STATE OF MICHIGAN

COURT OF APPEALS

CHARTER TOWNSHIP OF HURON,

Plaintiff-Appellee,

v

RONALD K. ENGLAND,

Defendant-Appellant.

UNPUBLISHED
December 21, 2001

No. 225645
Wayne Circuit Court
LC No. 99-938637-CE

Before: Meter, P.J., and Jansen and Gotham*, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order directing defendant to abate a nuisance on his property. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Pursuant to an order to show cause, the court held a hearing on plaintiff's complaint for abatement of a public nuisance. MCR 3.601. After hearing the proofs, the court found that defendant was using the property in violation of the township zoning ordinance and ordered him to remove a structure and other miscellaneous items and debris within ninety days.

Defendant first contends that the trial court improperly shifted the burden of proof by making him present his proofs first. We disagree. The plaintiff bears the burden of proof (persuasion) for all elements necessary to establish his cause of action and this burden never shifts during trial. *Kar v Hogan*, 399 Mich 529, 539; 251 NW2d 77 (1976). The plaintiff usually bears the burden of going forward with evidence (production), although that burden may shift during the course of the trial. *Id.* at 540. Actions to abate a public nuisance are governed by the rules applicable to nonjury actions, MCR 3.601(A), and in such actions, the plaintiff bears the initial burden of production in a trial unless otherwise ordered by the court. MCR 2.507(B). Here, the court ordered otherwise. Given that, plus the fact that defendant does not claim that plaintiff did not meet its burden of proof, we find no error.

Defendant next claims that the trial court erred in ordering abatement instead of some other remedy.

Section 24 of the Township Zoning Act provides in part:

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

> A use of land or a dwelling, building, or structure including a tent or trailer coach, used, erected, altered, razed, or converted in violation of a local ordinance or regulation adopted pursuant to this act is a nuisance per se. The court shall order the nuisance abated and the owner or agent in charge of the dwelling, building, structure, tent, trailer coach, or land is liable for maintaining a nuisance per se. [MCL 125.294.]

The trial court found that defendant was using the land in violation of the zoning ordinance, and defendant does not dispute the validity of that finding. Plaintiff thus proved that the use of the land was a nuisance per se and, pursuant to the statute, the court was required to order the nuisance abated, the term "shall" being mandatory rather than permissive. *Snyder v General Safety Corp (On Remand)*, 200 Mich App 332, 334; 504 NW2d 31 (1993). While the court should try "to tailor the remedy to the problem," *Norton Shores v Carr*, 81 Mich App 715, 724; 265 NW2d 802 (1978), and abate the nuisance while allowing any existing legitimate activity to continue, *Orion Charter Twp v Burnac Corp*, 171 Mich App 450, 459; 431 NW2d 225 (1988), defendant did not show that he was maintaining any conforming use or structure. Rather, he simply wanted yet another chance to try to bring the house and property into compliance with the zoning ordinance. Because he had been given ample opportunity to do that in the past and had failed to follow through, the remedy ordered by the court was not inappropriate. *Id*. at 461-462.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham