STATE OF MICHIGAN

COURT OF APPEALS

HARTFORD EQUITIES, INC., DALE HOPPES, KAREN A. HOPPES, GREGORY HUHN, and GEOFFREY HUHN,

Plaintiffs,

v

COUNTY OF CLINTON,

Defendant-Appellee,

v

DURGA, LLC, and KUMAR VEMULAPALLI,

Respondents-Appellants.

UNPUBLISHED
November 26, 2013

No. 313443
Clinton Circuit Court
LC No. 00-009158-CZ

Before: MURRAY, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Respondents appeal as of right the trial court's order granting defendant's motion to enforce a consent judgment agreed to by plaintiffs and defendant in 2000. The consent judgment contained provisions that restricted plaintiffs' use of certain real property (the Property) that respondent Durga, LLC, later purchased. It was undisputed that the consent judgment was not recorded with the register of deeds. When defendant believed that the Property was being used contrary to the terms of the consent judgment, it filed a motion to enforce the consent judgment and served it on respondents. The trial court held that respondents were bound by the consent judgment's land-use restrictions because there was no justiciable question of fact created by respondent that Durga's member, respondent Kumar Vemulapalli, received actual notice of the consent judgment before purchasing the Property. We affirm.

Respondents first argue that the trial court should have held an evidentiary hearing on whether it had notice of the consent judgment's terms before purchasing the property, and that we should remand for that to occur. However, respondents present no legal authority or facts in support of this argument and have, therefore, abandoned it. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and

rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position."). Indeed, the total argument entails one short paragraph without citation to even one legal source or piece of evidence, and does not come close to the advocacy required to properly present an issue to this Court.[1]

Respondents next argue that the trial court deprived them of their right to procedural due process when it denied them the opportunity to conduct discovery and present evidence at a hearing. This argument was first presented in their motion for reconsideration, so it is not properly preserved for appeal. *Vushaj v Farm Bureau Ins Co of Michigan*, 284 Mich App 513, 519; 773 NW2d 758 (2009). However, "[t]his Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Nuculovic v Hill*, 287 Mich App 58, 63; 783 NW2d 124 (2010). We will overlook this preservation hurdle because the argument was made in response to what the trial court did, or did not do, in deciding the original motion, and so it could not have been anticipated by respondents.

"Due process is a flexible concept, the essence of which requires fundamental fairness." *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). "Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). "The opportunity to be heard does not mean a full trial-like proceeding, but it does require a hearing to allow a party the chance to know and respond to the evidence." *Id.* Here, respondents were not denied their right to procedural due process because they were properly informed of the motion hearing and were allowed to make their full arguments to the trial court. Additionally, there is no suggestion that the trial court was biased, and the refusal to hold an evidentiary hearing does not per se result in the denial of due process. See *York v Civil Service Comm*, 263 Mich App 694, 704 n 7; 689 NW2d 533 (2004); *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 460-461; 688 NW2d 523 (2004).

Respondents also argue in a cursory manner that defendant's motion to force compliance with the consent judgment was time barred under MCL 600.5809(3) because more than ten years had passed since the consent judgment was entered and defendant had not renewed or recorded it. Reviewing de novo the trial court's legal conclusion that defendant's action was not time barred, see *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130; 743 NW2d 585 (2007), we find no error. MCL 600.5809 expressly applies to "an action to enforce a noncontractual

[1] This also holds true for the legal assertion in the paragraph that respondent is not in privity with plaintiffs. And, case law seems to be to the contrary. See *Perrin v Lepper*, 34 Mich 292, 294 (1876).

money obligation," and defendant's motion did not seek to enforce a noncontractual money obligation. Accordingly, MCL 600.5809 is inapplicable.[2]

We likewise reject respondents' argument that the trial court lacked personal jurisdiction over them because they were never served with process. This issue was first raised in respondent's motion for reconsideration, so it is not preserved. See *Vuschaj*, 284 Mich App at 519. In any event, it is clear that "[a] party who enters a general appearance and contests a cause of action on the merits submits to the court's jurisdiction and waives service of process objections." *Penny v ABA Pharmaceutical Co (On Remand)*, 203 Mich App 178, 181; 511 NW2d 896 (1993), overruled in part on other grounds *Al-Shimmari v Detroit Medical Ctr*, 477 Mich 280, 293; 731 NW2d 29 (2007).[3] "Generally, any action on the part of a defendant that recognizes the pending proceedings, with the exception of objecting to the court's jurisdiction, will constitute a general appearance." *Id.* at 181-182. Furthermore, "[a]n appearance by an attorney for a party is deemed an appearance by the party." MCR 2.117(B)(1).

While respondents stated in their first responsive pleading to defendant's motion to enforce the consent judgment that there was a lack of personal jurisdiction over them, respondents first complained that they were not served with process in their motion for reconsideration of the trial court's order granting defendant's motion to enforce the consent judgment. In the meantime, their counsel filed an appearance on their behalf, which was not identified as a special appearance for the purpose of contesting personal jurisdiction. Their counsel also contested defendant's motion on its merits, arguing that defendants were not bound by the consent judgment because they lacked notice of it before they purchased the Property and that they had not violated its terms. By appearing generally, contesting defendant's motion on its merits, and first raising their service-of-process objection in a motion for reconsideration, defendants submitted to the court's jurisdiction and waived any service-of-process objections. *Penny*, 203 Mich App at 181.

Additionally, respondents argue that the consent judgment (1) constitutes an unconstitutional taking of private property without just compensation, (2) violates their rights to substantive due process, and (3) violates public policy by unlawfully delegating legislative authority. But having first raised each of these issues in their motion for reconsideration of the trial court's order granting defendant's motion to enforce the consent judgment, respondents have not properly preserved these issues for appellate review. *Vushaj*, 284 Mich App at 519.

In any event, each of these arguments fails on the merits. With respect to the takings assertion, the trial court enforced a consensual agreement, not a land-use regulation imposed by

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[2] Respondents argue, citing only to MCR 2.101(B), that defendant cannot enforce the consent judgment against them in this action and, instead, must file a separate action for breach of the consent judgment. However, MCR 2.101(B) does not speak to whether a consent judgment must be enforced in a separate action.

[3] *Al-Shimmari* overruled *Penny*'s general statement to the extent it conflicts with MCR 2.116(D)(1), which is not applicable here.

defendant. Additionally, respondents present no legal authority supporting their assertion that a consent judgment can violate their right to substantive due process. See *Green Oak Twp v Munzel*, 255 Mich App 235, 241; 661 NW2d 243 (2003). And, as in *Green Oak Twp*, 255 Mich App at 241, respondents have failed to show that the consent judgment comported with the "particularized requirements of a zoning ordinance or amendment." Although the consent judgment is akin to a use variance, "a zoning board has the authority to allow a use in a zoning district that would not otherwise be allowed under an ordinance," and that "when a variance is granted, the ordinance—and zoning pursuant to the ordinance—is left unchanged." *Id.* at 242-243. Respondents acknowledge that use variances may be granted by consent judgments, and that consent judgments entered for this purpose are construed as contracts. Thus, respondents are bound by the consent judgment not because of an ordinance or regulation imposed by defendant, but because of their assumption of restrictive covenants contained in a consensual agreement.

In support of the assertion that the consent judgment improperly restricted the legislative decision-making authority of future county boards, respondents rely on *Inverness Mobil Home Community v Bedford Twp*, 263 Mich App 241; 687 NW2d 869 (2004), where we voided certain provisions of a consent judgment that required future county boards to amend the county's "master plan" for future land development and deemed future land uses to be "reasonable." *Id.* at 249-250. As this Court stated, "The language regarding future use that limits future boards from making determinations about what is reasonable deprives future boards of 'discretion which public policy demands should be left unimpaired.'" *Id.*, quoting *Harbor Land Co v Twp of Grosse Ile*, 22 Mich App 192, 205 n 2; 177 NW2d 176 (1970).

Here, respondents fail to identify any provision of the consent judgment prohibiting future county boards from exercising discretion and present no legal authority supporting the position that a consent judgment between a county and landowner is void as against public policy unless the county retains the right to unilaterally amend the consent judgment as it sees fit.[4]

Affirmed. Defendant may tax costs, having prevailed in full. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra

[4] Respondents fail to explain how MCL 125.2307(6) applies in this case and fail to identify an impacted local ordinance.