STATE OF MICHIGAN

COURT OF APPEALS

FORSBERG FAMILY, LLC,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF MERIDIAN,

Defendant-Appellee.

UNPUBLISHED
February 24, 2004

No. 245413
Ingham Circuit Court
LC No. 02-000979-CE

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In this zoning dispute, plaintiff appeals as of right from an order of the Ingham Circuit Court, granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), and denying plaintiff's cross motion for summary disposition pursuant to MCR 2.116(C)(9). We affirm.

I. Facts and Procedural History

Plaintiff owns about nine acres of undeveloped land in Meridian Township that includes state-regulated wetland. Plaintiff began plans to develop the property into an office park. A small portion of the wetland area was needed for the construction of a road and a parking lot. Accordingly, plaintiff obtained a permit from the Michigan Department of Environmental Quality (MDEQ) to fill a total area of 0.149 acres in five different areas in the wetland that would allow plaintiff to construct the road and parking lot.

Plaintiff applied for zoning variances from Meridian Township to allow it to construct the parking lot and road without having to provide a twenty-foot setback from the edge of the wetland at the new landfills. The zoning ordinance at issue, enacted pursuant to the Township Zoning Act, MCL 125.271 *et seq.*, requires structures and graded surfaces on land adjacent to wetlands be set back no less than twenty feet from the edge of the wetland, and that a protective vegetative buffer be maintained on this twenty-foot strip. According to plaintiff, there was not enough space for it to comply with both the MDEQ permit and the zoning ordinance. The township denied the variances. Although plaintiff claimed that it was not provided with any reason for the denial of the variances, the record indicates that the variances were denied on the ground that any special circumstances in this case were self-imposed, that no practical difficulties would result from denying the variances because the development plans could be changed, and a variance would adversely affect adjacent land.

Plaintiff filed suit, challenging the constitutionality of the two relevant sections of the zoning ordinance, 84.1.11.a.2 and b.1. Plaintiff asserted that the ordinance was preempted by the state statutory scheme with respect to wetland protection and violates § 303307(4) of the Wetland Protection Act, MCL 324.30301 *et seq*. Plaintiff moved for summary disposition on the same ground. Defendant also moved for summary disposition, asserting that the ordinance was enacted as a proper exercise of the township's zoning power and that the regulation of wetland setback areas was not preempted by the state statutory scheme for wetland protection. The trial court did not state on the record whether any genuine issue of material fact existed in this case but determined that the ordinance was not preempted by any state statutory scheme and it granted defendant summary disposition.

We review the trial court's decision to grant or deny summary disposition de novo. *Charter Twp of Northville v Northville Public Schools*, 469 Mich 285, 289; 666 NW2d 213 (2003). This Court also reviews de novo statutory interpretation, which involves a question of law. *Michigan Coalition for Responsible Gun Owners v Ferndale*, 256 Mich App 401, 405; 662 NW2d 864 (2003).

In resolving a challenge to a zoning ordinance as being preempted by state law, we consider principles pertaining to township zoning authority in general, and to preemption of that authority by state action in particular. The Township Zoning Act gives townships broad authority to adopt zoning ordinances. MCL 125.271. Our constitution specifically states that the grant of authority to townships must "be liberally construed in their favor." Const 1963, art 7, § 34. An ordinance is invalid if

> (1) the ordinance directly conflicts with the state statutory scheme, or (2) the state statutory scheme preempts the ordinance by occupying the field of regulation that the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation. Preemption may be established (1) where state law is expressly preemptive; (2) by examination of the legislative history; (3) by the pervasiveness of the state regulatory scheme, although this factor alone is not generally sufficient to infer preemption; or (4) where the nature of the subject matter regulated demands exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest. [*Frericks v Highland Twp*, 228 Mich App 575, 585-586; 579 NW2d 441 (1998) (citations omitted).]

It does not appear that plaintiff argues that the ordinance directly conflicts with the state statutory scheme. Rather, plaintiff argues that the state statutory scheme preempts the ordinance. Plaintiff argues that the state statutory scheme, as evidenced in Wetland Protection Act, MCL 324.30301 *et seq*., indicates the intent to occupy the field of regulation with respect to state wetlands. We agree. See generally, *Addison Twp v Gout*, 435 Mich 809; 460 NW2d 215 (1990), *Frericks, supra*. However, § 30307(4) of the Act expressly grants a local unit of government the power to regulate wetland within its boundaries, provided that the regulation complies with the Act. Plaintiff does not point to and we do not find anything within the language of the Act that prohibits a local unit of government from imposing on developers a twenty-foot setback area from the edge of the wetland for natural vegetation, the purpose of which complies with the statutory scheme to preserve and protect the wetland.

The thrust of plaintiff's argument on appeal is that the ordinance poses "a blanket ban on all development near the wetland." We disagree. While plaintiff has presented its issue below in very broad terms, the unique facts and circumstances in this case indicate that the zoning ordinance *as applied to plaintiff's property* may have prohibited the development of the property. However, this is not what plaintiff raised as a claim below. See, generally, *Paragon Props Co v City of Novi*, 452 Mich 568; 550 NW2d 772 (1996). Accordingly, we conclude that the trial court properly ruled that the zoning ordinance did not preclude what the statute permits and that the ordinance did not purport to regulate the wetland itself. Thus, summary disposition in defendant's favor was proper under the circumstances in this case. In light of our conclusion, we need not address plaintiff's remaining issue on appeal.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot