S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

GERRISH TOWNSHIP,

Plaintiff-Appellant/Cross-Appellee,

v

RICHARD S. CRONK,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
August 6, 2002

No. 229577
Roscommon Circuit Court
LC No. 99-721188-CE

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiff Gerrish Township appeals as of right the trial court's order permanently enjoining defendant from conducting certain aspects of his commercial archery operations on his residential property, arguing that the trial court should have enjoined additional activities associated with defendant's archery business. Defendant cross-appeals, contending the trial court's order was overly broad in both its scope and authority. We reject both parties' contentions and affirm the trial court's order.

Plaintiff contends the trial court erred in permitting defendant to continue to service and repair archery equipment, sell goods incidental to those services, and take orders for merchandise. Specifically, plaintiff argues these activities do not qualify as a "home occupation" under the Gerrish Township Zoning Ordinance. Meanwhile, defendant asserts the trial court erred in precluding him from displaying and selling merchandise as part of his home occupation. We disagree.

In reviewing a trial court's interpretation of a zoning ordinance, we will not disturb the trial court's fact findings unless they are clearly erroneous. MCR 2.613(C); *Frericks v Highland Twp*, 228 Mich App 575, 583; 579 NW2d 441 (1998). However, we review zoning ordinance interpretations de novo as questions of law. *Brandon Charter Twp v Tippett*, 241 Mich App 417, 421; 616 NW2d 243 (2000).

Gerrish Township's zoning ordinance defines "home occupation" as follows:

> Any use customarily conducted entirely within the dwelling and carried on by the inhabitants thereof, not involving employees other than members of the immediate family residing on the premises, which use is clearly incidental and

> secondary to the use of the dwelling for dwelling purposes, does not change the character thereof, and which does not endanger the health, safety, and welfare of any other persons residing in that area by reasons of noise, noxious odors, unsanitary or unsightly conditions, excessive traffic, fire hazards and the like, involved in or resulting from such occupation, profession or hobby.

In interpreting a zoning ordinance, we consider and give deference to the past practical construction of the ordinance by those administering the ordinance. *Sinelli v Birmingham Bd of Zoning Appeals*, 160 Mich App 649, 652; 408 NW2d 412 (1987). However, we are not bound by that interpretation if we find the construction erroneous. *Id.*

Gerrish Township has interpreted "home occupation" to include the sale of Mary Kay products as well as operation of a musical instrument repair business from one's residence, provided these activities do not generate excessive noise or garbage or otherwise violate the zoning ordinance. In contrast, the township has precluded operation of a beauty salon, bed and breakfast, or shoe repair business as "home occupations."

Because the trial court's ruling is in line with the township's previous interpretations, we find no error in its conclusion that defendant's service and repair business qualifies as a home occupation. Defendant's service and repair of archery equipment is similar to repair of musical instruments, and defendant's catalog order business mirrors the sale of Mary Kay products. Also, the trial court correctly concluded that the business otherwise satisfies the ordinance's requirements. Despite evidence of possibly excessive traffic and garbage, sufficient evidence was presented on both sides of the question to support the court's conclusion that the business did not violate that aspect of the zoning ordinance.

The trial court similarly did not err in precluding defendant from displaying merchandise for sale. Contrary to defendant's assertion on cross-appeal, no evidence exists in the record to indicate that Gerrish Township has allowed merchandise displays as part of other home occupations. To the contrary, the evidence demonstrates that the township has previously interpreted the use of store-like retail displays to be precluded in connection with a "home occupation." Accordingly, the trial court properly enjoined defendant from using such displays in his business.

Finally, we reject defendant's contention that the trial court erred in restricting defendant's personal, non-commercial use of an outdoor archery shooting range on his property because plaintiff did not include the matter in its original complaint, and because such use did not violate the township's zoning ordinance and was, therefore, outside the court's authority to regulate. The trial court properly allowed plaintiff to amend its pleadings to include these claims. MCR 2.118(C)(1). Defendant was not prejudiced by a lack of notice of these claims because defendant stipulated to entry of an order concerning his personal use of the range early in these proceedings, which provided him early notice that the trial court would consider the issue. See MCR 2.118(C)(2). Moreover, in stipulating to entry of such an order, defendant waived any challenge to the court's authority to restrict non-commercial use of the range. See, e.g., *Schulz v Northville Public Schools*, 247 Mich App 178, 181 n 1; 635 NW2d 508 (2001), citing *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000).

We affirm.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell