

STATE OF MICHIGAN
COURT OF APPEALS

NORTHERN PROCESSING, L.L.C.,

Plaintiff-Appellant,

v

COUNTY OF OTSEGO, OTSEGO COUNTY
ZONING ADMINISTRATOR, and OTSEGO
COUNTY PLANNING COMMISSION,

Defendants-Appellees.

UNPUBLISHED

August 11, 2000

No. 218798

Otsego Circuit Court

LC No. 97-007311-CH

Before: Murphy, P.J., and Kelly and Talbot, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition under MCR 2.116(C)(7) based on governmental immunity. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action for declaratory and injunctive relief and money damages based on the denial of a permit to mine gravel. Plaintiff alleged that the zoning administrator improperly refused to apply a formal policy adopted by the county board of commissioners as to minor permits for small parcels. Defendants moved for summary disposition, asserting that the claim was based on actions of the zoning administrator who is entitled to absolute governmental immunity under MCL 691.1407(5); MSA 3.996(107)(5). The trial court granted summary disposition on this ground.

At the time this case was filed, MCL 691.1407(5); MSA 3.996(107)(5) provided:

Judges, legislators, and the elective or highest appointive executive officials of all levels of government are immune from tort liability for injuries to persons or damages to property whenever they are acting within the scope of their judicial, legislative, or executive authority.

To determine whether the zoning administrator is entitled to absolute immunity, a court must establish whether the zoning department is a level of government. *Nalepa v Plymouth-Canton Comm School Dist*, 207 Mich App 580, 587; 525 NW2d 897 (1994). The court should look to whether the entity shares the attributes of other political subdivisions, such as a defined geographical area, power to tax, power of eminent domain, and power to make decisions with wide effect on the community. *Id.* Unlike a county, township, city, or school district, the county zoning department lacks these attributes. While the zoning administrator is the highest official in the zoning department, there is no showing that he is a top appointed official at a level of government. No evidence establishes that the zoning administrator is the equivalent of other highest appointive or elective officials at other levels of government.

Defendants' remaining issues were not decided by the trial court, and the factual basis for these claims was not developed. The parties may address these issues after remand.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Michael J. Talbot