

STATE OF MICHIGAN
COURT OF APPEALS

SANILAC COUNTY PARKS COMMISSION,

Plaintiff/Counter Defendant-
Appellee,

v

LEXINGTON TOWNSHIP,

Defendant/Counter Plaintiff.,

and

JOHN GROUSTRA, CATHY GROUSTRA,
JOAN THOMPSON, and WILLIAM HICKSON,

Intervening Defendants/
Counter Plaintiffs-Appellants.

UNPUBLISHED

March 23, 2006

No. 258603

Sanilac Circuit Court

LC No. 01-027822-CZ

SANILAC COUNTY PARKS COMMISSION,

Plaintiff/Counter Defendant-
Appellee,

v

LEXINGTON TOWNSHIP,

Defendant/Counter Plaintiff-
Appellant,

and

JOHN GROUSTRA,

Intervening Defendant/
Counter Plaintiff-Appellee,

and

No. 258685

Sanilac Circuit Court

LC No. 01-027822-CZ

CATHY GROUSTRA, JOAN THOMPSON, and
WILLIAM HICKSON,

Intervening Defendants/
Counter Plaintiffs.

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

In these consolidated cases, defendant Lexington Township and the four individual intervening defendants appeal as of right from the circuit court's order following this Court's remand in an earlier appeal. We reverse and remand for further proceedings. These appeals are being decided without oral argument in accordance with MCR 7.214(E).

This litigation arose from a dispute over the permissible uses of Lexington Park. The facility had long operated as a day camp and playground, and apparently some overnight camping took place dating from 1992 until such activities were suspended for approximately three years beginning in 1995. Plaintiff developed plans for expanding camping at the park, and made some improvements in furtherance of those plans. Camping resumed in 1999, with the site now offering water, electrical, and sewage services. The Township objected to the expansion of camping at the site, citing its zoning ordinance, and the intervening defendants—nearby homeowners—objected to all overnight camping.

Plaintiff sued to enjoin defendant from enforcing its ordinance, alleging laches on the part of defendant and arguing that defendant should be estopped from enforcing its ordinance because plaintiff had relied on defendant's earlier non-enforcement. Defendant counterclaimed, arguing that neither laches nor estoppel was applicable and seeking an injunction to prohibit camping at the park. Intervening defendants joined the action, asserting that plaintiff's operation of a campground in a residential area was a nuisance per se. The trial court agreed with plaintiff that enforcement of the ordinance was barred by laches and equitable estoppel.

On appeal, this Court reversed this result and “remanded for entry of summary judgment for defendant.” *Sanilac Co Parks Comm'n v Lexington Twp*, unpublished opinion per curiam of the Court of Appeals, issued June 29, 2004 (Docket No. 244858), slip op at 2.

On remand, the trial court stated as follows:

[T]he Court of Appeals ordered that summary disposition is awarded to the Township and the Intervenors and so that means whatever they ask for in their pleadings they are awarded. . . .

. . . . The Township has this morning indicated that there [sic] not asking that the water lines and sewer lines and septic system all be eliminated, but they

are asking that the electrical hook-ups be eliminated and I guess the wiring to those electrical hook-ups. . . .

. . . I think it's [sic] maybe goes beyond what is necessary to actually remove physical improvements at this point. . . . So any electrical outlets to these sites . . . should be capped so that they can't be used for that purpose. I'm not gonna require that they be torn out of the ground and that the wiring all be torn out

[A]s of right now the Zoning Ordinance applies to this park and so it's appropriate to have an injunction against further development of the property in violation of that Zoning Ordinance.

The final order that followed included the following terms:

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff shall cease all overnight camping which supplies electrical service and/or a waterline to the individual sites in Lexington Park.

IT IS HEREBY ORDERED AND ADJUDGED that [plaintiff] will not be required to remove improvements constructed after 1994, but will cap and deny the use of water, sewer or electric services to any individual campsites within Lexington Park.

IT IS HEREBY ORDERED AND ADJUDGED that the Lexington Township Zoning Ordinance applies to the Lexington Park Campground and [defendant] is hereby granted an injunction against any further development of the property in violation of its Zoning Ordinance.

Defendants argue that to the extent that this order permits any overnight camping, or retention of disputed improvements, it impermissibly deviates from this Court's instructions. Plaintiff retorts that the order simply allows it to continue the preexisting nonconforming use of primitive camping which factual question this Court did not expressly rule on in the earlier appeal.

Under the law of the case doctrine, an appellate court ruling on a particular issue binds the appellate court and all lower tribunals with regard to that issue. The law of the case mandates that a court may not decide a legal question differently where the facts remain materially the same. The doctrine applies to questions specifically decided in an earlier decision and to questions necessarily determined to arrive at that decision. [*Webb v Smith*, 224 Mich App 203, 209; 568 NW2d 378 (1997) (citations omitted).]

"The applicability of a legal doctrine is a question of law," calling for review de novo. *James v Alberts*, 464 Mich 12, 14; 626 NW2d 158 (2001).

In the earlier appeal, this Court did not just decide certain issues, but decided the ultimate result—"entry of summary judgment for defendant." The opinion as a whole indicates that the use of the singular "defendant" includes the intervening defendants along with the Township.

The question, then, is, what, if anything, do defendants request on appeal that they asked for in their motions for summary disposition, but that the trial court did not provide on remand?

Defendant Lexington Township requests that this Court order that plaintiff “cease all overnight camping in the Lexington Park,” that “[a]ll campsite improvements . . . be removed from the Lexington Park,” and that “[n]o campsite improvements . . . be constructed in the absence of Township zoning approval.” The individual intervening defendants request simply that “the unlawful camping use at the Park cease.”

The Township’s motion for summary disposition requested “dismissal of Plaintiff’s Complaint and Judgment in favor of the Township of the Counterclaim” The counterclaim in turn generally requested orders “requiring removal of all improvements developed after 1994 for which the Parks Commission has no township land use permit,” and “[o]rders prohibiting further improvements without Township approval.” The particulars asserted within the countercomplaint emphasize the park’s earlier operations as “a non-commercial day camp and play ground, with no improved overnight camping and/or recreational vehicle facilities.”

Intervening defendants’ motion requested that “the Court enter judgment in their favor, and enter the Court’s injunctive order prohibiting camping at the Lexington Township Park.” Their trial brief asserted that “[t]he primitive camping, or tent camping for a fee, established in 1992 is . . . in violation of the Township’s zoning ordinance in effect in 1992,” complained that “[a] continuing zoning violation is a nuisance per se,” and urged that “[a]s violations of the zoning ordinance the camping activities at Lexington Park must be enjoined by the Court.” The brief further asserted that “no information discovered could substantiate the existence of a nonconforming use in this case,” and argued alternatively that “assuming the tent camping was somehow a nonconforming use when it began in 1992 it was abandoned when there was no camping in the park for three years in 1996, 1997, and 1998,” and urged that “all camping activities must be prohibited by Court order.”

Not at issue is that plaintiff may install no further campsite improvements in violation of the zoning authority, in light of the trial court’s enjoining of “any further development of the property in violation of its Zoning Ordinance.”

Concerning removal of certain improvements, as opposed to their being capped or otherwise withheld from use, the Township concedes that water and sewer lines need not be eliminated insofar as they support the traditional day camp facilities, but otherwise demands “removal of all the campground sites and accoutrements,” adding that this requires extraction, not mere capping. To the extent that the trial court’s order stops short of requiring plaintiff to remove all unpermitted improvements specifically intended to service campsites, it has failed to apply the law of the case. Granting the Township’s motion for summary disposition means requiring that all campsite improvements constructed from 1994 onward be removed, not merely rendered unavailable.

Concerning overnight camping, even without use of water or electricity, the Township did not expressly ask that this be disallowed, but chose to challenge instead the expansion of camping activities on the site. Intervening defendants, however, have consistently requested that all overnight camping be disallowed. To the extent that the trial court enjoined such activity only insofar as water or electrical services are provided to the campsites, the court failed to apply

the law of the case. Granting the intervenors summary disposition means disallowing all overnight camping.

For these reasons, we reverse the result below, and remand with instructions to order removal of all improvements to the campsites dating from 1994 and thereafter, and to enjoin all overnight camping on the site.

Reversed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Henry William Saad

/s/ Richard A. Bandstra