

STATE OF MICHIGAN  
COURT OF APPEALS

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JOHN E. VASKO and ADEL BIALLAS,

Plaintiffs-Appellants,

v

DEPARTMENT OF AGRICULTURE,

Defendant-Appellee.

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UNPUBLISHED

February 2, 2006

No. 257534

Court of Claims

LC No. 03-000181-MM

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Plaintiffs appeal as of right the Court of Claims order granting summary disposition in favor of defendant. This case arises out of an alleged nuisance from a pig farm operation that neighbors plaintiffs' home. We affirm.

Plaintiffs filed a complaint against defendant seeking monetary damages for exposure to pollution resulting from defendant's allegedly improper and inadequate regulation of the operations of the neighboring pig farm. Plaintiffs alleged that despite their repeated requests that defendant conduct thorough and unbiased inspections of the farm's operations in accordance with MCL 286.474 and MCL 324.1701, defendant failed to do so. Plaintiffs additionally requested that the court determine the constitutionality of the Michigan Right to Farm Act (RTFA), MCL 286.471 *et seq.*, specifically MCL 286.473(3)(a) and (e), 286.473b, and 286.474(1), in light of the ruling in *Bormann v Bd of Supervisors*, 584 NW2d 309 (Iowa, 1998).

Regarding plaintiffs' claim for money damages for defendant's failure to properly regulate the pig farm, defendant moved for summary disposition under MCR 2.116(C)(7), arguing that plaintiffs failed to plead an exception to governmental immunity, and in any event, it was governmentally immune from plaintiffs' claim. Regarding plaintiffs' claim for declaratory relief, defendant moved for summary disposition under MCR 2.116(C)(8), arguing that there was no factual development that could justify recovery, because plaintiffs failed to timely appeal the matter.

In considering defendant's motion for summary disposition, the court explained that "[p]laintiff[s] filed a complaint, or complaints, with [defendant], regarding the subject pig farming operation. As a result, [defendant] conducted the requisite review and investigation pursuant to the [RTFA], and found the operation to be in compliance with the [g]enerally [a]ccepted [a]gricultural [m]anagement [p]ractices. Plaintiffs' gravamen is not that the agents of

the [d]efendant acted outside the scope of their employment. The true nature of [p]laintiffs' [c]omplaint is simply that he [sic] disagrees with the outcome of that investigation." The court also noted that plaintiffs' complaint failed "to enumerate any allegations that would fall into any of the . . . accepted exceptions to governmental immunity." The court then granted summary disposition in favor of defendant on plaintiff's claims for money damages under MCR 2.116(C)(7), holding that defendant was entitled to governmental immunity.

Turning to the issue of the timeliness of plaintiffs' claim, the court first concluded that the claim for declaratory relief could not possibly be viewed as being brought under the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, because MCL 24.264 expressly required that a plaintiff first file a request for a declaratory ruling with the applicable agency before bringing an action in the circuit court. And here, the court noted, plaintiffs had not shown that such a request was ever made to defendant. Therefore, the court held, the applicable rule to review the timeliness of plaintiffs' complaint was MCL 600.631, as governed by MCR 7.101 and 7.103. The court concluded that the letters relied on by plaintiffs to extend the date of the "final agency decision" did nothing but detail the history of the complaints made to defendant and its actions. The court pointed out that, in fact, one of the letters explained that plaintiffs' complaint file was closed on December 11, 2002. Thus, the court declined to view the letters as final agency determinations. The court then granted summary disposition in favor of defendant on the remainder of plaintiffs' complaint under MCR 2.116(C)(8), holding that plaintiffs' claim was untimely.

Plaintiffs first argue that the trial court judge was prejudiced and biased against them, as demonstrated by her repeated expressions of concern over their choice to exercise their constitutional right to self-representation. Const 1963, art 1, § 13. Plaintiffs fail to cite any authority to support their contentions of bias and prejudice, and plaintiffs may not merely announce their position, then leave it to this Court to unravel their arguments and search for authority to support or reject their position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Accordingly, we are permitted to decline to address this issue which plaintiffs have given "cursory treatment . . . with . . . no citation to relevant supporting authority. . . ." *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001).

Nevertheless, we conclude that plaintiffs have clearly failed to overcome the heavy presumption of judicial impartiality. *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996); *Arnholt v Arnholt*, 129 Mich App 810, 817-818; 343 NW2d 214 (1983). Even accepting plaintiffs' allegations of the court's expressed concern over their choice to exercise their right to self-representation, their allegations do not suggest that the judge harbored any hostility or antagonism toward plaintiffs that would have rendered her incapable of making a fair judgment on the merits of their case. *Cain, supra* at 495 n 29; *Eldred v Ziny*, 246 Mich App 142, 152; 631 NW2d 748 (2001). Therefore, plaintiffs' claims of bias and prejudice are without merit.

Plaintiffs next argue that the trial court erred in granting summary disposition and failing to rule on the merits of their claims regarding defendant's alleged failure to properly inspect and investigate. We disagree. We review de novo a trial court's ruling on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The applicability of governmental immunity is a question of law that we also review de novo. *Baker v Waste Mgt of Michigan, Inc*, 208 Mich App 602, 605; 528 NW2d 835 (1995).

We first note that plaintiffs again fail to cite any authority to support their contentions, thereby waiving the issue. *Wilson, supra* at 243; *Silver Creek Twp, supra* at 99. Nevertheless, we note that defendant is a governmental agency that was engaged in a governmental function when it investigated plaintiffs' complaints and inspected the pig farm operation. See *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 595; 363 NW2d 641 (1984); MCL 691.1401(c), (d), and (f); MCL 286.474(1). Therefore, immunity applies unless that governmental function falls within an exception to the act. *Ross, supra* at 620; MCL 691.1407(1). Plaintiffs failed to allege any facts in their complaint warranting application of an exception to governmental immunity; therefore, summary disposition under MCR 2.116(C)(7) was appropriate. See *Smith v Kowalski*, 223 Mich App 610, 616; 567 NW2d 463 (1997).

Plaintiffs next argue that the trial court erred in concluding that their complaint was untimely. We disagree. Absent disputed issues of fact, whether a cause of action is time barred is a question of law that we review de novo. *Colbert v Conybeare Law Office*, 239 Mich App 608, 613-614; 609 NW2d 208 (2000).

Again, plaintiffs fail to cite any authority to support their contentions, thereby waiving the issue. *Wilson, supra* at 243; *Silver Creek Twp, supra* at 99. Regardless, we conclude that the trial court properly ruled that, applying "the rules of the supreme court" as required by MCL 600.631, plaintiffs' complaint is untimely. See MCR 7.104(A).

The trial court acknowledged the end dates relied on by the parties but did not expressly conclude from which date the timeliness of the appeal should be measured. We conclude that December 11, 2002 is the proper date to utilize in this case. In a letter dated December 11, 2002, defendant explained to plaintiffs that its staff met with the pig farm operators on November 21, 2002, to follow-up on and review their manure management practices. The letter expressed defendant's conclusion that all the provisions of the operator's manure management system plan had been implemented and the source of the complaint had been abated. The letter stated that the complaint file was therefore closed.

Although plaintiffs continued to send correspondence to defendant, the Office of the Governor, United States Senator Carl Levin, and Michigan Senator Carl S. Brown, expressing dissatisfaction with defendant's decision, no other action was taken by defendant except to respond to plaintiffs and reiterate that it had made its final inspection on November 21, 2002 and thereafter closed the file. As the trial court concluded, the August 12, 2003 letter from defendant to Senator Brown relied on by plaintiffs does nothing more than detail the history of the complaints made to defendant and its actions. The letter in no way constituted an order, decision, or opinion of the agency conceivably subject to appeal. Taking the December 11, 2002 letter as the final opinion of the agency, plaintiffs' complaint was untimely under both MCR 7.101(B)(1)(a) and MCR 7.103(B)(6).

Plaintiffs also argue that the trial court erred by failing to rule on the constitutionality of the RTFA. We note that plaintiffs have failed to meet their burden of proving the RTFA's invalidity. *Phillips v Mirac, Inc*, 470 Mich 415, 422; 685 NW2d 174 (2004); *TCG Detroit v Dearborn*, 261 Mich App 69, 77; 680 NW2d 24 (2004). Plaintiffs' argument merely recites various provisions of the state constitution without any explanation regarding how the statute violates the various provisions. And the decision of the Iowa Supreme Court on which plaintiffs rely has no binding force on our interpretation of the Michigan Constitution or Michigan statute.

Further, plaintiffs fail to offer any explanation why the Iowa decision is relevant or applicable. The core of plaintiffs' claim is that the statute is unfair or unjust, and subject to improper administration by defendant. However, such allegations are not sufficient to sustain a constitutional challenge. *Doe v Dep't of Social Services*, 439 Mich 650, 681; 487 NW2d 166 (1992).

Plaintiffs also argue that their proofs below showed "an apparent, engineered policy, of willful violation of State Law and provisions of the Michigan Constitution" by defendant and the office of the Attorney General. This issue was not raised below and is therefore not preserved for our review. *Peterman, supra* at 183. Moreover, plaintiffs again fail to cite any authority to support their contentions, thereby waiving the issue. *Wilson, supra* at 243; *Silver Creek Twp, supra* at 99.

We affirm.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Helene N. White