STATE OF MICHIGAN

COURT OF APPEALS

ALMONT TOWNSHIP,

Plaintiff-Appellant,

v

SAM DOME,

Defendant-Appellee.

UNPUBLISHED
January 17, 1997

No. 179297
Lapeer Circuit Court
LC No. 93-019240-CZ

Before: McDonald, P.J., and Murphy and J.D. Payant,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment declaring that defendant did not violate plaintiff's zoning ordinances §§ 2.02(6) and 20.03, and providing that defendant would have 120 days to come into compliance with plaintiff's zoning ordinance § 2.05. We affirm.

Defendant ran a tree farming operation on certain property he owned. He placed a mobile home on the property without first obtaining a permit and used it as an office and storage facility. Plaintiff maintained that the mobile home violated the three zoning ordinances previously referenced and constituted a nuisance per se.

Plaintiff first argues that since the trial court found that defendant violated zoning ordinance § 2.05 by bringing a mobile home onto his property without a permit, the trial court should have ordered abatement immediately. We disagree. MCL 125.294; MSA 5.2963(24) provides that the violation of a zoning ordinance is a nuisance per se that "shall" be abated, but the statute imposes no time restriction. The trial court properly exercised its discretion by allowing defendant 120 days to obtain the proper permit. See *Michigan ex rel Wayne Co Prosecutor v Bennis*, 447 Mich 719, 755; 527 NW2d 483, aff'd 116 S Ct 994 (1996).

Plaintiff next argues that the trial court erred in finding no violation of ordinances §§ 202(6) and 20.03 based on the Right to Farm Act (RTFA), MCL 286.472 *et seq.*; MSA 12.122(2) *et seq.*, which

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* Circuit judge, sitting on the Court of Appeals by assignment.

protects farmers from public and private nuisance suits if the farm operation in question conforms to "generally accepted agricultural and management practices." MCL 286.473; MSA 12.122(3).

Plaintiff claims that defendant failed to establish that he was entitled to the protection of the RTFA.

MCL 286.473(1); MSA 12.122(3)(1) provides, in relevant part:

> A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture.

Plaintiff argues that because the commission of agriculture did not adopt any written guidelines pertaining to generally accepted agricultural and management practices for tree farmers, the trial court could not have concluded that defendant's use of the mobile home was a generally accepted practice. We disagree. The commission of agriculture's written policy statement provides, in relevant part:

> The Commission shall establish Practices encompassing the broadest possible sector of the state's agricultural industry. The Commission recognizes the diversity in Michigan farm products with over 125 commodities being produced in the state. This commercial production process involves the use of a multiplicity of acceptable management techniques. Therefore, the Practices defined using the enclosed referenced procedures should not be construed as an exclusive list of acceptable practices.

Based on this language, we decline to accept plaintiff's argument that because defendant's use of the mobile home was not listed in the commission of agriculture's written guidelines, the commission of agriculture would not consider the use to be generally accepted. We do not wish to punish defendant for engaging in what the commission of agriculture may consider to be a generally accepted practice simply because the commission did not adopt any written guidelines for tree farmers. From a practical standpoint, it would seem nearly impossible to list every generally accepted agricultural and management practice for every possible type of farm or farming operation in the state. At trial, the program manager for the RTFA within the department of agriculture opined that defendant's use of the mobile home was appropriate and a generally accepted practice under the commission of agriculture's policy. In light of the nonexclusive nature of the commission of agriculture's written guidelines, we consider the trial court's reliance on expert testimony to have been proper. Based on that credible testimony, we can not say that the trial court clearly erred in concluding that defendant's use of the mobile home was a generally accepted practice.

Next, plaintiff claims that 1995 PA 94, which amended the RTFA, clarifies that the RTFA has no affect on the application of township rural zoning acts and that therefore, defendant should not have been protected by the RTFA. At the time this case was decided, MCL 286.474; MSA 12.122(4), had been interpreted as insulating farmers from charges of zoning violations when the violation was alleged as a part of a nuisance claim. *Northville Twp v Coyne*, 170 Mich App 446, 449; 429 NW2d 185

(1988). In light of such interpretation, the trial court's ruling was correct. The amendments to the RTFA did not take effect until after this case was decided. While we foresee that because of the amendments to the RTFA, cases such as this, which are brought after the effective date of the amendments, may require a different result, we decline to give the amendment retroactive effect.

Affirmed.[1]

/s/ Gary R. McDonald
/s/ William B. Murphy
/s/ John D. Payant

[1] We have read and considered the brief submitted by amicus curiae (Michigan Townships Association), but do not deem it necessary to address the arguments raised therein.