

STATE OF MICHIGAN
COURT OF APPEALS

GARY BENGSTON and ANNIS BENGSTON,

Plaintiffs-Appellants,

UNPUBLISHED
May 18, 2001

v

DELTA COUNTY and DELTA COUNTY
ZONING AND BUILDING DEPARTMENT,

Defendants-Appellees.

No. 224167
Delta Circuit Court
LC No. 98-014502-CE

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the circuit court order granting defendants summary disposition in this zoning dispute. We decide this appeal without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiffs own property located in Wells Township, within Delta County. Plaintiffs asserted that, at some point in time, Wells Township zoned the property for commercial use. However, Delta County currently recognizes the property as zoned for residential use.¹ Plaintiffs applied for a county building permit to expand their gas station and convenience store. The county denied the application, presumably on the grounds that plaintiff was attempting to expand a nonconforming use. Plaintiffs then filed a petition with the county planning commission, requesting that the county “continue” the township’s commercial zoning classification. Plaintiffs declined the county’s invitation to request re-zoning of the property from residential to commercial, based on plaintiffs’ refusal to recognize the legitimacy of county zoning. Plaintiffs subsequently filed an action in the circuit court seeking a writ of mandamus directing the county to “continue” the township’s zoning classification, as applied to plaintiffs’ property. Plaintiffs

¹ Plaintiffs argued before the trial court that the Wells Township zoning remained in effect and that the Delta County zoning was invalid as applied to plaintiffs’ property. However, the trial court did not decide the issue and plaintiffs do not appeal on those grounds. Therefore, we do not decide that issue.

also sought damages for discrimination and unlawful taking. The circuit court granted summary disposition based on plaintiffs' failure to exhaust their administrative remedies.²

Issuance of a writ of mandamus is proper where (1) the plaintiff has a clear legal right to performance of the specific duty sought to be compelled, (2) the defendant has the clear legal duty to perform such act, and (3) the act is ministerial, involving no exercise of discretion or judgment. Mandamus is an extraordinary remedy that may lie to compel the exercise of discretion, but not to compel its exercise in a particular manner. [*Vorva v Plymouth-Canton Community School Dist*, 230 Mich App 651, 655-656; 584 NW2d 743 (1998).]

Further, mandamus is "appropriate only when there is no other remedy, legal or equitable, that might achieve the same result." *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508; 522 NW2d 686 (1994).

The trial court granted defendants' motion for summary disposition based on a finding that plaintiffs had failed to exhaust their administrative remedies. Specifically, the trial court noted that plaintiffs could have applied for rezoning of the parcel from residential to commercial zoning, which would have granted plaintiffs the result they desired. We conclude that the trial court properly granted summary disposition where plaintiffs had an adequate alternative legal remedy, which they failed to pursue.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly

² On appeal, plaintiffs challenge only the trial court's decision that they failed to exhaust their administrative remedies. Plaintiffs do not address the merits of their discrimination or unlawful taking claims. Our review is limited to the issue actually raised on appeal.