

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MIKE CRAMER, d/b/a ALLSTAR BOOKS,

Plaintiff-Appellant,

v

RONALD VITALE, YORKSHIRE FOOD  
MARKET, CITY OF DETROIT, and DETROIT  
BOARD OF ZONING APPEALS,

Defendants-Appellees.

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UNPUBLISHED

April 25, 2006

No. 258840

Wayne Circuit Court

LC No. 03-340654-CZ

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders granting summary disposition in favor of all defendants, and awarding defendants Vitale and Yorkshire Food Market sanctions in the amount of \$7,741.50. We affirm.

On May 8, 2003, the Detroit Board of Zoning Appeals granted defendants Ronald Vitale and Yorkshire Food Market a variance for a parking lot sign. Plaintiff, whose building is located adjacent to the parking lot, had opposed the variance request, arguing at a public hearing that the sign was too large, did not conform to city ordinances, and was too close to a mural painted on the side of plaintiff's store. Although plaintiff had opposed the variance request and believed that the grant of the variance was improper, he failed to appeal the Board of Zoning Appeals' decision to the circuit court. Instead, seven months after the Board of Zoning Appeals granted the variance, plaintiff filed this action in the Wayne Circuit Court, alleging claims for (1) gross negligence, (2) a violation of 42 USC 1983, which included a claim for an unconstitutional "taking" of property, (3) a violation of his First Amendment right to free speech, US Const, Am I, and (4) nuisance per se.

Defendant City of Detroit removed the action to federal court. The United States District Court subsequently remanded the gross negligence and nuisance claims to state court. On remand, Vitale and Yorkshire Food Market moved for summary disposition on those claims, arguing that the trial court lacked subject-matter jurisdiction over them because plaintiff never timely appealed the Board of Zoning Appeals' decision. Defendants city of Detroit and the Board of Zoning Appeals concurred in the motion, which the trial court granted pursuant to MCR 2.116(C)(4).

We review de novo jurisdictional questions under MCR 2.116(C)(4). *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). A trial court's ruling on a motion for summary disposition is also reviewed de novo. *Lockridge v State Farm Mut Auto Ins Co*, 240 Mich App 507, 511; 618 NW2d 49 (2000).

It is undisputed that decisions of a zoning board of appeals are final, subject to appeal in the circuit court. MCL 125.585(11). In order to file a timely appeal to the circuit court, the appeal must be filed within 21 days after entry of the order or judgment being appealed. MCR 7.101(B)(1); see, also, *Krohn v Saginaw*, 175 Mich App 193, 196; 437 NW2d 260 (1988). A circuit court does not have jurisdiction to hear an appeal if it is not timely filed. *Id.*; *Schlega v Detroit Bd of Zoning Appeals*, 147 Mich App 79, 80-82; 382 NW2d 737 (1985).

In *Krohn*, the plaintiffs owned a parcel of property adjoining a parcel for which a variance and a special land use permit were granted to enable the construction of an automobile parts store. *Krohn, supra* at 195. While the variance and special land use permit were not granted by a zoning board of appeals, the planning commission that granted them had the same authority as a zoning board of appeals. *Id.* Thus, the rules governing appeals from decisions of a zoning board of appeals were determined to be applicable, and the plaintiffs were required to file an appeal to the circuit court within 21 days after entry of the decision or order granting the variance and special use permit. *Id.* at 195-196. The plaintiffs did not timely file an appeal and the circuit court held that it did not have jurisdiction over the plaintiffs' claims, which were brought later, in a separate lawsuit. *Id.* at 197. This Court affirmed, rejecting the plaintiffs' argument that the claims alleged in their complaint were "different" causes of action, which were not covered by the 21-day appeal period. *Id.* This Court held that the plaintiffs' claims, including claims for due process violations, an unlawful "taking" without just compensation, nuisance per se, and declaratory judgment, could not be decided by the trial court. *Id.* at 197-198.

With respect to each of these counts, we believe that they all raise issues relative to the decision of the planning commission and the procedures employed by the planning commission in reaching that decision. Thus, they do not establish separate causes of action, but merely address alleged defects in the methods employed by the planning commission or the result reached by the commission. Since plaintiffs were tardy in claiming their appeal, those counts were properly dismissed. [*Id.* at 198.]

In this case, plaintiff failed to timely appeal the Board of Zoning Appeals' decision to the circuit court. He argues, however, that he had a right to file an "original" cause of action related to that decision. We disagree. The only claims properly before the trial court on remand from the federal court were for gross negligence and nuisance per se. The allegations supporting those claims are directly related to the actions of, or method used by, the Board of Zoning Appeals in granting the variance and the result of the grant of that variance. It is clear that plaintiff was impermissibly attempting to collaterally attack the decision to grant the variance without properly following the appeal procedure. See *Krohn, supra* at 196-198; see, also, *Martin v Dep't of Corrections (After Remand)*, 168 Mich App 647, 653; 425 NW2d 205 (1988) ("[a]djudications which may become final through lapse or exhaustion of appeal rights may not be disturbed by collateral attack"). The proper forum to attack the Board of Zoning Appeals' decision was in the circuit court on direct review. Because plaintiff did not timely appeal the decision granting the

variance, the trial court properly granted summary disposition based on lack of jurisdiction. See *Krohn, supra*.

We reject plaintiff's argument that he had constitutional claims pending before the trial court which he was entitled to maintain. The constitutional claims alleged by plaintiff, including a violation of 42 USC 1983, an unlawful "taking" of property, and violation of his right to free speech, were retained by the federal court, which only remanded the state claims. Those claims were not properly before the trial court, and likewise, are not properly before this Court.

We also affirm the trial court's award of sanctions against plaintiff in favor of defendants Vitale and Yorkshire Food Market. A party who maintains a frivolous suit is subject to sanctions. *BJ's & Sons Constr Co, Inc v Van Sickle*, 266 Mich App 400, 404; 700 NW2d 432 (2005). "The purpose of imposing sanctions for asserting frivolous claims 'is to deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose.'" *Id.* at 405. We review a trial court's determination that an action is frivolous and that sanctions should be awarded for clear error. *Id.*

MCR 2.114(A) and (C) require that documents, including pleadings and motions, be signed and, if a party is represented by an attorney, the attorney must sign the document. The signature of the attorney or a party, if not represented, constitutes a certification by the signer that:

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. [MCR 2.114(D).]

MCR 2.114(E) provides that sanctions may be ordered against the person who signs a document in violation of the rule, a represented party, or both. MCR 2.114(F) further provides that, in addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2), which states:

In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.

MCL 600.2591 states:

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with

the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) As used in this section:

(a) “Frivolous” means that at least 1 of the following conditions is met:

(i) The party’s primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party’s legal position were in fact true.

(iii) The party’s legal position was devoid of arguable legal merit.

In this case, we find no clear error in the trial court’s decision to award sanctions. Applicable case law clearly established that plaintiff’s “original” action for gross negligence and nuisance per se, based on the granting of the variance, could not be maintained because a timely appeal from the decision granting the variance was not taken. A reasonable investigation would have led to the conclusion that the decision granting the variance could not be collaterally attacked in the manner attempted by plaintiff. Plaintiff failed to cite any authority to support a contrary conclusion. Additionally, plaintiff repeatedly attempted to convince the trial court that he had constitutional claims pending and, as such, had the right to maintain his “original” action. But he could not have had a reasonable basis to believe that the facts underlying his legal positions were true because the constitutional claims were retained by the federal court. Under the circumstances, sanctions were properly awarded to Vitale and Yorkshire Food Market for having to defend against frivolous claims of gross negligence and nuisance per se and having to address constitutional arguments that were not properly before the trial court.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Mark J. Cavanagh  
/s/ E. Thomas Fitzgerald