STATE OF MICHIGAN

COURT OF APPEALS

TOWNSHIP OF ROME,

Plaintiff-Appellee,

V

TIMOTHY HALLIWILL,

Defendant-Appellant.

UNPUBLISHED
February 1, 2002

No. 224221
Lenawee Circuit Court
LC No. 99-008212-CH

Before: White, P.J., and Whitbeck, C.J., and Holbrook, Jr., J.

PER CURIAM.

Defendant appeals as of right the circuit court's order permanently enjoining defendant from parking, servicing or storing his trucks with commercial license plates on his farm, which is zoned agricultural. We affirm.

Defendant owns several large trucks in conjunction with his two businesses, farming and trucking. Some are commercially-plated, and some are farm trucks. At issue here are defendant's commercially-plated trucks that were stored and serviced at his farm, and which regularly traveled to and from the farm. After receiving a written complaint signed by dozens of residents who live near defendant's farm, plaintiff township investigated defendant's use of the farm and pole barn as related to the commercial trucks. Plaintiff then brought the instant suit. After a bench trial, the court found that defendant was conducting a separate commercial trucking business on his farm and thus violated the zoning ordinance. The court entered an injunction to prohibit defendant's unauthorized use.

Defendant first argues that the court erred in entering the injunction, asserting that the parking of his commercially-plated trucks on his farm does not violate the pertinent ordinance. We disagree.

Although defendant's argument rests on the premises that he merely parked and serviced the commercial trucks on his farm, and that the trucks are used for farm-related purposes, the circuit court rejected defendant's testimony as incredible and did not believe defendant's assertions that the commercial trucks were used in his farm business. This Court gives great deference to the trial court's opinion regarding witness credibility. *Lumley v Bd of Regents for University of Michigan*, 215 Mich App 125, 135; 544 NW2d 692 (1996). That deference is due to "the special opportunity of the trial court to judge the credibility of the witnesses who

appeared before it." MCR 2.613(C); *Williams v Williams*, 214 Mich App 391, 401; 542 NW2d 892 (1995).

We review for clear error the trial court's factual findings. *Dobie v Morrison*, 227 Mich App 536, 541; 575 NW2d 817 (1998). Not only does the record reflect that defendant's trucking business grossed over $400,000 in the year preceding trial, the record also contained testimony from defendant's neighbors that the trucks traveled to and from defendant's farm on a daily basis from 5:00 a.m. to 10:00 p.m., all year. Further, defendant already used several farm-plated trucks on his farm and the circuit court did not find credible his assertion that he also needed the large commercial trucks on the farm. We do not find clear error in the court's factual findings.

It follows, therefore, that the issue is not whether the mere parking of defendant's commercial trucks constitutes a violation of the ordinance, but rather, whether defendant's conducting of his commercial trucking business from his farm constitutes a violation. The ordinance at issue provides, in part, that the use should be compatible with the agricultural and rural residential character of the land. Even defendant does not contend that a commercial trucking business would be compatible with those uses. Rather, defendant contends that the mere parking and servicing of his commercially-plated trucks is compatible with those uses. As noted, however, the trial court rejected defendant's testimony that the trucks were merely parked at the farm. Further, the zoning ordinance permits uses that are "similar in nature" to permitted uses. Defendant's commercial trucking business is not similar in nature to the farm and thus the circuit court properly issued the injunction.[1] We reject defendant's efforts to focus only on the activity on the premises -- parking and maintenance. The ingress and egress of the trucks through the neighborhood was incident to the commercial trucking operation and was therefore a permissible consideration notwithstanding that the activity took place off the premises.

Defendant next asserts that plaintiff has discriminated in enforcing its ordinance by selectively pursing this action against him, while leaving other violators alone. We disagree.

Plaintiff's policy of enforcement requires the receipt of a written complaint before a zoning violation investigation may commence.[2] The record reflects that plaintiff received a written complaint about defendant's trucking business, but not about the other two businesses;

---

[1] The cases relied on by defendant are inapposite. The issue here is whether defendant's use is a commercial use inconsistent with the agricultural zoning classification, not whether defendant is operating a truck terminal or depot. Further, the court rejected defendant's contention that the trucks were used in the farm business. We therefore reject defendant's arguments based on *Cohen v Dane Cty Bd of Adjustment*, 74 Wis 2d 87; 246 NW2d 112 (1976). Nor does this case involve the interpretation of the ordinance's language to discern whether an arguably permissible use is encompassed in the ordinance. Here, the clear language of the ordinance prohibits defendant's use. Thus, we also reject defendant's arguments based on *Talcott v City of Midland*, 150 Mich App 143, 147; 387 NW2d 845 (1985).

[2] Defendant does not dispute that this policy, in fact, exists. Indeed, it appears that defendant suggested this policy in his capacity as a township Trustee.

thus, plaintiff has not discriminated in its enforcement. Further, where the other asserted noncomplying uses are not identical to the use at issue, the question of equal protection does not arise. See *Walker's Amusements, Inc v City of Lathrup Village*, 100 Mich App 36, 43; 298 NW2d 878 (1980). As noted by the trial court, the record is insufficient to conduct an analysis of whether the businesses are identical. The record does not reflect that the other two businesses enjoyed the same volume of trade as defendant's company, employed a similar number of workers, or were located on similar property with neighbors in close proximity. Because defendant has not made a showing that the uses were identical, his reliance on *Township of Blackman v Koller*, 357 Mich 186; 98 NW2d 538 (1959), is misplaced.

Affirmed.

/s/ Helene N. White
/s/ William C. Whitbeck
/s/ Donald E. Holbrook, Jr.