STATE OF MICHIGAN

COURT OF APPEALS

JOHN T. ANDERSON, AMY A. BAUER, MELISSA K. GOODNOE, BRET D. GOODNOE, ROLAND HARMES, JR., DANIEL J. JONES, ELEANOR V. LUECKE, and THOMAS C. VOICE,

Plaintiffs-Appellants,

v

MERIDIAN CHARTER TOWNSHIP and MERIDIAN TOWNSHIP BOARD OF TRUSTEES,

Defendants-Appellees,

and

LOUIS J. EYDE LIMITED FAMILY PARTNERSHIP and GEORGE F. EYDE LIMITED FAMILY PARTNERSHIP,

Intervening Defendants-Appellees.

UNPUBLISHED
January 15, 2008

No. 275186
Ingham Circuit Court
LC No. 04-001522

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

PER CURIAM.

Plaintiffs appeal the trial court's order, entered in March 2005, dismissing their complaint pursuant to MCR 2.116(C)(4) and (8). Plaintiffs previously appealed the order to this Court; however, the Court dismissed the appeal for lack of jurisdiction, finding that the order did not constitute a final order because the trial court had not yet addressed plaintiffs' motion seeking leave to amend the complaint. *Anderson v Meridian Charter Twp*, unpublished order of the Court of Appeals, entered December 9, 2005 (Docket No. 262168). Following the Michigan Supreme Court's denial of defendants' application for leave to appeal, *Anderson v Meridian*

Charter Twp, 474 Mich 1130; 712 NW2d 717 (2006), the trial court heard and denied plaintiffs' motion to amend or supplement the complaint,[1] finding undue delay caused by plaintiffs in scheduling the motion. Plaintiffs appeal that order as well. We affirm the dismissal of plaintiffs' complaint, but reverse and remand with respect to the denial of plaintiffs' motion to amend or supplement the complaint.

This case arises out of an application to rezone property pursued by the intervening defendants (Eyde) and the approval of a resolution and adoption of a zoning amendment by the Meridian Township Board of Trustees (township board or board) that rezoned the property from a rural residential district (RR) to a "single family – medium density" district (RA) with a Planned Residential Development (PRD) overlay district. Plaintiffs' November 2004 complaint challenged the action of the township board on the basis that the board failed to hold a public hearing before rezoning the property as requested by township property owners and required by MCL 125.281. Plaintiffs also complained that the board failed to require the filing of an additional application by Eyde for the PRD overlay district and the payment of the accompanying filing fee. Plaintiffs' complaint was in the form of a declaratory judgment action. Defendants then filed a motion to remand the case to the township board for a public hearing, and the trial court granted the motion, retaining jurisdiction.

Following public hearings conducted by the board on February 1 and 15, 2005, in which the board rescinded the previously adopted zoning amendment and then adopted the same zoning amendment without change, the trial court granted defendants' motion to dismiss under MCR 2.116(C)(4) and (8). A motion to amend the complaint had been filed by plaintiffs after the February board hearings and before defendants' motion to dismiss was filed and heard, but it had not been noticed for hearing at the time of the hearing on defendants' motion to dismiss, wherein the court ruled in defendants' favor. Pursuant to MCR 2.116(C)(8), the court concluded that summary dismissal was proper because plaintiffs should have filed an appeal from the township board's actions, not an original action in the form of the complaint, and, pursuant to MCR 2.116(C)(4), the court found that it lacked jurisdiction to further address plaintiffs' complaint because the case was moot and there was no longer a controversy, given the public hearings before the board in February 2005.

Plaintiffs appealed as of right to this Court; however, after almost eight months, during which time this Court denied multiple motions by defendants to dismiss the appeal, this Court ruled, sua sponte, that it lacked jurisdiction because the trial court never entertained nor ruled on plaintiffs' motion to amend the complaint. After the Supreme Court denied defendants'

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[1] Before the earlier appeal to this Court, plaintiffs had filed a first and second motion for leave to amend the complaint, and after the case returned to the trial court, plaintiffs filed motions to amend or supplement the complaint that reiterated the claims made in the pre-appeal motions. For purposes of ease of reference, we shall simply refer to the motions jointly and in the singular as either plaintiffs' motion to amend or supplement the complaint or the motion to amend. Plaintiffs also identified a proposed first amended complaint and a proposed second amended complaint, and the proposed second amended complaint is the only one of relevance here and shall be referred to as the proposed amended complaint.

application for leave, and following an adjourned hearing on plaintiffs' renewed motion to amend and scheduling delays, which we will discuss in detail below, the trial court finally heard the motion to amend or supplement the complaint in December 2006. The trial court denied the motion, finding undue delay caused by plaintiffs in scheduling the motion.

