STATE OF MICHIGAN

COURT OF APPEALS

ERNEST P. GREER and MONICA GREER,

Plaintiffs-Appellants,

v

BETTY J. LINGEMAN, PAUL LINGEMAN, CLAUDIA LINGEMAN, and TOWNSHIP OF PARK,

Defendants-Appellees.

UNPUBLISHED
December 16, 2003

No. 239560
Ottawa Circuit Court
LC No. 00-037941-CH

Before: Smolenski, P.J., and Sawyer and Borrello, JJ.

PER CURIAM.

This action arose after the construction of defendants Paul and Claudia Lingeman's home, which plaintiffs alleged was a nuisance per se. Defendant Betty Lingeman owned four platted lots (lots 38, 40, 41 and 42) in Macatawa Park, a lake resort community located in Park Township. She built a cottage on two of those lots (lots 40 and 41), and later conveyed the other two lots (lots 38 and 42) to her son and his wife, defendants Paul and Claudia Lingeman (hereinafter "defendants"), who subsequently built a home on lot 38, next to plaintiffs' cottage. Plaintiffs alleged that defendants' home was a nuisance per se because it violates several provisions of the township's zoning ordinance. Plaintiffs requested that the home be moved or razed. Following a bench trial, the trial court ruled in favor of defendants. Plaintiffs appeal as of right from a judgment of no cause of action entered in favor of defendants. We affirm.

A trial court's findings of fact are reviewed for clear error. *Bynum v ESAB Group, Inc*, 467 Mich 280, 285; 651 NW2d 383 (2002). A finding is clearly erroneous when, although there is evidence to support it, the appellate court is left with a definite and firm conviction that a mistake has been made. *Id.* Due regard is given to the trial court's special opportunity to evaluate the credibility of the witnesses who appeared before it. *Morris v Clawson Tank Co*, 459 Mich 256, 271; 587 NW2d 253 (1998).

Several of plaintiffs' issues in this case also involve the interpretation of the township's zoning ordinances. Questions of statutory interpretation are reviewed de novo. *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996). The usual rules of statutory construction apply to the interpretation of an ordinance. *Gora v Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). Like statutes, ordinances must be interpreted as written. *Lantz v Banks*, 245 Mich App 621, 626; 628 NW2d 583 (2001). And statutes that relate to the same subject or

share a common purpose must be read together as one law. *State Treasurer v Shuster*, 456 Mich 408, 417; 572 NW2d 628 (1998). Additionally, in interpreting an ordinance, a court must "give due deference to the agency's regulatory expertise and may not 'invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views.'"[1] *Gordon v City of Bloomfield Hills*, 207 Mich App 231, 232; 523 NW2d 806 (1994), quoting *Michigan Employment Relations Comm v Detroit Symphony Orchestra, Inc*, 393 Mich 116, 124; 223 NW2d 283 (1974). The party challenging the application of an ordinance has the burden of proving a violation. *Gora, supra* at 711.

Plaintiffs first argue that the trial court erred in its interpretation of the zoning ordinance's definition of a "lot" in § 3.21. Plaintiffs assert that all four lots should have been considered as one lot for purposes of § 3.21, and, therefore, defendants' home violated the requirement in § 4.13 that no more than one home be located on a single lot. Section 3.21 defines a "lot" as

> [a] piece or parcel of land *occupied or intended to be occupied by a principal building* or group of such buildings and accessory structures, or utilized for a principal use and accessory uses, together with such open spaces as are required by this ordinance. Lot width shall be measured at the front of the building line. In determining lot area, land located within a street right of way shall not be considered. [Emphasis added.]

Plaintiffs' proposed interpretation of this definition ignores the intent language contained in the ordinance, and introduces concepts regarding "lots of record," a phrase that is separately defined in the ordinance and is not part of § 3.21. Courts should avoid interpretations that render language nugatory or mere surplusage. *Hoste v Shanty Creek Mgt, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999). And nothing should be read into a clear statute that is not derived from the language of the statute itself. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002).

In light of the clear language of the ordinance, we find that the trial court did not err in interpreting the definition of a "lot" in terms of existing or proposed conditions, in the context of determining whether a proposed or existing home (building or structure) complies with the township's zoning ordinance. Applying the clear language of § 3.21 to this case, the trial court did not clearly err in finding that plaintiffs failed to establish that lots 38, 40, 41 and 42 were ever "occupied or intended to be occupied" by a single home. Rather, the undisputed evidence showed that, although the four lots had long been held under single ownership, Betty Lingeman's home was located on lots 40 and 41, and, until defendants purchased lots 38 and 42, that land was vacant, having never been occupied, built upon, or otherwise used. Clearly, defendants intended to and did occupy lots 38 and 42 with a single home, while Betty Lingeman continued to occupy lots 40 and 41 with her single home. Thus, contrary to plaintiffs' argument, the trial court did not err in finding that, under §3.21, lots 40 and 41 constituted one "lot," while lots 38 and 42 constituted a separate "lot." Consequently, because defendants' and Betty Lingeman's

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[1] Because this case does not involve the grant or denial of a variance, we decline plaintiffs' invitation to apply the standards provided by the ordinance in guiding such decisions.

homes were located on separate lots, the trial court did not err in finding that there was no violation of the one home limit prescribed in § 4.13.

Plaintiffs next argue that the trial court erred in finding that Betty Lingeman's conveyance of lots 38 and 42 did not increase the nonconformance of her lot, contrary to § 4.03(a). However, as discussed above, defendants' lots 38 and 42 constituted one "lot," while Betty Lingeman's lots 40 and 41 constituted a separate "lot." Therefore, the dimensions of Betty Lingeman's "lot," were not affected by the conveyance of lots 38 and 42. The trial court properly found that the conveyance of lots 38 and 42 did not divide, alter, or reduce Betty Lingeman's lot "so as to make it not in conformity with the minimum requirements" of the zoning ordinance or to "increase its non-compliance."

Plaintiffs further argue that the trial court erred in allowing defendants' lots (lots 38 and 42) to be irrevocably joined for the purpose of meeting the minimum lot size, width, and other requirements of the zoning ordinance, set out in § 10.04. Because § 4.03(a) provides that a lot cannot be divided if the result is to make it nonconforming or increase its noncompliance, the township has interpreted its ordinance to allow "lots of record"[2] to be irrevocably combined for the purpose of meeting the requirements of the zoning ordinance. Thus, where lots are so combined, § 4.03(a) prevents them from being later divided. The township's interpretation is consistent with the interpretation that defendants' two platted lots were considered one "lot" as defined in § 3.21. Accordingly, we find that the trial court did not clearly err in deferring to the township's interpretation of its zoning ordinance, *Gordon, supra* at 232, and finding that lots 38 and 42 could be irrevocably joined for the purpose of meeting the minimum lot dimensions and setback requirements of § 10.04.

Plaintiffs next argument, that the trial court erred in finding that § 4.19 did not apply to defendants' lot, is without merit. According to the express terms of § 4.19, the public road frontage requirements—whether fifty feet in 1989 or eighty-five feet in 1999—"shall not apply to any lot which was platted or otherwise of record" before the effective date of § 4.19 (or its amendment). While lots 38 and 42 were sold to defendants in December 1999, it is undisputed that they were platted before 1989. Thus, the trial court did not err in finding that the public road frontage requirements of § 4.19 did not apply to defendants' "lot."

Plaintiffs further argue that the trial court erred in finding that they failed to present sufficient evidence to show that defendants violated § 4.14, which addresses the minimum front yard depth for a lot.[3] Plaintiffs asserted at trial that the average front yard depths of their home

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[2] A "lot of record" is a lot that was "platted or otherwise of record" as of the effective date of the zoning ordinance. See §§ 4.03(b), 4.19. It is not disputed that all four lots were platted before the zoning ordinance's effective date.

[3] Specifically, § 4.14 provides:

> In any Residence Zoning District where the average depth of at least two (2) front yards of existing adjacent buildings within one hundred (100) feet of the lot in question and within the same block on the same side of the street is less or

(continued…)

and their neighbor's home, the Wondergems', needed to be considered in determining whether defendants' violated § 4.14. Pursuant to the parties' stipulation, a "sketch of description" was introduced at trial. The sketch showed that defendants' home, Betty Lingeman's home, and her neighbor's home (located on lot 43) were all located on Lakeside Road and that defendants' home sat farther back from Lakeside Road than either Betty Lingeman's or her neighbor's home. Although it appears that plaintiffs' home and the Wondergems' home are both located within one hundred feet of defendants' home, the "sketch" does not show the streets on which those homes are located or the dimensions of their front yards. And no other evidence was introduced regarding these questions. Therefore, we conclude that the trial court did not clearly err in finding that plaintiffs failed to present sufficient evidence to establish that their home and the Wondergems' home should have been considered in ascertaining "the average depth of at least two (2) front yards of existing adjacent buildings within one hundred (100) feet of the lot in question and within the same block on the same side of the street." Accordingly, the trial court correctly found that plaintiffs failed to prove that defendants' front yard depth violated § 4.14.

Next, plaintiffs argue that the trial court erred in finding that they were guilty of laches. A trial court's decision that a party is guilty of laches is reviewed for clear error. *Gallagher v Keefe*, 232 Mich App 363, 369; 591 NW2d 297 (1998).

> The application of the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against the defendant. The defendant must prove a lack of due diligence on the part of the plaintiff resulting in some prejudice to the defendant. [*Id.*, citations omitted.]

The doctrine can be applied to bar an attempt to abate a zoning violation. *Independence Twp v Skibowski*, 136 Mich App 178, 185; 355 NW2d 903 (1984).

On October 5, 1999, plaintiffs received a notice of public hearing stating that Betty Lingeman was appealing a decision "denying a permit for a house on a lot that has only 25 feet or less of road frontage instead of the required 85 feet." The notice further stated that "[s]aid land and premises are located behind 691 Lakeside Road," Betty Lingeman's address. Plaintiff Monica Greer admitted that she "thought maybe [Betty Lingeman] was building another cottage right in front of ours" and, therefore, she should investigate further. Monica Greer wrote the township, asking for more information concerning Betty Lingeman's appeal. Her note stated, in part, "My cottage is near this parcel and I would like to know what she will be doing, it could likely effect (sic) my view!"

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> greater than the minimum front yard depth prescribed for the Residence Zoning District in which the lot is located, then the required front yard shall be modified to be no less than the average depth of the existing adjacent buildings; provided, however, that the depth of the front yard shall be no less than ten (10) feet in any event.

Plaintiffs did not follow up on this note, nor did they read the township's October 18, 1999 reply until they visited Grand Rapids in late December 1999. But plaintiffs were living in Japan at the time and the township's reply was inexplicably not forwarded to them by their property manager. The township's letter informed plaintiffs that Betty Lingeman's appeal had been dismissed because the township staff and counsel had determined that the parcel complied with § 4.19, and, therefore, a variance was not needed. When plaintiffs returned to Japan in January or February 2000, plaintiff Ernest Greer called the township and was told that it had decided that no variance was required and that there was nothing he could do. Plaintiffs stated that, at this point, they believed the township would ensure that "everything was done lawfully." Plaintiffs did nothing further until June 2000, when Monica Greer saw defendants' home substantially completed.

In light of the above, the trial court found that defendants proved that plaintiffs were guilty of laches. But the court also determined that the defense of laches only barred plaintiffs' claim under the township's zoning provision § 4.03 regarding the legality of defendants constructing *any* residence on the property. After reviewing the facts of this case, we agree with the trial court's limited application of the doctrine of laches. The trial court did not clearly err in finding that, between October 1999 and June 2000, plaintiffs knew or should have known that a home was going to be built on either lot 38 or lot 42, and failed to use due diligence sufficient to ascertain whether there were such plans for a residence. In the meantime, defendants experienced a substantial change in condition, having constructed their home on the property at a cost of $290,000 excluding the real estate. Clearly, defendants would be prejudiced by being required to move or raze their home. Therefore, we conclude that the trial court did not clearly err in finding that it would be inequitable to enforce plaintiffs' claim that a home could not be built at that location.

Lastly, plaintiffs argue that the trial court erred in denying their request to abate a nuisance per se, contrary to MCL 125.294. On this issue, we also disagree, albeit for a slightly different reason than the one articulated by the trial court. The Township Zoning Act, MCL 125.294, provides:

> A use of land, or a dwelling, building, or structure including a tent or trailer coach, *used, erected, altered, razed, or converted in violation of a local ordinance* or regulation adopted pursuant to this act is a nuisance per se. The court shall order the nuisance abated and the owner or agent in charge of the dwelling, building, structure, tent, trailer coach, or land is liable for maintaining a nuisance per se. [Emphasis added.]

In this case, the only violation found by the trial court was that the combined side setback of defendants' home was sixteen inches short of the required combined twenty feet. The trial court considered this violation de minimus and declined to order abatement because the violation did not harm plaintiffs "in any way whatsoever."

It is clear from the plain language of the statute that the violation of the combined setback requirement constitutes a nuisance per se under MCL 125.294. Therefore, plaintiffs did not need to prove a nuisance in fact. *Towne v Harr*, 185 Mich App 230, 232; 460 NW2d 596 (1990). However, a nuisance arising from the violation of a zoning ordinance is a "public nuisance." *Id*. As such, plaintiffs were required to show that they suffered "damages of a special character

distinct and different from the injury suffered by the public generally." *Id*. Because plaintiffs did not allege that they suffered a harm different from the public generally as a result of the setback violation, nor can we discern any, plaintiffs lacked standing to bring this claim. *Id*. at 233. Plaintiffs' remedy regarding this claim is limited to seeking enforcement of the ordinance through township officials. *Id*. Therefore, the trial court reached the correct result.

Affirmed.

/s/ Michael R. Smolenski
/s/ David H. Sawyer
/s/ Stephen L. Borrello