STATE OF MICHIGAN

COURT OF APPEALS

MARGARET HAINES, MITCH CASKEY, VICKI CASKEY, RICHARD HOBBS, BARBARA SCHARPING, JULIE KING, PIERRE KING, BRUCE SCHARPING, ROBERT RYAN, KAY NOBLE, ROBERT RAYMOND and JUDY RAYMOND,

Plaintiffs-Appellees,

v

LAPEER COUNTY SPORTSMEN'S CLUB,

Defendant-Appellant.

UNPUBLISHED
August 9, 1996

No. 183268
LC Nos. 81-0006870-CZ
00000218

Before: Neff, P.J., and Fitzgerald and C.A. Nelson,* JJ.

PER CURIAM.

Defendant appeals as of right from the denial of its motion for relief from judgment and issuance of a judgment by Lapeer County Circuit Judge Martin E. Clements on February 6, 1995. We reverse.

Plaintiffs are property owners whose properties are adjacent to defendant's fifty-acre club in Arcadia Township. In 1963, plaintiffs filed a complaint for nuisance, alleging that the shooting activities at the club unreasonably disturbed, by noise, the peaceful and quiet enjoyment of their properties. Plaintiff's sought to restrain the alleged unreasonable use and to restrict the club's activities to certain hours and days. Following a hearing, Judge Timothy C. Quinn determined that the activities of the club, while "not a nuisance per se, may become a nuisance in fact." In an April 20, 1964, judgment, the court ordered that the club's activities be restricted "with guns other than rifles on Monday and Friday nights, 7:00 to 10:00 P.M.; Sunday shoots, 9:00 A.M. to 6:00 P.M.; Saturday and the rest of the week, shooting until dark with rifles only."

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

In July 1964 plaintiffs petitioned the court for an order directing defendant to show cause why it should not be held in contempt for violating the April 20, 1964, judgment. The petition alleged that defendant had not complied with the time restrictions outlined in the judgment, and that defendant intended to increase the number of turkey shoots held at the club. Following a hearing, the court determined that, although there had been a technical violation of the order, the violation was not willful. The court ordered defendant to pay $50 in costs to plaintiffs.

On October 13, 1967, defendant filed a petition to modify Judge Quinn's 1964 order. During a hearing on the petition on April 15, 1968, Judge James P. Churchill altered the times and days of shooting, but did not allow an increase in shooting activities. However, a written order was never entered.

In 1983, plaintiffs again sought to restrain certain of defendant's activities, alleging that defendant had expanded its operations to include "silhouette shooting." Plaintiffs claimed that the noise and the risk of danger had increased as a result of this new shooting with high-powered long barrel pistols at metal targets. Judge Martin E. Clements determined that plaintiffs had established that silhouette shooting is a nuisance and enjoined silhouette shooting at the club.

On March 24, 1994, plaintiffs filed a petition for a preliminary injunction and for an order to show cause for an alleged violation of Judge Quinn's 1964 order. They alleged that defendant had attempted to change the dates and times of its shotgun shooting activities, and that defendant was conducting two-day shoots, both of which were contrary to the terms of the order. Following the entry of a show cause order issued by Judge Clements, defendant moved for entry of a judgment that incorporated the final ruling of Judge Churchill that was made on the record on April 15, 1968.[1] Defendant also argued that the Sport Shooting Range Act, MCL 691.1541 *et seq.*; MSA 18.1234(41) *et seq.*, nullified the validity of any previous restrictive judgments and orders on the basis of noise and rendered their enforcement inequitable. A hearing on the settlement of judgment was held on May 27, 1994. The trial court declined to address the applicability of the statute, and instead merely interpreted Judge Churchill's ruling on the record to the satisfaction of the parties.

Apparently, the parties could not agree on the language of the judgment and, in January 1995, plaintiffs moved for entry of a judgment embodying Judge Clements' interpretation of the 1968 judgment. Defendants moved for relief from all prior judgments based on the Sport Shooting Range Act. Judge Clements denied defendant's motion and entered plaintiffs' proposed judgment on February 6, 1995.

On appeal, defendant argues that the trial court erred by denying its motion for relief from judgment pursuant to MCR 2.612(C)(1)(e) because it is inequitable, in light of the enactment of the Sport Shooting Range Act, to prospectively enforce the 1964 and 1968 orders that place restrictions on the activities and hours of operation at defendant's club.[2] Although the issue was not squarely addressed by the trial court, this Court may review an issue not decided by the trial court if it is one of law and all the facts necessary for its resolution have been presented. *American Nat'l Fire Ins Co v Frankenmuth Mutual Ins Co*, 199 Mich App 202, 210; 501 NW2d 237 (1993).

As amended,[3] the Sport Shooting Range Act provides in relevant part:

> (1) Notwithstanding any other provision of law, and in addition to other protections provided in this act, a person who owns or operates or uses a sport shooting range that conforms to generally accepted operation practices in this state is not subject to civil liability or criminal prosecution any matter relating to noise or noise pollution resulting from the operation or use of the range if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.
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> (2) In addition to other protections provided in this act, a person who owns, operates, or uses a sport shooting range that conforms to generally accepted operation practices is not subject to an action for nuisance, and a court of this state shall not enjoin or restrain the use or operation of a range on the basis of noise or noise pollution, if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.
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> (3) Rules or regulations adopted by any state department or agency for limiting levels of noise in terms of decibel levels which may occur in the outdoor atmosphere do not apply to a sport shooting range exempted from liability under this act. However, this subsection does not restrict the application of any provision of the generally accepted operation practices. [MCL 691.1542; MSA 18.1234(42).]

Clearly, the intent of the Legislature in enacting the Sport Shooting Range Act was to give ranges[4] immunity from civil liability and criminal prosecution in matters relating to noise as long as a range is in compliance with local noise control ordinances at the time the range's construction or operation was approved. There is no dispute that defendant was and continues to be in compliance with all applicable noise control laws as well as with generally accepted operating practices established by the commission of natural resources. Consequently, defendant is afforded by law immunity from an action for nuisance based on noise. Thus, we find that this case is an appropriate one for application of MCR 2.612(C)(1)(e) because of the subsequent enactment of a statute specifically allowing activities that were disallowed, and prohibiting the type of restrictions that were imposed, in the original judgments in this matter. See, e.g., *Sylvania Silica Co v Berlin Twp*, 186 Mich App 73; 463 NW2d 129 (1990).

Reversed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Charles A. Nelson

[1] Plaintiffs contend that the Mary 27, 1994, judgment was a "consent judgment." This contention is misplaced. Both Judge Quinn's and Judge Churchill's judgments were litigated judgments. Judge Clement's May 27, 1994, judgment merely interpreted Judge Churchill's litigated judgment. Defense counsel merely agreed with Judge Clement's interpretation of Churchill's opinion, and agreed that it was a binding judgment. We reject plaintiff's contention that defense counsel's agreement with Judge Clement's interpretation of Judge Churchill's litigated judgment transforms the judgment into a consent judgment. Defendant agreed that the judgment was binding, but raised the Sport Shooting Range Act as an affirmative defense to enforcement of *all* judgments entered in this case.

[2] Defendant also contends that the Sport Shooting Range Act deprived the trial court of subject matter jurisdiction to enter an order restricting the club's activities. Defendant's contention is misplaced. Although no cause of action may have existed on the particular facts of this case, the court has jurisdiction over the subject matter presented to it (nuisance action) under MCL 600.2940; MSA 27A.2940. See MCL 600.605; MSA 27A.605; *Bowdie v Arder*, 441 Mich 23, 38; 490 NW2d 568 (1992).

[3] 1989 PA 269, amended by 1994 PA 250, effective July 5, 1994.

[4] "Sport Shooting Range" or "range" is defined in the act as "an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting." MCL 691.1541; MSA 18.1234(41).