# STATE OF MICHIGAN

# COURT OF APPEALS

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JOY MANAGEMENT, a Michigan corporation,

Plaintiff-Appellant,

v

CITY OF DETROIT, a Municipal corporation,

Defendant-Appellee.

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UNPUBLISHED
June 7, 1996

No. 176369
LC No. 93-313483 CZ

Before: O'Connell, P.J., and Reilly and D.E. Shelton,* JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(5) in favor of defendant. We reverse.

In an attempt to ameliorate "the number of vacant and deteriorating dwellings" in Detroit, defendant City of Detroit enacted its nuisance abatement ordinance, Ord 556-H. The ordinance provides that defendant may declare privately owned dwellings to be "nuisances." A dwelling may be declared a "nuisance" when it is vacant, dilapidated, accessible to trespassers, dangerous, and when there exist outstanding property taxes on the property. The ordinance further provides that defendant may contract with third parties to occupy these "nuisances," despite the fact that neither defendant nor the third party holds title to the property. Those residing in a "nuisance" are responsible for rehabilitating it, or, in the language of the ordinance, abating the nuisance. When the abatement period has expired, the city may obtain title to the property through prescribed judicial proceedings, after which the property may be sold to those who have abated the nuisance.

The constitutionality of the ordinance was challenged in *Moore v Detroit (On Remand)*, 159 Mich App 199; 406 NW2d 488 (1987), in which it was contended that the ordinance authorized the confiscation of private property for public use in a manner that exceeded defendant's power of eminent domain. This Court determined that the ordinance was an exercise of defendant's police power rather

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* Circuit judge, sitting on the Court of Appeals by assignment.

than power of eminent domain, and that because this exercise of police power was reasonable under the surrounding circumstances, it was constitutional. *Id*., pp 203-206.

Our finding of reasonableness was based on two grounds. First, the ordinance allowed only the *temporary possession* of private property. (The actual transfer of title to the city and then to the abatement contractor was effected through other presumably valid mechanisms utilized in, for example, tax forfeiture proceedings.) Second, because "[b]uilt into the ordinance are ample notice and opportunity provisions which protect the right of the property owner to terminate the nuisance abatement contract at any point," *Id*., p 206, a property owner could easily intercede and regain possession and complete control of the property. "Given the nature of the intrusion, the purpose sought to be accomplished and the ease with which a property owner may terminate a nuisance abatement contract, we cannot say that Ord. 556-H constitutes an unreasonable exercise of the city's policy power." *Id*.

In the present case, plaintiff challenges "the notice and hearing provisions, not as written, but as implemented by the City." Plaintiff was, apparently, the owner of seven properties that were deemed nuisances by defendant, were the subject of nuisance abatement contracts, and which were eventually acquired by defendant. Defendant did not strictly comply with the notice requirements set forth in the ordinance. After title had been wrested from plaintiff with respect to all of the properties in issue, plaintiff filed suit, contending that its right to due process had been violated because of defendant's failure to comply with its own notice requirements. Defendant moved for summary disposition on various grounds, among them being that plaintiff lacked standing to bring suit because it was no longer the owner of the properties. The circuit court was persuaded by defendant's argument, and granted summary disposition pursuant to MCR 2.116(C)(5) in favor of defendant. This appeal follows.

The court improperly granted summary disposition pursuant to MCR 2.116(C)(5). Summary disposition is appropriate where "[t]he party asserting the claim lacks the legal capacity to sue." MCR 2.116(C)(5). One without standing lacks the legal capacity to sue. See *George Morris Cruises v Irwin Yacht & Marine Corp*, 191 Mich App 409, 411; 478 NW2d 693 (1991). As stated in *Taylor v Blue Cross and Blue Shield of Michigan*, 205 Mich App 644, 655-656 ; 517 NW2d 864 (1994), "[t]o have standing, a plaintiff must demonstrate a legally protected interest that is in jeopardy of being adversely affected and must allege a sufficient personal stake in the outcome of the dispute to ensure that the controversy to be adjudicated will be presented in an adversarial setting that is capable of judicial resolution."

Here, plaintiff had standing to sue. Plaintiff asserted that its property interests had been infringed upon without due process of law, that is, plaintiff contended that its legally protected property rights were placed in jeopardy. As made clear by *Hart v City of Detroit*, 416 Mich 488; 331 NW2d 438 (1982), one need not own the property that is the subject of litigation to have standing to initiate the litigation. Additionally, plaintiff had a sufficient personal stake in the outcome, the approximately $80,000 value of the properties. Therefore, because plaintiff had standing to bring suit, *Taylor, supra,* summary disposition pursuant to MCR 2.116(C)(5) was inappropriate.

On appeal, defendant does not defend the reasoning of the circuit court. Instead, defendant argues that, even if one assumes that the trial court erred in granting summary disposition on the ground that plaintiff lacked standing, summary disposition is still appropriate for several other reasons. In support of its position, defendant emphasizes that this Court customarily affirms lower court orders granting or denying summary disposition where the correct result was reached by the lower court, albeit for the wrong reasons. See, e.g., *Cox v City of Dearborn Heights*, 210 Mich App 389, 391; 534 NW2d 135 (1995). However, while it is true that this Court will affirm where the right result was reached for the wrong reason, in the present case, the specific issues advanced by defendant were not addressed by the lower court. We are reticent to affirm on grounds that were not even considered at the trial level, see *Bajis v City of Dearborn*, 151 Mich App 533, 536; 391 NW2d 401 (1986), and, in any event, we find the record insufficient to determine the substantive merit of the arguments advanced by defendant on appeal.

Reversed.

/s/ Peter D. O'Connell
/s/ Maureen Pulte Reilly
/s/ Donald E. Shelton