

COURT REVERSES CLAIM DISMISSAL OF MEPA CLAIM

The Michigan Court of Appeals held that a trial court had erroneously dismissed a plaintiff's challenge to a drain project under the Michigan Environmental Protection Act (MEPA). The appeals court held that the plaintiff had alleged sufficient facts and law to state a proper claim under MEPA and that the plaintiff had "standing" to bring his claim because MEPA allows "any person" to bring a properly-stated claim.

Robert Thomas (Thomas) appealed the trial court's dismissal of his claims against defendants Intercounty Drain Board for Crapeau Creek Drain, Macomb County Public Works Office, Anthony V. Marrocco, and Michigan Department of Environmental Quality (collectively, Drain Board). Thomas had brought suit against the Drain Board under MEPA, challenging their approval of a drain improvement project. MEPA provides, among other things, that "the attorney general or any person may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction."

As a preliminary matter, the Court of Appeals addressed whether the case was moot because the drain project had been completed. The appellate court held that the case was not moot because the "relief of restoration could be granted even though the project is completed and is an appropriate remedy in MEPA claims."

The Court of Appeals next addressed whether the trial court had correctly dismissed Thomas's claim brought pursuant to MEPA on two bases: (1) failure to state a claim on which relief can be granted; and (2) lack of standing.

Addressing whether the trial court had correctly dismissed Thomas's action for failure to state a claim on which relief can be granted, the appeals court observed that the test is whether a claim is legally sufficient based on the pleadings alone. All factual allegations in support of the claim are accepted as true, "as well as any reasonable inference or conclusions that can be drawn from the facts and construed in the light most favorable" to the person making the claim. A motion to dismiss for failure to state a claim on which relief can be granted "should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery."

The appellate court next reviewed MEPA to determine exactly what constitutes a properly stated claim under MEPA. Citing Michigan Supreme Court precedent, the appellate court found that MEPA requires an allegation that a statute, rule or other standard that is meant to protect against the pollution or impairment of a natural resource has been violated. A claim that an environmental protection standard has been violated is sufficient to show that the affected "natural resource has been, or is likely to be, harmed," the Court of Appeals stated. The appeals court held that this includes a claim that the challenged activity required a permit under the applicable law but no permit had been issued for it. The appellate court held the Thomas's pleadings met this standard.

The Court of Appeals next addressed whether the trial court had properly dismissed the case based on lack of standing. "Standing" is a principle that requires a claimant to have a legally sufficient stake in the outcome of the case at hand to be permitted to pursue its claim. The appeals court noted that MEPA states that "the attorney general or *any person* may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air,

water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.” (Original emphasis.) The appellate court stated that “[t]he Legislature is presumed to have intended the meaning it plainly expressed” in this “clear and unambiguous” language. Accordingly, the appeals court held that “the trial court erred in granting summary disposition based on” lack of standing.

The Court of Appeals sent the case back to the trial court for further consideration consistent with the Court of Appeals’ opinion.

Thomas v. Intercounty Drain Board for Crapeau Creek Drain, (Mich. Ct. App. July 9, 2002).

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