

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE CITY OF ROSEVILLE,

Plaintiff-Appellee,

v

COURTESY TRANSFER, INC.,

Defendant-Appellant.

UNPUBLISHED

May 26, 2009

No. 282071

Macomb Circuit Court

LC No. 07-002885-AV

Before: Markey, P.J., and Fitzgerald and Gleicher, JJ.

PER CURIAM.

In this dispute regarding towing and storage fees, defendant Courtesy Transfer, Inc., appeals by leave granted a circuit court ruling that plaintiff City of Roseville properly imposed the fees. We reverse.

I. Facts and Proceedings

On March 16, 2007, a semi-tractor truck owned by defendant stalled on a service drive of I-696 in Roseville. The driver could not restart the truck's engine, and called defendant's dispatcher seeking a mechanic. Before the mechanic arrived, Roseville police officer Steven Boucher noticed the stalled truck and stopped to direct traffic around it. Bruce George, defendant's mechanic, joined the scene and opined that the truck required towing. George called defendant's owner, David Miller, who made arrangements for the Boulevard and Trumbull towing service to tow the truck to defendant's premises. Meanwhile, a second Roseville police officer arrived and observed several equipment violations related to the truck, including a flat tire.

Officer Boucher decided that it would take too long for the Boulevard and Trumbull tow truck to reach the scene, and called Van's, the towing service ordinarily used by the Roseville Police Department. When the Van's truck arrived, the driver determined that it lacked the capacity to tow a commercial vehicle. Van's then dispatched a tow truck from Ruehle's, another towing company. According to the officers, as the driver of the Ruehle's wrecker finished hooking up defendant's truck, the Boulevard and Trumbull tow truck arrived at the scene. At Officer Boucher's direction, the Ruehle's wrecker towed defendant's truck to Van's lot, where the City of Roseville impounded it. A motor carrier officer inspected the truck that evening and issued four violations. Van's released the truck several days later, and charged defendant \$525 for the truck's towing and storage.

Defendant petitioned the district court seeking reimbursement of the towing and storage fees charged by Ruehle's. Defendant's petition asserted that pursuant to MCL 257.252d(2), the police and their designated towing companies were required to disconnect the truck when the Boulevard and Trumbull wrecker arrived. The district court conducted an evidentiary hearing and concluded that the Roseville police properly directed the towing on the basis of the equipment violations and defendant's failure to tender a reasonable service fee, as required by MCL 257.252d(2). Defendant appealed this ruling to the circuit court, which also rejected defendant's arguments, explaining that "in the interest of safety, which is over-riding," the police properly ordered the disabled truck towed from the scene.

II. Analysis

The decisions of the district court and circuit court involve the application of statutory provisions in the Michigan vehicle code, MCL 257.1 *et seq.* This Court reviews de novo legal issues of statutory construction. *In re Petition of Attorney Gen for Investigative Subpoenas*, 274 Mich App 696, 698; 736 NW2d 594 (2007). When construing a statute, this Court must ascertain and give effect to the Legislature's intent. *People v Pasha*, 466 Mich 378, 382; 645 NW2d 275 (2002). "The first step in that determination is to review the language of the statute itself." *Id.* (internal quotation omitted).

We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written. [*Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 10; 654 NW2d 610 (2002), quoting *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002) (internal quotation omitted).]

This Court gives effect to every word, phrase, and clause in the statute. *People v Hill*, 269 Mich App 505, 515; 715 NW2d 301 (2006). We must avoid construing a statute in a manner that renders statutory language nugatory or surplusage, and instead endeavor to "construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature." *Id.*, quoting *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159-160; 627 NW2d 247 (2001). A particular word in one statutory section must be interpreted in conjunction with "every other section, so as to produce, if possible, a harmonious and consistent enactment as a whole." *Grand Rapids v Crocker*, 219 Mich 178, 182-183; 189 NW 221 (1922).

Under MCL 257.252d(1), a police agency may immediately remove a vehicle from a public road, at the owner's expense,

- (a) If the vehicle is in such a condition that the continued operation of the vehicle upon the highway would constitute an immediate hazard to the public.
- (b) If the vehicle is parked or standing upon the highway in such a manner as to create an immediate public hazard or an obstruction of traffic.

However, subsection 252d(2) qualifies the police agency's towing powers as follows:

If the owner or other person who is legally entitled to possess the vehicle arrives at the location where a vehicle is located before the actual towing or removal of the vehicle, the vehicle shall be disconnected from the tow truck, and the owner or other person who is legally entitled to possess the vehicle may take possession of the vehicle and remove it without interference upon the payment of the reasonable service fee, for which a receipt shall be provided.

In MCL 257.252f, the Michigan vehicle code also sets forth a procedure that a vehicle owner may employ to challenge police conduct under MCL 257.252d, and to recover the costs of improper towing and storage. In relevant part, this section provides,

(1) Upon the filing of a petition prescribed in section 252a, 252b, or 252d, signed by the owner of the vehicle which has been taken into custody, the court shall do both of the following:

(a) Schedule a hearing within 30 days for the purpose of determining whether the police agency . . . acted properly.

* * *

(2) At the hearing specified in subsection (1), *the police agency . . . shall have the burden of showing by a preponderance of the evidence that it has complied with the requirements of this act* in processing the abandoned vehicle or vehicle removed under section 252d.

(3) After the hearing, the court shall make a decision that includes 1 or more of the following:

(a) A finding that the police agency complied with the procedures established for the processing of . . . a vehicle removed under section . . . 252d . . .

(b) *A finding that the police agency did not comply with the procedures established for the processing of . . . a vehicle removed under section . . . 252d.* After making the finding, the court shall issue an order directing that the vehicle immediately be released to the owner, and that the police agency is responsible for the accrued towing and storage charges. . . . [Emphasis added.]¹

The parties agree that Boulevard and Trumbull arrived “before the actual towing or removal of the vehicle” owned by defendant had been accomplished by Ruehle’s. The plain language of MCL 257.252d(2) contemplates that under these circumstances, “the owner or other person who is legally entitled to possess the vehicle may take possession of the vehicle and

¹ After the district court’s and circuit court’s rulings in this case, the Legislature amended MCL 257.252d and MCL 257.252f in several respects, none of which have any bearing on the issues raised in this case. 2008 PA 539, effective January 13, 2009.

remove it without interference” Although the last sentence of subsection 252d(2) envisions that a truck owner must pay a “reasonable service fee,” the evidence in this case agrees that after the Roseville police officers decided to impound the truck, they failed to offer defendant’s employees the opportunity to pay a service fee. Because the record evidence undisputedly establishes that defendant’s employees and its designated tow truck arrived at the scene before “the actual towing or removal of the vehicle,” defendant was entitled to the vehicle’s possession and should have been allowed to remove it “without interference.” And because the City of Roseville’s officers failed to comply with the requirements of MCL 257.252d, its “police agency is responsible for the accrued towing and storage charges.” MCL 257.252f(3)(b).

The City of Roseville has presented no authority supporting the proposition that its officers could impound defendant’s truck for equipment violations without regard to the express language of subsection 252d(2). Despite that practical considerations of public safety may have mitigated against disconnecting the truck from the Ruehle’s wrecker and reconnecting it to the Boulevard and Trumbull tow truck, the clear and unambiguous language of subsection 252d(2) compels a conclusion that the Legislature intended this result. “If the wording or language of a statute is unambiguous, the Legislature is deemed to have intended the meaning clearly expressed, and we must enforce the statute as written.” *Hill, supra* at 515. When police intervene because a vehicle poses an “immediate public hazard or an obstruction of traffic,” subsection 252d(1)(b), the Legislature intended that the vehicle’s owner may select a towing service, even if that decision requires disconnection of the vehicle from a tow truck chosen by the police. The district court’s and the circuit court’s interpretations of § 252d rendered nugatory the statutory language plainly requiring disconnection of the truck under the circumstances of this case.

In summary, the Roseville police officers’ failure to adhere to the procedures prescribed in subsection 252d(2) subjects the department to liability for the towing and storage charges under MCL 257.252f(3)(b).

Reversed. No costs are taxable pursuant to MCR 7.219, a public question being involved.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Elizabeth L. Gleicher