STATE OF MICHIGAN

COURT OF APPEALS

WOODLAND HILLS HOMEOWNERS ASSOCIATION OF THETFORD TOWNSHIP,

Plaintiff-Appellant,

v

THETFORD TOWNSHIP and ROGER ALLISON,

Defendants-Appellees.

UNPUBLISHED
May 20, 2008

No. 275315
Genesee Circuit Court
LC No. 05-081537-NZ

Before: Fort Hood, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant, Roger Allison (Allison), summary disposition pursuant to MCR 2.116(C)(5), MCR 2.116(C)(8) and MCR 2.226(C)(10). On appeal, plaintiff also challenges the trial court's subsequent order granting summary disposition to defendant, Thetford Township (Thetford), pursuant to MCR 2.116(C)(5), MCR 2.116(C)(8) and MCR 2.116(C)(10). Plaintiff also challenges a subsequent order granting Allison's motion for costs. We affirm.

Plaintiff first contends that the trial court erred in determining that Allison's property qualified for protection under Michigan's Right to Farm Act (RTFA), MCL 286.471, in granting summary disposition pursuant to MCR 2.116(C)(8) and 2.116(C)(10). While we agree that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(8), because the trial court properly granted summary disposition pursuant to MCR 2.116(C)(10), no relief is warranted.

This Court reviews a trial court's decision regarding summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). "Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and other documentary evidence show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Kennedy v Great Atlantic & Pacific Tea Co,* 274 Mich App 710, 712; 737 NW2d 179 (2007). Where summary disposition is sought pursuant to MCR 2.116(C)(8), "the motion tests whether the complaint states a claim as a matter of law, and the motion should be granted if no factual development could possibly justify recovery." *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). "[A]ll well-pleaded allegations are accepted as true, and construed

most favorably to the nonmoving party." *Wade v Dep't of Corrections,* 439 Mich 158, 162-163; 483 NW2d 26 (1992).

In addressing Thetford and Allison's MCR 2.116(C)(8) motion, the trial court stated:

> "In the instant case, there is no documentary evidence of a nuisance. The Plaintiff's compliant does not give any detail of what harm is being suffered nor does their brief in opposition to the motion for summary disposition. As a result, it's not possible for the Plaintiff to bring suit because no specific harm has been alleged."

The trial court erred in considering the lack of documentary evidence while discussing the MCR 2.116(C)(8) motion. As discussed *supra*, only the pleadings are to be considered in reviewing a motion for summary disposition filed pursuant to MCR 2.116(C)(8). However, because summary disposition was proper in accordance with MCR 2.116(C)(10), reversal is not required.

The zoning ordinance in question states that no farm may operate unless that farm is at least 20 acres in size. Allison's property does not meet the size threshold. Plaintiff thus contends that Thetford should be forced to apply the zoning ordinance to prevent Allison from using his property for farming purposes. However, as this Court stated in *Northville Twp v Coyne*, 170 Mich App 446, 448; 429 NW2d 185, 186 (1988):

> The Michigan Right to Farm Act was enacted by our Legislature in 1981 to provide for circumstances under which a farm and its operation shall not be found to be a public or private nuisance. In furtherance of this purpose, this act prohibits nuisance litigation against a farm or farm operation that conforms to generally accepted agricultural and management practices [GAAMPS].

This Court has previously held that where a zoning ordinance prevents an individual from operating a farm on a parcel of land because of the small size of that parcel, that ordinance is preempted by the RTFA where the RTFA would otherwise protect the operation. *Charter Twp of Shelby v Papesh*, 267 Mich App 92, 105-107; 704 NW2d 92 (2005). Therefore, if Allison's property is protected by the RTFA, the local zoning ordinance is preempted and a nuisance cause of action cannot be maintained. This Court must therefore determine whether Allison's enterprise fit the RTFA's definition of a farm, and, if so, whether the operation conformed to the GAAMPS.

Pursuant to MCL 286.472, the RTFA defines a farm and farm operation in the following manner:

> (a) "Farm" means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.
>
> (b) "Farm operation" means the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

* * *

(*ii*) The generation of noise, odors, dust, fumes, and other associated conditions.

* * *

(*vii*) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.

This Court has previously explained that in order to be protected by the RTFA, the farm operation must be commercial in nature. In order to be a commercial operation, the farmer must be engaged in "the act of producing or manufacturing an item intended to be marketed and sold at a profit." *Papesh*, *supra* at 100-101. Further, "there is no minimum level of sales that must be reached before the RTFA is applicable." *Id*. at 101 n 4.

