STATE OF MICHIGAN

COURT OF APPEALS

BUNKER HILL TOWNSHIP, Plaintiff-Appellee,	UNPUBLISHED November 9, 2004
v	No. 249353 Ingham Circuit Court
ARTHUR ALLEN and DONALD BAILEY, Defendants-Appellants.	LC No. 00-092513-CZ

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Defendants Arthur Allen and Donald Bailey appeal as of right a permanent injunction ordering the removal of a mobile home from a lot located in plaintiff Bunker Hill Township. We affirm.

I. Factual and Procedural History

Mr. Bailey and his wife own a 1984 mobile home that was manufactured in compliance with United States Department of Housing and Urban Development ("HUD") standards in effect in 1984. However, the mobile home does not comply with amendments made to HUD construction and safety standards for mobile homes in 1994. In 1999, Mr. Bailey moved the home from one lot to another owned by Mr. Allen within the township. This move violated plaintiff's zoning ordinance which requires that all mobile homes that are moved within the township must comply with current HUD standards.[1] Because defendants failed to have the

[1] Plaintiff's zoning ordinance provides in pertinent part:

> All single-family dwelling units, including mobile and modular homes, to be constructed or located in Bunker Hill Township shall conform to all standards listed below. These standards shall apply to all one-family living units built or brought into the Township, those whose location is changed within the Township or on a lot, and those dwellings, moblie [sic] homes or modular homes which replace an existing mobile home, modular home or dwelling. . . .

(continued…)

mobile home inspected and certified as meeting current HUD standards, they could not obtain building and occupancy permits as required by plaintiff's ordinance. Plaintiff sought an injunction requiring defendants to remove the mobile home from the lot. The trial court granted a permanent injunction on January 10, 2003, and held that the ordinance was not preempted by federal or state law, nor did it violate defendants' right to due process.[2]

II. Preemption

Defendants contend that plaintiff's ordinance is preempted by the National Manufactured Housing Construction and Safety Standards Act (the federal act),[3] and by the Michigan Mobile Home Commission Act (the "MHCA").[4] We disagree. The determination of whether a local law is preempted by federal or state law is a question of statutory construction which we review de novo.[5]

"Congressional intent to preempt state or local law can be explicitly stated in the statute or implied through comprehensive legislation or a conflict between the state and federal law."[6] The preemptive reach of the federal act is express:

> Whenever a Federal manufactured home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which

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> H. All dwelling units shall meet the minimum construction and safety standards of the Michigan Mobile Home Commission, the Michigan State Construction Code, the Department of Housing and Urban Development, or the Farmers Home Administration, *whichever may be applicable*. [Bunker Hill Township Zoning Ordinance of 1981, § 11.13 (emphasis added).]

[2] Defendants sought leave to appeal to this Court following the entrance of a preliminary injunction on March 8, 2002, ordering them to vacate the mobile home. This Court denied defendants' requests for leave to appeal and to stay that injunction. *Bunker Hill Twp v Allen*, unpublished order of the Court of Appeals, entered July 22, 2002 (Docket No. 242192).

[3] 42 USC 5401 *et seq*.

[4] MCL 125.2301 *et seq.*

[5] *Konynenbelt v Flagstar Bank, FSB,* 242 Mich App 21, 27; 617 NW2d 706 (2000).

[6] *Michigan Manufactured Housing Ass'n v Robinson Twp,* 73 F Supp 2d 823 (WD Mich, 1999), citing *Michigan Canners & Freezers Ass'n v Agricultural Mktg & Bargaining Bd*, 467 US 461, 469; 104 S Ct 2518; 81 L Ed 2d 399 (1984).

> is not identical to the Federal manufactured home construction and safety standard.[7]

HUD has further defined the scope of preemption in 24 CFR § 3282.11(d):

> No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act.[8]

Furthermore,

> Federal preemption under this subsection shall be broadly and liberally construed to assure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this title.[9]

If a state or local ordinance is consistent with HUD requirements dealing with construction and safety or regulates on another basis, then that ordinance is not preempted by the federal act.[10] The township's zoning ordinance requires nothing more than compliance with the minimum construction and safety standards of HUD. Therefore, it is not preempted by the federal act.

We also reject defendants' contention that plaintiff's ordinance is preempted by state law. The MHCA provides that a local unit of government shall not establish higher standards for mobile home parks or businesses than those promulgated by the Mobile Home Commission

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[7] 42 USC 5403(d).

[8] 24 CFR § 3282.11(d).

[9] 42 USC § 5403(d).

[10] See *Michigan Manufactured Housing Ass'n, supra* at 826, citing *Georgia Manufactured Housing Ass'n v Spalding Co,* 148 F3d 1304, 1310 (CA 11, 1998), *Texas Manufactured Housing Ass'n v City of Nederland*, 101 F3d 1095, 1100 (CA 5, 1996), and *CMH Mfg, Inc v Catawba Co,* 994 F Supp 697, 708 (WD NC, 1998).

without the Commission's approval.[11] Local ordinances "shall not be designed as exclusionary to mobile homes."[12] Furthermore,

> A local government ordinance shall not contain a . . . construction standard that is incompatible with, or is more stringent than, a standard promulgated by [HUD]. . . . A local government ordinance may include reasonable standards relating to mobile homes located outside of mobile home parks . . . which ensures that mobile homes compare aesthetically to site-built housing located or allowed in the same residential zone.[13]

While the ordinance refers to construction and safety standards for all types of dwellings, including mobile homes, it does not require that mobile homes meet any standard more stringent than the current HUD standard. Therefore, the ordinance does not violate the MHCA.[14]

III. Due Process

Defendants further argue that plaintiff's ordinance is, effectively, a per se exclusion of older mobile homes from the township in violation of the Due Process Clause.[15] We disagree. We review a ruling on a constitutional challenge to a zoning ordinance de novo.[16]

Substantive due process protects a claimant from the arbitrary deprivation of property or liberty interests.[17] For purposes of due process analysis, all local ordinances are initially presumed valid.[18]

> [A] substantive due process claim requires the following proof: (1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) that an ordinance is unreasonable because of the purely

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[11] MCL 125.2307(2). Contrary to defendants' assertion, local ordinances which apply only to mobile homes outside of mobile home parks do not require Commission approval.

[12] MCL 125.2307(3).

[13] MCL 125.2307(6).

[14] Defendants also argue that plaintiff's ordinance is invalid because neither state nor federal law authorizes post-construction inspections of mobile homes. However, defendants only support this assertion by effectively reiterating the preemption claim we have already rejected. Although neither HUD nor the Commission typically performs post-construction inspections on mobile homes, defendants could have had their home inspected by any competent professional to determine how the home could be altered to meet current HUD standards.

[15] Const 1963, art 1 § 17.

[16] *Scots Ventures Inc, v Hayes Twp*, 212 Mich App 530, 532; 537 NW2d 610 (1995).

[17] *Electronic Data Systems Corp v Flint Twp,* 253 Mich App 538, 549; 656 NW2d 215 (2002).

[18] *Hecht v Niles Twp,* 173 Mich App 453, 458; 434 NW2d 156 (1988).

> arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question.[19]

If, however, the ordinance is a total exclusion of a particular land use, either expressly or effectively, the burden shifts to the defendant to show that the ordinance is reasonable.[20]

As plaintiff permits mobile homes on any residential lot, there is no express exclusion of mobile homes as a class. Defendants argue that plaintiff has effectively excluded a certain sub-class of mobile homes—those built before 1994. However, as the Michigan Supreme Court noted in *Robinson Twp v Knoll,*[21]

> [A] municipality need not permit all mobile homes, regardless of size, appearance, quality of manufacture or manner of on-site installation, to be placed in all residential neighborhoods. A mobile home may be excluded if it fails to satisfy reasonable standards designed to assure favorable comparison of mobile homes with site-built housing which would be permitted on the site, and not merely because it is a mobile home.[22]

Furthermore, plaintiff's zoning ordinance has already overcome a due process challenge, albeit for a different requirement in the ordinance. In *Bunker Hill Twp v Goodnoe*,[23] the defendants claimed that plaintiff's ordinance, which required that all homes newly constructed or relocated in the township meet a fourteen-foot minimum width requirement, had no rational relationship to health, safety, or welfare.[24] This Court noted that fourteen-foot-wide mobile homes had become an industry standard and that "[c]onstruction of 12-foot-wide mobile homes is limited."[25] Because the ordinance exempted mobile homes already located in the township and because the industry standard had changed to one more compatible with site-built homes, the

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[19] *Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998).

[20] *Landon Holdings, Inc v Grattan Twp,* 257 Mich App 154, 175; 667 NW2d 93 (2003).

[21] *Robinson Twp v Knoll,* 410 Mich 293; 302 NW2d 146 (1981).

[22] *Id.* at 310. For support, defendants cite the unpublished opinion of *Twp of Pittsfield v Borck*, unpublished opinion per curiam opinion of the Court of Appeals, issued December 19, 1997 (Docket No. 196165). In *Pittsfield,* the ordinance forbid all mobile homes more than ten years old. *Id.* at 2. The panel found that an older mobile home may be as safe as a new one if it complies with *current* standards. *Id.* As plaintiff's ordinance permits any mobile home that meets current HUD standards, and defendants have not in fact improved their mobile home to meet these standards, the ordinance clearly has a rational relationship to safety.

[23] *Bunker Hill Twp v Goodnoe,* 125 Mich App 794; 337 NW2d 27 (1983).

[24] *Id.* at 797.

[25] *Id.*

Court found that the ordinance was rationally related to plaintiff's police power, and therefore, passed constitutional muster.[26]

In the current case, defendants are challenging the ordinance on similar due process grounds. Here, as in *Goodnoe*, construction standards have improved since the time defendants' mobile home was built, but the ordinance exempts mobile homes that are already situated in the township. As this Court has already found that plaintiff's ordinance is rationally related to its police power, and as defendants' mobile home actually does not comply with current safety standards, defendants' due process challenge must fail.

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra

[26] *Id.* at 797-798.