STATE OF MICHIGAN

COURT OF APPEALS

HURON CHARTER TOWNSHIP, Plaintiff-Appellee,	UNPUBLISHED March 2, 2010
v	No. 289734 Wayne Circuit Court
LANNY DESMOND FOX, Defendant-Appellant.	LC No. 07-721662-CE

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting plaintiff summary disposition and injunctive relief. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I

This case concerns defendant's alleged violation of plaintiff's "tree protection" ordinance. The ordinance includes these relevant provisions:

> 145.100 FINDINGS, RATIONALE, PURPOSE
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> 145.102 Purpose.
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> Sec. 1.02.
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> A. To provide for the protection, preservation, replacement, proper maintenance and use of trees and woodlands located on a parcel of land ten acres in size or greater in the township in order to minimize disturbance to them and to prevent damage from erosion and siltation, a loss of wildlife and vegetation, and/or the destruction of the natural habitat. (See also section 4.01.)
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> * * *
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> 145.400 APPLICABILITY

145.401 Site plans, plats, and site condominiums.

> Sec. 4.01. This ordinance shall apply to land regardless of size for which a site plan or land division plan was or is submitted for approval to the planning commission on or after the effective date of this ordinance, or for which a preliminary plat or preliminary site condominium development plan has received tentative approval on or after such date, provided the site plan, land division plan, plat, or condominium plan remain [sic] in effect in good standing under the Huron Township Zoning Ordinance and other applicable ordinances.

145.500 TREE REMOVAL PERMIT REQUIRED

145.501 Requirement established.

> Sec. 5.01. Subject to the exceptions enumerated in Article VI no person shall remove, cause to be removed, transplant or destroy, on any land in the township to which this ordinance applies, any permitted tree having six inches d.b.h. ["diameter at breast height," defined as 4½ feet above grade] or greater, any prohibited tree having nine inches d.b.h. or greater, or conifer greater than 20 feet in height, without first obtaining a tree removal permit.

Article VI of the ordinance identifies seven "activities [that] are permitted unless otherwise prohibited": agriculture, conservation, emergencies, public utilities, dead or damaged trees, outdoor recreation, and this one:

145.606 Residential parcels containing less than 25 acres.

> Sec. 6.06. Tree removal or transplanting occurring during the use of the parcel in support of one residential dwelling and permitted residential uses. All contiguous land owned in common shall be included in the acreage calculations. This provision shall not exempt such parcels from regulation under the terms of this ordinance at the time of application for approval of site plans, plats, and site condominiums as outlined in Article IV.

None of these apply here, and only Section 6.06 mentions the size of the parcel.

Finally, the ordinance provides the following penalties:

145.1300 ENFORCEMENT

145.1301 Violation, misdemeanor.

> Sec. 13.01. Any persons [sic] who violates any provision of this Ordinance shall be guilty of a misdemeanor.

145.1302 Injunction.

> Sec. 13.02. Any activity conducted in violation of this ordinance is declared to be a nuisance per se, and the township may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation.

145.1303 Fee for illegally removed trees.

> Sec. 13.03. In addition to any penalty provided for in the event of a conviction for violation of this ordinance, any person who removes [sic] or causes any tree to be removed except in accordance with this ordinance shall forfeit and pay to the township a civil fee equal to the total value of tree illegally removed or damaged, as computed from the International Society of Arborculture shade tree value formula.
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> A. The fee shall accrue to the township, and, if necessary, the township may file a civil action to recover the fee. The township shall place any sum collected in the township tree fund.

* * *

II

Defendant owns an undeveloped parcel undisputedly larger than ten acres and smaller than 25 acres. In 2007, plaintiff received complaints from nearby residents that defendant was cutting down trees on his property. On March 7, 2007, defendant was ticketed for violating the tree protection ordinance. The parties do not dispute that the misdemeanor charge was dismissed and plaintiff filed this civil suit, seeking damages and an injunction prohibiting further cutting.

The case was evaluated, with the panel unanimously awarding plaintiff $12,500. Plaintiff accepted and defendant rejected the award. Plaintiff then moved for summary disposition, noting that plaintiff twice sent defendant Requests for Admissions, including a request that he admit that he intended to build a subdivision on the land, but defendant did not respond. Under MCR 2.312, that matter is deemed conclusively admitted. Defendant responded and filed a counter-motion, asserting that he only planned to build a single-family home for himself on the land and that under Section 4.01 of the ordinance, he was only required to get permission to cut trees if he was subdividing the land. Defendant submitted no evidence in support of his motion.

The trial court found that defendant was deemed to have admitted, "that it was [his] intent to build a subdivision and/or multiple housings on the parcel of land." Thus, the ordinance applied to his land under Section 4.01 and defendant had violated the ordinance by cutting the trees without a permit. The court also found that the ordinance allowed plaintiff to impose a fine without convicting defendant. Because defendant submitted no contrary evidence, the court awarded plaintiff the value calculated by its expert, $28,047.98, and defendant was permanently enjoined from further development activities or tree cutting without seeking the proper permits. The judgment was later increased by $4,000 because of case evaluation sanctions.

III

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although substantively admissible evidence submitted at the time of the motion must be viewed in the light most favorable to the party opposing the motion, the non-moving party must come forward with at least some evidentiary proof, some statement of specific fact upon which to base his case. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Interpretation of an ordinance is a question of law that we also consider de novo on appeal, *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003), and ordinances are interpreted under the same rules that govern the construction of statutes. *Gora v Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). "When reviewing a grant of equitable relief, an appellate court will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

IV

On appeal, defendant argues that the trial court's interpretation of the ordinance is contrary to the plain language of the ordinance. Section 4.01 applies only to land for which a site plan or land division plan was or is submitted, or to land for which a plan has received tentative approval. The other sections of the ordinance clearly indicate that the tree permit gets submitted along with the site plan. Defendant's property is zoned for single-family residences. Defendant informed plaintiff that he was removing dead trees and clearing an area to build a single-family home, which does not require submitting a site plan under plaintiff's zoning ordinance. This does not give rise to the requirement that he submit a site plan, and single residential dwellings are exempt from permitting requirements under Article VI of the ordinance.

Plaintiff responds that there was no dispute in the trial court that defendant planned to build homes on the property. His project necessitated the submission of a site plan, as well as obtaining a tree removal permit. Defendant reads Section 4.01 in a vacuum. The single section must be looked at in the context of the whole ordinance. Section 1.02 states that the ordinance protects parcels of land ten acres and larger. This is how plaintiff has interpreted and enforced the ordinance since it was enacted. Section 4.01 simply provides an exception to expand the ten-acre rule to include any size parcel when a site or land division plan is submitted. Defendant is asking this Court to rule that, because he failed to apply for the necessary development permits, he is excused from complying with the tree protection ordinance.

Plaintiff further argues that defendant also cannot rely on the single-family home exception of Section 6.06. There is no home on the property; therefore, his tree removal cannot be in support of one residential dwelling.

We find both parties are correct to some extent. Defendant is correct in reading the plain language of Section 4.01 as requiring a tree removal permit only when a site plan is filed. At its core, the ordinance reads; "This ordinance shall apply to land . . . for which a site plan or land division plan was or is submitted." A mere intent or mental plan to develop property does not trigger the requirement of applying for a tree removal permit.

However, plaintiff is also correct in its assertion that the ordinance should be read as a whole. *Gora*, 456 Mich at 711; *Arrowhead Dev Co v Livingston Cty Rd Comm*, 413 Mich 505, 516; 322 NW2d 702 (1982). Nothing in Section 4.01 identifies it as being the only description of parcels to which the permit requirement applies. Reading it that way, as defendant would like, would render nugatory not only the words "ten acres in size or greater" but also several of the exceptions identified in Article VI. No site plan would be on file for land being used for agriculture, conservation, or outdoor recreation, so exceptions would not be needed for those uses. And it is nonsensical to argue that the enactors intended to exempt those lands if they were being subdivided for development, because the developers would then have to submit a plat or plan, triggering the need for a tree removal permit, again rendering the exception unnecessary. The only reasonable reading of the ordinance as a whole is that it applies to all parcels of ten or more acres unless an exception applies, and to all parcels, regardless of size, for which a site plan or plat has been filed. Because there is no dispute that defendant's property is over ten acres, the ordinance applies and he was required to seek a permit before cutting the trees.

We therefore conclude that although the trial court erroneously interpreted the ordinance, it reached the correct outcome nonetheless.

V

Defendant also argues that the plain language of the penalty provision of the ordinance, Section 145.1303, only allows assessment of a civil fine when there has been a conviction. Following a conviction, the ordinance provides that "the township may file a civil action to recover the fee." Because there was no conviction in this case, no civil fine can be assessed.

We disagree. Defendant misreads the plain language of the penalty ordinance at issue. The words, "In addition to any penalty provided for in the event of a conviction for violation of this ordinance . . ." do not impose a condition that limits the penalties. Rather, it expands the penalties. The words mean exactly what they say: a person can be both criminally charged and civilly fined. Defendant's reading rearranges it so that it begins, "In the event of a conviction . . ." and omits the words, "In addition to." Grammatically, the sentence reads the same way regardless of whether the prepositional clause comes at the beginning of the sentence or the end ("Any person . . . shall forfeit and pay to the township a civil fee . . . in addition to any penalty provided for in the event of a conviction . . . "). Thus, plaintiff had authority to impose the fee.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis