

STATE OF MICHIGAN
COURT OF APPEALS

TG CANTON, INC.,

Plaintiff-Appellee,

v

CHARTER TOWNSHIP OF CANTON,

Defendant-Appellant.

UNPUBLISHED

December 18, 2003

No. 242635

Wayne Circuit Court

LC No. 99-915876-CZ

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting summary disposition in favor of plaintiff and denying defendant's cross-motion for summary disposition, with regard to plaintiff's claim that defendant's decision to cease municipal garbage collection at multi-residential property owned by plaintiff violates plaintiff's equal protection rights under the Michigan and United States Constitutions. We reverse and remand for entry of judgment in favor of defendant.

Plaintiff owns property in defendant township that was legally organized as a condominium project in 1985, but was operated as an apartment complex known as the Autumn Ridge Apartments. Defendant provided trash collection services for plaintiff's property from 1985 through March 1999. In February 1999, defendant decided that plaintiff was ineligible for trash collection services under its Solid Waste Disposal ordinance (hereafter SWD ordinance), but notified plaintiff that it could temporarily use its services for a fee.

Plaintiff thereafter filed the instant action, alleging that defendant's decision to demand a fee for trash collection services violated the Headlee Amendment, Const 1963, art 9, § 31. Plaintiff subsequently amended its complaint to add a claim that defendant's decision violated its rights to equal protection by treating its property differently from other condominium properties within defendant's jurisdiction. The trial court granted defendant summary disposition of plaintiff's claim under the Headlee Amendment, but found that plaintiff was entitled to defendant's municipal trash collection services, without a fee, and a refund of earlier fees charged, because defendant's decision to cease trash collection services for plaintiff's property violated plaintiff's right to equal protection. The court reached this conclusion after viewing photographs of the Autumn Ridge Apartments, which the court concluded showed that it was amenable to curbside collection as defined in the SWD ordinance.

On appeal, defendant argues that the trial court erred by granting summary disposition in favor of plaintiff, and by denying its cross-motion for summary disposition. We agree. We review the trial court's decision de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Because the trial court considered proofs beyond the stipulation of facts provided by the parties and found no genuine issue of material fact, we have reviewed the trial court's decision under MCR 2.116(C)(10), rather than MCR 2.116(A). But we still treat the parties' stipulation of facts as binding. See *Staff v Johnson*, 242 Mich App 521, 535; 619 NW2d 57 (2000) (stipulations of fact are binding on a court). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Maiden, supra* at 120. Summary disposition is appropriate where the evidence fails to establish a genuine issue of material fact for trial. *Id.* at 120-121.

Equal protection is guaranteed by both the Michigan and United States Constitutions. Const 1963, art 1, § 2; US Const, Am XIV. "Michigan's equal protection guarantee is construed no more broadly than the federal guarantee. The equal protection guarantees require that persons in similar circumstances be treated alike." *Syntex Laboratories v Dep't of Treasury*, 233 Mich App 286, 290; 590 NW2d 612 (1998)(citations omitted). Because this case does not involve a fundamental right or suspect classification, the rational basis test applies to plaintiff's equal protection claim. *Stegeman v City of Ann Arbor*, 213 Mich App 487, 492; 540 NW2d 724 (1995).

"Rational basis review does not test the wisdom, need, or appropriateness of the legislation, or whether the classification is made with 'mathematical nicety,' or even whether it results in some inequity when put into practice." *Crego v Coleman*, 463 Mich 248, 260; 615 NW2d 218 (2000). Rather, it tests only whether the legislation is reasonably related to a legitimate governmental purpose. The legislation will pass "constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable." *Id.* at 259-260. To prevail under this standard, a party challenging a statute must overcome the presumption that the statute is constitutional. *Thoman v Lansing*, 315 Mich 566, 576; 24 NW2d 213 (1946). Thus, to have the legislation stricken, the challenger would have to show that the legislation is based "solely on reasons totally unrelated to the pursuit of the State's goals," *Clements v Fashing*, 457 US 957, 963; 102 S Ct 2836; 73 L Ed 2d 508 (1982), or, in other words, the challenger must "negative every conceivable basis which might support" the legislation. *Lehnhausen v Lake Shore Auto Parts Co*, 410 US 356, 364; 93 S Ct 1001; 35 L Ed 2d 351 (1973). [*TIG Ins Co, Inc v Dep't of Treasury*, 464 Mich 548, 557-558; 629 NW2d 402 (2001).]

As a threshold matter, we must identify the relevant legislation under scrutiny. Although both parties have submitted to this Court documentary evidence concerning defendant's condominium ordinance, we decline to consider this ordinance because the record does not reflect that it was presented to the trial court. In general, our review is limited to the record presented to the trial court. *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487

(1990). Further, plaintiff has not identified any provision of the condominium ordinance that it believes is relevant to its equal protection claim.¹ A party may not leave it to this Court to discover and rationalize the basis of their claim. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001).

In any event, because the parties stipulated that the SWD ordinance was the basis for defendant's decision that plaintiff was ineligible for municipal trash collection services, and the trial court relied on the SWD ordinance in finding that plaintiff's equal protection rights were violated, we confine our review to whether the SWD ordinance, as applied to plaintiff, is constitutionally infirm.

Initially, we must identify the purpose of the SWD ordinance. *Crego, supra* at 269. The SWD ordinance expressly states that its purpose is to "protect the public health and welfare by assuming the timely and lawful collection of solid waste from owners of private property. . . ." This is a legitimate governmental purpose. The material question, therefore, is whether the ordinance's classification scheme is rationally related to the object of timely and lawful collection of solid waste from the owners of private property.

The basic classification evident from the SWD ordinance is that it only provides for municipal trash collection services for residential property. Section 44.605(B) states:

The Board of Trustees of the Charter Township of Canton finds that regulation of the collection and disposal of solid waste is necessary to protect the public health and safety; that, under current circumstances, it is feasible to implement curbside pickup and disposal of residential recyclable materials, compostables and solid waste

"Curbside Collection" is further defined in § 44.610(E) as "the collection of solid waste which has been placed for pickup in appropriate solid waste receptacles at the side of a public or private road adjacent to the abutting property." Appropriate solid waste receptacles are addressed in § 44.640. Under subsection (D), "[i]n the case of a building housing more than two families, the receptacles shall be provided by the owner of the premises and shall be commercial receptacles unless the curbside collection of solid waste is available."

Although defendant initially intended to place plaintiff's property outside the SWD ordinance by treating it as commercial property, we need not consider this status because defendant later conceded that the property was arguably residential. Further, the status of the property as either residential or commercial, or even its legal status as a condominium, is not

¹ We also decline to consider the affidavits from plaintiff's experts that were submitted to the trial court. Although plaintiff's failure to file a cross appeal does not preclude plaintiff from arguing alternative grounds for affirmance that were rejected by the trial court, *Middlebrooks v Wayne Co*, 446 Mich 151, 161 n 41; 521 NW2d 774 (1994), plaintiff has not identified any basis for disturbing the trial court's decision that the affidavits should not be considered because they were unnecessary and because defendant was not afforded an opportunity to respond to them.

dispositive whether plaintiff's equal protection rights were violated, because the SWD ordinance also draws a classification between properties based on whether the property is amenable to curbside collection.

Indeed, the trial court's opinion reflects that it properly focused on the "curbside collection" requirement in analyzing plaintiff's equal protection claim. But the trial court erred in concluding that defendant's "decision" to cease municipal trash collection services violated plaintiff's equal protection rights for the following reasons.

First, as we have already indicated, the proper focus of an equal protection analysis is on the application of the SWD ordinance to plaintiff's property, rather than defendant's decision to discontinue municipal trash collection services.

Second, the trial court incorrectly substituted its judgment for that of defendant in finding an equal protection violation grounded on the ability of tenants to bring trash out to "roads" abutting the property for pickup. Moreover, we note that what the trial court characterized as "roads," based on its review of photographs, were stipulated by the parties as constituting parking lots connected by driveways. The parties' stipulations were binding on the trial court. *Staff, supra*. Further, the photographs themselves substantiate the parties' stipulation, notwithstanding that the layout of the parking lots have some characteristics of a "road."

Therefore, plaintiff's property, even assuming that it was residential, was not similarly situated to residential property abutting private and public roads. Further, plaintiff did not offer evidence that defendant's failure to include parking lots and driveways in the "curbside collection" classification scheme was not rationally related to the legitimate purpose of the SWD ordinance. *TIG Ins Co, Inc, supra*; *Crego, supra* at 269. See also *Alexander v Detroit*, 392 Mich 30, 35-36; 219 NW2d 41 (1974). "A property's access to curbside collection is a valid factor that a municipality may consider in its decision to offer refuse collection." *Iroquois Properties v East Lansing*, 160 Mich App 544, 555; 408 NW2d 495 (1987); see also *Beztak Co v Farmington Hills*, 136 Mich App 664, 669; 358 NW2d 25 (1984).

Third, the trial court erred by not considering the actual nature of the trash collection that took place on plaintiff's property when finding that plaintiff's equal protection rights were violated and, in particular, plaintiff's use of dumpster pads. Although the trial court's decision suggests that it sua sponte applied principles of equitable estoppel to preclude defendant from arguing that plaintiff's use of dumpster pads would not be amenable to curbside collection, the general rule is that a municipality's officers cannot be estopped from enforcing a legally adopted ordinance. See *Pittsfield Twp v Malcolm* 375 Mich 135; 134 NW2d 166 (1965); *White Lake Twp v Amos*, 371 Mich 693; 124 NW2d 803 (1963).

Here, the parties stipulated only that the "trash collection took place at pickup points approved by Defendant as dumpster pads on Plaintiff's condominium plan" and that plaintiff's trash system "involved personal non-commercial receptacles concentrated on concrete pads in areas approved by Defendant as dumpster pads." The record does not reflect that defendant required the dumpster pads.

Even if defendant required the dumpster pads, we are not here presented with any site plan for review. Further, the factors relevant to defendant's approval of a property owner's site

plan, as well as the process itself available to a property owner who might disagree with defendant's action on a site plan, are clearly distinguishable from a property owner's eligibility for municipal trash collection under the SWD ordinance. Site plans generally come within the ambit of land use regulation. See *Northville Twp v Northville Public Schls*, 469 Mich 285, 292-293, 300; 666 NW2d 213 (2003), *Frericks v Highland Twp*, 228 Mich App 575, 583; 579 NW2d 441 (1998), and MCL 125.286e(1) (defining "site plan" in the Township Zoning Act as "the documents and drawings specified in the zoning ordinance needed to insure that a proposed land use or activity is in compliance with local ordinances and with state and federal statutes").² Condominium projects must comply with local laws, ordinances, and regulations. MCL 559.241(1).

Regardless whether plaintiff's condominium plan included dumpster pads because defendant required them or because plaintiff wanted them, there was no evidence of exceptional circumstances to equitably estop defendant from denying that the dumpster pads are amenable to curbside collection. Further, regardless whether plaintiff intended to continue using dumpster pads, or intended to change to "curbside collection" in areas running along parking lots, the trial court's conclusion that plaintiff was denied equal protection was erroneous. Giving due regard to the parties' stipulation of facts and the other proofs considered by the trial court, no genuine issue of material fact was shown. As a matter of law, defendant was entitled to summary disposition under MCR 2.116(C)(10), because the SWD, as applied to plaintiff's property, does not violate equal protection guarantees.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Jessica R. Cooper

² The Township Zoning Act (formerly the Township Rural Zoning Act), MCL 125.271 *et seq.*, applies to chartered townships such as defendant. *Huxtable v Meridian Charter Twp Bd of Trustees*, 102 Mich App 690; 302 NW2d 282 (1981).