STATE OF MICHIGAN

COURT OF APPEALS

ATTITUDE WELLNESS, LLC, doing business as LUME CANNIBIS CO.,	UNPUBLISHED November 23, 2021
Plaintiff-Appellant,	
v	No. 355767 Cass Circuit Court LC No. 20-000218-CZ
VILLAGE OF EDWARDSBURG, NOBO MICHIGAN, LLC, and ALVAREZ CULTIVATION, LLC,	
Defendants-Appellees.	

Before: RONAYNE KRAUSE, P.J., and CAMERON and RICK, JJ.

PER CURIAM.

At issue in this case is the circuit court's subject-matter jurisdiction to adjudicate facial and as-applied challenges to a municipal ordinance. Plaintiff, Attitude Wellness, LLC, appeals by right from a final order, challenging a prior order granting summary disposition in favor of defendants the Village of Edwardsburg, NOBO Michigan, LLC, and Alvarez Cultivation, LLC, under MCR 2.116(C)(4) (lack of subject-matter jurisdiction). Because the circuit court erred by granting defendants' motions for summary disposition, we reverse the circuit court's order and remand to the circuit court for adjudication of plaintiff's claims.

I. RELEVANT FACTS AND PROCEEDINGS

Relevant to the instant appeal are the requirements of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.*[1] "[T]he MRTMA is a 2018 voter-initiated law that generally decriminalizes the possession and use of marijuana for persons 21 years

[1] Although the statutory provisions at issue refer to "marihuana," this Court uses the more common spelling "marijuana" in its opinions. See *People v Jones*, 301 Mich App 566, 569 n 1, 837 NW2d 7 (2013).

old or older, and provides for the legal production and sale of marijuana." *Brightmoore Gardens, LLC v Marijuana Regulatory Agency*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket Nos. 353698 and 353739); slip op at 2. Under the MRTMA, a municipality may completely prohibit or limit the number of "marihuana establishments"[2] within its boundaries. Municipalities that allow marijuana establishments within their borders may adopt an ordinance requiring such establishments "to obtain a municipal license, but may not impose qualifications for licensure that conflict with this act or rules promulgated by the department [of licensing and regulatory affairs]." MCL 333.27956(3). If a municipality limits the number of licenses available, and the number of applicants for those licenses exceeds the number of licenses, "the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality." MCL 333.27959(4).

In 2020, the Village of Edwardsburg (the "Village") adopted Ordinance 2020-1, which allows individuals to obtain licenses to operate medical marijuana facilities and marijuana establishments under the Michigan Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq*., and the MRTMA, MCL 333.27951 *et seq*., respectively.

The Ordinance 2020-1 authorized two state-licensed marijuana businesses in the Village, and set forth the application requirements. A three-person ad hoc committee composed of the Village President, a planning commission representative, and the Village clerk would evaluate the applications and nominate for approval by the Village Council the applicants recommended to receive a license. The ordinance required the ad hoc committee to consider the following when evaluating the applications:

> 1) Compliance with application requirements;
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> 2) Compliance with the requirements of [the] Ordinance;
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> 3) Capitalization and means to operate the proposed Establishment;
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> 4) Business history and experience;
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> 5) Regulatory compliance/legal history;
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> 6) Strength of business plan;
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> 7) Integrity, moral character, and cooperation level with the Village;
>
> 8) Financial benefit to the Village;

[2] " 'Marihuana establishment' means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the marijuana regulatory agency." MCL 333.27953(h).

9) Availability of open license types;

10) Any other consideration relevant to the public health, safety, or welfare, and

11) Approval for Prequalification with the State of Michigan to operate a Marihuana Establishment or Medical Marihuana Facility as defined in the Acts or other regulated activity authorized by the Rules promulgated by the State. [Village of Edwardsburg Ordinance 2020-1, § 5B(h).]

Plaintiff and defendants NOBO of Michigan, LLC, and Alvarez Cultivation, LLC, along with other entities, applied for one or both of the Village's licenses. In May 2020, the ad hoc committee recommended that the licenses be awarded to NOBO and Alvarez. The Village Council adopted the recommendation. In June 2020, plaintiff filed a two-count complaint, in Count I of which plaintiff raised facial and as-applied challenges to Ordinance 2020-01.[3] Pertinent to the instant appeal, plaintiff alleged that Ordinance 2020-01 violated the MRTMA on its face because it required the Village's ad hoc committee to consider subjective criteria that were wholly irrelevant to whether an applicant was "best suited to operate in compliance with [the MRTMA] within the municipality." MCL 333.27959(4). The gravamen of plaintiff's as-applied challenge was that the Village violated the MRTMA by using the factors identified in Ordinance 2020-01 to select applicants to receive marijuana business licenses. Plaintiff sought a declaratory judgment that the portion of Ordinance 2020-01 related to awarding marijuana business licenses was invalid and that the licenses awarded through the process outlined in the ordinance were void. Plaintiff also asked the circuit court to enjoin the Village from subsequently awarding marijuana establishment licenses under the current provisions of the ordinance. In addition, plaintiff moved for a preliminary injunction to maintain the status quo until the circuit court could decide its claims.

The circuit court never ruled on plaintiff's preliminary injunction or adjudicated plaintiff's claims. Plaintiff amended its complaint in July 2020, for reasons not relevant to this appeal. The court treated the August 17, 2020 hearing on plaintiff's injunction motion as a scheduling conference. At the end of the hearing, the trial court asked whether all necessary parties were part of the litigation and whether it was exercising original or appellate jurisdiction. After the hearing, the court entered a stipulated order that allowed plaintiff to file a second amended complaint to add Alvarez and NOBO as defendants.

At an October 2, 2020 hearing on plaintiff's preliminary injunction motion, NOBO's attorney questioned whether the circuit court had subject-matter jurisdiction to hear plaintiff's complaint as an original action. NOBO asserted that the Village's licensing decision was an administrative decision, properly challenged in an action for appellate review, not in an original action like the present one. Plaintiff argued that it was not challenging the Village's decision but was asserting "a facial and as-applied challenge to the ordinance itself, and whether it is legal under state law for a municipality to award licenses for reasons that have nothing to do with assessing the applicant's relative suitability to operate in compliance with MRTMA." Alvarez

[3] Plaintiff later stipulated to dismissal with prejudice of Count II.

implied that the case should have been brought as an appeal. The purpose of an appeal in an administrative matter is to determine whether "the lower body acted outside the scope of the law," which, according to Alvarez, was exactly what plaintiff was asking the circuit court to do. Rather than proceed with the scheduled evidentiary hearing, the circuit court rescheduled the hearing for October 28, 2020, to give the parties time to brief the question of the circuit court's subject-matter jurisdiction.

On October 16, 2020, all three defendants moved for summary disposition under MCR 2.116(C)(4) for lack of subject-matter jurisdiction. The gravamen of defendants' collective argument in the briefing that followed was that plaintiff's claims should have been brought as an appeal of the Village's licensing decision, which was quasi-judicial in nature, and that the circuit court's jurisdiction was appellate, in accordance with Const 1963, art 6, § 28.[4] Defendants argued that because plaintiff failed to appeal within 21 days of the Village's decision as required by MCR 7.104(A)(1), the circuit court should dismiss plaintiff's complaint with prejudice. In addition, NOBO contended that plaintiff had failed to raise a facial challenge to Ordinance 2020-01 because plaintiff's alleged facial challenge was in substance a restated challenge to the Village's decision. Plaintiff argued that circuit courts are courts of general jurisdiction with presumptive jurisdiction unless Michigan's Constitution or a statute expressly prohibits or gives jurisdiction to another court, and nothing divested the circuit court of jurisdiction in this matter. Plaintiff also asserted that this was not an administrative appeal, the Village's decision was not quasi-judicial, and Article 6, § 28, was not relevant. Plaintiff concluded that, because defendants had cited no authority that created an exception to the circuit court's presumptive general jurisdiction in this matter, the circuit court had subject-matter jurisdiction.

The circuit court held a hearing on all pending motions on November 20, 2020, at which the parties argued consistently with their briefs. Ruling from the bench, the circuit court agreed with NOBO that the essence of plaintiff's second amended complaint was a challenge to the Village's application of the ordinance. The court concluded that the Village's decision was final, that it was acting in a quasi-judicial fashion when it determined who was going to get a marijuana business license, and that the decision affected private rights or licenses, implying that the court's jurisdiction was appellate in accordance with Article 6, § 28. The court issued an order dismissing Count I of plaintiff's complaint under MCR 2.116(C)(4). The court granted plaintiff's subsequent motion to dismiss Count II of its complaint with prejudice, and this appeal followed.

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[4] Article 6, § 28 gives circuit courts appellate jurisdiction over administrative agency decisions that are final, quasi-judicial, and affect property rights or licenses, and also sets forth a minimum standard of review as follows:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

II. DISCUSSION

Plaintiff argues that the circuit court erred by granting summary disposition of Count I of plaintiff's complaint in favor of defendants under MCR 2.116(C)(4). We agree. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Sun Communities v Leroy Twp*, 241 Mich App 665, 668; 617 NW2d 42 (2000). Whether a court has subject-matter jurisdiction is a question of law that this Court reviews de novo. *In re Wayne Co Treasurer*, 265 Mich App 285, 290; 698 NW2d 879 (2005).

Two related errors led to the circuit court's erroneous result. First, the circuit court determined that the Village's licensing decision was a quasi-judicial act. The circuit court did not analyze the process by which the Village made its decision, but assumed that the Village's decision was an administrative action and that it was quasi-judicial. It was not.

"Quasi-judicial proceedings include procedural characteristics common to courts, such as a right to a hearing, a right to be represented by counsel, the right to submit exhibits, and the authority to subpoena witnesses and require parties to produce documents." *Natural Resources Defense Council v Dep't of Environmental Quality*, 300 Mich App 79, 86; 832 NW2d 288 (2013). "To determine whether an administrative agency's determination is adjudicatory in nature, courts compare the agency's procedures to court procedures to determine whether they are similar." *Id*.

The procedure the Village used to make its licensing decision did not require or employ any of the hallmarks of the court procedures identified in *Natural Resources Defense Council*. Applicants used a form provided by the Village to apply for one or both of the available licenses. In addition, applicants were required to submit the information listed in § 5A of Ordinance 2020-01. They, along with anyone else, could participate in the public comments period at the July 17 special meeting and at the July 20 Village Council meeting. Applicants were not required to do so, either personally or through their representatives, and most did not. The Village's ad hoc committee investigated the applications and the companies, took public comments, scored the applications using the criteria listed in the ordinance, and made its recommendation. The Village Council also provided a period of public comment, asked questions of the ad hoc committee about its decisional process, and then adopted the committee's recommendation by roll call vote. The Village's decisional process did not involve any procedures approaching "a right to a hearing, a right to be represented by counsel, the right to submit exhibits, and the authority to subpoena witnesses and require parties to produce documents." *Id*. Accordingly, the process was not quasi-judicial, and there was no need to resort to Const 1963, art 6, § 28.

"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 or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605. Circuit courts "have subject-matter jurisdiction to issue declaratory rulings, injunctions, or writs of mandamus." *Citizens for Common Sense in Govt v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000), citing Const 1963, art 6, § 13. Subject-matter jurisdiction is the right to "exercise judicial power over a class of cases, not the particular case." *Workers' Compensation Agency Dir v MacDonald's Indus Prod, Inc*, 305 Mich App 460, 477-478; 853 NW2d 467 (2014) (cleaned up).

Plaintiff filed an original complaint asserting facial and as-applied challenges to Ordinance 2020-01. Plaintiff sought declaratory and injunctive relief. There are no constitutional or statutory provisions denying circuit courts' jurisdiction over the class of cases that challenges the validity of a local ordinance, and circuit courts have frequently adjudicated cases involving facial challenges and as-applied challenges to local ordinances. See, e.g., *DeRuiter v Byron Twp*, 505 Mich 130, 140; 949 NW2d 91 (2020); *Ter Beek v City of Wyoming*, 495 Mich 1, 14, 19-20; 846 NW2d 531 (2014); *Shelby Charter Twp v Papesh*, 267 Mich App 92, 105-106; 704 NW2d 92 (2005). Plaintiffs in each of these cases alleged that a local ordinance was preempted by a state law, and the circuit courts had original jurisdiction and subject-matter jurisdiction to adjudicate the claims. Similarly, the circuit court in the present case had original, subject-matter jurisdiction over plaintiff's complaint.

The circuit court's analysis that this case was analogous to a zoning case and that it should be viewed through the lens of the procedures established to deal with zoning matters was flawed. At the November 20 hearing, the circuit court opined that there were similarities between the present case and zoning cases because zoning cases "are illustrative of how regulation has to be done at [the] local level." The court noted that many of the cases it was going to rely on in its ruling were zoning cases because zoning was the "biggest area of regulation." In addition, the circuit court identified *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195; 550 NW2d 867 (1996), as one of the cases important to its decision. *Carleton* was a zoning case in which this Court held that when "a township zoning ordinance does not provide for review of a request for a special land-use permit by a zoning board of appeals, the township board's decision is final and subject to appellate review by the circuit court pursuant to Const 1963, Art 6, § 28." *Id*. at 200. When referring to *Carleton*, the court noted that it was a zoning case, but opined, "I think it's still something that we'll use to rely on because zoning cases are where all the law is at when it comes to these type[s] of cases." Presumably, *Carleton* was instrumental in the court's conclusion that it did not have original jurisdiction over this matter.

The Village's decision is not analogous to decisions in zoning matters. Statutes that have the same general purpose or affect similar policies may be considered when there is no guiding precedent on a statutory issue. See *Sills v Oakland Gen Hosp*, 220 Mich App 303, 309-310; 559 NW2d 348 (1996). Zoning statutes and the MRTMA do not have the same general purpose or affect similar policies. Zoning involves a local government's exercise of statutory authority to regulate land use by geographic area. This case is about a municipality exercising statutorily granted authority to draft, adopt, and enforce ordinances in compliance with the MRTMA. It was erroneous for the circuit court to apply zoning case procedures to its analysis in the present case.

We conclude that the circuit court erred by dismissing Count I of plaintiff's complaint for lack of subject-matter jurisdiction. Zoning cases do not provide the framework for analyzing plaintiff's claims, and the Village's licensing decision was not a quasi-judicial action. The court has subject-matter jurisdiction over plaintiff's facial and as-applied challenges to Ordinance 2020-01. Accordingly, we reverse the circuit court's December 2, 2020 order granting defendants' motions for summary disposition under MCR 2.116(C)(4), and remand to the circuit court for adjudication of the claims in plaintiff's second amended complaint.

Reversed and remanded. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Thomas C. Cameron
/s/ Michelle M. Rick