STATE OF MICHIGAN

COURT OF APPEALS

TOWNSHIP OF OXFORD,

Plaintiff,

and

GERALD R. BENTLEY, ARLINE BENTLEY, RICHARD J. CALOIA, LISA A. CALOIA, CHARLES W. GARDNER, JUNE V. GARDNER, JULIA HICKMOTT, DENNIS A. JAMEYFIELD, DIANN C. JAMEYFIELD, JESSIE G. REYNOLDS, HARWOOD L. ROWLAND, SANDRA A. ROWLAND, JOHN D. SHAW, ADELE K. SHAW, BRUCE WYNKOOP, SUSAN WYNKOOP, HAROLD ZUSCHLAG and PENNY ZUSCHLAG,

Intervening Plaintiffs-Appellants,

v

PHILIP HANDLEMAN, Successor-in-Interest to PIERCE E. WOODWORTH,

Defendant-Appellee.

UNPUBLISHED
October 19, 1999

No. 206581
Oakland Circuit Court
LC No. 80-209683 CE

Before: Neff, P.J., and Murphy and J. B. Sullivan*, JJ.

PER CURIAM.

Intervening plaintiffs appeal by leave granted from an order striking a 1981 injunctive prohibition against guest flights on defendant Philip Handleman's property in Oxford Township. We affirm.

This case dates back to 1980, when plaintiff Oxford Township ("plaintiff") sought to enjoin former defendant Pierce Woodworth from developing an airport on his property located in Oxford

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Township. Intervening plaintiffs are residents living in the surrounding area who were allowed to join in the action. This matter was originally assigned to Oakland Circuit Court Judge Farrell E. Roberts. Following a bench trial, Judge Roberts ruled that Woodworth had a vested right to operate a private airport on his property, but was permanently enjoined from operating the airport as a public facility. The court expressly limited the use of the airport to Woodworth, his wife, and his children, for personal use only. This Court subsequently affirmed the trial court's decision and issuance of a permanent injunction. *Twp of Oxford v Woodworth*, unpublished opinion per curiam, issued July 21, 1983 (Docket No. 59030).

In 1988, Philip Handleman purchased the Woodworth property. Judge Fred Mester, the successor to Judge Roberts, subsequently held that the 1981 injunction applied to Handleman. In May 1997, Handleman filed a motion to set aside the 1981 injunction based upon changes in state law that vested exclusive control over airport operations in the Michigan Aeronautics Commission ("MAC"), a state agency. After entertaining arguments, Judge Mester agreed that the portion of Judge Roberts' 1981 injunction that limited the use of the private airport to the property owner and his immediate family was invalid and unenforceable and, therefore, entered an order striking the invalid portion of Judge Roberts' order from the 1981 injunction. Intervening plaintiffs moved for rehearing, but their motion was denied. This Court subsequently granted intervening plaintiffs' application for leave to appeal.[1] We now affirm.

Defendant Handleman sought relief from the 1981 injunctive order pursuant to MCR 2.612(C)(1)(e). This Court reviews a trial court's decision to grant relief from a judgment for an abuse of discretion. *Hadfield v Oakland Co Drain Comm'r*, 218 Mich App 351, 354; 554 NW2d 43 (1996). "In civil cases, an abuse of discretion exists when the decision is so violative of fact and logic that it evidences a defiance of judgment and is not the exercise of reason, but rather, of passion or bias. *Id*. at 355.

Intervening plaintiffs moved for reconsideration of the trial court's decision to grant Handleman relief from the injunction and it is that order that has been appealed in this case. A motion for rehearing or reconsideration under MCR 2.119(F) requires the moving party to "demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." This Court reviews a trial court's decision to deny a motion for reconsideration for an abuse of discretion. *In re Berlinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997).

Intervening plaintiffs contend that they had a vested right to the continuation of Judge Roberts' 1981 injunctive order, which prohibited Handleman from allowing guest flights on the subject property. We disagree. In general, there is a strong policy favoring the finality of judgments. However, this case is distinguishable from a typical civil judgment in that the 1981 judgment included the permanent injunctive order that had prospective application. Under MCR 2.612(C)(1)(e), a court may grant a party relief from the effect of an injunctive order if it is no longer equitable for that judgment to apply prospectively. *Sylvania Silica Co v Berlin Twp*, 186 Mich App 73, 76; 463 NW2d 129 (1990). An injunction is always subject to modification or dissolution by a trial court if the facts merit such action. *Opal Lake Ass'n v Michaywe Ltd Partnership*, 47 Mich App 354, 367; 209 NW2d 478 (1973).

Thus, a party that procures a permanent injunction against another party does not have a vested right in the continuation of that injunction if the facts or law no longer support continuation of the injunction. We therefore reject intervening plaintiffs' argument that they had a vested right to the continuation of the 1981 injunction as a matter of procedure.

Turning to the merits of Handleman's request for relief from the 1981 injunctive order, we agree that it was no longer equitable for the court to continue the injunction insofar that it prohibited guest flights on Handleman's property. The MAC was created pursuant to MCL 259.26(1); MSA 10.126(1). In 1996, legislation was adopted that resulted in significant changes to the Aeronautics Code. See 1996 PA 370. Significantly, in § 51(1) of the Aeronautics Code, it was established that the MAC has exclusive jurisdiction over aeronautical activity within the state. MCL 259.51; MSA 10.151, which became effective July 3, 1996, states:

> (1) The commission has general supervision over aeronautics within this state, with exclusive authority to approve the operation of airports, landing fields, and other aeronautical facilities within the state, so as to assure a uniformity in regulations covering aeronautics. The commission shall encourage, foster, and participate with and provide grants to the political subdivisions of this state in the development of aeronautics within this state. The commission shall establish and encourage the establishment of airports, landing fields, and other aeronautical facilities. The commission shall promulgate rules that it considers necessary and advisable for the public safety governing the designing, laying out, location, building, equipping, and operation of airports and landing fields. In order to implement this act, the commission may establish programs of state financial assistance in the form of grants, leases, loans, and purchases, or a combination of grants, leases, loans, and purchases, for assisting political subdivisions or other persons. The commission shall not grant an exclusive right for the use of an aeronautical facility. . . .

Before this 1996 amendment, §51(1) did not contain language stating that the MAC had exclusive authority to approve the operation of airports and landing fields within the state.

This Court has recently held that the Legislature intended for the MAC (along with airport authorities) to have exclusive jurisdiction over aeronautical activities throughout the state to assure uniformity in laws regulating aeronautics for the public good. *Capitol Region Airport Authority v Charter Twp of DeWitt*, 236 Mich App ___; ___ NW2d ___ (Docket No. 201181, issued July 23, 1999), slip op at 7-8. This Court concluded that, because exclusive authority for aeronautical activities was granted to the state agency, that agency was not subject to local land use ordinances or regulations if those ordinances or regulations related to aeronautical activities. *Id*., slip op at 6-8. Therefore, even if a local township had been granted broad powers to regulate local land use under the Township Planning Act, MCL 125.321 *et seq*.; MSA 5.2963(101) *et seq*., the township's authority was subservient to the agency's authority in matters related to the agency's expertise. *Id*. However, the township's authority over local land development could include airport property to the extent that the authority asserted by a township involves only non-aeronautical uses or development of the land. *Id*., slip op at 9.

On the basis of the above authority, intervening plaintiffs' argument that the township zoning laws were effectively repealed as a result of the trial court's interpretation of MCL 259.24a; MSA 10.124a and MCL 259.51(1); MSA 10.151(1) lacks merit. Townships may still determine the locations of airports and landing areas, and control non-aeronautical activities, but may not determine what aeronautical activities take place on the property. The 1996 amendments to the Aeronautics Code simply operated to clarify the law in an area where townships had never previously had express legislative authority to control aeronautical activities. It also follows that there is no violation of the title-object clause of the state constitution, Const 1963, art 4, § 24, given that no zoning laws were effectively repealed by the amendments to the Aeronautics Code.

To the extent that plaintiff township was asserting a right to control the activity on defendant Handleman's property, it was attempting to regulate aeronautical activity. Intervening plaintiffs are similarly seeking to enforce a restriction that limits the type of flights that may be made to and from Handleman's property. Intervening plaintiffs' intent to limit the flight activities exceeds the scope of the township's authority to regulate Handleman's property in light of the MAC's exclusive jurisdiction. After defendant Woodworth was granted the right to maintain a private airport on his property, a right now possessed by Handleman, the local authority's control over this mater with respect to aeronautical activities ended and that authority is now vested exclusively with the MAC.

1996 PA 370 also added §24a to the Aeronautics Code, MCL 259.24a; MSA 10.124a, which, as initially enacted, provided:

> "Private landing area" means any location, either on land or water, that is used for the take-off or landing of aircraft, and is to be used by the owner or persons authorized by the owner. Commercial operations shall not be conducted on private landing areas.

This section was recently amended by 1998 PA 268, effective July 17, 1998, and now provides:

> "Private landing area" means any location, either on land or water, that is used for the takeoff or landing of aircraft, and is to be used by the owner or persons authorized by the owner. *Notwithstanding any existing limitation or regulation to the contrary, the owner and any person authorized by the owner shall have the right to use such private landing area*. Commercial operations shall not be conducted on private landing areas. [Emphasis added.]

This more recent change reflects that the owner of a private landing field has the right to authorize others to use the landing field, notwithstanding any limitation or regulation to the contrary. Thus, the Legislature has made it clear that the owner of a private landing field has the right to allow guests to use the landing field. Although the latest version of §24a had not yet been adopted when Judge Mester issued his decision, it provides further support for that decision.

Reading §§ 24a and 51(1) together, we are satisfied that Judge Mester properly granted defendant Handleman's request for relief from the 1981 injunctive order, because it was no longer equitable to continue the injunction in light of the statutory changes.

Intervening plaintiffs further argue that the effect of Judge Mester's ruling and the legislative changes is to effectuate a taking of their property without just compensation. However, intervening plaintiffs do not explain what property of theirs has been taken. To the extent they claim a vested property right in the injunction, that argument is meritless for the reasons previously discussed.

Intervening plaintiffs next argue that the newly adopted amendments to the Aeronautics Code violate their rights to due process. Legislation comports with due process where the legislation bears a reasonable relationship to a permissible legislative objective. *Fort Gratiot Charter Twp v Kettlewell*, 150 Mich App 648, 653; 389 NW2d 468 (1986). The changes made to the Aeronautics Code were intended to clarify the MAC's authority over aeronautical matters, as well as promote uniformity and safety in air travel. Because the amendments had the effect of clarifying the MAC's jurisdiction and matters within its exclusive control, these changes are reasonably related to a permissible legislative objective. Thus, intervening plaintiffs have not shown that the statutory amendments violate their due process protections, even if the changes adversely affect their rights.

Intervening plaintiffs also argue that the legislative changes to the Aeronautics Code had the effect of violating the separation of powers clause of the state constitution, Const 1963, art 3, § 2. Plaintiffs argue that the Legislature overstepped its bounds and invaded the judicial branch's authority because the effect of the statutory amendments was to invalidate Judge Roberts' 1981 injunctive order. Under the separation of powers doctrine, the Legislature may not reverse a judicial decision or set aside a final judgment through a legislative enactment. *Wylie v Grand Rapids City Comm*, 293 Mich 571, 582-583; 292 NW 668 (1940).

Intervening plaintiffs' argument is flawed. Judge Roberts' made his ruling in the absence of any controlling state law on point. Injunctive relief is an extraordinary remedy that should only issue when justice requires it and there is no adequate remedy at law. *Kernan v Homestead Development Co*, 232 Mich App 503, 509; 591 NW2d 369 (1998). Here, Judge Roberts' ruling was one in equity only because there was no controlling legal authority at the time.

It is the Legislature's function to make laws and the judicial branch is vested with the authority to interpret and apply laws, not make them. *Randall v Meridian Twp Bd*, 342 Mich 605, 608; 70 NW2d 728 (1955). It was certainly within the Legislature's authority to enact a law clarifying the jurisdiction of the MAC and defining private landing rights. It is not inappropriate for the Legislature to adopt new legislation in response to court rulings without violating the separation of powers doctrine if those statutes apply prospectively to future actions. The Legislature is only precluded from adopting retroactive legislation that either reopens or sets aside a final judgment of a court already entered. See *Quinton v General Motors Corp*, 453 Mich 63, 82-84; 551 NW2d 677 (1996) (Opinion of Levin, J.). The effect of the changes made by the Legislature was not to invalidate the trial court's equity powers, even though the proposed changes had an effect on the subject matter of the 1981 injunctive

order. We conclude that it was not a violation of the separation of powers clause for Judge Mester to modify the 1981 injunction in light of the recent legislative changes.

Finally, we find no merit to intervening plaintiffs' claim that res judicata applies. Res judicata does not apply if the relevant facts change or new facts develop. *Labor Council, Michigan Fraternal Order Police v Detroit*, 207 Mich App 606, 608; 525 NW2d 509 (1994). Since 1981, the basis for the injunctive order has changed as a result of the statutory amendments made by the Legislature.

Intervening plaintiffs also argue that defendant Handleman's right to land planes on his property should be abolished altogether because the effect of Judge Mester's decision was to expand the rights originally granted by Judge Roberts in 1981. We find no merit to this argument. Defendant Handleman's right to operate a private landing strip was established by the 1981 judgment and this Court affirmed that decision. This Court is bound to follow its prior decision on that issue as the law of the case. *Freeman v DEC Int'l, Inc*, 212 Mich App 34, 37-38; 536 NW2d 815 (1995). However, due to an intervening change in the law that applies to Judge Roberts' injunctive order, the law of the case doctrine does not apply to the portion of the court's order prohibiting guest flights and that portion may therefore be set aside. Moreover, because Judge Roberts' original intent was to allow defendant Woodworth to operate a private landing field, as opposed to a public airport, we do not believe the effect of Judge Mester's ruling was to improperly expand defendant Handleman's rights.

Intervening plaintiffs also adopt and incorporate by reference the issues raised by Oxford Township in Docket No. 205688. However, because Oxford Township's appeal has since been disconsolidated and dismissed by stipulation of the parties, this issue is no longer properly before this Court.

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Joseph B. Sullivan

[1] The Experimental Aircraft Association has been granted the right to participate in this case as amicus curiae.