STATE OF MICHIGAN

COURT OF APPEALS

LISA A. BUCHANAN, as personal representative of the ESTATE OF RICHARD BUCHANAN, Plaintiff-Appellant,	UNPUBLISHED May 27, 2010
v	No. 289141 Lapeer Circuit Court
DEERFIELD TOWNSHIP, Defendant-Appellee.	LC No. 04-034748-CZ

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order granting summary disposition in defendant's favor in this zoning dispute. Because the trial court did not err in granting defendant's motion for summary disposition, we affirm.

This instant case arose following a prior lawsuit between plaintiff and neighboring landowners, Ronald and Cynthia Helzer, related to a three acre parcel of real property (Parcel B) the two parties owned jointly after plaintiff's brother sold his interest in the parcel, and the neighboring one (Parcel C) to the Helzers in 1989. Parcel B is contiguous with Parcel C and plaintiff's remaining three-acre parcel (Parcel A).[1] After the Helzers sued plaintiff to enjoin his mining/excavation activities, plaintiff and the Helzers entered into a settlement and agreed to equally divide parcel B. The parties agreed that the Helzers' portion of Parcel B was to be combined with their adjoining parcel. The parties' initial settlement was contingent on plaintiff's portion of Parcel B remaining a separate piece of property, retaining its original tax identification number and "having been determined to be a buildable lot." Plaintiff did obtain the signature of defendant's then-supervisor on a document entitled "consent order," which summarized the above referenced terms. The trial court did not enter that document. Although, on June 30, 1999, the trial court entered an order that contained similar language conditioning the settlement, and the division, upon Parcel B having been determined to be a buildable residential site.

[1] Plaintiff's current home lies on Parcel A. We also note that plaintiff's wife was apparently a party to the underlying suit, but is not a party to the instant litigation.

However, when plaintiff attempted to execute this agreement, the township's assessor noted that there was a problem with the tax identification numbers referenced in the request, and indicated her belief that each one and one half-acre parcel should be joined with each party's existing parcel. In her July 26, 2000 letter to plaintiff, the assessor also noted that she could not split Parcel B in this way because it would be in violation of the court order. She stated that the parties needed to resolve the discrepancy before she could make legal description changes to the parcels. Subsequently, in response to a request by plaintiff's attorney to make the split as contemplated by the trial court's order, in August 2000, defendant's attorney wrote to plaintiff's attorney indicating that, in light of the local zoning ordinance requiring that property in that district (R1) contain a minimum of four acres, the only way a division of Parcel B could be accomplished in compliance with the Land Division Act would be to combine the respective one and one half-acre portions with the adjacent three acre parcels owned by the respective parties. This letter also indicated the township's position that the township supervisor's signature on the earlier consent order did not serve as prior township consent to the proposed land division because only the assessor had the authority to make such decisions. Accordingly, the property was split with one and one half acres added to the Helzers' property and one and one half acres being added to plaintiff's adjacent property.[2]

In October 2001, plaintiff applied for and received an address permit through the Construction Code Authority for his remaining half of parcel B. The following year, plaintiff obtained zoning approval to construct a large storage building on the parcel. The application indicated that the building was to be constructed on a one and one half-acre parcel that had been split in February 1999, and used the tax identification number of "old" Parcel B. Plaintiff maintains that he spent approximately $30,000 constructing that building. Plaintiff asserts that he first learned that defendant did not consider his half of Parcel B to be a buildable lot in the summer of 2002. Plaintiff subsequently filed suit against defendant requesting that his portion of Parcel B be deemed a separate and buildable lot. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). Following a hearing, the trial court granted defendant's motion and dismissed plaintiff's claims, noting that plaintiff could not have reasonably relied on the supervisor's "approval" when he had received notice that the proposed lot split was contrary to local ordinances and the Land Division Act. This appeal followed.

We review the decision of a trial court pertaining to a motion for summary disposition de novo. *Associated Builders & Contractors v Consumer & Industry Services Director*, 472 Mich 117, 123; 693 NW2d 374 (2005). Because the trial court made reference in its ruling to a letter

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[2] Plaintiff asserts that he did not consent to the merger of the two parcels and did not learn of it until after taking the action detailed below. However, in June of 2001, the trial court in the underlying case entered a stipulated order between plaintiff and the Helzers to correct the tax identification number listed on the earlier order, which also contained language that plaintiff would continue use the initial tax identification number of Parcel B on his portion of the parcel, "subject to the approval of the Deerfield Township Assessor. . . ."

drafted by defendant's attorney, a document beyond the pleadings, and did not indicate that its ruling was based on governmental immunity, we review the trial court's decision as if it were made pursuant to MCR 2.116(C)(10). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002). A question of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

On appeal, plaintiff first argues that defendant should have been estopped from enforcing its zoning ordinance, given the exceptional circumstances presented in this case and that the trial court thus erred in granting defendant's motion for summary disposition. We disagree.

There is a general rule against estoppel of municipalities from enforcing their zoning ordinances, even in cases where an official has acted in error. *Fass v City of Highland Park*, 326 Mich 19, 30-31; 39 NW2d 336 (1949). However, a municipality may be estopped from enforcing its zoning ordinances in cases of exceptional circumstance. *Pittsfield Twp v Malcolm*, 375 Mich 135, 146-147; 134 NW2d 166 (1965). In the *Malcolm* case, the defendant obtained permission to construct a dog kennel, expended $45,000 constructing same, and then was sued by the township because the kennel apparently was not allowed under local zoning ordinances. *Id*. at 137. Our Supreme Court held that the situation constituted exceptional circumstances and enjoined the enforcement of the zoning ordinance. *Id*. at 148.

We find that there is no genuine issue of fact that exceptional circumstances were not present in the instant case and that defendant should not be estopped from enforcing its zoning ordinance. We do not dispute plaintiff's statement that there was no indication of collusion between himself and township officials, and recognize that lack of collusion was one factor the *Malcolm* Court considered in finding that exceptional circumstances were present sufficient to prevent the township from enforcing its zoning ordinance in that case. *Malcolm*, 375 Mich 148. However, the *Malcolm* Court went on to state "no factor is in itself decisive of the case," and indicated that the entire circumstances viewed together warranted the result. *Id*. The other factors the Court looked at included the fact that substantial notice of the project was provided, both through the newspaper and postings on the project itself. *Id*. In addition, the property owner spent a significant amount of money on a building that had little alternative utility. *Id*. Finally, the township first notified the property owner of a zoning conflict more than ten months after construction, occupancy, and operation of the kennel. *Id*. Plaintiff in the instant case lacks these additional factors to support a finding of exceptional circumstances.

Perhaps most striking is the fact that plaintiff received notice in August 2000, well before he applied for an address or zoning approval to construct the storage building, that the division of Parcel B could only be accomplished if each one and one half-acre section were added to the respective adjoining parcels. And, while plaintiff may have expended a significant amount of money to build the pole barn on the property, the building remains useful even if a residence is not constructed, especially given that this portion of plaintiff's lot is adjacent to his current residence.

We likewise reject plaintiff's argument that defendant should be bound by its supervisor's "agreement" to the proposed land division because defendant generally had the authority to approve the lot split, in spite of the zoning ordinance, by granting a variance and the supervisor's act can be interpreted as approval in an irregular fashion.

Plaintiff's reliance on *Parker v West Bloomfield Twp*, 60 Mich App 583; 231 NW2d 424 (1975), to support this position is misplaced. In that case, the plaintiff, suing for wrongful discharge, successfully argued that the township should be estopped from arguing that she was not a police officer at the time of her dismissal even where she was hired by a process different from the one set forth in the ordinance providing the proper procedure for hiring a police officer. *Id*. at 590-591. Importantly, *Parker* did not involve a zoning ordinance. As discussed above, when a zoning ordinance is at issue, estoppel is generally inapplicable. *Fass*, 326 Mich at 30-31. Thus, we find the Court's reasoning in *Parker* not applicable to a situation involving zoning ordinance procedures. Moreover, we note the existence of a well-established principle requiring one who deals with an officer of a governmental authority to take notice of the limits of his or her authority. *Baker v Kalamazoo*, 269 Mich 14, 19; 256 NW 606 (1934). Plaintiff recognizes this rule, yet maintains that it should not apply to situations involving a land division. Nevertheless, no such exception is provided for in *Baker*, and this Court is bound to follow the decisions of our Supreme Court. *People v Tierney*, 266 Mich App 687, 713; 703 NW2d 204 (2005). Defendant's land division ordinance requires prior review and written approval of the township assessor before land can be divided. Consequently, plaintiff is charged with the knowledge that the supervisor lacked the authority to approve a lot split.

Plaintiff also argues that the trial court's dismissal of equitable claims should not have resulted in the automatic dismissal of his request for monetary damages. We disagree.

We first note that this issue is unpreserved as plaintiff failed to raise it below. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005). Additionally, plaintiff has failed to provide appropriate citation to authority to support this argument. An appellant may not merely announce his or her position and then leave it to this Court to discover and rationalize the basis for his or her claims, nor may appellant give issues cursory treatment with little or no citation of supporting authority. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Consequently, we treat this issue as having been abandoned. *Unibar Maintenance Services, Inc* v Saigh, 283 Mich App 609, 628-629; 769 NW2d 911 (2009).

Finally, we need not address plaintiff's remaining argument that he was not required to establish that the essential elements of a contract were present when his complaint did not include a contract claim, as it was not reached by the trial court below. *Tingley v Kortz*, 262 Mich App 583, 588; 688 NW2d 291 (2004).[3]

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[3] While noting that plaintiff's underlying settlement with the Helzers was contingent upon this division, we reach no decision concerning the respective rights of plaintiff and the Helzers to Parcel B as the result of this conclusion, because that question was not presented in the instant case and the Helzers are not parties to this proceeding.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto