STATE OF MICHIGAN

COURT OF APPEALS

CITY OF SAGINAW,

Plaintiff-Appellant,

v

BRADLEY HURRY,

Defendant-Appellee.

UNPUBLISHED
August 11, 2000

No. 218885
Saginaw Circuit Court
LC No. 95-008540-CE

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

PER CURIAM.

Plaintiff appeals as of right from the trial court's order on remand enjoining it from enforcing certain municipal land ordinances to prohibit defendant from parking vehicles on certain portions of his property. We affirm.

Defendant resides in a single-family home on a corner lot in an area zoned R-1, single family residential. Although defendant has only a one-car garage, he has a two-car driveway. One-half of the driveway is in front of the garage, while the other half extends approximately one car width into the adjoining yard area. Defendant uses the entire width of the area to park vehicles. In 1986, plaintiff required a widening of the curb cut and driveway apron on defendant's property, and the paving of the driveway area that extends beyond the width of the garage.

In 1995, plaintiff sought to enjoin defendant from operating a small engine repair business on his property, and from parking vehicles or maintaining a driveway in violation of § 602 of the Saginaw General Code (SGC) and § 601(d) of the Saginaw Zoning Code (SZC). In his answer to plaintiff's complaint, defendant denied that any activity which he undertook on his property violated any ordinance. As an affirmative defense, he asserted that plaintiff was estopped from taking the position that his use of the driveway violated the SGC or the SZC for the reason that plaintiff had ordered that the driveway be paved. At trial, defendant testified that he had ceased operating a business on his property. In addition, he testified that when plaintiff required him to pave the driveway beyond the width of his garage, he was told that by doing so he would have a "nice driveway."

The trial court enjoined defendant from parking "motor vehicles, trailers on the side street or the side yard except in the two-car wide paved area in front of his garage." Plaintiff appealed as of right, and in *Saginaw v Hurry*, memorandum opinion of the Court of Appeals, issued February 12, 1999 (Docket No. 205754), another panel of this Court vacated the injunctive order and remanded for further consideration and an articulation of the trial court's reasoning. On remand, the trial court found that the curb cut and paving ordered by plaintiff in 1986 was for the purpose of parking vehicles in that area. The court concluded that because defendant continued to use his property as he had before the ordered improvements were made, plaintiff was estopped from enforcing the ordinances to prevent defendant from parking vehicles in that area.

This case presents a question of law, which we review de novo on appeal. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

A party who seeks to invoke the doctrine of equitable estoppel must establish that there has been: (1) a false representation or concealment of a material fact; (2) an expectation that the other party would rely on the misconduct; and (3) knowledge of the actual facts on the part of the representing or concealing party. *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997). Application of the doctrine requires a showing of prejudice. *Dep't of Public Health v Rivergate Manor*, 452 Mich 495, 508; 550 NW2d 515 (1996). Absent exceptional circumstances, a zoning authority will not be estopped from enforcing zoning ordinances. *Pittsfield Twp v Malcolm*, 375 Mich 135, 146; 134 NW2d 166 (1965).

Plaintiff argues that the trial court erred by holding that it was estopped from enforcing the SGC and SZC to preclude defendant from parking vehicles on the entire width of the paved driveway. We disagree. The evidence showed that defendant parked vehicles in the disputed area prior to the time in 1986 when plaintiff informed him that the curb cut had to be widened and the entire area paved with concrete. By stating to defendant that the improved area would constitute a driveway, plaintiff falsely represented to defendant, by implication at least, that it was permissible to park vehicles in that entire area. No evidence showed that defendant was told that he could not continue to park vehicles in the same manner in which he had prior to the making of the improvements; therefore, the evidence supports a conclusion that plaintiff expected defendant to rely on its false representation. Plaintiff does not and could not assert that it was unaware of the contents of the SGC and the SZC. We conclude that the required showing of prejudice and exceptional circumstances was made to estop plaintiff from enforcing the provisions of the SGC and the SZC to preclude defendant from using his property in the manner in which he had for more than a decade. *Cincinnati Ins Co*, *supra*; *Rivergate Manor*, *supra*; *Malcolm*, *supra*.

We decline to consider plaintiff's argument that the trial court's decision effectively creates a zoning variance for defendant. Plaintiff did not raise this argument before the trial court on remand. Our review is limited to issues actually decided by the trial court. *Michigan Mutual Ins Co v American Community Mut Ins Co*, 165 Mich App 269, 277; 418 NW2d 455 (1987).

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Michael J. Talbot