In the present case, Allison stated that he has sold horses that he raised on his property. He also stated that he has raised chickens, cattle and pigs and sold them for their meat. He classifies his farm as a commercial operation. Plaintiff has presented no evidence to contradict Allison's alleged commercial history on the property. As a result, Allison has established that his facility qualifies as a farm under the RTFA and no nuisance action may be brought against the facility so long as it complies with the GAAMPS. Kristin Linderman of the Michigan Department of Agriculture submitted an affidavit stating that Allison's operation complies with the applicable GAAMPS. Therefore, because Allison's facility qualifies as a commercial farming operation that complies with the GAAMPS, it is afforded protections by the RTFA. Specifically, no nuisance cause of action may be maintained against the property. *Coyne*, *supra* at 448. When viewing the evidence in the light most favorable to the plaintiff, there is no genuine issue of material fact. As a result, summary disposition in favor of Allison and Thetford was appropriate pursuant to MCR 2.116(C)(10).

Plaintiff next contends that the trial court erred in concluding that it did not possess standing. We disagree. This Court reviews a trial court's decision regarding whether a party has standing to maintain a cause of action de novo. *Michigan Ed Ass'n v Superintendent of Pub Instruction*, 272 Mich App 1, 4; 724 NW2d 478 (2006).

MCR 2.116(C)(5) provides that a party is entitled to summary disposition where "the party asserting the claim lacks the legal capacity to sue." In granting Allison summary disposition, the trial court specifically stated that plaintiff lacked standing. The Michigan Supreme Court has explained that in order to have standing, a party must establish that it has suffered an injury in fact, that the injury in fact can be traced to the conduct of the defendant, and that the injury would "likely" be "redressed by a favorable outcome." *Lee v Macomb County Bd of Comm'rs*, 464 Mich 726, 739; 629 NW2d 900 (2001). The Supreme Court further explained that an injury in fact is an injury that is "concrete and particularized" and that is "actual or imminent" as opposed to "conjectural or hypothetical." *Id*. (internal quotation marks omitted). Additionally, it is recognized that a private citizen does not have standing where he is unable to establish that he has been harmed in a manner different than a member of the general public. *Detroit Fire Fighters Ass'n v Detroit*, 449 Mich 629, 634; 537 NW2d 436 (1995).

In plaintiff's complaint, it alleged that Allison owned property "in extremely close proximity to the homes of the members of the Woodland Hills Homeowners Association." It further alleged that Allison was engaging in activity on his property in violation of the Thetford Township zoning ordinances. Finally, plaintiff stated that there were numerous "nuisance aspects of the horse farm" and that Thetford failed to protect the health, safety and welfare of the citizens of Woodland Hills.

While plaintiff alleged that the farm was in close proximity to its members' homes, and the farm possessed numerous "nuisance aspects," it failed to explicitly state the injury that the residents of Woodland Hills suffered or identify a specific nuisance that was objectionable. At the time the trial court granted summary disposition, plaintiff had not produced a single deposition or affidavit of a Woodland Hills resident. The trial court had no evidence demonstrating that a resident of the subdivision had been injured by Allison's conduct, nor did it have specific allegations regarding aspects of Allison's farm that created a nuisance (such as offensive smells or visuals). Plaintiff, therefore, failed to distinguish its residents from members of the general public who did not belong to the association. As a result, the trial court properly held that plaintiff lacked standing to bring the suit against Allison.

Plaintiff next contends that the trial court erred in granting Allison's motion for costs and it is entitled to a new hearing on that motion. We disagree. This Court reviews a trial court's decision to award costs and fees for an abuse of discretion. *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006).

Pursuant to the RTFA, MCL 286.473b:

> In any nuisance action brought in which a farm or farm operation is alleged to be a nuisance, if the defendant farm or farm operation prevails, the farm or farm operation may recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the farm or farm operation in connection with the defense of the action, together with reasonable and actual attorney fees.

The parties do not dispute that where a party prevails in a nuisance action, it is entitled to its reasonable costs and fees if it is a facility protected by the RTFA. As discussed *supra*, the RTFA affords protection to Allison's operation. Therefore, because Allison prevailed in this cause of action, he is entitled to his costs and fees. However, plaintiff further contends that it must be given an opportunity in the form of an additional hearing to contest certain charges awarded to Allison. This Court notes that the trial court held a hearing on the motion for costs. Plaintiff primarily used this opportunity to contest the trial court's determination that the RTFA applied even though the parties conceded the issue had already been settled by the trial court. Plaintiff was not precluded from challenging specific details of Allison's bill of costs. The trial court briefly stated that it reviewed the costs and fees and found them to be reasonable. Plaintiff has failed to provide this Court with any specific examples or detail regarding the contested charges and does not suggest an amount, or in any manner delineate, which charges were allegedly inflated. Because plaintiff has failed to provide this Court with an adequate explanation or

assertion of why the initial hearing conducted on the motion for costs was insufficient, it is not entitled to a subsequent hearing.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Stephen L. Borrello