

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF PITTSFORD,

Plaintiff-Appellant,

UNPUBLISHED
December 19, 1997

v

RONALD L. BORCK, ANITA J. BORCK, ALLEN
STIVERSON and RACHEL STIVERSON,

No. 196165
Hillsdale Circuit Court
LC No. 95-025165 CZ

Defendants-Appellees.

Before: O’Connell, P.J., and White and C. F. Youngblood*, JJ.

PER CURIAM.

Pittsford Township (the “Township”) appeals by right from a judgment of the Hillsdale Circuit Court, refusing to enforce in limited respects various provisions of Township Ordinance No. 94-01 dealing with mobile homes. The trial court did require defendants to apply for and obtain an occupancy permit, to reconfigure the windows of one bedroom to conform with federal regulations, to place the mobile home on a foundation having a tie-down system which complies with the ordinance, and to make external electrical and water and sewage connections in compliance with applicable electrical and plumbing codes. The circuit court also required defendants to remove an older mobile home from the premises, and all these portions of its order are not presently in dispute.

The trial court, however, declared invalid and unenforceable that aspect of §4B of the ordinance which precludes issuance of an occupancy permit for a mobile home manufactured more than ten years prior to the date of application, and likewise the requirement that an occupancy permit be issued only for a mobile home bearing a “H.U.D. seal.” The Township contends that the circuit court erred in these rulings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Pursuant to MCL 125.2307; MSA 19.855(107), the Township, under its police power, may enact an ordinance regulating manufactured housing construction and safety standards which is not incompatible with or more stringent than standards promulgated by the Federal Department of Housing & Urban Development pursuant to the National Manufactured Housing Construction and Safety

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

Standards Act of 1974, 42 USC §§5401 to 5426. Those federal regulations, effective July 1, 1976, in original form, are found in 24 CFR, parts 3280 and 3282. Those standards include regulation of the electrical, plumbing, and heating and fuel systems of manufactured housing, similar to those for site built housing, as well as structural integrity and other requirements peculiar to manufactured housing.

With respect to the ten-year provision of §4B of the ordinance, the Township does not purport to require that a mobile home for which an occupancy permit is sought comply with federal manufacturing and safety standards at least as current as a date ten years prior to the date of application; rather, the ordinance bars application or issuance of an occupancy permit for any manufactured housing which is more than ten years old on the date of application. As housing manufactured more than ten years prior to the date of application may nonetheless comply with even the most current health and safety standards, it is clear that the ten-year provision in the ordinance bears no rational relationship to health and safety but is rather an arbitrary limitation which therefore violates substantive due process under the State and Federal Constitutions. *Kropf v City of Sterling Heights*, 391 Mich 139; 215 NW2d 179 (1974). It is not for this Court or the circuit court to rewrite the ordinance so that it does bear some rational relationship to health and safety concerns. *Great Lakes Steel Corp v MESCO*, 6 Mich App 656, 661-662; 150 NW2d 547 (1967).

However, with respect to the requirement of a “H.U.D. seal,” the only sensible construction of this requirement of the ordinance is a reference to manufacturer data plates required by 24 CFR §3280.5 and Production Inspection Primary Inspection Agency (“IPIA”) labels required by 24 CFR §3282.362(c)(2). Such labels assure that manufactured housing has been designed to meet applicable electrical, plumbing, heating and construction safety code requirements, that the manufacturer has suitable quality control measures in place to assure that its products will comply with its approved designs, and that an agency approved by the Department of Housing & Urban Development (HUD) as competent to inspect manufacturing facilities and products has been conducting an ongoing inspection of both to assure compliance with the design and quality standards and that, as manufactured, each home poses no unreasonable threat to public health or safety.

As established at the evidentiary hearing in the trial court in this case, after manufacturing is complete, inspection of plumbing, electrical, heating and structural systems for health and safety purposes is impossible unless the home is disassembled, because walls and other parts of the structure conceal components which are crucial to health and safety concerns. Furthermore, under the scheme established by the federal regulations, only agencies approved by HUD, generally, statewide agencies, qualify for approval by HUD as inspectors of manufactured housing, and therefore the absence of a manufacturer’s data plate and IPIA label justify the Township in barring use of such a structure for residential occupancy. Only if the Department of Housing & Urban Development or one of its approved inspectors certify the home as complying with pertinent federal health and safety standards may the Township be required to issue an occupancy permit, assuming that site preparation, foundation, and external connection requirements for electrical, plumbing and fuel systems satisfy local inspection requirements. The circuit court erred in refusing to enforce this provision of the Township’s ordinance and in authorizing defendants to occupy the uncertified mobile home in question, which lacks an IPIA label or any satisfactory equivalent.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood