STATE OF MICHIGAN

COURT OF APPEALS

FOUR TOWNSHIP CITIZENS' COALITION, GEORGE HADDAD, ERIN HADDAD, JOHN GIANNONE, SARA GIANNONE, SALVATORE GIANNONE, NANCY GIANNONE, WILLIAM TRAVIS and MARLENE TRAVIS, Plaintiffs-Appellants,	UNPUBLISHED June 10, 2008
v	No. 275471 Macomb Circuit Court
RONDIGO, LLC, Defendant-Appellee.	LC No. 2006-001471-CZ

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiff Four Township Citizens' Coalition (FTCC) is a nonprofit corporation consisting of residents of four townships who live in close proximity to defendant Rondigo, LLC's property in Richmond Township. Plaintiffs Haddad, Giannone, and Travis are the homeowners who make up the FTCC. Plaintiffs appeal as of right the order dismissing for lack of standing plaintiffs' complaint for injunctive and declaratory relief against Rondigo, whose principals are Dolores and Ron Michaels. We affirm.

I

Rondigo was formed in 2000, and owns property in Richmond Township, Lenox Township, and Casco Township. Rondigo purchased three separate parcels of land in Richmond Township, and upon the purchase of the third parcel on April 9, 2003, combined the parcels to form the Richmond Township property that is involved in this case. Rondigo purchased the property for "investment" and to "expand farm operations." Rondigo registered the farm with the federal government and began farming the land in 2003.[1] On February 17, 2006, Rondigo

[1] Rondigo grows crops on the Richmond Township land using the crop rotation method, which involves the planting of different crops on the land each year.

received Michigan Agriculture Environmental Assurance Program (MAEAP) certification from the Michigan Department of Agriculture. An MAEAP certification designates that the farm complies with environmentally sound farming practices. On that same date, Rondigo informed Richmond Township that it intended to accept yard waste that Rondigo would then turn into finished compost on-site and apply on-farm to its fields at agronomic rates pursuant to a nutrient utilization plan.

On April 4, 2006, plaintiffs brought this action against Rondigo "because Rondigo was initiating a commercial composting operation on its property."[2] Plaintiffs' complaint contained four counts: (1) nuisance per se, (2) private nuisance, (3) violation of the Michigan Environmental Protection Act, and (4) request for a declaratory judgment that the Michigan Right to Farm Act (RTFA) does not protect commercial composing or, in the alternative, that the RTFA is unconstitutional.

Throughout the complaint, plaintiffs alleged that Rondigo is engaged in the business of operating commercial composting facilities. Plaintiffs further alleged that commercial composting is permitted only in areas zoned industrial. Much of the complaint refers to a separate business entity owned by Dolores and Ron Michaels, known as "King of the Wind" (KOTW) Farm in Macomb County.[3] KOTW engaged in commercial composting and is in no way involved in this action. Pursuant to a consent judgment entered in a lawsuit filed by Macomb Township against KOTW, KOTW agreed to stop accepting compost materials by December 31, 2005, and to remove all compost materials located on the Macomb Township property by December 31, 2007. However, Macomb Township never declared KOTW a nuisance and never shut them down. In apparent anticipation that Dolores and Ron Michaels would move their commercial composting operation to their Richmond township property, plaintiffs brought the present lawsuit "for declaratory and injunctive relief to prevent Rondigo from commencing unregulated commercial composting operations on its Richmond Township property."

In its April 21, 2006, answer, Rondigo denied, inter alia, plaintiffs' allegation that it "sought another site to which to move the massive tons of rotting compost from the KOTW Macomb Township location and to deposit yet even more new composting materials, which they have contracted to accept for a profit." Rondigo asserted in its answer that the Richmond Township Ordinances permit on-farm composting as provided for in the RTFA and the Generally Accepted Agricultural Practices (GAAP) in areas zoned agricultural.[4] In its Affirmative Defenses, Rondigo asserted, inter alia, that plaintiffs did not have standing and that

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[2] Rondigo's construction of a driveway to access the back fields of the property is the subject of a separate lawsuit by Richmond Township. The Richmond Township case was consolidated with the present case at one point, but was severed by order of the trial court so that this appeal could proceed.

[3] Indeed, plaintiffs' reliance on events that occurred in Macomb Township with regard to KOTW, an entity not involved in this case, is extensive.

[4] Rondigo's Richmond Township property is zoned agricultural/residential.

this lawsuit was premature, as Rondigo "has not undertaken any actions which violate the Ordinances of the Township of Richmond so the allegations set forth in the complaint are not ripe for judicial review."

At a motion hearing on June 26, 2006, Rondigo raised the issue whether an actual controversy existed between plaintiffs and Rondigo sufficient to justify going forward with the lawsuit. The trial court directed the parties to submit briefs on the issue of plaintiffs' standing. A hearing was held on this matter on July 11, 2006. On August 3, 2006, the trial court issued a written opinion and order finding that plaintiffs lacked standing to pursue the case against Rondigo "at this juncture." The trial court found in relevant part:

> Thus, the Court is presented with FTCC's complaint based on the assertion that there will be a commercial composting operation at the Richmond Township property as there was at defendant's prior properties. But FTCC has not presented evidence to show that a commercial composting operation is planned and will be carried out. FTCC refers to contracts held by defendant for purchasing compost, but does not present any of those contracts. FTCC also points to a driveway built on the property, yet cannot present evidence that the driveway is not simply for the continued farming operations on the property. Finally, FTCC points to the deposition of Rondigo's owner, Shelly Dolores Michaels, in which she stated that she is planning on composting at the site. However, Rondigo has assured this Court that the composting planned will be consistent with the RTFA, and not a commercial operation.
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> The Court finds that Plaintiff Four Township Citizens Coalition lacks standing at this juncture to pursue this cause of action against Defendant Rondigo, L.L.C. FTCC has not provided evidence that conclusively demonstrates that Rondigo has commenced or intends to commence a commercial composting operation at its Richmond Township property and as such, no injury in fact has occurred that can be addressed by this Court. The Court's ruling, however, is in reliance on the statements made to this Court by Defendant indicating that it was not intending to commence commercial composting operations at its Richmond Township Property. If Defendant has purposely misled this Court [it will not] hesitate to remedy the situation with an injunction and order to rip out the facilities, including the driveway, at Defendant's cost.
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> THEREFORE, IT IS HEREBY ORDERED, that all counts of plaintiff's [sic] claims are DISMISSED for lack of standing.

II

Plaintiffs first argue that the trial court erred by finding plaintiffs lacked standing to file their complaint for injunctive and declaratory relief. Whether a party has standing is a question of law that this Court reviews de novo. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 734; 629 NW2d 900 (2001).

For a party to have standing, the party must have suffered an actual or imminent, concrete and particularized, invasion of a legally protected interest. *Lee, supra* at 739-740. A trial court

may consider the issue of standing at any time during the proceedings. *46th Circuit Trial Court v Crawford County*, 266 Mich App 150, 178; 702 NW2d 588 (2005), rev'd on other grounds 476 Mich 131; 719 NW2d 553 (2006). Initially, plaintiffs contend that the legal standard regarding the burden of proof when determining whether a party has standing is dependent upon the stage of the litigation. See *National Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 630-631; 684 NW2d 800 (2004). They contend that this case was merely at the pleadings stage at the time the court dismissed the action and, therefore, the trial court erred by looking beyond the pleadings and requiring plaintiffs to present proofs in determining whether plaintiffs had standing.

In *National Wildlife Federation*, the Court explained:

> a plaintiff must include in the pleadings "general factual allegations" that injury will result from the defendant's conduct. If the defendant brings a motion for summary disposition, the plaintiff must further support the allegations of injury with documentation, just as he has to support the other allegations that make up his claim. Finally, when the matter comes to trial, the plaintiff must sufficiently support his claim, including allegations of injury, to meet his burden of proof.

Here, the record reveals that this case was not merely at the pleadings stage as plaintiffs contend. Although discovery was not fully completed at the time the trial court requested briefs on June 26, 2006, on the issue of whether plaintiffs had standing to pursue this case, the record reveals that much discovery had already occurred and that many depositions had already been conducted. The trial court properly found that plaintiffs could not simply rely on the unsupported allegations in the complaint and that plaintiffs must support the allegations with documentation.

Plaintiffs also assert that the evidence does not support the trial court's finding that plaintiffs lacked standing.

> At a minimum, standing consists of three elements: First, the plaintiff must have suffered an "injury in fact"- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be "fairly ... traceable to the challenged action of the defendant, and not ... the result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." [*Lee, supra* at 739, quoting *Lujan v Defenders of Wildlife,* 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992).]

A thorough review of the trial court's opinion and order reveals that the basis for the trial court's finding that plaintiffs lacked standing was that plaintiffs failed to present evidence to support a finding on the first element -- that they suffered an injury in fact. The trial court noted that plaintiffs' claims were all premised on the assertion that "there will be a commercial composting operation at the Richmond Township property as there was at defendant's prior properties." The court then found that plaintiffs failed to present evidence to show "that a commercial composting operation is planned and will be carried out." In other words, because

no evidence was presented that Rondigo intended to engage in commercial composting, plaintiffs' alleged injury was merely hypothetical. We agree.

Although plaintiffs argue in their brief on appeal that their claims of injury are not premised on the assertion that Rondigo would engage in commercial composting, a review of plaintiffs' complaint suggests otherwise. The complaint is replete with references to commercial composting. No evidence was presented that Rondigo was engaged in commercial composting or that it planned or proposed to engage in commercial composting.[5] Thus, this case is different from those cases on which plaintiffs rely that involved *already planned or proposed* activity. See, e.g., *National Wildlife, supra* (the plaintiff brought suit to enjoin the *planned* expansion of an in iron mining company); *Opal Lake Ass'n v Michaywe Ltd Partnership*, 47 Mich App 354; 209 NW2d 478 (1973) (the plaintiff sought an injunction to restrain a *proposed* use of shoreline); *Falkner v Brookfield*, 368 Mich 17; 117 NW2d 125 (1962) (the plaintiffs brought an anticipatory nuisance claim against the *proposed* construction of an auto wrecking and junking business); *Keiswetter v City of Petoskey*, 124 Mich App 590; 335 NW2d 94 (1983) (the plaintiffs sought to enjoin the *planned* construction of a fire training center). Because plaintiff has not shown that Rondigo has proposed or is planning a commercial composting operation, any injury to plaintiffs from potential or future commercial composting is conjectural or hypothetical, and not actual or imminent. Hence, plaintiffs do not have standing to bring this action for declaratory judgment or injunction.

At oral arguments on this case, plaintiff argued that the on-farm composting of more than 5,000 cubic yards of yard clippings would violate the newly enacted MCL 324.11521(3),[6] which provides as follows:

> (3) A person may compost yard clippings on a farm if composting does not otherwise result in a violation of this act and is done in accordance with generally accepted agricultural management practices under the Michigan right to farm act, 1981 PA 93, MCL 285.471 to 286.474, and if 1 or more of the following apply:
>
> (a) Only yard clippings generated on the farm are composted.
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> (b) There are not more than 5,000 cubic yards of yard clippings on the farm.
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> (c) If there are more than 5,000 cubic yards of yard clippings on the farm at any time the following requirements are met:

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[5] Indeed, evidence was presented that Rondigo did not intend to engage in commercial composting but, rather, solely to engage in on-farm composting. Dolores Michaels testified that she would bring in as much raw material as her expert consultants recommended to be agronomically correct, with the consent of the Michigan Department of Agriculture who would approve her compost operations plan and nutrient management plan.

[6] MCL 324.11521 was added by 2007 PA 212, effective March 26, 2008.

(*i)* The farm operation accepts yard clippings generated at a location other than the farm only to assist in management of waste material generated by the farm operation.

(*ii)* The farm operation does not accept yard clippings generated at a location other than the farm for monetary or other valuable consideration.

(*iii*) The owner or operator of the farm registers with the department of agriculture on a form provided by the department of agriculture and certifies that the farm operation meets and will continue to meet the requirements of subparagraphs (*i*) and (*ii*).

MCL 325.11521(3) was not in effect at the time of the lower court proceedings in this case. Plaintiffs contend that an injunction is necessary to prevent Rondigo from engaging in on-farm composting in light of Dolores Michael's testimony that "she would bring in as much raw material as her expert consultants recommended to be agronomically correct, with the consent of the Michigan Department of Agriculture who would approve her compost operations plan and nutrient management plan." However, this testimony does not support plaintiff's position but, rather, suggests that Rondigo would comply with the statutory requirements. Nonetheless, at this point plaintiff's argument is premature. Rondigo has not engaged in any on-farm composting, and no evidence has been presented that Rondigo's proposed on-farm composting would violate MCL 325.11529(3).

III

Plaintiffs argue that the trial court erred in ruling on the merits of Rondigo's defense that that Rondigo had RTFA protection. But the trial court did not make such a ruling. Rather, the trial court found that plaintiffs lacked standing to pursue the lawsuit and therefore dismissed all of plaintiffs' claims. Thus, this issue is without merit.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey