STATE OF MICHIGAN

COURT OF APPEALS

CAROL QUINN,

Plaintiff-Appellee,

v

CITY OF GROSSE POINTE FARMS,

Defendant-Appellant.

UNPUBLISHED
January 25, 2005

No. 250464
Wayne Circuit Court
LC No. 01-139311-CZ

CAROL QUINN,

Plaintiff-Appellant,

v

CITY OF GROSSE POINTE FARMS,

Defendant-Appellee.

No. 252342
Wayne Circuit Court
LC No. 01-139311-CZ

Before: Gage, P.J., and Meter and Hood, JJ.

PER CURIAM.

In Docket No. 250464, defendant appeals as of right from the judgment awarding plaintiff $75,000 for her inverse condemnation claim. We affirm. In Docket No. 252342, plaintiff challenges several of the trial court's post-trial rulings. We affirm in part and reverse in part and remand for entry of an order allowing statutory interest from the date plaintiff filed her complaint.

Defendant first argues that the trial court erred in denying it summary disposition because a diminution in the value of property is insufficient to support a claim of inverse condemnation. We disagree. This Court reviews de novo a trial court's ruling with respect to a motion for summary disposition. *Glancy v City of Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim. After the trial court reviews the evidence in the light most favorable to the nonmoving party, it may grant summary disposition if no genuine issue concerning a material fact exists and the moving party is entitled to judgment as a matter of law. *De Sanchez v State*, 467 Mich 231, 235; 651 NW2d 59 (2002).

Const 1963, art 10, § 2, provides, in part: "Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law." "[T]he State of Michigan recognizes a cause of action, often referred to as an inverse or reverse condemnation suit, for a de facto taking when the state fails to utilize the appropriate legal mechanisms to condemn property for public use." *Peterman v Dep't of Natural Resources*, 446 Mich 177, 187-188; 521 NW2d 499 (1994). The term "taking" is used broadly and should not be construed in an unreasonably narrow sense. *Id*. at 189. "[A] physical intrusion on the property itself is not required for a 'taking' to have occurred." *Id*. "In fact, inverse condemnation may occur even without a physical taking of property, where the effect of a governmental regulation is 'to prevent the use of much of plaintiffs' property . . . for any profitable purpose.'" *Id*. at 190, quoting *Grand Trunk W R Co v Detroit*, 326 Mich 387, 392-393; 40 NW2d 195 (1949).

Defendant argues that in order to constitute inverse condemnation, the actions of the government must make an actual physical impact on the land in question.[1] Although most inverse condemnation or de facto taking cases involve an actual physical invasion or impact to property, courts have not held this to be a requirement. Instead, the basis of inverse condemnation is that the government's actions deprived the property of a profitable use. *Peterman*, *supra* at 190. A quintessential profitable use of property is the sale of that property. Thus, government action that prevents or hinders the sale of property would amount to inverse condemnation.

This Court specifically held a diminution in value sufficient to establish a de facto taking in *Merkur Steel Supply, Inc v City of Detroit*, 261 Mich App 116, 125-128; 680 NW2d 485 (2004). *Merkur* indicates that the government cannot deliberately act to reduce the value of property and that such actions can amount to a de facto taking. *Id*. at 128. Examples of actions that amount to deliberate acts to reduce value are:

> published threat of condemnation, mailing letters concerning the project to area residents, refusing to issue building permits for improvements coupled with intense building inspection, reductions in city services to the area, and protracted delay and piecemeal condemnation. [*Id*.]

Plaintiff alleged such actions in this case. She claimed that defendant sent out letters stating that it had to purchase her property for the project; continued to include her property in the planning for the project even after it stated that it would not purchase plaintiff's property; indicated on land use maps that her property was part of the project; and refused to pay fair market value for the property. These alleged actions were sufficient deliberate actions to reduce the value of

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[1] In support of its argument, defendant cites a portion of *Spiek v Michigan Dep't of Transportation,* 456 Mich 331, 339; 572 NW2d 201 (1998), in which the Supreme Court quotes the earlier Court of Appeals opinion in the case. The portion of *Spiek* emphasized by defendant is dicta, given that *Spiek* did not focus on whether a physical intrusion onto the plaintiff's property occurred, see *id.* at 344, but instead dealt with the doctrine of *damnum absque injuria* and its application to taking jurisprudence as applied to public highways. *See id.* at 346, 350.

property to support an inverse condemnation claim. *Id*. Therefore, the trial court properly denied defendant's motion for summary disposition.

Defendant next argues that plaintiff was not entitled to compensation just because defendant offered to purchase her property. Although the argument is not perfectly clear, given that defendant mentions trial testimony in its argument, it seems that defendant is arguing that the trial court erred in failing to grant it a directed verdict. A reviewing court conducts de novo review over such an issue. *Sniecinski v Blue Cross & Blue Shield*, 469 Mich 124, 131; 666 NW2d 186 (2003).

Defendant attempts to minimize plaintiff's claim by stating that it is totally based on defendant's statement that it had to purchase plaintiff's property. Defendant argues that a decrease in property value due to its decision to acquire property does not amount to a taking. If this were all defendant had attempted to do, defendant's appeal might be meritorious, because defendant would have been exercising its power of eminent domain. This case presents a different situation, however. A case of inverse condemnation arises when the government entity abuses its authority and fails to use proper legal mechanisms. *Peterman*, *supra* at 187-188. As discussed earlier, a series of distinct actions can amount to an attempt to devalue property and a de facto taking. *Merkur*, *supra* at 128. Plaintiff set forth such actions in this case. These actions were sufficient to show inverse condemnation. *Id*.

We cannot view each of defendant's actions in a vacuum. Although each action viewed in and of itself may not have amounted to a de facto taking, when they are viewed as a whole, they demonstrate a pattern on the part of defendant and an attempt to devalue plaintiff's property. We will not view plaintiff's evidence and claims in a myopic fashion as defendant urges. Instead, we must view the totality of the circumstances. Viewing the facts together demonstrates that plaintiff presented sufficient evidence for the jury to find an inverse condemnation.

In its statement of questions presented, defendant raises additional issues. However, defendant fails to address these listed issues in the body of its brief. Instead, defendant replaces these issues with other issues. Because defendant failed to brief the two issues listed in the statement of questions presented, they are abandoned on appeal. *County of Wayne v Hathcock*, 471 Mich 445, 465-466; 684 NW2d 765 (2004). Further, the issues not raised in the statement of questions presented are not properly presented for appellate review. *Bouverette v Westinghouse Elec Corp*, 245 Mich App 391, 404; 628 NW2d 86 (2001). Accordingly, we decline to address them.

In her appeal, plaintiff argues that the trial court improperly denied prejudgment interest. We agree. This Court reviews de novo the award or denial of prejudgment interest under MCL 600.6013. *Beach v State Farm Mut Ins Co*, 216 Mich App 612, 623-624; 550 NW2d 580 (1996). The trial court ruled that it could not award prejudgment interest because that was an issue for the jury to decide. Both parties agree that this ruling is incorrect. It is undisputed that MCL 600.6013 applies to this case. An award of interest is mandatory in all cases in which the statute applies. *Rodriguez v State Farm Ins Group of Cos*, 251 Mich App 454, 460; 651 NW2d 428 (2002). Under MCL 600.6013, this interest runs from the date the complaint is filed. Therefore, the trial court erred in its determination.

Next, plaintiff argues that she is entitled to twelve percent interest under MCL 600.6013(5). Plaintiff claims that the letter sent by defendant stating that it had to purchase her property constitutes a written instrument. The Michigan Supreme Court discussed the meaning of "written instrument" in *Yaldo v North Pointe Ins Co*, 457 Mich 341; 578 NW2d 274 (1998). The Supreme Court stated that the term was unambiguous. *Id.* at 346. Although the Court did not explicitly define "written instrument," it indicated that the term had been used interchangeably with the term "written contract." Thus, we conclude that we must determine if the letter sent by defendant constituted a contract.

A contract is an agreement between two or more parties creating obligations that are enforceable at law, or it is the writing that sets forth such an agreement. Black's Law Dictionary (7th ed). Therefore, to be a written instrument, an item must be an agreement between the parties. In this case, the letter did not immortalize an agreement between plaintiff and defendant. Rather, this was a unilateral letter stating that the parties would need to discuss the property in the future. The letter merely stated that the parties would have to reach an agreement. It was not an agreement itself. Given that the letter contained no agreement, we conclude that it was not a written instrument. *Yaldo*, *supra* at 346. Therefore, the twelve percent interest rate does not apply. MCL 600.6013(5).

Finally, plaintiff contends that the trial court erred in failing to award her case evaluation sanctions. Plaintiff argues that the jury's determination of fair market value should be used to compare to the case evaluation rather than the damages actually awarded in this case (the difference between fair market value and actual value found by the jury). We disagree. This Court reviews the trial court's decision on whether to award case evaluation sanctions de novo. *Brown v Gainey Transp Servs*, 256 Mich App 380, 383; 663 NW2d 519 (2003).

MCR 2.403 allows for case evaluation sanctions. "If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation." MCR 2.403(O)(1). Verdict is defined as a jury verdict, a judgment by the court after a non-jury trial or a judgment entered as a result of a ruling on a motion after rejection of the case evaluation. MCR 2.403(O)(2).

The Michigan Supreme Court dealt with the meaning of the phrase "jury verdict" in *Marketos v Am Emplrs Ins Co*, 465 Mich 407; 633 NW2d 371 (2001). The Supreme Court stated: "For purposes of awarding sanctions under MCR 2.403(O), a 'verdict' must represent a finding of the amount that the prevailing party should be awarded." *Id*. at 414. In this case, it is undisputed that defendant does not have to pay the $225,000 value of the property because plaintiff maintains ownership of the property, which still has a value of $150,000. Defendant only has to pay the difference in the property's fair market value and its actual value, which amounted to $75,000 according to the jury's findings. This is the verdict. *Id*. The case was evaluated at $210,000, and, therefore, plaintiff is not entitled to sanctions.[2] MCR 2.403(O)(1).

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[2] Although the monetary figure reached during case evaluation represented the mediators' (continued…)

Affirmed in part and reversed in part. Remanded for entry of an order awarding statutory interest from the date plaintiff filed her complaint. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

(…continued)

determination of the fair market value of the property, the court rule pertaining to case evaluation sanctions simply does not allow us to compare this case evaluation figure with the fair market value figure ultimately calculated by the jury. Instead, the court rule focuses on the *verdict*. Under the circumstances, case evaluation sanctions are simply not available.