STATE OF MICHIGAN

COURT OF APPEALS

JOY MANAGEMENT COMPANY and E. KARR,

Plaintiffs-Appellants,

v

OAKLAND COUNTY and OAKLAND COUNTY CLERK/REGISTER,

Defendants-Appellees.

UNPUBLISHED
November 6, 1998

No. 203060
Oakland Circuit Court
LC No. 96-522898-CZ

Before: Wahls, P.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of involuntary dismissal[1] and from an order denying their motion for class certification. We affirm.

Plaintiffs' lawsuit alleged that the recording fees charged by the Oakland County Register of Deeds constituted an unconstitutional tax. On appeal, plaintiffs first argue that the trial court erred in entering an order of involuntary dismissal. Plaintiffs claim that they presented sufficient evidence to show that the recording fees charged by the Oakland County Register of Deeds were not reasonably related to the cost of the service provided. We disagree.

The $7 recording fee charged by defendants is authorized by MCL 600.2567(1) and (2); MSA 27A.2567(1) and (2). Legislative enactments are presumed to be constitutional, and the party challenging the constitutionality of a statute bears the burden of overcoming that presumption. *Gorney v City of Madison Heights*, 211 Mich App 265, 267; 535 NW2d 263 (1995). Statutorily enacted fees are presumed reasonable, but may be found constitutionally infirm, if they bear no reasonable relationship to the expense for which they are chargeable. *Foreman v Oakland Co Treasurer*, 57 Mich App 231, 237; 226 NW2d 67 (1974). Such infirmity, however, must appear on the face of the statute itself, or be established by proper evidence. *Id*.

In this case, the trial court concluded that plaintiffs failed to overcome the presumption of constitutionality. We review a decision to grant or deny a motion for involuntary dismissal under the clearly erroneous standard. The decision will not be overturned unless the evidence manifestly

preponderates against the decision. *Sullivan Industries v Double Seal Glass Co*, 192 Mich App 333, 339; 480 NW2d 623 (1991).

Here, plaintiffs failed to overcome the presumption that the $7 fee was reasonable, and the trial court did not err in dismissing plaintiffs' claim. Our conclusion is supported by two separate analyses. First, the evidence regarding the excess revenue generated in Oakland County was insufficient to show that the statutory fee was unreasonable, even in Oakland County. As our Supreme Court stated long ago:

> In determining whether a fee required for a license is excessive or not, the absence or amount of regulatory provisions and the nature of the subject of regulation should be considered, and, if the amount is wholly out of proportion to the expense involved, it will be declared a tax. If revenue is incidentally derived which is not so disproportionate as to make the fee charged unreasonable, there can be no objection. [*Vernor v Secretary of State*, 179 Mich 157, 168; 146 NW 338 (1914) (citations omitted).][2]

Here, the evidence presented was insufficient to show that the amount of the fee was "wholly out of proportion to the expense involved," and the trial court properly dismissed plaintiff's case on this basis.

Second, the fact that a statewide fee exceeds the cost of a service in one county does not necessarily mean that the fee is unrelated to the service provided. Here, plaintiffs have produced no evidence regarding the cost of processing real estate recordings in other counties. It is not difficult to imagine that many Michigan counties process far fewer recordings each year than Oakland County, and that their costs may well exceed the fees collected. Plaintiffs cite no authority for the proposition that a legislative decision to mandate a statewide uniform fee is unconstitutional simply because the cost of providing that service may vary from county to county. Indeed, we doubt that there is any authority for such a rule. Thus, without evidence comparing total costs incurred to total fees collected in other Michigan counties, plaintiffs could not show that the statutory fee was not reasonably related to the cost of the service provided. Put differently, the fact that some counties, by virtue of the large number of documents they process, operate more efficiently than other counties, does not make the legislatively mandated fee unreasonable.

Plaintiffs also claim that the trial court erred in denying their motion for class action certification. However, in light of our conclusion that the trial court properly dismissed plaintiffs underlying claim, the class certification issue is now moot.

Affirmed.

/s/ Myron H. Wahls
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald

[1] We note that defendants labeled their motion below as one for a directed verdict, and that the trial court labeled its order as one granting a directed verdict. However, because this was a bench trial, the parties concede that the order is more properly characterized as one for involuntary dismissal pursuant to MCR 2.504(B)(2).

[2] We acknowledge that the Supreme Court has, on at least one occasion, used language suggesting that there is an absolute rule prohibiting the generation of any revenue whatsoever from fees:

> We have on occasion opined on the necessity to distinguish between a fee and a tax, but in most instances we needed to do so only in order to determine the applicability of a constitutional or statutory limitation on a "tax." In doing so, we have announced the rule that to pass the test of a "regulatory fee," an exaction must not produce revenue in excess of the cost of the regulation. *Bray v Dep't of State*, 418 Mich 149, 160; 341 NW2d 92 (1983). [*Rouge Parkway Associates v City of Wayne*, 423 Mich 411, 419; 377 NW2d 748 (1985).]

However, even a cursory reading of *Rouge Parkway* reveals that this statement was pure dicta. Moreover, *Bray* does not establish such a rule. Rather, the Court in *Bray* simply noted that "it is well settled law in this state that the amount of the fees charged must be related to the costs of the regulation" citing *Vernor, supra*.