STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY G. FAHOOME and ROSEMARY FAHOOME,

Plaintiffs-Appellants,

v

CITY OF ST. CLAIR SHORES,

Defendant-Appellee.

UNPUBLISHED
March 17, 1998

No. 194020
Macomb Circuit Court
LC No. 95-002535 CZ

Before: McDonald, P.J., and O'Connell and Smolenski, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition and dismissing plaintiffs' complaint, which alleged constitutional challenges to defendant's zoning decisions. We affirm.

Because the zoning decisions in question were made more than two years before plaintiffs commenced this action, the trial court dismissed plaintiffs' complaint as an untimely appeal pursuant to *Krohn v Saginaw*, 175 Mich App 193; 437 NW2d 260 (1988). Plaintiffs contend that this ruling was erroneous because their complaint alleges an action for inverse condemnation and, to the extent the complaint is deficient, they should have been granted leave to amend. Even if the rationale underlying the trial court's ruling can be considered erroneous, it nevertheless reached the correct result.

Plaintiffs cannot challenge the city's decision to grant rezoning to an adjacent landowner because the decision is not specifically directed towards plaintiffs' property and thus does not constitute a taking of plaintiffs' property. *Charles Murphy, MD, PC v Detroit*, 201 Mich App 54, 56-57; 506 NW2d 5 (1993). To the extent a direct invasion of plaintiffs' property is unnecessary under the exception noted in *Spiek v Dep't of Transportation*, ___ Mich ___; ___ NW2d ___ (No. 104096, issued 1/21/98), here the interference with plaintiffs' property rights has been caused, not by the city's action in granting rezoning, but by the landowner's use of the adjacent property. Thus, a governmental taking is not involved. While plaintiffs are allowed to challenge the city's decision regarding rezoning of their own property, their claim is not ripe for judicial review because the decision to deny rezoning was

not a final decision. *Paragon Properties Co v Novi*, 452 Mich 568, 580; 550 NW2d 772 (1996). Because the proposed amendment would not have cured either defect, the trial court did not abuse its discretion in denying plaintiffs' request for leave to amend. *Burse v Wayne Co Medical Examiner*, 151 Mich App 761, 767; 391 NW2d 479 (1986).

Affirmed.

/s/ Gary R. McDonald
/s/ Peter D. O'Connell
/s/ Michael R. Smolenski