

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF SAUGATUCK,

Plaintiff-Appellee,

v

JOHN W. BREEN and SAN MARINO
HOLDING, INC.,

Defendants-Appellants,

and

MARGARET W. BREEN and LAKESHORE
LODGING, INC.,

Defendants.

UNPUBLISHED

April 28, 2011

No. 297530

Allegan Circuit Court

LC No. 08-044069-CE

Before: SHAPIRO, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Defendants John W. Breen and San Marino Holding, Inc., appeal as of right from the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of plaintiff, City of Saugatuck, in this zoning enforcement case arising from a zoning violation. We affirm.

I. FACTS AND PROCEDURAL HISTORY

This case involves property and a residence located at 850 Park Street in Saugatuck. The gist of plaintiff's complaint is that the property, which is zoned for single family use, was being used as a multifamily dwelling by defendants. The complaint alleged that John W. Breen is an owner or has an ownership interest in the property and that defendant San Marino Holding, Inc., is a company that owns or has an ownership interest in the property. The complaint alleged that defendants rented out the upper levels of the home on the property to persons who are not family of Margaret Breen (who is defendant Breen's mother), while Margaret Breen occupied the lower level of the home. The complaint alleged that defendant Lakeshore Lodging is the rental agency that facilitated the rental of the home. Plaintiff's complaint sought, in relevant part, a declaration that defendants' maintenance and use of the single family dwelling for more than one family is in violation of the zoning ordinance and that violation of the zoning ordinance constitutes a

nuisance per se. The complaint also sought entry of a permanent injunction prohibiting more than one family from using the home at a time.

In answer to the complaint, John W. Breen and San Marino Holding, Inc., denied that John W. Breen owned or had an ownership interest in the property. Defendants also asserted that San Marino Holding, Inc., “does not have an interest in the property which would allow it to control or determine what use or uses or [sic] made of the property.” In her answer to the complaint, Margaret Breen asserted that she had vacated the premises and no longer resided at 850 Park Street.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) and (10) on the ground that there was no dispute that defendants violated the zoning ordinance by using or permitting the use of the home as a two-family dwelling, thereby violating the zoning ordinance. Plaintiff also sought a permanent injunction against use of the home by more than one family at a time. In answer to the motion for summary disposition, defendants asserted that Margaret Breen had vacated the premises and that any violation of the zoning ordinance had thereby been corrected. Defendants also denied a history of repeated violations of the zoning ordinance.

Defendant John W. Breen also filed a motion for summary disposition in which he maintained that he is not a proper party to this lawsuit. The sole documentary evidence submitted in support of the motion was the affidavit of John W. Breen in which he averred that “He does not own the property at 850 Park Street and does not have an operating or controlling interest in any entity or organization that does; he does not possess any rights relative to the leasing of the property.” He also averred that “He has never dealt with . . . Lakeshore Lodging, Inc., as a representative of San Marino, Inc. nor in a personal capacity in his own behalf.”

A hearing was held on the cross motions for summary disposition on May 8, 2009. Plaintiff presented a plethora of documentary evidence in support of its position that defendants John W. Breen and San Marino Holdings, Inc., either owned or had an ownership interest in the property.¹ Counsel for defendants John W. Breen, San Marino Holding, Inc., and Margaret Breen conceded that Margaret Breen had been living in one level of the home “at the same time

¹ For example, plaintiff presented evidence that John W. Breen applied for a zoning permit and building permit as owner of the property in 1994. In 1996, he, as president of Enterprises Unlimited, Inc., conveyed the property to San Marino Holding, Inc. An e-mail from San Marino Holding, Inc. to the City of Saugatuck in response to the city’s written notification regarding the alleged zoning violation in this case indicated that John W. Breen is an agent of the company. A letter from John W. Breen’s attorney to the city manager of Saugatuck in response to the same notification stated that “A lady, with a relationship to a person who has an ownership interest in the property, has been living in the lower level.” The rental agent agreement for the property is between Lakeshore Lodging, Inc. and Investment Solutions, Inc., as owner of the property. The agreement is signed by John W. Breen on behalf of Investment Solutions, Inc. Additionally, plaintiff presented e-mail communications between John W. Breen and Lakeshore Lodging regarding specific rental reservations and maintenance for the property.

they were renting out upper levels to people for a week or two weeks during the summer.” Counsel stipulated on behalf of San Marino Holding, Inc., “that there was a violation” of the zoning ordinance. Counsel noted John W. Breen’s position that he “doesn’t have any control over the rental property.” The following colloquy then took place between the court and defense counsel after the court asked who was responsible for the zoning violation:

San Marino Holding Company, which as I understand it, and I’m not going to try to represent to the Court anything more than I know, is-the president’s name is Patricia Topping, and it’s-they’re apparently registered –

THE COURT: Are you reading off the Articles of Incorporation or what?

DEFENSE COUNSEL: Copies of articles. I’m advised that it is a legitimate LLC, maybe not registered in Michigan but –

THE COURT: Do you know where it is registered?

DEFENSE COUNSEL: According to the information that I have in Virginia. Pursuant to the authority of Chapter 12 Title 13.1 of Virginia Code, I’m the authorized officer for San Marino Holding of Virginia, LLC.

THE COURT: Alright. Are you telling me that from your perspective, based on the facts available to you, you believe John W. Breen has no interest in this property whatsoever? He has no more interest in this property than I have?

DEFENSE COUNSEL: That’s my understanding. I don’t know who this San Marino Holding Company consists of, but he’s – he advised me he’s not a part of it.

THE COURT: How then, given that –

DEFENSE COUNSEL: Right. I know it sounds unusual and he’s the only person I have had contact with.

THE COURT: Given that, where would he come to the conclusion that he was authorized to file seeking tax relief before the Board of Review for example?

DEFENSE COUNSEL: Well, this is maybe hair splitting. . . . He says I can – I’m authorized to file a tax appeal, I’m not authorized to rent the property. . . . Anyway, I think the key thing is here that yes, there was a violation. I don’t think the facts support the issuance of an injunction which of course is in the discretion of the Court.

The trial court granted summary disposition in favor of plaintiff. The court found no issue of fact with regard to whether a zoning violation occurred and ruled, as a matter of law, that the zoning violation constituted a nuisance per se. The court ruled that plaintiff is entitled to injunctive relief to prevent John W. Breen and San Marino Holding, Inc, from using the property in a fashion that would violate the zoning ordinance. Relying on the documentary evidence provided by plaintiff, the court also found that John W. Breen had a sufficient ownership interest in the property to support running the injunctive relief to him, and that the leasing of the property to more than one family on the occasion involved in this case was not an isolated incident. The court found in pertinent part:

It's clear to me that damages, even if they were requested in this case, are not an adequate remedy and that while there is some-still some modest uncertainty in the Court's mind about precisely what John Breen's role is, I can say my finding is that he has some ownership interest sufficient to support running the injunctive relief to him. In fact, I take it that from counsel's-defense counsel's statement that San Marino Holding is a real entity, my belief and my finding is that John Breen is the power behind that entity and is guiding and directing San Marino Holding. I won't address Lakeshore Lodging, it sounds like their role in this whole transaction has been resolved by stipulation. But, I am most persuaded of John – that the injunction should run to John Breen because John Breen filed the tax appeal. That is typically an authoritative assertion of an ownership interest 'cause the burden to pay taxes is one that runs to the land and to the owner of the land. If there's any person responsible it's someone who asserts an ownership interest, and there is no other documentation provided articulating that John Breen has only some authority as an agent. Even if his authority were limited to that of an agent, his role in this property, if we attributed all of his behavior to his agency relationship with San Marino holding, he is still a person who asserted sufficient connection to the property on an ongoing basis over a course of time that I would nevertheless run the injunction to him. But I'm ruling on these motions that I'm convinced from the exchange of e-mail with the Lakeshore Newspaper, that the reference to the aol e-mail address, I forget the letters, it's PTK-I think that's on the record already, I won't tie my tongue in knots trying to pronounce it, that that indicates a deep and substantial interest in this property and warrants running the injunction against Mr. Breen.

In addition, I've considered the fact that he's listed in the white pages at that address and his assertion that he resides there when renters aren't there in the e-mail to the newspapers an assertion that he's fully aware of when renters are there and when renters are not, and he can move in. The person most likely to have that kind of intelligence about any given property is the owner.

I also consider in finding there's no material issue of fact as to his ownership interest, his application for a previous variance and his signature on a rental contract as to this property.

Defense counsel made the statement with a single violation of the ordinance isn't ordinarily warranted. I've considered that authority but I don't

think its persuasive to me. I think what we really have here is not a single stark violation departing from practice. We have a continuing practice going back some time when Mr. Breen acts like an owner and undertakes actions to construction of the kitchen downstairs, and then it's removal, that are unmistakable marks of someone who creates a risk in the situation of an ongoing controversy and the Courts wants to see this controversy put to bed today in such a way that the local government has an important role to play in assuring compliance with its Zoning Ordinance in the interest of its entire community, doesn't have to churn litigation which is time consuming, distracting from their executive and legislative functions, and otherwise some would say uncharitably a nuisance in itself to have to be put through the process of successive litigation to rule out one zoning violation, we want to avoid that. The best way to do that I'm convinced is to issue the injunction.

The trial court also denied defendant John W. Breen's motion for reconsideration or to amend the complaint.

II. SUMMARY DISPOSITION

Defendant John W. Breen argues that the trial court erred by finding that there was no genuine issue of material fact with regard to whether Breen owned or controlled the property at 850 Park Street. A trial court's decision on a motion for summary disposition is reviewed de novo. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). When reviewing a motion under subrule (C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists warranting a trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002).

Plaintiff presented an abundance of documentary evidence to support its allegation that defendant Breen either owned or controlled San Marino Holdings, Inc., and, therefore, that defendant controlled the property in question. The only evidence presented by defendant Breen was his own affidavit stating that he "does not have an operating or controlling interest in any entity or organization that does [have an operating or controlling interest]" and that "He has never dealt with Defendant, Lakeshore Lodging, Inc., as a representative of San Marino, Inc. nor in a personal capacity in his own behalf." Aside from the documentary evidence suggesting otherwise, counsel for both defendant John Breen and San Marino Holding, Inc., acknowledged at the hearing on the motion for summary disposition that counsel was the authorized agent for San Marino Holding, Inc., that he had no idea "who this San Marino Holding Company consists of," that John Breen indicated to him that Breen was not a part of it, but that John Breen was the only person he ever had contact with in regard to San Marino Holding, Inc.

The trial court properly ruled that, when viewed in a light most favorable to defendant, there is no genuine issue of material fact with regard to whether John Breen either owned or had a controlling interest in San Marino Holding, Inc. such that it could be held responsible for the violation of the zoning ordinance.

Defendant Breen also asserts that the trial court erred by denying his motion to amend the pleadings that was filed with his motion for reconsideration. Breen cites no authority in support of his allegation, and merely asserts that “it is difficult to see how the allowance of an amendment would be prejudicial.” An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority. The failure to cite any supporting legal authority constitutes abandonment of this issue. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001).

III. THE ISSUANCE OF A PERMANENT INJUNCTION

Defendant argues that the trial court erred by entering a permanent injunction because Margaret Breen had moved out of the property by the time of the hearing on the motions for summary disposition, thereby eliminating the possibility of irreparable harm. The granting of injunctive relief is within the trial court’s sound discretion. *Higgins Lake Property Owners Ass’n v Gerrish Twp*, 255 Mich App 83, 105; 662 NW2d 387 (2003).

Counsel for the defendants acknowledged that the use of the property by both Margaret Breen and another unrelated family was in violation of the single-family zoning ordinance. Consequently, the use of the property by multiple families was a nuisance per se, and the trial court properly issued an injunction enjoining future violations of the ordinance by defendants. See MCL 125.3407.² Plaintiff presented sufficient evidence for the trial court to conclude that the activity in this case was not an isolated event and that a real and imminent risk of the same violations being repeated on a future date existed. The trial court did not abuse its discretion by entering a permanent injunction prohibiting use of the property by more than one family at a time.

Affirmed.

/s/ Douglas B. Shapiro
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello

² MCL 125.3407 is part of the Michigan Zoning Enabling Act, 125.2898 *et seq.*, and provides in pertinent part:

Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se.