

Court of Appeals Refuses to Grant Judgment Before Trial

In a case involving claims under the Natural Resources and Environmental Protection Act (NREPA), the Michigan Court of Appeals has affirmed a trial court's decision denying a motion for judgment before trial and granting motions to add affirmative defenses.

Robert Thomas brought an action against various corporations and individuals, the City of New Baltimore, Michigan, and the Michigan Department of Environmental Quality (MDEQ), based on provisions of NREPA. The trial court made various rulings, including denying Thomas's motion for judgment before trial, and granting motions to add affirmative defenses.

Thomas had alleged NREPA causes of action against one of the parties, Brooks Williamson, and had moved for judgment before trial on these counts. The trial court had denied Thomas's motion for judgment before trial because the procedures for the parties to exchange information before trial had not been completed, and, thus, the motion was "premature." The Court of Appeals noted that the trial court's reasoning was incorrect because a court rule "clearly states that only the pleadings may be considered when ruling on such a motion." Therefore, the status of discovery should have been irrelevant to the trial court's determination.

The appeals court, however, ruled that the trial court's decision was still proper. In response to Thomas's complaint, Brooks Williamson had either categorically denied Thomas's allegations or stated that he lacked sufficient knowledge to admit or deny the allegations. The court observed that the 1990 Michigan Supreme Court decision in *Nasser v. Auto Club Ins. Ass'n* established that judgment before trial is improper when material allegations in the complaint are categorically denied, regardless of whether such denials are ultimately unsuccessful. Thus, because Brooks Williamson had categorically denied Thomas's allegations, *Nasser* established

that judgment before trial was improper, and the trial court's decision to deny Thomas's motion was correct, albeit for different reasons than those stated by the trial court.

The trial court had also granted various parties' motions to add the affirmative defense set forth in MCL §324.1703(1), which provides that a party is not liable when it shows that "there is no feasible and prudent alternative to defendant's conduct and that his or her conduct is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction." The trial court had granted the motions because it found that Thomas was aware of the statute, and thus, it would not be unfair to Thomas to allow addition of the affirmative defense.

The Court of Appeals agreed with the trial court, and elaborated on its reasoning: [t]here was no evidence of bad faith in defendants' delays in raising this affirmative defense. Furthermore, we agree with the trial court's conclusion that [Thomas] would not be prejudiced if the trial court granted the requests for amendment. There is no evidence that [Thomas] would be denied a fair trial. Discovery was incomplete, there was no impending trial date, and there was no evidence that defendants' delays in raising this defense resulted in the loss of valuable witnesses or evidence. Finally, [Thomas] was not surprised by this affirmative defense because it is provided for by the NREPA, the act [Thomas] relied on to state a cause of action against defendants.

The court also noted the general rule that amendment of pleadings "should be freely granted when justice requires." Thus, the Court of Appeals affirmed the trial court's decision to allow addition of the §324.1703(1) affirmative defense.

Thomas v. George Jerome & Co., No. 224259 (Mich. App. May 21, 2002).

H. Kirk Meadows