The two central issues that are involved in this appeal are whether the trial court erred in dismissing plaintiffs' 2004 complaint and whether the court subsequently erred in denying the motion to amend or supplement the complaint based on undue delay.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). A challenge to subject-matter jurisdiction may be raised at any time and presents a question of law that this Court reviews de novo. *Bass v Combs*, 238 Mich App 16, 23; 604 NW2d 727 (1999). Decisions denying or granting motions to amend the pleadings are reviewed for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997); *Dorman v Clinton Twp*, 269 Mich App 638, 654; 714 NW2d 350 (2006). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). MCR 2.116(C)(4) provides for summary disposition where "[t]he court lacks jurisdiction of the subject matter." See *Cairns v East Lansing*, 275 Mich App 102, 107; 738 NW2d 246 (2007). MCR 2.116(C)(8) provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The trial court may only consider the pleadings in rendering its decision. *Id.* All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997). "The motion should be granted if no factual development could possibly justify recovery." *Beaudrie*, *supra* at 130.

We first address the order granting summary disposition in favor of defendants that was entered in March 2005 relative to plaintiffs' 2004 complaint. There are some preliminary issues or matters that require our attention on this subject. First, we reject Eyde's argument that this Court lacks jurisdiction to entertain and address the order for failure by plaintiffs to comply with MCR 7.204(C)(1) and (D)(1). MCR 7.204(C)(1) requires the appellant to file "a copy of the judgment or order appealed from[,]" and MCR 7.204(D)(1) provides that the claim of appeal must include a statement indicating that the appellant "claims an appeal from the [*judgment or order*] entered . . . ." (Brackets and emphasis in original.) Eyde's argument lacks merit because the final order being appealed from is the December 2006 order denying the motion to amend or supplement, which was attached and identified for purposes of MCR 7.204(C)(1) and (D)(1), thereby satisfying the court rules. "Where a party has claimed an appeal from a final order, the party is free to raise on appeal issues related *to other orders* in the case." *Bonner v Chicago Title Ins Co*, 194 Mich 462, 472; 487 NW2d 807 (1992) (emphasis added). Accordingly, this jurisdictional argument fails.

Next, we address whether the challenge to the township board's actions in rezoning the property from a RR to RA district with a PRD overlay district should have been through an appeal to the circuit court or by way of an original action as filed by plaintiffs in November 2004. "[I]t is settled law in Michigan that the zoning and rezoning of property are legislative functions." *Sun Communities v Leroy Twp*, 241 Mich App 665, 669; 617 NW2d 42 (2000); see

also *Arthur Land Co, LLC v Otsego Twp*, 249 Mich App 650, 662; 645 NW2d 50 (2002). Questions regarding the administration of zoning ordinances by a board of zoning appeals, as opposed to legislative functions of a township board, are subject to review on an appeal to the circuit court. *Sun Communities, supra* at 669-670; see also *Arthur Land, supra* at 662. Nowhere in the Township Zoning Act (TZA), MCL 125.271 *et seq.*,[2] "is it mandated that a decision of a township board denying a rezoning (a legislative act) be appealed to the circuit court." *Sun Communities, supra* at 670. The panel in *Arthur Land, supra* at 664-665, stated:

> Because in denying plaintiff's request to rezone, the county board of commissioners acted as a legislative, as opposed to administrative, body, the trial court's decision [to treat the case as an administrative appeal] . . . was error. Were this an appeal from an administrative body, the trial court would have been limited to a determination whether the decision was authorized by law and supported by competent, material, and substantial evidence on the record. However, "'[b]ecause rezoning is a legislative act, its validity and the validity of a refusal to rezone are governed by the tests which we ordinarily apply to legislation.'"
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> Moreover, plaintiff's complaint was filed as an original action in the circuit court, wherein plaintiff challenged the constitutionality of the zoning ordinance as applied to plaintiff's property and requested declaratory and injunctive relief. These were matters within the trial court's original, rather than appellate, jurisdiction. Accordingly, plaintiff was entitled to a hearing de novo on the issues raised and the trial court therefore erred in limiting plaintiff's proofs to those presented before the township and county commissions and boards. [Citations omitted.][3]

On the basis of *Sun Communities* and *Arthur Land*, we find that plaintiffs' challenge of the township board's actions brought in the form of an original action, i.e., the filing of a complaint, was the proper procedure to utilize. Accordingly, the trial court's dismissal of

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[2] The TZA was repealed by 2006 PA 110, effective July 1, 2006. See MCL 125.3702(1)(c). MCL 125.3702(2) provides that "[t]his section [repealing the TZA] shall not be construed to alter, limit, void, affect, or abate any pending litigation, administrative proceeding, or appeal that existed on the effective date of this act or any ordinance, order, permit, or decision that was based on the acts repealed by this section." Plaintiffs' complaint was filed in November 2004; therefore, we shall rely on the TZA in addressing the issues in this appeal.

[3] In *Sun Communities, supra* at 672, the Court agreed with the plaintiff's contention that the complaint filed in the circuit court challenging the zoning of property invoked the court's original, rather than appellate, jurisdiction, noting that there was no "challenge to the administrative activities of a municipal body acting in the capacity of a zoning board of appeals."

plaintiffs' complaint under MCR 2.116(C)(8) on the basis that an appeal was not timely pursued was error.[4]

With regard to the trial court's ruling under MCR 2.116(C)(4), finding a lack of jurisdiction because the complaint was now moot, we first note that the doctrine of mootness is constitutionally derived and jurisdictional in nature, which may be raised at any time and may not be waived. *Michigan Chiropractic Council v Comm'r of the Office of Financial & Ins Services*, 475 Mich 363, 371-372; 716 NW2d 561 (2006). Mootness precludes the adjudication or litigation of claims where the actual controversy no longer exists, *id.* at 371 n 15, or where a subsequent event renders it impossible to fashion a remedy, *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003).

Our review of the complaint indicates that it was in the form of a declaratory judgment action, where it requested that the court declare that the township board's actions were unlawful, "invalid, void and of no force or effect." MCR 2.605(A)(1) empowers the circuit court to issue a declaratory judgment when and only if an actual controversy exists. *PT Today, Inc v Comm'r of the Office of Financial & Ins Services*, 270 Mich App 110, 140; 715 NW2d 398 (2006). "MCR 2.605 is permissive rather than mandatory; thus, it rests with the sound discretion of the court whether to grant declaratory relief." *Id.* at 141. "Further necessary or proper relief based on a declaratory judgment may be granted after reasonable notice and hearing, against a party whose rights have been determined by the declaratory judgment." MCR 2.605(F).

Here, the trial court's ruling granting the motion to remand the case to the township board is highly questionable and unorthodox. First, given that this was an original action and not an appeal, the "remand" to the township board and the retention of jurisdiction raise procedural concerns. Also, plaintiffs were not seeking a public hearing; rather, they merely sought an order declaring the rezoning action or zoning amendment void for lack of a public hearing.[5] By ordering a public hearing in the context of an original action, the trial court was in essence exercising its general authority to grant equitable or injunctive type relief, MCR 3.310, or relief comparable to actions involving a claim for mandamus, MCR 3.305, to cure the alleged defect.

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[4] We also conclude, notwithstanding plaintiffs' argument to the contrary, that adoption of the PRD overlay district included in the zoning amendment and interwoven with the change from a RR to RA zoning district constituted a legislative act under the circumstances of this case. See MCL 125.271 and MCL 125.286c, repealed by 2006 PA 110. Ordinance 86-378 reflects that approval of a PRD overlay district relative to a development parcel entails a rezoning of the property; therefore, *Sun Communities* dictates that an appeal would not be the appropriate mechanism to challenge the board's action. See also *Schwartz v Flint*, 426 Mich 295, 307; 395 NW2d 678 (1986)(zoning is a legislative function).

[5] We note that, in light of the lower court record, plaintiffs' claim that they were entitled to a hearing appears to find some force in MCL 125.281, repealed by 2006 PA 110, wherein it is provided that "the township board shall grant a hearing on a proposed ordinance provision to a property owner who by certified mail addressed to the clerk of the township board requests a hearing . . . ." We take no position on whether a public hearing was indeed required because it is unnecessary for us to do so.

See *PT Today, supra* at 137. However, again, plaintiffs never requested injunctive relief or a writ of mandamus.

Where there has been a failure to comply with statutory language that requires the holding of a public hearing, "any ordinance adopted in the absence of such compliance is void." *Ann Arbor v Danish News Co*, 139 Mich App 218, 224; 361 NW2d 772 (1984); see also *Bingham v Flint*, 14 Mich App 377, 384; 165 NW2d 628 (1968) (ordinance changing the zoning of land from commercial to industrial was "void" because the ordinance was adopted without the statutorily required public hearing). And *Davis v Imlay Twp Bd*, 7 Mich App 231, 235-236; 151 NW2d 370 (1967), suggests that any attempts to cure a procedural zoning defect after the fact does not render the original zoning action valid.[6] Here, the proper procedure would have entailed a ruling on whether a public hearing was required pursuant to MCL 125.281, followed by a determination, if supported by the law, that the zoning amendment was void for lack of the requested public hearing, with judgment entered in favor of plaintiffs. At that point, the rezoning process could have been initiated anew. That being said, the inescapable fact is that resurrecting plaintiffs' complaint necessarily leads to a direct confrontation with the mootness doctrine. Despite the unusual procedure that took place, the township board did consider the rezoning request, did conduct a public hearing, did approve the resolution, and did adopt the zoning amendment. Assuming that a public hearing was required, there would be no purpose or reason to resolve whether plaintiffs were denied a public hearing relative to the allegations in the complaint. Given that the original resolution approval and adoption of the zoning amendment were officially rescinded and the matter taken up anew, there can be no continuing controversy, nor can a meaningful remedy be fashioned, with respect to the failure of the township board to conduct a hearing before rezoning the property in 2004.[7] Determining whether the original rezoning action was "void" would be an act without meaning and steeped in futility. Had the court ruled that the township board's actions were void and entered judgment in plaintiffs' favor, as desired by plaintiffs, the case would effectively not be in any different posture because the township board would clearly have taken the same steps in that situation as were taken after the trial court's remand order.[8] Accordingly, we affirm the dismissal of plaintiffs' complaint.

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[6] *Davis* involved an action to have a zoning ordinance declared invalid for noncompliance with a statutory requirement that mandated submission of a proposed township ordinance to a county zoning commission or county coordinating zoning committee before the ordinance could be adopted. After the lawsuit was commenced, the defendant zoning board submitted the enacted ordinance to a county coordinating zoning committee for approval, and approval was conclusively presumed because the committee did not act within 30 days of receipt of the ordinance. This Court deemed the attempted cure as meaningless because it was "bound by the language of the statute which requires such submission [to the committee] prior to adoption." *Davis, supra* at 236. One distinction in the instant case is that the original zoning amendment was ultimately rescinded in its entirety, with the process of a hearing, new resolution, and new adoption commencing after the remand order was entered.

[7] We find no basis to alter our conclusion premised on the argument that Eyde did not apply for a change to a PRD overlay district, given that the zoning amendment was rescinded in its entirety.

[8] The only difference is that plaintiffs would in all likelihood have commenced a fresh action
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We now turn to plaintiffs' motion to amend or supplement the complaint. Under MCR 2.118(A)(2), a party may move to amend a pleading by leave of the court, and "[l]eave shall be freely given when justice so requires." MCR 2.118(E) provides:

> On motion of a party the court may, on reasonable notice and on just terms, permit the party to serve a supplemental pleading to state transactions or events that have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or a defense.

In *Miller v Chapman Contracting*, 477 Mich 102, 105; 730 NW2d 462 (2007), our Supreme Court reiterated the well-established principles regarding motions to amend pleadings:

> Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party, or where amendment would be futile. . . . Although an amendment generally relates back to the date of the original filing if the new claim asserted arises out of the conduct, transaction, or occurrence set forth in the original pleading, MCR 2.118(D), the relation-back doctrine does not extend to the addition of new parties. [Citations and internal quotation marks omitted.]

"The rules pertaining to the amendment of pleadings are designed to facilitate amendment except when prejudice to the opposing party would result; amendment is generally a matter of right rather than grace." *PT Today, supra* at 143. Where all the parties anticipated changes related to the development of the litigation, leave to supplement the pleadings consistent with those anticipated changes should be granted. *Id.*

Our review of the proposed amended complaint reveals that it relies on transactions or events that transpired after the filing of the 2004 complaint, i.e., the February 1 and February 15, 2005, board hearings, and it relies on transactions or events that occurred before the date of the complaint, i.e., alleged ex parte meetings, discussions, and communications dating back to 2002 that violated due process, the TZA, and the Open Meetings Act, MCL 15.261 *et seq.* Thus, plaintiffs' motion relates to both amending and supplementing the 2004 complaint. The question, therefore, becomes whether plaintiffs caused undue delay or failed to provide reasonable notice relative to the motion and scheduling. We hold that the court abused its discretion in finding undue delay and that defendants had reasonable notice.

There is no dispute that plaintiffs timely filed a motion to amend the complaint. The motion was filed on March 1, 2005, and plaintiffs initially sought a stipulation to the motion that was not forthcoming. The record reflects that due to health issues that involved surgery, plaintiffs' counsel, a sole practitioner, was hopeful that he could attend court hearings on or after

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against the township unhampered by the motion to amend or supplement. Given that we reverse the court's ruling on that motion and remand for substantive consideration by the trial court, this difference is rendered irrelevant.

March 21, 2005. Counsel did not notice the motion for hearing, and by March 9, 2005, Eyde filed the motion to dismiss, in which the township defendants concurred, and a hearing on that motion was set for March 30, 2005. Plaintiffs did not obtain a hearing date on the motion to amend the complaint by the time of the March 30, 2005, hearing on the motion to dismiss (summary disposition). As indicated earlier in this opinion, the trial court granted the motion for summary disposition. MCR 2.116(I)(5) indicates that if a motion for summary disposition is brought pursuant to, as pertinent here, MCR 2.116(C)(8), "the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." Defendants maintain that plaintiffs should have scheduled a hearing on the motion to amend before the hearing on summary disposition and could have done so after the hearing pursuant to MCR 2.116(I)(5). It is apparent that an attempt to reach a stipulation to amend the complaint, along with health problems in regard to plaintiffs' attorney, played a role in plaintiffs' failure to obtain a hearing date by the time of or before the summary disposition hearing. It is also clear that defendants were on notice that plaintiffs wished to amend the complaint.

Moreover, we cannot place blame with plaintiffs for failure to notice a hearing on the motion to amend after the court's ruling dismissing the 2004 complaint. This Court's sua sponte ruling finding a lack of jurisdiction approximately eight months after plaintiffs' initial claim of appeal was filed was the first time that there was any indication that the trial court's order was not a final order and did not dispose of all pending matters. Although we are bound by this Court's prior order, the record gives rise to a reasonable belief that the trial court had addressed the motion to amend, although it was not technically before the court. In its ruling from the bench, the trial court observed that plaintiffs should have pursued an appeal from the township board's adoption of the zoning amendment and that "this civil action can[not] be converted into an appeal by simply filing an amended complaint." The subsequent order entered by the trial court indicated that the motion for summary disposition was granted, that, further, the complaint was dismissed with prejudiced, and that the order resolved the last pending claim and closed the case. When this broad language is viewed in context with the court's statements from the bench that the action could not be converted to an appeal by filing an amended complaint and with the fact that amendment of the complaint was discussed at the hearing, one could reasonably surmise that the court effectively ruled on amendment and rejected it. Indeed, despite multiple motions to this Court by defendants to dismiss the appeal on other grounds, our Court only recognized the failure to resolve all pending matters late in the appeal. We cannot in good conscience attribute this time period to plaintiffs. Furthermore, once the claim of appeal was filed, the trial court lost jurisdiction over the case. MCR 7.208(A).

Additionally, once this Court made its ruling, defendants applied for leave to appeal to the Supreme Court, and while defendants argue that no stay was in place and that plaintiffs could have scheduled a hearing during the pendency of the application, we do not agree with this assessment.[9] Under MCR 7.302(C)(5)(a), when a party appeals a decision to our Supreme Court

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[9] Defendants also maintain that plaintiffs could have scheduled the motion to amend immediately after this Court's order of December 9, 2005, was entered. We note, however, that there is a 21-day period after issuance of an order during which a party can seek reconsideration,
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that had remanded the case for further proceedings, as occurred here, the application for leave stays proceedings on remand unless this Court or the Supreme Court orders otherwise, but only if the decision by this Court is a judgment under MCR 7.215(E)(1). MCR 7.215(E)(1) provides, in pertinent part, that "[w]hen the Court of Appeals disposes of an . . . appeal, whether taken as of right . . ., its opinion or order is its judgment." By finding a lack of jurisdiction and sending the case back to the trial court for final resolution of the motion to amend, this Court disposed of the appeal and remanded the case. Accordingly, defendants' application for leave to appeal in the Supreme Court stayed proceedings in the trial court, precluding plaintiffs from noticing a hearing. On April 28, 2006, the application for leave was denied by the Supreme Court. Court docketing information indicates that the Supreme Court closed out and returned the file in May 2006. But there did exist a 21-day period during which the Supreme Court's order could be challenged by a motion for reconsideration, although no automatic stay would result from such a filing. MCR 7.313(E).

In June 2006, plaintiffs obtained a July hearing date on the motion to amend the complaint. At the July 2006 hearing on the motion to amend, there was some confusion regarding the timeliness of service of defendants' response briefs on plaintiffs and with respect to whether the trial court had been given copies of the township defendants' brief, and therefore the court adjourned the hearing for a later date.[10] The court indicated that the parties should contact its secretary about getting a hearing date, but the court also stated that, because the court would be handling a lengthy criminal case, "after September 11th, I'm not even going to have a civil docket. So keep that in mind. If you want a civil motion, you'll be going to Judge Draganchuk or Judge Collette because I'll be in the Holland trial[11] for the next, I don't know how many weeks." The adjournment of the July 2006 hearing cannot be labeled as being caused by plaintiffs' failures or shortcomings.

After an objection to a proposed order submitted under the 7-day rule, a stipulated order was eventually entered on August 24, 2006, providing that the motion to amend was adjourned, that plaintiffs could file a single reply brief, and that plaintiffs would consult the court's staff to determine the court's availability to schedule a new hearing date.

Back on August 11, 2006, the township defendants had filed a supplemental brief in opposition to plaintiffs' motion to amend. On September 8, 2006, plaintiffs filed a reply brief. On September 29, 2006, plaintiffs formally filed a motion to amend *or supplement* the complaint, recognizing that its motion to amend technically reflected a partial request to supplement the complaint.

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MCR 7.215(I)(1), and the record remains with this Court during that time, and Eyde concedes on appeal that, while there was only one short settlement meeting, it "did request a meeting whereby the parties could discuss settlement" before the application was filed with the Supreme Court.

[10] Plaintiffs preferred an adjournment where the court chose not to strike the briefs claimed to be untimely, and the township defendants expressly indicated that they had no objection to adjournment of the hearing.

[11] The trial judge was to preside over the well-publicized trial involving murder charges against Lisa Holland arising out of the death of Ricky Holland.

On November 14, 2006, plaintiffs filed a notice of hearing with respect to amending and supplementing the complaint, setting a date for December 6, 2006. On December 1, 2006, plaintiffs filed a new notice of hearing, still setting the date for December 6, but changing the time of the hearing. In the December 6, 2006, hearing, it was revealed that plaintiffs' counsel had originally procured from the court clerk a hearing date of October 11, 2006, before Judge Collette, as the trial court was still presiding in the Holland murder trial, but defendants had a conflict and plaintiffs' counsel eventually agreed to obtain a different date, i.e., December 6, 2006.

Under this set of circumstances, the trial court's ruling did not constitute a decision that fell within a range of principled outcomes. There was no undue delay and there existed reasonable notice. Moreover, any prejudice suffered by defendants cannot be attributed to plaintiffs' actions but rather defendants' own actions in jumping the gun by commencing the development project while appeals were being pursued. Further, there is no evidence of bad faith or dilatory motive on plaintiffs' part. This leaves consideration regarding whether amending and supplementing the complaint as proposed would be futile. This effectively requires substantive analysis of plaintiffs' constitutional, statutory, and ordinance related allegations contained in the proposed amended complaint. Because the parties do not engage in any substantive analysis of these matters, and because the trial court never ruled on the substance of the allegations, remand for consideration is appropriate.[12]

Affirmed in part, reversed and remanded in part for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Helene N. White

[12] Count VII in the proposed amended complaint claiming an appeal from the township board's actions in February 2005 must be dismissed because, for the reasons stated earlier, an appeal is not the proper procedure to be utilized in this case.