and

COURT OF APPEALS

No. 201604
Barry Circuit Court
LC No. 92-000601 AW

BARRY COUNTY DRAIN COMMISSIONER, BARRY COUNTY, ALLEGAN COUNTY DRAIN COMMISSIONER, ALLEGAN COUNTY and MICHIGAN DEPARTMENT OF NATURAL RESOURCES,

UNPUBLISHED
December 1, 1998

Before: Whitbeck, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order establishing the normal level of Pine Lake at 890.5 feet above sea level, subject to seasonal variations and precipitation. We affirm.

I

In 1969, the Barry Circuit Court, in response to a petition from the boards of supervisors of Barry and Allegan counties and pursuant to the Inland Lake Level Act ("ILLA"), MCL 281, 61 *et seq.*; MSA 11.300 (1) *et seq.*,[1] established the normal level of Pine Lake at 890.5 feet above sea level, and ordered that the maximum level of the lake not exceed 891 feet and the minimum level not fall below 890 feet. In 1992, plaintiffs filed an action against defendants Barry County and Barry County Drain Commissioner to enforce the 1969 judgment because plaintiffs experienced flooding due to a rise in the lake's level. The circuit court determined that the 1969 judgment was too old to be enforced. On appeal, this Court reversed the trial court and remanded to the trial court to determine whether the lake level set in 1969 remained beneficial to the public. *Anson v Barry Co Drain Comm'r*, 210 Mich App 322; 533 NW2d 19 (1995).[2]

On remand, the trial court concluded that the minimum lake level of 890.5 feet set in 1969 should remain as the lake's normal level, but amended the 1969 judgment by removing the minimum and maximum level requirements. Plaintiffs now appeal, insisting that the trial court erred by failing to establish a maximum lake level and by refusing to award them attorney fees.

II

Plaintiffs first argue that the ILLA requires a trial court set a normal lake level with both an upper and lower limit, and that the trial court erred in simply determining that the normal level of Pine Lake should remain at 890.5 feet, subject to seasonal variations and precipitation. After reviewing this issue of statutory construction de novo, *In re Ballard*, 219 Mich App 329, 331; 556 NW2d 196 (1996), we disagree.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Farrington v Total Petroleum, Inc,* 442 Mich 201, 212; 501 NW2d 76 (1993). The first criterion in determining intent is the specific language of the statute itself, *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993), and the Legislature is presumed to have intended the meaning it plainly expressed. *Nation v WDE Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997). If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. *Barr v Mt Brighton Inc*, 215 Mich App 512, 517; 546 NW2d 273 (1996).

The ILLA defines "normal level" as follows:

> "Normal level" means the level or levels of the water of an inland lake that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake. A normal level shall be measured and described as an elevation based on national geodetic vertical datum. [MCL 324.307001(h); MSA 13A.30701(h).]

MCL 324.30707(5); MSA 13A.30707(5) allows for the court to determine seasonal variances to the "normal level":

> The court shall determine the normal level to be established and maintained, shall have continuing jurisdiction, and may provide for departure from the normal level as necessary to accomplish the purposes of this part. The court shall confirm the special assessment district boundaries within 60 days following the lake level determination. The court may determine that the normal level shall vary seasonally.

The plain and ordinary meaning of the language contained in the ILLA does not define "normal level" to include a minimum and a maximum level. Rather, the ILLA permits trial courts to be flexible and provide for seasonal departures from the normal lake level as necessary to accomplish the purpose of the act, which is to provide for the control and maintenance of inland lake levels for the benefit and welfare of the public. *In re Van Ettan Lake*, 149 Mich App 517, 525; 386 NW2d 572 (1986). Accordingly, we find that the trial court was not required to set a maximum level for Pine Lake in addition to reaffirming the normal level of 890.5 feet above sea level.[3]

III

Plaintiffs also challenge the trial court's denial of their motion for attorney fees. Specifically, plaintiffs argue that the ILLA mandates the award of such fees. We disagree.

Generally, a party may not recover attorney fees, either as costs or damages, unless such recovery is expressly authorized by statute or court rule. *Oscoda Chapter of PBB Action Committee, Inc v DNR*, 115 Mich App 356, 363; 320 NW2d 376 (1982). In the present case, plaintiffs contend that the trial court ignored the mandate in MCL 324.10711-30712; MSA 13A.30711-30712 that their

legal fees must be included within the costs assessed as part of a normal lake level project. To the contrary, these sections allowing for the payment of legal fees are restricted to special assessments to reimburse the county for all or part of the project's cost.[4]

The focus of the ILLA is on the public welfare, not individual riparian rights, and it "does not create a civil cause of action for individuals who are dissatisfied with the county's exercise of authority." *In re Matter of Van Ettan Lake, supra* at 526. To enable riparian owners to vindicate their personal property rights, and then charge their legal fees to the other members of the special assessment district, or the county, is not consistent with the public purpose of the ILLA. In short, nothing in the ILLA supports plaintiffs' contention that they, as individual lake residents, are entitled to an award of attorney fees.

Affirmed.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Janet T. Neff

[1] The Inland Lake Level Act of 1961, MCL 281.61 *et seq*.; MSA 11.300(1) *et seq*., was repealed by 1994 PA 51, and reenacted as part of the Natural Resources and Environmental Protection Act, 1995 PA 59, without any substantive changes. Although the present case was commenced in 1992 under the former Act, we will use the current section numbers where applicable.

[2] On remand, the trial court ordered that Allegan County, Allegan County Drain Commissioner and the Michigan Department of Natural Resources (DNR) be added as defendants. The trial court also allowed two groups of landowners to intervene.

[3] If the trial court had set a maximum level, then the county would have had to maintain it. MCL 324.307088(1); MSA 13A.307088(1). Our review of the record reveals that the proposed project to maintain the lake level would cost upwards of $600,000 and could injure the environment, while at the same time benefiting only 4 ½percent of the houses on the lake. We believe that the trial court properly refused to set a maximum lake level which could not be maintained or to approve a project which did not benefit the public welfare.

We further note that the trial court's order instructed the Barry County Drain Commission to operate the existing drain and leave it "open and unobstructed until further Order of the Court." Therefore, defendants are left with some ability to maintain the normal lake level reaffirmed by the trial court.

[4] MCL 324.30711(1); MSA 13A.30711(1) provides:

> The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project: privately owned parcels of land, political subdivisions of the state, and state owned lands under

the jurisdiction and control of the department. If the county board determines that a special assessment district is to be established, the delegated authority shall compute the cost of the project and prepare a special assessment roll.

The following costs may be defrayed by a special assessment against the landowners benefited by the project:

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

(a) The preliminary study.

(b) Surveys.

(c) Establishing a special assessment district, including preparation of assessment rolls and levying assessments.

(d) Acquiring land and other property.

(e) Locating, constructing, operating, repairing, and maintaining a dam or works of improvement necessary for maintaining the normal level.

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

(g) Court costs.

(h) Interest on bonds and other financing costs for the first year, if the project is so financed.

(i) Any other costs necessary for the project which can be specifically itemized. [MCL 324.30712; MSA 13A.30712.]