STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE TOWNSHIP OF ADDISON, Plaintiff-Appellee,	UNPUBLISHED April 10, 2012
v	No. 301294 Oakland Circuit Court
JERRY KLEIN BARNHART, a/k/a JERRY CLINE BARNHART, Defendant-Appellant.	LC No. 2009-008918-AV

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

This case returns to the Court following a remand that required the district court to apply the law of the case and the Sport Shooting Ranges Act (SSRA), MCL 691.1541 *et seq*. On remand, the district court entered judgment in favor of defendant. Plaintiff appealed the decision to the circuit court, and the circuit court reversed the district court's decision. Defendant appeals by leave the circuit court's decision. We affirm the circuit court.

This Court recited the facts and prior procedural history of the case in its original opinion. See *Addison Twp v Barnhart*, unpublished opinion per curiam of the Court of Appeals, issued March 13, 2008 (Docket No. 272942) (*Barnhart I*). On remand from this Court, the district court held an evidentiary hearing at which defendant testified about compliance with generally accepted operating practices for shooting ranges. The district court ruled in favor of defendant, but the circuit court remanded the case for further consideration of the SSRA. The district court reaffirmed its decision; the circuit court then reversed the district court.

The circuit court found that the law of the case from this Court's *Barnhart I* opinion was unequivocal. According to the circuit court, the law of the case established that "to the extent that there was testimony to suggest that defendant's operation of a shooting range was for business or commercial purposes, MCL 691.1542a(2)(c) does not provide freedom from compliance with local zoning controls." *Barnhart I*, unpub op at 4. The circuit court noted the parties' stipulation that prior to the effective date of the pertinent portion of the SSRA, defendant's range was used for recreational and business purposes. On the basis of the stipulation and other evidence, the circuit court concluded that defendant's range was not a sport shooting range within the meaning of the pertinent portion of the SSRA. The circuit court

decided that because the range was not a sport shooting range, the SSRA did not protect the range from enforcement of local zoning controls.

Defendant now argues that the circuit court failed to defer to the district court's resolution of a factual issue, i.e., that defendant's range was a sport shooting range. We disagree with defendant's characterization of the issue as a factual issue. The term "sport shooting range" has a specific statutory meaning, defined in MCL 691.1541(d) as "an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting." The SSRA protections at issue in this case apply to sport shooting ranges as defined in the act: "A sport shooting range that is in existence as of the effective date of this section and operates in compliance with generally accepted operation practices, even if not in compliance with an ordinance of a local unit of government, shall be permitted to . . . [d]o anything authorized under generally accepted operation practices . . . ." MCL 691.1542a(2)(c). Defendant's challenge on appeal is to the circuit court's application of the statutory definition to the undisputed facts, not to any specific factual resolution by the district court. Accordingly, the issue of whether defendant's range was a sport shooting range within the meaning of the SSRA, is a legal issue, which the circuit court could properly review de novo. We find no error in the circuit court's review.

Defendant next argues that the circuit court incorrectly applied the law of the case. An appellate court's ruling on an issue becomes the law of the case, and that law binds the appellate court and all lower courts as to that issue. *Grievance Admin v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). Once an appellate court has decided a question of law, the question cannot be decided differently on remand unless the facts underlying the decision have changed. *Flint City Council v Michigan*, 253 Mich App 378, 389; 655 NW2d 604 (2002). The law of the case controls lower courts regardless of the correctness of the appellate court's decision. *Augustine v Allstate Ins Co*, 292 Mich App 408, 428; 807 NW2d 77 (2011). We review de novo a lower court's application of the law of the case. *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007).

Here, the circuit court correctly interpreted and applied the law of the case. In *Barnhart I*, this Court specifically stated that the case presented the issue of the proper application of MCL 691.1542a. *Barnhart I*, unpub op at 3. The Court analyzed the statute and concluded that defendant's operation of the range for business or commercial purposes would preclude defendant from obtaining the protections of MCL 691.1542a. *Id*. at 4. The Court then remanded for a determination of "whether the criteria for MCL 691.1542a were established and to examine the provisions of the SSRA as a whole." *Id*. at 6.

The circuit court correctly recognized the undisputed facts that established defendant was operating the range for both recreational and business purposes as of the effective date of MCL 691.1542a. On the basis of the undisputed facts, the circuit court correctly concluded that defendant's range was not a sport shooting range within the meaning of the SSRA. Moreover, the record before us establishes that even before defendant constructed the range, he indicated his intent to use it to test firearms for various companies. In addition, defendant acknowledged that prior to the effective date of the statute, he received payment for instructing a student on the range. Given that defendant acknowledged these business or commercial purposes for the range,

the law of the case required the conclusion that defendant's range was not a sport shooting range within the meaning of the SSRA.

Defendant next argues that the receipt of income from the range did not constitute a business or commercial purpose. Defendant contends that "all sport shooting ranges must charge fees in order to perpetuate their existence" and further contends that the *Barnhart I* decision would eviscerate the SSRA if the decision is applied to preclude sport shooting ranges from charging fees. Defendant similarly argues that our Legislature's inclusion of the terms "partnership" and "corporation" in the SSRA definition of "person" demonstrates that the SSRA encompasses business operations. However, defendant did not present these arguments in the proper forum. A party that seeks to overturn an appellate court's decision on an issue must seek rehearing in the appellate court, or must appeal to a higher court. *Bruce Twp v Gout (After Remand)*, 207 Mich App 554, 557-558; 526 NW2d 40 (1994). Defendant neither requested reconsideration of the *Barnhart I* decision, nor applied for leave to our Supreme Court. Defendant cannot now challenge the validity of the *Barnhart I* decision.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck