STATE OF MICHIGAN

COURT OF APPEALS

DOUGLAS A. GEISS, Plaintiff-Appellee,	UNPUBLISHED February 1, 2005
v	No. 256212 Wayne Circuit Court
JACKLYN MOLNER and MARY ANN RILLEY, Defendants-Appellants.	LC No. 03-338961-AW

Before: Talbot, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Defendants appeal as of right the orders denying defendants' motion for summary disposition and granting plaintiff's motion for summary disposition. On appeal, defendants argue that the trial court erred in its interpretation of the Taylor city charter and in removing them from the offices of chairperson of the Taylor city council and Taylor city clerk. We reverse.

I

On July 14, 2003, Taylor city clerk Dorothy West resigned her position effective July 31, 2003. On July 15, 2003, a Taylor city council meeting was held, and six of the seven members of the council were present, including plaintiff and defendants Rilley and Molner. At the meeting, Rilley was nominated for the position of city clerk and, upon a vote being taken, was voted in by a vote of four votes to two. Rilley voted for herself. Rilley subsequently resigned from her position as chairperson on July 31, 2003, a position she had held since her election in November 2001. At the city council meeting in September 2003, plaintiff and Molner were nominated to fill the position of chairperson. The council voted Molner into the chairmanship by a majority vote.

Plaintiff sought, and was granted, leave to file a quo warranto action against defendants for wrongfully holding and exercising the offices of chairperson of the city council and city clerk. On April 6, 2004, before the trial court rendered its decision on the parties' cross-motions for summary disposition, Rilley resigned as city clerk, and the city council voted again to fill the

position of city clerk, electing Rilley by a vote of six votes to one vote.[1] Rilley, no longer a sitting council member, did not vote.

II

Defendants argue that Rilley is entitled to hold the office of Taylor city clerk because she properly voted for herself and because the city council's vote on April 6, 2004, ratified and cured any defect in the first election. We agree that the April 6, 2004, vote ratified and cured the initial defect.

The interpretation of a city charter is a question of law subject to review de novo. *In re Storm,* 204 Mich App 323, 325; 514 NW2d 538 (1994), overruled in part on other grds *Detroit Police Officers Ass'n v City of Detroit,* 452 Mich 339; 551 NW2d 349 (1996). A decision on a motion for summary disposition is also reviewed de novo. *Maiden v Rozwood,* 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition of all or part of a claim or defense may be granted when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." [MCR 2.116(C)(10).] A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley, supra* at 278.

The city of Taylor is a Home Rule City pursuant to MCL 117.1 *et seq.* and has adopted a city charter. The charter sections applicable to Rilley's election to the office of city clerk are § § 4.5, 4.11, and 6.9. Section 4.5 provides, in pertinent part: "If a vacancy occurs in any elective office, then the Council by a majority vote of its members elect, shall fill such vacancy . . . for the unexpired term of such office . . . ."

Section 4.11(a) reads, in pertinent part: "(a) No officer of the City shall be financially interested, directly or indirectly, in any contract, sale, job, work or service (other than official service), to be performed for the City except as hereinafter provided in Paragraph (b) . . . ."

Section 6.9 reads, in pertinent part: "No Councilman shall vote on any question in which he has any financial interest other than the common public interest."

We conclude that Rilley was not entitled to vote for herself as city clerk. Defendants argue that § 4.5 of the charter required the council to vote to fill the vacancy of city clerk, and that by voting for herself, Rilley was fulfilling the duty imposed upon the council members by § 4.5. Section 4.5 does require the council to vote to fill vacancies in elective offices. However, § 4.5 does not require all council members to vote to fill a vacant position when one of the council members has a personal interest in the outcome of the vote. Section 4.5 is limited by § 6.9, which provides that no councilperson shall vote on an issue in which she has any financial

[1] Plaintiff cast the only vote against Rilley.

interest other than the common public interest. Rilley argues that it was in the common public interest for her to vote to fill the position of city clerk, and, therefore, it was not a violation of the charter for Rilley to vote for herself. However, while it is true that the public has an interest in filling the post of city clerk in an expeditious manner and with a competent candidate, it is not clear that it was in the common public interest for it to be filled by Rilley or for it to be filled by Rilley due to her own vote. Rilley has more than just a common public interest in the outcome of the vote for the office of city clerk. Upon appointment, she attained a full-time position with a commensurate increase in pay and with all the attendant health and pension benefits. Because Rilley benefited financially from her appointment to the office of city clerk, she had a personal interest in the vote. Therefore, under § 6.9, Rilley was not entitled to vote for herself for city clerk.

Defendants argue that the "official service" exception of § 4.11 to the general rule that the council may not enter into a contract in which its members have a personal or financial interest applies to allow Rilley to vote for herself because the office of city clerk is an official position requiring official service. However, the trial court accurately observed that, while § 4.11 allows a council member to have a personal interest in a contract, job, work, or service with the city under certain circumstances, it does not allow a council member to *vote* on such a contract, work, job, or service. While Rilley was entitled to be considered as a candidate for the office of city clerk, § 6.9 forbade Rilley from voting on the election when she had a personal financial interest in the outcome. Rilley's election to the office of city clerk in July 2003 was in violation of the charter.

While, due to her own vote, Rilley's election to the office of city clerk in July 2003 was in violation of the charter, we hold that the council's subsequent and proper election of Rilley as city clerk in April 2004 cured the defect. An illegal appointment to a municipal office can be cured by ratification of the municipal body with power to make the appointment. 3 McQuillin, The Law of Municipal Corporations (3d ed, 2001 rev), § 12.88, p 479. The minutes of the April 6, 2004, city council meeting indicate that the council voted to receive and file a letter of resignation from Rilley as city clerk on that date. The council, of which Rilley was no longer a member, then received two nominations for the position of city clerk, one of which was Rilley. The council voted to elect Rilley to the office of city clerk by a vote of six votes to one vote. By so voting, the council cured any defect in the prior election in July 2003. Therefore, we conclude that Rilley has validly held the office since July 2003 and is now entitled to hold the office of city clerk.

III

Defendants next argue that the trial court erred in its interpretation of the Taylor city charter and in ordering Molner's removal from the office of chairperson of the Taylor city council, where Molner was properly elected to that office by a majority vote of the city council. Again, we agree.

The rules of statutory construction apply to city charters. *In re Storm, supra* at 327. Questions of statutory interpretation obligate this Court to discern and give effect to the Legislature's intent as expressed in the words of the statute. *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004); *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). The fair and natural import of the terms employed, in view of the subject matter of the

law, governs. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998); *Ford Motor Co v Bruce Twp,* 264 Mich App 1, 7; 689 NW2d 764 (2004). Different provisions must be read in the context of the entire statute in an effort to produce a harmonious whole. *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001). Seeming inconsistencies should be reconciled if possible. *Nowell v Titan Ins Co*, 466 Mich 478, 483; 648 NW2d 157 (2002). If two statutes lend themselves to a construction which avoids conflict, that construction should control. *Livonia Hotel, LLC v City of Livonia,* 259 Mich App 116, 131; 673 NW2d 763 (2003).

The charter sections relevant to determining whether Molner was correctly elected as chairperson of the city council are § § 4.1, 4.5, 4.6, and 6.3. Charter § 4.5, entitled "Filling Vacancies in Elective Offices," provides: "If a vacancy occurs in any elective office, then the Council by a majority vote of its members elect, shall fill such vacancy except as otherwise provided by this Charter for the unexpired term of such office."

Charter § 4.1 defines elective officers as: "[t]he elective officers of the City shall be (a) Mayor, (b) a City Clerk, (c) a Treasurer, (d) seven (7) Councilmen, (e) two (2) Municipal Judges, and (f) two (2) Constables, all of whom shall be elected from the City at large."

Vacancies in appointive offices are the subject of § 4.6: "Vacancies that occur in appointive offices of a specified term shall be filled for the balance of the unexpired term in the manner provided for [in] making the original appointments."

Charter § 6.3 reads as follows:

> (a) The Chairperson of the Council shall be the Councilperson who receives the highest number of votes cast for the City Council by the electorate in the general City election. If the Councilperson receiving the highest number of votes declines to act as Chairperson, the Councilperson receiving the next highest number of votes shall be Chairperson. In the event that the Councilperson receiving the second highest number of votes declines, the Chairperson shall be elected by the majority vote of the Council.
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> (b) The Chairperson Pro-Tem of the Council shall be the Councilperson elected who has the second highest total of votes in the preceding election. If the Councilperson receiving the second highest total of votes has become Chairperson of the Council pursuant to Section 6.3(a), or declines to act as Chairperson Pro-Tem, the Councilperson receiving the next highest number of votes shall be Chairperson Pro-Tem. In the event of additional declinations, the Chairperson Pro-Tem shall be elected by a majority vote of the Council.

The first question to be resolved in determining whether Molner was rightfully elevated to the chairmanship by a majority vote of the counsel is whether the chairmanship is an elective or appointive office. Plaintiff argues that it is an appointive office because it is not listed in charter § 4.1 as an elective office. However, the seven councilman positions are listed as elective offices, and the chairperson of the council is, by definition, a council member. Also, § 6.3(a) states that the chairmanship is determined by the member who receives the highest number of votes from the electorate, while the chairperson pro-tem is the member who receives

the second highest number of votes. Because the number of votes received by the council members determines which council member will become chairperson, it is an elective office. In the face of the requirement of § 6.3, that the chairmanship is determined by the highest number of votes received, any assertion that the office is appointive and not elective is lacking in all logic.

Having determined that the chairmanship is an elective position, the question becomes whether § 4.5 or § 6.3 applies to determine the correct method to fill a vacancy in the chairmanship. Plaintiff argues, and the trial court agreed, that the provisions of §§ 6.3(a) and (b) apply and dictate that plaintiff, as chairperson pro-tem, automatically succeeded as chairperson when Rilley resigned from the chairmanship to take the office of city clerk in July 2003. However, this interpretation of § 6.3 places § 6.3 in conflict with § 4.5, which provides that vacancies in elective offices are to be filled by a majority vote of the council. Provisions of a charter are to be read together to form a harmonious whole, and seeming inconsistencies should be reconciled, if possible. *Nowell, supra* at 483. Because plaintiff's reading of § 6.3 places it in conflict with § 4.5, his reading of the provision is not favored.

The correct reading of § 6.3 is the limited interpretation of this section provided by defendants. Defendants assert that § 6.3 should be applied to the period immediately following a general election when the appropriate council members are installed in the positions of chairperson and chairperson pro-tem. It is the initial decision whether the elected member will serve as chairperson and chairperson pro-tem which is contemplated by § 6.3. Once the council member with the highest vote total accepts and serves in the position of chairperson, his or her subsequent resignation, removal, or other renunciation of the position results in a majority vote of the city council under § 4.5 to fill the vacancy. This interpretation of § 6.3 as applied, again, only to the initial assumption of office, allows the provisions of the charter to be read together harmoniously. Therefore, because Rilley initially accepted the position of chairperson of the city council upon election and served for over a year before resigning, § 6.3 does not come into play, and Rilley's vacancy is filled by a majority vote of the council pursuant to § 4.5. Molner's election to the office of chairperson by a majority vote of the city council was proper pursuant to § 4.5. Molner is entitled to hold the office of chairperson of the Taylor city council.

IV

Reversed and remanded for the entry of a judgment in favor of defendants. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder

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TALBOT, J. (*concurring*).

I concur. I am not convinced that Rilley could not vote for herself as city clerk. Regardless, I do agree that any defect was cured by ratification by the city council in April 2004.

/s/ Michael J. Talbot