

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

MEDINA TOWNSHIP,

Plaintiff-Appellant,

v

JEFFREY E. DAVIS,

Defendant-Appellee.

---

UNPUBLISHED

January 8, 2009

No. 281120

Lenawee Circuit Court

LC No. 06-002291-CZ

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the order finding that plaintiff's claims against defendant presented no cause of action. We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On March 5, 1984, defendant and his father appeared before the Medina Township Board seeking a permit to place a trailer on their property, which was zoned for agriculture. Plaintiff's zoning ordinance provided that on any farm one mobile home could be authorized temporarily by special use permit. This permit was to be drafted by the zoning board of appeals and issued at the discretion of the board for one year in cases of extreme hardship and unusual need to accommodate the family farm operation. In the March 5, 1984 township board minutes, the board stated that it had no objection to the permit as long as Health Department requirements and regulations were met.

On July 13, 2006, plaintiff filed a complaint alleging that defendant failed to apply on a year-to-year basis for a new special use permit, and, consequently, the trailer violated its ordinance. Defendant argued below that the special use permit was not properly issued as the zoning board of appeals did not issue the permit. Defendant also argued that, because plaintiff continued to allow the trailer to be on the property since March 1984, the affirmative defense of laches applied.

The trial court granted defendant's motion for summary disposition, finding that the doctrine of laches applied. Plaintiff contends that the trial court erred in granting defendant's motion solely on the basis of the passage of time and taxes levied on the trailer. This Court reviews de novo a trial court's grant of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Regarding defendant's claim that plaintiff's complaint was barred

by the equitable defense of laches, this Court reviews de novo a trial court's equitable decisions but reviews the findings of fact supporting an equitable decision for clear error. *Yankee Springs Twp v Fox*, 264 Mich App 604, 611; 692 NW2d 728 (2004).

In *Charter Twp of Shelby v Papesh*, 267 Mich App 92, 108; 704 NW2d 92 (2005), the defendants argued that the plaintiff's attempt to enjoin them from continuing their poultry operation was barred by the doctrine of laches. This Court found that, while "[l]aches may apply to bar an attempt to abate a zoning ordinance violation," it would be "premature" for the Court "to consider whether plaintiff's attempt to abate the poultry operation [was] barred by the doctrine of laches." *Id.* This Court reasoned:

By entering judgment in plaintiff's favor, the trial court must have implicitly concluded that plaintiff's claim was not barred by the doctrine of laches as argued by defendants below. But the trial court did not articulate any factual findings to support such a conclusion. This is critical because, while a trial court's decisions regarding application of the equitable doctrine of laches are reviewed de novo, its findings of fact supporting such a decision are reviewed for clear error. Application of the doctrine of laches requires a passage of time and a change in condition that would make inequitable the enforcement of a claim against a defendant. In this regard, defendant has the burden of proving that lack of due diligence by plaintiff prejudiced defendant. Without findings of fact regarding when plaintiff was first placed on notice of the poultry operation and the effect on defendants of being forced to discontinue this activity, we cannot determine whether defendants would be prejudiced so that it would be inequitable to allow plaintiff to enforce a claim to enjoin the poultry operation. [*Id.* (citations omitted).]

Regarding plaintiff's notice of the trailer in the case at hand, the trial court found that the township board acted in 1984. We agree that this evidence demonstrates that the board was initially aware of the trailer. The trial court also appeared to find that plaintiff had notice in the subsequent years because it had assessed taxes and fees on the trailer. At the June 1, 2007 hearing, defendant's attorney stated, "But if you look at the tax bills that are attached, it's being taxed as real property all the way through. In addition, it's being assessed a separate fee for the ambulance fees, okay, each year. So this township collected money over a long period of time and condoned the trailer use as it was in place without any complaints for some 21 years." However, we did not find any evidence in the lower court record to support the contention that plaintiff had assessed taxes and fees on the trailer.

Like the trial court in *Papesh*, the trial court did not make any specific findings regarding how defendant would be prejudiced. The trial court stated, "We've got a trailer there that's at least 22 years old. My experience with trailers is it couldn't be moved under any conditions if it's that old without disintegrating. I don't know if that's true or not. It hasn't been argued, but I suspect that's true." The trial court was correct that it was not argued by defendant that moving this trailer would cause the trailer to disintegrate, nor was there any evidence presented supporting this contention. Rather, defendant's attorney stated, "There is an extreme amount of prejudice because he would have to remove the trailer at a significant cost." But no evidence was presented regarding what this "significant cost" would be, and any reliance by the trial court on the assumption that removal would cause the trailer to disintegrate was clearly erroneous.

Thus, the trial court clearly erred in granting defendant's motion for summary disposition on the basis that plaintiff's claim was barred by the affirmative defense of laches.

Defendant argues alternatively that plaintiff's claim was barred by the statute of limitations. Because defendant did not raise this issue in the trial court, it is not preserved for appellate review, and we decline to consider it. See *Walters v Nadell*, 481 Mich 377, 387-389; 751 NW2d 431 (2008).

Reverse and remanded for further proceedings. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood