STATE OF MICHIGAN

COURT OF APPEALS

OTSEGO COUNTY RURAL ALLIANCE, INC., JAMES F. PAGELS, CAROL OSBORNE, and GERTRUDE JOHNSON,

Plaintiffs-Appellants,

and

GORDON BAYLIS, BLANCHE BAYLIS, ALBERT CARRIERE, JOANNE CARRIERE, JOHN BISHOP, GAYE BISHOP, and JOE PEAK,

Intervening Plaintiffs-Appellants,

v

BAGLEY TOWNSHIP, BAGLEY TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY, and BAGLEY TOWNSHIP/OTSEGO LAKE TOWNSHIP UTILITIES AUTHORITY,

Defendants-Appellees,

and

OTSEGO COUNTY, OTSEGO COUNTY PLANNING COMMISSION, OTSEGO COUNTY ZONING BOARD OF APPEALS,

Defendants.

UNPUBLISHED
June 19, 2003

No. 237377
Otsego Circuit Court
LC No. 01-009003-CE

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Plaintiffs and intervening plaintiffs (hereinafter "plaintiffs") appealed as of right, challenging a number of adverse orders of the trial court. As a result of a stipulated order dismissing plaintiffs' appeal against the Otsego County defendants, the issues on appeal were

reduced considerably.[1] All that remains is the propriety of Bagley Township's establishment of the Bagley Downtown Development Authority (the DDA) and the referendum election by which Bagley Township voters approved a sewage treatment contract between Bagley Township and a utilities authority established by Bagley Township and Otsego Lake Township. However, because we determine that plaintiffs had no standing to challenge either of these matters, we need not address the merits of their arguments.

Our Supreme Court recently reviewed state and federal standing precedents in *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726; 629 NW2d 900 (2001). In its majority opinion, the Court stressed that the concept of standing arises from "concern with maintaining the separation of powers" and, specifically, "preventing the judiciary from usurping the powers of the political branches." *Id*. at 737. The Court adopted the standing test articulated by the United States Supreme Court in *Lujan v Defenders of Wildlife*, 504 US 555, 559-560; 112 S Ct 2130; 119 L Ed 2d 351 (1992)[2]:

> Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."
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> The party invoking . . . jurisdiction bears the burden of establishing these elements. [*Lee*, *supra* at 739-740, quoting from *Lujan*, *supra* at 560-561 (citations omitted).]

The plaintiffs in *Lee* were veterans seeking to compel the legislative branch of the county government, the board of commissioners, to levy a tax to establish a veterans relief fund as required by a state statute. *Lee*, *supra* at 729-730. Applying the *Lujan* test, our Supreme Court held that they did not have standing:

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[1] Specifically, plaintiffs no longer challenge the zoning decisions made by the Otsego County defendants regarding the proposed shopping mall. Accordingly, because the intervening plaintiffs sought to intervene partly to bolster their standing claim because they live in close proximity to the location of the proposed mall, whether the trial court improperly denied intervention on that basis needs no resolution. These plaintiffs also sought intervention as residents/electors of Bagley Township but, like plaintiff Johnson who also lives in Bagley Township, they were without standing to challenge the referendum election or the formation of the Bagley Township Downtown Development Authority, as explained below.

[2] The *Lujan* test was adopted by the four justice majority opinion in *Lee* as well as by dissenting Justices Kelly and Cavanagh. *Lee*, *supra* at 750.

> Applying this test in the present case, it is clear that plaintiffs lack standing. In *Lujan* terms, they have not yet suffered any "injury in fact." Specifically, they have shown no "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" [P]laintiffs have alleged and argued only that they "should receive" and "should have received, the benefit of the property tax levy required by MCL 35.21," and that the failure to levy and collect the tax set forth in the soldiers' relief fund act "has caused, and continues to cause, plaintiffs great harm and damage." Even if accepted as true, these allegations cannot satisfy the *Lujan* injury in fact requirement because it is not readily apparent how the collection of a tax pursuant to the act would have benefited plaintiffs in a concrete and particularized manner. MCL 35.23 provides that the solders' relief commission is to determine the amount and manner of any relief thereunder and that it may discontinue such relief in its discretion. Thus, the amount of relief, if any, that plaintiffs might have received under this act is solely within the discretion of the commission. "[G]reat harm and damage" is not concrete or particularized. Plaintiffs also fail to explain, with particularity, what is meant by "the benefit of the property tax levy required by MCL 35.21." At most, we can only speculate how the existence of a fund would have helped plaintiffs. Accordingly, plaintiffs lack standing to pursue the present actions. [*Id*. at 740-741 (citations omitted).]

We begin by noting that the concerns the *Lee* majority voiced regarding the judiciary usurping the power of the political branches are well illustrated here. At base, plaintiffs are seeking to disrupt actions taken by elected representatives, at both the township and county level, to promote a development plan for the proposed shopping mall. Further, the plaintiffs' challenge is not directed solely against actions of the people's representatives; they also seek to undo the affirmation given to those representatives' plans by the people themselves in their majority vote to approve the sewage treatment contract.

Applying the *Lujan* test here, we conclude that, like the plaintiffs in *Lee*, plaintiffs have no standing to contest these decisions. They can establish no "injury in fact," no "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" *Id*. at 740. With respect to the DDA, plaintiffs contend that taxes the DDA would capture for development purposes would be diverted from supporting other government services. Plaintiffs argue that the result will be either an increase in taxes or a diminishment of those services. We find plaintiffs' argument to be conjectural and hypothetical. For example, as the township points out, the only taxes that will be captured are new taxes that result from development within the DDA. Contrary to plaintiffs' argument, those taxes would not be available for other government services if the DDA was not established. Further, the purpose of the DDA is to promote general growth and development in the community. That would likely occur, at least in part, outside of the bounds of the DDA. This would result in a higher level of taxation available to support county services apart from increased revenues captured by the DDA. Thus, any injuries plaintiffs might hypothesize would not be "concrete and particularized" to them. *Id*. Assuming arguendo that existing (rather than new) tax dollars will be lost for other county services because they are captured by the DDA, those dollars might well be replaced through taxation of the general growth that the DDA promotes throughout the Township, not through increased taxation of plaintiffs.

With respect to the referendum vote by which the majority of electors evinced their support for the development plan, again the *Lujan* test is not satisfied. The only "injury in fact" that plaintiffs can suggest here is the majority vote in support of the plan. They argue that the proposal before the voters was flawed because the contract at issue had as one of its parties a utilities authority that had not, technically, been incorporated on the date of the election. Thus, even assuming that what plaintiffs perceive to be an untoward election result might qualify as an "injury in fact," the second and third elements of the *Lujan* test remain at issue. Specifically, plaintiffs must show a "causal connection", i.e., that the election would have turned out differently if the utilities authority had been technically incorporated at the time of the vote or if the voters had known that it was not. *Id*. at 739. Further, they must establish that it is "likely," not merely "speculative", that the injury would be "redressed by a favorable decision" in court, meaning that the election would turn out differently if the first vote was declared void and a second election held now that the utilities authority has technically been incorporated. *Id*. Merely stating these arguments illustrates how hypothetical, conjectural and unpersuasive they are. We see nothing in this record to suggest that the alleged technical failure to properly incorporate the utilities authority before the vote made any difference whatsoever to its outcome.

We conclude that the trial court properly determined that plaintiffs are without standing to raise the issues they now contest on appeal. In the absence of standing, we will not address plaintiffs' substantive claims. *Id*. at 741.

We affirm.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Bill Schuette