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CIRCUIT COURT ORDER/OPINION  
Stephine Gwin, Circuit Court Clerk

Appeal Docket No: 2839

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15 Section of the Act

Date: 7/20, 2005

[Signature]  
R. Douglas Daligga, Director  
MES - Board of Review

PC \_\_\_\_\_  
REP \_\_\_\_\_

Prepared by Stephine Gwin

Appeal Docket No. L2003-00060-2839  
Employer No. 1023865

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 6<sup>TH</sup> JUDICIAL CIRCUIT  
OAKLAND COUNTY

DANIEL ZGOL,  
dba BERKLEY AMOCO,  
Appellant.

v

STATE OF MICHIGAN, DEPARTMENT  
OF LABOR AND ECONOMIC GROWTH,  
UNEMPLOYMENT INSURANCE AGENCY,  
Appellee.

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Unemployment Insurance Agency

OPINION AND ORDER

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DANIEL ZGOL, dba BERKLEY AMOCO,

Appellant,

v

Case No. 2004-063262-AE  
Hon. John J. McDonald

STATE OF MICHIGAN, DEPARTMENT OF  
LABOR & ECONOMIC GROWTH,  
UNEMPLOYMENT INSURANCE AGENCY,

Appellees.

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OPINION AND ORDER

At a session of said Court, held in the Courthouse, in the  
City of Pontiac, County of Oakland, State of Michigan, on

APR 27 2005

PRESENT: HONORABLE JOHN J. McDONALD, Circuit Judge

This matter is before the Court on appeal from a November 17, 2004, decision of  
the Michigan Employment Security Board of Review, denying Daniel Zgol's application  
to reopen and review the Board's decision dated May 28, 2004.

According to the record and the parties' briefs, Daniel Zgol was the former owner of Berkley Amoco. In December 1999, Mr. Zgol sold 100% of the business assets to another entity. On June 10, 2003, the Department of Consumer and Industry Services, now the Department of Labor and Economic Growth, Unemployment Insurance Agency (UIA), issued an assessment against Mr. Zgol for unpaid employment contributions that were due during the years 1996-1998, while he still owned the business. Mr. Zgol appealed from this assessment.

The parties appeared for a hearing before the Administrative Law Judge (ALJ) on January 27, 2004. At the hearing, the parties stipulated that: Mr. Zgol had sold 100% of the business assets; notice of discontinuation of the business was timely filed with the UIA, and; the amount of the assessment was \$5,639.96. No testimony was taken at the hearing. The only question presented to the ALJ was whether Section 15(g) of the Michigan Employment Security Act, MCL 421.15(g), required the UIA to assess Mr. Zgol's successor, or whether the Act allowed the UIA to assess either one, at the UIA's discretion. The ALJ issued his opinion on January 28, 2004, finding Mr. Zgol was not liable for the assessment under the Act. The UIA appealed that decision to the Board of Review.

The Board of Review issued its decision on May 28, 2004. The Board reversed the ALJ's decision and determined that the Act allows the UIA to allocate charges to Mr. Zgol. Mr. Zgol requested a rehearing and he applied to the Board for a reopening and review by the Board. Both requests were denied.

The narrow question before the Court is whether MCL 421.15(g) allows the UIA to assess these charges to Mr. Zgol. This is a question of statutory interpretation and calls

for de novo review by this Court. *Dana v American Youth*, 257 Mich App 208, 211 (2003). “The primary goal in construing a statute is to ascertain and give effect to the legislature’s intent.” *Id.* at 212. The Court “looks first to the specific language of the statute, because the Legislature is presumed to have intended the meaning it has plainly expressed.” *Id.* “If the expressed language is clear, judicial construction is neither required nor permitted, and the statute must be enforced as written.” *Id.*

MCL 421.15(g) provides:

A person or employing unit, that acquires the organization, trade, business, or 75% or more of the assets from an employing unit, as a successor defined in section 41(2), is liable for contributions and interest due to the commission from the transferor at the time of the acquisition in an amount not to exceed the reasonable value of the organization, trade, business, or assets acquired, less the amount of a secured interest in the assets owned by the transferee that are entitled to priority. The transferor or transferee who has not less than 10 days before the acquisition, requested from the commission in writing a statement certifying the status of contribution liability of the transferor shall be provided with that statement and the transferee is not liable for any amount due from the transferor in excess of the amount of liability computed as prescribed in this subsection and certified by the commission. At least 2 calendar days not including a Saturday, or legal holiday before the acceptance of an offer, the transferor, or the transferor’s real estate broker or other agent representing the transferor, shall disclose to the transferee on a form provided by the commission, the amounts of the transferor’s outstanding unemployment tax liability, unreported unemployment tax liability, and the tax payments, tax rates, and cumulative benefit charges for the most recent 5 years, a listing of all individuals currently employed by the transferor, and a listing of all employees separated from employment with the transferor in the most recent 12 months. This form shall specify such other information, as determined by the commission, as would be required for a transferee to estimate future unemployment compensation costs based on the transferor’s benefit charge and tax reporting and payment experience with the commission. Failure of the transferor, or the transferor’s real estate broker or other agent representing the transferor, to provide accurate information required by this subsection is a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than \$2,500.00, or both. In addition, the transferor, or the transferor’s real estate broker or other agent representing the transferor, is liable to the transferee for any consequential damages resulting from the failure to

comply with this subsection. However, the real estate broker or other agent is not liable for consequential damages if he or she exercised good faith in compliance with the disclosure of information. The remedy provided the transferee is not exclusive, and is not to be construed to reduce any other right or remedy against any party provided for in this or any other act. Nothing in this subsection shall be construed to decrease the liability of the transferee as a successor in interest, or to prevent the transfer of a rating account balance as provided in this act. The foregoing provisions are in addition to the remedies the commission has against the transferor.

In this case, it is not clear whether Mr. Zgol remains liable for contributions due prior to the sale of the business. It is certainly clear that the successor is liable up to the reasonable value of the organization or assets at the time of the acquisition. But, it is less clear what "remedies" the commission has against Mr. Zgol after the sale of the business.

When statutory language is ambiguous a court may go beyond the words of the statute to ascertain legislative intent. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236 (1999). "When ascertaining legislative intent, the language of the statute should be given a reasonable construction, considering the statute's purpose and the object sought to be accomplished." *Great Lakes Sales, Inc v State Tax Comm*, 194 Mich App 271, 276 (1992).

The enacting section provides that the Act is intended to:

Protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers . . . .

The legislative intent can be further derived by looking to the declaration of policy, which states:

The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic

insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state. MCL 421.2

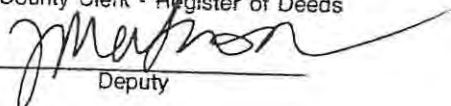
Clearly, these statements indicate that the legislature considered the unemployment system to be of vital importance to the health and welfare of the state's citizenry. These statements indicate that the legislature intended to create a system where employers could not escape payment by merely selling their business. And, the Court finds that to fully fund such a system, the legislature intended that the commission should have the option of assessing the transferee or the transferor of a business. Accordingly, Mr. Zgol may be assessed for the past due contributions.

WHEREFORE, IT IS HEREBY ORDERED that the decision of the Michigan Employment Security Board of Review is affirmed.

JOHN J. McDONALD

HON. JOHN J. McDONALD

A TRUE COPY  
RUTH JOHNSON  
Oakland County Clerk - Register of Deeds

By:   
Deputy