

STATE OF MICHIGAN
COURT OF APPEALS

VILLAGE OF SARANAC,

Plaintiff-Appellee,

v

CHARLES EDWARD PRINS,

Defendant-Appellant.

UNPUBLISHED

November 26, 1996

No. 187117

LC No. 94-15634-AZ

Before: Neff, P.J., and Hoekstra and G.D. Lostracco,* JJ.

PER CURIAM.

Defendant appeals as of right from an order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10), and apparently pursuant to MCR 2.116(C)(9). We affirm.

This suit arose out of defendant's alleged use of his property in violation of city zoning ordinances. Defendant constructed an addition to an existing building on his property without first acquiring a zoning compliance permit for that addition; he also placed that addition in violation of setback provisions with regard to his front and rear property boundaries, and used that addition without first obtaining a certificate of occupancy. Further, defendant constructed a second building on his property that was larger than the dimensions permitted by that building's zoning compliance permit. When completed, these two buildings in combination with other buildings on defendant's property covered in excess of fifty percent of defendant's property, in violation of another city zoning ordinance. Defendant additionally used his property as a junkyard and kept chickens on his property, both acts constituting additional violations of city zoning ordinances. Plaintiff then filed the instant suit to enjoin these violations, and the trial court granted plaintiff's motion for summary disposition.

Defendant first argues that the trial court erred in denying his two motions for reconsideration,¹ maintaining that his post-summary disposition affidavits raised genuine issues of material fact. We disagree. Plaintiff filed a motion for summary disposition against defendant that was supported by affidavits and other documents. Defendant, who was representing himself, did not answer the motion or submit any documentation or evidence contradicting or denying plaintiff's claims. The trial court granted

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

plaintiff's motion for summary disposition finding that plaintiff's motion was adequately supported by the evidence submitted and that defendant had failed to respond with any proof to contradict the motion. In fact, at the hearing defendant admitted many of the claims made by the plaintiff. Thereafter, defendant retained counsel and sought reconsideration, submitting for the first time affidavits and other documents in opposition to the motion for summary disposition. The trial court denied defendant's first motion for rehearing on the basis that the motion was untimely.² Thereafter, defendant submitted a second motion for reconsideration, which the trial court denied on the merits.³ We review the grant or denial of a motion for reconsideration for an abuse of discretion. *Charbeneau v Wayne Co General Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Here, because the affidavit upon which defendant relied could have been introduced prior to the motion for reconsideration, we find no abuse of discretion. *Id.*; MCR 2.119(F)(3).

Defendant next argues that the trial court erred in relying on statements he made in a zoning application appeal, maintaining that those statements were made for the purposes of negotiation and were therefore inadmissible under MRE 408. However, the record reveals that in granting summary disposition, the trial court did not utilize any statements that defendant made in his zoning appeal application.

Defendant finally argues that the trial court erred in granting summary disposition to plaintiff pursuant to MCR 2.116(C)(8) because defendant, as the defendant, was not required to state a claim.⁴ Because the trial court's grant of summary disposition pursuant to MCR 2.116(C)(10) was proper, as outlined above, this Court need not address the propriety of summary disposition on other grounds as well.

Affirmed.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Gerald D. Lostracco

¹ Plaintiff asserts that defendant's appeal is from the trial court's denial of his two motions for reconsideration and that this Court should affirm on the basis that these motions were properly denied as untimely. However, the two trial court orders denying reconsideration were not final orders from which defendant could appeal; rather, the trial court's order granting summary disposition for plaintiff on all its claims was the final appealable order in this case and is properly the subject of this Court's review. See *Adams v Perry Furniture Co (On Remand)*, 198 Mich App 1, 5; 497 NW2d 514 (1993).

² Denial of reconsideration based on timeliness was erroneous, and although the record is not clear, we surmise that this is the reason the trial court addressed the merits of the issue upon the filing of a second motion for reconsideration.

³ The trial court entered an order granting the motion for reconsideration and denied the request to overturn the order of summary disposition in plaintiff's favor without explanation.

⁴ There is a discrepancy between the transcript of hearing, which indicates that the motion was granted pursuant to (C)(8), and the actual order, which indicates that the motion was granted pursuant to (C)(9). MCR 2.116(C)(9) would have been the appropriate disposition for defendant's failure to state a valid defense.