

STATE OF MICHIGAN
COURT OF APPEALS

HARRISVILLE TWP,

Plaintiff/Counter-Defendant-
Appellant,

v

THOMAS C. APSEY and CYNTHIA L. APSEY,

Defendants/Counter-Plaintiffs-
Appellees,

and

GEORGE LOYER and MERRY LOU LOYER,

Counter-Plaintiffs.

UNPUBLISHED

June 25, 2002

No. 231543

Alcona Circuit Court

LC No. 99-010230-CE

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Plaintiff Harrisville Township appeals as of right an order dismissing for lack of jurisdiction Count I of its complaint, which alleged defendants¹ violated a township zoning ordinance by dumping dirt and debris to form a berm between plaintiff's and defendants' properties. We dismiss.

In May 1999, defendants began to dump piles of dirt and debris along the boundary line between their property and plaintiff's property, creating a berm approximately 6 to 8 feet high. The township zoning administrator determined the berm violated a township zoning ordinance prohibiting dumping of materials that alter the natural terrain or may contaminate water or soil.

Plaintiff filed this action in July 1999, seeking, among other claims, abatement of defendants' ordinance violation, which constituted a nuisance per se. MCL 125.294. The trial court dismissed plaintiff's claim regarding the zoning violation, finding it lacked jurisdiction of the claim because the township's zoning board of appeals (ZBA) had not reviewed the

¹ "Defendants" refers only to Thomas and Cynthia Apsey. George and Merry Lou Loyer are not parties to this appeal.

township's determination that defendants had violated the zoning ordinance. On reconsideration, the trial court affirmed its ruling.

After dismissal of the claim, plaintiff sought review of the zoning administrator's decision by its ZBA, which affirmed the decision. Plaintiff then sought leave to supplement its complaint to reinstate the zoning ordinance violation claim. After the trial court denied the motion, plaintiff filed a new complaint, again asserting the zoning violation claim. Plaintiff attached a copy of the ZBA decision to its new complaint. Plaintiff claims—and defendant does not dispute—that the second circuit court action was pending at the time it filed its brief on appeal in this case.

Plaintiff concedes that the second circuit court action creates mootness issues in this case, but claims our review is appropriate because the issue is capable of repetition yet evades review. We disagree. Whether a trial court has subject-matter jurisdiction is a question of law that we review de novo. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000).

As a general rule, we will not decide moot issues, which are those presenting only abstract questions of law that do not rest upon existing facts or rights. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). The test for mootness is whether an event has occurred that renders it impossible for this Court to grant relief. *Contesti v Attorney General*, 164 Mich App 271, 278; 416 NW2d 410 (1987).

Because plaintiff complied with the court's instructions to seek ZBA approval before initiating a circuit court action, the question of the validity of that ruling is an abstract one that does not rest on existing facts or rights. *B P 7*, *supra* at 359. Additionally, we could grant plaintiff no relief in this case because plaintiff has complied with the court's instructions to seek ZBA review. *Contesti*, *supra* at 278. Finally, any relief granted in this case would have no effect on plaintiff's separate cause of action. Therefore, the issue is moot.

More importantly, by complying with the trial court's instructions to seek ZBA review, plaintiff intentionally relinquished its right and waived appellate review of this issue. *Greathouse v Rhodes*, 242 Mich App 221, 231 n 5; 618 NW2d 106 (2000), *rev'd* on other grounds 465 Mich 885 (2001). Accordingly, no trial court error exists for our review.

Dismissed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jessica R. Cooper