

STATE OF MICHIGAN
COURT OF APPEALS

HAZEL PARK DEVELOPMENT, LLC,

Plaintiff-Appellant,

v

CITY OF HAZEL PARK,

Defendant-Appellee.

UNPUBLISHED
February 16, 2006

No. 264903
Oakland Circuit Court
LC No. 04-059289-CZ

Before: Donofrio, P.J. and Murphy and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting summary disposition in defendant's favor. We affirm.

We review de novo a trial court's decision on a motion for summary disposition and constitutional issues. *Hess v Cannon Twp*, 265 Mich App 582, 589; 696 NW2d 742 (2005). If the parties relied on documentary evidence in support of their arguments, we review the motion under MCR 2.116(C)(10). *Krass v Tri-County Security*, 233 Mich App 661, 665; 593 NW2d 578 (1999). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

Plaintiff first contends that the trial court erred in granting summary disposition of its regulatory taking claim. We disagree. Plaintiff alleged that defendant's refusal to provide public funding for its development project precludes any economically viable use of the property. In this type of regulatory taking, a property owner may recover if a regulation forces an owner to "sacrifice all economical beneficial uses [of his land] in the name of the common good" *K & K Construction, Inc v DNR*, 456 Mich 570, 577; 575 NW2d 531 (1998), quoting *Lucas v South Carolina Coastal Council*, 505 US 1003, 1019; 112 S Ct 2886; 120 L Ed 2d 798 (1992). Assuming that it is true that the property has no economically viable use, the evidence clearly demonstrates that defendant's actions did not cause any change in the economic use of the property. The state of the property was the same before defendant's decision as it was after. Therefore, defendant's actions did not cause plaintiff to sacrifice any economically beneficial use that it already had. Furthermore, defendant's actions have not precluded plaintiff's development

of the property; defendant has only precluded plaintiff from developing the property with public funds. Therefore, the trial court did not err in dismissing this claim.

Plaintiff next argues that the trial court erred in granting summary disposition of its detrimental reliance claim. On appeal, however, plaintiff failed to cite any authority on detrimental reliance, thereby abandoning this issue. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Plaintiff next argues that the trial court erred in granting summary disposition of its equal protection claim. We disagree. When no suspect or somewhat suspect classification is alleged, the courts uphold legislation that is rationally related to a legitimate government purpose. *Crego v Coleman*, 463 Mich 248, 259-260; 615 NW2d 218 (2000). To prevail under this standard, a plaintiff must show that the legislation is “arbitrary and wholly unrelated in a rational way to the objective of the statute.” *Id.* at 259. The evidence clearly demonstrates that defendant had a rational cost-effective basis for declining to provide \$1 million in tax increment financing to plaintiff’s private development project. Defendant’s enforcement of its weed control ordinance and code requirements also had a rational basis in preventing weed overgrowth and protecting the public from unsafe structures. Therefore, the trial court did not err in dismissing plaintiff’s equal protection claim.

Plaintiff next argues that the trial court erred in granting summary disposition of its substantive due process claim. We again disagree. Unless a fundamental right is involved, the governmental action need only be rationally related to a legitimate governmental interest. *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173; 667 NW2d 93 (2003). Plaintiff has not asserted that a fundamental right was involved. As concluded above, defendant’s actions were rationally related to a legitimate governmental interest. Therefore, the trial court did not err in dismissing plaintiff’s substantive due process claim.

Plaintiff finally argues that the trial court erred in granting summary disposition of its trespass claim ruling that governmental immunity precluded the claim. We disagree. “Governmental immunity is a question of law that is reviewed de novo.” *Pierce v City of Lansing*, 265 Mich App 174, 176; 694 NW2d 65 (2005). The governmental tort liability act provides immunity for governmental agencies, including municipalities. *Haliw v Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001). It is well settled that governmental agencies are immune from tort liability while engaging in a governmental function unless an exception applies. *Id.* A governmental function “is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law.” MCL 691.1401(f). Because defendant’s alleged entry onto plaintiff’s property was expressly authorized by ordinance, defendant was engaged a governmental function when it made the entry. Plaintiff does not argue that any exception to governmental immunity applies. Therefore, we conclude that the trial court did not err in dismissing this claim.

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Kirsten Frank Kelly