

STATE OF MICHIGAN
COURT OF APPEALS

BRADLEY ALAN WOLFBAUER,
Plaintiff-Appellant,

UNPUBLISHED
March 19, 2013

v

CITY OF BERKLEY,

No. 305668
Oakland Circuit Court
LC No. 2010-113264-PZ

Defendant-Appellee.

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Plaintiff brought this action for a declaratory judgment, seeking a declaration that the legally enforceable speed limit on Woodward Avenue in the city of Berkley is 55 miles per hour. The trial court determined that the legally enforceable speed limit is the posted speed limit of 45 miles per hour and granted defendant's motion for summary disposition. Plaintiff appeals as of right. We affirm.

The posted speed limit on Woodward Avenue in the city of Berkley is 45 miles per hour. State officials adopted that speed limit in 1958, pursuant to the procedure set forth in MCL 257.628. Plaintiff was stopped for speeding and other traffic violations in 2009. That stop led to plaintiff's prosecution and convictions for driving while intoxicated, MCL 257.625(1) and (9), and driving with a suspended license, MCL 257.904. Shortly after he was sentenced, plaintiff filed this action seeking a declaration that the posted 45-mile-an-hour speed limit was not legally enforceable because state officials did not follow the procedure for adopting a speed limit different than the maximum speed limit after MCL 257.628 was amended by 2006 PA 85. The trial court granted defendant's motion for summary disposition, finding that "the legally enforceable speed limit is forty-five miles per hour."

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). The trial court's decision to grant or deny declaratory relief is reviewed for an abuse of discretion. *Guardian Environmental Servs, Inc v Bureau of Constr Codes & Fire Safety*, 279 Mich App 1, 6; 755 NW2d 556 (2008). Statutory interpretation is a question of law that is reviewed de novo on appeal. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003).

A court may declare the rights and other legal relations of an interested party in a case involving an "actual controversy." MCL 2.605(A). The existence of an actual controversy is

necessary because a court cannot decide hypothetical issues. *Detroit v Michigan*, 262 Mich App 542, 550; 686 NW2d 514 (2004). “An actual controversy will be found to exist only where a declaratory judgment is necessary to guide a litigant’s future conduct in order to preserve the litigant’s legal rights.” *Flanders Indus, Inc v Michigan*, 203 Mich App 15, 20; 512 NW2d 328 (1993). “If no actual controversy exists, the circuit court lacks subject-matter jurisdiction to enter a declaratory judgment.” *Genesis Ctr, PLC v Comm’r of Fin & Ins Servs*, 246 Mich App 531, 544; 633 NW2d 834 (2001).

We conclude that plaintiff failed to plead the existence of an actual controversy. Plaintiff does not require a declaration to guide his future conduct. Whether or not he believes the posted speed limit was validly established, he is required to abide by it. MCL 257.628(7). Further, the statute does not present an untenable dilemma such as that recognized in *Associated Builders & Contractors v Dep’t of Consumer & Indus Servs Dir*, 472 Mich 117, 127-128; 693 NW2d 374 (2005), overruled in part on other grounds by *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 371 n 18; 792 NW2d 686 (2010). The failure to comply with the speed limit is only a civil infraction, and thus does not subject plaintiff to criminal liability, MCL 257.6a; MCL 257.628(7); MCL 750.5, and plaintiff need not forgo any rights or privileges as an alternative to complying with the speed limit. He can still drive (assuming he complies with other traffic laws); he simply cannot exceed the speed limit, which would be the case whether the speed limit is 45 miles per hour or 55 miles per hour. Thus, defendant was entitled to summary disposition.

Furthermore, even if plaintiff had stated a valid claim for declaratory relief, his claim that the legal speed limit on one segment of Woodward Avenue reverted to 55 miles per hour with the enactment of 2006 PA 85 is without merit. An examination of the history of MCL 257.628 reveals that a maximum speed limit for state trunk line highways was established in 1956 and that speed limit prevailed unless “otherwise fixed pursuant to this act.” MCL 257.628(a), as amended by 1956 PA 93. Although the maximum speed limit has varied throughout the years, it has remained a part of the statute since 1956. Consistent with the statute then in effect, the state highway and state police commissioners undertook an investigation in 1958 and established a speed limit of 45 miles per hour along Woodward Avenue within Berkley city limits. They directed the highway department to erect speed limit signs and a copy of the order was filed with the Oakland County clerk. None of the subsequent statutory amendments, including those under 2006 PA 85, changed the overall substance of the statute, which is that state trunk line highways are subject to a maximum speed limit, which controls unless the relevant authorities set a different speed limit following the requisite investigation, erect signs posting the set speed limit, and file a record in the clerk’s office. As explained in 82 CJS, Statutes, § 511, pp 673-674:

When an amendment leaves certain portions of the original act unchanged, such portions are continued in force Thus, where an amendatory act provides that an existing statute is to be amended to read as recited therein, such portions of the existing law as are retained verbatim or in substance are regarded as a continuation of the existing law and not as a new enactment. [Footnotes omitted.]

Accord 2 Singer & Singer, Sutherland Statutory Construction (7th ed), § 22:33, pp 387-389, which provides:

Provisions of the original act or section which are repeated in the body of an amendment, either in the same or equivalent words, are a continuation of the original law. This rule of interpretation is applicable even though the original act or section is expressly repealed.

Because the substance of § 628 regarding the establishment of a speed limit different than the maximum speed limit has not changed since 1956, there is no basis for concluding that the procedure be undertaken anew with each amendment, including 2006 PA 85, if the previously established speed limit is not changed. Therefore, plaintiff's claim is without merit.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Douglas B. Shapiro