STATE OF MICHIGAN

COURT OF APPEALS

GREGORY CAMBURN and FRED LEWIS, Trustee of the FREDERICK LEWIS TRUST,

Plaintiffs-Appellants,

v

MACON TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED
May 26, 2005

No. 260197
Lenawee Circuit Court
LC No. 04-041619-CE

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(I)(2). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs own substantial areas of undeveloped land in a zoned agricultural (AG) district. Defendant's zoning ordinance permits a limited number of lots for single-family dwellings in an AG district. Plaintiffs filed this action, challenging the validity of certain regulations in defendant's zoning ordinance, including the density allowances in the AG district for single-family dwellings, on the ground that they conflict with the Land Division Act (LDA), MCL 560.101 *et seq.* Plaintiffs moved for summary disposition, asserting that provisions of defendant's zoning ordinance were invalid. The trial court agreed with defendant that the matter was not ripe for judicial review, but also concluded that, on the merits, defendant's zoning ordinance was valid.

Appellate review of a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).[1] This Court also reviews de novo questions of statutory interpretation. *Sotelo v Grant Twp*, 470 Mich 95, 100; 680 NW2d 381 (2004). Under MCR 2.116(I)(2), if it appears that the nonmoving party, rather than the moving

[1] Because the trial court considered evidence outside the pleadings, its decision is reviewed under MCR 2.116(C)(10), which tests the factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337-338; 572 NW2d 201 (1998).

party, is entitled to summary disposition, the trial court may enter judgment in favor of the nonmoving party.

On appeal, plaintiffs first challenge the trial court's decision that this matter was not ripe for judicial review. Because plaintiffs limit their argument regarding ripeness to the validity of the zoning ordinance's density regulation, we limit our review accordingly. We agree that a landowner need not exhaust administrative remedies to bring a facial challenge to a zoning ordinance. *Conlin v Scio Twp,* 262 Mich App 379, 383; 686 NW2d 16 (2004). "Finality is not required for facial challenges because such challenges attack the very existence or enactment of an ordinance." *Paragon Properties Co v Novi,* 452 Mich 568, 577; 550 NW2d 772 (1996). In this case, however, the particular argument raised by defendant was not based on the finality doctrine, but rather basic standing principles set forth in *Karrip v Cannon,* 115 Mich App 726, 732-734; 321 NW2d 690 (1982), i.e., that a litigant have a personal stake in the outcome of the controversy. See *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co,* 471 Mich 608, 630-631; 684 NW2d 800 (2004); *Lee v Macomb Co Bd of Comm'rs,* 464 Mich 726, 739-740; 629 NW2d 900 (2001) (adopting the standing test stated in *Lujan v Defenders of Wildlife,* 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992)). Because the trial court's decision reflects that it agreed with defendant's argument, and plaintiffs have failed to brief the specific question of their standing, we deem this issue abandoned. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald,* 237 Mich App 186, 197; 602 NW2d 834 (1999). The failure to brief an issue that necessarily must be reached precludes appellate relief. *Roberts & Son Contracting, Inc v North Oakland Development Corp,* 163 Mich App 109, 113; 413 NW2d 744 (1987).

But even if plaintiffs had standing to challenge the facial validity of the density regulation in defendant's zoning ordinance, we would conclude that the trial court properly held that the density regulation was valid.

A township may not generally prohibit what state law allows. *Conlin, supra at* 385, citing *Frens Orchards, Inc v Dayton Twp Bd,* 253 Mich App 129, 136-137; 654 NW2d 346 (2002). In determining whether the township's legislative action is beyond the scope of its authority, this Court applies the usual rules of statutory construction. *Conlin, supra* at 386. In construing statutory language, a court is obligated to "discern the legislative intent that may reasonably be inferred from the words expressed in the statute by according those words their plain and ordinary meaning." *Sotelo, supra* at 100. The LDA regulates the division of land by imposing platting and other building and assessment requirements. *Id.* at 97. Also, the LDA creates limited "division" rights, which permit a landowner to split or partition real property without complying with the platting process. *Id.* Landowners who wish to divide or subdivide land into smaller parcels must obtain governmental approval in accordance with MCL 560.109. *Capital Region Airport Authority v DeWitt Twp,* 236 Mich App 576, 596; 601 NW2d 141 (1999).

By comparison, the Township Zoning Act, MCL 125.271 *et seq.,* enables a township to plan development and regulate land use in furtherance of the public interest. *Capital Region Airport Authority, supra* at 594; see also *Silver Creek Twp v Corso,* 246 Mich App 94, 97; 631 NW2d 346 (2001). Unlike statewide regulations, zoning ordinances can address the unique residential, commercial, and agricultural needs of each township. *Frens Orchards, Inc, supra* at 136.

In *Conlin, supra*, this Court rejected a claim that the LDA preempted a township's density regulation for land zoned general agricultural. This Court found that the LDA, MCL 560.259, expressly allowed townships to impose stricter requirements for plats than required by the LDA, and that the Township Zoning Act enabled a township to impose density restrictions. *Id.* at 387-388. Although the *Conlin* court decided this issue within the context of the LDA's platting requirements, rather than division rights, we find no discernable basis for holding that the Legislature intended a different result with regard to division rights. The LDA's provisions governing division consider a number of factors, including whether a resulting parcel would be accessible and, with respect to a development site, whether there are adequate easements for public utilities. MCL 560.109(1). But the LDA is not concerned with the particular land use established by a municipality through its zoning powers. By contrast, defendant's zoning ordinance links its density restrictions to the land use, which in this case involves the number of single-family dwellings permitted in an agricultural district. Under the plain and unambiguous language of the LDA, MCL 560.109(6), "[a]pproval of a division is not a determination that the resulting parcels comply with other ordinances or regulations." Because this statutory provision plainly contemplates that the resulting parcels must comply with other ordinances and regulations, and the subject matter of defendant's zoning ordinance, namely, density for particular land uses, is not addressed by the LDA, we conclude that the zoning ordinance is not preempted by the LDA. *Frens Orchards, Inc, supra* at 136-137.

We find plaintiffs' related issue concerning whether defendant effectively repealed the density regulation in the zoning ordinance by adopting ordinance No. 5 (land division ordinance) under the LDA, MCL 560.109(5), insufficiently briefed to properly invoke appellate review. An appellant may not give an issue cursory treatment, with little or no citation to supporting authority. *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). In passing, we note that plaintiffs' argument is contrary to the plain and unambiguous language of Ordinance No. 5 that it does not repeal any zoning ordinance. Like statutes, judicial construction of an ordinance generally is not necessary or permitted when the language is clear. *Warren's Station, Inc v Bronson,* 241 Mich App 384, 388; 615 NW2d 769 (2000).

Finally, we decline to address plaintiffs' claim that defendant's prohibition against the creation of private roads conflicts with the LDA. We deem this claim abandoned because plaintiffs do not address the necessary issue of their standing to challenge the alleged prohibition. *Prince, supra* at 197; *Roberts & Son Contracting, Inc, supra* at 113. Further, plaintiffs' cursory treatment of the merits of this issue is insufficient to invoke appellate review. *Peterson Novelties, Inc, supra* at 14.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski