STATE OF MICHIGAN

COURT OF APPEALS

GRANT TOWNSHIP,

Plaintiff-Appellee/Cross Appellant,

v

WALTER J. VANDER WALL, PHYLLIS A. VANDER WALL, WALTER J. VANDER WALL TRUST, PHYLLIS A. VANDER WALL TRUST, LAKE MICHIGAN GROWERS, INC., ROGUE RIVER DEVELOPMENT, and ROGUE RIVER RANCH,

Defendants-Appellants/Cross Appellees.

UNPUBLISHED
June 13, 2006

No. 258102
Newaygo Circuit Court
LC No. 01-018234-AW

Before: Murphy, P.J., and White and Meter, JJ.

PER CURIAM.

In this equitable action for declaratory and injunctive relief under plaintiff's zoning ordinances, defendants appeal as of right from the trial court's judgment in favor of plaintiff, and plaintiff cross-appeals certain rulings of the court. Defendants claim that plaintiff lacked the statutory authority to promulgate the zoning ordinance at issue; that the trial court erroneously deprived them of vested parcel division rights; and that plaintiff waived, and is therefore estopped from enforcing, its permit requirements for defendants' previous parcel divisions. We affirm.

This dispute arises out of a series of land divisions occurring just prior to the effective date of the Land Division Act (LDA), MCL 560.101 *et seq.*, 1996 PA 591, which amended and renamed its predecessor statute, the Subdivision Control Act (SCA), 1967 PA 288. Both statutes purport to govern property divisions and subdivisions so as to provide for the regulated subdivision of land, specifically by imposing various platting and approval requirements for statutorily defined parcels of land. By its terms, the SCA did not apply where a tract of land was

divided into fewer than five parcels within a ten-year period.[1] Under the LDA, parcels "lawfully in existence" on its effective date are deemed "parent parcels," that are themselves permitted a specified number of subdivisions exempt from platting. A statutory window was thereby created wherein property owners could divide their properties under the SCA, wait until the LDA became effective, and divide their properties further, without having to comply with certain requirements of either act.

In March of 1997, prior to the effective date of the LDA, defendants divided their properties without creating more than four parcels. They failed, however, to comply with several of plaintiff's zoning ordinances. Plaintiff sought enforcement of section 3.53 of its zoning ordinance in circuit court. After a partial summary disposition order and bench trial, the court ordered defendants' parcels reconfigured to their status as existed prior to the effective date of the LDA.

I

Defendants first argue that the trial court erred in determining that plaintiff had the authority to promulgate section 3.53 of its zoning ordinance. We disagree. Questions of statutory interpretation are reviewed de novo. *Ayar v Foodland Distributors*, 472 Mich 713, 715-716; 698 NW2d 875 (2005). Provisions of law concerning townships "shall be liberally construed in their favor." Const 1963, art 7, § 34; *Hess v West Bloomfield Twp*, 439 Mich 550, 560; 486 NW2d 628 (1992). A township zoning ordinance is presumed valid; the burden to prove otherwise is on the party challenging it. *Kropf v Sterling Hts*, 391 Mich 139, 162; 215 NW2d 179 (1974).

During the relevant timeframe, section 3.53 of the Grant Township zoning ordinance provided, in pertinent part:

> Section 3.53 – Land Divisions. No property within the Township shall be split, divided or subdivided until and unless a permit has been obtained from the Township Zoning Administrator (or such other Township official as is designated by the Township Board by resolution) authorizing such land division. This section shall apply to all land divisions whether the property involved is an unplatted parcel of land, a platted lot, or site condominium unit. . . . Anyone desiring to split, divide, or subdivide a piece of land, create a site condominium unit or to create an access easement shall fill out and file the form required by the Township

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[1] Under the SCA, "subdivision" or "subdivide" was defined as:

> the partitioning or dividing of a parcel or tract of land . . . where the act of division creates 5 or more parcels of land each of which is 10 acres or less in area; or 5 or more parcels of land each of which is 10 acres or less in area created by successive divisions within a period of 10 years. [MCL 560.102(d) (1996).]

> together with any fee set by the Township Board for such permits. If the proposed land division and resulting lots, parcels, site condominium units and/or access easements meet the requirements of the Grant Township Zoning Ordinance as to area, width, frontage, and other applicable requirements, the land division permit shall be granted. The Township shall have discretion to require that the property owner supply a survey by a registered land surveyor showing all resulting parcels or properties and easements or rights-of-way as proposed by the land division prior to issuing a land division permit. . . .

The SCA was inapplicable to the divisions here because by its terms it did not regulate divisions of land that did not result in five or more splits in ten years. MCL 560.102(d), 560.103(1). Defendants essentially argue that because the SCA did not limit their preexisting common law rights as land owners to subdivide their property (provided the division resulted in fewer than five parcels), plaintiff township had no authority to do so. We disagree.

We find the cases relied on by defendants inapposite. *Conlin v Scio Twp*, 262 Mich App 379; 686 NW2d 16 (2004), does not stand for the proposition that provisions that are permitted under the LDA were not permitted under the SCA, or that additional requirements can only be applied to divisions subject to the platting requirements.

In *Eyde Constr v Charter Twp of Meridian*, 149 Mich App 802, 812; 386 NW2d 687 (1986), this Court held that a township could not condition the approval of a plat that otherwise satisfied the requirements of the SCA upon the dedication or reservation of land for parks or recreation purposes. The Court first noted the provisions of §§ 105 and 106 of the SCA:

> The Subdivision Control Act of 1967 (SCA), MCL 560.101 *et seq.*, . . . provides a comprehensive statutory scheme concerning the regulation of the subdivision of land. Any person dividing a tract of land which results in a subdivision as defined by the SCA must submit a plat to the applicable governing body for approval. Sections 105 and 106 of the SCA set forth the conditions that a governing body, like Meridian Township, may impose for the approval of a subdivision plat. Those sections provide in relevant part:
>
> > "Sec. 105. Approval of preliminary and final plats shall be conditioned upon compliance with:
> >
> > "(a) The provisions of this act.
> >
> > "(b) Any ordinance or published rules of a municipality or county adopted to carry out the provisions of this act.
> >
> > "(c) Any published rules of the county drain commissioner, county road commission, or county plat board adopted to carry out the provisions of this act.
> >
> > * * *
> >
> > "Sec. 106. No approving authority or agency having the power to approve or reject plats shall condition approval upon compliance with, or base a rejection upon, any requirement other than those included in section 105." (Footnote omitted.)

> In this case, since under the SCA the Meridian Township board was the approving authority, it could not, as a matter of law, condition approval of plaintiff's subdivision plat upon any requirement other than one of those encompassed by § 105. [149 Mich App at 807-808. Footnotes omitted.]

The *Eyde* Court then rejected arguments that other sections of the SCA authorized the township's actions. It concluded, based on the consistent interpretation of the SCA's predecessor statute, that the Legislature did not intend that § 188 of the SCA, concerning a municipality's authority to require the installation of improvements in addition to those required by the SCA, authorize municipalities to require the dedication of land for recreation purposes. It further rejected the argument that § 259 of the SCA allowed such a requirement. § 259 provided:

> The standards for approval of plats prescribed in this act are minimum standards and any municipality, by ordinance, may impose stricter requirements and may reject any plat which does not conform to such requirements.

The Court concluded that § 259 "merely authorizes a municipality to impose stricter requirements than those minimal requirements set forth in the various other provisions of the act, but we do not believe it was intended to grant a municipality the authority to mandate conditions of a different kind." *Id.* at 814.

Here, in contrast, the challenged ordinance did not seek to impose a requirement that is of a different kind than those contemplated under the SCA. Rather, the ordinance has the effect of carrying out the provisions of the act, and requiring compliance with zoning requirements. Thus, had the subdivisions at issue here been subject to the SCA, the ordinance would be valid under the SCA.[2]

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[2] In *Oakland Court v York Twp*, 128 Mich App 199; 339 NW2d 873 (1983), this Court observed:

> The plaintiff argues that a subdivision control ordinance cannot prohibit the platting of land solely because of its current zoning classification. The Subdivision Control Act of 1967 provides that "[n]o approving authority or agency having the power to approve or reject plats shall * * * base a rejection upon, any requirement other than those included in section 105". MCL § 560.106; MSA § 26.430(106). Section 105 does not list as a condition for approval a requirement that the land fit within the applicable zoning classification. Despite this omission, we believe proper zoning is an implied precondition to the platting process. In § 182 of the statute, the requirements for approval of a final plat by the municipal governing board are set forth; compliance with zoning laws is not mentioned, yet obviously a residential subdivision cannot be allowed in an area excluding residences. The same omission affects § 186. If we were to accept the plaintiff's argument that the platting process must continue notwithstanding the zoning restriction, the Subdivision Control Act would supersede the zoning law. In effect, a municipality would be powerless to stop an otherwise proper plat in the wrong zoning district because the authority to reject a

(continued…)

The question then is whether the ordinance is invalid because the Legislature intended to preempt the field to the extent that all subdivisions not subject to the SCA must be permitted without restriction by municipalities. We find no basis to conclude that in enacting the SCA, the Legislature intended to abrogate the authority otherwise granted to townships so as to preclude them from regulating the subdivision of parcels not subject to the SCA to the same extent they were permitted to regulate parcels subject to the SCA. Nor do we find the LDA's inclusion of provisions related to the division of land not subject to the platting requirements indicative of the intent of the Legislature in enacting the SCA years before. See *S Abraham & Sons v Dep't of Treasury*, 260 Mich App 1, 23; 677 NW2d 31 (2003) ("While the Legislature generally may be presumed to change the law when it amends a statute, '[t]he rule is not applied in reverse for the purpose of determining the meaning of the statute before amendment. . . '" quoting *Production Credit Ass'n of Lansing v Dep't of Treasury*, 404 Mich 301, 319; 273 NW2d 10 (1978), quoting *Detroit Edison v Janosz*, 350 Mich 606, 613; 87 NW2d 126 (1957).) Additionally, these new provisions specifically addressed to divisions not subject to the platting requirement speak as much to a desire to establish some uniformity in municipal regulation as to a desire to grant powers that were previously nonexistent.

Section 3.53 is a valid exercise of authority under the Township Zoning Act (TZA), MCL 125.271-125.310. The TZA authorizes zoning ordinances governing lot size, area, density restrictions, and the like. *Conlin, supra* at 393-394. Section 3.53 provides that a land division permit must issue "[i]f the proposed land division and resulting lots . . . meet the requirements of the Grant Township Zoning Ordinance as to area, width, frontage, and other applicable requirements." Grant Township Ordinances, § 3.53. Thus, section 3.53 aids in enforcing plaintiff's various substantive ordinances because it prevents subdivisions resulting in parcels that violate substantive zoning provisions. Plaintiff's various substantive zoning ordinances are presumed valid and defendants have failed to prove otherwise. *Kropf*, 391 Mich at 162.

II

Defendants next argue that the trial court's order improperly strips them of vested property division rights under the LDA. The LDA provides that parcels of land "lawfully in existence" on its effective date are deemed "parent parcels" vested with certain rights of division excepted from compliance with its platting requirements. MCL 560.102(d), (i); MCL 560.108. Because the court found their parcels to have been "lawfully in existence" under the LDA, defendants argue that they are entitled to the property divisions thereunder. Defendants' argument fails to appreciate the substance of the court's order, however. Notwithstanding that the effect of the trial court's ruling was to undo the divisions and thereby negate the subdivided parcels' status as parent parcels under the LDA, the court did not reach this result by concluding that the divided parcels were not "lawfully in existence" on the effective date of the LDA. Rather, the court reconfigured the parcels as a remedy for the zoning violations.

(…continued)

> plat on zoning grounds is not expressly contained in the statute. We do not believe the Legislature intended this result. [128 Mich App 200-201. Footnotes omitted.]

Under the TZA certain zoning violations are considered nuisances per se, and circuit courts have equitable jurisdiction in actions to remedy them. MCL 125.294; *Portage Twp v Full Salvation Union*, 318 Mich 693, 703-706; 29 NW2d 297 (1947). This Court has observed:

> The action on the statutory nuisance, or nuisance per se, is a legislatively created action to give teeth to local zoning enactments. Although the statute itself creates a new remedy at law, it declares that violations of an ordinance are a nuisance per se. It is within the power of the legislature to provide equitable remedies for statutory actions; and by the declaration that such a violation is a nuisance per se, equity is given jurisdiction as in the case of any other nuisance. [*Fredal v Forster*, 9 Mich App 215, 229; 156 NW2d 606 (1967).]

Actions in equity vest the circuit court with broad discretion in fashioning an appropriate remedy. *Herpolsheimer v A B Herpolsheimer Realty Co*, 344 Mich 657, 666; 75 NW2d 333 (1956), quoting 3 Pomeroy (5th ed), p 574 ("In conferring these reliefs which are purely equitable, and therefore exclusive, the power of equity knows no limit. The court can always shape its remedy so as to meet the demands of justice in every case, however peculiar."). In circumstances where "[a] transaction ought not to have taken place, [an equity] court proceeds as though it had not taken place, and returns the parties to that situation." *Herpolsheimer*, *supra* at 666, quoting Pomeroy, *supra* at 578.

The effect of the trial court's reconfiguration order was to vacate defendants' purported parcel configuration. *Herpolsheimer*, *supra* at 666. Consequently, although defendants retained their LDA rights, the parcels to which these rights attached were the reconfigured parcels. While defendants are not precluded from enforcing their division rights under the LDA, their division rights must nevertheless attach to existing parcels. MCL 560.102, 560.108. Because these rights therefore only attach to the now existing parcels, those the trial court reconfigured, they apply as if defendants had never initially divided their parcels. We note that defendants have made no argument that even if § 3.53 is valid, the court abused its discretion in fashioning its remedy, and make no argument that seeks to distinguish between parcels that complied with the substantive zoning provisions and those that did not.

III

Finally, defendants claim the trial court erred in rejecting, as a matter of law, their argument that plaintiff's zoning administrator orally approved their divisions under section 3.53. They argue that section 3.53 authorizes oral permits and alternatively that plaintiff is estopped from denying its waiver. We disagree.

As noted, section 3.53 of plaintiff's ordinances requires that a permit be issued, approving of a proposed land division, before the subdivsion take place. When interpreting a statute, the fair and natural import of the terms employed, in view of the subject matter of the law, should govern." *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 457; 674 NW2d 731 (2003). It strains credulity to suggest, in the context of a zoning ordinance regulating land divisions, that oral permit approvals were contemplated by the township. The ordinance plainly speaks of "permit" as a noun, rather than a verb, in requiring that upon meeting requisite specifications "*the* land division *permit* shall be granted." Reference to legal dictionaries

confirms a writing was contemplated, as the former is defined as "[a] certificate evidencing permission; a license," while the latter definition is "[t]o consent to formally; [t]o give opportunity for; [t]o allow or admit of." Black's Law Dictionary (8th ed), p 1176. Further, defendants' proposed construction would violate the whole act rule, as elsewhere in the plaintiff's ordinances the term "zoning permit" is expressly defined as "[a] standard form issued by the Zoning Administrator." Grant Township Ordinances, § 2.77; see *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 425; 565 NW2d 844 (1997), quoting *Plymouth Stamping v Lipshu*, 436 Mich 1, 17; 461 NW2d 859 (1990) ("We cannot interpret [a statutory section] apart from other sections of the statute 'without constant reference to the whole.'"). We therefore decline to adopt defendants' proposed construction of plaintiff's ordinance.

We similarly reject defendants' second argument. It is well-established that, absent exceptional circumstances, municipalities may not be estopped from enforcing their zoning ordinances. *Pittsfield Twp v Malcom*, 375 Mich 135, 146-147; 134 NW2d 166 (1965); *Fass v Highland Park*, 326 Mich 19, 31; 39 NW2d 336 (1949). Viewed in the light most favorable to defendants, *Nastal, supra* at 721, we conclude, as a matter of law, that the circumstances presented here do not rise to the *Pittsfield* level of exceptionality. Defendants' only alleged detrimental reliance was in the purchase of an additional ten feet of frontage in an effort to remain compliant with plaintiff's ordinances. It is undisputed that they have made no substantial improvements to the subject parcels. Defendants therefore have not established that plaintiff should be estopped from enforcing its ordinances.

IV

Plaintiff has filed a cross-appeal alleging various errors. Because our resolution of the foregoing renders the issues moot, we decline to address the merits of plaintiff's cross-appeal. *Commercial Union Ins Co v Liberty Mut Ins Co*, 426 Mich 127, 139; 393 NW2d 161 (1986).

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Patrick M. Meter