

STATE OF MICHIGAN
COURT OF APPEALS

PEGGY SUE BROWN,

Plaintiff-Appellant,

v

SUMMERFIELD TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED

August 23, 2012

No. 304979

Monroe Circuit Court

LC No. 10-029703-CH

Before: SAAD, P.J., and SAWYER and CAVANAGH, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order that granted defendant summary disposition pursuant to MCR 2.116(C)(10). For the reasons set forth below, we affirm.

Plaintiff claims the Right to Farm Act, MCL 286.471 *et seq.*, preempts a township ordinance that prohibits her from keeping horses on property less than one and a half acres. Though defendant raised several arguments in its motion for summary disposition, the trial court granted the motion based on its finding that plaintiff was not engaged in a commercial farming operation.

MCL 286.473(1) states that a farm or farm operation must not be found to be a public or private nuisance if it conforms to "generally accepted agricultural and management practices" ("GAAMPs"), according to policy determined by the state commission on agriculture. Local government may not enact or enforce an ordinance that conflicts with the Right to Farm Act or the GAAMPs. MCL 286.474(6). Therefore, "any township ordinance, including a zoning ordinance, is unenforceable to the extent that it would prohibit conduct protected by the RTFA." *Shelby Twp v Papesh*, 267 Mich App 92, 107; 704 NW2d 92 (2005). This includes ordinances requiring minimum lot sizes, which the GAAMPs do not address. *Id.* at 106.

However, the Right to Farm Act preempts ordinances only to the extent that they impose restrictions on commercial farming operations. *Shelby Twp*, 267 Mich App at 106. In other words, the Act does not apply to property owners who are not engaged in a commercial operation for profit. *Id.* at 100-101, 105. MCL 286.472(b) defines a farm operation as activity conducted "in connection with the commercial production, harvesting, and storage of farm products[.]" Plaintiff cites the reference in MCL 286.472(b)(vii) to "the care of farm animals"; however, this subsection is part of a list of possible farm activities that might be conducted in

connection with commercial production, harvesting, and storage. It does not create an exception to the commercial requirement.

Plaintiff offered no evidence that she kept horses for profit, either through breeding, boarding, or horse rides. We need not address whether MCL 286.474(6) creates a cause of action or merely provides a defense, because it does not apply to a plaintiff who was not engaged in a commercial farm operation. We also need not address whether MCL 286.474(6) applies to a new farming operation located in property already zoned residential. The trial court found it unnecessary to reach these issues in this case, and we agree.

The trial court correctly granted defendant summary disposition regarding the Right to Farm Act because plaintiff offered no evidence she was engaged in a commercial operation. The court also did not err when it granted summary disposition of plaintiff's substantial due process claim because the ordinance was not unreasonable. See *Kyser v Kasson Twp*, 486 Mich 514, 521; 786 NW2d 543 (2010). Moreover, the court did not err when it granted summary disposition on plaintiff's equal protection claim because she provided no evidence that the township treated any other person differently. See *Risko v Grand Haven Charter Twp Zoning Bd of Appeals*, 284 Mich App 453, 465; 773 NW2d 730 (2009).

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Mark J. Cavanagh