STATE OF MICHIGAN

COURT OF APPEALS

MARK CARRICK and SANDY CARRICK,

Plaintiffs/Counter-Defendants-Appellees,

v

EATON COUNTY COMMUNITY DEVELOPMENT and EATON COUNTY CONSTRUCTION CODE DEPARTMENT,

Defendants/Counter-Plaintiffs-Appellants.

UNPUBLISHED
June 5, 2001

No. 220943
Eaton Circuit Court
LC No. 98-001201-CZ

Before: Holbrook, Jr., P.J., and Hood and Griffin, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for plaintiffs. We affirm.

In January 1997, plaintiffs received a building permit from defendant Eaton County Construction Code Department to construct a pole barn on their rural property. The proposed building plan for the barn indicates that the structure was to have three garage doors measuring twelve feet by fourteen feet. Plaintiff Mark Carrick testified that the barn was constructed exactly as designed. Plaintiffs used the barn to store three gravel trucks used in their landscaping business. No gravel, sand, or other landscaping material was stored at the barn.

In February 1998, plaintiffs received a letter from defendant Eaton County Community Development Department, informing them of a complaint alleging they were in violation of the county land development code. Specifically, the letter indicated that plaintiffs' alleged zoning violation was, "operating a trucking terminal from your Limited Agricultural property."

On April 28, 1998, plaintiffs went before the Eaton County Board of Appeals (ECBA) to request a variance. At the conclusion of plaintiffs' presentation, a motion was raised to deny the "variance on the conditions that this Board was not able to rule, as this was a use variance and did not meet their criteria." The motion passed. In a letter dated April 30, 1998, the ECBA further explained its decision and notified plaintiffs of their right to appeal the decision to the circuit court, which the plaintiffs did. The circuit court concluded that plaintiffs were not operating a "trucking terminal," as that term is defined under the zoning code. The circuit court

then ordered that defendants were restrained from enforcement action against plaintiffs for use of the barn to park their gravel trucks.

Defendants first argue that the circuit court erred in concluding that plaintiffs were not operating a "trucking terminal." We disagree. The parties agree that the following definition of "trucking terminal" is applicable to the case at hand: "An area and building where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportations" [sic]. The parties also agree that the following comment is amended to this definition: "Truck terminals are basically trans-shipment facilities and often include storage or parking of trucks awaiting cargo as well as facilities for servicing of trucks. Storage facilities such as warehouses incidental to the principal use may also be part of a truck terminal."

The circuit court concluded that the evidence showed that plaintiffs kept "no supplies, freight, merchandise, wares, or stock of any kind within the pole building or at any location on their property." Defendants do not challenge this finding on appeal. Furthermore, the court also concluded that plaintiffs did not load, unload, or store cargo at the property. This finding also remains unchallenged on appeal. Thus, none of the activities identified by the definition as characteristic of a trucking terminal go on at plaintiffs' barn.

Defendants contend that the court erred, in part, because the barn served as a "staging area." However, defendants do not define "staging area," nor do they explain how the "staging area" concept falls within the framework of the agreed upon definition. "Staging area" is defined as a "place where troops or equipment in transit are assembled and processed, as before a military operation." *The American Heritage Dictionary of the English Language* (3rd ed, 1996), p 1750. There is nothing in the record to suggest that any equipment was assembled or processed in the barn. It was simply a place where plaintiffs parked their trucks.

Defendants also contend that because the trucks are stored in the barn, and because some servicing of them occurs there, the barn is operating as a trucking terminal. We find no merit to this argument, which is based on the following language found in the comment appended to the definition: ". . . often include storage or parking of trucks awaiting cargo as well as facilities for servicing of trucks." The problem with this argument is that it removes the passage from the context in which it was placed. The comment states that trucking terminals are basically transshipment facilities. The storing and servicing of trucks mentioned is noted as being incidental to these transshipment activities. To transship means to "transfer or be transferred from one conveyance to another for reshipment." *The American Heritage Dictionary of the English Language* (3rd ed, 1996), p 1903. There was no evidence presented that any transfer of landscaping material was taking place at the barn. Therefore, any parking or servicing of the trucks was not incidental to any transshipment activities.

We also reject defendants' argument that pursuant to article 4, § 34 of the Michigan Constitution of 1963, the circuit court was bound to apply a liberal interpretation of the term "trucking terminal." Defendants' argument is predicated on a fundamental misconception of this constitutional provision, which states: "The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and

not prohibited by this constitution." Const 1963, art 7, § 34. The constitutional directive here is to liberally construe the statutory enabling legislation when determining if an exercise of local authority is within the power granted. *Delta Charter Twp v Dinolfo*, 419 Mich 253, 260, n 2; 351 NW2d 831 (1984)("Once the power has been granted to a political subdivision, it should not be artificially limited."). In other words, rather than directing that the language of an ordinance be liberally construed, article 7, § 34 provides that when considering the relevant enabling legislation or constitutional provision, any power conferred upon a county be liberally construed in the county's favor. See *Eyde Construction Co v Meridian Twp*, 149 Mich App 802, 807; 386 NW2d 687 (1986).

Finally, defendants assert that the trial court abused its discretion in granting declaratory relief, arguing that the trial court was required to remand the case to the ECBA for further proceedings. We disagree. A circuit court's decision to grant or deny declaratory relief under MCR 2.605[1] is reviewed for abuse of discretion. *Allstate Ins Co v Hayes*, 442 Mich 56, 74; 499 NW2d 743 (1993).

In this case the circuit court granted declaratory relief in plaintiffs' favor after concluding that plaintiffs' use of their property did not meet the ordinance's plain definition of the term "trucking terminal." We conclude, based on MCR 2.605 and the foregoing analysis, that the trial court acted within its authority.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Harold Hood
/s/ Richard Allen Griffin

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[1] MCR 2.605 provides in relevant part:

> (A) Power to Enter Declaratory Judgment.
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> (1) In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.