

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM H. LEECH and JOYCE B. LEECH,

Plaintiffs–Appellants,

v

TOWNSHIP OF LEONI, STEVE SAWICKI,
KENNETH WHITE, SHIRLEY JOHNSON, JASON
CHALFANT, SANDRA K. SMITH, NORMA JEAN
HERMAN and DAVID J. PHELPS,

Defendants–Appellees.

UNPUBLISHED

August 16, 1996

No. 183178

LC No. 94-069585-CE

Before: Sawyer, P.J., and Bandstra and M.J. Talbot,* JJ

PER CURIAM.

Plaintiffs appeal as of right the trial court’s grant of summary disposition in favor of defendants. We affirm.

Plaintiffs brought suit against the township and the township board for damages allegedly incurred when the township denied plaintiff’s application for a conditional use permit to allow construction of a cellular telephone transmission tower on their residential property. Plaintiffs contended that the board’s decision violated their substantive due process rights and that the individual board members were personally liable for plaintiffs’ loss of the lease contract with the cellular telephone company. They also alleged that the decision amounted to a taking without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution, 42 USC 1983 and the Michigan Constitution. Defendants asserted several affirmative defenses, including a claim that their actions were subject to governmental immunity. Following discovery, defendants moved for summary disposition. The trial court granted the motion, apparently pursuant to MCR 2.116(C)(4) regarding plaintiffs’ claims against the township and pursuant to MCR 2.116(C)(7) with respect to the individual defendants. We review a trial court’s grant of summary disposition de novo. *Borman v State Farm Fire & Casualty Co*, 198 Mich App 675, 678; 499 NW2d 419 (1993).

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

The dispositive issue is whether the township board's denial of plaintiffs' application constituted a final determination from which plaintiffs could seek redress in the circuit court. Failure to obtain a final decision from a governmental entity deprives the court of subject matter jurisdiction and, in such cases, summary disposition is appropriate pursuant to MCR 2.116(C)(4). *Campbell v St John Hosp*, 434 Mich 608, 616; 455 NW2d 695 (1990). In the instant case, plaintiffs have not obtained a final decision from the township and have not sought to obtain just compensation through inverse condemnation proceedings. Consequently, the trial court did not err when it granted summary disposition to defendants. *Paragon Properties v Novi*, 206 Mich App 74, 76-77; 520 NW2d 344 (1994).

Plaintiffs' reliance on *Trojan v Taylor Twp*, 352 Mich 636; 91 NW2d 9 (1958), is misplaced. In that case, the Court held that the the finality requirement is excused only when an appeal would be futile based upon actions done or statements made by members of the board of appeals. In the instant case, plaintiffs have provided no evidence to show that an appeal would have been futile. Consequently, the exception as outlined in *Trojan* does not apply. See *Lake Angelo Associates v White Lake Twp*, 198 Mich App 65, 74; 498 NW2d 1 (1993).

The rules of statutory construction apply to ordinances. *Albright v Portage*, 188 Mich App 342, 350 n 7; 470 NW2d 657 (1991). The township ordinances must be construed in such a way as to give effect to each provision without repugnancy, absurdity, or unreasonableness. *Michigan Humane Society v Natural Resources Comm*, 158 Mich App 393, 401; 404 NW2d 757 (1987). It should be noted that MCL 125.293(a); MSA 5.2963(23a), which allows persons having an interest affected by the zoning ordinance to appeal the decision of the board of appeals to the circuit court, authorizes the circuit court to review only a decision of the board of appeals. Thus, an interpretation of the ordinance to provide that the decision of the township board was unreviewable by the zoning board of appeals would be unreasonable, because no statutory authority exists whereby circuit courts can directly review the decisions of township boards. Consequently, we conclude that § 7.4 of the Leoni Township ordinance authorizes the board of appeals to review the decision of the township board where error is alleged. Because this issue is dispositive, we need not address the other arguments raised by plaintiff.

Although the lower court did not err in holding that plaintiffs' claims against the individual defendants were barred on grounds of immunity, the court need not have addressed the issue because plaintiffs' failure to exhaust their administrative remedies deprived it of subject matter jurisdiction. See *In re Hatcher*, 443 Mich 426, 438; 505 NW2d 834 (1993).

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Michael J. Talbot