

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

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CHARLES F. FAWCETT, LINDA S. FAWCETT,  
MICHAEL P. REINERTSEN, CHERYL L.  
REINERTSEN and NORTHWESTERN  
SAVINGS BANK & TRUST,

Plaintiffs/Counterdefendants-  
Appellees,

v

ESTATE OF ANNETTE C. MEYER, Deceased,  
JOSEPH ELFEST, JOAN F. ELFELT and  
STEPHEN M. ELFELT,

Defendants/Counterplaintiffs-  
Appellants

and

CLARENCE J. MEYER and CLEMENT B.  
MEYER,

Defendants/Counterplaintiffs.

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CHARLES F. FAWCETT, LINDA S. FAWCETT,  
MICHAEL P. REINERTSEN, CHERYL L.  
REINERTSEN and NORTHWESTERN SAVINGS  
BANK & TRUST,

Plaintiffs/Counterdefendants-Appellees,

v

ESTATE OF ANNETTE C. MEYER, Deceased,  
JOSEPH ELFELT, JOAN F. ELFELT and  
STEPHEN M. ELFELT,

Defendant/Counterplaintiffs-Appellants,

and

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UNPUBLISHED  
September 15, 2005

No. 253819  
Kalkaska Circuit Court  
LC No. 98-006213-PZ

No. 259595  
LC No. 98-006213-PZ

CLARENCE J. MEYER and CLEMENT B.  
MEYER,

Defendants/Counterplaintiffs.

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

PER CURIAM.

These consolidated appeals involve six parcels (A-F) of former farm land located in Kalkaska County (totaling approximately 436 acres), and arise from the parties' dispute over (1) the value of reforestation improvements of the property, (2) reimbursement of back taxes paid for the property, and (3) the amount of logging damages to the property.<sup>1</sup> In Docket No. 253819, the Estate of Annette C. Meyer,<sup>2</sup> Joseph Elfelt, Joan F. Elfelt and Stephen M. Elfelt, who together shared an undivided ownership interest in roughly two-thirds of the property, appeal as of right the amended order of judgment that awarded reimbursement for back taxes paid by plaintiffs Charles F. Fawcett, his wife Linda S. Fawcett, Michael P. Reinertsen, his wife Cheryl L. Reinertsen and Northwestern Savings Bank & Trust, all of whom shared an undivided ownership interest in the remaining one-third of the property, and compensation for improvements made to the property by the Fawcetts. In addition to the award to plaintiffs, the trial court awarded defendants reimbursement for property taxes they paid, and damages for plaintiffs' logging operations on the property, the amount of which is also challenged on appeal. The court prorated the awards according to the percentages of the parties' respective ownership interests in the property, set off the various amounts awarded, and entered a lien against defendants' ownership interests in the amounts of \$51,768, plus interest from November 19, 2003, for the Fawcetts, and \$17,127, plus interest from November 19, 2003, for the Reinertsens.

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<sup>1</sup> Plaintiffs filed a complaint on January 21, 1998 seeking to quiet title to "open farm land located in Garfield Township, Kalkaska County." Defendants filed a counter-complaint, claiming interests in the 436-acre parcel. During the quiet title proceedings, the parties stipulated regarding their respective ownership interests in the property. The court entered an order effectuating the parties' stipulation as to their fee simple title interests. The quiet title order also provided that "[a]ll other claims of the parties regarding title to the parcels, including, but not limited to, abandonment, adverse possession under MCL 211.73a, failure to redeem from tax sale, and constructive trusts, are hereby dismissed with prejudice." The remaining issues included plaintiffs' claims for reimbursement of property taxes and the enhanced value of the property resulting from their tree planting efforts, as well as defendants' claims for use and rental value and logging damages.

<sup>2</sup> Annette C. Meyer died during the pendency of this appeal, and her estate has been substituted in her place.

The court entered an amended judicial lien<sup>3</sup> on February 4, 2004, after prorating the logging damages. The court declined to award either party costs.

In Docket No. 259595, defendants appeal as of right the court's order denying their motion for sanctions.

We affirm in both appeals.

## I

At trial, Charles Fawcett testified that he purchased or redeemed property taxes on all six parcels from 1985 through the 2000 tax year, and that he received six tax deeds of all the property from the state in 1985, arising from the 1982 tax sale, and 1986, arising from the 1983 tax sale.<sup>4</sup> Fawcett testified that he began to occupy the property exclusively in 1987. Fawcett

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<sup>3</sup> After the initial judgment was entered, the parties moved the court to alter its findings and conclusions. The court denied defendants' motion because it restated prior claims, and for the same reason denied plaintiffs' motions, with the exception of plaintiffs' request that the logging damages awarded defendants be prorated "according to the parties' fractional title interests," which the court granted. The judgments against defendants were as follows:

1. In favor of Plaintiffs Fawcett and against the interest in such real property held by Defendant Annette Meyer, a lien in the amount of \$7,506;

2. In favor of Plaintiffs Fawcett and against the interest in such real property held by Defendants Joseph and Joan Elfelt, a lien in the amount of \$22,131;

3. In favor of Plaintiffs Fawcett and against the interest in such real property held by Defendant Stephen Elfelt, a lien in the amount of \$22,131;

4. In favor of Plaintiffs Reinertsen and against the interest in such real property held by Defendant Annette Meyer, a lien in the amount of \$2,483;

5. In favor of Plaintiffs Reinertsen and against the interest in such real property held by Defendants Joseph and Joan Elfelt, a lien in the amount of \$7,322;

6. In favor of Plaintiffs Reinertsen and against the interest in such real property held by Defendant Stephen Elfelt, a lien in the amount of \$7,322 . . .

The amended lien stated that it would continue to "accrue interest as provided in MCL 600.6013(8) beginning on the 19<sup>th</sup> day of November 2003."

<sup>4</sup> The tax deeds were issued to now defunct Coldsprings Construction Company, which Fawcett, the sole shareholder and officer, described as his "alter ego."

testified that he did not understand at the time that because of a statutory period in which the existing owners had the right to redeem the property, the tax deeds that he received did not provide him title to the Meyer property. Fawcett believed that he had five years from his receipt of the tax deeds to notify the existing owners that he had purchased and received the deeds. Fawcett testified that on at least three occasions during this period, including once on September 4, 1986, he published a notice of the right to redemption of the Meyer farm "To Whom It May Concern," and that he had arranged for personal service on lone farm resident Francis Meyer on May 1, 1990. The county tax records, which Fawcett reviewed instead of the filings in the register of deeds, revealed the last Meyer taxpayers to be Francis Meyer and Ralph Meyer, who Fawcett learned from Francis had died; Beulah Elliott was the last tax sale purchaser of record before Fawcett began purchasing tax sale certificates. Although Fawcett conceded that he had not read the applicable Michigan notice statute, he believed that his actions satisfied his obligation to provide notice of the right of reconveyance.

Francis Meyer<sup>5</sup> testified that he had run out of money to pay the property taxes by about 1982, and that he called two of his brothers, told them he could not pay, and advised them of the upcoming tax sale, and they offered him no assistance. On January 26, 1991, Francis Meyer gave the Fawcetts a deed to the property that, pursuant to an agreement with Fawcett, excepted a four-acre parcel of land on which was located the house where Francis had resided since 1945. Days later, Fawcett received a February 1, 1991 letter from Mona Meyer, widow of Charles Meyer, asserting that she and several other persons she referred to as her brothers, owned some share of the Meyer farm property. On February 2, 1991, Fawcett telephoned Mona Meyer, who seemed upset with Francis Meyer, asked Fawcett how much money he had given Francis, and inquired why Fawcett did not evict Francis. Fawcett testified that he had not asked Mona Meyer about the identities of the other alleged property owners because he did not think they actually had such interests, in part because neither Mona nor her siblings had ever paid or offered to pay any property taxes.<sup>6</sup> Fawcett denied that Mona Meyer expressed any concern about his logging or other use of the property, requested a share of any proceeds arising from activity on the property, or asked Fawcett to vacate the property.

In July 1995, the Fawcetts conveyed by quitclaim deed to the Reinertsens their interest in parcel D in exchange for \$18,000. The Fawcetts had earlier conveyed parcels C and F to Northwestern Savings Bank and Trust, a cotrustee with Charles Fawcett of a Fawcett family trust; in September 1995, the bank sold parcels C and F to the Reinertsens by land contract. The Reinertsens began paying some of the property taxes levied on parcels C, D and F in 1995, and Michael Reinertsen, who described himself as Charles Fawcett's nephew in law, asserted that he helped plant trees on these parcels. Reinertsen explained that at the time he and his wife obtained their interests in the property, they believed Charles Fawcett had good title, but did not

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<sup>5</sup> Francis Meyer died in 2002.

<sup>6</sup> After the instant lawsuit began, Fawcett learned that the inventory of Mona Meyer's estate did not reference any interest in the property.

receive a title insurance commitment from Charles Fawcett, and did not independently investigate Fawcett's ownership of the property.<sup>7</sup>

Defendant Joseph Elfelt testified he had invested in Michigan tax sale properties for twenty years. Elfelt learned of the Meyer property at some point when he visited the Kalkaska County courthouse to peruse available tax sales. When the 1990 Kalkaska County tax sale occurred, Elfelt purchased a tax sale certificate for the 1987 taxes, but Charles Fawcett redeemed the property. Elfelt subsequently obtained an interest in the property by paying an amount related to the 1990 taxes.

Beginning around early 1998, Elfelt and his brother Stephen had many contacts with the Meyer siblings and their heirs by telephone and letter, in which the Elfelts expressed their desire to purchase the Meyer-derived interests in the property, and mentioned the danger that the Meyers might lose the property as a result of Fawcett's tax sale purchases and the instant suit. For example, Joseph Elfelt corresponded with cloistered Meyer sibling Sister Mary Linus, who was in declining health, through Sister Mary's superior; in September 1998, Joseph obtained a conveyance of her interest in the property<sup>8</sup> for \$500 after he wrote at least two letters in March and August 1998, in which he mentioned the fifteen years of back taxes, that her siblings were letting the property go, and that if she ignored his letters he would have to serve on her a sequence of papers once the court struggle over her abandoned interest began. After Joseph Elfelt wrote to former tax sale purchaser Beulah Elliott in October 1998, the Elfelts purchased her interest in the property, if any, for \$500. The Elfelts also purchased the interest of Meyer heir Elmer Cain for \$500. According to the Elfelts, they advised the Meyers and their heirs of their right to retain an attorney.

After the Elfelts sent at least two letters to husband and wife Clarence and Annette Meyer,<sup>9</sup> who lived in Idaho, the Elfelts entered an agreement with the Meyers, which provided that they would purchase one-half of the Meyers' interest in the property for \$2,000, and that the Meyers would allow the Elfelts to direct the lawsuit through their attorney; the agreement permitted the Meyers to secure their own attorney at their expense. In the event defendants prevailed in the lawsuit, the Meyers would share one-sixth of the damages recovered above \$200,000 (after legal costs), and the Elfelts could purchase for \$500 the remainder of the Meyers' interest.<sup>10</sup>

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<sup>7</sup> Michael Reinertsen testified that he stopped making payments pursuant to the land contracts in 1997, when he sought title insurance for the property and learned that the Fawcetts' full ownership of the property appeared in doubt. Reinertsen confronted Charles Fawcett with the title agent's concerns, but Fawcett reassured Reinertsen that he owned the property through the tax deeds. Reinertsen continued to pay property taxes on the parcels because he believed he still had some interest in them.

<sup>8</sup> The Elfelts did not obtain any deeds of a Meyer-derived interest in the property until after this lawsuit began.

<sup>9</sup> Both Clarence and Annette Meyer died during the pendency of the case.

<sup>10</sup> The Elfelts also had contacts with Francis Meyer, including a September 8, 1999 letter in which they offered to pay Meyer \$5,000 if he joined the lawsuit under the representation of the

(continued...)

