

STATE OF MICHIGAN
COURT OF APPEALS

KRAMER HOMES CO-OPERATIVE, INC.,

Plaintiff-Appellant,

v

CITY OF CENTER LINE,

Defendant-Appellee.

UNPUBLISHED

September 24, 1996

No. 185154

LC No. 93-005951-CZ

Before: Corrigan, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order dismissing its claims that defendant's system of payment for refuse collection violated equal protection and constituted an illegal tax. The trial court granted summary disposition on both counts, apparently pursuant to MCR 2.116(C)(10),¹ finding no genuine issue of material fact. We affirm.

This case was brought following defendant's implementation of a "user fee" system to pay for the collection of refuse. At the same time, defendant imposed a maintenance fee upon each dwelling, even if it opted out of the user fee system. The revenue from the maintenance fee was earmarked for cleanup of closed landfills, which had formerly been used by all residents of the City of Center Line, including plaintiff. Plaintiff, a cooperative of five hundred housing units, elected to opt out of defendant's user fee system. However, pursuant to the maintenance fee, each unit was required to pay \$1 per month, which totaled \$6,000 per year for the cooperative. Plaintiff contends that the imposition of the maintenance fee constitutes a violation of equal protection and an illegal tax. We disagree.

Center Line Ordinance No. 317 provides, in part, as follows:
any multiple family dwelling which opts out of the City of Center Line's solid waste disposal program, shall be assessed a maintenance fee, said fee being a part of the total User Fee, representing their proportionate share of annual costs associated with the South Macomb Disposal Authority's (SMDA) closed landfill sites, such fee shall be established by Resolution of the Council.

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

The “annual costs associated with the . . . closed landfill sites” involved the cleanup costs of landfills which were previously used by plaintiff and the other residents of Center Line. Plaintiff does not dispute that it is responsible for paying its share of the cleanup cost. Plaintiff contends that, under the user fee system, its residents pay the maintenance fee with no benefit, while homeowners pay less than they did under the previous system for the same service and pay no additional maintenance fee. Plaintiff thus claims that it has been denied equal protection.

The Fourteenth Amendment of the United States Constitution provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” Even if a law treats groups of people differently, it does not necessarily violate the guarantee of equal protection because neither the federal nor the state constitutions have been interpreted to require absolute equality. *Doe v Department of Social Services*, 439 Mich 650, 661; 487 NW2d 166 (1992). When legislation is challenged as violative of the equal protection guarantee under either constitution, it is subjected to judicial scrutiny to determine whether the goals of the legislation justify the differential treatment it authorizes. *Id.*, pp 661-661. Generally, legislation challenged on equal protection grounds is accorded a presumption of constitutionality and is reviewed applying the rational basis standard. *Id.*, p 662. Under the rational basis standard, a statute will not be struck down if the classification scheme is rationally related to a legitimate governmental purpose. *Id.* Likewise, an ordinance carries a strong presumption of validity and the burden is on the party challenging the ordinance to show that it violates equal protection. *Iroquois Properties v City of East Lansing*, 160 Mich App 544, 554; 408 NW2d 495 (1987).

The evidence shows that Center Line Ordinance No. 317 does not violate equal protection. The unrefuted testimony of defendant’s city manager, Donald R. Reiterman, established that all residences of Center Line were charged \$1 for cleanup costs. For those that did not opt out of the user fee system, the \$1 was taken out of the individual’s monthly user fee. For those multiple family dwellings which opted out of the user fee system, \$1 was collected in the form of the maintenance fee. Thus, each property owner was treated the same with respect to the fees paid for the cleanup of the used landfills. Accordingly, no violation of equal protection occurred and summary disposition in favor of defendant was properly granted by the trial court.

Plaintiff also contends that the revenues collected by the maintenance fee exceeded the costs associated with the cleanup of the closed landfill sites, thus constituting an illegal tax. State and local governments cannot impose taxes under the guise of a regulatory fee. *Iroquois Properties, supra*, 564. In order for a fee to be deemed a tax, there must be no reasonable relationship between the fee and the expense of the service provided. *Gorney v Madison Heights*, 211 Mich App 265, 268; 535 NW2d 263 (1995). A regulatory fee will be construed as an illegal tax only where the revenue generated by the regulation exceeds the cost of the regulation. *Id.* The legislative enactment is presumed valid and the burden is on plaintiff to overcome that presumption. *Id.*, p 267.

Defendant presented evidence that the revenues collected from the maintenance fee were not in excess of the costs associated with the closed landfills. In the period from 1990 to 1993, the landfill cleanup costs exceeded the amount defendant collected in fees. This evidence was not disputed by

plaintiff; thus, plaintiff failed to overcome the ordinance's presumption of validity. Because the maintenance fee imposed on plaintiff did not generate revenue in excess of the costs associated with the closed landfills, the maintenance fee did not constitute an illegal tax. Accordingly, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Maura D. Corrigan

/s/ Kathleen Jansen

/s/ Meyer Warshawsky

¹ The trial court did not specify whether it granted defendant's motion on the basis of MCR 2.116(C)(8) or MCR 2.116(C)(10). However, the trial court relied on deposition testimony and other documentary evidence in making its decision, thus indicating that defendant's motion was granted based on a lack of a genuine issue of material fact. Accordingly, we will assume the trial court granted defendant's motion under MCR 2.116(C)(10).