STATE OF MICHIGAN

COURT OF APPEALS

PINE RIVER TOWNSHIP,

Plaintiff-Appellee,

v

VICTOR FINCH and MARILYN FINCH,

Defendants-Appellants.

UNPUBLISHED
April 25, 1997

No. 192710
Gratiot Circuit
LC No. 95-003530-CZ

Before: Doctoroff, P.J., and Michael J. Kelly and Young, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for plaintiff, through which the trial court found that defendants had violated the Pine River Township Blight Ordinance by allowing a variety of junk to accumulate on their property. The court ordered defendants to clean their property within thirty days and provided that if they did not do so, plaintiff could enter the premises to abate this public nuisance and tax defendants to recover the costs of abatement. We affirm.

Defendants have owned a parcel of real property that is located in Pine River Township since 1967. Since their acquisition of the property, defendants allowed unlicensed and inoperable vehicles, old appliances, tires and lawnmowers, abandoned automobile parts, scrap metal, and a variety of other material to accumulate on the property. After unsuccessfully requesting that defendants clean the property, plaintiff filed for injunctive relief, alleging that defendants had violated the township's blight ordinance.

The Pine River Township Blight Ordinance was enacted in 1982 under the enabling authorities of the Township Ordinances Act, MCL 41.181 *et seq*.; MSA 5.45(1) *et seq*., and the Blighted Area Rehabilitation Act, MCL 125.71 *et seq*.; MSA 5.3501 *et seq*. The stated purpose of the ordinance is "to prevent, reduce or eliminate blight or potential blight in Pine River Township by the prevention or elimination of certain environmental causes of blight or blighting factors which exist or which may in the future exist in [the] Township." Pine River Township Blight Ordinance No. 206, as amended by Ordinance No. 1994-102. The ordinance provides a laundry list of items that may not be stored on any property because they have been determined by the township to be causes of blight. *Id*. The list

includes inoperable automobiles that are not being restored or dismantled for parts, building materials in the absence of a valid building permit, junk, trash, rubbish and refuse.

The Township Ordinances Act allows township boards to "adopt ordinances regulating the public health, safety, and general welfare of persons and property." MCL 41.181(1); MSA 5.45(1)(1). The Blighted Area Rehabilitation Act provides that municipalities "may bring about the rehabilitation of blighted areas and the prevention, reduction, or elimination of blight, blighting factors, or causes of blight." MCL 125.73; MSA 5.3503. In its definition of "blighted area," this Act also provides that "the conditions that constitute blight are to be broadly construed to permit a municipality to make an early identification of problems and to take early remedial action to correct a demonstrated pattern of deterioration and to prevent worsening of blight conditions." MCL 125.72(a); MSA 5.3502(a).

Defendants argue that the trial court erred in finding that the ordinance was not unconstitutionally vague. Defendants contend that because the ordinance's definition of a blighted area encompasses things that are not included in its enabling statute's definition of a blighted area, it is overbroad. A statute or ordinance is presumed to be constitutional, and a court must construe it as such unless its unconstitutionality is apparent. *Lansing v Hartsuff*, 213 Mich App 338, 343-344; 539 NW2d 781 (1995). A statute may be challenged as void for vagueness on the following grounds: "(1) it does not provide fair notice of the conduct proscribed; (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed; and (3) its coverage is overly broad." *People v Hubbard (After Remand)*, 217 Mich App 459, 484; 552 NW2d 493 (1996). An ordinance is overbroad if it prohibits "innocent conduct that has no tendency to endanger the health, safety, welfare, or morals of the community." *City of Fremont v Beatty*, 53 Mich App 137, 139; 218 NW2d 799 (1974). Although the ordinance's list of problems that the township had identified as conditions that constituted blight was not included in the Blighted Area Rehabilitation Act's definition of "blighted area," the ordinance's list fell within the provision of the Act that allowed townships to broadly construe the conditions that constitute blight. By creating this list according to the provisions of the Blighted Area Rehabilitation Act, the township acted within its regulatory authority and did not prohibit innocent conduct. Therefore, the ordinance's list of blighting factors was not overbroad. *Id*. at 139.

Defendants also contend that the ordinance is vague because it has the characteristics of a zoning ordinance. Defendants incorrectly claim that the ordinance requires citizens to obtain permits from the zoning board and lists the failure to do so as both a zoning and a regulatory violation. The ordinance does no such thing. Pine River Township Blight Ordinance No. 206, as amended by Ordinance No. 1994-102. Moreover, because the ordinance was enacted under enabling authorities that allow townships to regulate the public's health, safety and welfare, it is a regulatory ordinance. See *Casco Twp v Brame Trucking Co, Inc*, 34 Mich App 466, 469-470; 191 NW2d 506 (1971). Because this is a regulatory ordinance, the prior non-conforming uses exception, which makes all zoning ordinances subject to the rights of those having non-conforming uses at the time an ordinance takes effect, does not apply. *Id*. at 471. Accordingly, defendants were not entitled to maintain the blighted condition of their property on the ground that it was consistent with a prior non-conforming use.

Defendants also contend that the ordinance improperly defines "nuisance per se." In fact, the ordinance neither provides a definition of "nuisance per se" nor uses the phrase. Pine River Township Blight Ordinance No. 206, as amended by Ordinance No. 1994-102.

Finally, we decline to address defendants' apparent assertion that this ordinance constitutes a regulatory taking without just compensation in violation of the Fourteenth Amendment. An appellant may not merely announce a position and then leave it to this Court to discover and rationalize the basis for a claim. *Sargent v Browning-Ferris Industries*, 167 Mich App 29, 32-33; 421 NW2d 563 (1988).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Michael J. Kelly
/s/ Robert P. Young, Jr.