

STATE OF MICHIGAN
COURT OF APPEALS

TIBOR L. GYARMATI and TERRIE
GYARMATI,

Plaintiffs-Appellants,

v

JAY A. BIELFIELD, DIANE BIELFIELD and
BLOOMFIELD CHARTER TOWNSHIP,

Defendants-Appellees.

FOR PUBLICATION
May 4, 2001
9:10 a.m.

No. 214338
Oakland Circuit Court
LC No. 97-002290-CK

Updated Copy
June 22, 2001

Before: Gribbs, P.J., and M.J. Kelly and Sawyer, JJ.

M.J. KELLY, J.

Plaintiffs, Tibor L. and Terrie Gyarmati, appeal as of right from an order granting summary disposition in favor of defendant Bloomfield Charter Township. Plaintiffs also raise issues related to an earlier order granting defendants Jay Bielfield and Diane Bielfield summary disposition and denying plaintiffs' motion for summary disposition. We affirm.

Plaintiffs filed a complaint for declaratory judgment against the township and their neighbors, the Bielfields, alleging that an easement that the Bielfields had over plaintiffs' land was illegal because it violated a township ordinance that prohibited riparian use of property by anyone other than the riparian owner or occupant. Plaintiffs sought to have declared void because of illegality a prior stipulated order between the parties that reaffirmed the easement. The township moved for summary disposition pursuant to MCR 2.116(C)(8). Plaintiffs also moved for summary disposition, pursuant to MCR 2.116(C)(10). In response to plaintiffs' motion for summary disposition, the Bielfields argued that they were entitled to judgment as a matter of law pursuant to MCR 2.116(I)(2) because plaintiffs did not have standing to bring suit. The trial court granted the Bielfields summary disposition, finding that plaintiffs did not have standing to seek to enforce a public ordinance. The trial court also granted summary disposition to the township, finding that plaintiffs failed to state a claim on which relief could be granted.

Plaintiffs argue that the trial court erred in granting the Bielfields summary disposition and denying plaintiffs' motion for summary disposition. We disagree. Appellate review of a

motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court granted the Bielfields summary disposition pursuant to MCR 2.116(I)(2). "Summary disposition is properly granted [under this rule] to the opposing party if it appears to the court that that party, rather than the moving party, is entitled to judgment." *Sharper Image v Dep't of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996). Whether a party has standing to bring an action is a question of law reviewed de novo on appeal. *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 384; 600 NW2d 406 (1999).

Pursuant to *Comstock v Wheelock*, 63 Mich App 195, 202; 234 NW2d 448 (1975), "public rights actions must be brought by public officials vested with such responsibility." Contrary to plaintiffs' assertions, they are, in fact, seeking enforcement of the ordinance by requesting that the court declare that the Bielfields may not use the easement for riparian purposes. It is the township, not plaintiffs, that has standing to enforce the ordinance. Plaintiffs are attempting to be released from their stipulated agreement and nothing more. It is immaterial whether the township enforces the ordinance or seeks redress by criminal prosecution for failure to obey it. This is not a mandamus action. Because plaintiffs do not have standing, it is axiomatic that they, in turn, were not entitled to summary disposition.

Plaintiffs also argue that the trial court erred in granting summary disposition in favor of the township. We disagree. A motion for summary disposition relying on MCR 2.116(C)(8) tests the legal sufficiency of a plaintiff's complaint. *Celina Mut Ins Co v Aetna Life & Casualty Co*, 434 Mich 288, 294; 454 NW2d 93 (1990). The court must accept the factual allegations of the plaintiff's complaint as true, and if, even after considering the facts in a light most favorable to the plaintiff, a claim is clearly unenforceable as a matter of law, then the motion should be granted and there is no right to recovery. *Scameheorn v Bucks*, 167 Mich App 302, 306; 421 NW2d 918 (1988).

In order to maintain an action for declaratory judgment, a plaintiff must demonstrate that an "actual controversy" exists between the parties. *Durant v Michigan (On Remand)*, 238 Mich App 185, 204; 605 NW2d 66 (1999); *Chrysler Corp v Home Ins Co*, 213 Mich App 610, 613; 540 NW2d 485 (1995). "Generally, an actual justiciable controversy exists where a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights." *Durant, supra* at 204. To demonstrate an actual controversy, a plaintiff must "plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised." *Id.*, quoting *Fieger v Comm'r of Ins*, 174 Mich App 467, 470-471; 437 NW2d 271 (1988).

There was nothing adverse in plaintiffs' declaratory action against the township. Plaintiffs did not argue that the ordinance was unconstitutional or unenforceable in any way. Plaintiffs did not seek a ruling from the court that would have been detrimental to the township. In fact, in their brief on appeal, plaintiffs seem to contend that the township would be an ally in their fight against the Bielfields, stating, "[i]t was expected that Bloomfield Township would support the validity of Ordinance No. 340" and that the township had "an interest in the efficacy of its Ordinance 340." This language clearly demonstrates that there was no "actual controversy"

between plaintiffs and the township. Even if all of plaintiffs' allegations are accepted as true, there is no action against the township. As such, plaintiffs' complaint for declaratory judgment failed to state a claim on which relief could be granted and summary disposition was proper.

Affirmed.

Gribbs, P.J., concurred.

/s/ Michael J. Kelly

/s/ Roman S. Gribbs