

STATE OF MICHIGAN
COURT OF APPEALS

SANILAC COUNTY PARKS COMMISSION,

Plaintiff/Counter-Defendant-
Appellee,

V

LEXINGTON TOWNSHIP,

Defendant/Counter-Plaintiff,

and

JOHN GROUSTRA and CATHY GROUSTRA,

Intervening Defendants/Counter-
Plaintiffs-Appellants

and

JOAN THOMPSON and WILLIAM HICKSON,

Intervening Defendants/Counter-
Plaintiffs.

UNPUBLISHED

June 29, 2004

No. 244858

Sanilac Circuit Court

LC No. 01-027822-CZ

SANILAC COUNTY PARKS COMMISSION,

Plaintiff/Counter-Defendant-
Appellee,

V

LEXINGTON TOWNSHIP,

Defendant/Counter-Plaintiff-
Appellant,

and

No. 244960

Sanilac Circuit Court

LC No. 01-027822-CZ

JOHN GROUSTRA, CATHY GROUSTRA, JOAN THOMPSON, and WILLIAM HICKSON,

Intervening Defendants/Counter-Plaintiffs.

Before: Neff, P.J., and Wilder and Kelly, JJ.

PER CURIAM.

Defendant Lexington Township and interveners John Groustra, Cathy Groustra, Joan Thompson, and William Hickson appeal by right from a judgment barring defendant from enforcing a zoning ordinance on the grounds of laches and equitable estoppel. We reverse.

This Court reviews a trial court's judgment in equity de novo, but we will not reverse absent clear error or a determination by this Court that it would have reached a different result. *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 582; 458 NW2d 659 (1990).

Both defendant and intervenors claim plaintiff Sanilac County Parks Commission did not establish the requisite elements for equitable estoppel or show that extraordinary circumstances justified preventing defendant from enforcing its zoning ordinance. We agree.

The elements of equitable estoppel are: (1) intentional or negligent inducement of another party to believe certain facts through representations, admissions, or silence, (2) justifiable reliance on those facts; and (3) prejudice to the other party if those facts are denied. *Holland v Manish Enterprises*, 174 Mich App 509, 514; 436 NW2d 398 (1989).

Several principles are pertinent in this case. In *Pittsfield Twp v Malcolm*, 375 Mich 135, 146-147; 134 NW2d 166 (1965), our Supreme Court affirmed the general rule that, except in exceptional circumstances, municipalities may not be estopped from enforcing their zoning ordinances. Moreover, individuals seeking to enjoin a municipality from enforcing its zoning ordinance are "charged with knowledge of the restrictive provisions of the ordinance." *Fass v Highland Park*, 326 Mich 19, 31; 39 NW2d 336 (1949). Finally, it is a general rule of equity that "where the facts are known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel." *Rix v O'Neil*, 366 Mich 35, 42; 113 NW2d 884 (1962), quoting *Sheffield Car Co v Constantine Hydraulic Co*, 171 Mich 423, 450; 137 NW 305 (1914).

In the instant case, the evidence showed that defendant's ordinances have always prohibited the operation of a campground in Lexington Park. Plaintiff does not contend otherwise. Rather, plaintiff argues that because defendant had failed to enforce its ordinance in the past, specifically, when plaintiff unlawfully established camping at the park since at least 1993, plaintiff was justified in assuming that camping was permissible and defendant should be estopped from enforcing its ordinance at this time. We disagree. "Such acts being unauthorized and in express contravention of ordinance provisions of the city [of which it was aware], [plaintiff] acquired no vested right to use [its] property for a purpose forbidden by law. *Fass*, *supra* at 31.

Plaintiff next argues that laches bars enforcement of the zoning ordinance. Again, we disagree. “To successfully assert laches as an affirmative defense, a defendant must demonstrate prejudice occasioned by the delay.” *Schmude, supra* at 574. Here, defendant’s delay in enforcing its ordinance actually inured to the benefit of plaintiff. As we stated in *White Lake v Lustig*, 10 Mich App 665, 675; 160 NW2d 353 (1968),

[t]he detriment suffered by the defendants accrued to them through their own acts in violation of the ordinance. The time of which they had taken advantage had accrued to their benefit. A detriment illegally incurred does not appeal readily to the conscience of a court and, in this case, does not appeal to the conscience of this Court. Further comment on the question of laches is unnecessary. Equity will grant relief appropriate to the case before it.

Reversed and remanded for entry of summary judgment for defendant. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Kurtis T. Wilder

/s/ Kirsten Frank Kelly