STATE OF MICHIGAN

COURT OF APPEALS

DORA EWING,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
June 12, 2003

No. 239896
Wayne Circuit Court
LC No. 96-625523-CZ

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition to the city.[1] We affirm.

Plaintiff originally brought this action on May 7, 1996, against the city claiming that Detroit Ordinances 2-91 and 3-91 were invalid because they were not properly published, and further claimed that the ordinances, as well as Detroit Ordinances 291-H and 579-H, which were purportedly repealed by ordinances 2-91 and 3-91, were unconstitutional because they authorized warrantless searches in violation of the Fourth Amendment. The trial court granted the city summary disposition, holding that Ordinance 2-91 and Ordinance 3-91 were validly adopted and constitutional and that plaintiff was time-barred from challenging ordinances 291-H and 579-H. Plaintiff appealed to this Court and this Court reversed, finding that the city had not properly adopted ordinances 2-91 and 3-91, and thus, the ordinances were invalid. See *Ewing v Detroit*, 237 Mich App 696; 604 NW2d 787 (1999). This Court remanded this case to the trial court without deciding the constitutional validity of ordinances 291-H and 579-H.

On remand, plaintiff filed a motion for summary disposition arguing that certain fees paid under the invalid ordinances must be repaid and cannot be attributed to the predecessor ordinances.[2] Defendant responded that the invalidity of the successor ordinances meant that the earlier ordinances, Ordinance 291-H and Ordinance 579-H, remained in force and the fees collected were validly collected under those ordinances. Plaintiff responded, arguing that

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[1] Plaintiff successfully moved below to certify her claim as a class action.

[2] Plaintiff's complaint alleged that her fees totaled $120.50.

whether collected under the old or new ordinances, the fees were collected under duress and that the ordinances were unconstitutional.

The trial court denied plaintiff's motion for summary disposition and, instead, granted summary disposition to the city. The trial court found that the invalid ordinances could not repeal the prior valid ordinances; thus, ordinances 291-H and 579-H remained in effect. The court further found that the ordinances were constitutional, and even if they were not, the unconstitutional provisions could be properly severed.

We review de novo the trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The constitutionality of an ordinance is evaluated under the same rules as statutes, and accordingly, is reviewed de novo as a question of law. *Plymouth Charter Twp v Hancock*, 236 Mich App 197, 199; 600 NW2d 380 (1999).

By way of background, Ordinance 291-H became effective November 15, 1978, and in part, created an inspection program for dwelling units in the city. It also provided penal sanctions for those in violation. Ordinance 579-H was enacted February 15, 1984, and provided in part, that all rental units in the city had to be registered with the city's Department of Building and Safety Engineering, and that all rented properties, including single and two-family dwellings, had to be inspected annually. The ordinance also provided for the department to issue to the owner or his agent a certificate of registration after payment of the prescribed fees for the inspections. Both of these ordinances were recodified in the 1984 Detroit City Code.

The city adopted Ordinance 2-91 on March 6, 1991. By this ordinance, the city attempted to adopt the BOCA National Property Maintenance Code/1990 by reference.[3] On the same day, the city adopted Ordinance 3-91. This ordinance provided in part for inspections of buildings for compliance with the BOCA maintenance code. The ordinance also had a repealing provision that purportedly repealed the existing ordinances.

Plaintiff now argues to this Court that because this Court rendered Ordinance 2-91 and Ordinance 3-91 invalid, the inspection fees paid under those ordinances must be repaid. The city responds that the fact that the ordinances were rendered invalid means that the predecessor ordinances were never effectively repealed; thus, the fees paid after 1991 can be attributed to the predecessor ordinances and need not be repaid.

It has long been held that where a court has held a law invalid, it leaves all preceding laws on that subject in force. *McClellan v Recorder's Court of Detroit*, 229 Mich 203, 213; 201 NW 209 (1924).[4] A law held invalid can be compared to a law held unconstitutional, as each is

[3] BOCA is an acronym for Building Officials & Code Administrators International, Inc.

[4] See also 1A Singer, Sutherland Statutory Construction (6th ed), § 23:25, p 544 ("An unconstitutional statute which purports to repeal a prior statute by specific provision does not do so where, under standard rules governing separability, a hiatus in the law would result from the impossibility of substituting the invalid provisions for the legislation that was to be repealed . . ."); *People v DeBlaay*, 137 Mich 402; 100 NW598 (1904).

considered void for any purpose and is ineffective as if it had never been enacted. See *Stanton v Lloyd Hammond Produce Farms*, 400 Mich 135, 144-145; 253 NW2d 114 (1977). Therefore, even though ordinances 2-91 and 3-91 purportedly repealed the previous ordinances, the repeal had no effect because the ordinances were held invalid. This means that Ordinance 291-H and Ordinance 579-H remained in force so long as they are not held unconstitutional.[5]

Ordinance 3-91 required plaintiff, and others similarly situated, to pay a prescribed fee for inspections, and it is for these fees that plaintiff requests repayment. However, Ordinance 579-H required plaintiff to pay, what appear to be, the same fees for the city's inspections. Plaintiff does not argue that the fees were not required under the previous ordinances or that the fees were somehow different.[6] Therefore, under these circumstances, plaintiff properly paid the fees regardless of which ordinance she paid under.

Plaintiff argues that regardless whether the invalid ordinances failed to repeal the prior ordinances, the inspection fees paid were paid under unlawful duress, and therefore, must be refunded. Plaintiff contends that because the ordinances provided for criminal prosecution if she failed to comply with the ordinance requirements, her payment of the inspections fees constituted payment under duress. Plaintiff cites *Beachlawn Bldg Corp v St. Clair Shores*, 370 Mich 128; 121 NW2d 427 (1963), in support of its argument. However, in that case, an amendment to an ordinance increasing certain fees was held to be invalid. The Court held that the excess fees were illegal and remanded to the trial court to determine how much of the fees should be returned. It was the amount of the fee being charged that was at issue, not the city's authority to charge the fee, nor the validity of the original ordinance that established the fee. Therefore, the case actually supports the conclusion that in this case, the prior ordinances remained in effect by the invalidation of the subsequent ordinances.

Plaintiff also argues that the disputed ordinances are penal ordinances that cannot be applied retroactively. Plaintiff provides very little legal support for this argument. A party may not give an issue cursory treatment with little citation of authority. See *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). Regardless, we find no merit to this issue.

Here, plaintiff does not dispute the amount of fees assessed, nor does plaintiff dispute that the fees were provided for in the previous ordinances. Therefore, we find that because the

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[5] We note that MCL 8.4 provides the following:

> Whenever a statute, or any part thereof shall be repealed by a subsequent statute, such statute, or any part thereof, so repealed, shall not be revived by the repeal of such subsequent repealing statute.

However, in this case, the subsequent ordinances were not repealed by the city, they were held invalid by this Court. Thus, the statute does not apply. Further, the purported repeal of the prior ordinances did not take effect because the subsequent ordinances were held invalid.

[6] We note that plaintiff argues that the ordinances are dissimilar in various ways; however, she does not appear to ever dispute that the provision requiring the payment of fees was the same.

previous ordinances were not effectively repealed, and there is no evidence that the prior ordinances did not provide for the same fees, so long as those ordinances are constitutional, the fees were properly paid and need not be refunded.[7]

Plaintiff, however, argues that the ordinances are unconstitutional because they do not require the city's inspectors to obtain search warrants before inspecting properties when consent to inspect has been withheld. The rules governing the construction of statutes apply equally to the interpretation of ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). "'The enactment and enforcement of ordinances related to municipal concerns is a valid exercise of police powers as long as the ordinance does not conflict with the constitution or general laws.'" *Id*., quoting *Rental Property Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 253; 566 NW2d 514 (1997). "Statutes and ordinances must be construed in a constitutional manner if possible." *Id*., citing *Detroit v Qualls*, 434 Mich 340, 364; 454 NW2d 374 (1990). "Because ordinances are presumed constitutional, the party challenging the validity of an ordinance has the burden of proving a violation." *Id*. at 711-712, citing *Rental Property Owners Ass'n, supra* at 253.

The disputed provision reads as follows:

> The enforcing officer and all inspectors, officers and employees of the enforcement department, and such other persons as may be authorized by the enforcing officer, may without fee or hindrance enter, examine and survey all premises, grounds, erections, structures, apartments, dwellings, buildings, and every part thereof of the city. The owner or his agent or representative and the lessee and occupant of every dwelling and every person having the care and management thereof shall at all reasonable times when required by any such officers or persons give them free access to such dwellings and premises. The owner of a dwelling and his agents and employees shall have right of access to such dwelling at reasonable times for the purpose of bringing about a compliance with the provisions of this article or any order issued thereunder.

We agree that upon first glance, the provision appears to authorize searches without a warrant. The city asserts, however, that the ordinance does not empower the city to conduct unlawful searches because under Michigan law, the city is required to obtain a warrant when requested. We agree that the ordinance must be read in light of the relevant Michigan statutes.

Under MCL 125.408, local governments can enact their own housing ordinances, but they cannot dispense from the minimum standards imposed under the state Act. MCL 125.526 of the Michigan Housing act provides the basis for an enforcing agency to make inspections. Under the statute, an inspector must request and receive permission before entering a leasehold at reasonable hours, or upon presentment of a warrant, the inspector can enter at any time. MCL 125.526(5). MCL 125.527 further provides:

[7] We stress the fact that in this case, there is no evidence that the prior ordinances did not provide for the same fees.

> In a nonemergency situation where the owner or occupant demands a warrant for inspection of the premises, the enforcing agency shall obtain a warrant from a court of competent jurisdiction.

In *Camara v Municipal Court of San Francisco*, 387 US 523; 87 S Ct 1727; 18 L Ed 2d 930 (1967), the Supreme Court interpreted a city housing code that lacked a warrant requirement as a precondition for city officials to inspect structures, and held that the Fourth Amendment guarantee against unlawful searches and seizures prevented the city from conducting searches without warrants. See *Pletz v Secretary of State*, 125 Mich App 335, 365-366; 336 NW2d 789 (1983). In contrast, in *Butcher v Detroit*, 156 Mich App 165, 171; 401 NW2d 260 (1986), the Court held constitutional an ordinance that contained a warrant procedure that provided that an inspector is required to advise an owner that he or she has the right to refuse entry to an inspector who does not have a search warrant.

We must construe an ordinance constitutional whenever possible. When the city enacted the ordinance, it is logical to presume that it was aware of the constitutional prohibitions against warrantless searches and seizures. See *Pletz*, *supra* at 365. However, it is also logical to presume that the city was aware of the pertinent statutes and law involved. Therefore, the constitutionality of the ordinance must be analyzed in light of the relevant statutes. *Pletz*, *supra*. The ordinance does not explicitly allow an inspection of a dwelling without a warrant. Read in conjunction with the relevant statutes, we interpret the ordinance to require the obtaining of a search warrant when requested in a nonemergency situation; however, an owner or tenant may always consent to the inspection without a warrant.[8] When interpreted in that light, we find the ordinance constitutional.[9]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R . Gage
/s/ Brian K. Zahra

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[8] We note that we are aware of this Court's decision in *Northgate Towers Associates v Charter Twp of Royal Oak*, 214 Mich App 501; 543 NW2d 351 (1995), in which this Court held unconstitutional an ordinance that provided an inspection requirement that contained no procedure to obtaining search warrants in instances where the occupant refused to consent to an inspection. However, this portion of this Court's decision was vacated by the Supreme Court. *Northgate Towers Associates v Charter Twp of Royal Oak*, 453 Mich 959, 962; 557 NW2d 312 (1996). Therefore, we are not bound by that decision.

[9] Because we find the provision constitutional, we need not address whether the provision could properly be severed from the remainder of the ordinance. Further, although the city argued that plaintiff had no standing to challenge the constitutionality of the provision in the ordinance because plaintiff never refused inspection of the property, the trial court did not address the issue of standing. For this reason, and because we find the ordinance constitutional, we need not address the standing issue.