

SUPREME COURT OF ILLINOIS

Springfield, Illinois, October 16, 2009

THE FOLLOWING CASE ON THE REHEARING DOCKET IS DISPOSED OF AS INDICATED:

No. 105568 - Ken Landis et al., appellants, v. Marc Realty et al., appellees. Appeal, Appellate Court, First District.

Petition for rehearing denied.

Kilbride, J., dissenting upon denial of rehearing, with opinion, joined by Karmeier, J.

Dissent attached.

Dissent Upon Denial of Rehearing

JUSTICE KILBRIDE, dissenting:

In their petition for rehearing, plaintiffs, Ken and Anna Landis, argue that in light of this court's ruling that the term "statutory" is ambiguous and in need of statutory interpretation, the legislature's prior use of that term should have been considered. I agree with plaintiffs that section 1 of the Statute on Statutes supports plaintiff's argument that "the legislature linked the term 'statute' solely to Acts of the legislature."

The Statute on Statutes, originally adopted in 1874, was entitled "AN ACT to revise the law in relation to the construction of the statutes." Ill. Rev. Stat. 1874, ch. 131, par. 1 *et seq.* Section 1 of the Statute on Statutes provided, in relevant part:

"Be it enacted by the People of the State of Illinois, represented in the *General Assembly*, That in the construction of all *statutes* now in force, or which may hereafter be enacted, the following rules shall be observed, unless such construction would be inconsistent with the *manifest intent of the legislature* or repugnant to the context of the same statute \*\*\*[.]" (Emphases added.) Ill. Rev. Stat. 1874, ch. 131, par. 1.

The Statute on Statutes exists expressly for the purpose of aiding in the interpretation of statutes. The Statute on Statutes refers to statutes *only* in the context of the "General Assembly" and the "legislature." Statutes are passed by the General Assembly. Ordinances are not. Section 1 therefore makes it clear that at the time section 13–202 of the Code of Civil Procedure was passed, the legislature did not intend the terms "statute" and "statutory" to refer to ordinances as well as to statutes.

I continue to believe that the majority has erroneously failed to consider the meaning of the term "statutory penalty" at the time of the adoption of section 13–202 of the Code of Civil Procedure. Since I believe the legislature did not intend to include municipal ordinances within the meaning of "statutory penalty," I respectfully dissent upon denial of the plaintiffs' petition for rehearing.

JUSTICE KARMEIER joins in this dissent.