

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

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CHARLES A. GROSSMANN and MARILYN  
GROSSMANN,

UNPUBLISHED  
July 1, 2014

Plaintiffs-Appellants,

v

No. 314531  
Oakland Circuit Court  
LC No. 2012-129273-AW

OAKLAND COUNTY BOARD OF  
COMMISSIONERS and OAKLAND COUNTY  
WATER RESOURCES COMMISSIONER,

Defendants-Appellees.

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Before: WILDER, P.J., and SAAD and K. F. KELLY, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's order that granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), and rejected plaintiffs' request for a writ of mandamus. For the reasons stated below, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

This case involves a special assessment issued under the Natural Resources and Environmental Protection Act ("NREPA"), MCL 324.101 *et seq.* to pay for a small dam to regulate the level of Bush Lake. Plaintiffs own property that abuts Bush Lake, and in June 2004, they and other lakefront property owners signed a petition to determine and establish the lake's normal water levels, pursuant to MCL 324.30701. The petition, which defendant Oakland County Board of Commissioners ("the Board") submitted to the Oakland Circuit Court, estimated the dam would cost in excess of \$280,000. After a hearing, the court issued an order in July 2006 that approved a new lake level and construction of the dam.

In the next few years, the dam project suffered a series of setbacks that raised the estimated cost of construction, including a series of lawsuits from a lakefront property owner opposed to the project. During this period, defendants made an extensive effort to inform the public of the additional expenses by holding public meetings and passing resolutions explaining the new cost structure. In September 2006, the Board passed a resolution authorizing the Drain

Commission<sup>1</sup> to compute “all costs relating to the establishment and maintaining the normal level for Bush Lake . . . and prepare a special assessment roll.” The costs were to be “defrayed by special assessments” against properties “benefited by the project,” including “privately owned parcels of land.” The Drain Commission held a public hearing in March 2007, and the Board approved a resolution that recognized the dam’s cost would require an additional special assessment sometime in the near future.<sup>2</sup>

After the dam’s design was completed in May 2009, the Drain Commissioner held a project meeting to discuss “the design of the [dam], the project schedule, project budget and financing, and proposed payment methods,” which plaintiff Charles Grossmann attended.<sup>3</sup> One year later, the Drain Commission mailed lakefront property owners a hearing notice that explained the new total amount of the special assessment (\$267,000),<sup>4</sup> outlined when and how the assessment would be levied, specified that a public meeting on the assessment would take place on May 19, 2010, and noted that property owners could protest the assessment and preserve their right of appeal by letter or in person at the Drain Commission offices. The Commission also published the notice in a newspaper for consecutive weeks. At the May 19, 2010 meeting, which plaintiffs attended, representatives from the Drain Commission explained the purpose of the dam project, the project budget, and how the assessment would be levied.

The Board confirmed the assessment in October 2010.<sup>5</sup> After filing an appeal of the assessment with the Michigan Tax Tribunal (which rejected the suit for lack of jurisdiction), plaintiffs brought the present action in the Oakland Circuit Court, and alleged that defendants: (1) did not follow the NREPA’s notice procedures for the special assessment; (2) improperly calculated the assessment by including legal fees incurred from the suit that opposed the dam project; and (3) violated their right to due process. They asked the court for a writ of mandamus that would order defendants to void the special assessment and return all funds collected.

Defendants responded with a motion for summary disposition under MCR 2.116(C)(8) and (C)(10), and argued that they complied with the NREPA’s notice provisions and properly levied the assessment. The trial court agreed, and granted defendant’s request for summary disposition.

Plaintiffs appealed to our Court and argue that the trial court erred when it held that defendant: (1) did not violate the NREPA’s notice provisions; (2) properly calculated the

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<sup>1</sup> Defendant Oakland County Water Resources Commissioner (“WRC”) was previously titled “County Drain Commissioner.” Throughout this opinion, we refer to defendant WRC as the “Drain Commission” for ease of reference.

<sup>2</sup> Plaintiffs do not challenge the 2007 assessment of \$104,415.75.

<sup>3</sup> Grossmann’s name is on the meeting sign-in sheet.

<sup>4</sup> The amount was later increased to \$300,000 to adjust for higher-than-anticipated bids.

<sup>5</sup> Plaintiffs claim they did not receive confirmation of the assessment until after October 25, when the county treasurer mailed their assessment bill.

assessment; and (3) did not violate plaintiffs' right to due process. We address each issue in turn.

## II. STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition is reviewed de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). The trial court considered evidence outside of the pleadings and MCR 2.116(C)(10) is thus the proper subrule for analysis. A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). When we review a motion under MCR 2.116(C)(10), we consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.*

Issues of statutory interpretation are questions of law, which are reviewed de novo. *In re MCI Telecom Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999). The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 217; 801 NW2d 35 (2011). The first criterion in determining intent is the specific language of the statute. *United States Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 795 NW2d 101 (2009). The Legislature is presumed to have intended the meaning it plainly expressed, and clear statutory language must be enforced as written, *Velez v Tuma*, 492 Mich 1, 16-17; 821 NW2d 432 (2012).

## III. ANALYSIS

### A. NREPA

MCL 324.30714 governs the procedural aspects of a special assessment, including notice, and states that:

(1) A special assessment roll shall describe the parcels of land to be assessed, the name of the owner of each parcel, if known, and the dollar amount of the assessment against each parcel.

(2) The delegated authority shall set a time and place for a public hearing or hearings on the project cost and the special assessment roll. Notice of a hearing shall be by both of the following:

(a) By publication of notice at least twice prior to the hearing in a newspaper that circulates in the special assessment district, the first publication to be at least 10 days before the hearing.

(b) As provided in Act No. 162 of the Public Acts of 1962, being sections 211.41 to 211.746 of the Michigan Compiled Laws.

(3) At or after a public hearing, the delegated authority may approve or revise the cost of the project or the special assessment roll. Before construction of a project

is begun, the county board shall approve the cost and the special assessment roll by resolution.

(4) The special assessment roll with the assessments listed shall be final and conclusive unless appealed in a court within 15 days after county board approval.

MCL 211.741(2) imposes additional notice requirements for governmental authorities that make a special assessment:

(2) The notice of hearing shall include a statement that appearance and protest at the hearing in the special assessment proceedings is required in order to appeal the amount of the special assessment to the state tax tribunal and shall describe the manner in which an appearance and protest shall be made.

Here, plaintiffs wrongly claim that defendants' conduct with regard to the special assessment violated these statutory mandates. In fact, defendants complied with all the requirements of MCL 324.30714 and 211.741: The May 2010 notice advised of the specific date, time, and place of the public hearing and described the hearing's purpose. It also stated that appearance and protest at the hearing was required to appeal the amount of the special assessment, and described the manner in which appearance and protest had to be made. Plaintiffs do not dispute that defendants provided the notice to each property owner or party in interest of property to be assessed, as provided on local tax assessment records, nor do they claim that defendants failed to publish the notice in an appropriate newspaper. Accordingly, defendants complied with MCL 324.30714 and 211.741, and plaintiffs' claim is without merit.

#### B. CALCULATING THE ASSESSMENT

MCL 324.30711(1) grants the County Board the power to defray "the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake" via "special assessment" on, among other things, "privately owned parcels of land." MCL 324.30712(1)(f) and (g) govern how to calculate a special assessment for such projects, and state, in relevant part:

(1) Computation of the cost of a normal level project shall include the cost of all of the following:

\* \* \*

(f) Legal fees, including estimated costs of appeals if assessments are not upheld.

(g) Court costs.

Here, plaintiffs incorrectly argue that defendants improperly included in the special assessment fees and costs related to a lawsuit against the dam project. MCL 324.30712(1)(g) entitled defendants to include these expenses in the special assessment, as they were "court costs" directly related to "the cost of a project to establish and maintain a normal level" for Bush Lake. Had the property owner opposed to the dam project prevailed, the lower lake level would have been preserved, and thus would have damaged plaintiffs and other lakefront property owners—as stated by plaintiffs in the June 2004 petition that requested construction of the dam.

Plaintiffs' argument that the legal fees should not have been included in the assessment is thus contrary to statute and their self-professed interest.

### C. DUE PROCESS

To invoke due process protections, plaintiff must show a state action deprived him of a life, liberty, or property interest. *Sherwin v State Hwy Comm'r*, 364 Mich 188, 199; 111 NW2d 56 (1961). Generally, due process in civil cases requires notice of the nature of the proceedings,<sup>6</sup> an opportunity to be heard in a meaningful time and manner,<sup>7</sup> and an impartial decision maker.<sup>8</sup>

In this case, plaintiffs claim that defendant violated their right to due process in connection with the special assessment. In fact, the opposite is true—the special assessment took place with a surfeit of process, and plaintiffs availed themselves of this process on multiple occasions. As noted, plaintiffs received notice of and attended the May 19, 2010 hearing on the final special assessment, and had an opportunity to be heard.<sup>9</sup> Nor did the Board violate plaintiffs' right to due process in the months after the meeting. There is nothing in the record that suggests the Board's October 2010 approval of the special assessment was untimely or unfair, and plaintiffs received notice of the approval. The Board, which also appears to post its business online, was not required to publish its approval in a newspaper, contrary to plaintiffs' assertions.

Further, as noted, defendants' May 2010 notice of public hearing complied with statutory requirements and informed plaintiffs of the prerequisites for filing an appeal. Though the Michigan Tax Tribunal was not the proper forum for plaintiffs' suit, defendants were not parties to that action, and the circuit court eventually considered and denied plaintiffs' claims when plaintiffs brought suit there. Plaintiffs' due process argument is therefore unavailing.

### IV. CONCLUSION

Accordingly, the trial court correctly granted defendants summary disposition pursuant to MCR 2.116(C)(10).

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<sup>6</sup> *Van Slooten v Larsen*, 410 Mich 21, 53; 299 NW2d 704 (1980).

<sup>7</sup> *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000).

<sup>8</sup> *Crampton v Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975)

<sup>9</sup> There is no indication in the record that the WRC demonstrated a lack of impartiality at the meeting. Plaintiffs were thus provided due process as it relates to the May 19, 2010 hearing. See *In re Project Cost and Special Assessment Roll for Chappel Dam*, 282 Mich App 142, 151; 762 NW2d 192 (2009) (analyzing due process requirements of a public hearing regarding a special assessment).

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Henry William Saad  
/s/ Kirsten Frank Kelly