COA Opinion: Correcting a typographical error in a recent amendment to the Michigan Vehicle Code to give it its intended effect.

30. April 2010 By Gaëtan Gerville-Réache

On April 29, 2009, the Court of Appeals published a per curiam opinion in *Oshtemo Charter Twp. v. Kalamazoo County Road Commission*, No. 292980, in which it vacated a preliminary injunction order that was based on a typographical error in a recent amendment to the Michigan Vehicle Code. The lower court had enjoined Kalamazoo County Road Commission ("KCRC") from invalidating Oshtemo Charter Townsip's truck route ordinance under recently enacted MCL 257.726(3) because that new subsection cross-referenced incorrect sections of the Code. The Court of Appeals reversed, ruling that the trial court should have applied the doctrine of "scrivener's error" to avoid construing the new subsection in a manner that rendered it completely nugatory.

On March 7, 2007, the Oshtemo adopted a truck route ordinance blocking truck access to several county primary roads in Oshtemo in response to an anticipated mining operation in adjacent Alamo Township. The effect of this ordinance was to route heavy trucks onto neighboring roads in Alamo Township and Kalamazoo Charter Township and block the most direct access to US 131. Soon after, the legislature enacted 2008 PA 539, which amended MCL 257.726 to give county road commissions authority to override such ordinances under similar circumstances.

The KCRC subsequently invalidated Oshtemo's ordinance as it applied to three roads within its jurisdiction, acting on the written objections of Alamo Township and Kalamazoo Charter Township to the ordinance. This lawsuit ensued, and the trial court entered a preliminary injunction against the KCRC's order.

The problem with the KCRC's order, according to the the trial court, was that the new subsection did not actually give KCRC authority over the three roads at issue. The new provision states "for purposes of this subsection, 'county primary road' means a highway or street designated as a county primary road pursuant to 1951 PA 51, MCL 247.671 to 247.675." Those sections do not designate any road as "county primary roads." The three roads at issue therefore could not be "county primary roads" within the meaning of MCL 257.726(3), if it is interpreted as written.

The Court of Appeals reversed. It ruled that the trial court should have applied the doctrine of "scrivener's error" to give the statute its intended effect. Interpreting the statute as written–where no road qualifies as a "county primary road"–leads to the absurd result of leaving county road commissions without any authority to do what is contemplated in the new subsection. Courts should avoid assigning constructions that renders any part of the statute nugatory.

MCL 247.651 to 247.655 are the provisions in the Michigan Vehicle Code which designate county primary roads. The similarity between these section numbers and those written in the legislation, 247.671 and and 247.675, makes it apparent that a 7 was erroneously substituted for a 5. The doctrine of "scrivener's error" permits the Court to treat this anomaly as a typographical error and correct it in order to give county road commissions the authority clearly intended by the plain language of the new subsection.

In full disclosure, Warner Norcross & Judd LLP represented one of the parties in the underlying litigation that gave rise to the truck route ordinance and this municipal dispute.