STATE OF MICHIGAN

COURT OF APPEALS

GERRISH TOWNSHIP,

Plaintiff-Appellee,

v

HAROLD E. TEAGUE and JOYCE E. TEAGUE,

Defendants-Appellants.

UNPUBLISHED
March 28, 2000

No. 214443
Roscommon Circuit Court
LC No. 96-007842-CH

Before: Talbot, P.J., and Gribbs and Meter, JJ.

PER CURIAM.

In this action by plaintiff to abate a nuisance caused by a zoning ordinance violation, defendants appeal by right from a judgment for plaintiff entered after a bench trial conducted on stipulated facts. The judgment enjoined defendants from maintaining a deck in violation of plaintiff's zoning ordinance's setback provisions, and, in the alternative, permitted plaintiff to remove the offending portion of the deck at defendants' expense. We affirm.

Defendants first argue that the trial court erred in failing to rule that defendants were denied due process of law when the Zoning Board of Appeals ("ZBA") determined that the deck violated the ordinance's setback requirements, and therefore had to be truncated, without first notifying defendants about the alleged violation. This issue presents a constitutional question that we review de novo. See *Alliance for the Mentally Ill of Michigan v Dep't of Community Health*, 231 Mich App 647, 656; 588 NW2d 133 (1998). We conclude that defendants waived their due process argument by failing to appeal the ZBA's decision to the circuit court under MCL 125.293a; MSA 5.2963(23a). See *Krohn v Saginaw*, 175 Mich App 193, 195-198; 437 NW2d 260 (1988). Even if defendants had *not* waived this argument, it would nonetheless provide no basis for reversal, since the record establishes that defendants received sufficient notice regarding the appropriateness of their deck under plaintiff's zoning ordinance.

Next, defendants argue that the trial court erred in finding that plaintiff, in the instant abatement case,[1] adequately proved that defendants' deck violated the setback requirements of the zoning

ordinance. Although we review a trial court's decision regarding a zoning violation de novo, "we accord great weight to the findings of the trial court . . . ." *Cryderman v City of Birmingham*, 171 Mich App 15, 20; 429 NW2d 625 (1988). We disagree that the trial court erred in concluding that plaintiff met its burden of proof, since defendants' own evidence and testimony established the violation in question.

Finally, defendants argue that the trial court erred by failing to conclude that even if a zoning violation existed, it was a mere technical violation that needed no correction. Again, defendants waived this argument by failing to appeal the ZBA's decision to the circuit court under MCL 125.293a; MSA 5.2963(23a). *Krohn*, *supra* at 195-197. Even if defendants had *not* waived this argument, it would nonetheless provide no basis for reversal. Indeed, the violation of a valid township zoning ordinance is a nuisance per se that the court is required to order abated.[2] MCL 125.294; MSA 5.2963(24); *Farmington Twp v Scott*, 374 Mich 536, 539-541; 132 NW2d 607 (1965); *Independence Twp v Eghigian*, 161 Mich App 110, 114; 409 NW2d 743 (1987).

Affirmed. Plaintiff, as the prevailing party, may tax costs under MCR 7.219.

/s/ Michael J. Talbot
/s/ Roman S. Gribbs
/s/ Patrick M. Meter

[1] Defendants do not argue in this appeal that the zoning violation was not proven before the ZBA.

[2] Defendants cite *Cooper v Kovan*, 349 Mich 520, 530; 84 NW2d 859 (1957), to support their argument that a technical violation of a zoning ordinance need not be abated. However, that case interpreted a restrictive covenant, not a zoning ordinance. Defendants cite no cases in which the "technical violation" exception was applied to the violation of a zoning ordinance.