# STATE OF MICHIGAN

# COURT OF APPEALS

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| WILLIAM SCHALL and MELANIE SCHALL,<br><br>Plaintiffs-Appellees,<br><br>v<br><br>CITY OF WILLIAMSTON, PATRICK SLOAN, MICHAEL GRADIS, MCKENNA ASSOCIATES, INC.,<br><br>Defendants,<br>and<br><br>D&G EQUIPMENT, INC., ELDEN E. GUSTAFSON, and JOLENE GUSTAFSON,<br><br>Defendants-Appellants. | UNPUBLISHED<br>December 4, 2014<br><br>No. 317731<br>Ingham Circuit Court<br>LC No. 13-000250-CZ |

Before: OWENS, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

In this case, plaintiffs William Schall and Melanie Schall (plaintiffs), sought injunctive relief to compel their new neighbors, defendants D&G Equipment, Inc. (D&G) and its owners Elden Gustafson and Jolene Gustafson (defendants or the Gustafsons), to comply with the city of Williamston's zoning ordinance that allows the outdoor display of farm implements for sale only by special use permit, which in turn requires a green buffer zone to shield plaintiffs' property from the outdoor sales displays on D&G's property. Plaintiffs also sought a writ of mandamus to compel the city and its contract zoning administrator, McKenna Associates, Inc.,[1] to enforce the ordinance. After a hearing on the parties' respective motions for summary disposition, the trial court granted plaintiffs' motion and denied defendants' motion. In its opinion and order, the trial court found that defendants' use of their property was in violation of the city's zoning ordinance—therefore a nuisance per se—and ordered the zoning administrator for the city to

[1] Individual McKenna employees serving as zoning administrator at various times were Patrick Sloan, Michael Gradis, and Greg Milliken, who was not named as a defendant.

enforce the ordinance's buffering requirement. Defendants, D&G and the Gustafsons, appeal by right. For the reasons discussed below, we affirm.

## I. JURISDICTION

We address first defendants' claim that the circuit court lacked jurisdiction over plaintiffs' complaint for injunctive relief. Defendants argue that the circuit court lacked jurisdiction because plaintiffs failed to timely appeal the planning commission's grant of a special use permit to defendants, did not exhaust their administrative remedies, lacked standing, failed to allege "special damages" necessary for an actionable nuisance claim, and that plaintiffs' claim was not ripe for adjudication because the zoning ordinance allowed three years for a landscape buffer to mature. We find that none of these claims have merit.

### A. STANDARD OF REVIEW

The issue of jurisdiction presents a question of law reviewed de novo on appeal. *Michigan's Adventure, Inc v Dalton Twp*, 287 Mich App 151, 153; 782 NW2d 806 (2010). Whether a court should invoke the doctrine of exhaustion of administrative remedies to decline jurisdiction also presents a question of law reviewed de novo on appeal. *Shelby Charter Twp v Papesh*, 267 Mich App 92, 109; 704 NW2d 92 (2005).

### B. DISCUSSION

Defendants' arguments that the circuit court lacked jurisdiction because plaintiffs did not timely appeal the granting of a special use permit and that plaintiffs lack standing because of their not suffering "special damages" are without merit because plaintiffs did not appeal the planning commission's administrative decision. Instead they sought enforcement of the zoning ordinance. Under MCL 125.3407, and the zoning ordinance, § 74-9.705, its violation is a nuisance per se over which the circuit court has jurisdiction to grant injunctive relief on the complaint of affected neighboring property owners. *Jones v DeVries*, 326 Mich 126, 135; 40 NW2d 317 (1949); *Towne v Harr*, 185 Mich App 230, 232; 460 NW2d 596 (1990) ("our Supreme Court has long recognized the propriety of private citizens bringing actions to abate public nuisances, arising from the violation of zoning ordinances").

Also, we find equally without merit defendants' assertions that plaintiffs' claim is not ripe either because of their failure to exhaust administrative remedies or because of the ordinance's three-year grace period to permit a landscape buffer to mature. Likewise, defendants' discussion regarding public nuisance or nuisance in fact is inapposite.

Subject-matter jurisdiction presents the question whether a court has "'the power to hear and determine a cause or matter.'" *Bowie v Arder*, 441 Mich 23, 36; 490 NW2d 568 (1992) (citation omitted). The Zoning Enabling Act and the city's zoning ordinance do not specify the court having jurisdiction to abate zoning violations. MCL 125.3407 provides, "a use of land . . . in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se" and "[t]he *court* shall order the nuisance abated . . . ." Section 74-9.705 of the zoning ordinance provides "any use of . . . land . . . in violation of any of the provisions thereof, is hereby declared to be a public nuisance per se, and may be abated by order of *any court of competent jurisdiction*." The circuit court has "the power and jurisdiction" of "courts of record at the

common law," and "judges in chancery in England on March 1, 1847" as subsequently altered by state law, and as "[p]rescribed by the rules of the supreme court." MCL 600.601. And, circuit courts "have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court . . . ." MCL 600.605. The circuit court also is accorded specific authority to abate nuisances. MCL 600.2940(1). Furthermore, our Supreme Court has recognized that under the common law, a circuit court may grant equitable relief from a violation of a local zoning ordinance. *Farmington Twp v Scott*, 374 Mich 536, 540-541; 132 NW2d 607 (1965). We therefore conclude that the circuit court possessed subject-matter jurisdiction to hear plaintiffs' complaint and grant injunctive relief regarding a use of land found in violation of local zoning regulation.

We also find without merit defendants' contention that plaintiffs lacked standing. In general, standing requires not only that a party have a sufficient interest in the outcome of litigation to ensure vigorous advocacy but also have "'in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.'" *Bowie*, 441 Mich at 42 (citation omitted). Further, "a litigant has standing whenever there is a legal cause of action." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). Also, a litigant has standing if he or she "has a special injury or right, or substantial interest," which "will be detrimentally affected in a manner different from the citizenry at large . . . ." *Id.* Plaintiffs satisfy these various iterations of standing and may assert a violation of the zoning ordinance landscape buffering requirements.

As the abutting property owners for whom the landscape buffer is designed to shield from defendants' outdoor storage and sales of large farm equipment, plaintiffs patently have a real interest in the subject matter of the controversy and the outcome of litigation to ensure vigorous advocacy. *Bowie*, 441 Mich at 42. Moreover, our Supreme Court has recognized that neighboring property owners have an equitable cause of action to enforce compliance with local zoning regulations. *Cook v Bandeen*, 356 Mich 328, 330-334; 96 NW2d 743 (1959) ("residents in the immediate vicinity" had the right to obtain injunctive relief from land use contrary to zoning ordinance); *Jones*, 326 Mich at 128-135 ("property owners in the area affected" had a right to seek equitable relief from use in violation of local zoning); *Baura v Thomasma*, 321 Mich 139, 142-143, 146; 32 NW2d 369 (1948) (neighbors of proposed use in violation of zoning ordinance were "entitled to the equitable relief"). As this Court has explained:

> While the designated officials are undoubtedly the only persons who can commence any action of a penal nature for zoning violations . . ., there is nothing to indicate that the Legislature intended to limit a private person's right to invoke the circuit court's jurisdiction to abate a public nuisance arising out of the violation of a zoning ordinance. [*Indian Village Ass'n v Shreve*, 52 Mich App 35, 38; 216 NW2d 447 (1974).]

The cases defendants cite, *Village of Franklin v Southfield*, 101 Mich App 554; 300 NW2d 634 (1980), *Unger v Forest Home Twp*, 65 Mich App 614; 237 NW2d 582 (1975), and *Joseph v Twp of Grand Blanc*, 5 Mich App 566; 147 NW2d 458 (1967), are inapposite as they address the "aggrieved party" criteria to have standing to appeal the administrative actions of zoning officials. These cases simply do not apply to plaintiffs' action because it is not an appeal of administrative zoning action; it is an independent action for equitable relief from a purported

violation of the zoning ordinance. Furthermore, the *Unger* Court recognized this distinction in its discussion regarding "aggrieved party" status, noting that it did not apply to "an action to abate a public nuisance . . . brought by any township property owner . . . ." *Unger*, 65 Mich App at 618. Simply stated, the cited cases cannot overrule Supreme Court precedent establishing the right of abutting property owners like plaintiffs to seek equitable relief from zoning violations. See *Cook*, 356 Mich at 330-334; *Jones*, 326 Mich at 128-135; *Baura*, 321 Mich at 142-143, 146.

Moreover, to the extent plaintiffs must "show damages of a special character distinct and different from the injury suffered by the public generally," *Towne*, 185 Mich App at 232, they have done so based on the fact they are the abutting property owners the zoning provisions are intended to benefit. They have alleged "special damages not common to other property owners similarly situated," *Village of Franklin*, 101 Mich App at 557, because no other property owners are immediately affected by the alleged violation. In sum, plaintiffs have standing to assert their claim to equitable relief from the asserted zoning violation.

For similar reasons, defendants' discussion of public nuisances is unavailing. There are two categories of nuisance: (1) nuisances per se and (2) nuisances in fact. *Martin v Michigan*, 129 Mich App 100, 107-108; 341 NW2d 239 (1983). "A nuisance per se is an act, occupation, or structure which is a nuisance at all times and under any circumstances." *Id*. at 108. A nuisance in fact "is a nuisance by reason of circumstances and surroundings, and [has a] . . . natural tendency . . . to create danger and inflict injury to person or property." *Id*. A nuisance in fact is also referred to as a public nuisance because the condition "must affect an interest common to the general public, rather than peculiar to one individual, or several." *Garfield Twp v Young*, 348 Mich 337, 342; 82 NW2d 876 (1956).

But in this case, plaintiffs do not allege a public nuisance or nuisance in fact. They assert a violation of the zoning ordinance, which both MCL 125.3407 and § 74-9.705 of the ordinance, declares a nuisance per se. As explained in *Ford v Detroit*, 91 Mich App 333, 335; 283 NW2d 739 (1979), proving the violation of the ordinance establishes a nuisance per se:

> The distinction between a nuisance per se and a nuisance in fact is an evidentiary one. A nuisance per se is an act, occupation or structure which is a nuisance at all times and under all circumstances. Once the act has been proved, the court decides as a matter of law whether the act complained of constitutes a nuisance per se. The defendant's liability at that point is established. [*Id*.]

As discussed already, a neighboring landowner may bring an equitable action to enjoin a violation of local zoning that is a nuisance per se.

We also find without merit defendants' claim that plaintiffs' action should have been dismissed because plaintiffs failed to exhaust their administrative remedies. Generally, "'where an administrative grievance procedure is provided, exhaustion of that remedy, except where excused, is necessary before review by the courts.'" *In re Harper*, 302 Mich App 349, 358; 839 NW2d 44 (2013) (citation omitted). Application of the doctrine is, however, excused where invoking administrative remedies would be futile. *Nalbandian v Progressive Mich Ins Co*, 267 Mich App 7, 10-11, n 2; 703 NW2d 474 (2005); *West Bloomfield Charter Twp v Karchon*, 209 Mich App 43, 47; 530 NW2d 99 (1995). The only administrative remedy available to plaintiffs

would consist of convincing the zoning administrator to take action to enforce the landscape buffer requirements of the zoning ordinance. The zoning administrator's (Patrick Sloan's) affidavits make clear plaintiffs' efforts to pursue administrative remedies without court intervention were and would remain futile.

Finally, we reject defendants' argument that plaintiffs' claim was not ripe. "'[T]he doctrine of ripeness is intended to avoid premature adjudication or review of administrative action. It rests upon the idea that courts should not decide the impact of regulation until the full extent of the regulation has been finally fixed and the harm caused by it is measurable.'" *Paragon Properties Co v City of Novi*, 452 Mich 568, 579 n 13; 550 NW2d 772 (1996), quoting *Herrington v Sonoma Co*, 834 F2d 1488, 1494 (CA 9, 1987). Section 74-7.304(B) of the ordinance requires that the landscape buffer must consist of "closely spaced evergreens . . . which can be reasonably expected to form a complete visual barrier at least six feet in height within three years of installation." This plain language requires present plantings that can, within three years, "be reasonably expected to form a complete visual barrier at least six feet in height." This is a clear standard that is subject to proof regarding what is "reasonably expected." Here, plaintiffs presented such proof, and their claim was ripe for adjudication. To accept defendants' argument to the contrary would encourage continued extensions of the three-year time limit of § 74-7.304(B) for having a mature landscape screen in place.

We conclude defendants have presented no arguments to support finding that the trial court erred. The circuit court had subject-matter jurisdiction of plaintiffs' claim for equitable relief from the alleged zoning violation, a nuisance per se. Plaintiffs have standing, no non-futile administrative remedy is available, and plaintiffs' claim was ripe for adjudication.

## II. MOTIONS FOR SUMMARY DISPOSITION

### A. STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. This Court reviews de novo trial court's decision regarding the motion. *Karbel v Comerica Bank*, 247 Mich App 90, 95-96; 635 NW2d 69 (2001). The moving party must specifically identify and support with evidence the issues as to which it believes there is no genuine issue of material fact, and that entitle it to judgment as a matter of law. MCR 2.116(G)(4); *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). "If the moving party properly supports its motion, the burden 'then shifts to the opposing party to establish that a genuine issue of disputed fact exists.'" *Id*. at 370, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The nonmoving party must then present competent evidence, the content of which would be admissible at trial, showing that there is a genuine issue of disputed material fact. MCR 2.116(G)(4), (6); *Maiden v Rozwood*, 461 Mich 109, 121, 123 n 5; 597 NW2d 817 (1999); *Barnard Mfg Co*, 285 Mich App at 373. When deciding the motion, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Quinto*, 451 Mich at 362. When the submitted evidence fails to establish a disputed material fact and the moving party is entitled to judgment as a matter of law, the motion should be granted. MCR 2.116(G)(4); *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

## B. DISCUSSION

We conclude that the trial court did not err by granting plaintiffs summary disposition by finding no material disputed fact that defendants' landscape buffer failed to comply with the zoning ordinance (and special use permit) and therefore was an abatable nuisance per se. MCL 125.3407 ("a use of land . . . in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se . . . [t]he court shall order the nuisance abated . . ."); § 74-9.705 ("any use of premises or land which is begun or changes subsequent to the time of passage of this section and in violation of any of the provisions thereof, is hereby declared to be a public nuisance per se, and may be abated by order of any court of competent jurisdiction"); *Indian Village Ass'n*, 52 Mich App at 38 (a private citizen may bring an action to abate a public nuisances that arises from the violation of a zoning ordinance).

The zoning ordinance is clear and unambiguous. Defendants cannot operate their outdoor sales and storage operation of large farm equipment without a special use permit and they cannot obtain a special use permit without complying with the pertinent landscape buffer requirements of the zoning ordinance. § 74-2.202; § 74-2.443 (unrestricted outdoor retail sales). The issuance of a special use permit requires a "determination that a special land use proposal is in compliance with the standards and requirements of this Ordinance and other applicable ordinances and laws . . . ." § 74-9.302(E)(1). The ordinance landscaping requirements are the minimum standards for landscaping and screening. § 74-7.101. The pertinent minimum standards in the ordinance for a landscape screen in a commercial district are "a minimum 15 feet wide" and "a staggered double row of closely spaced evergreens (i.e., no farther than 15 feet apart) which can be reasonably expected to form a complete visual barrier at least six feet in height within three years of installation." § 74-7.304(A), (B). The planning commission has no authority to modify these standards absent "a written request identifying the relevant landscape standard, the proposed landscaping, how the proposed landscaping deviates from the landscaping standard, and why the modification is justified." § 74-7.710.

In the present case, there was no "written request" to modify the ordinance standards meeting the criterion of § 74-7.710, but we will assume that defendants' site plan coupled with the zoning administrator's written and oral submissions to the planning commission satisfied this requirement and that the modified landscape site plan included incorporating existing vegetation for purposes of landscape screening. Still, when existing vegetation is utilized in the modified plan it must "achieve the same effect as the required landscaping." § 74-7.710(C). Thus, the planning commission had the authority and apparently did modify the ordinance landscape buffer requirements but only to the extent that the existing vegetation satisfied the "intent" or satisfied the required buffering effect. Specifically, the planning commission approved the special use in this case contingent on a landscape buffer being "installed and maintained in accordance with the landscape plan presented on the December 22, 2011 site plan, . . . supplemented by spruce or evergreen trees to meet the intent of the Zoning Ordinance buffering requirements." In sum, the minimum standards of the ordinance apply except to the extent those standards are satisfied by the existing vegetation.

It is undisputed that at the time this lawsuit was initiated the landscape buffer at issue did not meet the minimum standard of "closely spaced evergreens" that "form a complete visual barrier at least six feet in height." § 74-7.304(B). The issue is whether within three years of

installation such a visual barrier could reasonably be expected to form. *Id*. Plaintiffs presented two affidavits of a competent, qualified landscape architect, Deborah Kinney, who averred that "because the plantings were in many cases too short and too widely-spaced," the landscape buffer did not comply and could not reasonably be expected to comply within three years with the standard of § 74-7.304(B), and that an additional 30 evergreens, 10 to 12 feet tall, would need to be planted. Kinney's expert opinion is consistent with defendants' December 22, 2011 site plan that provided for planting White pines of that size to supplement the existing vegetation. Defendants' reliance on Sloan's affidavits to create a disputed question of fact whether the landscape buffer complied with the ordinance is misplaced for several reasons.

First, in a February 14, 2013 letter, less than six months before his June 2013 and July 2013 affidavits, Sloan wrote that the landscape buffer did not comply with the ordinance in that he "identified 10 areas along the west side of the southern lot line that had openings that I did not expect to close up within the next 3 years." Sloan recommended planting six-foot tall Norway spruce trees in these gaps, but admitted he had no idea whether these additional plantings "will result in a 6-foot high screen within 3 years." In other words, Sloan acknowledged his ignorance regarding whether defendants' landscape plantings would mature within three years to provide the minimum screening required by § 74-7.304(B). Sloan also sets forth no facts in his affidavit to support his conclusion that defendants' plantings "meets or exceeds the conditions established by Planning Commission in its January 3, 2012, special use permit approval." "Mere conclusory allegations that are devoid of detail are insufficient to demonstrate that there is a genuine issue of material fact for trial." *Bennett v Detroit Police Chief*, 274 Mich App 307, 317; 732 NW2d 164 (2006), citing *Quinto*, 451 Mich at 371-372.

Second, because Sloan had within the recent past expressed his ignorance regarding whether the landscape would sufficiently mature to meet the standards of § 74-7.304(B), he cannot create a question of fact on that issue with conclusory statements of compliance in an affidavit submitted on a motion for summary disposition. A party cannot avoid summary disposition by setting forth conclusory assertions in an affidavit that conflict with the actual historical conduct of the party. *Bergen v Baker*, 264 Mich App 376, 389; 691 NW2d 770 (2004).

Sloan's effort to support his conclusion regarding defendants' compliance because another section of the zoning ordinance only requires that newly planted evergreens be a minimum of six feet tall, see § 74-7.403(C), is also unavailing. As noted already, the planning commission required compliance with defendants' December 22, 2011 site plan that provided for 10-12 foot evergreens. Further, for the reasons discussed, the planning commission could not and did not waive the substance of the screening requirements of § 74-7.304(B). Additionally, plaintiffs presented competent expert evidence that showed six-foot tall evergreens would not satisfy the requirement of forming within three years of installation a complete visual barrier of at least six feet in height. In other words, while one section sets a general minimum height standard, the other more specific section sets performance standards that expert testimony showed required planting taller evergreens. Applying the rules of statutory construction, the general rule of § 74-7.403(C) regarding minimum height of evergreens cannot trump the more specific landscape screening requirements of § 74-7.304(B). See *In re Harper*, 302 Mich App at 358, and *Slater v Ann Arbor Pub Sch Bd of Ed*, 250 Mich App 419, 434-435; 648 NW2d 205 (2002)(opining that "where two statutes or provisions conflict and one is specific to the subject matter while the other is only generally applicable, the specific statute prevails"). Moreover, the

planning commission specifically imposed defendants' December 22, 2011 site plan that required planting 10-12 foot evergreens.

Finally, defendants' claim that Sloan's affidavits positioned this case as a battle of experts at trial is also without merit. The trial court specifically queried defendants' counsel regarding Sloan's qualifications and received no response. Sloan's own affidavits state only that he is a "planner," without further explication, and that he has scant experience as an employee of McKenna serving as the city's zoning administrator. No evidence was presented to the trial court to support concluding that Sloan possessed any expertise at all regarding landscaping or the rate at which recently planted evergreens might mature. Indeed, there was record evidence to suggest Sloan's lack of knowledge in this area. To be considered on a motion for summary disposition, the substance of evidence must be admissible. *Maiden*, 461 Mich at 121, 123 n 5; *Barnard Mfg Co*, 285 Mich App at 373. An expert must also be qualified for his opinion to be considered on a motion for summary disposition. MRE 702; *Amorello v Monsanto Corp*, 186 Mich App 324, 331; 463 NW2d 487 (1990). Sloan's opinion in his affidavits that defendants' landscape buffer complied with the ordinance did not meet the standard of competence required on summary disposition. See MCR 2.116(C)(G)(6)("Affidavits . . . offered in support of or in opposition to a motion based on subrule (C)(1)-(7) or (10) shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion."). An expert's opinion must have a basis in facts. See MRE 703; *Edry v Adelman*, 486 Mich 634, 639-641; 786 NW2d 567 (2010); *Gonzalez v St John Hosp & Med Ctr (On Reconsideration)*, 275 Mich App 290, 305-306; 739 NW2d 392 (2007). When proposed expert testimony is based on speculation, it should be excluded. *Phillips v Deihm*, 213 Mich App 389, 402; 541 NW2d 566 (1995). Here, defendants did not establish Sloan's qualifications as an expert, MRE 702; his opinion was not shown to be based on facts, MRE 703, and his affidavits presented mere conclusory statements insufficient to withstand a supported motion for summary disposition. *Maiden*, 461 Mich at 121, 123 n 5; *Quinto*, 451 Mich at 362, 371-372.

As we have already noted, defendants' characterization of plaintiffs' action as an appeal of an administrative action is inaccurate. Although the trial court's opinion was less than clear when it referred to appeals under MCL 125.3607, the trial court granted relief on the basis that plaintiffs had established, on the basis of undisputed evidence, that defendants' use of their property was in violation of the landscape screening requirements of the zoning ordinance. As a result, we find that the trial court properly granted plaintiffs' motion and denied defendants' motion for summary disposition. MCR 2.116(C)(10), (G)(4); *West*, 469 Mich at 183.

## III. OTHER ISSUES

Defendants also argue that although the circuit court held their landscape screen did not comply with the zoning ordinance and ordered the zoning administrator to enforce the ordinance, its opinion and order was "void for vagueness" because it did not provide adequate notice of what must done to comply with it. They further argue the circuit court's order unlawfully delegates zoning authority to plaintiffs because plaintiffs have the power to seek enforcement of the zoning ordinance by filing motions for contempt. These claims were not raised before or decided by the trial court, so they are not preserved, *Gen Motors Corp v Dep't of Treas*, 290 Mich App 355, 386; 803 NW2d 698 (2010), and present questions of law reviewed de novo on appeal, *Beach v Lima Twp*, 489 Mich 99, 106; 802 NW2d 1 (2011).

Defendants have failed to present any pertinent authority or logical argument in support of their claims that the court's order is too vague and unlawfully delegates zoning authority to plaintiffs. "It is axiomatic that where a party fails to brief the merits of an allegation of error, [or] . . . fails to cite any supporting legal authority for its position, the issue is deemed abandoned." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). As our Supreme Court explained in *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959):

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.

Accordingly, we find these claims are abandoned. *Id*.; *Prince*, 237 Mich App at 197.

We affirm. As the prevailing party, plaintiffs may tax costs pursuant to MCR 7.219.

/s/ Donald S. Owens
/s/ Jane E. Markey
/s/ Deborah A. Servitto