STATE OF MICHIGAN

COURT OF APPEALS

ELMWOOD CITIZENS FOR SENSIBLE GROWTH and STEVE VANZOEREN,

Plaintiffs-Appellees,

v

CHARTER TOWNSHIP OF ELMWOOD, ELMWOOD TOWNSHIP ZONING BOARD OF TRUSTEES, and ELMWOOD TOWNSHIP BOARD OF TRUSTEES,

Defendants-Appellants,

and

LINCOLN MEADOWS, LLC,

Defendant.

UNPUBLISHED
September 16, 2004

No. 246393
Leelanau Circuit Court
LC No. 02-005921-CE

Before: Whitbeck, C.J., and Sawyer and Saad, JJ.

PER CURIAM.

Defendant appeals as of right an order granting plaintiffs $16,701.77 in sanctions pursuant to MCL 600.2591, to be paid by defendant Charter Township of Elmwood. This suit is the culmination of three lawsuits filed against the Township, its Board of Trustees, and its Zoning Board of Trustees, in efforts to force the Township to properly apply its zoning ordinance. The only issue on appeal is the trial court's grant of fees and costs.[1] We affirm.

---

[1] On February 3, 2003, defendants filed their claim of appeal in this Court from the lower court's September 23, 2002, order addressing the merits of their complaint. Plaintiffs cross-appealed from the court's November 12, 2002, order denying their motion for a default judgment. This Court dismissed defendants' claim of appeal with respect to the September 23, 2002, order because it was not timely filed. It also dismissed the cross appeal because it arose from an untimely claim of appeal. *Elmwood Citizens for Sensible Growth v Charter Twp of Elmwood*, unpublished order of the Court of Appeals entered March 18, 2003 (Docket No. 246393).
(continued…)

In January 2001, plaintiffs appealed the issuance of a zoning permit to Lincoln Meadows, LLC, for development of residential housing. Plaintiffs alleged that the proposed development violated the local zoning ordnances and that a member of the planning commission had a conflict of interest. The trial court invalidated the approval of the project and remanded for reconsideration of the development proposal. The court instructed the township to "specifically discuss the relationship of the proposed development to the clustered housing provisions of the Zoning Ordinance." The court further ordered that the township's "findings must be supported factually and with reference to the relevant Zoning Ordinance provisions." Subsequently, the township once again approved the project.

Thereafter, plaintiffs filed a complaint again challenging the approval of the project. In response, the township argued that the relevant zoning provisions did not apply because, when it was adopted, the township also adopted certain "housekeeping amendments" that made the provision inapplicable to the land in issue. The court specifically found that these "housekeeping amendments" were an improper attempt to amend the zoning ordinance in violation of MCL 125.284:

> [T]he Township must abide by its Zoning Ordinance as it stands. Without clear, unequivocal proof that the "housekeeping" amendments were lawfully adopted, their absence from the Zoning Ordinance must be construed to mean that they may not be relied upon. Since they were not adopted, the Township could not apply them when deciding whether to approve the Lincoln Meadows project.
>
> In conclusion, the action of the Planning Commission and Township Board was unlawful and must be set aside.

The court then ordered the township to "either consider the project in light of the Zoning Ordinance as it is currently written, making specific findings regarding clustered housing . . . or officially amend its Zoning Ordinance and reconsider the project in view of such amendments."

The township followed neither path set out by the court. Instead, the zoning board interpreted the ordinance so as to nullify the density and lot size requirements mandated by the zoning ordinance.

Subsequently, plaintiffs filed a two-count complaint, claiming in the first count that the township's interpretation of its zoning ordinance provisions, and its subsequent decision to incorporate certain 1997 amendments into the ordinance, violated the Township Rural Zoning Act, MCL 125.271 *et seq.* The second count alleged that defendant's acts were in contempt of a court order issued in a prior lawsuit, which required defendants to either apply the zoning ordinance as written or engage in the formal amendment process.

(…continued)

Defendant then filed an application for delayed appeal of the September 23, 2002, order, which this Court denied for lack of merit. *Elmwood Citizens for Sensible Growth v Charter Twp of Elmwood*, unpublished opinion of the Court of Appeals entered December 11, 2003 (Docket No. 249777).

In its decision in the instant suit, the trial court found for plaintiffs on Count I and nullified the acts of defendant finding that they were illegal. However, while the court found that defendant had violated a clear court order, it declined to hold defendants in contempt. On a subsequent motion, the court granted the sanctions to plaintiffs that are the subject of this appeal.

Defendants argue that because the court declined to hold defendants in contempt, plaintiffs are not the prevailing party "on the entire record" as required by MCL 600.2591. Furthermore, defendants argue that because they never filed an answer or argued plaintiffs' first claim, the court could not have found their defense frivolous as also required by MCL 600.2591. These arguments are without merit.

"The determination whether a party is a 'prevailing party' . . . is a question of law. This Court reviews legal questions de novo." *Klinke v Mitsubishi Motors*, 219 Mich App 500, 521; 556 NW2d 528 (1996). We review a trial court's finding that a claim is frivolous, and a decision to impose sanctions, for clear error. *Contel Systems Corp v Gores*, 183 Mich App 706; 455 NW2d 398 (1990). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a firm conviction that a mistake was made. *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

As a rule, "attorney fees . . . are not recoverable from the losing party as costs in the absence of an exception set forth in a statute or court rule expressly authorizing such an award." *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639; 607 NW2d 100 (1999). However, "[t]his Court has repeatedly recognized that a trial court has inherent authority to impose sanctions on the basis of the misconduct of a party or an attorney." *Id.*

> [O]ur Supreme Court has "recognized the inherent power of a court to control the movement of cases on its docket by a variety of sanctions." *Banta v Serban*, 370 Mich 367, 368; 121 NW2d 854 (1963). Furthermore, MCL 600.611 . . . provides, "Circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts' jurisdiction and judgments."
>
> In *Cummings* [*v Wayne Co*, 210 Mich App 249, 252-253; 533 NW2d 13 (1995),] this Court held that a court has the inherent authority to dismiss a lawsuit as a sanction for litigant misconduct. It therefore follows that the less severe sanction of an assessment of attorney fees is within a court's inherent power as well. [*Id*. at 640.]

While the trial court awarded the sanctions pursuant to MCL 600.2591, it also invoked the doctrine of inherent power as an alternative basis for the award. We need not address whether plaintiffs were the "prevailing party on the entire record" or the merits of defendants' legal position, since it is clear from the record that defendant willfully disregarded the court's order to apply the zoning ordinance *as written* or undertake the statutory amendment process. Defendant did not appeal this decision nor did it request reconsideration or clarification. It simply ignored the decision.

In a series of decisions and orders, the court made specific references to defendants' "blatant attempts" to "circumvent the dictates of the Court's Order and the law" noting at one point:

> The Township's obstinance and refusal to conduct its business in a lawful manner has three times caused the [C]itizens of Elmwood Township to file suit. This third lawsuit was necessitated by the Township's clever attempt to avoid compliance with the Court's March 11, 2002 Order. The Order was clear – make findings regarding clustered housing pursuant to Article XIIIA or officially amend the Ordinance. The Township chose not to do either.

We disturb a trial court's exercise of its inherent power only if we find a clear abuse of discretion. *Persichini, supra,* 238 Mich App at 642. We find no abuse of discretion here.

Defendants also appeal the trial court's denial of its request for an evidentiary hearing on plaintiffs' fees and costs. We affirm. We review a decision not to hold an evidentiary hearing for an abuse of discretion. *46th Circuit Court v Crawford Co,* 261 Mich App 477, 503; 682 NW2d 519 (2004). "Generally, a trial court should hold an evidentiary hearing when a party is challenging the reasonableness of the attorney fees claimed. However, if the parties created a sufficient record to review the issue, an evidentiary hearing is not required." *Kernan v Homestead Dev Co,* 252 Mich App 689, 691; 653 NW2d 634 (2002) (citations omitted).

Over the five-month period between plaintiffs' motion for sanctions and the court's final order, the parties generated fourteen documents for the court to review. Plaintiffs submitted detailed invoices, billing statements and affidavits which met the requirements of MCR 2.625. In addition, the court held a hearing, issued three prehearing orders, and entered two decisions. In sum, the record created on this issue was voluminous and it was not an abuse of discretion for the court to deny defendants' request for yet another hearing. The record as it existed was sufficient to review the matter. *Kernan, supra*.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Henry William Saad