STATE OF MICHIGAN

COURT OF APPEALS

CITY OF MT. CLEMENS,

Plaintiff-Appellee/Cross Appellant,

v

MIRIAM G. CARROLL, Trustee for the MIRIAM G. CARROLL Revocable Living Trust,

Defendant-Appellant/
Cross Appellee,

and

RICHARD P. WHITMORE, PAULINE A. WHITMORE, STEVEN P. WHITMORE, and HELEN PECK,

Defendants-Not Participating.

UNPUBLISHED
June 29, 2001

No. 219085
Macomb Circuit Court
LC No. 93-003387-CH

Before: Cavanagh, P.J., and Cooper and K. F. Kelly, JJ.

PER CURIAM.

Defendant appeals, and plaintiff cross-appeals, from a final judgment, holding in part for plaintiff and in part for defendant, entered in this action for injunctive relief following a bench trial. We affirm.

Defendant was the owner of two houses located on Cass Avenue in the City of Mt. Clemens and rented rooms in the houses to tenants who stayed for weeks, months, or years. The tenants shared the bathroom facilities in both houses. In 1993, plaintiff filed complaints for injunctive relief alleging that the houses violated its Housing Code, in particular § 18.068(C), which prohibited the existence and use of shared sanitary facilities in dwellings, and § 18.074, which prohibited basement living units.[1] Plaintiff requested permanent injunctions and an order requiring defendant to install a bathroom in each rented room. Following a bench trial, the trial

[1] The two actions regarding the properties were subsequently consolidated by stipulated order.

court denied plaintiff's request regarding the enforcement of § 18.068(C) and granted plaintiff's request regarding § 18.074, enjoining the use of basement living units.

On appeal, defendant argues that the trial court improperly denied her motion for frivolous action sanctions, pursuant to MCR 2.625(A)(2) and MCL 600.2591, because plaintiff's claims did not have factual support or legal merit. We disagree. A trial court's finding that a claim or defense was or was not frivolous will not be reversed on appeal unless clearly erroneous. *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997). The relevant time period in which to scrutinize the plaintiff's action for purposes of MCL 600.2591 is the time at which the lawsuit was commenced. See *In re Attorney Fees & Costs*, 233 Mich App 694, 702; 593 NW2d 589 (1999); *Meagher v Wayne State Univ*, 222 Mich App 700, 727; 565 NW2d 401 (1997). First, defendant argues that the trial court did not consider her claim that the lawsuit was frivolous. However, the trial court clearly and adequately addressed defendant's claim in its opinion and order denying both parties' motions for summary disposition and defendant's request for sanctions.

Next, defendant argues that plaintiff's action was not reasonably based on facts because it conducted no investigation and provided no evidence that the sharing of bathrooms posed an immediate threat to the health and safety of residents. However, the complaints for injunctive relief were premised on defendant's properties violating the Housing Code, specifically §§ 18.068(C) and 18.074, which prohibited shared sanitary facilities and basement living units. It is undisputed that plaintiff was aware that shared sanitary facilities and basement living units existed because plaintiff had inspected the properties in accordance with its Rental Registration Ordinance. Consequently, at the time the complaints were filed, plaintiff had a reasonable basis to believe that the facts underlying its legal position were true, i.e. that defendant's properties violated the Housing Code.

Finally, defendant argues that plaintiff's action lacked legal merit because § 18.068(C) was invalid on its face since it allegedly excluded rooming houses from the city. Section 18.068 of the Housing Code provides, in pertinent part:

> No person shall occupy or let to another for occupancy for dwelling or dwelling unit for the purpose of living therein, which does not comply with the following requirements:
>
> * * *
>
> (C) SHARED SANITARY FACILITIES. No shared sanitary facilities are permitted under this Ordinance except in emergency shelters, as defined in Section 18.052 AA of this Ordinance or adult foster care facilities, as defined in Michigan Compiled Laws, Section 400.703(4) as amended.

Clearly, on its face, § 18.068(C) does not specifically exclude rooming houses from the city. Further, an ordinance is only deemed facially invalid if there are no factual circumstances under which the provision could be constitutionally implemented. *Gora v Ferndale*, 456 Mich 704, 722; 576 NW2d 141 (1998). Rooming houses that have bathrooms in each room would still be permitted within the city. Consequently, the ordinance was presumptively valid and plaintiff had

the right to attempt its enforcement. Therefore, plaintiff's action was not frivolous as devoid of arguable legal merit at the time it was filed.

Next, defendant argues that she was entitled to compensation for a taking because if plaintiff had obtained the injunction it sought, a taking would have occurred. Defendant further argues that the lawsuit itself constituted a taking, under an inverse condemnation theory, because it diminished the value of her properties in terms of their marketability and she could not pledge them as collateral for loans. However, defendant cites no apposite supporting authority for the proposition that a taking occurs by the institution of a legal action, by the pursuit or threat of enforcement of an ordinance, or when a landowner allegedly suffers financial consequences from such attempt or threat of enforcement.[2] This Court will not search for authority to sustain or reject a party's position. See *Troy v Papadelis (On Remand)*, 226 Mich App 90, 95; 572 NW2d 246 (1997). Further, a "taking" for purposes of inverse condemnation results from a governmental action that causes injury to the property, including partial destruction or diminution of value, or that permanently deprives the owner of possession or use of his property. See *Spiek v Michigan Dept of Transportation*, 456 Mich 331, 334 n 3; 572 NW2d 201 (1998); *Peterman v Dep't of Natural Resources*, 446 Mich 177, 190; 521 NW2d 499 (1994). Upon review of the facts presented in this case, including that the ordinance was not enforced against defendant's properties, no such taking occurred.

Next, defendant argues that plaintiff is estopped from enforcing § 18.074, which prohibits basement living units, against defendant's properties. However, this issue was rendered moot by defendant's subsequent sale of the properties because the action complained of will not continue to adversely affect defendant in any way. See *School Dist of City of East Grand Rapids, Kent County v Kent County Tax Allocation Bd*, 415 Mich 381, 390; 330 NW2d 7 (1982).

On cross-appeal, plaintiff argues that the trial court abused its discretion when it denied plaintiff's request for an injunction, pursuant to § 18.068(C), because the trial court disregarded the ordinance's presumption of validity and impermissibly shifted the burden of proof to plaintiff. We disagree. This Court reviews the trial court's decision to grant or deny an injunction for an abuse of discretion. *Kernen v Homestead Development Co*, 232 Mich App 503, 509; 591 NW2d 369 (1998).

It is well-established that "injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Id.*, quoting *Jeffrey v Clinton Twp*, 195 Mich App 260, 263-264; 489 NW2d 211 (1992). Although on appeal plaintiff argues that the trial court improperly shifted the burden of proving the constitutionality of the ordinance onto it, the trial court did not rule on the constitutionality of the ordinance. The trial court merely held that plaintiff did not meet its burden of proving that a permanent injunction was proper because plaintiff did not establish that "a real and imminent danger of irreparable injury" existed as a consequence of the

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[2] Defendant's reliance on *Peterman v Dep't of Natural Resources*, 446 Mich 177, 190; 521 NW2d 499 (1994) and *Luna Pier v Lake Erie Landowners*, 175 Mich App 430; 438 NW2d 636 (1989) is misplaced as these cases are factually distinguishable.

continued use of the rental units. However, the use of land in violation of an ordinance is a nuisance per se; therefore, plaintiff was not required to prove the existence of irreparable harm resulting from the ordinance violation. See MCL 125.587; *Addison Twp v Dep't of State Police (On Remand)*, 220 Mich App 550, 559; 560 NW2d 67 (1996); *Indian Village Ass'n v Shreve*, 52 Mich App 35, 37-38; 216 NW2d 447 (1974). Nevertheless, this Court may affirm a trial court's decision when the trial court reached the right result for the wrong reason. See *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 640; 534 NW2d 217 (1995).

On appeal plaintiff argues that its enactment of § 18.068(C), prohibiting shared sanitary facilities, represented a proper exercise of its police power because it "advances governmental interests such as the health, safety and quality of life of City residents, ridding neighborhoods of blighting influences, insuring rehabilitation of structures and improvement in housing conditions." Plaintiff also argues that "[t]he ordinance fosters the security of home life, the preservation of a favorable environment in which to rear children, the protection of morals and health, the stabilization of the use and value of the property, the attraction of desirable citizenship and fostering the permanency of its residents."

It is well-established that ordinances are presumed reasonable and valid unless the contrary is shown by competent evidence or appears on the face of the enactment. *Gora*, *supra* at 719-720, quoting *Brown v Shelby Twp*, 360 Mich 299, 309; 103 NW2d 612 (1960), quoting *Harrigan & Reid Co v Burton*, 224 Mich 564, 569; 195 NW 60 (1923). The burden is on the party challenging the ordinance to rebut the presumption. *Detroit v Qualls*, 434 Mich 340, 364; 454 NW2d 374 (1990). In this case, enforcing the ordinance would prevent the continued rental of rooms at defendant's houses. Government may not deprive a landowner of the full use and enjoyment of his property, so long as not injurious to others, without due process of law. *People v McKendrick*, 188 Mich App 128, 137; 468 NW2d 903 (1991), quoting *Roman Catholic Archbishop of Detroit v Orchard Lake*, 333 Mich 389, 392; 53 NW2d 308 (1952). Consequently, the validity of such an exercise of police power is determined by the application of a two-pronged analysis: "(1) whether the object of the ordinance is one for which police power may be properly invoked, and, if so, (2) whether there is a reasonable and substantial relationship between the exercise of the police power invoked and the object to be attained." *McKendrick*, *supra*; see, also, *Square Lake Hills Condominium Ass'n v Bloomfield Twp*, 437 Mich 310, 318; 471 NW2d 321 (1991). The reasonableness of an ordinance, while a question of law, depends upon the particular facts of each case. *Id.*

In this case, although the general objective of the ordinance appears to be to preserve or promote the public health, safety, and general welfare of plaintiff's residents, the prohibition of shared sanitary facilities, as applied to defendant's properties, does not bear a reasonable and substantial relationship to that objective. The evidence presented by defendant, considered as a whole, rebutted the presumption of reasonableness and validity of the ordinance and illustrated that requiring defendant to install an additional nineteen bathrooms in her two houses (five at one house and fourteen at the other house) would not reasonably and substantially promote the public health, safety and general welfare. See *Johnson Const Co v White Lake Twp*, 351 Mich 374, 379; 88 NW2d 426 (1958); *Frischkorn Const Co v Lambert*, 315 Mich 556, 561-562; 24 NW2d 209 (1946). Although plaintiff espouses laudable objectives of the ordinance, prohibiting shared sanitary facilities in any dwelling within the city limits, including defendant's houses, does not

reasonably promote those objectives. Consequently, the trial court properly denied plaintiff's request for an injunction to enjoin the continued use of defendant's properties as rental units for failure to have separate sanitary facilities because the ordinance, as applied to defendant's properties, was unconstitutional.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly