

STATE OF MICHIGAN
COURT OF APPEALS

LAURENCE WOLF CAPITAL MANAGEMENT
TRUST,

UNPUBLISHED
February 23, 2001

Plaintiff-Appellant,

v

CITY OF FERNDALE and GATEWAY
OUTDOOR ADVERTISING LIMITED
PARTNERSHIP,

No. 220308
Oakland Circuit Court
LC No. 98-007663-CZ

Defendants-Appellees.

Before: Meter, P.J., and Neff and O'Connell, JJ.

MEMORANDUM.

Plaintiff appeals as of right the orders granting defendants' motions for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This action concerns a bus shelter constructed by defendant Gateway under contract with defendant City of Ferndale. The shelter is located near the intersection of Nine Mile Road and Woodward Avenue, in front of an entrance to a commercial building owned by plaintiff. Plaintiff brought this action alleging that Ferndale acted capriciously in issuing the building permit for the shelter, and that Gateway created a nuisance.

Courts have authority to enjoin the acts of a city when the city as a corporation is acting unlawfully. Interference of a court in municipal affairs is warranted if it is shown that there was a malicious intent, capricious action, or the actions did not arise from an exercise of judgment and discretion. *Kent Co Theater Corp v Grand Rapids*, 14 Mich App 362, 365; 165 NW2d 421 (1968).

The complaint alleges that the city failed to consider the impact of the shelter on plaintiff's building and failed to consider alternative locations due to animosity toward plaintiff's principal. These allegations are insufficient to support plaintiff's cause of action. Plaintiff failed to show that defendant city was required to consider other interests or alternatives in issuing a building permit. The construction of bus shelters is authorized by statute, MCL 247.334; MSA

9.391(4), and shelters are deemed for the use and convenience of the public, MCL 247.335; MSA 9.391(5). The trial court properly granted summary disposition to defendant city.

A nuisance must create a legally cognizable injury that significantly interferes with the use and enjoyment of land. *Adkins v Thomas Solvent Co*, 440 Mich 293, 309; 487 NW2d 715 (1992). The interference must be such that it is unreasonable to permit the defendant to cause the harm without paying for it. *Id.* Plaintiff failed to present evidence showing a significant harm that materially interfered with its use and enjoyment of the property. The trial court properly granted summary disposition as to the nuisance claim.

Affirmed.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell