STATE OF MICHIGAN

COURT OF APPEALS

MARVIN E. MARKS, Plaintiff-Appellant,	UNPUBLISHED May 27, 2010
v	No. 294453 Gogebic Circuit Court
HARVEY AND CAROL HULSTROM, Defendant-Appellee.	LC No. 08-000294-CH

Before: WHITBECK, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Plaintiff Marvin Marks appeals as of right the grant of summary disposition to defendants Harvey and Carol Hulstrom under MCR 2.116(C)(7). We affirm. We have decided this appeal without oral argument.[1]

I. BASIC FACTS AND PROCEDURAL HISTORY

Marks and the Hulstroms own adjacent parcels in Ironwood Township, Michigan. Marks alleged that the Hulstroms violated the township's blight ordinance by keeping on their property, among other items, junk automobiles, trailers in disrepair, construction materials, and physically deteriorating buildings. The alleged blight and nuisance existed, according to Marks, for over ten years. Marks testified that the value of his property decreased because of the blight; but when asked what he based that assertion on, Marks simply stated, "Common sense."

The Hulstroms moved for summary disposition, asserting that Marks' claim was barred by the three-year statute of limitations found in MCL 600.5805(10). Marks responded that his lawsuit was filed within three years of passage of the blight ordinance. Marks also asserted that his action was not barred under the continuing wrongs doctrine.

The trial court concluded that although Marks cited the township ordinance, his claim was "a private nuisance action" that was "barred by . . . the three-year statute of limitations." Accordingly, the trial court granted summary disposition to the Hulstroms under MCR 2.116(C)(7). Marks now appeals.

[1] MCR 7.214(E).

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Marks argues that he properly brought his nuisance action under the applicable three-year statute of limitations when the Hulstroms' wrongful conduct caused him injury within the preceding three-year period.

Under MCR 2.116(C)(7), a party may move for summary disposition on the ground that a claim is barred by the statute of limitations. Neither party is required to file supportive material; any documentation that is provided to the court, however, must be admissible evidence.[2] The plaintiff's well-pleaded factual allegations must be accepted as true and construed in the plaintiff's favor, unless contradicted by documentation submitted by the movant.[3] Absent disputed issues of fact, we review de novo whether the cause of action is barred by a statute of limitations.[4]

B. STATUTE OF LIMITATIONS

MCL 600.2940(1) provides, "All claims based on or to abate nuisance may be brought in the circuit court. The circuit court may grant injunctions to stay and prevent nuisance." The applicable period of limitations for such an action is three years.[5]

Marks contends that the nuisance was a "continuing wrong" and therefore not subject to the statute of limitations. "Under [this] doctrine, . . . when the nuisance is of a continuing nature, the period of limitations does not begin to run on the occurrence of the first wrongful act; rather, the period of limitations will not begin to run until the continuing wrong is abated."[6] Citing *Garg v McComb Co Community Mental Health Servs*,[7] this Court in *Froling Revocable Living Trust v Bloomfield Hills Country Club* considered the continuing viability of the doctrine, and concluded as follows:

> *Garg* and it progeny completely and retroactively abrogated the common-law continuing wrongs doctrine in the jurisprudence of this state, including in

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[2] *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

[3] MCR 2.116(G)(5); *Maiden*, 461 Mich at 119; *Gortney v Norfolk & W R Co*, 216 Mich App 535, 538-539; 549 NW2d 612 (1996).

[4] *Colbert v Conybeare Law Office*, 239 Mich App 608, 609 NW2d 208 (2000).

[5] MCL 600.5805(1), (10).

[6] *Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 280; 769 NW2d 234 (2009).

[7] *Garg v McComb Co Community Mental Health Servs*, 472 Mich 263; 696 NW2d 646 (2005), amended 473 Mich 1205 (2005).

> nuisance and trespass cases. Therefore, the Froling Trust's arguments fail to the extent that it relies on that doctrine to save its claims.[8]

However, *Froling* also recognized that it is possible for a claim to accrue at a later date than the first causal conduct if there is further causal conduct.[9] This Court explained that MCL 600.5805, read in conjunction with the accrual statute,[10] provides that a claim accrues from the time of that last causal conduct and the first corresponding injury.[11] However, "[s]ubsequent claims of additional harm caused by one act do not restart the claim previously accrued."[12]

In his affidavit, Marks alleged that the nuisance and blight on the Hulstroms' property has existed "in excess of 10 years" and that "the Hulstrom cottage . . . has not been used, or inhabited by anyone in excess of 10 years." Marks did state there had been "some subtractions; some additions" to the garbage and debris on the Hulstroms' property over the years, but he did not specify when these changes took place. Accordingly, under these allegations, we conclude that his private nuisance action was time-barred.

In addition to requesting relief under MCL 600.2940, Marks' amended complaint also states that the Hulstroms' property was in violation of the township's blight ordinance. Although there is no direct evidence in the record of the date of the passage of the blight provision, we accept the assertion that it was passed on June 26, 2006.[13] On appeal, Marks asserts "it would have been impossible for any Statute of Limitations to have been expired on the filing of the Complaint . . . on the enforcement of the Township Blight Ordinance" due to the date it was enacted.

At the motion hearing, the trial court raised the possibility of a public nuisance claim predicated on the township ordinance, and Marks argued as follows:

> It's our position that when Ironwood Township passed a new blight ordinance that created a cause of action that did not exist before. This new cause of action authorized a private individual to take action to abate a nuisance. . . . Mr. Marks did, in the original complaint, show the special damages. They were above and beyond those of the general public by showing that he was damaged. His property is right next door to the blighted property . . . .

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[8] *Froling*, 283 Mich App at 288.

[9] *Id.* at 290-291.

[10] MCL 600.5827 provides that "the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results."

[11] *Froling*, 283 Mich App at 288-290.

[12] *Id*. at 291.

[13] *Smith v Kowalski*, 223 Mich App 610, 616; 567 NW2d 463 (1997) ("All well-pleaded allegations are accepted as true and construed in favor of the nonmoving party.").

However, Marks has not continued this argument in his brief on appeal; that is, he does not argue that he pleaded a claim for public nuisance. Rather he asserts, without citation to the ordinance, that his complaint sought "enforcement" of the blight ordinance. Article XVI of the ordinance states, in part, as follows:

> The Zoning Administrator, the Township Board, or any owner of real estate may institute injunction, mandamus, abatement, or any other appropriate action or proceedings to prevent, enjoin, abate, or remove any lawful erection, alteration, maintenance, violation, or nuisance. The rights and remedies provided herein are cumulative in addition to all other remedies provided by law.

It is not clear what Marks means by "enforcement." He may be asserting that he was seeking to force the Hulstroms to comply, which sounds like an action to abate the nuisance. However, Marks has made no argument on appeal that because the action was based in part on enforcement of the township ordinance, this somehow transformed the action into a public nuisance. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim."[14] Further, actions predicated on such zoning ordinances have long been considered private civil claims.[15] "[T]he mere fact that a condition constitutes a violation of a local ordinance does not make that condition a public nuisance, and the circuit court has no jurisdiction to abate or enjoin such a condition unless it is independently established that the condition constitutes a nuisance."[16] The nuisance here existed and was recognized by Marks before the enactment of the ordinance, so, as discussed above, such an action was time-barred. Further, the record supports the conclusion that the problem may have been abated as of the motion hearing.

Further, if by "enforcement" Marks means an action for superintending control,[17] he has not argued that the township has been delinquent in pursuing this matter or that that the blight has not been partially or completely abated.[18] Moreover, Marks did not file against the township or its zoning authority.

We affirm.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Stephen L. Borrello

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[14] *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

[15] See, e.g., *Baura v Thomasma*, 321 Mich 139; 32 NW2d 369 (1948).

[16] *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 277-278; 761 NW2d 761 (2008).

[17] *Choe v Flint Charter Twp*, 240 Mich App 662, 666; 615 NW2d 739 (2000) ("[A] municipal zoning authority is subject to the circuit court's superintending control, not its power of mandamus.").

[18] See *Nat'l Waterworks*, 275 Mich App at 265.