

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL C. SESSA, JAMES SENSTOCK, and
WALTER GRAVES,

UNPUBLISHED
January 4, 2005

Plaintiffs-Appellants,

v

No. 249485
Macomb Circuit Court
LC No. 2002-005638-CZ

CHARTER TOWNSHIP OF HARRISON,

Defendant-Appellee,

and

MICHIGAN TOWNSHIPS ASSOCIATION and
MICHIGAN MUNICIPAL LEAGUE,

Amicus Curiaes.

Before: Cavanagh, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendant. We affirm.

On appeal plaintiffs first argue that the trial court erred in dismissing their claims because there were issues that were not decided on the merits and they should have been allowed to amend their complaint. We disagree. This Court will not reverse a trial court's decision on a motion to amend a complaint absent an abuse of discretion. *Frank W Lynch & Co v Flex Techs, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001).

A court should freely grant leave to amend a complaint when required by justice. MCR 2.118(A)(2); *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997); *Tierney v University of Michigan Bd of Regents*, 257 Mich App 681, 687; 669 NW2d 575 (2003). Such motions to amend should usually be granted unless there is undue delay, bad faith, repeated deficient amendments, undue prejudice, or if such amendment would be futile. *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 240; 615 NW2d 241 (2000); *Jager v Nationwide Truck Brokers, Inc*, 252 Mich App 464, 487; 652 NW2d 503 (2002). Merely restating the original claim is futile, as are the addition of allegations that fail to state a claim. *Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

Here, after the trial court granted defendant's motion for summary disposition, plaintiffs sought leave to amend their complaint to address issues regarding whether the tax was a special assessment and whether notice was acceptable under the provisions of Public Act 33. The trial court denied the request on the ground that the issues that were properly pleaded and raised were already argued, decided, and dismissed. We agree. Plaintiffs' attempt to merely restate their original claims must fail; accordingly, the trial court did not abuse its discretion.

Plaintiffs next argue that the trial court erred by granting summary disposition because there were disputed issues of material fact. After de novo review to determine whether there is factual support for the claim considering the documentary evidence submitted, we disagree. See *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiffs argue that there were unresolved factual issues regarding whether defendant interfered with plaintiffs' right to a referendum vote, ability to gather petitions and gave faulty information to plaintiffs. First, we agree with the trial court that requested petitions were provided and that defendant did not interfere with plaintiffs' rights to gather petitions. Second, because the levy was a special assessment and not a general tax, plaintiffs did not have the Constitutional right to a referendum vote. See *Kadzban v Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993), citing *Knott v Flint*, 363 Mich 483, 497; 109 NW2d 908 (1961). Public Act 33 provides that the authorized special assessment for fire protection is levied on "the land and premises" to be benefited, based on the "taxable value" of the land and premises. MCL 41.801(3) and (4). MCL 41.801 "specifically provides for the financing of a fire department through special assessment." *Niles Twp v Berrien Co Bd of Comm'rs*, 261 Mich App 308, 324; 683 NW2d 148 (2004). Here, defendant created a special assessment district and levied additional millage pursuant to MCL 41.801, *et seq.* Therefore, there was no right to a vote of the electorate, and defendant did not block plaintiffs' right to a referendum.

Finally, notice supplied by defendant was proper under MCL 41.801, and defendant did not mislead plaintiffs or provide plaintiffs with faulty information. Plaintiffs indicate that under *Trussell v Decker*, 147 Mich App 312, 325; 382 NW2d 778 (1985), the special assessment was void due to improper notice when the notice misled taxpayers. However, the *Trussell* Court held, "We decline to hold that notice of hearing is insufficient and a denial of due process unless the notice contains a reference to other statutory provisions available to the person affected." *Id.* at 322. Here, the notices simply stated that a hearing on Public Act 33 would be held, including the time and place, and did not state any of the possible remedies. The notices did not mislead plaintiffs as to their remedies. The notice given complied with the notice requirements of MCL 41.801, indicating that defendant publish the time, place, and purpose of the meeting.

Next, plaintiffs argue that the trial court did not correctly interpret the statute when it determined that Public Act 33 is available to charter townships, as well as townships with over fifteen thousand inhabitants, and that defendant's estimated budget conformed to the statutory requirements. We disagree. Statutory interpretation is a question of law reviewed de novo on appeal. *Sotelo v Grant*, 470 Mich 95, 100; 680 NW2d 381 (2004).

Plaintiffs argued below that MCL 41.810 should be interpreted to state that Public Act 33 is not available to townships with over fifteen thousand residents. MCL 41.810 provides:

The provisions of this act shall apply to townships, and adjoining townships and incorporated villages and cities under 15,000 inhabitants acting jointly. Whenever reference is made in this act to townships, such reference shall be deemed to mean and apply to townships and incorporated villages and cities under 15,000 inhabitants, and whenever reference is made in this act to township boards, such reference shall be deemed to mean and apply to township boards and the legislative bodies of incorporated villages and cities under 15,000 inhabitants. No township, incorporated village or city under 15,000 inhabitants shall in any way use this act to lessen the number of paid full time firemen in their respective communities.

In statutory interpretation the Court must determine and give effect to the Legislature's intent as expressed in the statutory language. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). If the statute's language is clear and unambiguous, it is enforced as written. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). The issue here is whether the phrase "under 15,000 inhabitants" in MCL 41.810 applies to townships. But, by the plain language of the statute, the phrase "under 15,000 inhabitants" references and applies to cities, only. MCL 41.811(6)(a), defines a city as having a population "of not more than 15,000," clearly the disputed phrase does not reference or apply to townships. Further analysis is not necessary but legislative history likewise supports this construction.

Plaintiffs also argue that Public Act 33 does not apply to charter townships because they are governed by the Charter Township Act, and such act has a provision for establishing and maintaining a fire department. However, MCL 42.13 of the Charter Township Act merely gives the charter township the power to establish and fund a fire department, while MCL 41.801 *et seq.*, gives townships, including charter townships, as incorporated through MCL 42.1(2), the power to raise funds for the fire department through a special assessment. Therefore, MCL 41.801 *et seq.* and MCL 42.13 are not in conflict.

Plaintiffs also argue that the trial court erred in determining that the budget defendant submitted was adequate under the statute. However, as the trial court noted, defendant provided a budget estimate of fire protection expenditures as required under MCL 41.801(4). The statute does not require that each individual expense be itemized; therefore, the trial court did not err in concluding that defendant's budget proposal was sufficient.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood