STATE OF MICHIGAN

COURT OF APPEALS

KENNETH SLATER and LORETTA SLATER, Plaintiffs-Appellants, v DEWITT CHARTER TOWNSHIP, Defendant-Appellee.	UNPUBLISHED April 1, 2004 No. 244791 Clinton Circuit Court LC No. 02-009423-CZ

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's grant of summary disposition in favor of defendant under MCR 2.116(C)(8) and (C)(10) in an action challenging the validity of § 6.1.1 of defendant's zoning ordinance. We affirm.

Plaintiffs first argue, in essence, that their proposed division of their property meets the requirements of Michigan's Land Division Act (LDA), MCL 560.101 *et seq.*, and therefore defendant has no authority to prescribe the additional requirement for land division of section 6.1.1 of defendant's zoning ordinance that dictates that new lots have frontage on a public street, except in one circumstance not at issue here. Specifically, plaintiffs claim that access by Old County Access Road No. 1, which is not a public road,[1] meets the requirement of accessibility as defined in the LDA, MCL 560.109(1)(e). We disagree.

The LDA specifies several requirements for proposed divisions of land, including a requirement that each new parcel be accessible. In relevant part, section 109 of the LDA, MCL 560.109, provides:

> (1) A municipality shall approve or disapprove a proposed division within 45 days after the filing of a complete application for the proposed division with the assessor or other municipally designated official. . . . A complete application

[1] Apparently Old County Access Road No. 1 is not a public road as presently configured because it is 33 feet wide and under a county requirement it must be 66 feet wide to be a public road.

> for a proposed division shall be approved if . . . all of the following requirements are met:
>
> * * *
>
> (e) Each resulting parcel is accessible.

Section 102 of the LDA, MCL 560.102, defines "accessible" as follows:

> (j) "Accessible", in reference to a parcel, means that the parcel meets 1 or both of the following requirements:
>
> (i) Has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state transportation department or county road commission under Act No. 200 of the Public Acts of 1969, being sections 247.321 to 247.329 of the Michigan Compiled Laws, and of the city or village, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.
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> (ii) Is served by an existing easement that provides vehicular access to an existing road or street and that meets all applicable location standards of the state transportation department or county road commission under Act No. 200 of the Public Acts of 1969 and of the city or village, or can be served by a proposed easement that will provide vehicular access to an existing road or street and that will meet all such applicable location standards.

Although the parcels resulting from plaintiffs' proposed lot division would be accessible by Old County Access Road No. 1, the means of access must also meet the "applicable location standards" of the state, county, and municipal highway authorities. MCL 560.102(j)(i), (ii). This specifically includes all applicable standards under MCL 247.321 to MCL 247.329. Relevant to the instant case, MCL 247.322 expressly provides that means of access must comply with local ordinances:

> … Nothing in this act shall be construed to prevent the application of the provisions of any other statute of this state or any local ordinance which is more restrictive than this act nor to preclude any city or village from requiring city or village permits with respect to any street or highway within its corporate limits. No permit shall be issued pursuant to this act unless there is compliance with other provisions of law or ordinances.

Despite plaintiffs' contention that defendant has no authority to enact an ordinance requiring frontage on a public street, the township zoning act, MCL 125.271 *et seq*., gives defendant broad authority to zone for the public health, safety, and welfare. MCL 125.271(1); *Delta Charter Twp v Dinolfo*, 419 Mich 253, 263; 351 NW2d 831 (1984). This includes "the authority to enact ordinances pertaining to roadway standards." *Bevan v Brandon Twp*, 438 Mich 385, 400 n 14; 475 NW2d 37 (1991). Therefore, a parcel may not be considered accessible under the LDA unless it is also accessible under applicable township zoning ordinances.

Contrary to plaintiffs' assertion, their proposed lot division does not meet the requirements of the LDA because it does not meet the requirements of defendant's zoning ordinance.

Plaintiffs next argue, in essence, that their federal and state constitutional rights were violated as a result of the application of defendant's ordinance. However, for the reasons stated in *Bevan, supra* at 397-405, we conclude that plaintiffs have not suffered an unconstitutional taking without just compensation as a result of defendant's ordinance. Nor do we find merit in defendant's claim of a violation of substantive due process. A substantive due process claim requires proof "(1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) that an ordinance is unreasonable because of the purely arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question." *Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998). Plaintiffs have not met their burden of proof. Defendant's stated reasons for § 6.1.1 of its zoning ordinance are legitimate and reasonable and bear a substantial relationship to the health, safety, and general welfare of the public. *Bevan, supra* at 399-400; *Frericks, supra*. Plaintiffs are entitled to no relief.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot