STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE TOWNSHIP OF CLAY, Plaintiff-Appellee,	UNPUBLISHED November 13, 2007
v	No. 271082 St. Clair Circuit Court
NELSON EDWARD TEMPLETON, SAINT EDWARDS ORDER, and GLENN PATRICK TEMPLETON, Defendants-Appellants.	LC No. 04-003061-CZ

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

PER CURIAM.

Defendants appeal as of right from a circuit court order denying their motion for attorney fees and costs under the Right to Farm Act ("RTFA"), MCL 286.471 *et seq.* We affirm.

The RTFA allows a trial court to award attorney fees and costs to a farm or farm operation that prevails in a nuisance action. MCL 286.473b provides:

> In any nuisance action brought in which a farm or farm operation is alleged to be a nuisance, if the defendant farm or farm operation *prevails*, the farm or farm operation *may* recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the farm or farm operation in connection with the defense of the action, together with reasonable and actual attorney fees. [Emphases added.]

Thus, a farm or farm operation that prevails is not automatically entitled to attorney fees and costs. Rather, it is within the trial court's discretion whether to award such fees and costs. Accordingly, we review the trial court's decision for an abuse of discretion. *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006). The abuse of discretion standard acknowledges that there may be more than one reasonable and principled outcome. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006); *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. *Maldonado, supra* at 388; *Babcock, supra* at 269.

The term "prevails" is not defined in the RTFA and thus must be accorded its plain and ordinary meaning. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Although plaintiff and the trial court applied the definition of "prevailing party" articulated in MCL 600.2591(3)(b), that definition applies to actions or defenses deemed frivolous, and the Legislature specifically stated that that definition applies as that term is used in that section, i.e., § 2591. Accordingly, the definition of "prevailing party" in MCL 600.2591(3)(b) does not apply in the context of the RTFA. *Random House Webster's College Dictionary* (2001) defines "prevail" as "to succeed; become dominant; win out." Because defendants succeeded in obtaining a dismissal of plaintiff's nuisance action, they arguably prevailed according to the plain meaning of that term.

Nonetheless, the trial court did not abuse its discretion by denying defendants' motion for attorney fees and costs. As the trial court noted, the parties reached a resolution pursuant to which plaintiff agreed to dismiss the action if defendants' application for a farmland and open spaces agreement was approved. Thus, the parties agreed to resolve their dispute in lieu of trial. Contrary to what defendants argue, it does not appear that plaintiff brought this action merely to harass defendants. Plaintiff's contention that the RTFA did not apply to the property appears well founded. Although tax records listed the property as "agricultural," this designation does not necessarily mean that the property was used for farming. Further, defendant Nelson Templeton's income tax returns did not reflect any income or loss from farming activities until he filed an amended 2004 tax return, which was after plaintiff commenced this action. In addition, defendants' agreement to use the property for farming for the next ten years pursuant to the farmland and open spaces agreement did not suggest that the land was used for farming previously.

Defendants argue that the trial court was biased against them because it commented on the history of the case, including defendant Nelson's in propria persona representation. The court's comments, however, were not a criticism of the fact that Nelson represented himself, but rather, remarked on Nelson's apparent attempt to mislead plaintiff regarding the owner of the property. After the show cause hearing on January 10, 2005, the trial court allowed plaintiff to amend its complaint to add Saint Edwards Order and Glenn Patrick Templeton as defendants in accordance with Nelson's representations at the hearing. Thereafter, however, Nelson admitted in his motion for summary disposition that he is the owner and resident of the property. Therefore, defendant's, and in particular, Nelson's, representations regarding the ownership of the property were unclear at best.

Further, defendants argue that the trial court applied the incorrect standard in deciding their motion for attorney fees. They assert that the court should have applied the factors enunciated in *O'Neill v Home IV Care, Inc*, 249 Mich App 606, 613; 643 NW2d 600 (2002), for determining an attorney fee award. Defendants' argument is misplaced because the factors discussed in *O'Neill* pertain to determining the reasonable amount of fees to be awarded. Here, because the court did not award attorney fees, there was no need to consider the factors for determining the reasonableness of an award.

Finally, defendants contend that the trial court failed to consider the remedial intent of the RTFA and failed to take into account plaintiff's conduct. As previously discussed, plaintiff's position that the RTFA did not apply appears well founded, and in fact the trial court denied defendants' motion for summary disposition after finding that material issues of fact existed.

Accordingly, the trial court's denial of defendants' motion for attorney fees and costs was not outside the range of reasonable and principled outcomes and reversal is not warranted. *Maldonado, supra* at 388; *Babcock, supra* at 269.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly