STATE OF MICHIGAN

COURT OF APPEALS

TOWNSHIP OF MACOMB,

Plaintiff-Appellant,

v

RONALD MICHAELS and DELORES MICHAELS,

Defendants-Appellees.

UNPUBLISHED
April 1, 2003

No. 229228
Macomb Circuit Court
LC No. 95-004372-CZ

Before: Meter, P.J., and Saad and R.B. Burns*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's opinion and order denying its request for a preliminary injunction and granting defendants' motion for summary disposition under MCR 2.116(C)(10). We reverse and remand.

Plaintiff commenced this action in 1995, alleging that defendants were operating a commercial composting business on property that was zoned for agricultural use. Plaintiff's zoning ordinances at the time provided that a commercial composting facility could operate only in a manufacturing zone. Plaintiff requested both declaratory relief and an injunction enjoining defendants' operation. In 1997, the trial court granted defendants' motion for summary disposition, concluding that defendants were engaged in protected farming activities under the Michigan Right to Farm Act ("RTFA"), MCL 286.471 *et seq.* On appeal by plaintiff, this Court reversed the trial court's decision, holding that the RTFA could not serve as a defense to an action to enforce a zoning ordinance. *Township of Macomb v Michaels*, unpublished opinion per curiam of the Court of Appeals (Docket No. 206594, issued May 11, 1999). The Supreme Court denied leave to appeal. See 461 Mich 1022 (2000).

On remand from this Court, the trial court, after considering amendments to the RTFA and a new ordinance governing composting operations, again granted defendants summary disposition. The trial court concluded that, under the RTFA as amended, a local municipality could no longer enact zoning ordinances that conflicted with the RTFA without the prior approval of the Department of Agriculture. The court ruled that, because plaintiff's new ordinance did not comply with the RTFA amendments, plaintiff was barred from restricting defendants' operation.

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

We conclude that the trial court erroneously relied on the amendments to the RTFA that were enacted pursuant to 1999 PA 261.

The RTFA amendments were recently addressed by this Court in *Travis v Preston (On Rehearing)*, 249 Mich App 338; 643 NW2d 235 (2002). In *Travis*, the defendants conducted a hog-farming operation and the plaintiffs sued for injunctive relief on the basis that the odors and fumes from the farm constituted a nuisance and that the operation violated local zoning ordinances. *Id*. at 340-341. The trial court concluded that the township had the authority to adopt ordinances that restricted the effect of the RTFA and that the defendants were in violation of a local ordinance. *Id*. at 341-342. The plaintiffs were awarded damages on the basis that the defendant's farming operation constituted a nuisance. *Id*. at 342.

On appeal, the defendants relied on the RTFA as a defense to the plaintiffs' action. *Id*. This Court considered whether the recent amendments to the RTFA could be applied retroactively. *Id*. At the time the action was filed and decided, the RTFA did not exempt farms from the operation of local zoning laws. *Id*. at 343. However, the *Travis* Court noted that the intent of the Legislature beginning on June 1, 2000, was to preempt any local zoning laws that conflicted with either the RTFA or Generally Accepted Agricultural And Management Practices ("GAAMPS"), unless a local government submits a proposed ordinance for approval by the director. *Travis, supra* at 344. See MCL 286.474(6), (7), and (8), as amended by 1999 PA 261.

MCL 286.474, as amended, now provides, in relevant part:

> (5) Except as provided in subsection (6), this act does not affect the application of state statutes and federal statutes.
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> (6) Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act.
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> (7) A local unit of government may submit to the director a proposed ordinance prescribing standards different from those contained in generally accepted agricultural and management practices if adverse effects on the environment or public health will exist within the local unit of government. A proposed ordinance under this subsection shall not conflict with existing state laws or federal laws. At least 45 days prior to enactment of the proposed ordinance, the local unit of government shall submit a copy of the proposed ordinance to the director. Upon receipt of the proposed ordinance, the director shall hold a public meeting in that local unit of government to review the proposed ordinance. In conducting its review, the director shall consult with the departments of environmental quality and community health and shall consider any recommendations of the county health department of the county where the adverse effects on the environment or public health will allegedly exist. Within

> 30 days after the public meeting, the director shall make a recommendation to the commission on whether the ordinance should be approved. An ordinance enacted under this subsection shall not be enforced by a local unit of government until approved by the commission of agriculture.
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> (8) By May 1, 2000, the commission shall issue proposed generally accepted agricultural and management practices for site selection and odor controls at new and expanding animal livestock facilities. The commission shall adopt such generally accepted agricultural and management practices by June 1, 2000. In developing these generally accepted agricultural and management practices, the commission shall do both of the following:
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> (a) Establish an advisory committee to provide recommendations to the commission. The advisory committee shall include the entities listed in section 2(d), 2 individuals representing townships, 1 individual representing counties, and 2 individuals representing agricultural industry organizations.
>
> (b) For the generally accepted agricultural and management practices for site selection, consider groundwater protection, soil permeability, and other factors determined necessary or appropriate by the commission. . . .

The *Travis* Court held that the amendments to the RTFA apply prospectively only. *Id*. at 345-346.[1]

Under MCR 7.215(I)(1), we are required to follow the decision in *Travis*. In *Travis*, this Court concluded that the amendments did not apply because they were enacted after the case at issue in *Travis* was filed and after it was decided. In the case at bar, the amendments similarly became effective after the nuisance claim arose and after the case was filed. Although the case was pending in the trial court on the effective date of the amendments, defendants have not shown that the amendments apply to this case as it currently stands.

Generally, when a statute is amended, the pertinent date for determining whether to apply the amended statute is the date the cause of action arose. *Hill v General Motors Acceptance Corp*, 207 Mich App 504, 513-514; 525 NW2d 905 (1994). The law in effect when the injury occurs generally controls the case where there is a substantive change in the law that affects the rights of a party. *Franklin v Ford Motor Co*, 197 Mich App 367, 368-369; 495 NW2d 802 (1992). A statute adopted for prospective application generally is to be applied only to cases filed after its effective date or causes of action that arise after the effective date. See *Tobin v Providence Hosp*, 244 Mich App 626, 661-662; 624 NW2d 548 (2001); see also *Mary v Lewis*, 399 Mich 401, 418; 249 NW2d 102 (1976) (Levin, J., concurring) (new legislation that expressly applies to pending actions is retroactive), and *Chesapeake & Ohio Railway Co v Public Service*

[1] Even though the legislative analyses for 1999 PA 261 suggested that the amendments were adopted as a remedial measure to correct an existing oversight in the law, the *Travis* Court rejected the legislative analyses as an expression of legislative intent based upon our Supreme Court's decision in *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 587; 624 NW2d 180 (2001). *Travis, supra* at 345, n 2.

Comm, 5 Mich App 492, 506; 147 NW2d 469 (1967) (statutory amendment that went into effect during pendency of suit had no bearing on the rights of the parties fixed by law before its enactment). In this case, the amendment became effective after plaintiff's nuisance claim arose. We therefore conclude that the trial court erroneously relied on the amended version of the RTFA when deciding this case. The court should not have granted summary disposition to defendants.

Indeed, because plaintiff's complaint included a request for injunctive relief and a declaration that defendants' operation was a nuisance per se based upon the allegations in 1995 when the complaint was filed, defendants cannot now rely on the RTFA amendments as a basis for continuing their composting operation. Rather, defendants must submit a new application to plaintiff for approval to operate their business before the amendments to the RTFA can apply.[2] While defendants *may* be entitled to operate their composting business in the future, we cannot presently enforce the recent amendments to the RTFA.

Should defendants submit a new application to plaintiff for approval to operate their business, the trial court shall decide anew whether plaintiff's new ordinance complies with the RTFA, using the most recent GAAMPS. Indeed, new GAAMPS concerning odor controls may be in effect at this time.

Finally, we conclude that the trial court must address plaintiff's motion for a preliminary injunction on remand, using the appropriate standard for reviewing a request for an injunction. See *State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1985).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Robert B. Burns

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[2] Our review of the record for the hearing on May 22, 2000, reveals that the parties were in agreement that defendants never submitted an application under plaintiff's new ordinance. Indeed, it was defendants' position that once the RTFA was amended, they were not required to submit an application in order to operate their composting business.