STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

RD Michigan Property Owner I LLC, a Delaware limited liability company, Feldkamp Siblings, LLC, a Michigan limited liability company, Dennis Finkbeiner, an individual, Lynn Ellen Finkbeiner, an individual, Wilkin Farm Properties I, LLC, a Michigan limited liability company, Dennis C. Wilkin, an individual, and Alice M. Wilkin, an individual, Plaintiffs, v. Saline Township, a Michigan municipal corporation, Defendant, Kathryn Elizabeth Haushalter Proposed Intervening Co-Defendant/ Cross-Claimant v. Saline Township, a Michigan municipal corporation, Proposed Cross-Claim Defendant	Civil Action No. 25-001577-CZ Hon JULIA B. OWDZIEJ Date filed: 9-12-25 **PROPOSED INTERVENING CO-DEFENDANT AND CROSS-CLAIMANT'S MOTION TO INTERVENE**

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MOTION

Proposed Intervenor Defendant and Cross-Claimant Kathryn Elizabeth Haushalter, by and through her attorney Ellis Boal, seeks to intervene by right and by permission in the above-caption action pursuant to MCR 2.209. In support of her motion, Kathryn Elizabeth Haushalter relies on the facts and the law stated in her accompanying Brief in Support.[1]

WHEREFORE, for the reasons stated more thoroughly in her Brief in Support, Kathryn Elizabeth Haushalter respectfully asks this Court to grant her intervention by right or permission pursuant to MCR 2.209

Respectfully submitted,

Dated: December _____, 2025

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[1] Undersigned counsel contacted counsel for Plaintiffs and Defendant on December 13, 2025, at 2:16 pm Eastern Time to inquire their clients' position on this Motion. As of the time of filing, counsel had not stated their clients' position. In an abundance of caution to avoid any potential timeliness concerns for Proposed Intervening Defendant/Cross-Claimant's claims, the Motion is being filed now.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

RD Michigan Property Owner I LLC, a Delaware limited liability company, Feldkamp Siblings, LLC, a Michigan limited liability company, Dennis Finkbeiner, an individual, Lynn Ellen Finkbeiner, an individual, Wilkin Farm Properties I, LLC, a Michigan limited liability company, Dennis C. Wilkin, an individual, and Alice M. Wilkin, an individual, Plaintiffs, v. Saline Township, a Michigan municipal corporation, Defendant, Kathryn Elizabeth Haushalter Proposed Intervening Co-Defendant/Cross-Claimant v. Saline Township, a Michigan municipal corporation, Proposed Cross-Claim Defendant	Civil Action No. 25-001577-CZ Hon JULIA B. OWDZIEJ Date filed: 9-12-25 **PROPOSED INTERVENING CO-DEFENDANT AND CROSS-CLAIMANT'S BRIEF IN SUPPORT OF MOTION TO INTERVENE**

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NOW COMES Proposed Intervening Co-Defendant and Cross-Claimant Kathryn Elizabeth Haushalter, by and through her attorneys, who submits this Brief in Support of Motion to Intervene.

INTRODUCTION

This Court accepted a proposed consent judgment that Saline Township did not appropriately vote to negotiate or approve in an open meeting pursuant to the Open Meetings Act, 1976 PA 267, MCL §§15.261-.275 ("OMA"). Under the OMA, Proposed Defendant and Cross-Claimant Kathryn Elizabeth Haushalter ("Haushalter") has the right to seek the rescission of the improperly enacted action, i.e., the approval of the consent judgment. But precisely because it is a judgment that Haushalter seeks to rescind, intervention in this action is preferable and potentially necessary to avoid potential prohibitions on collateral attacks to judgments.

Further, the consent judgment deprived Haushalter of her ability to defend Saline Township's decision to deny rezoning of a massive, proposed data center merely 256 yards from her property. Before Saline Township even brought an answer, it agreed to a consent judgment that reversed the denial of RD Michigan Property Owner I LLC's et al.'s ("RD") conditional rezoning application. This shocking reversal came as a complete surprise to Saline Township residents, including Haushalter, who supported Saline Township's original and correct decision to deny the rezoning. In so doing, Saline Township stripped Haushalter of her rights to participate in the zoning decisions that dramatically affect her property and quality of life. Saline Township has made clear it will not defend Haushalter's interests and therefore intervention is warranted.

FACTS

Saline Township is a predominantly rural community whose zoning decisions are designed to preserve that fundamental rural character. [*See* Proposed Answer ¶ 65.] Located within Saline Township is a "565.063 Acre Parcel of Land Located in Sections 18 & 19, Town 4 South, Range 5 East, Saline Township, Washtenaw County, Michigan" which was zoned A-1 for the entirety of its existence. [Consent Judgment Exhibit A.] RD sought to conditionally rezone the property from A-1 to I-1 to build a massive hyperscale data center. [Complaint ¶ 14.] That rezoning application was denied 4-1 on September 10, 2025. [Proposed Answer ¶ 43.] Two days later, RD initiated this action, alleging that the denial of the rezoning application was illegal for various reasons. [*See generally,* Complaint.]

Saline Township never brought an answer to RD's complaint. [Proposed Cross-Claim ¶ 9.] Rather, on October 1, 2025, Saline Township's Board held a meeting to discuss the pending litigation. [*Id.* ¶ 10.] During a closed portion of that meeting, the Township Board decided via a motion to "move forward with trying to settle the lawsuit." [*Id.* ¶ 10(a).] The Township Board never voted in an open meeting to negotiate for a consent judgment. [*Id.* ¶ 11.] The minutes for that meeting were approved on October 15, 2025. [*Id.* ¶ 20.]

Sometime before October 15, 2025, Supervisor James C. Marion and Clerk Kelly Marion signed the Consent Judgment. [*Id.* ¶ 12.] There was never an open meeting wherein the Marions were authorized to sign the Consent Judgment. [*Id.* ¶ 14.] Then, on October 15, 2025, the parties submitted the signed proposed consent judgment to this Court. [*Id.* ¶¶ 12-13.] This Court entered the consent judgment on the same day. [*Id.*] Saline Township never held a board meeting wherein it voted, in a public session, to approve the consent judgment. [*Id.* ¶¶ 14-15.] The first time Saline Township residents learned there was a formalized consent judgment was on October 15,

2025, after the consent judgment had been entered by this Court. To date, Saline Township has never held a publicly open vote to approve the Consent Judgment.

Haushalter is a Saline Township resident residing at 7760 Willow Rd, Clinton, MI 49236 since at least 2013. [Proposed Cross-Claim ¶ 2.] Her property lies a mere 256 yards from the property RD seeks to rezone. [*Id.*] She leases her property for agricultural farming, which will be disrupted and harmed by the data center. [*Id*.] Haushalter opposes the rezoning and supports Saline Township's original decision to deny the conditional rezoning application.

LEGAL STANDARD

This Court has discretion to grant intervention. *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612, 773 NW2d 267, 269 (2009); *see also Rieth v. Keeler,* 230 Mich App 346, 348, 583 NW2d 552 (1998) (a trial court's failure to exercise its discretion, when properly asked to do so, is itself an abuse of discretion). Intervention is governed by MCR 2.209, which provides intervention by right and by permission:

> *Intervention by right*: A person has the right to intervene in an action when the applicant claims an interest relating to the property ... which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by the existing parties.

MCR 2.209(A)(3).

> *Intervention by permission*: A person may also intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common." MCR 2.209(B)(2). "In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

MCR 2.209(B).

ARGUMENT

I. HAUSHALTER HAS A RIGHT TO INTERVENE.

Haushalter seeks to intervene in this action to protect her interest as a Saline Township resident residing a mere 256 yards from the RD property.[1] *See Vestevich v West Bloomfield Twp.,* 245 Mich App 759, 762, 630 NW2d 646 (2001) (nearby property owners could intervene to challenge a township's continued enforcement of a zoning ordinance where the township had entered into a consent judgment allowing development, suggesting that township's representation of property owners was inadequate). Specifically, she argues the "consent judgment brought to court ostensibly to settle plaintiff's renewal of [it's] claim was, in effect, an attempt by the parties to circumvent the legislatively prescribed processes for raising and deciding zoning issues." *Id.* at 765-765, 630 NW2d at 650. That was considered sufficient in *Vestevich*; it is sufficient here. *Id.*; *see also Cuson v Tallmadge Charter Twp*, an unpublished decision of the Court of Appeals issued May 15, 2003, Docket No. 234157 ("Most importantly, the intervenors in *Vestevich,* injected the issue of the validity of the consent judgment into the original action in which the consent judgment was designed to settle.").

Further, Haushalter will clearly not be adequately represented by Saline Township, as it has taken the exact opposition position as her in deciding to settle this action and rezone the property it originally voted not to conditionally rezone. *D'Agostini v Roseville,* 396 Mich 185, 188-189; 240 NW2d 252 (1976) ("The intervenor satisfies the requirements of the court rule by establishing that his representation is or *may be* inadequate."). In *D'Agostini,* a landowner filed a lawsuit seeking to enjoin the defendant city from interfering with the owner's proposed use of his property. Neighboring property owners filed a petition to intervene. The trial court denied

[1] As a nearby property resident, Haushalter has standing to intervene. *See Karrip v Cannon Twp*, 115 Mich App 726, 732; 321 NW2d 690 (1982) ("Although [petitioners] have a basis to intervene as of right, they must also demonstrate that they have standing to assert their claims.").

intervention and the Court of Appeals denied review. The Michigan Supreme Court granted the application for leave to appeal and reversed and remanded the judgment denying the neighboring property owners' intervention into the landowner's suit. *Id*. at 186-187.

The *D'Agostini* court ruled that intervention was frequently desirable to allow a person to protect an interest jeopardized by pending litigation to which he was not a party or to avoid relitigating in another suit of issues which were being litigated in a pending suit. The intervenors in that case possessed rights which would be adversely affected by the granting of the counterclaim, and their interest in the litigation far exceeded that of the general public or other owners in the area. *Id*. *D'Agostini* is right on point here.

Saline Township, "the only defendant named in the [action], is primarily concerned with [township]-wide zoning pattern and cannot be guided solely by a consideration of individual hardships. Under such circumstances the legitimate objects and purposes of [Saline Township] could well result in compromises to the detriment of individual rights such as those of [the landowner]." *D'Agostini*, 396 Mich at 189 (quoting *Bredberg v City of Wheaton*, 24 Ill 2d 612 (1962)).

In the Court of Appeals' words, "there is real and imminent danger of irreparable injury when governmental bodies act in secret." *Detroit News, Inc v City of Detroit*, 460 NW2d 312, 314 (Mich App 1990). That is exactly what Saline did here: approving a Consent Judgment in secret and depriving the public their right to comment. As a resident of Saline Township, Haushalter has the right to seek the setting aside of the consent judgment as violating the OMA and thus has a right to intervene here.

As a nearby property owner who uses her land for agricultural purposes, Haushalter has a right to intervene in this zoning dispute regarding whether over 550 acres of nearby land should

be turned into I-1 zoning for a hyperscale data center. Haushalter's Motion to Intervene should granted to protect her property rights.

II. THIS COURT SHOULD PERMIT HAUSHALTER TO INTERVENE.

Whether to set aside the Consent Judgment in this action due to Saline Township's OMA violation involves questions of both law and fact in common with RD's claims challenging Saline Township's denial of RD's rezoning application. MCR 2.209(B)(2). Specifically, approving the Consent Judgment is a key part of the attempted resolution of this action. If that resolution was *ultra vires*, that directly implicates the resolution RD seeks.

Further, because Haushalter seeks to defend the rezoning denial that RD seeks to overturn, her interest is the exact same question or law and fact that RD presents to this Court: was the denial of the conditional rezoning request legal? *Lakeland Neurocare Centers v Everest Nat'l Ins. Co*, an unpublished decision of the Court of Appeals issued October 8, 2019. Docket No. 340346 ("Gordon's action had the same factual basis as plaintiffs' action, namely, the car accident that led to her injuries. Gordon's action had the same question of law as plaintiffs' action, namely, whether Everest was responsible to pay for the medical bills for treatment Gordon received for the injuries she sustained in the car accident."). As such, Haushalter should be permitted to intervene to bring her OMA claim and defend against the underlying rezoning claims. *Vestevich*, 245 Mich App at 760-763 (permitting landowners to intervene to challenge consent judgment in rezoning dispute).

Additionally, judicial economy strongly suggests that Haushalter should be permitted to intervene in this action because this Court should be the one who decides whether to deploy the OMA's power to set aside non-conforming actions. Haushalter has the right to initiate an action to exercise her OMA rights. MCL § 15.270. But, if she must start an independent action, it is

likely that a different judge will be deciding whether to set aside the Consent Judgment entered into by this Court. That wastes judicial resources and potentially raises the specter of conflicting rulings on the same issues.

Further, requiring Haushalter to initiate an independent action raises concerns of collateral attacks on this Court's judgment which would be avoided by this Court considering whether its Consent Judgment is valid. *See Workers' Comp Agency Dir v MacDonald's Indus Prods, Inc*, 305 Mich App 460, 474, 853 NW2d 467, 475 (2014) ("It is well established in Michigan that, assuming competent jurisdiction, a party cannot use a second proceeding to attack a tribunal's decision in a previous proceeding.").

As such, because there are common questions of law and fact, and because judicial economy would be preserved by granting intervention here, this Court should permit Haushalter to intervene.

III. HAUSHALTER'S INTERVENTION, WHILE IT WILL SEEK TO SET ASIDE THE CONSENT JUDGMENT, DOES NOT UNDULY DELAY OR PREJUDICE THE ADJUDICATION OF THE RIGHTS OF THE ORIGINAL PARTIES.

Haushalter seeks to intervene to set aside the Consent Judgment entered by this Court; while that may cause delay in the adjudication of this action it would not cause *undue delay* because Haushalter has an absolute right to seek the vacatur of the Consent Judgment as violating the OMA and she is doing so timely. MCL § 15.270; *see Mahesh v Mills*, 237 Mich App 359, 364–365; 602 NW2d 618 (1999) (entry of final judgment is not a bar to intervention). Put differently, the current parties may have reached a settlement in this matter, but they failed to follow the mandatory legal procedures to do so. *Cuson*, Docket No. 234157 ("Most importantly, the intervenors in *Vestevich,* injected the issue of the validity of the consent judgment into the original action in which the consent judgment was designed to settle."). Any delay is Plaintiffs'

and Saline Township's fault for failing to ensure Saline Township followed the OMA. As such, the delay is not *undue*.

Further, this action was only filed in early September, and the Consent Judgment is not yet two months old. [*Compare* Complaint *with* Consent Judgment.] Saline Township never filed an answer in this matter. If not for the OMA-violating rush to settle, this action would still be in its infancy. *See People v 14925 Livernois*, unpublished decision of the Court of Appeals entered September 16, 2016, Docket No. 327377 ("[T]here is no indication that IIG moved to intervene in order to benefit from a favorable judgment" already entered).

Permitting Haushalter to intervene would also not prejudice the adjudication of the rights of the original parties. RD can still advance all the arguments it sought to advance originally; Saline Township can still choose to defend or not defend the action. All that would change is Saline Township would be forced to follow the OMA and Haushalter would be permitted to represent the rights of hundreds of property owners who supported Saline Townships earlier, and legal, decision to deny rezoning. And it cannot be prejudice to set aside an illegal and invalid settlement agreement.

Because there will be no *undue delay* and no prejudice to the adjudication of the rights of the original parties, this Court should grant Haushalter's Motion to Intervene.

CONCLUSION

Saline Township and RD rushed through a consent judgment without following any of the proper Open Meetings Act requirements and thereby deprived Proposed Intervening Defendant/Cross-Claimant Kathryn Elizabeth Haushalter of her rights to protect her property. She has a right to intervene, or alternatively should be permitted to intervene, to assert her OMA rights and to defend Saline Township's original decision to deny the conditional rezoning.

WHEREFORE, Proposed Intervening Defendant/Cross-Claimant Kathryn Elizabeth Haushalter respectfully request this Court grant her Motion to Intervene and enter the proposed order to be filed subsequently to this Brief.

Dated: December 13, 2025

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2003 WL 21108470
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Dennis L. CUSON, Kevin C. Heinig, Michael J. Barron, and Jay Fisher, Plaintiffs-Appellants,
v.
TALLMADGE CHARTER TOWNSHIP and Land Acquisition, LLC., Defendants-Appellees,
and
PANDA TALLMADGE POWER, L.P., Intervening Defendant-Appellee.

No. 234157.
|
May 15, 2003.

Before: WILDER, P.J., and GRIFFIN and SMOLENSKI, JJ.

[UNPUBLISHED]

PER CURIAM.

***1** Plaintiffs appeal as of right an order and opinion of the circuit court granting defendants' motions for summary disposition. [1] We affirm.

I

In court II of their complaint, plaintiffs seek to vacate a consent judgment entered in a previous case, *Land Acquisition, LLC v. Tallmadge Charter Twp* (Ottawa Circuit Court file No. 99-32939-CZ). In this collateral attack, [2] plaintiffs claim that the judgment entered by the Ottawa Circuit Court in settlement of File No. 99-32939-CZ violates the township rural zoning act (TRZA), M.C.L. § 125.271 *et seq.,* and public policy. In count I of their amended complaint, plaintiffs allege defendant Tallmadge Charter Township (township) violated Michigan's Open Meetings Act (OMA), M.C.L. § 15.261, when it approved the proposed consent judgment.

The relevant facts not in dispute are summarized in the well-reasoned written opinion by the Honorable Calvin L. Bosman: Defendant [Land] owns property located in the township (the Land parcel). Part of the Land parcel is zoned "RP" (rural preserve) and part is zoned "C-2" (general commercial). The township's master plan indicates that, in the future, the Land parcel should be used for industrial purposes. Defendant Panda also owns property located in the township (Panda parcel # 1). Panda parcel # 1 is zoned "RP" (rural preservation). The township's master plan indicates that, in the future, Panda parcel # 1 should be used for rural preservation.

Land wished to build a 750-unit multi-family residential housing development on the Land parcel. However, multi-family residential housing is not permitted on property zoned RP or C-2. Land requested that the township rezone the parcel. The Township denied Land's request.

Panda wished to build a power plant on Panda parcel # 1. Power plants are not permitted on property zoned RP, so Panda asked that the Township rezone Panda parcel # 1. Panda's application met with resistance from some of the citizens of the Township, who felt that power plants should be located on property designated for industrial use rather than on property designated for rural preservation. The Township denied Panda's request for rezoning.

Dissatisfied with the Township's denial of its request for rezoning, Land filed a lawsuit against the Township accusing the Township of exclusionary zoning.... After a year and a half of litigation, Land and the Township decided to settle the case. The parties drafted terms of a proposed consent judgment. The proposed consent judgment provided that Land would sell part of the Land parcel to Panda (Panda parcel # 2) and that Panda would build a power plant on Panda parcel # 2. However, Panda parcel # 2 is zoned RP and power plants are not permitted on property zoned RP. Therefore, in the proposed consent judgment, the Township agreed it would treat Panda parcel # 2 *as if* it were zoned "I-1" (industrial). Power plants are permitted on property zoned I-1. For its part, Panda agreed to abide by all the regulations that apply to property zoned I-1 and that it would comply with all applicable state and federal laws and regulations. In addition, over time, Panda agreed to pay the Township more than $5,000,000.00.

***2** The proposed consent judgment required the approval of the Tallmadge Township Board of Supervisors (Board). Four members of the Board constitute a quorum. Prior to voting on the proposed consent judgment, Board members gathered together informally in private homes in sub-quorum groups of two or three to review and discuss the terms of the proposed consent judgment.

On October 25, 2000, the Board held a special meeting to vote on the proposed consent judgment. At the meeting, the Township Supervisor informed the members of the public who were present at the meeting that the meeting was not a public meeting and that no one would be permitted to comment on the terms of the proposed consent judgment until after the Board had voted to approve or reject it. At the meeting, the Board enacted resolutions approving the proposed consent judgment. Following the vote, the Board permitted members of the public who were present to comment on the terms of the consent judgment. The next day, the consent judgment was presented to Judge Post. Judge Post signed the consent judgment in the absence of the undersigned judge, who was on vacation at the time.

On February 13, 2001, the Board held a second meeting to discuss the consent judgment. At this meeting, the Board permitted public comment on the consent judgment prior to voting on the matter. After entertaining comments on the terms of the consent judgment from the members of the public who were present at the meeting, the Board voted to re-enact the resolutions approving the consent judgment that the Board had previously enacted on October 25, 2000.

On February 14, 2001, the Board presented the re-enacted consent judgment to the undersigned judge, and he signed it.

Plaintiffs, who are residential property owners that live near Panda parcel # 2, oppose the construction of the power plant and bring this action to vacate the consent judgment.

In count I, plaintiffs allege that by meeting informally in sub-quorum groups of two or three at private residences to review and discuss the terms of the consent judgment, the Board ran afoul of the OMA. Plaintiffs make two claims in count I. First, plaintiffs claim that the informal sub-quorum gatherings constitute a violation of the OMA. Second, plaintiffs claim that the Board's refusal to permit public comment at the October 26, 2000, meeting prior to voting on the resolutions approving the consent judgment is also a violation of the OMA.

Nevertheless, on February 19, 2001, the parties entered into the following stipulation and order:

> "... the parties ... hereby agree and stipulate that Plaintiffs ... dismiss with prejudice that portion of the relief requested under Count I ... which seeks to invalidate the decision ... by the ... Board .. to approve the ... Consent Judgment ... without prejudice to Plaintiffs' other claims for relief under the Open Meetings Act...."

Count II alleges that the consent judgment violates the TRZA.

II

***3** This Court reviews de novo the grant or denial of a motion for summary disposition. *Maiden v. Rozwood,* 461 Mich. 109, 118; 597 NW2d 817 (1999). Further,

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v. Dep't of Corrections,* 439 Mich. 158, 162; 483 NW2d 26 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5). [*Id.* at 119-120.]

A motion brought under MCR 2.116(C)(10) tests the factual support of a claim. *Smith v. Globe Life Ins Co,* 460 Mich. 446, 454; 597 NW2d 28 (1999). In doing so,

> a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial

> court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). [*Quinto v. Cross & Peters Co,* 451 Mich. 358, 362-363; 547 NW2d 314 (1996).]

III

First, in regard to the OMA violation alleged in count I, in view of the parties' partial stipulation for dismissal, [3] the only relief remaining at issue is the request for injunctive relief to prohibit *future* violations of the act by defendant township. In addressing defendant township's motion for summary disposition, the lower court ruled that the equitable relief requested for potential future violations is "too speculative and hypothetical to be justiciable." We agree.

In general, the equitable relief of injunction is an extraordinary remedy that should be granted only
"if a plaintiff has a right but is without an effective remedy at law he may resort to equity for the enforcement of such right." Injunctive relief is an extraordinary remedy that is granted only when (1) justice requires it, (2) there is no adequate remedy at law, and (3) there exists a real and imminent danger of irreparable injury. *In re Martin,* 200 Mich.App 703, 723; 504 NW2d 917 (1993) .[*ETT Ambulance Service Corp v. Rockford Ambulance, Inc,* 204 Mich.App 392, 400; 516 NW2d 498 (1994), quoting *Kefgen v. Coates,* 365 Mich. 56, 63; 111 NW2d 813 (1961).

See also *Wexford Co Prosecutor v. Pranger,* 83 Mich.App 197, 205; 268 NW2d 344 (1978).

After applying the above standards, we agree with the trial judge that plaintiffs have failed to sustain their burden of establishing sufficient facts for the issuance of the extraordinary remedy of injunction. *Id.* The possibility for additional violations of the OMA by defendant township is purely hypothetical and speculative.

***4** In addition, we note that under the standing requirements adopted by our Supreme Court in *Lee v. Macomb Co Bd of Comm'rs,* 464 Mich. 726; 629 NW2d 900 (2001), plaintiffs do not have standing in regard to the issuance of an injunction for future acts. In order for plaintiffs to have standing, they must have suffered an injury in fact, and an invasion of a legally protected interest, which is concrete, particularized, and actual or imminent, not conjectural or hypothetical. *Id.* Here, plaintiffs have not established standing for the issuance of an injunction for potential future violations.

IV

Plaintiffs' main issue on appeal is their collateral attack claiming that the consent judgment entered in the previous action violated the statutory procedures in the township rural zoning act, M.C.L. § 125.271, *et seq.* and the public policy of the state of Michigan. We disagree.

Recently in *Green Oak Twp v. Munzel,* 255 Mich.App 235; ___ NW2d ___ (2003), this Court rejected a similar argument that a consent judgment entered in settlement of a zoning lawsuit constitutes de facto rezoning in violation of the TRZA. In Green Oak Township, the township was sued by a developer when it refused to grant a use variance for a proposed mobile home park. After the case was settled with the entry of a judgment, a property owner near the proposed mobile home park filed a subsequent action claiming that the consent judgment, which allowed the mobile home park to proceed, was a de facto amendment of the township's zoning ordinance in violation of the TRZA. We rejected the defendant's argument and held:

> [T]he consent judgment was neither the promulgation of a zoning ordinance nor an amendment of a zoning ordinance as contemplated by M.C.L. § 125.282. Therefore, a determination that M.C.L. § 125.282 is applicable to a consent judgment would be contrary to the plain language of the statute. [*Id.* at 241.]

In ruling that the consent judgment was not an amendment to the zoning ordinance, we stated:

> We suggest that the effect of the consent judgment is more akin to a use variance, which our Supreme Court has determined is allowable. *Mitchell v. Grewal,* 338 Mich. 81, 87; 61 NW2d 3 (1953). Specifically, a zoning board has the authority to allow a use in a zoning district that would not otherwise be allowed under an ordinance. *Paragon Properties Co v. Novi,* 452 Mich. 568, 575; 550 NW2d 772 (1996); 25 Mich. Civ Jur, zoning § 36, pp 669-670 (2001). Essentially, when a variance is granted, the ordinance - and zoning pursuant to the ordinance - is left unchanged. However, a particularized exception to the provision of the ordinance is permitted. Mich Civ Jur, zoning § 37, pp 670-673 (2001); *Mitchell, supra* at 88. Accordingly, a variance is distinct from an ordinance or an amendment of an ordinance as contemplated by the TRZA. [*Id.* at 242-243.]

Finally, in *Green Oak Twp* we rejected similar public policy arguments and suggested that plaintiffs' remedies were political in nature against their township board members or through the timely intervention in prior proceedings:

***5** Amici curiae argue that our holding today will encourage townships to routinely use consent judgments to effect zoning changes by circumventing the enactment procedure and the citizen's right to referendum. We do not agree. A consent judgment by its nature is a settlement reached by two opposing parties to a court proceeding. To reach a consent judgment allowing a zoning change, the township would have to file suit against or be sued by a developer. That is, the township's position would necessarily be opposing that of the developer. Putting aside the fact that the citizens could intervene at this point in the proceedings, it strikes us as uncertain and illogical that a township would engage in the fiction of advocating against a zoning change initially only to successfully procure a settlement with the opposing party allowing the zoning change.

The proper remedies in this case were: (1) citizen intervention in the trial court proceedings below, which was done too late here and therefore denied, see *Vestevich v. West Bloomfield Twp,* 245 Mich.App 759, 762; 630 NW2d 646 (2001) (property owners could intervene to challenge a township's continued enforcement of a zoning ordinance where the township had entered into a consent judgment allowing development, suggesting that township's representation of property owners was inadequate), citing MCR 2.209; and (2) recalling the offending township officials, see M.C.L. § 168.960(1). Further, the township could have reserved the right to appeal the consent judgment, but chose not to. See *Travelers Ins v. U-Haul of Michigan, Inc,* 235 Mich.App 273, 278, n 4; 597 NW2d 235 (1999) (appeal of right is available from a consent judgment where reserved); 7 Martin, Dean & Webster, Michigan Court Rules Practice, Rule 7.203, p 139 (an appeal by right is generally lost on agreeing to a consent judgment; leave to appeal may be requested). *We believe that it is within the township's discretionary authority to settle a legal matter or appeal an adverse judicial decision.* [*Id.* at 242 ns 6 and 7 (emphasis added).]

In the present case, plaintiffs' reliance on dicta contained in *Vestevich v. West Bloomfield Twp, supra,* and *Sloban v. Shelby Twp,* 67 Mich.App 371; 241 NW2d 211 (1976), is misplaced and unpersuasive. Both cases are factually distinguishable from the facts of the instant case. Most importantly, the intervenors in *Vestevich,* injected the issue of the validity of the consent judgment into the original action in which the consent judgment was designed to settle. In contrast, this Court is presented in the instant case with a *collateral attack* to the validity of a prior judgment entered in a different action. "Collateral attacks, as opposed to direct appeals, require consideration of the interests of finality and of administrative consequences." *People v. Ingram,* 439 Mich. 288, 291; 484 NW2d 241 (1992). For these reasons, collateral attacks on prior judgments are disfavored. *Id.; In re Hatcher,* 443 Mich. 426; 505 NW2d 834 (1993).

***6** Plaintiffs' argument that a consent judgment entered by the circuit court should be treated differently from a litigated judgment is not the law of this jurisdiction. As we held in *Trendell v. Solomon,* 178 Mich.App 365; 443 NW2d 509 (1989), a consent judgment is a judicial act that possesses the same force and character as a judgment rendered following a contested trial. See also *System Federation No. 91 Railway Employees' Dep't v Wright,* 364 U.S. 642, 651; 81 S Ct 368; 5 L.Ed.2d 349 (1961), and *Siebring v Charles W Hansen*

& Afsco, Inc, 346 F.2d 474, 477 (CA 8, 1965). Plaintiffs' arguments to the contrary are without merit. *Madison v. Detroit,* 182 Mich.App 696, 701; 452 NW2d 883 (1990).

Affirmed.

All Citations

Not Reported in N.W.2d, 2003 WL 21108470

Footnotes

1 Defendant township's motion was granted on the basis of both MCR 2.116(C)(8) and (10). Defendants Land Acquisition's and Panda's motions in regard to count II were granted pursuant to MCR 2.116(C)(8).

2 “Collateral attacks encompass those challenges raised other than by initial appeal of the [judgment] in question.” *People v. Ingram,* 439 Mich. 288, 291 n1; 484 NW2d 241 (1992).

3 In an effort to cure the claimed OMA violation, defendant township convened a second meeting at which the proposed consent judgment was reapproved. The partial stipulation for dismissal was apparently in response to the second meeting.

2019 WL 5061192
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

LAKELAND NEUROCARE CENTERS and VHS of Michigan, Inc, doing Business as Detroit Medical Center, Plaintiffs-Appellants,
and
Jaculyn Gordon, Intervening Plaintiff,
v.
EVEREST NATIONAL INSURANCE COMPANY, Arrowhead General Insurance Agency, and NDS Insurance Agency, Inc, doing Business as Premier Insurance Agency XXV, Defendants-Appellees.
Lakeland Neurocare Centers and VHS of Michigan, Inc, doing Business as Detroit Medical Center, Plaintiffs,
and
Jaculyn Gordon, Intervening Plaintiff-Appellee,
v.
Everest National Insurance Company, Defendant-Appellant,
and
Arrowhead General Insurance Agency and NDS Insurance Agency, Inc, doing business as Premier Insurance Agency XXV, Defendants.

No. 340346, No. 340349
|
October 8, 2019

Wayne Circuit Court, LC No. 17-005081-NF

Before: Jansen, P.J., and Cameron, and Tukel, JJ.

Opinion

Per Curiam.

***1** In Docket No. 340346, plaintiffs Lakeland Neurocare Centers (Lakeland) and VHS of Michigan (VHS), doing business as Detroit Medical Center (DMC) (collectively, "plaintiffs"), appeal by leave granted [1] the trial court order granting defendant Everest National Insurance Company (Everest) summary disposition in this third-party no-fault matter. [2] Plaintiffs argue on appeal that the trial court erred when it granted Everest summary disposition because plaintiffs had valid assignments, antiassignment clauses are void, the assignments made a present transfer of rights, the antiassignment clause is unenforceable to postloss claims, the assignments were permitted under the no-fault act, MCL 500.3101 *et seq.*, and the antiassignment clause is ineffective under the Uniform Commercial Code (UCC), MCL 440.1101 *et seq.* Plaintiffs also argue that the trial court erred when it denied their request to file an amended complaint. We agree that Everest was not entitled to summary disposition, but the trial court did not commit plain error affecting substantial rights when it declined plaintiffs' request to file an amended complaint. Accordingly, we reverse, and remand for further proceedings consistent with this opinion.

In Docket No. 340349, Everest appeals by leave granted [3] the trial court order granting intervening plaintiff Jaculyn Gordon's motion to intervene in this no-fault matter. [4] Everest argues on appeal that the trial court erred in determining that Gordon's complaint related back to plaintiffs' complaint. Additionally, Everest argues that *Shah v. State Farm Mut. Auto Ins. Co.*, 324 Mich. App. 182; 920 N.W.2d 148 (2018), was wrongly decided, but if it is upheld, Gordon lacked standing to intervene, and if *Shah* is reversed, and the antiassignment clause is upheld, plaintiffs had no standing, and the court lacked subject-matter jurisdiction. We disagree in part because the trial court did not abuse its discretion in allowing Gordon to intervene, but we agree with Everest's contention that Gordon's claims did not relate back to the filing of plaintiffs' complaint. Accordingly, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. RELEVANT FACTUAL BACKGROUND

***2** This case arises from an automobile accident involving Gordon on June 27, 2016, from which she sustained injuries. Gordon struck a pot hole at a high speed, and sustained a broken arm, dislocated hip, and multiple pelvic fractures that required surgery. Plaintiffs provided medical services to Gordon in relation to her injuries in the amount of $288,073.52. At the time of the accident, Gordon had an insurance policy with Everest. When plaintiffs tried to claim benefits under Gordon's policy for the services that they provided to Gordon, Everest attempted to rescind Gordon's

auto insurance policy, claiming that Gordon did not disclose a licensed driver of her household on her application for insurance.

Gordon initially executed an assignment of benefits to plaintiffs on March 18, 2017, and plaintiffs filed suit on March 30, 2017, alleging their assignee status. The Michigan Supreme Court issued its opinion in *Covenant Med. Ctr., Inc. v. State Farm Mut. Auto Ins. Co.*, 500 Mich. 191; 895 N.W.2d 490 (2017), on May 27, 2017, holding that medical providers have no direct cause of action against insurers for personal protection insurance (PIP) benefits. On June 14, 2017, Everest filed a motion for summary disposition seeking to dismiss plaintiffs' claims under *Covenant*. Gordon executed a second assignment of benefits to plaintiffs on June 17, 2017, because she was still receiving treatment for her accident-related injuries. On July 28, 2017, Gordon filed an emergency motion to intervene as a party plaintiff. The trial court granted Everest summary disposition under *Covenant*, and upheld the antiassignment clause in Gordon's insurance policy. The trial court also granted Gordon's motion to intervene, and determined that her claims related back to the date that plaintiffs filed their complaint. Plaintiffs and Everest filed applications for leave to appeal these orders in this Court, which were denied. [5] Plaintiffs and Everest filed for leave to appeal in the Michigan Supreme Court, which remanded both cases to this Court as on leave granted. [6] We consolidated these cases for appeal on remand.

II. DOCKET NO. 340346

A. EVEREST'S MOTION FOR SUMMARY DISPOSITION

Plaintiffs argue on appeal that the trial court erred in granting Everest summary disposition because they had valid assignments from Gordon that reflected an intent to make a present transfer, the antiassignment clause in the policy was void and unenforceable as to postloss claims, the assignments were valid under the no-fault act, and the antiassignment provision was ineffective under the UCC. We agree that the trial court erred in granting Everest summary disposition because plaintiffs had valid assignments from Gordon.

This Court reviews de novo a trial court's grant of summary disposition. *Lowrey v. LMPS & LMPJ, Inc.*, 500 Mich. 1, 5-6; 890 N.W.2d 344 (2016). Everest moved for summary disposition under MCR 2.116(C)(8), arguing that plaintiffs failed to state a claim upon which relief could be granted under *Covenant*. However, the trial court considered materials outside of the pleadings that the parties attached to their briefs, so the motion should be evaluated on appeal under MCR 2.116(C)(10). *Shah*, 324 Mich. App. at 206. See also, *El-Khalil v. Oakwood Healthcare, Inc.*, —— Mich. ——, ——; —— N.W.2d —— (2019) (Docket No. 157846); slip op. at 9-11, 10 n 5 (where the trial court considered evidence attached to pleadings as substantive evidence, review under MCR 2.116(C)(8) was improper).

***3** The court determined that there was an antiassignment clause in the Everest insurance policy, which it upheld. The policy was attached to Everest's reply to plaintiffs' response to Everest's motion for summary disposition. The assignments that plaintiff relied on were attached to its response to Everest's motion for summary disposition. Although a written instrument forming the basis for a claim or defense attached or referred to in a pleading may be treated as "part of the pleading for all purposes," MCR 2.112(F), neither the insurance policy, nor the assignments were attached or referred to in a pleading. A "pleading" includes only a "complaint, cross-claim, counterclaim, third-party complaint, an answer to any of the aforementioned pleadings, or a reply to an answer." MCR 2.110(A). See *Shah*, 324 Mich. App. at 206-207. The insurance policy and the assignments were not attached to the complaint, or to Everest's answer to plaintiffs' complaint.

Thus, the standard of review for MCR 2.116(C)(10) applies:

> A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. A motion pursuant to MCR 2.116(C)(10) is reviewed by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an

> issue upon which reasonable minds might differ. It is well settled that the circuit court may not weigh the evidence or make determinations of credibility when deciding a motion for summary disposition. Moreover, a court may not make findings of fact; if the evidence before it is conflicting, summary disposition is improper. [*Patrick v. Turkelson*, 322 Mich. App. 595, 605; 913 N.W.2d 369 (2018) (citations, quotation marks, emphasis and brackets removed).]

In addition, "[t]he interpretation of contractual language, as well as the determination of whether that contractual language is ambiguous, is a question of law that we review de novo." *Kyocera Corp. v. Hemlock Semiconductor, LLC*, 313 Mich. App. 437, 445; 886 N.W.2d 445 (2015) (citations and quotation marks omitted).

In *Covenant*, the Michigan Supreme Court held that "healthcare providers do not possess a statutory cause of action against no-fault insurers for recovery of personal protection insurance benefits under the no-fault act," but rather, "a provider that furnishes healthcare services to a person for injuries sustained in a motor vehicle accident may seek payment from the injured person for the provider's reasonable charges." *Covenant*, 500 Mich. at 196, 217. Therefore, the trial court did not err when it determined that, as an initial matter, *Covenant* applied to preclude plaintiffs' claims because they were medical providers. Plaintiffs did not have a direct cause of action against Everest for Gordon's bills. *Id.* "[A] provider simply has no statutory cause of action of its own to directly sue a no-fault insurer." *Id.* at 217-218. Plaintiffs' cause of action would be against Gordon, the patient, rather than the insurer, Everest. *Id.* at 217. Therefore, the trial court did not err when it determined that plaintiffs could not directly bring a claim for Gordon's unpaid bills against Everest under *Covenant*.

However, the trial court erred in determining that the assignments from Gordon to plaintiffs were unenforceable because of the antiassignment clause in Everest's policy that required written consent for an assignment.

Covenant provides that a healthcare provider does not have a statutory cause of action against a no-fault insurer. *Covenant*, 500 Mich. at 217-218. This decision applied retroactively. *W A Foote Mem. Hosp. v. Mich. Assigned Claims Plan*, 321 Mich. App. 159, 196; 909 N.W.2d 38 (2017). Rather, a healthcare provider must recover costs directly from "the person to whom services were provided." *Covenant*, 500 Mich. at 218. However, this did not alter "an insured's ability to assign his or her right to past or presently due benefits to a healthcare provider." *Id.* at 217 n 40. Under generally applicable principles of contract law, rights can be assigned unless the assignment is clearly restricted. *Burkhardt v. Bailey*, 260 Mich. App. 636, 653; 680 N.W.2d 453 (2004). An assignee stands in the shoes or position of the assignor, possessing the same rights, and being subject to the same defenses as the assignor. *Id.*

***4** The rules of contract interpretation apply to insurance policies. *Rory v. Continental Ins. Co.*, 473 Mich. 457, 461; 703 N.W.2d 23 (2005), implied overruling on other grounds recognized in *W A Foote Mem. Hosp.*, 321 Mich. App. at 183-184. "In ascertaining the meaning of a contract, we give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory*, 473 Mich. at 464. Unambiguous contracts must be enforced as written. *Id.* at 468. "[U]nless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written." *Id.* at 461. Although clear and unambiguous, a contract provision is unenforceable if it violates law or public policy. *Shah*, 324 Mich. App. at 197. Assignments are generally permitted unless the contract clearly states otherwise. *Id.*

In *Shah*, this Court held that an antiassignment clause in an insurance policy was unenforceable for violating Michigan public policy. *Id.* at 200. The policy in *Shah* provided, " 'No assignment of benefits or other transfer of rights is binding upon *us* [i.e., defendant] unless approved by *us*.' " *Id.* at 198. An individual was injured in a motor vehicle accident on November 30, 2014, and the defendant insurance company was his insurer. *Id.* at 186. The plaintiffs provided care and medical services to the individual, and submitted their costs to the defendant, but the defendant refused to pay. *Id.* The plaintiffs submitted their original complaint on February 24, 2017, and the *Covenant* decision was issued on May 25, 2017. *Id.* The plaintiffs obtained an assignment of rights from the injured individual on July 11, 2017, in order to pursue payment of no-fault benefits for the services that the plaintiffs already provided. *Id.* at 187-188. This Court held that the antiassignment clause was unenforceable as to an assignment

obtained after the loss occurred for an accrued claim of payment because the prohibition of such an assignment in the policy violated Michigan public policy. *Id.* at 200. This Court subsequently reaffirmed the holding in *Shah*. *Henry Ford Health Sys. v. Everest Nat'l Ins. Co.*, 326 Mich. App. 398, 405; 927 N.W.2d 717 (2018), held in abeyance 926 N.W.2d 258 (2019) ("Accordingly, we must conclude that the antiassignment clause in defendant's policy is unenforceable because it is contrary to public policy."). [7]

The language of Everest's auto insurance policy is clear and unambiguous. Gordon's policy with Everest provided:

> **TRANSFER OF YOUR INTEREST**
>
> Interest in this Policy may not be assigned without our written consent.

As argued by plaintiffs, however, courts have refused to enforce antiassignment clauses when the loss at issue occurs before the assignment was executed. In *Shah*, the Court stated:

> "The assignment having been made after the loss did not require consent of the company. The provision of the policy forfeiting it for an assignment without the company's consent is invalid, so far as it applies to the transfer of an accrued cause of action. It is the absolute right of every person–secured in this state by statute–to assign such claims, and such a right cannot be thus prevented. It cannot concern the debtor, and it is against public policy." [*Shah*, 324 Mich. App. at 199, quoting *Roger Williams Ins. Co. v. Carrington*, 43 Mich. 252, 254; 5 NW 303 (1880).]

***5** As such, Everest's argument that Gordon's assignments were void on the basis of the policy language lacks merit, and the trial court erred in upholding the antiassignment clause. Gordon's car accident occurred on June 27, 2016. She made postloss assignments to plaintiffs on March 18, 2017, and June 17, 2017. Therefore, the trial court erred in granting Everest summary disposition because plaintiffs could proceed with their claims under the valid assignments executed by Gordon, despite the antiassignment clause in the insurance policy. *Shah*, 324 Mich. App. at 199.

Although Everest argues on appeal that *Roger Williams* is no longer good law, the *Shah* Court recognized:

> [A]s our Supreme Court has instructed, we are bound to follow its decisions except where those decisions have clearly been overruled or superseded. There is no indication that *Roger Williams* or its holding relating to antiassignment clauses has been clearly overruled or superseded. Therefore, if the continued validity of *Roger Williams* is to be called into question, it will have to be by our Supreme Court. [*Shah*, 324 Mich. App. at 201 (quotation marks and citation omitted).]

Because this Court recognized that unambiguous contract terms must generally be enforced as written, yet also applied *Roger Williams*, this Court must continue to follow *Shah*. MCR 7.215(J)(1); *Holland Home v. Grand Rapids*, 219 Mich. App. 384, 394; 557 N.W.2d 118 (1996) ("A decision by any panel of this Court is controlling precedent until a contrary result is reached by this Court or the Supreme Court takes other action.").

Because this matter is governed by, and resolved under, the no-fault act, and corresponding case law, it is unnecessary to discuss plaintiffs' argument regarding the UCC on appeal. See *Henry Ford Health Sys*, 326 Mich. App. at 401-402 (where the plaintiff healthcare provider argued in the lower court in response to Everest's motion for summary disposition that the antiassignment clause was void under the UCC, this Court held that the clause was unenforceable under *Shah*, and did not discuss the UCC).

Regardless, because this case pertains to a no-fault action, "the more specific statute controls." *Mich. Deferred Presentment Servs. Ass'n v. Comm'r of Office of Fin & Ins. Regulation*, 287 Mich. App. 326, 334; 788 N.W.2d 842 (2010). *Shah* is the leading case on the validity of antiassignment clauses, and nowhere does it rely on the UCC to render antiassignment or consent clauses invalid. Rather, the *Shah* Court deemed antiassignment clauses unenforceable because of public policy. *Shah*, 324 Mich. App. at 198-201. This reasoning applies in this case as well. [8]

B. PLAINTIFFS' REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT

***6** Plaintiffs also argue on appeal that the trial court erred when it denied their request for leave to file a first amended complaint to clarify that they had valid standing under the assignments. We disagree.

"Generally, an issue is not properly preserved if it is not raised before, addressed by, or decided by the lower court or administrative tribunal." *Gen Motors Corp. v. Dep't of Treasury*, 290 Mich. App. 355, 386; 803 N.W.2d 698 (2010). Plaintiffs argued in their response to Everest's motion for summary disposition that they should be granted leave to file a first amended complaint to more specifically allege that their action was on the basis of assignments from Gordon. Everest did not respond to this argument in its reply to plaintiffs' response. The trial court held a hearing on Everest's motion for summary disposition, and the parties argued consistent with their briefs. The court determined that plaintiffs had no cause of action under *Covenant*, and upheld the antiassignment clause in the insurance policy, dismissing plaintiffs' claims. In dismissing plaintiffs' suit, the court, therefore, had no reason to specifically address and decide plaintiffs' request to amend. However, this means that the issue is unpreserved for appeal. *Id.*

It is within the discretion of the trial court to grant or deny leave to amend pleadings. *PT Today, Inc. v. Comm'r of Office of Fin & Ins. Servs.*, 270 Mich. App. 110, 142; 715 N.W.2d 398 (2006). The trial court "may, on reasonable notice and on just terms, permit [a] party to serve a supplemental pleading." MCR 2.118(E). An abuse of discretion occurs when the decision of the trial court is outside the range of reasonable and principled outcomes. *Shah*, 324 Mich. App. at 208. However, the review of this Court of an unpreserved error is limited to a determination of whether a plain error occurred affecting substantial rights. *Rivette v. Rose-Molina*, 278 Mich. App. 327, 328; 750 N.W.2d 603 (2008). "To avoid forfeiture under the plain-error rule, three requirements must be met: (1) an error must have occurred; (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected substantial rights." *Id.* at 328-329 (quotation marks and citation omitted). "[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich. App. 1, 9; 761 N.W.2d 253 (2008).

We acknowledge that plaintiffs were required to attach the assignments to their complaint because their assignment-related claim was "based on a written instrument." MCR 2.113(C)(1).[9] An attached written instrument becomes "part of the pleading for all purposes." MCR 2.113(C)(2). Summary disposition may be appropriate under MCR 2.116(C)(8) when a written instrument is not attached to a complaint as required. *Liggett Restaurant Group, Inc. v. Pontiac*, 260 Mich. App. 127, 133; 676 N.W.2d 633 (2003). Although plaintiffs asserted in their complaint that they were assignees of Gordon (because Gordon executed assignments before plaintiffs filed suit), plaintiffs did not attach the assignments to their complaint. Plaintiffs attached the assignments as an exhibit to their response to Everest's motion for summary disposition, and therein requested, if necessary, leave to file a first amended complaint to clarify their standing as assignees.

***7** MCR 2.116(I)(5) provides that "[i]f the grounds asserted [for summary disposition] are based on subrule (C)(8), (9), or (10), the court *shall* give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." (Emphasis added.) When summary disposition is granted under MCR 2.116(C)(10), the court should allow the nonprevailing party to amend its pleadings unless amendment is unjustified or futile. *Ormsby v. Capital Welding, Inc*, 471 Mich. 45, 52-54; 684 N.W.2d 320 (2004). A motion to amend should be denied only for particularized reasons, including undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to the opposing party, or futility. *PT Today, Inc*, 270 Mich. App. at 143. The trial court must provide specific reasons for denying leave to amend. *Id.* Failure to do so requires reversal unless the amendment would be futile. *Id.* "[A]mendment is generally a matter of right rather than grace." *Id.* Here, the trial court granted Everest's motion for summary disposition under *Covenant*, and upheld the antiassignment clause in the policy, so it did not discuss plaintiffs' request to amend.

MCR 2.118(D) provides that an "amendment that adds a claim or defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading." Amended pleadings may relate back to the date of the original pleadings, but supplemental pleadings cannot. *Shah*, 324 Mich. App. at 203. MCR 2.118(E) governs supplemental pleadings, and provides:

> On a motion of a party the court may, on reasonable notice and on just terms, permit the party to serve a supplemental pleading to state transactions or events that have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or a defense.

In *Shah*, the plaintiff medical providers filed suit directly against the defendant insurer, and after *Covenant* was issued, the plaintiffs obtained assignments. *Id.* at 187-189. Then the plaintiffs sought to amend their complaint to bring their lawsuit under an assignment-of-rights theory. *Id.* at 202-203. This Court had to determine whether the plaintiffs' request constituted an amended complaint, or a supplemental pleading, for purposes of the relation-back doctrine. *Id.* at 202-205.

It is routinely recognized that "[a]n assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Burkhardt*, 260 Mich. App. at 654. Thus, the *Shah* Court determined that the plaintiffs were afforded only the same rights that the injured person possessed as of the date of the assignment. *Shah*, 324 Mich. App. at 204. Additionally, the *Shah* Court determined that the plaintiffs' attempt to amend their complaint was actually an attempt to supplement the pleadings. The *Shah* court reasoned that "the procurement of the assignments was an event that occurred *after* the filing of the original complaint and provided the only means by which plaintiff[ ] could have standing to maintain a direct action against defendant insurer for recovery of no-fault benefits in this case." *Id.* (emphasis added), citing *Covenant*, 500 Mich. at 195-196, 217 n 40. And a supplemental pleading under MCR 2.118(E) cannot relate back to the date of the original pleading. *Shah*, 324 Mich. App. at 204-205.

On one hand, this case is distinguishable from the facts in *Shah* because Gordon executed the first assignment before plaintiffs filed suit. Gordon executed the first assignment of benefits on March 18, 2017, and plaintiffs filed their complaint on March 30, 2017, asserting their assignee status. However, after plaintiffs filed suit and *Covenant* was issued, Gordon executed a second assignment on June 17, 2017. Under *Covenant*, the assignments "provided the only means by which plaintiffs could have standing to maintain a direct action against defendant insurer for recovery of no-fault benefits." *Id.* at 202-204. Thus, plaintiffs' request to amend their complaint was actually a request to supplement the pleadings, and the relation-back doctrine would not apply. *Id.*

***8** However, this is irrelevant because Gordon executed the first assignment on March 18, 2017, which is the date upon which the one-year-back rule in MCL 500.3145 would apply. Even though the complaint was filed thereafter, the date of the first assignment marks the relevant date for the one-year-back rule. *Id.* at 204. The validity of assignments is subject to scrutiny under the one-year-back rule in MCL 500.3145, which was recently amended [10], and provides:

> (1) An action for recovery of personal protection insurance benefits payable under this chapter for an accidental bodily injury may not be commenced later than [one] year after the date of the accident that caused the injury unless written notice of injury as provided in subsection (4) has been given to the insurer within [one] year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury.
>
> (2) Subject to subsection (3), if the notice has been given or a payment has been made, the action may be commenced at any time within [one] year after the most recent allowable expense, work loss, or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than [one] year before the date on which the action was commenced.
>
> (3) A period of limitations applicable under subsection (2) to the commencement of an action and the recovery of benefits is tolled from the date of a specific claim for payment of the benefits until the date the insurer formally denies the claim. This subsection does not apply if the person claiming the benefits fails to pursue the claim with reasonable diligence.
>
> (4) The notice of injury required by subsection (1) may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits for the injury, or by someone in [sic] the person's behalf. The notice must give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place, and nature of the person's injury.

(5) An action for recovery of property protection insurance benefits may not be commenced later than [one] year after the accident.

"The one-year-back rule is designed to limit the amount of benefits recoverable under the no-fault act to those losses occurring no more than one year before an action is brought." *Joseph v. Auto Club Ins. Ass'n*, 491 Mich. 200, 203; 815 N.W.2d 412 (2012).

Plaintiffs sought to recover benefits from the date of the car accident, June 27, 2016, through the date of the second assignment, June 17, 2017. Because June 27, 2016, is within one year back of the first assignment on March 18, 2017, and the second assignment on June 17, 2017, plaintiffs could make a claim for these bills under the valid assignments. MCL 500.3145(1). As such, there was no plain error affecting substantial rights in the trial court's failure to allow plaintiffs to file a first amended complaint because the assignments were signed before the complaint was filed, making the relation-back doctrine a nonissue. Plaintiffs obtained the rights of Gordon upon the execution of her assignments, and the services rendered were within one year back of the date of each assignment. Thus, there was no plain error that affected the outcome of the proceedings because plaintiffs obtained the rights of Gordon to claim PIP benefits upon the date of the first assignment. Because the trial court erred in granting Everest summary disposition, and remand for further proceedings is appropriate, plaintiffs may proceed on their claims upon remand without filing an amended complaint or supplemental pleading. Their status as assignees was made clear in their original complaint.

III. DOCKET NO. 340349

A. GORDON'S MOTION TO INTERVENE

***9** Everest argues on appeal that the trial court abused its discretion by allowing Gordon to intervene, depending on the outcome of the appeal of *Shah* in the Michigan Supreme Court. [11] If *Shah* is affirmed, and the assignments are valid, Everest argues that Gordon lacked standing to intervene. If *Shah* is reversed, and the assignments are invalid, then plaintiffs lacked standing to file suit, and the order allowing Gordon to intervene is erroneous because the trial court lacked subject-matter jurisdiction. We disagree with Everest's assertion that the trial court abused its discretion by allowing Gordon to intervene.

"This Court reviews a trial court's decision on a motion to intervene for an abuse of discretion." *Auto-Owners Ins. Co v. Keizer-Morris, Inc.*, 284 Mich. App. 610, 612; 773 N.W.2d 267 (2009). " 'An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.' " *Id.* (citation omitted).

As an initial matter, Everest's arguments on appeal depend on the outcome of the mini oral argument scheduled in *Shah* in the Michigan Supreme Court. *Shah* is a published decision of this Court with binding precedential effect. See MCR 7.215(C)(2) ("A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis. The filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals."); MCR 7.215(J)(1) ("A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, ..."). "It is the [Michigan] Supreme Court's obligation to overrule or modify [caselaw] if it becomes obsolete, and until [the Michigan Supreme] Court takes such action, the Court of Appeals and all lower courts are bound by that authority." *Lakin v. Rund*, 318 Mich. App. 127, 137-138; 896 N.W.2d 76 (2016) (quotation marks and citations omitted). The *Shah* decision remains binding on this Court, and as explained in detail above, the assignments from Gordon to plaintiffs were valid and enforceable under *Shah*, despite the antiassignment clause. Therefore, under the assignments, plaintiffs had standing to file suit. *Covenant*, 500 Mich. at 217 n 40. And Everest's arguments depending on the reversal of *Shah* are not properly before this Court. "A party may not premise an action on a hypothetical controversy." *Van Buren Charter Twp v. Visteon Corp.*, 319 Mich. App. 538, 554; 904 N.W.2d 192 (2017).

Thus, the issue on appeal is whether the trial court abused its discretion by granting Gordon's motion to intervene when plaintiffs had valid assignments from Gordon, allowing them to pursue claims against Everest. *Id.* This is a close determination.

Legal actions must be prosecuted in the name of the real party in interest. MCL 600.2041. "A real party in interest is one who is vested with the right of action on a given

claim, although the beneficial interest may be in another." *In re Beatrice Rottenberg Living Trust*, 300 Mich. App. 339, 356; 833 N.W.2d 384 (2013) (quotation marks and citation omitted). "The real-party-in-interest rule requir[es] that the claim be prosecuted by the party who by the substantive law in question owns the claim asserted...." *Id.* (quotation marks and citation omitted).

Under the no-fault act, PIP benefits are payable "to or for the benefit of an injured person." MCL 500.3112. *Covenant* made clear that the claim for payment of PIP benefits under the no-fault act belongs to the injured party. *Covenant*, 500 Mich. at 210-217. Because Gordon had a statutory claim to payment under the no-fault act, she had a cause of action for those benefits when Everest refused to pay the bills for the services rendered by plaintiffs. *Id.*

***10** Intervention of right is governed by MCR 2.209(A), which provides:

> **(A) Intervention of Right.** On timely application a person has a right to intervene in an action:
>
> (1) when a Michigan statute or court rule confers an unconditional right to intervene;
>
> (2) by stipulation of all the parties; or
>
> (3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The trial court granted Gordon's right to intervene under MCR 2.209(A)(3) for the reasons set forth in Gordon's brief, relying on *Botsford Gen. Hosp. v. Citizens Ins. Co.*, 195 Mich. App. 127; 489 N.W.2d 137 (1992). In *Botsford*, issued before *Covenant*, the medical provider hospital and the injured person filed suit against the no-fault insurer. *Id.* at 130. On appeal, the insurer argued that the hospital was barred from intervening under the statute of limitations provided in MCL 500.3145 (one year after the accident unless written notice of the injury was provided to the insurer within one year). *Id.* at 139-140. This Court determined that notice to the insurer was provided in the complaint, which was filed within the statutory period, and the hospital's claims did not change or enlarge the injured person's claims already in existence. *Id.* at 141. Thus, the trial court did not err in granting the hospital's motion to intervene. *Id.*

The trial court recognized the distinguishable facts between this case and *Botsford*, namely, that Gordon, the injured person, sought to intervene in the case between the medical provider and the insurer, whereas in *Botsford*, the medical provider sought to intervene in the case between the injured person and the insurer. Despite this difference, the trial court determined that Everest had notice of the claims through plaintiffs' complaint, so Gordon was allowed to intervene. This was not an abuse of discretion.

Under MCR 2.209(A)(3), Gordon had an interest in the transaction because she had a right to claim benefits under the no-fault act, MCL 500.3112. Under her insurance policy with Everest, Everest was obligated to provide PIP benefits to Gordon. Plaintiffs provided healthcare services to Gordon after she was injured in the car accident, so Gordon had an interest in plaintiffs' action for reimbursement. Should Everest be found not responsible to reimburse plaintiffs, Gordon would still be liable for the payment of her medical bills, totaling $288,073.52. MCR 2.209 is to be "liberally construed to allow intervention where the applicant's interests may be inadequately represented." *State Treasurer v. Bences*, 318 Mich. App. 146, 150; 896 N.W.2d 93 (2016) (quotation marks and citations omitted). Thus, the trial court did not abuse its discretion by granting Gordon leave to intervene by right.

Alternatively, Gordon argues on appeal that permissive intervention was appropriate despite the valid assignments to plaintiffs. Permissive intervention is governed by MCR 2.209(B):

> ***11 (B) Permissive Intervention.** On timely application a person may intervene in an action
>
> (1) when a Michigan statute or court rule confers a conditional right to intervene; or
>
> (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

Under subsection (B), a court deciding a request for permissive intervention must "consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." MCR 2.209(B).

Gordon's action had the same factual basis as plaintiffs' action, namely, the car accident that led to her injuries. Gordon's action had the same question of law as plaintiffs' action, namely, whether Everest was responsible to pay for the medical bills for treatment Gordon received for the injuries she sustained in the car accident. Permissive intervention was not considered by the trial court because it granted Gordon's motion as intervention by right; however, Gordon's intervention would not unduly delay or prejudice the adjudication of the rights of plaintiffs.

B. RELATION BACK OF GORDON'S CLAIMS

Everest argues on appeal that the trial court erred in determining that Gordon's claims relate back to the date of the original complaint filed by plaintiffs because Gordon did not seek to add new claims or defenses, but rather, Gordon is a new party, and the addition of new parties cannot relate back. We agree that Gordon's claims do not relate back.

The interpretation and application of a statute presents a question of law that this Court reviews de novo. *Rambin v. Allstate Ins. Co.*, 495 Mich. 316, 325; 852 N.W.2d 34 (2014). Specifically, "[w]hether the relation-back doctrine is applicable is a question of law that this Court reviews de novo." *Local Emergency Fin Assistance Loan Bd. v. Blackwell*, 299 Mich. App. 727, 740-741; 832 N.W.2d 401 (2013).

MCR 2.118(D) provides in part:

> An amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

The relation-back doctrine, however, does not apply to the addition of new parties. *Miller v. Chapman Contracting*, 477 Mich. 102, 105; 730 N.W.2d 462 (2007). There is also no relation back for supplemental pleadings. *Shah*, 324 Mich. App. at 203; *Grist v. Upjohn Co.*, 1 Mich. App. 72, 84; 134 N.W.2d 358 (1965).

Gordon is clearly a different party than plaintiffs. She is not seeking to add new claims or defenses, MCR 2.118(D), but rather, assert the same claims as plaintiffs, but as a different party. Therefore, her claims would not relate back to the date of plaintiffs' complaint. Because Gordon's claims would not relate back to the date of the filing of the original complaint, she could only claim benefits dating one year back from the date that she filed her intervening complaint under MCL 500.3145, which was September 21, 2017. Because we affirm Gordon's ability to intervene, her claims on remand are limited to this period of time.

IV. CONCLUSION

***12** In Docket No. 340346, we reverse, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

In Docket No. 340349, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

All Citations

Not Reported in N.W. Rptr., 2019 WL 5061192

Footnotes

1 *Lakeland Neurocare Ctrs. v. Everest Nat'l Ins. Co.*, 502 Mich. 936; 916 N.W.2d 214 (2018). The Michigan Supreme Court remanded both of these consolidated cases to this Court for consideration as on leave granted. *Id.* at 936.

2 Although the Supreme Court order remanding these cases for consideration as on leave granted denotes defendants Arrowhead General Insurance Agency and NDS Insurance Agency, Inc, doing business as Premier Insurance Agency XXV, as "Defendants-Appellees," the order appealed from by plaintiffs grants [only] Everest summary disposition. Plaintiffs' claims against these other defendants were not decided by the trial court, and they have not filed any briefs on appeal in either of these consolidated cases.

3 See footnote 1.

4 Although defendants Arrowhead and NDS opposed Gordon's motion to intervene in the trial court, they have not challenged the trial court order granting intervention or otherwise participated in this appeal.

5 *Lakeland Neurocare Ctrs. v. Everest Nat'l Ins. Co.*, unpublished order of the Court of Appeals, entered February 16, 2018 (Docket No. 340346); *Lakeland Neurocare Ctrs. v. Everest Nat'l Ins. Co.*, unpublished order of the Court of Appeals, entered February 16, 2018 (Docket No. 340349).

6 See footnote 1.

7 We recognize that the Michigan Supreme Court has ordered the scheduling of oral argument on the application for leave to appeal filed in *Shah* to address the validity of antiassignment clauses. *Shah v. State Farm Mut. Auto Ins. Co.*, 503 Mich. 882, 882; 918 N.W.2d 528 (2018). However, as of this date, *Shah* remains binding precedent, and must be followed. MCR 7.215(C)(2); MCR 7.215 (J)(1). The Supreme Court is also holding the appeal in *Henry Ford Health Sys.* in abeyance pending the *Shah* decision. *Henry Ford Health Sys.*, 926 N.W.2d at 258.

8 We note that decisions of other courts have recognized lower court decisions determining that the UCC prohibited antiassignment clauses. See *ZMC Pharmacy, LLC v. State Farm Mut. Auto Ins. Co.*, 307 F Supp 3d 661, 671 (ED Mich, 2018) ("Relatedly, Michigan courts have held post-*Covenant* that the Michigan [UCC] prohibits restrictions on assignments of healthcare insurance receivables. [Citing *Mich. Brain and Spine Surgeons, PLLC v. State Farm Mut. Auto Ins. Co.*, No. 17-158827-NF, Oakland County Cir Ct, August 9, 2017, slip op. at 6] ('The UCC plainly prohibits all restrictions on a health[ ]care provider's receiving and relying on a patient assignment of benefit due in payment for services from an insurance company....')."') Decisions of lower federal courts are not binding on this Court, but may be considered as persuasive authority. *Abela v. Gen. Motors Corp.*, 469 Mich. 603, 606-607; 677 N.W.2d 325 (2004).

9 This provision was found in MCR 2.113(F)(1) at the time of the lower court proceedings, and before the Michigan Supreme Court amended the court rule, effective September 1, 2018.

10 See 2019 PA 21.

11 See footnote 7.

2016 WL 4947279
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

PEOPLE of the State of Michigan, Plaintiff–Appellee,
v.
14925 LIVERNOIS, Defendant,
and
Stanley White doing business as
Tropical Hut Lounge, Claimant,
and
Intelligent Investment Group, L.L.C., Appellant.

Docket No. 327377.
|
Sept. 15, 2016.

Wayne Circuit Court; LC No. 07–727338–CF.

Before: CAVANAGH, P.J., and SAAD and FORT HOOD, JJ.

Opinion

PER CURIAM.

***1** Intelligent Investment Group, L.L.C. ("IIG") appeals the trial court's decision to deny its motion to intervene and for relief from an order of abatement. The trial court concluded that IIG's motion to intervene was untimely because it was filed after a final judgment had been issued. The court consequently denied IIG's motion for relief from the order of abatement because IIG was not a party. IIG argues on appeal that the court's decisions were erroneous. We agree and reverse and remand for proceedings consistent with this opinion.

I. BACKGROUND FACTS AND PROCEDURAL POSTURE

In October 2007, plaintiff filed a complaint for abatement of nuisance, pursuant to MCL 600.3801 *et seq.* and MCL 333.7521 *et seq.,* against defendant real property ("the property") and other parties, including claimant Stanley White, who owned the liquor license and operated the business, the Tropical Hut Lounge ("Tropical Hut"), on the property. The complaint alleged that Tropical Hut had "a reputation for violence, disorderly persons, underage drinking, and use of controlled substances," and that it had been cited for serving alcohol to minors on several occasions. In addition, it alleged that between 2006 and 2007, Detroit Police officers responded to two shootings and an armed robbery outside of Tropical Hut. Plaintiff asked the court to abate the nuisance by padlocking the property for a period of one year pursuant to MCL 600 .3801 *et seq.,* and/or to enter a permanent injunction against defendants to cease from operating Tropical Hut, and to order that the furniture, fixtures, and other contents of the building be sold to pay any outstanding taxes, liens, or other outstanding costs against the property, and that the court order the forfeiture of the property and authorize the appointment of a receiver.

Other than White's answer to the complaint, nothing of substance happened in the case until October 2014. At that time, White entered into a consent judgment with plaintiff and stipulated that he was the owner of the property and that no other person or entity had a valid legal claim or interest in the property. White agreed to make several changes to the property and his business operations under the terms of the judgment, including installing lighting in the parking lots and alley; installing security cameras; instructing employees to ensure that customers of Tropical Hut were age 21 or older; and training security staff in "de-escalating" situations in which patrons had to be escorted out of the bar. White also agreed to pay a "redemption fee" of $1,500 to the prosecutor's office by October 24, 2014. When White failed to pay the redemption fee, the circuit court ordered the property to be padlocked for one year, beginning November 21, 2014, and ordered any occupants of the property to vacate during the padlocking. The court further ordered that the property was not to be mortgaged, exchanged, or transferred during the padlocked period.

***2** In January 2015, IIG moved (1) to intervene and (2) for relief from the order of abatement. According to IIG, the Wayne County Treasurer had foreclosed on the property on April 20, 2011, for the failure to pay property taxes, and in October 2011, IIG purchased the property from the treasurer. Thus, IIG claimed that it was the sole owner of the property and that it learned of the order of abatement only after it discovered that the property had been padlocked. The court denied IIG's motion to intervene as untimely because a final judgment had already been entered in the case. It also denied

IIG's motion for relief from the order of abatement because it was not a real party in interest.

IIG filed with this Court an application for leave to appeal the trial court's decision, which we granted. See *People v. 14925 Livernois,* unpublished order of the Court of Appeals, entered July 27, 2015 (Docket No. 327377).

II. MOTION TO INTERVENE

IIG argues that the trial erred when it denied IIG's motion to intervene. We agree. This Court reviews a trial court's decision on a motion to intervene for an abuse of discretion. *Auto–Owners Ins. Co. v. Keizer–Morris, Inc.,* 284 Mich.App 610, 612; 773 NW2d 267 (2009). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Id.* (quotation marks and citation omitted).

Pursuant to MCR 2.209(A)(3), a person who submits a timely application has a right to intervene

> when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The trial court denied IIG's motion to intervene solely because it determined that the motion was untimely, as a final judgment had already been entered. The court relied on *Dean v. Dep't. of Corrections,* 208 Mich.App 144, 150–151; 527 NW2d 529 (1994), aff'd 453 Mich. 448 (1996), and *W A Foote Mem. Hosp. v. Mich. Dep't. of Pub. Health,* 210 Mich.App 516, 525; 534 NW2d 206 (1995), for this proposition. We, however, disagree that a final judgment acts as a bar in all circumstances and that these cases are controlling.

In *Dean,* a panel of this Court held that the intervening plaintiffs' postjudgment motion to intervene was untimely, and stated that "[t]here should be considerable reluctance on the part of the courts to allow intervention after an action has gone to judgment and a strong showing must be made by the applicant." *Dean,* 208 Mich.App at 150. We further stated:

> [The] intervening plaintiffs made a less-than-strong showing that intervention was appropriate. They merely claimed that their action and the main action had a question of law in common and that intervention would not unduly delay or prejudice the adjudication of the original parties' rights. *Nowhere in their motion do intervening plaintiffs explain why they failed to move for intervention while the main action was pending.* [*Id.* at 150–151 (emphasis added).]

***3** We concluded that "[a]llowing intervening plaintiffs to intervene after a judgment is entered promotes a bad public policy: intervening plaintiffs reap the benefits of a favorable judgment but would not be bound by an adverse judgment." *Id.* at 151.

However, *Dean* is distinguishable from the present case in three primary aspects. First, unlike the applicants in *Dean,* IIG did explain why they moved to intervene when they did. IIG claims it only became aware of any proceedings when it found the property padlocked pursuant to the trial court's order of abatement. Nothing in the record gives any indication that IIG could have or should have known about the proceedings earlier.

Second, the Court's concerns in *Dean*—that allowing parties to intervene after judgment has been entered promotes gamesmanship because a party could wait to intervene only after a favorable judgment has been entered, and thereby not be bound by any unfavorable judgment—are not present in the instant case. Here, no such favorable judgment had been entered from which IIG sought to benefit. Although White was permitted to continue operating the Tropical Hut under the terms of the consent judgment, the judgment was not entirely in his favor, as White was required to expend monies to purchase lights and security cameras, and for additional employee training, in addition to the $1,500 redemption fee. Assuming that IIG would have been subject to the same terms under the judgment as White, there is no indication that

IIG moved to intervene in order to benefit from a favorable judgment. And with respect to the later order for abatement, there is no question that this order was not advantageous to IIG. Under this order, the property was to be padlocked for a year, thereby preventing IIG, the clear owner of record, from utilizing the property in any fashion.

Third, the proposed intervenors in *Dean* sought *permissive intervention* through MCR 2.209(B), and here, IIG sought *intervention of right* through MCR 2.209(A). Under the rules for permissive intervention, "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." MCR 2.209(B). Notably, under MCR 2.209(A) for intervention of right, there is no corresponding consideration. Thus, unlike with intervention of right, when a request for permissive intervention occurs, a court must evaluate any potential prejudice to the original parties, which necessarily includes consideration of whether a judgment may have already been entered in the action.

Similarly, in *W A Foote,* we concluded that the trial court abused its discretion when it allowed the intervening plaintiff to intervene. *W A Foote,* 210 Mich.App at 525. The intervening plaintiff argued "that the parties' claims arose out of the same transactions and occurrences, and that the identical question of law was at issue in both cases," which presumably entitled it to permissive intervention. *Id.* at 522; see MCR 2.209(B)(2). We cited our holding in *Dean* "that a trial court abuses its discretion in granting a motion to intervene after a judgment favorable to the intervenor has already been entered for the original party to the suit with whom the intervenor is attempting to align." *W A Foote,* 210 Mich.App at 525. Further, we stated that "[f]ollowing the rationale of *Dean,* it would be equally unfair to permit [the intervening plaintiff] to intervene in the case *when it knew that Foote had just received a favorable ruling from the trial court." Id.* (emphasis added).

***4** Here again, the facts in the instant case are not similar, as IIG did not wait to intervene until after entry of a favorable judgment. Rather, there is nothing in the record to show that it was aware of the litigation at any time before its building was padlocked pursuant to the order of abatement, a decision which certainly was not favorable to IIG.

Therefore, we hold that the trial court erred when it ruled that IIG's motion to intervene was untimely based on *Dean* and *W A Foote* because our holdings were not that, regardless of the circumstances, a motion to intervene as of right may *never* be granted after entry of a final judgment. In fact, in other decisions, we have held that entry of a final judgment is not a bar to a motion to intervene. See, e.g., *Vestevich v. West Bloomfield Twp.,* 245 Mich.App 759, 762–763; 630 NW2d 646 (2001); *Mahesh v. Mills,* 237 Mich.App 359, 364–365; 602 NW2d 618 (1999). Additionally, IIG correctly points out that MCR 2.209(A) does not contain any express language that an application to intervene must be made prior to entry of a final judgment.

In *Vestevich,* the plaintiff owned a piece of property zoned as residential, which he sought to develop commercially, and challenged the defendant's enforcement of a zoning ordinance as unconstitutional. *Vestevich,* 245 Mich.App at 760–761. The trial court upheld the ordinance, and we affirmed. *Id.* at 761. The plaintiff filed, but did not notice, a motion for reconsideration, and the parties entered into a consent judgment that allowed the plaintiff to develop the property commercially in exchange for "certain concessions." *Id.* However, adjacent and other nearby property owners objected to the plaintiff's development and filed motions to intervene, which were granted by the trial court. *Id.* We affirmed the decision of the trial court granting permissive intervention under MCR 2.209(B), stating that "the concern of inadequate representation of interests need only exist; inadequacy of representation need not be definitely established. Where this concern exists, the rules of intervention should be construed liberally in favor of intervention." *Id.* at 762–763. Further, we stated that although the consent judgment included terms that were "obviously intended to address the concerns of nearby landowners, this does not mean that defendant could not have failed to address all concerns of all affected landowners" and the "defendant's representation of the intervenors' interests might well have been inadequate"; thus, intervention was appropriate. *Id.* at 762–763.

Likewise, in the instant case, neither of the existing parties adequately represented IIG's interests in the litigation. White was no longer the owner of the property at the time of the entry of the consent judgment or order of abatement and, thus, was not similarly situated to IIG and could not have adequately represented its interests in the litigation. IIG's ownership interest in the property was not represented by the existing parties pursuant to MCR 2.209(A)(3). As a result, the trial court erred when it denied IIG's motion to intervene as of right.

***5** Incidentally, we note that plaintiff did not dispute that IIG was the owner of the property. Instead, plaintiff argued that IIG was nevertheless bound by the consent judgment because White was "associated" with IIG, and IIG had acted inequitably in order to avoid liability under the judgment. However, plaintiff offered no evidence to support these allegations. Because there was no evidence that IIG had acted in concert with White to avoid the consent judgment, or that IIG was aware of the foreclosure action, we hold that the trial court abused its discretion when it denied IIG's motion to intervene.

III. MOTION FOR RELIEF FROM JUDGMENT

IIG argues that the trial court improperly denied its motion for relief from the order of abatement under MCR 2.612(C). We review a court's decision on a motion for relief from judgment or order for an abuse of discretion. *Detroit Free Press v. Dep't. of State Police,* 233 Mich.App 554, 556; 593 NW2d 200 (1999).

MCR 2.612(C)(1) governs how a party may obtain relief from judgment or order and states as follows:

> On motion and on just terms, the court may relieve *a party or the legal representative of a party* from a final judgment, order, or proceeding on the following grounds:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect.
> * * *
>
> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
>
> (d) The judgment is void.
> * * *
>
> (f) Any other reason justifying relief from the operation of the judgment.
>
> [Emphasis added.]

Here, the trial court did not analyze the merits of IIG's claims that it was entitled to relief due to mistake under subsection (a) or any other reason under subsection (f). Instead, because the court denied IIG's request to intervene, it found that IIG's motion for relief from judgment was improper because IIG was not "a party or the legal representative of a party," as the court rule requires. But because we have ruled that IIG should have been allowed to intervene, the court necessarily erred when it relied on IIG's status as a nonparty. Normally, we would allow the trial court on remand to consider the underlying merits of IIG's motion first, but the facts as presented are straight-forward and, due to the interests of justice, we will address whether IIG was entitled to relief.

When the underlying consent judgment and order for abatement were entered in October and November 2014, respectively, the trial court was under the impression that White was still the owner of the property, as he had been when the case was initiated seven years earlier in October 2007. However, the evidence clearly establishes that this was erroneous, i.e., a "mistake." IIG provided to the trial court the October 2011 deed, which established that it had been the owner of the property for the three years preceding the entry of both the consent judgment between the prosecutor and White and the subsequent order of abatement. Consequently, the derivative order of abatement was not valid as to IIG because White was not the property's owner and did not have authority to enter into the earlier consent judgment on behalf of IIG or the defendant property. [1]

***6** Because we hold that IIG was entitled to intervene as of right and obtain relief from the abatement order, we need not address IIG's other argument that the consent judgment and order of abatement were void because plaintiff's interest in the property was extinguished by the judgment of foreclosure. See *Ryan v. Ryan,* 260 Mich.App 315, 330; 677 NW2d 899 (2004) ("Generally, this Court need not reach moot issues or declare legal principles that have no practical effect on the case...").

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

All Citations

Not Reported in N.W. Rptr., 2016 WL 4947279

Footnotes

1 Additionally, assuming that the facts as presented do not constitute a “mistake” under subsection (a), White's representations that he was the owner of the property at the time of the consent judgment would constitute “fraud” or “misrepresentation” under subsection (b).

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

RD Michigan Property Owner I LLC, a Delaware limited liability company, Feldkamp Siblings, LLC, a Michigan limited liability company, Dennis Finkbeiner, an individual, Lynn Ellen Finkbeiner, an individual, Wilkin Farm Properties I, LLC, a Michigan limited liability company, Dennis C. Wilkin, an individual, and Alice M. Wilkin, an individual, Plaintiffs, v. Saline Township, a Michigan municipal corporation, Defendant, Kathryn Elizabeth Haushalter Proposed Intervening Co-Defendant/ Cross-Claimant v. Saline Township, a Michigan municipal corporation, Proposed Cross-Claim Defendant	Civil Action No. 25-001577-CZ Hon JULIA B. OWDZIEJ Date filed: 9-12-25 **PROPOSED INTERVENING CO-DEFENDANT AND CROSS-CLAIMANT'S PROPOSED ANSWER AND CROSS-CLAIM**

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PARTIES AND JURISDICTION

1. Plaintiff RD Michigan Property Owner I LLC ("Developer" or "RD Michigan") is a Delaware limited liability company, with its principal offices located at 3001 Maple Avenue, Suite 800, Dallas, TX 75201.

1. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny this allegation and therefore denies.[1]

2. Plaintiff Feldkamp Siblings, LLC ("Feldkamp") is a Michigan limited liability company, having an address at 209 E. Michigan Avenue, Saline, MI 48176.

2. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny this allegation and therefore denies.

3. Plaintiffs Dennis Finkbeiner and Lynn Ellen Finkbeiner ("Finkbeiner"), husband and wife, reside in Saline Township, Michigan at 11411 Michigan Avenue, Saline, MI 48176.

3. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny this allegation and therefore denies.

4. Plaintiff Wilkin Farm Properties I, LLC ("Wilkin Farm") is a Michigan limited liability company, having an address at 8700 Braun Road, Saline, MI 48176.

4. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny this allegation and therefore denies.

5. Plaintiffs Dennis C. Wilkin and Alice M. Wilkin (the "Wilkins"), husband and wife, reside in Saline Township, Michigan at 8700 Braun Road, Saline, MI 48176. Wilkin Farm and the Wilkins are collectively referred to herein as "Wilkin."

5. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny this allegation and therefore denies.

6. Plaintiffs Feldkamp, Finkbeiner and Wilkin are collectively referred to herein as the "Owners."

6. This allegation does not present a pleading to which a response is required.

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[1] Proposed Intervening Defendant hereafter refers to the Plaintiffs collectively as "Related Digital," being that the lead Plaintiff is an affiliate of Related Digital.

To the extent a response is required, Admit.

7. Defendant is a Michigan municipal corporation whose mailing address is 5731 Braun Rd., Saline, MI 48176.

7. Admit.

8. This action arises out of Plaintiffs' proposal to rezone property located in the Township for development and operation of a data center project. Jurisdiction of this Court exists in that this action arises under the Constitution and laws of the State of Michigan, and the matter in controversy exceeds the sum or value of $25,000, exclusive of interests and costs. Jurisdiction is further invoked pursuant to MCR 2.305 and 3.310, this being a suit for injunctive relief and a declaratory judgment.

8. This allegation raises legal conclusions to which no response is required. Further, Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny the value of the matter in controversy. To the extent a response is required, Deny.

9. Venue is proper in this Circuit because the Defendant is a municipal corporation situated in Washtenaw County and because the property at issue in this land use dispute is located in Washtenaw County.

9. Admit.

FACTS GIVING RISE TO THE CLAIMS AGAINST THE TOWNSHIP

A. The Property and Proposed Data Center Project

10. The property at issue in this dispute (the "Property") consists of approximately 575 acres of land located on the north side of Michigan A venue in Saline Township, as more particularly described and depicted on **Exhibit 1** hereto.

10. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

11. The Property is owned by the Owners as set forth in **Exhibit 1.**

11. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

12. RD Michigan has entered into agreements with the Owners to acquire the Property in order to develop and use it for a data center project as more fully described below.

12. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

13. All of the Property is zoned A-1, or Agricultural, by the Township. The A-1 zoning is not limited to agricultural uses but also permits residential housing at 1 unit per acre, which could allow over 500 single family homes on the Property.

13. Admit in part and Deny in part. Admit that the Related Digital's 8 parcels making up the Property were zoned A-1 at the time of the Complaint. Admit that the Township A-1 zoning is not limited to agricultural uses as it allows several different residential uses, "office, service and community uses," "industrial, research and laboratory uses" and "other uses" as detailed in Article 4 of the Saline Township Zoning Ordinance. Deny that the Zoning Ordinance would allow 500 single-family homes on the 575-acres. 500 homes are not permissible as of right in the A-1 zoning on the 8 parcels described in Exhibit 1, due to the Land Division Act, Public Act 288 of 1967 as amended, MCL 560.101, *et seq* and the Zoning Ordinance § 3.202(A), which limit the number of splits of the Exhibit 1 parcels, to 50 splits, resulting in 58 lots, which would allow only one single-family dwelling per lot, or about 58 homes. The area is not designated for high density residential development in the Master Plan.

14. On July 10, 2025, the Developer submitted an Application for Conditional Rezoning seeking to rezone the Property from the A-1 District to the 1-1 (Industrial/Research) District, in order to develop, construct, use and operate a data center project (the "Project" or "Data Center"). Prior to submitting the formal rezoning request, the Developer had numerous meetings and discussions with Township officials and staff and local residents to discuss the proposed Data Center, provide detailed information regarding the Data Center and to answer questions raised by the Township and its residents. The submitted conditional rezoning application addressed any key questions and concerns raised in those informal meetings and discussions.

14. Admit that Related Digital met with Township officials and staff and local residents, and submitted an Application for Conditional Rezoning. Deny the remainder.

15. A Data Center describes a physical location that stores computing machines and their related hardware equipment. It contains the computing infrastructure that information technology systems require, such as computers, data storage drives, and network equipment. It is the physical facility that stores any company's digital data.

15. Proposed Intervening Defendant lacks sufficient information to admit or

deny and therefore Denies.

16. The Project primarily consists of three large, single-story buildings (approximately 550,000 sq./ft. each), a core building (approximately 80,000 sq./ft.) and two electrical substations. In addition, support infrastructure, including a warehouse (approximately 100,000 sq./ft.), administration building (approximately 40,000 sq./ft.), and guard shack (approximately 500 sq./ft.) are also proposed.

16. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

17. The total developed area proposed for the Project, including utility infrastructure, roads, and parking will be approximately 250 acres.

17. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

18. With respect to the remainder of the Property, Developer committed that the land would be preserved for agricultural uses, with approximately 40 acres of wetlands and woodlands being protected by a conservation easement.

18. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

19. As part of the rezoning request, Developer voluntarily proposed restrictions on its use and development of the Property as permitted under Section 405 of the Michigan Zoning Enabling Act, MCL 125.3405. The conditions would be a part of the rezoning of the Property and run with the land.

19. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

20. The conditions included, among other things, limiting the size and scope of the development, restricting the uses on the remainder of the Property and preserving substantial land for agricultural uses, increasing setbacks and buffering requirements, limiting the Project to the use of technologies that minimize water consumption, providing material financial resources for police and fire safety improvements, providing water access to the Fire Department for improving public health, safety and welfare, and providing for decommissioning and restoration of the Property if the Project should end in the future.

20. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

21. Data centers are instrumental to functioning in this age of information. The demand for data centers has exploded, including in Saline Township and surrounding areas in Washtenaw County.

21. Proposed Intervening Defendant considers this hyperbolic self-serving rhetoric to which no responsive pleading is required. To the extent a response is required, Deny.

22. To meet this demand and encourage the large investment needed for such projects, the State of Michigan has adopted tax incentives for data centers to encourage their location in the State to serve local, regional and national businesses as well as to provide employment (both permanent and temporary construction jobs) and tax revenues to the local community, the County and the State.

22. Proposed Intervening Defendant admits the state granted tax breaks to wealthy companies like Plaintiff RD but asserts these had nothing to do with zoning and therefore Denies the remainder.

23. The Property is an ideal location for the Project. There is sufficient contiguous flat land available adjacent to a State highway with convenient access to urban areas and air transportation networks. Indeed, it is a short commute from the University of Michigan, a leading research institution with respect to information technology.

23. Proposed Intervening Defendant considers this hyperbolic self-serving rhetoric to which no responsive pleading is required. To the extent a response is required, Deny.

24. The Property is separated from other land uses, such as residential, and would be screened and out of view from much of the community. As explained by the Township's outside Planning Consultant, "The berms and landscaping will provide a buffer between the facility and adjacent properties, and will screen the proposed facility from view." (Carlisle/Wortman Conditional Rezoning Review, dated August 4, 2025 (the "Carlisle Report"), at p. 5.)

24. Neither the Proposed Intervening Defendant nor the Court can evaluate this contention since the "Carlisle Report" was not attached as an exhibit to the Complaint; accordingly Proposed Intervening Defendant Denies.

25. Because the Property was already disturbed by farming activities, there is virtually no adverse impact on natural features. Most of the remaining wetlands and woodlands (not disturbed by historic farming operations) on the Property would be preserved forever through a recorded conservation easement.

25. Proposed Intervening Defendant denies that "farming activities" "already disturbed" land or impacted natural features. Farms also preserve wetlands, woodlands, and provide wildlife habitat. Accordingly, Proposed Intervening Defendant Denies.

26. Probably most important and unique for the Property is that multiple 345kV electrical transmission lines that have unused electrical capacity sufficient to serve the Project run through the Property.

26. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

27. The Planning Commission held a public hearing on the rezoning request on August 5, 2025.

27. Admit.

28. Developer provided substantial information to the Township regarding the significant amount of tax revenue to be generated by the Project for the Township, Washtenaw County, local schools and the State of Michigan.

28. Proposed Intervening Defendant considers this is more hyperbolic self-serving rhetoric to which no responsive pleading is required. To the extend a responsive pleading is required, Denied.

29. Developer provided the Township with traffic, sound, lighting and other studies demonstrating the minimal impact of the Project on the road system and neighboring properties.

29. Proposed Intervening Defendant considers this is hyperbolic self-serving rhetoric to which no responsive pleading is required. To the extent a response is required, Admit Related Digital provided the Township with studies, Deny the remainder.

30. Representatives of DTE (the electric utility) appeared at the public hearing (and later meetings before the Township Board) to express its full support of the Project. DTE represented that it had sufficient excess electrical capacity to serve the Project without any additional infrastructure or other financial impacts on other customers.

30. Admitted that DTE appeared at the public hearing and later meetings and that DTE made the representation reflected in this allegation; Deny the substance of the statement. Deny the remainder as "full support" is undefined.

31. DTE further represented to the Township that the Project can "have a meaningful impact on affordability to our customers, including those in Saline Township." *(See also* DTE letter to Township Supervisor James Marion dated August 5, 2025.)

31. Neither the Proposed Intervening Defendant nor the Court can evaluate this contention since the "DTE letter to Township Supervisor James Marion dated August 5, 2025" was not attached as an exhibit to the Complaint; accordingly Proposed Intervening Defendant Denies it.

32. The Fire Chief representing a consortium of 4 communities, including Saline Township, spoke in favor of the Project and explained how, through access to new water supplies and other financial resources provided by the Project, the Project would improve the ability to handle fires throughout the Township and thereby improve public health, safety and welfare.

32. Admitted that the Fire Chief said this, Deny the substance of the statement.

33. The Township's outside planning consultant issued a report dated August 4, 2025, discussing the many positive attributes of the Project. The Planner explained that, "We expect the proposed rezoning and data center will have a minimal impact on the adjacent and planned land uses. The applicant's proposed conditions of approval will also ensure that an incompatible industrial land use is not developed on the properties in the future." (Carlisle Report, at p. 9.)

33. Neither the Proposed Intervening Defendant nor the Court can evaluate this contention since the "Carlisle Report" was not attached as an exhibit to the Complaint; accordingly Proposed Intervening Defendant Denies it.

34. A representative of Plaintiff Feldkamp explained that the elderly family members who farmed the Feldkamp property had passed away and that the heirs were not farmers and regardless of what would happen to the data center project, the heirs intended to sell the land for development, whether for residential use as already permitted in the A-1 zoning or for solar farms and other potential industrial or business uses.

34. The Feldkamp representative's explanation was not attached as an exhibit to the Complaint; accordingly Proposed Intervening Defendant Denies it. And even if accurately described, the described intent is irrelevant to Related Digital's claims.

35. In order to respond to Township concerns about expansion of the Project and other potential future uses on the Property, Developer agreed to: (a) bar any uses allowed in the 1-1 district except for the data center; (b) not expand the data center project; (c) bar any

residential use from the Property which was otherwise permitted as of right in the Agricultural district; (d) bar any solar or wind farm on the Property (which would also involve the termination of an existing easement permitted a solar farm on approximately 127 acres of the Property); and (e) preserving over 200 acres of the Property for only agricultural activities.

35. Neither the Proposed Intervening Defendant nor the Court can evaluate this contention since neither Developer agreements nor the "existing easement" were attached as an exhibit to the Complaint; accordingly Proposed Intervening Defendant Denies it.

36. Other residents spoke in favor of and against the Project, with the opposition comments primarily complaining of factually erroneous perceptions regarding the Data Center and/or simply opposed to any development that took away agricultural land.

36. Proposed Intervening Defendant denies that Project opponents had "factually erroneous perceptions."

37. The Planning Commission tabled any discussion or decision at that time.

37. Admit.

38. The Planning Commission considered again the rezoning request at a meeting on August 12, 2025. With very little discussion and without supporting the recommendation with any factual or legitimate findings on the merits, the majority of the Planning Commission voted to recommend that the Township Board deny the rezoning request.

38. Proposed Intervening Defendant denies that the Planning Commission acted "without supporting the recommendation with any factual or legitimate findings on the merits." Admit the Planning Commission voted to recommend denying the rezoning request.

39. The Township Board considered the rezoning request at its meeting on August 13, 2025. The Township Supervisor recused himself from the matter because of an alleged conflict of interest. Upon information and belief, the Supervisor was under discussion or was approached by another developer to potentially sell land that he owned for a different data center. This would leave four members of the 5-member Township Board eligible to vote.

39. Admit the Township Board considered the rezoning request at an August 13, 2025 meeting. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny the remainder and therefore Denies.

40. The Township Board tabled any decision at that time.

40. Admit.

41. In the meantime, on August 14, 2025, Developer submitted an application and complete package of plans and documents (including condominium documents) for final site plan (collectively "Site Plan") approval of the Project. Upon information and belief the Site Plan has been submitted to the Township's outside planning and engineering consultants for review and comment.

41. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

42. The Township Board and Planning Commission held a joint special meeting on August 20, 2025, in order to discuss the Project further and ask questions of their counsel and consultants. No decision was made by the Board at the meeting.

42. Admit.

43. At its regular meeting on September 10, 2025, the Township Board again considered the rezoning application and, by a vote of 4 to 1, denied the rezoning request. There were no discussions among Board members or public deliberations in connection with the Board's action. Despite having recused himself from all prior Board proceedings on the rezoning request due to a conflict of interest, the Township Supervisor, without any explanation as to why he was voting or discussion of his position on the Project, voted against the rezoning.

43. Admit the Township Board held a September 10, 2025 meeting and denied the rezoning 4-1. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny the remainder and therefore Denies.

44. Contrary to the Board's determination, the rezoning request was appropriate for the nature and character of the Property and surrounding zoning and land uses, and would advance the policies and philosophy set forth in the Township's Master Plan and Zoning Ordinance.

44. Deny. The rezoning request was wholly inappropriate for the nature and character of the Property, which has been zoned A-1 for decades, including some parcels held in PA 116 agreements to keep the land in active agricultural use. The surrounding zoning and land uses are also agricultural, including agricultural preservation areas in neighboring adjacent land in Bridgewater township. The rezoning request was the *antithesis* of the policies and philosophy set forth in the Township's Master Plan which states, in part that "[t]he continuance of agricultural activity is a critical component to the Township's overall land use strategy. Therefore, it is imperative that the Township's agricultural areas be preserved and protected

from encroachment by incompatible development" and any future industrial use should be restricted to the Urban Services Area depicted on the Future Land Use Map. In its Summary of Goals, the Master Plan states: "Preserve agricultural lands and open space" and "Limit intense development and municipal sanitary sewer and water service to the urban service area to avoid patterns of sprawl, preserve agricultural and open space areas, and protect the Township's environment."

The Township's Master Plan language is consistent with Washtenaw County's regional goals of preserving large areas of active farmland and keeping all new development as close to city centers and within urban services areas surrounding city and village centers. See Washtenaw County Comprehensive Plan: https://content.civicplus.com/api/assets/1281774c-f83e-4dd5-96d2-e57dc5cb8a53?cache=1800. The map on page 4-4 of the county Comprehensive Plan indicates Saline Township to be the site of the most active farming regions in the county.

The rezoning request was similarly the exact opposite of the lawful purpose stated in the Zoning Ordinance for the intent and purpose of the A-1 Agriculture-Conservation District in §2.103 in part:

> **The Agricultural-Conservation (A-1) District is hereby established to conserve the rural character, open space, recreation areas, groundwater recharge areas, and agricultural uses of the Township. The primary purpose of this A-1 District is to preserve, to the greatest extent possible, areas designated for agricultural, open space or natural features preservation in the Township's General Development Plan or the adopted land use policies of Washtenaw County, while allowing a limited amount of non-farm housing. . . .**
>
> **It is recognized that the public health and welfare of the citizens of the Township, Washtenaw County, the State of Michigan, and the United States of America are greatly dependent upon the sustenance and economic benefits provided by a viable agricultural industry. This A-1 District is intended to ensure that land areas within the Township that are well suited for production of food and fiber are retained for such production, unimpeded by the establishment of incompatible uses that would hinder agricultural practices and irretrievably deplete agricultural lands.**

Additional purposes and objectives in §2.103 include: "1. Protect areas of the Township for agricultural production, distribution and accessory uses, and discourage the encroachment of land uses incompatible with active

agricultural and recreational uses into rural areas of the Township; and 6. Reduce the amount of land consumed in rural areas for non-agricultural use, and prevent intrusion of uses that are incompatible with the agricultural, open space or natural features preservation objectives of this District.

45. The denial of the rezoning request constitutes an arbitrary refusal to permit a legitimate and economically feasible land use, and an unreasonable exercise of the Township's police power.

45. This allegation is a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, Deny.

46. As was previously alleged, the proposed use of the Property for a data center was appropriate, necessary and reasonable, considering the nature and character of the Property and nearby land uses, market conditions and demand. As noted by the Township's outside municipal planner, "there has been recent demand for data center development in the region which was not contemplated when the Master Plan was last reviewed." (Carlisle Report, at p. 7.)

46. This allegation is a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, neither the Proposed Intervening Defendant nor the Court can evaluate this contention since the "Carlisle Report" was not attached as an exhibit to the Complaint; accordingly Proposed Intervening Defendant Denies it.

47. Consistent with Plaintiffs' allegations above, the Township Planner explained that such demand has been driven by recent State tax incentives adopted by the Legislature at the end of 2024. *(Id.)* Thus, the objectives of State law to encourage the development of data centers will be frustrated and never achieved if such projects proposed to be situated on appropriate land are rejected, as in this case.

47. This allegation is a legal conclusion to which no responsive pleading is required. To the extent a response is required, Proposed Intervening Defendant again asserts that tax breaks to wealthy companies like Plaintiff RD have nothing to do with zoning and therefore Deny.

48. Also, while reducing slightly the overall extensive amount of agricultural land available in the Township, the Project would actually provide the means to satisfy the Township's obligations to provide very low-impact industrial/research uses as authorized in the Zoning Ordinance in a manner compatible with adjacent agricultural activities and likely sufficient to satisfy any Township obligations to provide proper locations for such industrial/research uses.

48. Deny. The Township has no such "obligation." If it actually did, years ago the Township would have satisfied it or obligees would have sued. The A-1 zoning district does allow for some industrial "research and development facilities and testing laboratories" that are accessory to and incidental to principal rural uses, however the Township is under no obligation to provide the use itself.

49. As stated by the Township's outside municipal planning expert, "Limiting the permitted uses of the applicant's proposed facility will prevent other industrial uses that may be less compatible with the surrounding area from being permitted in the future." (Carlisle Report, at p. 5.)

49. Neither the Proposed Intervening Defendant nor the Court can evaluate this contention since the "Carlisle Report" was not attached as an exhibit to the Complaint; accordingly Proposed Intervening Defendant Denies it.

50. Moreover, the Project, as compared to the development of potentially more than 500 homes permissible as of right in the A-1 zoning, is materially less impactful on traffic, the environment, urban sprawl, and nearby active farming operations.

50. Deny. 500 homes are not permissible as of right in the A-1 zoning on the 8 parcels described in Exhibit 1, due to the Land Division Act, Public Act 288 of 1967 as amended, MCL 560.101, *et seq*., and the Zoning Ordinance § 3.202(A), which limits the number of splits of the Exhibit 1 parcels, to 50 splits, resulting in 58 lots, which would allow only one single-family dwelling per lot, or about 58 homes. The area is not designated for high density residential development in the Master Plan. The data center would be more impactful to Proposed Intervening Defendant's property than housing developments.

51 . Plaintiffs have exhausted all available administrative remedies in seeking approval to rezone the Property for economically reasonable and feasible uses, in that the Township's Zoning Ordinance specifically prohibits the Township Zoning Board of Appeals from granting use variances.

51. Deny that Plaintiffs have exhausted all available remedies, as they could re-apply for the rezoning, alter their project to meet zoning ordinance requirements, or bring their project to another municipality. Admit that Township ZO prohibits use variances.

COUNT I
(Exclusionary Zoning)

52. Plaintiffs incorporate by reference as if fully set forth herein, allegations 1 through 51 above.

52. Proposed Intervening Defendant incorporates by reference as if fully set forth herein its responses to allegations 1 through 51 above.

53. There are no data center projects in the Township.

53. Proposed Intervening Defendant lacks sufficient knowledge and information to admit or deny and therefore Denies.

54. Indeed, there is no land zoned 1-1 for industrial/research use anywhere in the Township.

54. Proposed Intervening Defendant Admits there is no current land zoned <u>I-1</u> for "industrial/research *use*" but Denies that "there is no land for industrial/research use anywhere in the Township." The majority of the township is zoned A-1 Agricultural zoning district which makes up 72.3% of the land acreage, which does allow for the "industrial/research use" of "research and development facility and testing laboratories."

55. There is no land identified in the Township's future land use map of its Master Plan for industrial/research uses.

55. Proposed Intervening Defendant Admits and Denies in part: There is no land identified on the Future Land Use Map for "industrial/research uses." However the Urban Services Area is designated on it, through the text description in the Master Plan text at p. 5-16: "Due to potentially negative external impacts, the Light Industrial/Research designation is limited in scope. Municipal sewer and water shall be required for light-industrial uses; therefore, Light Industrial areas shall be limited to the boundaries of the Urban Service Area. Light Industrial areas that are contiguous with agricultural/residential uses shall be buffered and feature intense screening."

56. There are very limited, if any, locations within the Township of suitable size and topography and with access to the electrical infrastructure and road network required for the data center project.

56. Deny. The Plaintiff defines its "data center project" in ¶ 17 as approximately 250 acres. The Urban Services Area contains parcels

currently zoned A-1 that are vacant and other large parcels north of Michigan Ave close to the City border, which the Master Plan indicates are nearby utilities.

57. On the other hand, for the reasons previously described, the Property is an ideal and unique location for the Data Center, having no or minimal adverse impacts on neighboring lands and utility and road infrastructure.

57. Deny. This is hyperbolic rhetoric. The Property is not ideal and unique for the Data Center because it is on Agriculturally-zoned land deemed well suited for agriculture, is near an aqua bed, and is counter to the community's Master Plan that prioritizes farmland preservation objectives. Three parcels have or had Act 116 agreements meant to preserve farming activity. The Property is also situated on the border of Bridgewater Township, which designates an "agricultural preservation area" best suited for farming. A data center's industrial use situated in the middle of two prime farmland townships would inject an incompatible use in this agricultural area, resulting in illegal spot zoning that reaches across the governmental jurisdictions. Taken together, the two townships' agricultural lands would be uniquely harmed by a major industrial site situated in the midst.

58. Exclusionary zoning is prohibited by the Michigan Constitution. Exclusionary zoning occurs when a community unreasonably excludes a legitimate land use from the community. *Smookler v Whitefield,* 394 Mich 574; 232 NW2d 616 (1974).

58. This is a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, Admit that exclusionary zoning is prohibited when a community *unreasonably* excludes a legitimate use. Deny that *Smookler v Whitefield [sic]* case said such a thing because there is no case by that name.

59. A zoning ordinance that totally excludes an otherwise legitimate land use carries with it a strong taint of unlawful discrimination and denial of equal protection of the law with regard to the excluded use. *Kropf v Sterling Heights,* 391 Mich 139, 155-156; 215 NW2d 179 I (1974).

59. This is a legal conclusion to which no responsive pleading is required. Admit that a zoning ordinance that totally excludes an otherwise legitimate land use carries a strong taint of unlawful discrimination. However Saline Township does not totally exclude all "industrial-research land use" in the township, as it allows some categories of that use in the A-1 zone, with conditions. Further, the *Kropf* court found no denial of equal protection in that matter.

60. A zoning ordinance that creates a zoning classification without attaching it to any specific land is invalid on its face. *Smookler v Whitefield,* 394 Mich 574,577; 232 NW2d 616 (1974) (Justice Williams concurring opinion.)

60. This is a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, deny that *Smookler v Whitefield [sic]* case said such a thing because there is no case by that name. Further, concurrences are not binding law and thus cannot provide precedential authority.

61. The Data Center is a legitimate land use and, indeed, one encouraged by the State and County. For at least all of the reasons described above, among other things, the exclusion of the Data Center from the Property at issue here (as well as the entire community by Saline Township's Zoning Ordinance) is unreasonable and exclusionary.

61. Deny. The Data Center as planned is not a "legitimate land use" in an agriculturally-zoned region. The A-1 zone does allow industrial-research uses of "research and development facility" and that facility must be "accessory to and incidental to principal rural uses." Zoning Ordinance § 4.02. Therefore, since Saline Township does allow such legitimate industrial land uses in the A-1 zone, the Township is not totally excluding industrial use. In addition, industrial use of gravel pit mining is an existing use in the township, comprising 248 acres. For a zoning ordinance to be exclusionary to industrial uses it must totally exclude them. That is not the case in Saline Township.

62. Independent of the constitutional prohibition of exclusionary zoning, the Michigan Zoning Enabling Act (the "Zoning Act"), MCL 125.3207, also bars exclusionary zoning as follows:

> A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.

62. This is a legal conclusion to which no responsive pleading is required. To the extent a response is required, MCL 125.3207 speaks for itself. Otherwise Deny.

63. There are no data centers in the Township. Although the Township has a zoning classification that would permit such a development (the "1-1" zoning), it is mere window

dressing, and no property has been zoned anywhere in the Township for 1-1 uses, whether for a data center or any other light industrial or research oriented uses.

63. Neither admit nor deny that there are any data centers currently in the Township. Some data centers are small, and there might be a small one located here; Proposed Intervening Defendant lacks sufficient information to admit or deny. Deny that the Township has a zoning classification that would permit such a hyperscale development. The I-1 zoning district description and permissible uses include "research and development facilities"; however there are dimensional and other standards that would not allow the use. For example no more than 30% of the land (Maximum Ground Floor Coverage) could be used for the facility. Zoning Ordinance § 3.101. The proposed data center is hyperscale and hypersize using 250 out of 575 acres, or 43.5%.

64. The Township's adopted future land use map also does not identify any land in the Township identified for future development under the 1-1 zoning.

64. Admit in part and deny in part. The Future Land Use Map combined with the text of the Master Plan about the Future Land Use Map indicates that Township designates future industrial zoning to take place within the Urban Services Area which is depicted on the map. The Existing Land Use Map in the Master Plan shows that large-acre parcels included there are currently vacant, while others are agriculturally used.

65. The record here established the demonstrated need and demand for a data center facility within both Saline Township and the surrounding areas within the State.

65. **Deny. The record "here" did not demonstrate that a 575 acre, hyperscale data center of three buildings approximately 550,000 square feet each, expected to use 1.4 gigawatts of electricity is a "need" of a 73% agriculturally-zoned community. Saline Township has a population of approximately 2,200 people, and its main industry is viable Agriculture with a limited amount of commercial and industrial land use. 1.4 gigawatts is the equivalent of a typical nuclear power plant and will cause DTE Electric to increase its total peak capacity by 24% statewide, necessitating massive electric infrastructure upgrades somewhere in the State.**

Together with an 80,000 sq foot core building and a 100,000 square foot warehouse, the total building square footage for the planned data center sums to 1,830,000. No square footage was provided for the two large substations. With the average Home Depot big box store at 104,000 square feet, the size of the proposed data center would be 17.5 Home Depot stores.

A small town is not obligated to pre-zone and designate industrial or commercial zones on large swaths of acreage for industrial use for massively-sized industrial use when no industrial use is occurring on that land. Saline Township currently has 248 acres of land in industrial use (gravel pit) according to the Master Plan and Existing Land Use Map.

Such a pre-zoning burdens the current property owners in the designated Urban Services Area on the Future Land Use Map, who may seek commercial *or* industrial future use of their properties as demonstrated needs arise in the future. Preservation of farmland is another reasonable governmental interest and a goal of Saline Township's Master Plan and Zoning Ordinance is to preserve the agricultural land in the township. The township board can consider the agricultural character of the surrounding area, the township master plan, and the lack of urban facilities when denying a rezoning request. *Whiteford Partners v Whiteford Township* (COA Cases ## 238719., 238719, VLEX-891783872 (MichApp 2003).

66. The application of the zoning to exclude a data center development from the I Property, violates statutory, constitutional and common law prohibitions against exclusionary zoning.

66. This is a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, Deny. For exclusionary zoning to apply, a township would have to disallow or prohibit any industrial use ("totally exclude") and that is not the case in Saline Township. There is already industrial land use in the township on 248 acres of gravel pit parcels along US-12/Michigan Ave, as found on the Existing Land Use Map in the township Master Plan (*Guy v Brandon Twp*, 450 NW2d 279, 181 Mich App 775 (1990)). A-1 Agricultural zoning allows the industrial use of "research and development facilities and testing laboratories" that are accessory to and incidental to the principal uses of the Agricultural zone. (Zoning Ordinance §§ 4.02 and 5.501).

67. Further, the denial of Plaintiffs' rezoning application is designed to have and does have the effect of excluding data centers and other industrial/research facilities from the Township in general and from the Property in particular. *See Eveline Twp v H & D Trucking Co,* 181 Mich App 25; 448 NW2d 727 (1989) (appellate court affirmed trial court decision finding exclusionary zoning in prohibiting a port facility for bulk cargo on land suitable for such use).

67. This is a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, Deny. The Township's denial of the Plaintiffs' rezoning request was not "designed" to and did not "exclude data

centers and other industrial/research facilities" because the Township expressly allows "research and development facilities" in the A-1 zone that are accessory to and incidental to the principal uses of the Agricultural district. (Zoning Ordinance §§ 4.02 and 5.501). This action is distinguished from *Eveline Township* v *H & D Trucking Co*, where a port facility existed on the site prior to establishment of zoning in the township; that is not the case in Saline Township.

COUNT II
(Declaratory Relief, Violation of Law)

68. Plaintiffs incorporate by reference as if fully set forth herein, allegations 1 through 67 above.

68. Proposed Intervening Defendant incorporates by reference as if fully set forth herein its responses to allegations 1 through 67 above.

69. In acting on the rezoning application, the Township was subject to the duties, limitations, liabilities, and restrictions imposed by law, including, but not limited to, Michigan's Zoning Enabling Act, MCL 125.3101, et seq.

69. This is a legal conclusion to which no responsive pleading is required. To the extent a response is required, Admit only that the Michigan Zoning Enabling Act governs rezoning applications. Deny the Remainder.

70. For the reasons described above, Defendant's denial of the rezoning request was not based on the requirements and standards of the Zoning Ordinance and State law, and was otherwise without basis, and an unreasonable, arbitrary and capricious exercise of the police power and exclusion of legitimate land uses from the Property.

70. Deny.

71. In addition, the present zoning of the Property, which authorizes only farming and large, estate-size residential dwellings, is unreasonable, arbitrary, capricious and exclusionary, and does not reasonably advance the express objectives of the Master Plan.

71. Deny.

COUNT III
(Violation Of Due Process Of Law)

72. Plaintiffs incorporate by reference as if fully set forth herein, allegations 1 through 71 above.

72. Proposed Intervening Defendant incorporates by reference as if fully set forth herein its responses to allegations 1 through 71 above.

73. Plaintiffs had a reasonable expectation that the Property could be used for some economically viable purpose, and particularly a purpose consistent and compatible with sound planning principles and neighboring land uses and due process requirements.

73. Deny that uses of the Property other than as a Data Center, such as the solar farm suggested by Plaintiff Feldkamp would not be economically viable.

74. Plaintiffs' proposed development of the Property for the Data Center is a reasonable use of the Property under the facts and circumstances present here.

74. Deny.

75. The Township's denial of the rezoning request constitutes an arbitrary, capricious and unreasonable use of the police power granted the Township, and/or an arbitrary, capricious and unfounded exclusion of a legitimate land use from the area in question.

75 Deny.

76. Moreover, there is no reasonable governmental interest being advanced by maintaining the present zoning classification of the Property and barring the use of the Property for the Data Center project.

76. Deny.

77. Each of the reasons given by the Township in support of its rejection of the rezoning request is either an illegitimate or inappropriate consideration and/or was not supported by the facts or the law.

77. Deny.

78. The denial of the rezoning request or otherwise not permitting Plaintiffs an economically feasible or reasonable use of the Property have denied Plaintiffs procedural and substantive due process of law under the Constitution of the State of Michigan.

78. Deny.

WHEREFORE, Plaintiffs demand judgment as follows:

A. That the Court determine, declare and adjudge that the Township's actions

constitute exclusionary zoning and/or a violation of state and local laws, ordinances and practices and a violation of Plaintiffs constitutional rights;

A. Deny.

B. That the Court determine, declare and adjudge that, as a result of the Township's j actions, Plaintiffs have been denied any reasonable and/or economically viable use of the Property;'

B. Deny.

C. That the Court determine, declare and adjudge that the Township's refusal to rezone the Property constitutes arbitrary, capricious and unreasonable exclusions of legitimate land uses, and/or bore no reasonable relationship to legitimate governmental objectives;

C. Deny.

D. That the Court issue an injunction preventing the Township from interfering with Plaintiffs' proposed reasonable use of the Property for the Data Center project in a manner consistent with the Final Site Plan for the Project; and

D. Deny.

E. That the Court grant such further or different relief as may be deemed just or appropriate.

E. Deny.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim for relief;
2. Plaintiffs failed to exhaust their administrative remedies;
3. Plaintiffs lack standing to make a claim based on zoning which excludes light industry or research, because Saline Township does not totally exclude, and it specifically allows, research and development facilities in the A-1 zone with conditions;
4. Saline Township properly denied the rezoning application because Saline Township

does not permit conditional rezoning. Saline Township Zoning Ordinance § 12.04(A);

5. The decision to reject the rezoning application was a valid and correct exercise of Saline Township's police power. *Village of Euclid v Ambler Realty*, 272 US 365 (1926);
6. Plaintiffs lack standing to bring their claims as they do not own the land which was to be rezoned;
7. Plaintiffs claims are barred by an applicable statute of limitations and/or repose;
8. Saline Township properly denied the conditional rezoning application because conditional rezoning cannot be used to allow uses that are prohibited within that zone. *Jostock v Mayfield Twp*, 15 NW3d 552, 513 Mich 360 (Mich 2024). Hyperscale data centers are not specifically permitted within the industrial-research zone. Saline Township Zoning Ordinance § 2.202;
9. Plaintiffs have failed to plead sufficient allegations meeting their burden of proof for an equal protection violation;
10. Plaintiffs are not similarly situated to other individuals such that an equal protection claim may lie;
11. Discovery is ongoing and Proposed Intervening Defendant reserves the right to add additional affirmative defenses as they are discovered.

CROSS-CLAIM

Cross-Claimant Kathryn Elizabeth Haushalter, for her Cross-Claim against Saline Township, states and alleges as follows:

FACTUAL ALLEGATIONS

1. Kathryn Elizabeth Haushalter incorporates her statements and allegations in the Proposed Intervening Answer in this Cross-Claim.
2. Kathryn Elizabeth Haushalter is a resident of Saline Township residing at 7760 Willow Rd, Clinton, MI 49236 since at least 2013. Her property resides a mere 256 yards from the proposed data center property. Haushalter and her husband lease their land out for agricultural farming which would be adversely affected by nearby industrial usages such as a data center, especially if the aqua bed on which her property and the data center sit on is poisoned or otherwise disrupted by the data center. Further, she would be more likely than others to experience a power outage due to the immense power drain of this data center, supposedly the largest propose in the State of Michigan.
3. Saline Township has a Township Board of Trustees, which is subject to the Michigan Open Meetings Act for all actions that it takes.[2]
4. All decisions, including a decision to settle a lawsuit or agree to a consent judgment, have to be voted on at a Board meeting.[3]
5. On or about September 12, 2025, Plaintiffs filed the Complaint, challenging the Township Board's 4-1 decision to deny their re-zoning application.

---

2 MCL 15.261 et seq.
3 MCL 15.263(2).

6. It is an important suit, involving re-zoning of 575 acres of land for a proposed Data Center, for storing computing machines, hardware equipment, computing infrastructure, data storage drives, network equipment, electrical substations, multiple 345kV electrical transmission lines, and buildings together constituting 2-3 million square feet.
7. The project has been the subject of widespread intense public controversy.
8. The suit's lead Plaintiff, an affiliate of Related Digital, had come into existence in August, 2025, only a month before the Company started the suit.
9. The Township never filed or served an Answer to the Complaint.
10. Instead, on October 1, 2025, according to Township Board minutes, the Board entered a closed session *during which it passed a motion*.[4]

    a. Digital/Finkbeiner/Feldkamp/Wilkin- a MOTION was made by Mr. Hammond and supported by Mrs. Zink to enter into a closed meeting. Attorney's Fred Lucas & David Landry addressed the Board regarding the lawsuit and the proposed consent agreement. Both Boards had many questions and concerns that were addressed in the proposed settlement. A MOTION was made by Mr. Hammond and supported by Ms. Marion to move forward with *trying to* settle the lawsuit. Ayes 4 Nays 1. A MOTION was made by Mr. Hammond and supported by Mr. D. Marion to open the special meeting back up. Attorney David Landry then went over many of the point of the proposed consent agreement with the residents.[5]

11. There was no motion to consider or approve achievement of <u>actual</u> settlement wording nor was there a vote during an open meeting to approve negotiating the final settlement.
12. Thereafter on an unknown date on or before October 15, 2025, Township Supervisor

---

4 A true and correct copy of the October 1, 2025 meeting minutes is attached hereto as **Exhibit A**. The minutes can also be found at:

https://salinetownship.org/uploads/minutes/1760634637_Special%20Meeting%20October%201%20%202025%20Minutes.pdf

5 *Id.* (emphasis added).

James C. Marion and Clerk Kelly Marion (two of the five-member Board), signed off on a Consent Judgment.

13. The Court entered the Judgment during daylight hours on October 15, 2025 (after all other parties had also signed).

14. There was no Township Board meeting between October 1 and 15, 2025 in which Board members considered drafts or a final version of a Consent Judgment, voted to authorize the Judgment which the Marions signed, or voted to authorize the Marions to sign the Judgment.

15. Nor was there a Township Board meeting between October 1 and 15, 2025, wherein the Board voted in an open session to approve negotiations or approve the term of the Consent Judgment.

16. Accordingly, the Board decision to authorize the Marions to sign the Judgment did not occur, if it occurred at all, at an open Township Board meeting.

17. There was a Township Board meeting in the evening hours of October 15, 2025. According to the minutes:[6]

    a. Related Digital- Data Center- Attorney Fred Lucas explained to the residents that the Board was not in favor of this project but had to decide on the facts of the lawsuit and that he nor attorney David Landry advised the Board on how to vote. Fred then answered questions from the residents. A MOTION was made by Trustee Hammond and supported by Trustee Marion to approve the Industrial Development District resolution. Ayes 4 Nays 0.[7]

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6 A true and correct copy of the October 15, 2025 minutes are attached hereto as **Exhibit B**. The minutes can also be found at:

https://salinetownship.org/uploads/minutes/1763385339_October%202025%20Minutes%20(1).pdf

7 *Id.* (emphasis added).

18. A copy of the "Industrial Development District resolution" was attached neither to the published minutes or agenda. According to ¶ 14, Exhibit D, and 1(m) of the Judgment and concluding order, it would seem to be a tax-related request to establish a tax (not zoning) district pursuant to 1974 PA 198, MCL 207.551 et seq:

    a. AN ACT to provide for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain facilities; to impose and provide for the disposition of an administrative fee; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of the state tax commission and certain officers of local governmental units; and to provide penalties.

19. A decision of a public body, which authorized Township officials to sign a Judgment, may be invalidated if it did not occur at a public meeting.[8]

20. At the October 15, 2025 Township Board meeting, the Board approved the October 1, 2025 meeting minutes.

21. To date, the Township Board has never held an open vote to approve negotiating the Consent Judgment, approve the Consent Judgment, or authorize any public official to execute the Consent Judgment.

COUNT 1
(Declaratory Judgment and Injunctive Relief: Violation of Open Meetings Act)

22. Proposed Cross-Claimant Kathryn Elizabeth Haushalter incorporates her allegations in ¶¶ 1-22 of her Cross-Claim as through set forth herein.

23. Under the Open Meetings Act, Township Boards such as the Saline Township Board

8 MCL 15.270(2), 263(2).

may not make a decision outside of an open meeting. Even decisions made in a closed meeting have to be reaffirmed in an open meeting.

24. The Open Meetings Act must be broadly and interpreted and its exemptions strictly construed.

25. The Open Meetings Act authorizes an individual to commence a civil action for injunctive relief to either compel compliance with the OMA or enjoin further noncompliance with the OMA.

26. The Open Meetings Act also authorizes this Court to invalidate the violating action.

27. And, a prevailing individual is entitled to her attorney's fees and costs.[9]

28. Authorizing settlement negotiations, approving a Consent Judgment, and authorizing the execution of a Consent Judgment are all "decisions" under the Open Meetings Act.

29. As a resident of Saline Township, Kathryn Elizabeth Haushalter has the right to sue Saline Township if the Saline Township Board fails to comply with the Open Meetings Act.

30. Litigation seeking invalidation of any authorization to sign the Consent Judgment must be filed within 60 days after the Township Board approves the meeting minutes for the meeting in which the violating act occurred.[10]

31. Because the October 1, 2025 Meeting Minutes were approved on October 15, 2025, any challenge to OMA-violating actions at the October 1, 2025 meeting must be brought by Sunday, December 14, 2025 which under MCL 8.6 becomes Monday, December 15,

9 MCL 15.271(4).
10 MCL 15.270(3)(a).

2025.

32. The Township Board violated the OMA when it voted in a closed session to approve negotiations of the Consent Judgment without re-voting on that motion at an open meeting.

33. No OMA exception exists that permitted the Township Board to vote to approve settlement negotiations without revoting on that motion at an open meeting.

34. The Township Board violated the OMA when it caused the Consent Judgment to be filed with the Court without ever approving the Consent Judgment at an Open Meeting.

35. No OMA exception exists that permitted the Township Board to cause the Consent Judgment to be filed with the Court without ever approving the Consent Judgment at an Open Meeting.

36. The Township violated the OMA when its supervisor and clerk executed the Consent Judgment without an open vote authorizing them to do so.

37. No OMA exception exists that permitted the Township supervisor and clerk to execute the Consent Judgment without an open vote authorizing them to do so.

38. Accordingly, the official Township signatures on the Consent Judgment were unauthorized and invalid, and the Consent Judgment may not be deemed entered by "consent."

39. As such, this Court should invalidate the entry of the Consent Judgment and vacate the Consent Judgment in line with the OMA because the Consent Judgment was never legally approved.

40. This Court should also issue a preliminary and permanent injunction enjoining the

Township from further violating the OMA, and require any further Consent Judgment or settlement to be negotiated, executed, and entered in accordance with the OMA.

COUNT II
(Alternative Claims for Declaratory Judgment: Interpretation of the Consent Judgment)

41. Proposed Cross-Claimant Kathryn Elizabeth Haushalter incorporates her allegations in ¶¶ 1-40 of her Cross-Claim as through set forth herein.

42. The Consent Judgment provides that the Property "shall be zoned I-1." [Consent Judgment ¶ 2.]

43. However, Saline Township has not amended its Zoning Ordinance or Zoning Map and has repeatedly taken the position that it is not required to do so because the Consent Judgment effectuates the rezoning.[11]

44. This Court lacks the legal authority to rezone, as zoning is a legislative act and the Court cannot compel legislative activity.

45. Thus, the Consent Judgment leaves unclear how the change in zoning designation is supposed to be effectuated.

46. The only Michigan Zoning Enabling Act-compliant and Zoning Ordinance-compliant method is for Saline Township to vote to amend and modify its Zoning Ordinance to conform to the Consent Judgment.

47. Saline Township's Zoning Ordinance § 1.06(A)(1) provides:

> A. The Township Board shall have the ultimate responsibility for administrative oversight and enforcement of this Ordinance, and shall further have the following responsibilities and authority pursuant to this Ordinance:
>
> 1. Adoption of this Ordinance and any amendments. In accordance with the intent and purpose of this Ordinance, and the authority conferred by the Michigan Zoning Enabling Act, the Township Board shall have the

[11] The Zoning Ordinance and Zoning Map can be found here: https://salinetownship.org/forms (containing the Zoning Map and "Saline Township New Zoning Ordinance 2007").

> authority to adopt this Ordinance and Official Zoning Map, as well as any subsequent amendments considered in accordance with Section 12.04 (Amendments).

48. Saline Township's Zoning Ordinance § 12.04(H) specifically provides that "Any amendment for the purpose of conforming to a provision of a decree of a court of competent jurisdiction *shall* be adopted by the Township Board and the amendment published without referral to any other board, commission or agency." (emphasis added)

49. Finally, Saline Township's Zoning Ordinance § 2.102 provides that:

> If in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Map promptly after the amendment has been approved by the Township Board. No changes of any nature shall be made on the Official Zoning Map, except in conformity with the amendment procedures set forth in Section 12.04 (Amendments). The Official Zoning Map shall be kept in the office of the Township Clerk, and shall be the final authority as to the current zoning status of land, water areas, and structures in the Township.

50. Thus, Saline Township's Board is required to vote to amend the Zoning Ordinance to reflect the Consent Judgment's zoning for the property so that the zoning change can be appropriately reflected on the Zoning Map.

51. Therefore, this Court should issue declaratory judgment interpreting the Consent Judgment as requiring Saline Township to formally adopt the map amendment rezoning the Property to I-1 in a meeting and the adoption and publication of a new Official Zoning Map incorporating the rezoned parcels. *Time Out, LLC v New Buffalo Twp.*, unpublished per curiam decision of the Michigan Court of Appeals issued on January 8, 2009, Docket No. 278916 ("As to the trial court's ruling regarding the map change, this Court ruled the change to the zoning map relating to the plaintiff's property was

unauthorized by the township board, did not comply with the zoning procedures, and was therefore insufficient to rezone the plaintiff's property.").

JURISDICTION

52. This Court has jurisdiction over this cross-claim pursuant to MCL 15.270(1) as this is an OMA claim.

53. Jurisdiction is further invoked pursuant to MCR 2.305 and 3.310, this being a cross-claim for injunctive relief and a declaratory judgment.

PRAYER FOR RELIEF

Wherefore Intervening Cross-Claimant Kathryn Elizabeth Haushalter respectfully request the following relief:

A. Declaratory judgment that the Consent Judgment was negotiated, executed, and entered in violation of the Open Meetings Act;

B. Vacatur of the Consent Judgment as violating the Consent Judgment;

C. A preliminary and permanent injunction enjoining Saline Township from committing further noncompliance with the OMA;

D. In the alternative, issue declaratory judgment that Saline Township must formally adopt and publish the Zoning Map Amendment showing the rezoned Property to I-1 in compliance with the Consent Judgment;

E. An award costs and disbursements, including attorneys fees, incurred in this action;

F. Such other relief as the Court deems just and equitable.[12]

12 MCL 15.271(2)

Respectfully submitted,

Dated: December 13, 2025

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**Motion for Temporary Admission Forthcoming*

Counsel for Proposed Intervening Defendant and Cross-Claimant

Exhibit A

Township Board Minutes October 1, 2025

TOWNSHIP OF SALINE

COUNTY OF WASHTENAW
SALINE, MICHIGAN 48176

Special Meeting
October 1, 2025

1. The Special Meeting of the Saline Township Board and Planning Commission was called to order by Gary Luckhardt on October 1, 2025, at 7:00 PM at the Saline Town Hall, 5731 Braun Road, Saline, MI 48176.

2. Members present: Supervisor Marion, Treasurer Zink, Clerk Marion, Trustee Hammond, Trustee D. Marion, Steven Rothfuss, Gary Luckhardt, Darrly Zink, Levi Smith and Ronald Kohler. Twenty-Two other citizens attended that signed in however there were many more in attendance.

3. Mr. Hammond led the Pledge of Allegiance.

4. Mr. Hammond moved, supported by Mr. D. Marion that the agenda be approved.

5. Data Center Lawsuit/Proposed Consent Agreement Related Digital/Finkbeiner/Feldkamp/Wilkin- a MOTION was made by Mr. Hammond and supported by Mrs. Zink to enter into a closed meeting. Attorney's Fred Lucas & David Landry addressed the Board regarding the lawsuit and the proposed consent agreement. Both Boards had many questions and concerns that were addressed in the proposed settlement. A MOTION was made by Mr. Hammond and supported by Ms. Marion to move forward with trying to settle the lawsuit. Ayes 4 Nays 1. A MOTION was made by Mr. Hammond and supported by Mr. D. Marion to open the special meeting back up. Attorney David Landry then went over many of the point of the proposed consent agreement with the residents.

6. Citizen Comments- Attorney David Landry answered questions about the proposed consent agreement regarding wells potentially going dry, decommissioning, DTE power, traffic and water usage during construction were among items discussed.

7. No Board Member Comments

8. The meeting adjourned at 10:07 pm.

_____
Kelly L. Marion
Saline Township Clerk

_____
James C. Marion
Saline Township Supervisor

CERTIFICATION

I, the undersigned, Kelly L. Marion, the duly qualified and elected Clerk for the Township of Saline, Washtenaw County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of the proceedings taken by the Township Board of said Township at a regular board meeting held on the 1st day of October 2025.

_____

Kelly L. Marion
Saline Township Clerk

Exhibit B

Township Board Minutes October 15, 2025

TOWNSHIP OF SALINE

COUNTY OF WASHTENAW

SALINE, MICHIGAN 48176

Regular Meeting
October 15, 2025

1. The Regular Meeting of the Saline Township Board was called to order by Supervisor Marion on October 15, 2025, at 7:00 PM at the Saline Town Hall, 5731 Braun Road, Saline, MI 48176.

2. Members present: Supervisor Marion, Clerk Marion, Trustee Hammond and Trustee D. Marion. Treasurer Zink was absent. Nineteen other citizens were present.

3. Trustee Tom Hammond led The Pledge of Allegiance.

4. Trustee Hammond moved, supported by Trustee Marion that the agenda be approved with one correction: item f was moved to item a.

5. Trustee Hammond moved, supported by Trustee Marion that the consent agenda be approved as presented.
    a. Approve minutes from the September 10th Regular Meeting, September 10th Public Hearing, September 24th Special Meeting, and the October 1st Special Meeting.
    b. Receive Clerk's Budget, Financial Report
    c. Approve Accounts Payable for October in the amount of $56.207.40
    d. Approve Payroll for October in the amount of $11,312.90

6. No Citizen Comments

7. PA116 Zink, PA116 Wilkin & PA116 Kohler- a MOTION was made by Trustee Hammond and supported by Trustee Marion to approve the request to enter the property on Feldkamp Rd Parcel R-18-17-200-001 into the PA116 program, Zink. Ayes 4 Nays 0. A MOTION was made by Trustee Hammond and supported by Trustee Marion to approve the request to enter the property on Case Rd Parcel R-18-29-100-004 into the PA116 program, Kohler. Ayes 4 Nays 0. A MOTION was made by Trustee Hammond and supported by Trustee Marion to terminate the PA116 for Wilkin, parcel R-18-18-300-002 Braun Rd. Ayes 4 Nays 0.

8. Saline Township L-4029- a MOTION was made by Trustee Hammond and supported by Trustee Marion to approve the 2025 tax rate. Ayes 4 Nays 0

9. River Raisin Watershed- tabled until the November meeting.

10. Health Insurance- a MOTION was made by Trustee Hammond and supported by Trustee Marion to approve the health insurance/stipend for 2026. On December 14, 2024, the Board adopted an Employee Manual and a Health Care Ordinance. Ayes 4 Nays 0.

11. Supervisor's Report

    a. Jupiter Development Agreement - a MOTION was made by Trustee Hammond and supported by Trustee Marion to approve the Development Agreement. Ayes 4 Nays 0.
    b. Sheriff's Report- no major incidents. The Sheriff's office is offering home checks when a resident will be absent for some time.
    c. Andelina Farms- the performance bond will be reduced however funds will be held until phase three is complete along with a few items remaining; sidewalks, drainage issues are among some of the items.
    d. Related Digital- Data Center- Attorney Fred Lucas explained to the residents that the Board was not in favor of this project but had to decide on the facts of the lawsuit and that he nor attorney David Landry advised the Board on how to vote. Fred then answered questions from the residents. A MOTION was made by Trustee Hammond and supported by Trustee Marion to approve the Industrial Development District

resolution. Ayes 4 Nays 0

e. Invenergy – a MOTION was made by Trustee Hammond and supported by Trustee Marion to have Attorney Fred Lucas hire an attorney that specializes in administrative law. Ayes 4 Nays 0.
f. Energy Amendment– a MOTION was made by Trustee Hammond and supported by Trustee Marion to approval the updated energy facility zoning ordinance. Ayes 4 Nays 0.
g. Master Plan Meeting Proposal Carlisle/Wortman- a MOTION was made by Trustee Hammond and supported by Trustee Marion to move forward with the proposal from Carlisle/Wortman to begin the updating of the master plan, joint meetings will be held to include all Boards. Ayes 4 Nays 0.

12. Trustee's Report- trees have been removed at the Oakwood Cemetery on Case Road.

13. Zoning/Building Administrator Report- public hearing was held October 7th, regarding an Event Barn Ordinance. Further discussion will follow at the next Planning Commission meeting.

14. Fireboard Report- reviewing the Authority Articles of Corporation.

15. Township Hall Manager Report- a MOTION was made by Trustee Hammond and supported by Trustee Marion to move forward with installing air conditioning, replacing the front doors, purchasing a TV and media system. Ayes 4 Nays 0.

16. No Board Member Comments.

17. The meeting adjourned at 8:25 pm.

_____ _____

Kelly L. Marion
Saline Township Clerk

James C. Marion
Saline Township Supervisor

CERTIFICATION

I, the undersigned, Kelly L. Marion, the duly qualified and elected Clerk for the Township of Saline, Washtenaw County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of the proceedings taken by the Township Board of said Township at a regular board meeting held on the 15th day of October 2025.

_____

Kelly L. Marion
Saline Township Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

RD Michigan Property Owner I LLC, a Delaware limited liability company, Feldkamp Siblings, LLC, a Michigan limited liability company, Dennis Finkbeiner, an individual, Lynn Ellen Finkbeiner, an individual, Wilkin Farm Properties I, LLC, a Michigan limited liability company, Dennis C. Wilkin, an individual, and Alice M. Wilkin, an individual, Plaintiffs, v. Saline Township, a Michigan municipal corporation, Defendant, Kathryn Elizabeth Haushalter Proposed Intervening Co-Defendant/Cross-Claimant v. Saline Township, a Michigan municipal corporation, Proposed Cross-Claim Defendant	Civil Action No. 25-001577-CZ Hon JULIA B. OWDZIEJ Date filed: 9-12-25 **ORDER GRANTING INTERVENING CO-DEFENDANT AND CROSS-CLAIMANT'S KATHRYN ELIZABETH HAUSHALTER'S MOTION TO INTERVENE**

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*Motion for Temporary Admission
Forthcoming

Counsel for Proposed Intervening Co-Defendant/Cross-Claimant

At a said session of said Court,
held in the County of Washtenaw, State of Michigan,
on _____, 2025

Hon. _____
Circuit Court Judge

The Court, having considered the Motion to Intervene by Kathryn Elizabeth Haushalter and her supporting brief, as well as the argument of counsel, and for the reasons stated on the record,

IT IS HEREBY ORDERED:

Kathryn Elizabeth Haushalter is granted leave to intervene in this action pursuant to MCR 2.209(A)(3) and MCR 2.209(B)(2).

Kathryn Elizabeth Haushalter shall file her responsive pleading to the Complaint by _____

Dated: December ___, 2025

_____
Hon.