STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE TOWNSHIP OF ADDISON,

Plaintiff-Appellant,

v

JERRY KLEIN BARNHART,

Defendant-Appellee.

UNPUBLISHED
March 13, 2008

No. 272942
Oakland Circuit Court
LC No. 06-008457-AZ

Before: Wilder, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Plaintiff, People of the Township of Addison, appeal by leave granted from the circuit court's affirmance of the district court's dismissal of a citation issued to defendant, Jerry Klein Barnhart. We reverse and remand for proceedings consistent with this opinion.

On November 1, 1993, a township meeting was held. During the public forum, an apparent attendee questioned construction that was occurring on Noble Road. The township supervisor stated that a "private target range" was being constructed on the property and the homeowner, defendant, and his wife were the only individuals who would be permitted to use the range. On November 22, 2005, a warrant was issued for defendant for violating plaintiff's zoning ordinance no. 300, by operating a shooting range without a zoning compliance permit.[1] The parties appeared for trial. At that time, defendant asserted that the citation should be dismissed because of lack of notice of the violation at issue, and that, by statute, his use of the property superseded any local zoning ordinance. The trial court noted that a motion to dismiss had not been filed, and that the case was scheduled for trial.

[1] Although the record from the circuit court appeal was transmitted to this Court, the district court record on appeal was not submitted. Consequently, we do not have the benefit of the citation, and this statement of fact was taken from the district court opinion addressing plaintiff's motion for reconsideration. The district court record would have aided our appellate review. For example, defendant repeatedly asserted that he had no idea what violation he had committed. To counter that assertion, plaintiff noted that ordinance 300 consisted of "hundreds of pages," but listed specific subsections of ordinance 300 that were violated, in particular section 27.05. The ordinance was submitted to the district court, but was not preserved in the record for our review.

Plaintiff presented the testimony of Andrew Koski, the township supervisor charged with ordinance enforcement. Koski testified that defendant came to plaintiff in 1993, with a request for permission to construct a range on his property. According to Koski, defendant represented that he tested different rifles and other firearms for various companies and he would like to use the range for himself and his family. There was no indication that any firearm range constructed on the property would be used by any other individuals or for any other purpose. In 2004, plaintiff began to receive complaints about defendant's property. Koski was shown different advertisements by township residents indicating that the property was being used contrary to the use approved by the township board. Specifically, advertisements indicated that individuals could come to the property and "be educated in combat arms." Koski opined that conducting firearms classes at the range was a violation of zoning ordinances. Specifically, firearms classes held on the property would make it a commercial or public use to which plaintiff had not agreed. Moreover, the zoning category of agricultural did not permit a shooting range.[2]

Sergeant Peter Burkett of the Oakland County Sheriff's Department testified that he had been to defendant's property approximately fourteen times. He estimated that the majority of his visits to the property had been to use the shooting range. Specifically, as a member of the special response team, Sergeant Burkett utilized the firing range on defendant's property for training. His use of the range occurred in groups consisting of two to six individuals. Sergeant Burkett never paid defendant or his wife to use the firing range. He had no personal knowledge of whether defendant was using the firing range as a commercial venture or business. On the day that Sergeant Burkett issued the citation to defendant, defendant and some "military friends" were training in the small arms range. It was unknown if the "military friends" were charged for their use of the range or if they were considered "guests."

Robert Keller testified that he lived south of defendant's shooting range. He moved into his property in 1990, before the shooting range was constructed. Keller testified that the activity occurring on defendant's property was "extremely disturbing." He was not allowed to use his own property without being interrupted by the firing range. For example, defendant would utilize a loudspeaker to give instructions to groups of people. He would tell the group to "fire," and Keller would hear a "large barrage of gunfire." Keller testified that he was unsure of the exact number of individuals present at the shooting range, but it sounded as if twelve to twenty guns were being fired. Keller rejected the assertion that one automatic weapon was being fired, stating that he could detect multiple weapons being fired at once. Moreover, he was unaware of any gun that could account for "1,000 or more explosions going off in a minute." Keller also testified that he was able to locate defendant's website wherein classes were offered on the property in exchange for compensation. Specifically, he saw that some classes were offered at a rate of $750 per person. The website advertised classes, provided prices, contained a class

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[2] On cross-examination, Koski acknowledged that he could not provide the specific ordinance number that defendant was charged with violating. However, Koski testified that the prosecuting attorney for plaintiff could provide the number. Indeed, at the conclusion of this testimony, plaintiff's attorney stated that ordinance 300 was at issue, specifically section 27.05. The ordinance was submitted to the district court for review. Thus, defendant's contention that he was unaware of the violation at issue is without merit.

schedule, and had photographs of the range. Keller stated that the shooting would begin as early as 8:00 a.m. on Saturday mornings and 9:00 a.m. on Sunday mornings and lasted until "almost dark." The shooting on the range also occurred during the week.

At the conclusion of plaintiff's proofs, defendant renewed his legal argument that the range was in existence in 1993, and therefore, he was entitled to expand the use of the range. After the submission of briefs, the district court agreed with defendant, concluding that the range could expand or increase opportunities for public participation. The circuit court affirmed the district court's ruling. We granted plaintiff's application for leave to appeal.

The Sport Shooting Ranges Act (SSRA), MCL 691.1541 *et seq*, was originally enacted in 1989. The SSRA was "passed in response to problems that arose as urban sprawl brought new development into rural areas, creating conflicts between shooting ranges and their new neighbors." *Ray Twp v B & BS Gun Club*, 226 Mich App 724, 727; 575 NW2d 63 (1997). The SSRA does "not free sport shooting range operators from local zoning controls regarding construction of new facilities." *Fraser Twp v Linwood-Bay Sportsman's Club*, 270 Mich App 289, 297; 715 NW2d 89 (2006). Instead, the Act provides that ranges may allow more use of existing facilities to support more membership, participation, events, or activities. *Id*. Thus, the SSRA does not expressly preempt all local regulation, and a township may seek injunctive relief to enforce its ordinances. *Id*. at 297-300.

The issue in the present case involves the application of MCL 691.1452a, an amendment to the SSRA that became effective July 5, 1994. Issues of statutory construction present questions of law that are reviewed de novo. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002). The goal of statutory construction is to discern and give effect to the intent of the Legislature by examining the most reliable evidence of its intent – the words of the statute. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). If the statutory language is unambiguous, appellate courts presume that the Legislature intended the plainly expressed meaning, and further judicial construction is neither permitted nor required. *DiBenedetto v West Shore Hospital*, 461 Mich 394, 402; 605 NW2d 300 (2000). Terms used in a statute must be given their plain and ordinary meaning, and it is appropriate to consult a dictionary for definitions. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004).

MCL 691.1542a is entitled "Continuation of preexisting sport shooting ranges" and provides:

> (1) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance.
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> (2) A sport shooting range that is in existence as of the effective date of this section and operates in compliance with generally accepted operation practices, even if not in compliance with an ordinance of a local unit of government, shall be permitted to do all of the following within its preexisting geographic boundaries if in compliance with generally accepted operation practices:

(a) Repair, remodel, or reinforce any conforming or nonconforming building or structure as may be necessary in the interest of public safety or to secure the continued use of the building or structure.

(b) Reconstruct, repair, restore, or resume the use of a nonconforming building damaged by fire, collapse, explosion, act of god, or act of war occurring after the effective date of this section. The reconstruction, repair, or restoration shall be completed within 1 year following the date of the damage or settlement of any property damage claim. If reconstruction, repair, or restoration is not completed within 1 year, continuation of the nonconforming use may be terminated in the discretion of the local unit of government.

(c) Do anything authorized under generally accepted operation practices, including, but not limited to:

(i) Expand or increase its membership or opportunities for public participation.

(ii) Expand or increase events and activities.

The district court dismissed the violation against defendant, concluding that the sport shooting range was in existence at the time of the enactment of MCL 691.1542a, and consequently, was entitled to expand its operation. However, the district court failed to conduct an analysis of the underlying provisions of the statute and failed to make factual findings regarding the application of the SSRA to the facts in the present case.

Although MCL 691.1542a(2)(c) addresses the intensity with which existing facilities are used, not the construction or reconstruction, *Fraser Twp, supra*, the statute is applicable to sport shooting ranges. To invoke the provision of MCL 691.1542a(2)(c), two requirements must be satisfied. That is, defendant must have been operating a sport shooting range and must be in compliance with generally accepted operation practices. MCL 691.1542a(2). With regard to the first requirement, MCL 691.1541(d) defines "Sport shooting range" as "an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting." A definition of the term "sport" is not contained within the statute. However, the term "sport" has been defined as an "athletic activity" or a "diversion [or] recreation." Random House Webster's College Dictionary (1997). Thus, the statute appears to apply to a recreational shooting range, to the exclusion of all other types of shooting ranges. See *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 712; 664 NW2d 193 (2003) ("the expression of one thing suggests the exclusion of all others"). Thus, to the extent that there was testimony to suggest that defendant's operation of a shooting range was for business or commercial purposes, MCL 691.1542a(2)(c) does not provide freedom from compliance with local zoning controls. See *Fraser Twp, supra* at 297.

With regard to the second requirement, MCL 691.1541(a) defines "generally accepted operation practices" as "those practices adopted by the commission of natural resources that are established by a nationally recognized nonprofit membership organization that provides voluntary firearm safety programs that include training individuals in the safe handling and use of firearms, which practices are developed with consideration of all information reasonably available regarding the operation of shooting ranges." Once adopted, the generally accepted

operation practices are subject to review every five years and are revised as necessary. MCL 691.1541(a).

In the present case, the district court failed to address whether the proofs established that defendant was operating a sport shooting range in compliance with generally accepted operation practices. At the time the district court dismissed the citation or essentially directed a verdict in favor of defendant, the proofs did not support the application of MCL 691.1542a(2)(c). Specifically, the testimony and the board meeting minutes indicated that defendant was setting up a shooting range for private use, albeit arguably for business purposes.[3] That is, he utilized the range to test firearms for various companies. Moreover, there was no testimony indicating that generally accepted operation practices were satisfied. On the record, counsel for defendant blanketly asserted that the requirements were established.[4] Consequently, it is unclear if generally accepted operation practices require barriers to prohibit errant firing onto neighboring properties and the height requirement of any such barriers or if distance requirements from neighboring occupied properties are imposed.[5]

The district court's ruling also failed to consider the import of MCL 691.1543, which provides: "Except as otherwise provided in this act, this act does not prohibit a local unit of government from regulating the location, use, operation, safety, and construction of a sport shooting range." In the present case, plaintiff asserted that township ordinances were violated because the location of defendant's shooting range was not zoned for a sport shooting range. In light of the fact that the SSRA does not preempt all local regulation, the trial court failed to consider whether other township zoning ordinances were violated.

The district court concluded that, because the shooting range was in existence before 1994, it could expand or increase public participation. MCL 691.1452a(2)(c). However, in addition to failing to examine whether the underlying requirements were established, the trial court did not review MCL 691.1452a(2)(c) in light of MCL 691.1453. See *Farrington v Total Petroleum, Inc*, 442 Mich 201, 209; 501 NW2d 76 (1993) ("It is a well-established rule of statutory construction that provisions of a statute must be construed in light of the other provisions of the statute to carry out the apparent purpose of the Legislature.") Specifically, the township supervisor testified that defendant was given permission to vary the zoning for the limited purpose of private activity. However, it was asserted that defendant subsequently

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[3] Defendant did not testify at trial. Defense counsel asserted in argument to the court that he disputed the representations that defendant made to the supervisor and township board. The case was dismissed before defendant presented any proofs.

[4] As previously stated, we do not have the district court record. Consequently, we do not have the trial briefs to determine if the parties addressed these issues. However, the district court opinion and the circuit court opinion do not address the underlying statutory provisions.

[5] Although Sergeant Burkett opined that defendant's range was safer than a police range, he did not testify regarding knowledge of generally accepted operation practices and whether the practices were fulfilled.

changed the nature of the activity to a private commercial enterprise that expanded in scope far beyond what is contemplated by the zoning at issue.[6]

Accordingly, we reverse the dismissal of the citation and remand for the trial court to address whether the criteria for MCL 691.1542a were established and to examine the provisions of the SSRA as a whole.[7]

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood

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[6] MCL 691.1542a(2) provides that it applies to "A sport shooting range that is in existence as of the effective date of this section and operates in compliance with generally accepted operation practices, even if not in compliance with an ordinance of a local unit of government …" The trial court effectively held that this applies to any ordinance of government. However, in light of MCL 691.1453, the trial court should consider whether MCL 691.1542a(2) applies to local ordinances attempting to regulate shooting ranges, not all ordinances, including zoning ordinances. See *Fraser Twp, supra*.

[7] We acknowledge that the record is inadequate to address these issues, and the trial court may be required to conduct an evidentiary hearing to resolve the underlying factual questions surrounding the application of the SSRA.