STATE OF MICHIGAN

COURT OF APPEALS

CHARTER TOWNSHIP OF WEST BLOOMFIELD, Plaintiff-Appellee, v WILLIAM JACOB, Defendant-Appellant.	UNPUBLISHED February 21, 2013 No. 305598 Oakland Circuit Court LC No. 2009-102110-CZ

Before: CAVANAGH, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Plaintiff, West Bloomfield Township, filed this action alleging that defendant, William Jacob's residential property qualified as a nuisance per se on the basis of several township ordinance violations. Defendant appeals the trial court's judgment that enjoined "unpermitted out[d]oor storage of vehicles, equipment and items" on his property. For the reasons set forth below, we affirm.

I. INTERPRETATION OF ZONING ORDINANCE § 26-29

Defendant maintains that the trial court misinterpreted West Bloomfield Township zoning ordinance, § 26-29. The court decided this issue in the context of a summary disposition ruling, which we review de novo. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).[1] A motion brought under MCR 2.116(C)(10) "tests the factual support of a plaintiff's claim." *Id*. "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

[1] Because the parties referenced evidence outside of the pleadings and the trial court considered the evidence, we review the summary disposition ruling pursuant to MCR 2.116(C)(10). *Walsh*, 263 Mich App at 621.

We also consider de novo the legal questions inherent in the construction of ordinances and statutes. *Bonner v City of Brighton*, ___ Mich App ___; ___ NW2d ___ (Docket No. 302677, issued December 4, 2012), slip op at 5. As this Court explained in *Bonner*:

> When reviewing an ordinance, we apply the same rules applicable to the construction of statutes. *Great Lakes Society v Georgetown Charter Twp*, 281 Mich App 396, 407; 761 NW2d 371 (2008). "The goal of statutory construction, and thus of construction and interpretation of an ordinance, is to discern and give effect to the intent of the legislative body." *Id.* at 407-408. The words used by the legislative body provide the most reliable evidence of its intent. *Shinholster v Annapolis Hosp*, 471 Mich 540, 549; 685 NW2d 275 (2004). Unless otherwise defined, we assign the words in a municipal ordinance their plain and ordinary meanings, *Great Lakes Society*, 281 Mich App at 408, avoiding an interpretation that would render any part of an ordinance surplusage or nugatory, *Zwiers v Growney*, 286 Mich App 38, 44; 778 NW2d 81 (2009). Also, unless a different intent is manifest, the language used by the legislative body must be understood and read in its grammatical context. *Shinholster*, 471 Mich at 549. The legislative body is deemed to have intended the meaning clearly expressed in an ordinance's unambiguous language, which must be enforced as written. *Id*. "'A necessary corollary of these principles is that a court may read nothing into an unambiguous [ordinance] that is not within the manifest intent of the [legislative body] as derived from the words of the [ordinance] itself.'" *Zwiers*, 286 Mich App at 44 (citation omitted). [*Bonner*, slip op at 5-6.]

The parties dispute the meaning of the township zoning ordinance governing "[p]arking requirements," § 26-29, which states, in pertinent part:

> *There shall be provided* in all districts, at the time of erection or enlargement of any main building or structure, *automobile off-street parking with adequate access to all spaces*. The number of off-street parking spaces, in conjunction with all land or building uses, shall be provided prior to the issuance of a certificate of occupancy, as follows:
>
> * * *
>
> (2) *Residential off-street parking spaces* for single-family and two-family dwellings *shall consist of a parking strip, driveway, garage or combination thereof and shall be located on the premises they are intended to serve* . . . . [Emphasis added.]

The language of § 26-29 plainly states that in all township zoning districts, including residential areas, a homeowner shall supply "automobile off-street parking," and all residential parking spaces shall exist off street in the form of "a parking strip, driveway, garage or combination thereof." The trial court's summary disposition opinion and order summarized the language in § 26-29 and agreed with plaintiff that "vehicles openly parked and/or stored upon unimproved and/or lawn area of the property violate" the ordinance. The trial court read § 26-

29(2) as mandating residential parking only on a driveway or parking strip, inside a garage or in some combination of these options.

We hold that the court correctly interpreted the clear and unambiguous ordinance language. Moreover, defendant repeatedly concedes in his brief on appeal that he regularly parked vehicles on dirt or grass at the back of his residential lot. Given the undisputed nature of defendant's rear-yard parking on dirt or grass, in violation of the plain language of § 26-29, we further hold that the trial court correctly granted plaintiff summary disposition pursuant to MCR 2.116(C)(10) on its claim that defendant violated § 26-29.

II. GOVERNMENTAL OBJECTIVE OF ORDINANCE § 26-29

Defendant challenges § 26-29 as unconstitutional and argues that it furthers no conceivable governmental objective. We consider de novo this constitutional issue. *Bonner*, slip op at 5.

Defendant's contention that § 26-29 has no rational relationship to any governmental objective constitutes a substantive due process challenge to plaintiff's enactment of the off-street parking ordinance. *Bonner*, slip op at 6. A substantive due process violation exists when a township enacts "unreasonable and clearly arbitrary" legislation that has "no substantial relationship to the health, safety, morals, and general welfare of the public," or "governmental conduct (is) so arbitrary and capricious as to shock the conscience." *Id*. (internal quotation and citation omitted). "In determining whether an ordinance enacted by a municipality comports with due process, the test employed is whether the ordinance bears a reasonable relationship to a permissible legislative objective." *Id*.

Courts "begin with the presumption that an ordinance is reasonable and thus constitutionally compliant." *Bonner*, slip op at 7. The challenger of the ordinance bears the burden "to overcome this presumption by proving that there is no reasonable governmental interest being advanced by the zoning ordinance." *Id*. (internal quotation and citation omitted). "The property owner must demonstrate that the challenged ordinance arbitrarily and unreasonably affects the owner's use of his or her property." *Id*. A finding that legislation rationally relates "to a legitimate government purpose" may rest on "rational speculation unsupported by evidence or empirical data." *Kenefick v City of Battle Creek*, 284 Mich App 653, 658; 774 NW2d 925 (2009) (internal quotations and citations omitted). "[T]o show that an ordinance is not rationally related to a legitimate governmental interest, a challenger must negate every conceivable basis that might support the ordinance or show that the ordinance is based solely on reasons totally unrelated to the pursuit of the [township's] goals." *Houdek v Centerville Twp*, 276 Mich App 568, 584; 741 NW2d 587 (2007) (internal quotations and citations omitted).

Plaintiff submitted with its response to defendant's motion for summary disposition an affidavit of Sara Roediger, "a Senior Planner . . . for the Charter Township of West Bloomfield." Roediger explained that she was familiar with plaintiff's "ordinances regulating the use of residential land and property within the Township." Roediger attested that plaintiff's

outdoor storage, off street parking and blight ordinances . . . were enacted to preserve the general health, safety and welfare including the following purposes:

a) To reduce congestion and overcrowding of residential land.

b) Preservation and enhancement of property values.

c) To reduce causes of blight and blighting factors.

d) To provide adequate access to light, air and sunlight by limiting and reducing obstructions in open yard areas.

e) Protect the soil, groundwater and environment by reducing contamination caused by open, unprotected storage upon ground and soil areas.

f) To reduce hazards to children and harborage for pests, rodents and vermin.

g) Preservation of the aesthetics of residential neighborhoods.

Although the trial court did not analyze at length the legislative objectives served by § 26-29, we hold that the ordinance reasonably relates to multiple permissible legislative objectives articulated by Roediger. By requiring off-street residential parking and clearing the roadways of parked vehicles, the ordinance arguably "reduce[s] congestion and overcrowding of residential land," and minimizes hazards to children posed by crowded streets that reasonably would tend to impair driver sight lines, thus enhancing public safety. By precluding the parking of vehicles on bare grass or dirt, the ordinance also arguably reduces the potential for environmental contamination by fluids leaking from vehicles or necessary for automotive maintenance. *Houdek*, 276 Mich App at 583-585. The ordinance further arguably enhances "the aesthetics of residential neighborhoods," and "a community's desire to enhance the scenic beauty of its neighborhoods through a very specific enactment is clearly a legitimate feature of the public welfare and is enforceable through the exercise of police power." *People v McKendrick*, 188 Mich App 128, 138; 468 NW2d 903 (1991); see also *Kenefick*, 284 Mich App at 658. Defendant has not satisfied his burden of overcoming the presumption of constitutionality, either "by proving that there is no reasonable governmental interest being advanced by the zoning ordinance" *Bonner*, slip op at 7 (internal quotation and citation omitted), by showing that "the challenged ordinance arbitrarily and unreasonably affects . . . [defendant's] use of his . . . property," *id.*, or by negating "every conceivable basis that might support the ordinance." *Houdek*, 276 Mich App at 584 (internal quotations and citations omitted).[2]

III. SUBSTANTIVE DUE PROCESS AND ZONING ORDINANCE § 26-33(3)

[2] Contrary to defendant's contention on appeal, "under the rational-basis test, [plaintiff] has no obligation to produce evidence to sustain the rationality of a statutory classification." *Kenefick*, 284 Mich App at 659 (internal quotation and citation omitted).

Defendant claims that township zoning ordinance § 26-33(3) violates his substantive due process rights. Section 26-33(3) provides, in relevant part:

> No use otherwise allowed shall be permitted within any use district which does not conform to the following standards of use, occupancy and operation, which standards are hereby established as the minimum requirements to be maintained within the area:
>
> * * *
>
> Outdoor storage. The outdoor storage of any vehicles, machinery, equipment, lumber piles, crates, boxes, building materials or other materials including wastes and materials either discarded, unsightly, or showing evidence of a need for repairs, shall not be visible from a public or private street, public place or adjoining residential property and shall be located in rear yard only. Any outdoor storage shall be screened by a solid enclosure consisting of a fence or wall not less than the height of the equipment or materials to be stored . . . .

Though the circuit court did not analyze at length the potential legislative objectives served by § 26-33(3), we hold that this ordinance also reasonably relates to multiple permissible legislative objectives mentioned by Roediger. By restricting outdoor storage to the rear yards of residential properties and maintaining clear front yards, the ordinance arguably "reduce[s] congestion and overcrowding of residential land," and minimizes hazards to children posed by debris-crowded front yards that reasonably would tend to impair driver sight lines, thus enhancing public safety. Further, the ordinance arguably enhances "the aesthetics of residential neighborhoods," "a legitimate feature of the public welfare . . . enforceable through the exercise of police power." *McKendrick*, 188 Mich App at 138; see also *Kenefick*, 284 Mich App at 658 ("protecting and promoting public health, safety, and general welfare are legitimate governmental interests . . . and protecting aesthetic value is included in the concept of the general welfare," "[t]hus, the general reduction of blight is undisputedly a legitimate governmental purpose") (internal quotation and citation omitted). Defendant again has failed to overcome the presumption of constitutionality by negating "every conceivable basis that might support the ordinance" *Houdek*, 276 Mich App at 584 (internal quotations and citations omitted), or showing that "the challenged ordinance arbitrarily and unreasonably affects . . . [defendant's] use of his . . . property." *Bonner*, slip op at 7.

IV. DOCTRINE OF VAGUENESS AND ORDINANCE § 26-33(3)

Defendant characterizes § 26-33(3) as unconstitutionally void for vagueness, and argues that it does not sufficiently define prohibited conduct and invests plaintiff with unfettered discretion to enforce the ordinance. We consider de novo whether an ordinance qualifies as unconstitutional pursuant to the doctrine of vagueness. *Van Buren Twp v Garter Belt, Inc*, 258 Mich App 594, 627; 673 NW2d 111 (2003).

In *Plymouth Twp v Hancock*, 236 Mich App 197, 199-200; 600 NW2d 380 (1999), this Court explained the following principles underlying the void for vagueness doctrine:

> Although both the void-for-vagueness and overbreadth doctrines are concerned with curbing arbitrary and discriminatory enforcement, they are nonetheless distinct jurisprudential concepts. . . . .
>
> An ordinance is unconstitutionally vague if it (1) does not provide fair notice of the type of conduct prohibited or (2) encourages subjective and discriminatory application by delegating to those empowered to enforce the ordinance the unfettered discretion to determine whether the ordinance has been violated.

With respect to the "fair notice" element of the vagueness analysis, this Court elaborated as follows in *Van Buren Twp*, 258 Mich App at 631:

> When a statute or ordinance is challenged on the ground that it is unconstitutionally vague, a court must review the entire text of the law, giving its words their plain [and] ordinary meanings. An ordinance is not vague if "'it is clear what the ordinance as a whole prohibits.'" *Hill* [*v Colorado*, 530 US 703, 733; 120 S Ct 2480; 147 L Ed 2d 597 (2000)], quoting *Grayned* [*v City of Rockford*, 408 US 104, 110; 92 S Ct 2294; 33 L Ed 2d 222 (1972)]. An ordinance provides fair notice when persons of ordinary intelligence have a reasonable opportunity to know what is prohibited. *People v Noble*, 238 Mich App 647, 652; 608 NW2d 123 (1999). Thus, an ordinance "is sufficiently definite if its meaning can fairly be ascertained by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words." *Id*.

"When determining whether a statute [or ordinance] is void for vagueness, the reviewing court need not set aside common sense, nor is [the drafter] required to define every concept in minute detail." *Dep't of State v Mich Ed Ass'n-NEA*, 251 Mich App 110, 120; 650 NW2d 120 (2002).

We hold that the language of § 26-33(3) gives fair notice of the types of prohibited outdoor storage. The first sentence of subsection 3 enumerates a list of items to which the ordinance applies: "any vehicles, machinery, equipment, lumber piles, crates, boxes, building materials," "or other materials including wastes and materials either discarded, unsightly, or showing evidence of a need for repairs." Subsection 3 describes the restricted items in a manner that gives "persons of ordinary intelligence . . . a reasonable opportunity to know what is prohibited." *Van Buren Twp*, 258 Mich App at 631. For example, the meanings of the restrictions on "vehicles, machinery, . . . lumber piles, crates, boxes, building materials," and "other materials including wastes and materials either discarded, unsightly, or showing evidence of a need for repairs," are self-explanatory. While an initial reading of subsection 3 may leave somewhat unclear the precise nature of the "equipment" that the ordinance prohibits, the ordinance "is sufficiently definite . . . [because the] meaning [of equipment and other potentially unclear terms] can fairly be ascertained by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words." *Id.* In other words, a person of ordinary intelligence would have a fair and reasonable opportunity to ascertain what is prohibited by consulting the relevant ordinances governing his particular proposed conduct, judicial interpretations thereof, and the common law. *Id.*

In light of the plain or readily ascertainable meanings of the restricted items enumerated in § 26-33(3), defendant is incorrect that plaintiff has unfettered discretion to enforce the ordinance as it sees fit. Because plaintiff must enforce the terms of the outdoor storage ordinance, and because the ordinance plainly describes the types of restricted materials, § 26-33(3) does not vest in plaintiff the unfettered discretion to determine whether a resident has violated the outdoor storage ordinance. *Van Buren Twp*, 258 Mich App at 632.

V. EQUAL PROTECTION AND ORDINANCE § 26-33(3)

Defendant argues that plaintiff's enforcement of § 26-33(3) against him, while declining to enforce the ordinance against other residential property owners, violates his constitutional rights to equal protection under the law. "Under the federal and Michigan constitutions, similarly situated persons must be treated equally." *Risko v Grand Haven Twp Zoning Bd of Appeals*, 284 Mich App 453, 465; 773 NW2d 730 (2009). In a zoning context, "the first question has to be whether [a litigant] demonstrated on the record that it was treated differently from some similarly situated [resident]." *Great Lakes Society*, 281 Mich App at 427. "The equal protection guarantee requires that persons in similar circumstances be treated alike. Equal protection does not require that persons in different circumstances be treated the same." *Thompson v Merritt*, 192 Mich App 412, 424; 481 NW2d 735 (1991).

In support of his equal protection violation claim, defendant has submitted six pages containing 12 photographs. The photos show a boat on a trailer sitting in a residential driveway in front of a garage; a trailer resting in grass next to a residence; a trailer parked on grass next to a residence, bearing a tarp-covered personal watercraft; a boat on a trailer sitting partially on grass and partially on a residential driveway; and the next two pages depict, among other things, a pickup truck parked on grass near a residential driveway and two cars parked on patches of grass in residential neighborhoods. Plaintiff submitted in the trial court ten photos taken during litigation by Steve Burns, "an ordinance enforcement officer for" plaintiff, which Burns described in an affidavit as follows:

> 7. . . . [O]n . . . March 1, 2010, I performed an on-site inspection of the exterior grounds of the subject property including an inspection of the outdoor storage items maintained thereon at which time I observed numerous older model vehicles, trailers, boats, equipment, and other miscellaneous items openly stored in the yard areas of the subject property that were plainly visible from both Willow Road, a public roadway, and neighboring adjacent properties . . . .
>
> 8. . . . [The] March 1, 2010 inspection of the subject property revealed a maroon van, older model black Mazda pick-up, and a blue Chevy Camaro openly parked and stored upon the lawn area of the rear yard for the subject property that were plainly visible from both Willow Road and neighboring properties.
>
> 9. . . . [The] inspection of the blue Chevy Camaro revealed that it displayed an expired plate, the tires were flat and sunken into the dirt below grade.

10. . . . [The] March 1, 2010 inspection further revealed a very large triple axle heavy steel frame trailer turned upside down and missing wheels openly stored in the middle of the rear yard and plainly visible from both Willow Road and neighboring properties.

* * *

12. [An] April 15, 2010 inspection revealed that the large heavy metal steel framed trailer remained in the same position in the middle of the rear yard turned upside down with no wheels although it was covered with a camo tarp at the time.

13. . . . [T]he Chevy Camaro remained in the same position in the rear yard; however, it too was covered with a tarp at the time.

* * *

15. . . . [The] April 15, 2010 inspection further revealed several old boat hulls stored on the ground stacked on top of one another showing signs of damage, deterioration, and need for repairs . . . .

16. . . . [The] April 15, 2010 inspection further revealed open outdoor storage of miscellaneous vehicle parts, including vehicle doors, wheels, and hoods openly stored in the rear yard and visible from either Willow Road and/or neighboring properties.

17. . . . [The] April 15, 2010 inspection further revealed numerous miscellaneous items, equipment, machinery, and tools openly stored under, around, and in the vicinity of the carport plainly visible from Willow Road and neighboring properties. Said items including, but not limited to, five rusty old lawnmowers showing signs of wear and need for repairs, numerous propane tanks, car/van doors, propane heating unit, gas tanks, barbeques, and other miscellaneous items all showing signs of wear and need for repair . . . .

* * *

19. . . . [R]egular and routine drive-by monitoring of the subject property and the open storage maintained thereon reveals that the vehicles, equipment, trailers, and items openly stored . . . tend to remain in the same location for long periods of time and show no evidence of active, regular use.

In light of the evidence of multiple and repeated violations of both §§ 26-29 and 26-33(3) on defendant's property, we hold that defendant has failed to "demonstrate[] on the record that [he] was treated differently from" the allegedly similar resident violators of § 26-29 and § 26-33(3) depicted in the photos attached to his brief on appeal. *Great Lakes Society*, 281 Mich App at 427. Moreover, as discussed, § 26-33(3) would survive further equal protection scrutiny because "it is rationally related to . . . legitimate governmental interest[s]." *Risko*, 284 Mich App at 465. For these reasons, the trial court correctly granted judgment in favor of plaintiff.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Henry William Saad