STATE OF MICHIGAN

COURT OF APPEALS

LAWSON VILLAGE, LLC, doing business as WILLOW GREEN MOBILE HOME,

Plaintiff-Appellant,

v

MONROE CHARTER TOWNSHIP and MIKE BLACK,

Defendants-Appellees.

UNPUBLISHED
August 26, 2021

No. 354357
Monroe Circuit Court
LC No. 19-142345-CZ

Before: SAWYER, P.J., and BOONSTRA and RICK, JJ.

PER CURIAM.

In this zoning dispute, plaintiff appeals as of right the order granting summary disposition in favor of defendants and denying summary disposition in plaintiff's favor. On appeal, plaintiff argues the trial court abused its discretion when it granted defendants' motion to set aside a default. Plaintiff also argues the trial court erred when it granted summary disposition under MCR 2.116(C)(8) in defendants' favor. For the reasons set forth below, we affirm.

I. BACKGROUND

In 2019, plaintiff submitted plans to defendants for installing 10 new mobile homes in an existing mobile home park on lots where mobile homes had previously been located. Plaintiff inquired, on the basis of the submitted plans, what would be required to complete the project. Defendants responded that a special use permit would be required for each mobile home, because the plans provided for filling in of the floodplain. Plaintiff did not apply for the special use permit. Instead, plaintiff filed a complaint in the trial court seeking a declaratory judgment and writ of mandamus.

After defendants failed to timely respond to the complaint, plaintiff obtained a default against defendants. Defendants moved to set aside the default, which the trial court granted. The parties then filed cross motions for summary disposition. The trial court concluded that defendants were not prohibited from regulating floodplain fill through the local zoning ordinance and granted defendants' motion for summary disposition. This appeal followed.

II. DISCUSSION

A. MOTION TO SET ASIDE DEFAULT

Plaintiff argues that the trial court abused its discretion by setting aside the default entered against defendants. We disagree.

This Court reviews a trial court's decision to set aside a default for an abuse of discretion. *Shawl v Spence Bros, Inc*, 280 Mich App 213, 220; 760 NW2d 674 (2008). "An abuse of discretion occurs when a court chooses an outcome outside the range of principled outcomes." *Baynesan v Wayne State Univ*, 316 Mich App 643, 651; 894 NW2d 102 (2016).

Plaintiff argues the trial court abused its discretion because defendants failed to demonstrate good cause or a meritorious defense, asserting that attorney negligence cannot satisfy good cause. The trial court concluded defendants demonstrated good cause because the failure to answer was a result of miscommunication and the failure was quickly rectified. The trial court also found that defendants had demonstrated a meritorious defense.

Under the court rules, a default may be set aside by the defaulted party "only if good cause is shown and a statement of facts showing a meritorious defense . . . ." MCR 2.603(D)(1).

> Good cause can be shown by: (1) a substantial defect or irregularity in the proceedings upon which the default was based, (2) a reasonable excuse for failure to comply with the requirements which created the default, or (3) some other reason showing that manifest injustice would result from permitting the default to stand. *Shawl*, 280 Mich App at 221 (cleaned up).

In determining whether a party has shown good cause, the trial court should consider the "totality of the circumstances" and the following factors:

> (1) whether the party completely failed to respond or simply missed the deadline to file;
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> (2) if the party simply missed the deadline to file, how long after the deadline the filing occurred;
>
> (3) the duration between entry of the default judgment and the filing of the motion to set aside the judgment;
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> (4) whether there was defective process or notice;
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> (5) the circumstances behind the failure to file or file timely;
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> (6) whether the failure was knowing or intentional . . . . [*Id*. at 237-238.]

A party seeking to set aside a default must also demonstrate a meritorious defense. MCR 2.603(D)(1). "The purpose of an affidavit of meritorious defense is to inform the trial court whether the defaulted defendant has a meritorious defense to the action." *Huntington Nat'l Bank*

v Ristich, 292 Mich App 376, 392; 808 NW2d 511 (2011). "Such an affidavit requires the affiant to have personal knowledge of the facts, state admissible facts with particularity, and show that the affiant can testify competently to the facts set forth in the affidavit." *Id*.

In *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233-234; 600 NW2d 638 (1999), our Supreme Court further explained how manifest injustice may result:

> [M]anifest injustice is the result that would occur if a default were to be allowed to stand where a party has satisfied the "meritorious defense" and "good cause" requirements of the court rule. When a party puts forth a meritorious defense and then attempts to satisfy "good cause" by showing (1) a procedural irregularity or defect, or (2) a reasonable excuse for failure to comply with the requirements that created the default, the strength of the defense obviously will affect the "good cause" showing that is necessary. In other words, if a party states a meritorious defense that would be absolute if proven, a lesser showing of "good cause" will be required than if the defense were weaker, in order to prevent a manifest injustice.

The trial court did not abuse its discretion when it set aside the default entered against defendants. In their motion and affidavit, defendants explained there was a miscommunication between co-counsel regarding which attorney would file the answer to the complaint. Although defendants did not timely file an answer, they responded within days of the deadline and immediately moved to set aside the default. The trial court looked at the totality of the circumstances and specifically noted, on the record, that defendants acted quickly to remedy their failure. See *Shawl*, 280 Mich App at 237-238. Therefore, the trial court was entitled to conclude that defendants had good cause because they presented it with a "a reasonable excuse for failure to comply with the requirements which created the default[.]" *Shawl*, 280 Mich App at 221. The trial court also properly concluded that manifest injustice would result if the default were not set aside. See *Alken-Ziegler*, 461 Mich at 233. Moreover, and contrary to plaintiff's argument, "the mere existence of negligence does not preclude a finding of good cause." *Huggins v MIC Gen Ins Corp*, 228 Mich App 84, 87; 578 NW2d 326 (1998). Therefore, the trial court did not abuse its discretion when it concluded defendants demonstrated good cause.

Similarly, the trial court did not abuse its discretion when it concluded that defendants had demonstrated a meritorious defense. A meritorious defense exists in circumstances when "the plaintiff cannot prove or defendant can disprove an element of the claim or a statutory requirement" or when "a ground for summary disposition exists under MCR 2.116(C)(2), (3), (5), (6), (7) or (8) . . . ." *Shawl*, 280 Mich App at 238. In their affidavit, defendants explained the reasons for their failure to answer and that the merits of their defense were contained within the answer filed on October 3, 2019. In that answer, defendants denied the allegations in plaintiff's complaint and identified the defenses it would assert, such as failure to exhaust administrative remedies.

In sum, defendants demonstrated good cause and a meritorious defense, and the trial court did not abuse its discretion when it granted defendants' motion. Therefore, we affirm the order of the trial court setting aside defendants' default.

B. MOTION FOR SUMMARY DISPOSITION

Next, plaintiff argues that the trial court improperly granted summary disposition in favor of defendants. We disagree.

Defendants moved for summary disposition under MCR 2.116(C)(8).[1] This Court reviews de novo a trial court's decision on a motion for summary disposition. *Dell v Citizens Ins Co of America*, 312 Mich App 734, 739; 880 NW2d 280 (2015).

> A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. When deciding a motion brought under this section, a court considers only the pleadings. [*Id.* at 739-740 (cleaned up).]

In addition, questions of statutory interpretation, including the interpretation of local ordinances, are reviewed de novo. *Sau-Tuk Indus, Inc v Allegan Co*, 316 Mich App 122, 136; 892 NW2d 33 (2016).

Defendants asserted that plaintiff was required to apply for a special use permit to fill in the floodplain because it was their understanding that plaintiff wished to fill in the floodplain beyond that necessary to install the manufactured homes. Section 3.201(D)(1) of Monroe's zoning ordinance provides for the need to obtain special use permits in addition to building permits when filling in a floodplain:

> All persons proposing development within the Floodway and Floodway Fringe Areas shall obtain approved permits from those governmental agencies having jurisdiction over floodplain development. No building permit or certificate of occupancy shall be issued until all other permits have been obtained and have been reviewed by the Building Official.

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[1] In addition, plaintiff moved for summary disposition under MCR 2.116(C)(9) and MCR 2.116(C)(10), which the trial court denied. The trial court did not specify under which subrule it granted summary disposition. However, defendants' motion was brought under MCR 2.116(C)(8) and the trial court did not appear to consider documentary evidence outside of the pleadings (which includes the exhibits attached to the complaint). See MCR 2.113(C)(2). Therefore, we consider the case as having been decided under MCR 2.116(C)(8). See *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 270; 826 NW2d 519 (2012) (holding that reviewing the motion for summary disposition under MCR 2.116(C)(10) was appropriate where the defendant moved for summary disposition under MCR 2.116(C)(8) and (10) and the trial court failed to specify the subrule under which it granted the motion and considered documentary evidence beyond the pleadings).

The zoning ordinance also states that if the development exceeds a permitted use, a special use permit is required. Monroe Charter Township Zoning Ordinance §§ 3.202(C) and 3.203(C). The permitted uses are allowed within a floodway or floodway fringe area "to the extent that they are not prohibited by the underlying district or any other ordinance and provided they do not require structures, fill, or storage of material or equipment." Monroe Charter Township Zoning Ordinance §§ 3.202(A) and 3.203(A). The installation of mobile homes is not a designated permitted use under the ordinance. The ordinance further provides:

> No structure or site shall be used[,] erected, moved, enlarged, altered or demolished until the owner or occupant has applied for and obtained a zoning permit. No permit shall be issued to erect, move, enlarge, substantially alter, or demolish a structure or site unless the request is in conformance with the provisions of this Ordinance. [Monroe Charter Township Zoning Ordinance § 18.201.]

Plaintiff contends that the Mobile Home Commission Act (MHCA), MCL 125.2301 *et seq*., precludes defendants from requiring a special use permit because the special use permit process is more stringent than the MHCA. The MHCA provides, in relevant part:

> [A] local government that proposes a standard related to mobile home parks or seasonal mobile home parks, or related to mobile homes located within a mobile home park or a seasonal mobile home park, that is higher than the standard provided in this act or the code, or that proposes a standard related to the business, sales, and service practices of mobile home dealers, or the business of mobile home installers and repairers, that is higher than the standard provided in this act or the code, shall file the proposed standard with the commission.
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> * * *
>
> (4) A local government ordinance shall not contain a standard for the setup or installation of mobile homes that is incompatible with, or is more stringent than, either of the following:
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> (a) The manufacturer's recommended setup and installation specifications.
>
> (b) The mobile home setup and installation standards promulgated by the federal department of housing and urban development pursuant to the national manufactured housing construction and safety standards act of 1974, 42 USC 5401 to 5426. [MCL 125.2307(1) and (4).]

Contrary to plaintiff's argument, neither the setup and installation standards in the federal rules, nor the standards adopted in Michigan mirroring those rules, are less stringent than defendants' special use permit process because the two address distinct issues. The rules promulgated by the Department of Housing and Urban Development (HUD), as they relate to mobile home construction in floodplain areas concern the construction and installation of the

mobile home unit itself. See 24 CFR 3280.1.[2] Similarly, the rules adopted in Michigan regarding the installation of a mobile home relate exclusively to the installation of the unit itself. See Mich Admin Code, R 125.1602. Further, the MHCA provides that it "shall not be construed to prohibit a municipality from enforcing its local ordinances or from taking any other appropriate action to protect the public health, safety, or welfare as authorized by law or its charter." MCL 125.2345(2).

The federal and state rules relate to the construction and installation of the mobile home unit on the parcel it is intended to be installed on. However, the rules do not relate to the filling of a floodplain in the surrounding parcel. As a result, defendants' zoning ordinance is not more stringent than or inconsistent with the federal rules or the MHCA because the ordinance regulates a different issue.

Plaintiff also contends Rule 125.1602(6), which requires that permits be obtained "for the construction of footings and accessories and the installation of homes from the enforcing agency charged with the administration and enforcement of the codes [under the Single State Construction Code Act, MCL 125.1501 *et seq*.,]" provides the exclusive permitting process for municipalities. In other words, plaintiff argues that because Rule 125.1602(6) does not contain a statement that permits are required for the filling of floodplains, defendants cannot require a special use permit. However, nothing in the regulation leads to that conclusion. While that rule does require that building permits be obtained, nothing in the rule implies it is exclusive. Further, Michigan law provides that municipalities, such as Monroe, may regulate land use through zoning requirements:

> A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare. [MCL 125.3201(1).]

Plaintiff also cannot demonstrate that Monroe's zoning requirements were superseded by the regulations it cited. In examining whether a statute has preempted a municipal ordinance, our Supreme Court has explained:

> The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements

[2] On appeal, plaintiff cites 44 CFR 60.3 as the HUD standards. However, that regulation was promulgated by the Federal Emergency Management Agency. See 44 CFR 59.1; 44 CFR 60.3. Nonetheless, 44 CFR 60.3 relates to the requirements regarding the placement and construction of manufactured homes, not the filling in of a floodplain. See 44 CFR 60.3.

> of the municipal ordinance are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. *The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith unless the statute limits the requirement for all cases to its own prescription*. [*Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 262; 566 NW2d 514 (1997) (cleaned up).]

In *Gackler Land Co, Inc v Yankee Springs Twp*, 427 Mich 562, 580; 398 NW2d 393 (1986), our Supreme Court addressed the issue of whether the defendant's zoning ordinance was preempted by state and federal law and concluded that the zoning ordinance did not conflict with and was not preempted by state and federal law. In concluding that the ordinance was not preempted, the Court stated:

> The requirements of the zoning ordinance in the case at bar are not standards regulating the construction and safety of mobile homes. Rather, they have for their purpose the regulation of where mobile homes may be placed and under what conditions. These requirements are for the purpose of regulating land use and therefore do not conflict with standards promulgated under the federal Manufactured Home Construction and Safety Standards Act. [*Id*.]

The Court applied the same reasoning to conclude that the ordinance was not preempted by the Single State Construction Code Act or the MHCA. *Id*. at 580-581.

As in *Gackler*, the trial court did not err when it granted summary disposition in defendants' favor, implicitly concluding that Monroe's special use permits were not preempted by state or federal law. Here, the ordinance relates to land use, specifically the filling in of a floodplain, not the construction and safety of mobile homes. Further, Monroe's regulation of floodplains unquestionably falls within its authority to exercise its police power to protect health and safety. See MCL 125.3201(1).

Plaintiff urges the Court to consider *Scurlock v Lynn Haven*, 858 F2d 1521 (CA 11, 1988),[3] as authority for its proposition that defendants were not permitted to require a special use permit. Specifically, plaintiff points to the statement from *Scurlock* that "[t]he City cannot attempt land use and planning through the guise of a safety provision in an ordinance when that safety requirement is preempted by federal law." *Id*. at 1525. However, the *Scurlock* Court concluded that, because the city ordinance imposed "greater safety requirements for a mobile home than the Federal Act, the ordinance must give way to the Act." *Id*. In *Scurlock*, the ordinance at issue required the mobile home to be in compliance with more stringent building code standards than that of the HUD standards. *Id*. at 1522-1523. Therefore, the instant case is entirely distinguishable from *Scurlock* because defendants did not require plaintiff to comply with a more stringent safety or building standard compared to HUD. In contrast here, the object regulated by Monroe's zoning ordinance—the floodplain—is not the object regulated by the state and federal regulations plaintiff

[3] "Caselaw from sister states and federal courts is not binding precedent but may be relied on for its persuasive value." *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719, 726 n 5; 957 NW2d 858 (2020).

cites—the mobile home. Accordingly, *Scurlock* is inapplicable because Monroe's zoning ordinance does not conflict with state or federal law governing mobile home installation.

Similarly, plaintiff's suggestion that the outcome is controlled by *Bell River Assoc v China Charter Twp*, 223 Mich App 124; 565 NW2d 695 (1997), is also misplaced. In that case, this Court addressed a township ordinance that imposed special use requirements only on mobile homes. *Id*. at 127. This fact, according to the Court, rendered the ordinance invalid under MCL 125.2307(6). *Id*. at 128. In the instant case, there is no suggestion that Monroe's special use permits apply only to mobile homes. Therefore, the prohibition under MCL 125.2307(6) simply does not apply.

Plaintiff also argues the permit from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) eliminated any need to obtain a special use permit from Monroe. The permit from EGLE authorized plaintiff to:

> Prepare ten (10) lots, previously developed, for new manufactured homes within existing Willow Green Manufactured Home Park. A net fill below the 100-year floodplain is approximately 116 cubic yards. Install new manufactured homes with lowest floors elevated at least one (1) foot above the 100-year floodplain and in accordance with the flood provisions within the Michigan Residential Building Code. Skirtings' [sic] below the 100-year floodplain shall be properly vented to allow the passage of flood waters, and the structures shall be anchored to prevent floatation and lateral movement.

By its terms, the permit specified how the mobile homes were to be constructed in relation to the floodplain. However, the permit specifically stated that plaintiff may be required to obtain other permits from other jurisdictions:

> Y. Work to be done under authority of this permit is further subject to the following special instructions and specifications:
>
> 1. Authority granted by this permit does not waive permit or program requirements under Part 91, Soil Erosion and Sedimentation Control, of the NREPA or the need to acquire applicable permits from the CEA. . . .
>
> 2. The authority to conduct the activity as authorized by this permit is granted solely under the provisions of the governing act as identified above. *This permit does not convey, provide, or otherwise imply approval of any other governing act, ordinance, or regulation, nor does it waive the permittee's obligation to acquire any local, county, state, or federal approval or authorization necessary to conduct the activity*.
>
> 3. No fill, excess soil, or other material shall be placed in any wetland, floodplain, or surface water area not specifically authorized by this permit, its plans, and specifications.
>
> 4. *This permit does not authorize or sanction work that has been completed in violation of applicable federal, state, or local statutes*.

* * *

8. The project is located within a community that participates in the National Flood Insurance Program (NFIP). As a participant in the NFIP, the community must comply with the Michigan Building Code (including Appendix G and listed supporting materials); the Michigan Residential Code; and Title 44 of the Code of Federal Regulations, Part 60, Criteria for Land Management and Use. The community is also responsible to ensure that its floodplain maps and studies are maintained to show changes to flood elevations and flood delineations as described in 44 CFR, Part 65, Identification and Mapping of Special Hazard Areas.

9. Any other filling, grading, or construction within the 100-year floodplain will require a separate EGLE permit before starting the work.

10. New or replacement manufactured homes must be elevated above the one percent (1%) annual chance (100-year) floodplain elevation. The structure must also be properly anchored to resist flotation.

11. The structure shall be firmly anchored to prevent flotation or lateral movement. [Emphasis added.]

The permit from EGLE, by its terms, stated that other permits may be required for plaintiff's intended development. Monroe's zoning ordinance, which governs floodplains, provides for the requirement to obtain special use permits when the intended use is not a permitted use in the floodplain. Therefore, the trial court did not err when it granted summary disposition in defendants' favor.

Affirmed. Defendants may tax their costs. MCR 7.219(A).

/s/ David H. Sawyer
/s/ Mark T. Boonstra
/s/ Michelle M. Rick