

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DWIGHT WATROS,

Plaintiff-Appellee,

v

SPRINGFIELD TOWNSHIP, COLLIN WALLS  
and DEREK PLACE,

Defendants-Appellants.

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UNPUBLISHED

April 20, 2004

No. 243427

Oakland Circuit Court

LC No. 01-030427-CH

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court order granting plaintiff's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The first issue we must address is the proper standard of review. On July 10, 2002, a hearing was held regarding the parties' cross-motions for summary disposition on the sole issue of whether the water on plaintiff's property, apart from the man-made pond, constituted a pond within the meaning of the township's ordinance. The trial court summarized the parties' positions and decided that it would make a visual inspection of the property, which it did on July 19, 2002, in the presence of counsel for both parties.

Subsequently, the court signed a stipulation order signed by the parties which provided that, in lieu of the scheduled trial on July 26, 2002, the parties agreed that the case "shall be submitted for non-jury bench determination based on the pleadings and documents of record and based on the Court's site observation of the premises in question." The parties further stipulated that the briefs in support of the cross-motions for summary disposition were considered to be the parties' trial briefs, the court could consider all deposition testimony and affidavits submitted in connection with these briefs, and all photographs/other exhibits submitted were considered admitted for trial purposes. The order also provided that the court would issue a written opinion to the parties. The court signed the order on July 25, 2002, but it was not filed until August 9, 2002.

On August 2, 2002, the court's written opinion was entered which granted plaintiff's and denied defendants' motion for summary disposition. The relief the court granted was in direct contradiction to the parties' stipulation that the court act as trier of fact and contrary to its own

opinion which stated that it was based on a review of the parties' arguments and its own visual inspection. Therefore, we find that the trial court did indeed make an adjudication as the trier of fact in this matter.

Accordingly, we review the trial court's factual findings for clear error. *Bynum v ESAB Group, Inc.*, 467 Mich 280, 283; 651 NW2d 383 (2002). Statutory interpretation is a question of law that is reviewed de novo on appeal. *Roberts v Mecosta Co Gen Hosp.*, 466 Mich 57, 62; 642 NW2d 663 (2002). The rules of statutory construction apply to ordinances. *Livonia Hotel, LLC v Livonia*, 259 Mich App 116, 131; 673 NW2d 763 (2003).

Plaintiff sought a building permit to erect a house on a piece of land in Springfield Township. Defendants denied the permit because it did not meet the fifty-foot setback requirement for lots that "abut a lake, stream, pond, or river" as required by the township ordinance. The parties agreed that most of the area is considered a wetland. But defendants found that the standing water on the disputed property constituted a pond within the meaning of the ordinance. The township ordinance did not provide a definition of the word, but rather provided that words that were not specifically defined by the ordinance "shall have the meaning customarily assigned to them."

If the ordinance language is clear and unambiguous, "the courts may only apply the language as written. However, if reasonable minds could differ regarding the meaning of the ordinance, the courts may construe the ordinance." *Brandon Charter Twp v Tippett*, 241 Mich App 417, 422; 616 NW2d 243 (2000) (citations omitted). But a statute is not rendered ambiguous simply because a word is not defined. *Henderson v State Farm Fire & Cas Co.*, 460 Mich 348, 354; 596 NW2d 190 (1999). In such cases, it is appropriate to consult dictionary definitions. *Koontz v Ameritech Services, Inc.*, 466 Mich 304, 312; 645 NW2d 34 (2002). This rule is in accord with the ordinance's instruction that words not defined are to be given their customary meaning.

*Webster's New Twentieth Century Dictionary of the English Language Unabridged* (2d ed, 1979), defines "pond" as a "body of standing water smaller than a lake, often artificially formed." It defines "lake" as an "inland body of water, usually fresh water, . . . larger than a pool or pond." It defines "pool" as a "small pond, as in a garden." *The American Heritage Dictionary of the English Language* (1969), defines "pond" as a "still body of water, smaller than a lake, often of artificial construction." A "lake" can be a "large inland body of fresh or salt water" or a "scenic pond, as in a park." A "pool" is a "small body of still water; small pond." Likewise, *Random House Webster's College Dictionary* (1992), defines a "pond" as a "body of water smaller than a lake, sometimes artificially formed;" a "lake" as a "body of fresh or salt water of considerable size;" and a "pool" as a "small body of standing water; a small pond." *Black's Law Dictionary* (6th ed), defines these words similarly. Thus, given its "customarily

assigned” meaning, a pond is a still body of water that is smaller than a lake and larger than a pool.<sup>1</sup>

This definition is extremely generic. Practically any standing water could fit this definition. However, the ordinance does not require a set-back where there was just standing water, but only where the lot abuts “a lake, stream, pond, or river.” In order to give the definition contextual meaning, the trial court had to supplement this definition with its own lay opinion as to what constitutes a pond based on its observations of the area. Notably, the dictionary definition of a “fen” is a “low land covered wholly or partially with water.” *Random House Webster’s College Dictionary* (1992). Based on the photographs of the area and the fact that the trial court, acting as trier of fact, had an opportunity to personally inspect the area, we cannot say that it clearly erred in determining that the water in question did not constitute a pond. Consequently, the zoning board erred in denying plaintiff a building permit on the basis that he did not meet the set-back requirement.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ William B. Murphy  
/s/ Michael R. Smolenski

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<sup>1</sup> Defendants argue that the trial court erred in not accepting their definition of pond which was based on several dictionary definitions, and in accepting plaintiff’s definition which was based on state statutory definitions. However, simply because the trial court’s conclusion was contrary to the one proffered by defendants does not mean that the trial court rejected their definition or blindly accepted the one put forth by plaintiff.