

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GLENN BAUER and JULIE N. BAUER,

Plaintiffs-Appellants/Cross-  
Appellees,

v

CITY OF ORCHARD LAKE VILLAGE and  
CITY BUILDING OFFICIAL,

Defendants-Appellees,

and

RAY WAECHILI and EILEEN WAECHILI,

Defendants-Appellees/Cross-  
Appellants.

UNPUBLISHED  
December 7, 2001

No. 218938  
Oakland Circuit Court  
LC No. 98-010123-CZ

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Before: Zahra, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court order granting summary disposition to defendants following the trial court's denial of plaintiffs' request for a preliminary injunction. Defendants have filed a cross-appeal. We affirm.

First, we are not persuaded by plaintiffs' argument that the trial court erred in determining that defendants' zoning variance was valid for six months from the date the zoning board's minutes were certified, rather than six months from the date of the meeting where the board granted the variance. The zoning ordinance at issue states:

Section 16.16 PERIOD OF VALIDITY: No order of the Zoning Board of Appeals permitting the erection or alteration of a building, open air land use or parking lot shall be valid for a period longer than six (6) months unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for the erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with such permit.

The zoning board granted defendants' variance at a meeting on April 20, 1998. The minutes of that meeting were approved on May 18, 1998. Defendants were issued their building permit on October 23, 1998. According to plaintiffs, the permit was improperly issued three days after the expiration of defendants' variance.

In *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400; 534 NW2d 143 (1995), this Court determined that the certification of a zoning board's minutes served as the date of entry of the board's order or judgment for purposes of filing an appeal. *Id.* at 405. We consider *Davenport* instructive to the present case. Using the date of certification of the board's minutes as the effective date of defendants' variance provides definiteness and is consistent with case law requiring a court order or judgment to be placed in written form to be effective. See *Id.*, citing *Stackhouse v Stackhouse*, 193 Mich App 437, 439-440; 484 NW2d 723 (1992); see also *Lorland Civic Ass'n v DiMatteo*, 10 Mich App 129, 135-136; 157 NW2d 1 (1968) (characterizing a zoning board as "a quasi-judicial body.") Defendants obtained the building permit within six months of the May 18, 1998 certification of the zoning board's minutes. Therefore, the permit was issued prior to the expiration of defendants' variance, and the trial court properly granted summary disposition for defendants.

In light of our determination that summary disposition was properly granted, we need not address plaintiffs' claim that the trial court erred in denying their request for a preliminary injunction. In any case, the trial court balanced the appropriate factors in making its determination and did not abuse its discretion. *MSEA v Dep't of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1984).

Finally, defendants argue on cross-appeal that the trial court erred in refusing to award sanctions for proceedings devoid of legal merit following the court's denial of the preliminary injunction. The trial court's decision whether to award sanctions for a frivolous action is reviewed for clear error. *Energy Reserves v Consumers Power Co*, 221 Mich App 210, 221; 561 NW2d 854 (1997); *Davenport, supra* at 408. Although sanctions can be awarded when a party pleads a frivolous defense, MCR 2.114(F), it is evident that the trial court did not consider the issue conclusively decided until it granted summary disposition. On this record, we are not convinced that the court clearly erred in denying defendants' request for sanctions.

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael R. Smolenski  
/s/ Michael J. Talbot