STATE OF MICHIGAN

COURT OF APPEALS

BERNARD GILLISH, LOUISE GILLISH, ROBERT J. WOODRUM, SR., ELIZABETH WOODRUM, JOE PUSTAI, STELLA PUSTAI, MIKE KRAWCZYK, STELLA KRAWCZYK, RALPH CHRISTIANSEN, BARBARA CHRISTIANSEN, and DOROTHY PUSTAI,

Plaintiffs-Appellees,

v

RAVENNA MOTOR PARK, WEST MICHIGAN KART CLUB, TOM HIMES, and BARRY GLOVICK,

Defendants-Appellants.

UNPUBLISHED
September 27, 1996

No. 183124
LC No. 93-30415-CZ

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

PER CURIAM.

Defendants appeal as of right the order of the circuit court finding the operation of Ravenna Motor Park to constitute a nuisance, and restricting the times during which the motor park could be operated. Ravenna Motor Park is located in a rural area zoned for agricultural and recreational uses. Plaintiffs are residents of the surrounding area who claim that the noise generated by the go-cart and motorcycle races held at the motor park is unreasonable and constitutes a nuisance in fact. The trial court found that under certain circumstances, the operation of the motor park does constitute a nuisance, and, accordingly, placed restrictions and limitations on the racing activities at the motor park. We affirm.

I

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

First, defendants claim that the trial court erred in concluding that the operation of the motor park constituted a nuisance in fact. When reviewing equitable actions, this Court reviews de novo the ultimate decision of the lower court, and for clear error the findings of fact underlying that decision. *Webb v Smith (After Remand*), 204 Mich App 564, 568; 516 NW2d 124 (1994).

At issue in the present case is whether the noise generated at Ravenna Motor Park constitutes a nuisance. To be considered a nuisance, the activity in question must be of such a character as to cause actual physical discomfort to persons of ordinary sensibilities. *Smith v Western Wayne Co Ass'n*, 380 Mich 526, 536; 158 NW2d 463 (1968). Relief must be based on an objective standard, and not based solely upon the subjective likes or dislikes of a particular plaintiff. *Id*. at 540.

In this case, the overriding theme of plaintiffs' case was that the noise from the motor park was simply not a "country noise," that is, the noise was incongruous with the surrounding community. Such testimony is insufficient to justify a finding of nuisance because it does not suggest that the noise caused actual physical discomfort. See *Smith, supra*. However, there was also testimony addressing the issue of physical discomfort. Many nearby residents testified that the noise of the motor park caused them various ailments, ranging from headaches to the less-believable shingles. Several residents, though, testified that the noise caused them no physical discomfort. Therefore, there was evidence both supporting a finding that the noise constituted a nuisance and evidence militating against such a finding.

In light of the evidence presented below and the circuit court's superior position to assess that evidence, we do not find the court's conclusion to be clearly erroneous. This case was, essentially, a credibility contest. Plaintiffs' witnesses testified that the noise was unreasonable and created physical discomfort, while defendants' witnesses testified that the noise was not unreasonable and could not cause physical discomfort. The trial court chose to believe plaintiffs. This Court gives special deference to the trial court's findings when they are based on credibility, and will not resolve issues of credibility anew on appeal. *Stanton v Dachille*, 186 Mich App 247, 255; 463 NW2d 479 (1990). This is especially true in situations such as the present case, where the trial court had the ability to garner a greater understanding of the testimony and evidence presented in the courtroom by listening to in-court reproductions, through audio tapes and video tapes with audio, of the noise created by the motor park, and by visiting the scene on several occasions. See *Valenti v Mayer*, 301 Mich 551, 558; 4 NW2d 5 (1942).

Because the trial court's findings are supported by competent evidence and because the trial court had a superior opportunity to evaluate the evidence, we decline to find clear error in the court's ruling that Ravenna Motor Park constituted a nuisance.

II

Next, defendants claim that the trial court's remedy was improper. We disagree.

"An equity court has the power to enjoin a nuisance. It is the policy of our courts, however, to tailor the remedy to the problem, to abate the nuisance without completely destroying the business in which the nuisance originates." *Norton Shores v Carr*, 81 Mich App 715, 724; 265 NW2d 802 (1978). In this case, the trial court found that unlimited use of the motor park would result in a nuisance, and placed several restrictions on the use of the motor park for racing. Such restrictions were proper, and have been approved of in the past. See *Smith*, *supra* at 544-545 (1968) (upholding similar restrictions to prevent the defendants' conduct from rising to the level of a nuisance). We agree with the trial court that such a disposition meets the needs and protects the rights of both parties.

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Kenneth W. Schmidt