

STATE OF MICHIGAN
COURT OF APPEALS

SKYWORKS, INC.,

Plaintiff-Appellee,

v

SHELBY TOWNSHIP,

Defendant,

and'

CITY OF FRASER,

Defendant-Appellant.

UNPUBLISHED

April 28, 2009

No. 279671

Macomb Circuit Court

LC No. 2006-001969-NO

SKYWORKS, INC.,

Plaintiff-Appellee,

v

SHELBY TOWNSHIP,

Defendant-Appellant,

and

CITY OF FRASER,

Defendant.

No. 279865

Macomb Circuit Court

LC No. 2006-001969-NO

Before: Servitto, P.J., and Owens and Kelly, JJ.

PER CURIAM.

In these consolidated appeals, defendants Shelby Township (the "Township") and the City of Fraser (the "City") appeal as of right from an order declaring defendants' ordinances banning the sale of fireworks in temporary, outdoor establishments unconstitutional, and

conditionally ordering defendants to provide plaintiff with the necessary permits to operate temporary facilities for the sale of legal fireworks in Michigan. We affirm.

I. Facts

Plaintiff, a seller of consumer “Class C” fireworks as defined by MCL 750.243a(1)(c), has in past years sold its products seasonally in outdoor tents in both the City and the Township. The City and the Township subsequently amended their ordinances to ban the sale of “Class C” fireworks in temporary structures such as tents, and to provide that retail sales of such fireworks are permitted only in permanent structures with fire suppression systems. Plaintiff filed this action alleging that the ordinances were facially unconstitutional because they violated its due process and equal protection rights.

II. Standard of Review

This Court reviews de novo a trial court’s decision regarding the constitutionality of an ordinance. *Plymouth Twp v Hancock*, 236 Mich App 197, 199; 600 NW2d 380 (1999). However, considerable deference is given to the trial court’s factual findings, and we will not disturb those findings unless we would have reached a different result if we had been in the trial court’s position. *Jott, Inc v Clinton Twp*, 224 Mich App 513, 525-526; 569 NW2d 841 (1997).

III. Analysis

In *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173-174; 667 NW2d 93 (2003), this Court addressed the test to be used for evaluating equal protection and substantive due process claims for the type of ordinance at issue here:

The state and federal constitutions guarantee equal protection of the laws. US Const, Am XIV; Const 1963, art 1, § 2; *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999). When no suspect or somewhat suspect classification can be shown, the plaintiff has the burden of establishing that the statute is arbitrary and not rationally related to a legitimate governmental interest. *Crego v Coleman*, 463 Mich 248, 259; 615 NW2d 218 (2000). This test specifically applies to zoning ordinances. *Cryderman v Birmingham*, 171 Mich App 15, 26; 429 NW2d 625 (1988).

The state and federal constitutions also guarantee that no person will be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17; *Marlin v Detroit (After Remand)*, 205 Mich App 335, 339; 517 NW2d 305 (1994). Unless a fundamental right is involved, the statute need only be rationally related to a legitimate governmental interest. *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 549; 656 NW2d 215 (2002). The essence of a claim of violation of substantive due process is that the government may not deprive a person of liberty or property by an *arbitrary* exercise of power. *Id.*

The Supreme Court has specifically said that zoning ordinances must be reasonable to comply with due process. *Silva v Ada Twp*, 416 Mich 153, 157-

158; 330 NW2d 663 (1982). A zoning ordinance may be unreasonable either because it does not advance a reasonable governmental interest or because it does so unreasonably. *Hecht v Niles Twp*, 173 Mich App 453, 461; 434 NW2d 156 (1988); see also *Cryderman, supra*. [Emphasis in original.]

This test does not test “the wisdom, need, or appropriateness of the legislation” *Crego, supra* at 260. The ordinance will be constitutional if the municipality's judgment is supported by any set of facts, either known or which could reasonably be assumed, even if those facts are debatable. *Muskegon Area Rental Ass’n v City of Muskegon*, 465 Mich 456, 464; 636 NW2d 751 (2001). The challenging party must show that the ordinance is based solely on reasons unrelated to the pursuit of the municipality’s legitimate goals. *Id.*

There is no dispute that the regulation of fireworks in order to prevent fires and protect the public’s safety is a legitimate governmental purpose. *Detroit v Qualls*, 434 Mich 340, 365; 454 NW2d 374 (1990). The question here is whether defendants’ ordinances are rationally related to this purpose. The rationales offered by defendants for banning retail sales of consumer fireworks in temporary structures were based on their belief that permanent structures provided greater public safety, whereas temporary structures presented increased safety risks and hazards. Defendants did not suggest, however, that permanent structures were necessarily safer than temporary structures; rather, with proper safety precautions, they were safer. Defendants’ reasoning presupposed that temporary structures could not be made as safe as permanent structures. Defendants’ expert, the Township’s fire marshal, conceded that he was not an expert in fireworks safety and admitted that his belief that temporary structures were not as safe was only a subjective belief. Defendants had no empirical evidence to support their position.

Conversely, plaintiff presented the testimony of John Steinberg, an expert in fireworks safety and a participant in the drafting of the National Fire Prevention Association’s (NFPA) safety code regulations.¹ Regarding the retail sale of consumer fireworks in both permanent and temporary structures, Steinberg’s testimony established that neither structure was inherently safer if the NFPA’s safety rules were followed. He stated that his opinions were based on objective data. Steinberg explained that there were applicable safety precautions to address each of defendants’ proffered rationales for why a temporary structure was not believed to be as safe as a permanent structure. Given Steinberg’s credentials in the specific area of firework safety, the trial court found his testimony “extremely credible” and pertinent.

Steinberg testified that the safety of a structure, whether permanent or temporary, depended on the safety measures present within the structure. Because of the many variables involved, he opined that it was impossible to state that one type of structure posed a lower safety risk to the public. For instance, if a permanent structure did not have sufficient egresses to deal with its occupancy capacity, the safety risk to the public was much greater than in a temporary structure that complied with applicable NFPA standards. Moreover, Steinberg opined that

¹ The NFPA is a nonprofit, non-governmental agency. Steinberg testified that a majority of states had adopted the agency’s fireworks code.

because of the industry regulations on fireworks to prevent accidental ignition, the fire hazards associated with retail sales in temporary structures were the same regardless of the product sold.

Defendants assert that their ordinances merely expand on the minimum restrictions established by MCL 750.243d for wholesalers, dealers, and jobbers, one of which is that fireworks be sold out of a permanent structure to provide further protection of life and property. However, simply because this restriction is reasonable in one context does not make it so in another. MCL 750.243d involves persons who store large quantities of fireworks and have a lower level of contact with the general public. Conversely, as Steinberg explained, the safety concerns are different for retailers, who attract larger numbers of the public and deal with small quantities of fireworks. Therefore, defendants' reliance on MCL 750.243d to require permanent structure for retailers is misplaced.

In light of Steinberg's testimony, plaintiff established that permanent structures were not inherently safer venues for retail firework sales, and that defendants' concerns regarding greater safety risks associated with firework sales in temporary structures were unfounded. Rather, potential hazards associated with the sale of fireworks could be addressed in a temporary structure as equally as they could in a permanent one. Given these circumstances, plaintiff met its burden of showing that defendants' ordinances were not rationally related to their legitimate objective of regulating sales of consumer fireworks in order to prevent fires and protect the public's safety. Accordingly, the trial court did not err in ruling that the ordinances were unconstitutional.

The Township also argues that the trial court erred in granting plaintiff injunctive relief and requiring defendants to issue plaintiff the necessary permits to sell "Class C" fireworks in outdoor tents. A trial court's decision to grant injunctive relief is reviewed for an abuse of discretion. An abuse of discretion exists when the decision is outside the range of principled outcomes. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008).

Injunctive relief is an extraordinary remedy which issues only when justice requires, there is no adequate remedy at law, and there is a real and imminent danger of irreparable injury. *Id.* In deciding whether injunctive relief is appropriate, the trial court generally must balance the benefit to the plaintiff of an injunction against the inconvenience and damage to the defendant, and make a decision in accordance with justice and equity under all the circumstances of the case. *Kernen v Homestead Dev Co*, 232 Mich App 503, 514; 591 NW2d 369 (1998).

The Township argues that injunctive relief was inappropriate because plaintiff suffered no deprivation, given that it was not completely banned from selling "Class C" fireworks. However, the Township's argument ignores that plaintiff's entire retail sales business of consumer fireworks is conducted in outdoor tents. The injunctive relief allowed plaintiff to continue its seasonal business in the same type of structure it has used for many years. Because the Township's ordinance is unconstitutional, the equities weigh significantly in plaintiff's favor.

Therefore, the trial court did not abuse its discretion in granting plaintiff's request for injunctive relief.²

Affirmed.

/s/ Deborah A. Servitto

/s/ Donald S. Owens

² We note that the trial court addressed one of defendants' safety concerns regarding retail firework sales in outdoor tents by giving defendants discretion to condition the issuance of permits on the installation of fire suppression systems.