The trial court's "Opinion & Interim Order" invoked the doctrine of unjust enrichment in awarding plaintiffs tax payment reimbursement "according to the parties' undivided, fractional title interests"; the court explained that the Meyers knowingly failed to pay any property taxes for twenty years, plaintiffs had purchased tax sale certificates or redeemed the vast majority of the property taxes for approximately fifteen years, that solely through plaintiffs' substantial tax payments were the valuable title interests of the Elfelt/Meyer defendants preserved from 1985 to date, and that rejection of plaintiffs' claims would "result in a windfall to Defendants," "who have, for approximately 17 years . . . completely ignored their statutory duty to pay." The court awarded defendants pro rata reimbursement for the \$3,827.14 the Elfelts contributed to the tax debt during this fifteen-year period.

Regarding plaintiffs' claim under MCR 3.411(F) for the value of the property improvement from their tree planting efforts, the court initially found that plaintiffs conducted the plantings in good faith in light of the evidence that, in addition to possessing the tax deeds, "Fawcett actually held a cotenants legal title interest" pursuant to the deed from Francis Meyer.

Regarding defendants' logging claim,<sup>11</sup> the court found Fawcett and Eklund's recollections regarding the type of trees cut and the money Fawcett received as a credible measure of value, \$30,000, and awarded defendants twice this value pursuant to MCL 600.2919(2)(a). The court rejected defendants' use claim because it found that the property had no lease or other use value during the period of plaintiffs' occupancy.

## II

We first address, and reject, defendants' claim that the trial court erred in failing to dismiss plaintiffs' claims for taxes and improvements on the basis that they lacked clean hands.

Because the clean hands doctrine "is designed to preserve the integrity of the judiciary, courts may apply it on their own motion even though it has not been raised by the parties or the courts below." *Stachnik v Winkel*, 394 Mich 375, 382; 230 NW2d 529 (1975). The equitable doctrine of unclean hands constitutes an affirmative defense to a plaintiff's claim. *Heritage Broadcasting Co v Wilson Communications, Inc*, 170 Mich App 812, 819; 428 NW2d 784 (1988). This Court reviews de novo the application of an equitable doctrine, but reviews for clear error the trial court's factual findings. *Stachnik, supra*, 394 Mich 383; *McFerren v B & B Investment Group*, 253 Mich App 517, 522; 655 NW2d 779 (2002). Clear error exists when, although some evidence supports the trial court's finding, this Court after reviewing the entire record is left with the definite and firm conviction that the trial court made a mistake. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). "[R]egard shall be given to the special

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(...continued)

Elfelts' attorney and requested that the court set aside the 1991 deed he had given the Fawcetts; if Meyer's request succeeded, the Elfelts would pay \$15,000 for his interest in the property and give Meyer a life estate with hunting and firewood rights. Francis Meyer never responded to the offer.

<sup>11</sup> The evidence regarding this claim is discussed in greater detail below.

opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” MCR 2.613(C).

Defendants assert that there was overwhelming evidence that Fawcett obtained the deed from Francis Meyer for no consideration and through misrepresentations. The trial court did not specifically find that plaintiffs had, or lacked, clean hands; but the court implicitly rejected defendants’ clean hands argument by repeatedly observing that plaintiffs acted in good faith in obtaining and improving the property. We find no error.

Defendants do not dispute that Charles Fawcett timely supplied Francis Meyer with the notices of reconveyance within five years of obtaining tax title, as contemplated within MCL 211.73a.<sup>12</sup> Defendants criticize Fawcett for including in the statutory notices of reconveyance amounts Fawcett/Coldsprings Construction Company, see n 4, *supra*, paid in taxes for subsequent tax years.

Even assuming that Charles Fawcett should have excluded from the notices some of the tax amounts for the various years he paid, the record contains no evidence or suggestion that Fawcett obtained the 1991 deed of Francis Meyer’s interest in the property either by claiming inflated redemption amounts or threatening Meyer with eviction. With respect to the circumstances surrounding the 1991 deed, Francis Meyer testified that he had lived on the property, grown crops, raised cattle, and paid the property taxes from 1945 until the early to mid 1980s, after which he continued to reside there, hunt and cut wood. At some point, Francis Meyer had difficulty meeting the property tax obligation, but once redeemed the property after Beulah Elliott had purchased a tax sale certificate for an early 1980s tax year. After this redemption, however, Francis Meyer paid no further property taxes because he lacked the funds to do so. According to Meyer, his brothers in Idaho and Indiana (Clarence and Clement) ignored his warning that a tax sale was forthcoming and that he could not afford to pay the taxes levied.

After Francis Meyer received the notices of his right to redeem the property by reimbursing the taxes paid by Fawcett (and after his six-month redemption period expired in November 1990), Meyer gave the Fawcetts a January 26, 1991 deed to his interest in 436 acres

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<sup>12</sup> Exhibit 125 is comprised of six notice forms regarding parcels A-F, each of which is accompanied by a return of personal service form. The notices track the statutorily prescribed notice of redemption language within MCL 211.140(2), describe the location of each parcel and the respective amounts Charles Fawcett paid for property taxes for the years 1982 through 1985, and are directed to “Ralph A. Meyers [sic] and/or Francis Meyers [sic],” at “Box 166 Route 1 Fife Lake MI,” the address of the Meyer farm. A deputy sheriff signed each return of service to confirm that he personally gave Francis Meyer the notices on May 1, 1990. The parties do not appear to dispute that the deputy filed the returns of service with the Kalkaska County treasurer, as required by MCL 211.140(1). Consequently, the notice provided by Fawcett to Francis Meyer complied in all respects with the various requirements of subsections 140(1) and (2). No indication exists within the record that Francis Meyer ever challenged the adequacy of these notices of redemption, or contested the tax sale proceedings in any other respect.

of the property,<sup>13</sup> in exchange for which Meyer maintained an ownership interest in the four-acre parcel on which his home sat, and, pursuant to a separate agreement, also received the Fawcetts' permission to hunt and "gather or cut firewood for . . . personal use . . . during his lifetime." Meyer, who knew that Fawcett had paid "the assessments for so many years" and that "they weren't going to be redeemed, not by me," opined that he received items of value in exchange for the deed to the Fawcetts. Meyer believed Fawcett "may have said something along th[e] line" that he could evict Meyer but did not desire to do so, and Meyer held the personal belief that Fawcett could have done so had Meyer decided not to execute the deed.

In summary, Francis Meyer specifically denied that he signed the 1991 deed because of any coercion by Charles Fawcett. In light of the fact that Fawcett possessed tax deeds to the property and served Francis Meyer with the notices of his right to redeem, we decline defendants' invitation to reverse the trial judge and declare that the unclean hands doctrine precludes any reimbursement claim by plaintiffs for improvements and property taxes paid.

### III

We next address defendants' assertion that in making its award, the trial court erred by relying on an incomplete definition of "good faith," making a finding of good faith based on that incomplete definition, and, based on that finding, making an award to plaintiffs under MCR 3.411(F). We find no grounds for reversal.

MCR 3.411(F)(3) governs claims for improvements to real property:

(1) Within 28 days after the finding of title, a party may file a claim against the party found to have title to the premises for the amount that the present value of the premises has been increased by the erection of buildings or the making of improvements by the party making the claim or those through whom he or she claims.

(2) The court shall hear evidence as to the value of the buildings erected and the improvements made on the premises, and the value the premises would have if they had not been improved or built upon. The court shall determine the amount the premises would be worth at the time of the claim had the premises not been improved, and the amount the value of the premises was increased at the time of the claim by the buildings erected and improvements made.

(3) *The party claiming the value of the improvements may not recover their value if they were made in bad faith.* [Emphasis added.]

"[U]nder the court rule the burden is on the owner . . . to show 'bad faith.'" *Hogerheide v Hickey*, 2 Mich App 580, 584; 141 NW2d 357 (1966).

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<sup>13</sup> In August 1994, Meyer executed a second deed to correct an error in the legal description of the original deed.

Defendants assert that the trial court disregarded the appropriate definition of “good faith.” The trial court, however, accurately cited *Taylor v Hurd*, 293 Mich 425, 428; 292 NW 862 (1940), for the proposition that in the context of real property disputes, a claimant seeking the value of improvements to the property must have “an honest belief . . . in his right or title.” None of the cases cited by defendants in their brief on appeal define “good faith” in the context of a claim for improvements to real property. See *Austin v Hayden*, 171 Mich 38, 54-55; 137 NW 317 (1912) (addressing the good faith of a stock transfer); *Pinkerton Bros Co v Bromley*, 119 Mich 8; 77 NW 307 (1898) (involving a dispute regarding the ownership of goods); and *Karibian v Paletta*, 122 Mich App 353, 359; 332 NW2d 484 (1983) (considering the definition of “good faith” within the Uniform Commercial Code). Defendant confuses the “good faith” required to show good title with the “good faith,” lack of “bad faith,” required to recover the value of improvements where another has been found to have good title. *Taylor, supra*; *Petit v Flint & Pere Marquette, RR*, 119 Mich 492; 78 NW 554 (1899).

Clearly, by the end of 1990, after he had served the requisite notice on Frances Meyer and the six months had expired, Fawcett satisfied any definition of “good faith” in entering upon and improving the property.<sup>14</sup> We find no error in the trial court’s determination that Fawcett satisfied the applicable standard for recovering improvements to the property.

#### IV

Defendants assert that the trial court erred by not limiting plaintiffs’ property improvement award to plaintiffs’ actual out of pocket costs. Defendants contend that

Assuming arguendo that any . . . Plaintiffs satisfied the good faith requirement . . . then any such Plaintiff is *not* automatically entitled to an award equal to the value their improvements added to the land. Instead, it is basic hornbook law that any award made for property improvements is capped by either (1) the cost of the improvements or (2) the value added to the land by the improvements, *whichever is smaller*.

Defendants assert that “the trial court made an incorrect conclusion of law that such awards are not capped by actual costs and awarded Plaintiffs a total of \$67,163.”

Defendants have failed to demonstrate that the trial court applied an incorrect standard when calculating the value of the real property improvements plaintiffs made. The trial court correctly referred to MCR 3.411(F), which directs a court to calculate improvement value as follows:

(1) . . . [A] party may file a claim against the party found to have title to the premises for *the amount that the present value of the premises has been increased* by the erection of buildings or the making of improvements by the party making the claim . . . .

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<sup>14</sup> Any tree planting prior to this date was of de minimis value in the trial court’s award.

(2) The court shall hear evidence as to the value of the buildings erected and the improvements made on the premises, and the value the premises would have if they had not been improved or built upon. *The court shall determine the amount the premises would be worth at the time of the claim had the premises not been improved, and the amount the value of the premises was increased at the time of the claim by the buildings erected and improvements made.* [Emphasis added.]

See *Ferguson v City of Lincoln Park*, 264 Mich App 93, 95-96; 694 NW2d 61 (2004) (observing that courts must apply plain and unambiguous ordinance language as written). Nowhere does MCR 3.411(F) contemplate or suggest that the actual cost of the improvements made constitutes a limitation on the amount recoverable for an improvement reimbursement claim, or that the trial court must award the lesser of either “the amount that the present value of the premises has been increased” or the actual cost of the improvements. MCR 3.411(F)(1).

After quoting the correct court rule provision, the trial court properly considered the values prescribed within the rule before arriving at the increase in the present value of the property attributable to plaintiffs’ improvements. Because the court applied the plain language of the governing court rule, defendants’ contention that the court miscalculated the value of plaintiffs’ improvements lacks merit. *Ferguson, supra*, 264 Mich App at 95-96.

## V

We next address, and reject, defendants’ claims that the court erred in awarding plaintiffs reimbursement for taxes they paid on the property when they were co-owners of the property, and that even if such taxes are properly reimbursed to a co-owner, any claims for taxes plaintiffs paid outside the six-year period of limitations of MCL 600.5813 were barred.

## A

Defendants first assert that the trial court erred in ignoring the general rule that when “a party (1) is in exclusive possession and (2) simply claims to be the sole owner, then they must pay 100% of the taxes.” We disagree.

We conclude that defendants misplace their reliance on *Dubois v Campau*, 24 Mich 360 (1872), as governing the outcome of plaintiffs’ tax reimbursement claim. In *Dubois*, the plaintiffs and Joseph Campau held the property in dispute as tenants in common, with the plaintiffs having an undivided one-third interest and Joseph Campau holding an undivided two-thirds interest. *Id.* at 361-362. Joseph Campau possessed the entire property during his lifetime, and after his death, his “children (and heirs) conveyed, or purported to convey, to the defendant Daniel J. Campau, in fee . . .” *Id.* at 362. In 1857, before Joseph Campau’s death, Francis Palms acquired a tax deed after paying a “delinquent paving tax assessed in 1855.” *Id.* at 362-363. Apparently, nonparty Palms conveyed his interest to the defendant, Daniel Campau, in the same deed in which the heirs of Joseph Campau conveyed their interests in the property to Daniel Campau. *Id.* at 363. The Supreme Court then considered whether the defendant could defeat the plaintiffs’ ownership interest in the parcel by receiving a conveyance of the entire parcel from tax sale purchaser Palms. *Id.* at 366-367.

The Supreme Court rejected Daniel Campau's attempt to defeat or acquire the plaintiffs' undivided one-third ownership interest:

. . . [S]uppose Joseph Campau were living and this action brought against him, . . . could he set up that [tax] title against these plaintiffs, his co-tenants, to strengthen his own, or to defeat their recovery in this action? We are satisfied that he could not. The sale seems to have been of the whole lot, and of course for the whole tax. Joseph Campau, therefore, did not pay any of his own share of the tax, and the sale, which is an entire thing, was based in part on his own default. *It may be regarded as settled in this state, that one in possession of land, claiming it as his own, is bound to pay the taxes imposed upon it,—certainly such as are imposed and become due during such possession; and that, by neglecting this duty, suffering the land to be sold for the taxes, and bidding it in himself, he can acquire no title as against any one, and certainly not as a co-tenant; such sale being based upon his own default . . . . And that one tenant in common, without reference to the question of possession, cannot procure the title of his co-tenants by purchasing in the land for taxes, a part of which were upon his own share, as such sale is based in part upon his own default . . . .*

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But it is urged that if the land is bid in by a stranger, on his own account, and without any understanding or collusion with the co-tenant, and a deed be given to the purchaser, such tenant, through the sale has been based in part upon his own default, may purchase in the title and thus acquire the interest of his co-tenant, and set it up against him. In such a case, it is true, the purchasing tenant, if not in possession, is under no obligation to pay the taxes of his co-tenant. But we need express no opinion upon such a case, as it is not involved here.

In the present case it is clear enough that *defendant claimed on the trial, that Joseph Campau was continually in possession, claiming the whole and treating it as his own, from a period long prior to the levy of the tax until his death, long after the sale became absolute and the deed was given to Palms. They introduced evidence tending to show this; and this must be treated as an admission, at least by them, that he was thus in possession. If so in possession, claiming the whole as his own, it was his duty to pay all the taxes . . . . and . . . he shall not take advantage of his own violation of [h]is duty, to acquire [the plaintiffs'] interest in the land by a [tax] sale. [Dubois, supra, 24 Mich 368-369 (emphasis added).]*

In their appellate brief, defendants string the above-italicized sentences together to support their claim that whenever a cotenant possesses the entirety of common property he must pay all property taxes, and therefore has no equitable claim to reimbursement in an action such as this. However, the circumstances involved in *Dubois* have no parallel to the instant case, which

plainly does not involve plaintiffs' effort to defeat defendants' title through tax deeds arising from plaintiffs' violation of their own obligation to pay property taxes.<sup>15</sup>

## B

Defendants further assert that “[r]ecovery of taxes can only be had if the taxes were paid in good faith,” that “[p]laintiffs are not entitled to recover the excess taxes they paid [on the fractional shares they did not own] because they paid the excess as volunteers,” that “[p]laintiffs’ payment of excess taxes was not necessary to protect their own interests, and therefore [they] cannot recover the excess,” and that “[p]laintiffs have failed to show that they were inequitably manipulated into making unsolicited benefits by way of paying . . . Defendants’ share of the taxes.” We conclude that none of these arguments establish error by the trial court.

Kalkaska County tax records introduced during trial established that with respect to tax years 1982 through at least 1997, plaintiffs (the Fawcetts and Reinertsens) paid or redeemed virtually all property taxes assessed against parcels A through F. Charles Fawcett testified that during this period, only once, in August 1998, did anyone else pay money toward satisfying the tax obligations; specifically, Joseph Elfelt paid \$3,202.11 toward the amount of taxes owed on parcel B.

The testimony of Beulah Elliott and Annette and Clarence Meyer indicated that the Meyer siblings had at least a vague understanding that as long as Francis Meyer lived on the property, he would pay the property taxes. But according to the testimony of Elliott, Annette and Clarence Meyer, and Francis Meyer, (1) in the early 1980s, Francis notified his siblings that he could no longer pay the property taxes, (2) Elliott, with money from her sister, Mona Meyer, widow of Charles Meyer, paid the 1980 and 1981 property taxes when they were sold at tax sales, after which she “served papers on the whole Meyers [sic] family,” (3) thereafter, none of the Meyers contributed anything toward the property taxes.

Plaintiffs’ many property tax payments plainly conferred a benefit to the Meyers and the Elfelts. The lengthy string of tax sale purchases and redemptions regarding all six parcels of the property by plaintiffs protected the interests of the Elfelts’ predecessors in title in the 440-acre parcel from becoming property of the state, or perhaps being divided by the state or another purchaser, and enabled plaintiffs to develop and improve the entire property through their

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<sup>15</sup> Further, a footnote to one of the *Dubois* headnotes affirms the general principle that a cotenant who pays all property taxes may obtain reimbursement from his cotenants:

If one tenant in common pay taxes, or purchase a tax-title, or remove an incumbrance upon the whole property, his co-tenant is bound to re-imburse him to the extent of his proportionate share in the property . . . and the interest of such co-tenant in the property will, in equity, be subjected to a lien in favor of the one who has thus removed a burden from the whole property . . . . [*Dubois, supra*, 24 Mich 361 n 4.]

extensive reforestation efforts, which substantially increased the value of the property.<sup>16</sup> Because plaintiffs' repeated property tax payments, made in good faith, preserved defendants' ownership interests in the property, which rose in value through the years, we conclude that the trial court did not err in awarding reimbursement of the property taxes.<sup>17</sup>

## C

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<sup>16</sup> The trial court's findings are well-supported by the record:

As to the tax claim, the evidence at trial was clear that it was solely through the substantial tax payments by Plaintiffs Fawcetts over the years, and to a lesser extent the payments by Plaintiffs Reinertsens, that the extremely valuable title interests of the Defendants Elfelts/Meyers have been preserved from 1985 to date. Therefore, to deny the tax reimbursement claim, would result in an extremely unjust enrichment of Defendants who have, for approximately 17 years—with the 1998 payment exception—completely ignored their statutory duty to pay their annual taxes when due. Failure to award *pro rata* reimbursement would not only result in a windfall to Defendants, it would also reward parties who have sat on their rights, reward the dilatory, and reward those who essentially abandoned their interests in the land. To ensure a fair, just, and equitable result, consistent with the facts and applicable law, the court specifically finds that Plaintiffs should be awarded a *pro rata* reimbursement for the significant sums expended over the years for payment and redemption of the real estate taxes. Further, Plaintiffs [sic] actions and payments have effectively preserved the very valuable title interests Defendants now have enforced in this lawsuit.

<sup>17</sup> We observe that several cases reflect the general equitable principle that a tenant in common may obtain reimbursement for property taxes he paid in excess of his proportionate share to maintain or secure the property. See, e.g., *Nott v Gundick*, 216 Mich 217, 223; 184 NW 864 (1921) (finding in a partition action that the defendant was entitled to recover for one-half of taxes paid while the parties were tenants in common); *Connecticut Mut Life Ins Co v Bulte*, 45 Mich 113, 120-121; 7 NW 707 (1881) (observing that a tenant in common, who is forced to buy “the whole land at the tax sale,” “does not lose what he pays beyond what is needful for discharging the lien upon his own interest; his co-tenants must refund to him such portion as is found to be just”). In *Fenton v Miller*, 116 Mich 45, 46-48; 74 NW 384 (1898), the plaintiff filed a partition action requesting division or sale of the property and an accounting of the rents and profits, and the defendant responded by requesting reimbursement for the large sums expended on property improvement and property maintenance costs, including insurance and taxes.

Additionally, case law supports the recovery of taxes paid at a tax sale where there is a failure to adequately serve the notice of reconveyance. *St Helen Resort Ass'n v Hannan*, 321 Mich 536, 543-545; 33 NW2d 74 (1948); *G F Sanborn & Co v Alston*, 153 Mich 456; 116 NW 1099, mod 153 Mich 463 (1908).

Defendants also contend that the trial court erred when it failed to apply MCL 600.5813 to bar the recovery of taxes paid more than six years prior to suit.<sup>18</sup> Again, we find no error. Plaintiffs' claim was essentially based on tax deeds and adverse possession, neither of which are governed by the general six-year statute of limitations. Defendants defended based on the failure to provide notice of the right of reconveyance, the failure to establish adverse possession, and a tax deed obtained by Beulah Elliott. Defendants' counter-complaint sought the use and rental value of the property and the value of the trees harvested from the property. The court awarded property tax reimbursement after the title issues, which were timely raised, were determined, as part of the overall accounting between the parties, and ancillary to the determination of title, and not pursuant to a separate claim by one co-tenant against another for property taxes paid. We conclude that, notwithstanding MCL 600.5815, under the circumstances here presented, MCL 600.5813 did not bar such an award.

## VI

We need not consider defendants' arguments relative to equitable estoppel. After observing that the appropriate amount of plaintiffs' award for improvement value was governed by MCR 3.411(F), the trial court noted that considerations of equitable estoppel similarly supported the award of improvement value to plaintiffs. The court then considered the evidence pertaining to the improvement value considerations set forth within MCR 3.411(F), without again specifically mentioning the doctrine of equitable estoppel. The court did not refer to equitable estoppel when concluding that plaintiffs should receive property tax reimbursement. Because the trial court correctly concluded that the circumstances otherwise supported reimbursement of the property taxes plaintiffs paid (see Issue V, *supra*), and that MCR 3.411(F) dictated an award to plaintiffs of the value of property improvements they made in good faith (see Issue III, *supra*), we decline to address the equitable estoppel issue as unnecessary.

## VII

Defendants also assert that the trial court clearly erred in calculating that plaintiffs' tree planting efforts increased the property value by \$175 per acre.

We conclude that the record amply supported the trial court's finding that the planting of approximately 150,000 trees enhanced the value of the property by a minimum of \$175 per acre.

Fawcett testified that beginning in 1991, in accordance with two forestry management plans Fawcett had ordered in 1986 and 1997, he and his wife had planted at least 150,000 trees on parcels A-D and F, and many other trees grew through self-regeneration. Fawcett believed that plaintiffs' tree planting efforts on 100 acres of parcels A and B had increased their value by as much as \$1,000 per acre. On parcels C, D and F, Fawcett believed that plaintiffs had planted around 50,000 trees, which currently had an in-ground value of between \$5 and \$7 each. Fawcett purchased all the trees he planted on the property from the Kalkaska County Soil and

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<sup>18</sup> Plaintiffs claim that defendants waived the statute of limitations defense by failing to properly plead it. Under the circumstances, however, we conclude that the defense was adequately preserved.

Water Conservation District. Fawcett estimated that the prices of the trees he planted averaged about \$100 per thousand, and that the costs to plant them was about \$65 per thousand.

Forestry expert Carl John Eklund, Jr., testified that beginning in 1990, he had lived across the street from the old Meyer farm, during the same period he directed the Kalkaska County Soil and Water Conservation District, that he prepared the 1997 forestry stewardship plan Charles Fawcett had requested concerning the property, that he had sold Fawcett nearly all the trees he had planted on the property, and that he had extensively visited the land, both for business purposes, to inspect the progress of the reforestation efforts, and for recreational purposes, including hunting and mushrooming. Eklund believed the very successful reforestation efforts had increased the values of the parcels because the trees made the property more desirable to potential purchasers, and enhanced the property as a wildlife habitat. Taking into account the ages of the trees planted by plaintiffs and an expected ten percent mortality rate for the approximately 149,000 machine-planted trees on the property, Eklund estimated in a July 1999 letter that, without taking into account future inflation and market increases “which are generally 5% per year,” the total value of timber on the property was \$55,883.00.

Defendants presented testimony by expert real estate appraiser, Edward B. Stehouwer, who visited the property three times, and reviewed the stewardship plans prepared with respect to the property, a report by defendants’ forestry expert, and a market analysis of the surrounding properties. Stehouwer testified that the property was zoned agricultural, and that the area was comprised mainly of large acre residential and public properties. Stehouwer opined that division of the instant property into residential and recreation sites constituted its highest and best use.

Stehouwer explained that he valued the property through the sales comparison approach, in which he considered eight or nine other Northwest Michigan properties in similar settings. Stehouwer calculated the values of the six parcels as of November 1998 and May 2001, both “as is” (with tree planting and/or logging), and “before” (in the absence of plaintiffs’ tree planting activities): (1) parcel A (156 acres) had a November 1998 before value of \$193,857, a November 1998 value with planting of \$203,604, and a May 2001 before value of \$245,946; (2) parcel B (160 acres) had a November 1998 before value of \$189,525, a November 1998 value with planting of \$199,489, and a May 2001 before value of \$240,540; (3) parcel C (20 acres) had a November 1998 before value of \$22,743, a November 1998 value with planting of \$23,934, and a May 2001 before value of \$28,854; (4) parcel D (40 acres) had a November 1998 before value of \$51,984, a November 1998 value with planting of \$54,367, and a May 2001 before value of \$65,952; (5) parcel E (40 acres), on which no planting took place, had a November 1998 before value of \$72,561, and a May 2001 before value of \$92,058; and (6) parcel F (20 acres) had a November 1998 before value of \$40,071, a November 1998 value with planting of \$41,316, and a May 2001 before value of \$50,838. According to Stehouwer’s estimates, plaintiffs’ planting activities had increased the value of the 436 acres by approximately \$24,000. Stehouwer conceded that in the context of the highest and best property use as recreational/residential, the presence of trees generally was viewed with favor because they added aesthetics and created habitats for birds and small game.

Defendants called forestry expert witness Ronald E. Scott, who visited the property several times, and reviewed the recent forestry stewardship plans, aerial photographs, and property resource data. Scott estimated the value of trees planted on the property as \$59,000.

As previously discussed, the trial court referred to MCR 3.411(F) for guidance in determining the improvement value, specifically the “amount the premises would be worth at the time of the claim had the premises not been improved,” in comparison with “the amount the value of the premises was increased at the time of the claim by the . . . improvements made,” MCR 3.411(F)(2).

The trial court accurately reviewed the conflicting evidence regarding the increase in property value derived from plaintiffs’ tree planting efforts, including the opinions of Charles Fawcett, Carl J. Eklund, who the parties stipulated was an expert forester, and defendants’ expert land appraiser, Edward B. Stehouwer. With respect to the value of the trees planted by plaintiffs, the trial court expressly found more credible the value of approximately \$56,000 estimated by Eklund,<sup>19</sup> the experienced forestry expert who (1) lived across the street from the Meyer farm for ten years of plaintiffs’ reforestation efforts, (2) sold Fawcett many of the trees he planted through a Kankaska County conservation program directed by Eklund, and (3) visited the property frequently, over the \$23,000 figure reached by Stehouwer, who conceded that he did not have forestry expertise. This Court will not second guess the trial court’s credibility determination. MCR 2.613(C).

The improvement value at which the court arrived plainly falls within the scope of the evidence presented during trial, which evidence the court carefully considered, and was not simply arbitrary, as defendants suggest. We thus cannot conclude that the court clearly erred in reaching its improvement valuation.

## VIII

Defendants assert that the court failed to properly calculate the actual damages inflicted by plaintiffs’ logging activities on the property. Actual damages “for . . . unauthorized logging are (1) the value of the trees that were cut *plus* (2) the decreased land value as a result of the logging.” Defendants maintain that, with respect to the court’s conclusion that actual damages amounted to \$30,000, in accordance with Charles Fawcett’s testimony to this effect, “[t]his finding is clearly erroneous as . . . Fawcett’s testimony is grossly inconsistent, implausible on its face, and contradicted by objective evidence.” Defendants contend that the court ignored defendants’ expert forester’s estimate that the actual damages from plaintiffs’ logging amounted to nearly \$80,000. Lastly, the court also “erred by finding the testimony by . . . Stehouwer that the logging reduced the value of the property by \$57,900 was speculative and not supported by the evidence.” We conclude that the evidence above amply supported the trial court’s finding that plaintiffs’ logging activities removed trees worth approximately \$30,000, and that this amount represented the actual damages suffered by defendants.

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<sup>19</sup> The court correctly observed that Eklund’s figure of approximately \$56,000 for the value of the trees planted, as of June 1999, did not take into account the forces of “inflation and future market increases which are generally 5% per year,” or the value of the trees as aesthetic enhancements, wildlife habitats, or for nursery stock/landscaping uses, if any. According to defendants’ forestry expert, Scott, who valued the trees planted at \$59,000, Eklund slightly underestimated the value of the trees planted on the property.

According to MCL 600.2919(2)(a),

. . . [a]ny joint tenant or tenant in common who commits or suffers waste of the lands, tenements, or hereditaments held in joint tenancy, without having a lawful license in writing to do so, is liable for double the amount of actual damages at the suit of his cotenant.

Concerning the meaning of “actual damages” occasioned by waste in the form of logging, this Court has explained:

“Generally speaking, damages in trespass to land are measured by the difference between the value of the land before the harm and the value after the harm, *but there is no fixed, inflexible rule for determining, with mathematical certainty, what sum shall compensate for the invasion of the interests of the owner. Whatever approach is most appropriate to compensate him for his loss in the particular case should be adopted.*” [*Governale v City of Owosso*, 59 Mich App 756, 761; 229 NW2d 918 (1975) (emphasis added), quoting *Schankin v Buskirk*, 354 Mich 490, 494; 93 NW2d 293 (1958).]

Consequently, if the evidence presented establishes the value of the trees improperly removed, the trial court properly may award this measure of damages. *Wolverine Electric Coop, Inc v Sagman*, 11 Mich App 495, 497-498; 161 NW2d 433 (1968).

Very little documentary evidence existed concerning the extent of plaintiffs’ logging activities, or the payments they received therefrom. According to the testimony of Charles Fawcett, who testified primarily on the basis of his memory, occasionally refreshed at trial with the 1997 stewardship plan prepared regarding the property, and Eklund, who recounted the order and types of trees involved in several cuts, (1) the cut on parcel A involved two to three acres of red pine, and perhaps a small number of hardwood trees, and yielded plaintiffs around \$3,000; (2) on parcel B or C, less than ten acres of aspen and poplar were removed and used for pulpwood, for which plaintiffs’ received between \$2,200 and \$2,600; (3) on parcel D, seven acres of red pine were cut, yielding plaintiffs around \$10,000; (4) on parcels E and F, between twenty-five to thirty acres of hardwood trees were removed, for which Fawcett received about \$11,000. While the testimony occasionally equivocated with respect to what trees were cut on which parcel, the total value of cut trees did not substantially vary. Fawcett did not believe that the cutting decreased the values of any parcels, especially given the large numbers of trees that were planted and regenerated. Fawcett reiterated that at the time of the logging operations, he believed he owned the property.

The \$30,000 in logging damages found by the trial court closely approximated the timber values estimated by Fawcett and Eklund,<sup>20</sup> which values represent a permissible measure of

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<sup>20</sup> Eklund’s recollections at trial regarding locations and extent of the logging activities, for the most part comported with Fawcett’s testimony. Eklund opined that the logging improved the deer hunting on the property.

“actual damages” under MCL 600.2919(2)(a). *Governale, supra*, 59 Mich App 761; *Wolverine Electric Coop, supra*, 11 Mich App 497-498.

The forestry expert called by defendants, Ronald E. Scott, testified that he traversed at least partially four parcels of the property and counted the stumps thereon that appeared to have been cut between 1989 and 1999; Scott estimated the 1999 value of (1) three acres of trees harvested on parcel A as \$5,750.01, (2) the 8.8 acres of trees cut on parcel D as \$9,336.25, and (3) the northern hardwood trees harvested on parcels E and F as \$63,241. Stehouwer, who conceded his lack of expertise in forestry matters, testified that on the basis of Scott’s report, aerial photographs and a visit to the property, he estimated the logging in the same four parcels decreased their value by nearly \$58,000.

In light of the conflicting testimony, we cannot conclude that the trial court clearly erred by finding, “based on the credible evidence introduced at trial that the amounts actually received provide the best measure of actual damages owed to the Defendant co-tenants in this case on their logging claim,” or that “the somewhat higher logging damage amounts argued by Defendants are too speculative and are unsupported by the evidence.” The evidence supports, and does not clearly preponderate against, the trial court’s finding that plaintiffs’ logging deprived defendants of \$30,000 in timber, and to the extent that the trial court credited the testimony of Fawcett and/or Eklund and discounted the opinions of Scott and Stehouwer, this Court will not second guess the court’s credibility determinations. MCR 2.613(C).

## IX

Defendants challenge on several bases the trial court’s denial of their motion for sanctions, which was brought under MCR 2.114(F) (frivolous claim) only as to plaintiffs’ quiet-title related claims, i.e., the claims asserting title based on tax deeds and adverse possession.

Whether a claim is frivolous within the meaning of MCR 2.114(F) and MCL 600.2591 depends on the facts of the case. *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002). We review the trial court’s finding that plaintiffs’ claims were not frivolous and thus not subject to sanctions for clear error. *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 203; 650 NW2d 364 (2002).

MCL 600.2591(3) provides:

(a) “Frivolous” means that at least 1 of the following conditions is met:

- (i) The party’s primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
- (ii) The party had no reasonable basis to believe that the facts underlying the party’s legal position were in fact true.
- (iii) The party’s legal position was devoid of arguable merit.

We assume without deciding that, notwithstanding the parties’ stipulations regarding plaintiffs’ quiet-title related claims, defendants reserved the right to move for sanctions. We also

assume without deciding that defendants' motion for sanctions was not untimely, i.e., was filed within a reasonable time after the prevailing party was determined. See *In re Attorney Fees and Costs*, 250 Mich App 89, 107-109; 645 NW2d 697 (2002), and discussion therein of *Avery v Demetropoulos*, 209 Mich App 500, 503; 531 NW2d 720 (1995), and *Giannetti Bros Constr Co, Inc v Pontiac*, 152 Mich App 648; 394 NW3d 59 (1986).

At the hearing on defendants' motion for sanctions, the court noted:

THE COURT: As to the Elfelt's [sic], Defendants' motion for sanctions and attorney fees, etcetera, given the factual history of this case, both procedural facts and substantive facts, I believe there is simply no statutory authority, case authority or court rule authority, in light of the facts of this case to grant the motion whatsoever. Here, just to highlight a few of those important facts, the primary parties are co-tenants here and they hold different and undivided fractional legal title interest in the various parcels that comprise the four hundred and thirty-six acres in dispute. . . . This has been a multiple claim and cross-claim case involving assorted interests in real estate, it's been a bifurcated action. The title interests essentially were resolved after phase one by entry of stipulated orders. As to the second phase as to damages and so forth, all of the parties have prevailed to different degrees here on their various damage claims and counter-claims, etcetera. Some of the claims were split, others were not. The title interests that the parties stipulated to were honored and respected in the award that I mapped out in my fifty page opinion and interim order. . . . The Fawcett's [sic] original claims were not devoid of arguable legal merit . . . .

We agree with the trial court that plaintiffs' quiet-title related claims were not frivolous, and thus not subject to sanctions.

We affirm in both appeals.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Michael R. Smolenski