STATE OF MICHIGAN

COURT OF APPEALS

PETER W. HUNT, Plaintiff-Appellant,	UNPUBLISHED May 21, 2009
v	No. 283524 Grand Traverse Circuit Court
GREEN LAKE TWP., Defendant-Appellee.	LC No. 07-025948-CH

Before: Whitbeck, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

Plaintiff Peter W. Hunt appeals as of right from two orders of the trial court granting summary disposition in favor of defendant Green Lake Township and an order of the trial court denying Hunt's motion to show cause. We affirm.

I. Basic Facts And Procedural History

It was undisputed that Hunt owned property located in the Township and that this property was situated in two sections, one of which was adjacent to a lake and separated from the remaining property by a road. The fee under this road was owned by the Township pursuant to a deed signed in 1912 in which the then-owner of the property conveyed it to the Township for the purpose of constructing a public highway on the premises.

In 2005, Hunt demolished an old home and rebuilt a new home on the parcel of property that was adjacent to the lake. Hunt never protested the 2006 property tax valuation of the property to the March Board of Review. The record indicates that construction on the new home may have been substantially completed in 2006. Hunt did protest the 2007 property tax valuation of his property to the Board of Review, but was apparently unsuccessful because he filed an appeal with the Michigan Tax Tribunal about both the 2006 and 2007 valuations. As part of this appeal, the Township's assessor completed an answer form in which he set forth the formulas used in the 2006 and 2007 tax years and indicated that he calculated the 2006 assessed and taxable value under MCL 211.34d(1)(b) and (h).

At some point, Hunt sought permission from the Township to build a garage across the road from his house (that is, on the property on the landward side of the road). The Township denied this permit application on the basis that the lakefront and landward properties were separate properties and its zoning ordinances prohibited an accessory structure in a residential district without a conforming dwelling.

Hunt filed a complaint, arguing that certain Michigan statutory tax provisions were unconstitutional (Count One) and challenging the Township's zoning ordinances (Count Two). As he has on appeal, at all times in the trial proceedings, Hunt, who is not an attorney, represented himself. Hunt moved for summary disposition on Count One. The parties participated in mediation, which was unsuccessful. Hunt then filed a motion to show cause why the Township should not be held in contempt for failing to comply with certain court orders regarding mediation and failing to respond to his e-mail discovery request. The trial court granted summary disposition on Count One in favor of the Township pursuant to MCR 2.116(C)(8) and (I)(2), denied Hunt's motion to show cause, denied Hunt's motion for reconsideration, and ordered Hunt to answer two interrogatories.

The Township then moved for summary disposition with respect to Count Two of Hunt's complaint pursuant to MCR 2.116(C)(8) and (10). In Hunt's answer to this motion, he asserted that the "[Township's] expansion of [Hunt's] complaint by introduction of material obtained during discovery of [Hunt's] complaint was not sanctioned by [Hunt]." The trial court interpreted this statement at the motion hearing as a request that the court limit its rulings to the claims made in the complaint. The trial court granted the Township's motion for summary disposition on Count Two. Hunt now appeals.

II. Hunt's Constitutional Claims

A. Standard Of Review

This Court reviews de novo the grant or denial of a motion for summary disposition.[1] We also review de novo issues concerning the interpretation of tax statutes.[2]

B. MCL 211.34d

The trial court did not err in granting summary disposition to the Township on Hunt's constitutional claims in Count One of his complaint. After the Michigan voters adopted Proposal A in 1994, thereby amending Const 1963, art 9, § 3, the Legislature enacted several amendments to MCL 211.34d. Hunt argues that two of the subsections of MCL 211.34d—(1)(b) and (1)(h)—are unconstitutional. In support of this argument, Hunt cites *WPW Acquisition Co v City of Troy*.[3] In that case, the Supreme Court held that MCL 211.34d(1)(b)(*vii*)—defining "additions," in certain circumstances, as an increase in the value of property because of increased occupancy by tenants—was unconstitutional because its definition of the term "additions" was inconsistent with the established meaning of that term at the time the voters passed Proposal A.[4] The Court later employed similar reasoning to find that MCL 211.34d(1)(b)(*viii*)—defining "additions" as

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[1] *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004).

[2] *Danse Corp v City of Madison Hts*, 466 Mich 175, 178; 644 NW2d 721 (2002).

[3] *WPW Acquisition Co v City of Troy*, 466 Mich 117; 643 NW2d 564 (2002).

[4] *Id*. at 119, 122-124.

including public-service improvements consisting of public infrastructure located on utility easements or land that ultimately becomes public—was unconstitutional.[5]

In this case, the statutory tax provisions at issue were MCL 211.34d(1)(b)(*iii*) and MCL 211.34d(1)(h)(*i*). Subsection (b)(*iii*) provides that, for taxes levied after 1994, the term "additions" means, among other things, "new construction." When compared to the definition that existed before the adoption of Proposal A, which was that "additions" included "all increases in value caused by new construction,"[6] it is clear that subsection (b)(*iii*) uses a meaning for "additions" that is essentially identical to the meaning employed at the time Proposal A was adopted.

Next, subsection (h)(*i*) provides that, for taxes levied after 1994, "losses" includes property that has been destroyed or removed. Comparing that definition to the one in force before the passage of Proposal A, which was that the term "losses" was "a decrease in value caused by the removal or destruction of real or personal property,"[7] it is again clear that MCL 211.34d(1)(h)(*i*) employs essentially the same meaning of the term "losses" that was in force before the adoption of Proposal A. Therefore, Hunt has not shown that subsection (b)(*iii*) and subsection (h)(*i*) are unconstitutional.

Hunt also argues that the implementation of subsection (b)(*iii*) and subsection (h)(*i*) resulted in a different valuation than what would have occurred before the adoption of Proposal A. Specifically, Hunt states that, under the definitions of "additions" and "losses" in effect before the adoption of Proposal A, his property taxes would have increased by the difference between the value of the property before the new construction and the value of the property after the new construction but that, after the Legislature made the amendments to MCL 211.34d following Proposal A's adoption, his property taxes were based on the value of the new construction without regard to the value of the property before the new construction. This claim has no merit because the formulas used by the Township's assessor for the 2006 and 2007 tax years clearly used as the starting points the taxable value of the property from the previous tax year.

III. Hunt's Uniformity Claims

Hunt argues that the alleged unequal tax treatment provided to "new construction" as opposed to "replacement construction" violated the Uniformity of Taxation Clause found in Const 1963, art 9, § 3. The trial court did not decide this issue, as Hunt first raised it in his motion for reconsideration. This Court, therefore, need not address this issue although it may do so to prevent manifest injustice.[8] No manifest injustice would occur here because Hunt's argument is entirely unconvincing. The purpose of the Uniformity of Taxation Clause is to

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[5] *Toll Northville, Ltd v Northville Twp*, 480 Mich 6, 8; 743 NW2d 902 (2008).

[6] MCL 211.34d(1)(a).

[7] MCL 211.34d(1)(g).

[8] *Herald Co, Inc v City of Kalamazoo*, 229 Mich App 376, 390; 581 NW2d 295 (1998).

guarantee equal treatment to similarly situated taxpayers.[9] The classifications of "new construction" and "replacement construction" are based on real differences, which necessitated different tax treatment. Moreover, any claim by Hunt that his prior home needed to be replaced because it had been damaged or destroyed by accident or an act of God and, thus, constituted "replacement construction" under MCL 211.34d(1)(b)(*v*), should have been directed to the Michigan Tax Tribunal.

IV. Hunt's Zoning Claims

The trial court also did not err in granting summary disposition to the Township on Hunt's challenges to its zoning ordinances in Count Two of Hunt's complaint. Hunt argued that the Township's zoning ordinance, which prohibited an accessory structure being constructed on property that did not contain a primary structure, conflicted with a restriction included in the 1912 deed that required "[s]aid road to be made in such manner as to not injure property for resort purposes." "When interpreting deeds and plats, Michigan courts seek to effectuate the intent of those who created them."[10] In this case, the clear language of the deed indicated that the signatories were concerned about the impact and location of the *road*. Therefore, the trial court did not err when it found that the deed restriction was not violated by a zoning ordinance that involved the placement of *buildings*.

V. The Balance Of Hunt's Summary Disposition Claims

The rest of Hunt's arguments concerning the grant of summary disposition on Count Two also fail. Hunt did not develop his claims that the Township's fee under the road was somehow adversely affected by a conveyance of other property that occurred in 1942, or that the Township may not have fulfilled the terms of the 1912 property conveyance. On appeal, we deem abandoned arguments that a party does not develop.[11] Hunt's proposal that the fee under the road be transferred to him, in return for a transfer back of the Township's right of way, did not constitute a legal decision by the trial court that this Court can review. The trial court did not err when it restricted its ruling at the January 2008 hearing to claims raised in the complaint. Hunt did not protest this decision then, and he fails to make clear on appeal what alleged conflicts between Township's zoning ordinance and the state of Michigan Zoning Enabling Act[12] he wanted to pursue.

Lastly, Hunt fails to explain on appeal in what way the trial court allegedly erred when it decided that the Township was not the proper defendant in a taking of private property issue, especially because it had been the Michigan Department of Environmental Quality that had

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[9] *City of Ann Arbor v Nat'l Center for Mfg Sciences, Inc*, 204 Mich App 303, 305-306; 514 NW2d 224 (1994).

[10] *Tomecek v Bavas*, 482 Mich 484, 490-491; 759 NW2d 178 (2008).

[11] See *Hamade v Sunoco, Inc*, 271 Mich App 145, 173; 721 NW2d 233 (2006).

[12] MCL 125.3101 *et seq*.

denied Hunt's application for a permit to fill in an excavated site situated in a wetlands area. Because Hunt failed to adequately brief this issue, he has abandoned it on appeal.[13]

VI. Hunt's Show Cause Motion

A. Standard Of Review

Hunt protests the denial of his motion to show cause why the Township should not be held in contempt. The decision whether to issue an order of contempt is left to the sound discretion of the trial court, and we review that decision for an abuse of discretion.[14] Generally, there must be a sufficient foundation of competent evidence, and legitimate inferences therefrom, before a show cause order may issue.[15]

B. Applying The Standards

The Township conceded that it did not comply with the trial court order to have present at the mediation persons invested with power to settle and that it apparently failed to comply with the mediator's request to provide a mediation summary. However, we conclude that the Township made a good faith effort to comply with the trial court order by having three board members, its attorney, and its assessor present at the mediation, because the presence of more than three board members would have constituted a majority and required posting of the meeting by the Open Meetings Act.

Thus, the Township's failure to provide a mediation summary did not significantly harm Hunt, who had been informed that the Township's assessor relied upon MCL 211.34d(1)(b) and MCL 211.34d(1)(h) when calculating the 2006 assessed and taxable value. We note that, although the assessor did not specify subsection (b)(*iii*) and subsection (h)(*i*), a clear reading of those statutory provisions established their relevancy to this case, as opposed to the completely irrelevant statutory provision involved in *WPW Acquisition Co*, which was subsection (b)(*vii*) and which involved tenant occupancy rate.

Similarly, Hunt had full access to the zoning ordinances that the Township enforced as well as the 1912 deed and Michigan statutory provisions. Therefore, the Township's actions did not deprive Hunt of critical information for the mediation, and the trial court did not abuse its discretion when it found that the circumstances did not warrant the grant of his motion to show cause.

VII. E-Mail Service

Hunt argues that service by e-mail had the same legal validity as service by United States mail under the Uniform Electronic Transactions Act.[16] We disagree. Hunt fails to cite which

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[13] *Hamade*, *supra* at 173.

[14] *Schoensee v Bennett*, 228 Mich App 305, 316; 577 NW2d 915 (1998).

[15] *In re Contempt of Calcutt*, 184 Mich App 749, 757; 458 NW2d 919 (1990).

[16] MCL 450.831 *et seq*.

statutory provision of that act contains this alleged principle. And, regardless, the authority to determine rules of practice and procedure rests exclusively with the Michigan Supreme Court.[17] Thus, the governing authority when it comes to service is the court rules that the Supreme Court promulgates. When Hunt sent his e-mail, there was no court rule that provided for service by e-mail, although such provisions were later added through amendments made to MCR 2.107.

Affirmed.

/s/ William C. Whitbeck
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher

[17] *McDougall v Schanz*, 461 Mich 15, 26; 597 NW2d 148 (1999).