

STATE OF MICHIGAN
COURT OF APPEALS

FRANCES VALLELY,

Plaintiffs-Appellant,

v

BOIS BLANC TOWNSHIP, LOREN GIBBONS,
SHELBY NEWHOUSE and JOAN E.
SCHROKA,

Defendants-Appellees.

UNPUBLISHED

September 25, 2008

No. 278985

Mackinac Circuit Court

LC No. 07-006303-CZ

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Plaintiff appeals the trial court's denial of his motion for summary disposition and its order granting summary disposition to defendants. For the reasons set forth below, we affirm.

I. Facts and Procedural History

In 1976, the Bois Blanc Township Board resolved to establish a planning commission under the Township Planning Act, MCL 125.321 *et seq.*¹ Plaintiff, Frances Vallely, was appointed to the Bois Blanc Township Planning Commission by the township supervisor, with the township board's approval. At an unspecified time, the township board transferred to the planning commission certain zoning powers. This transfer is permitted by MCL 125.331 of the Township Planning Act, which states that the planning commission may be given any powers and duties of zoning boards as set forth under the former Township Rural Zoning Act (TRZA), 125.271 *et seq.* The TRZA was repealed by 2006 PA 110, which enacted the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq.*²

¹ The Township Planning Act was repealed effective September 1, 2008, pursuant to 2008 PA 33, § 85; MCL 125.3885. The Township Planning Act, along with the Municipal Planning Act and the County Planning Act, has been replaced by the Michigan Planning Enabling Act. MCL 125.3801 *et seq.*

² The MZEA had an effective date of July 1, 2006.

Plaintiff asserts that he was removed from the planning commission in a manner that violated his due process and constitutional rights, after he and two other planning commission members filed a lawsuit against the township and board to place a referendum on a rezoning issue on the November 2006 ballot. Plaintiff maintains that, under the MZEA, MCL 125.3301(9), in order to remove a member of a zoning commission, the MZEA requires the board to establish that the member committed misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Plaintiff complains that defendants did not follow the MZEA removal provision and, instead, removed him at the direction of the township supervisor, after a hearing and a vote by the township board. Defendants maintain that this is the correct procedure for removing a member of a planning commission under the Township Planning Act, MCL 125.324(2). The trial court agreed with defendants, denied plaintiff's motion for summary disposition, and granted summary disposition to defendants.

II. Analysis³

The parties disagree about whether the removal provisions of the Township Planning Act or the MZEA applied when plaintiff was removed from the Bois Blanc Township planning commission.⁴ Under the Township Planning Act, MCL 125.324(2), “members [of the planning commission] may be removed by the township supervisor, after a hearing, with the approval of the township board.” This is the statutory section the Bois Blanc Township Board applied when it removed plaintiff from the planning commission. Plaintiff argues that the MZEA should

³ This Court reviews the grant or denial of a motion for summary disposition de novo. *Allison v AEW Capital Management, LLP*, 481 Mich 419, 424; 751 NW2d 8 (2008). Under MCR 2.116(D)(2), “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.” This appeal also involves the interpretation of a statute. This Court also reviews questions of statutory interpretation de novo. *Manuel v Gill*, 481 Mich 637, 643; 753 NW2d 48 (2008). As this court explained in *Kimmelman v Heather Downs Management Ltd*, 753 NW2d 265, 267; 753 NW2d 265 (2008):

The goal of statutory interpretation is to determine and give effect to the intent of the Legislature, with the presumption that unambiguous language should be enforced as written. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). If the language is unambiguous, “the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case.” *Veenstra v Washtenaw Country Club*, 466 Mich 155, 160; 645 NW2d 643 (2002), citing *Turner v Auto Club Ins Ass’n*, 448 Mich 22; 528 NW2d 681 (1995).

⁴ As noted in footnote 1, the Township Planning Act was replaced by the Michigan Planning Enabling Act (MPEA) on September 1, 2008. Under the MPEA, a township board member “may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing.” MCL 125.3815. Thus, the Legislature redrafted the statute to resemble the MZEA’s requirements for the removal of zoning commission members.

apply. Under the MZEA, MCL 125.3301(9), the township board “shall provide for the removal of a member of a zoning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing.” Though the township supervisor, Loren Gibbons, cited examples of alleged nonfeasance and malfeasance by plaintiff as reasons for his removal, defendants have apparently abandoned any argument that malfeasance or nonfeasance in office justified plaintiff’s removal.

Plaintiff argues that the removal provisions of the MZEA apply because the planning commission became a zoning commission under the plain language of the MZEA. It is undisputed that plaintiff was appointed to the planning commission under the Township Planning Act. However, it is also undisputed that, on an unspecified date, the township board bestowed on the planning commission some zoning powers that would allow the planning commission to, among other things, review rezoning requests and make recommendations to the township board regarding whether to approve or deny such requests.

The Township Planning Act authorizes townships to give a planning commission any and all powers and duties of zoning boards contemplated in the TRZA, which was repealed and replaced by the MZEA in 2006. Specifically, the Township Planning Act provides:

The township board, by resolution, may transfer to the planning commission all powers and duties provided by the township rural zoning act, Act No. 184 of the Public Acts of 1943, as amended, being sections 125.271 to 125.301 of the Michigan Compiled Laws, for zoning boards created under that act. If the existing zoning board is nearing the completion of its zoning plan, the township board shall postpone the transfer of the zoning board’s powers and duties until the completion of the zoning plan, but the postponement shall not exceed 1 year. In a county in which the county planning commission is established, the township planning commission shall file with the county planning commission a copy of the township zoning ordinances and any amendments to the ordinances. [MCL 125.331.]

The record does not reveal what specific zoning powers were transferred to the planning commission, but plaintiff maintains that the transfer triggered the application of the provisions of the MZEA. At the time of the events in this case, the MZEA, MCL 125.3301 read, in pertinent part, as follows:

(1) Each local unit of government in which the legislative body exercises authority under this act shall create a zoning commission. A zoning board in existence on the effective date of this act may continue as a zoning commission subject to a transfer of power under subsection (2) or until 5 years from the effective date of this act, whichever is earlier. A planning commission exercising the authority of a zoning board before the effective date of this act may continue to exercise that authority subject to this act.

(2) Except as otherwise provided under this subsection, if the legislative body has transferred the powers of the zoning commission to the planning commission as provided by law, the zoning commission shall be the planning commission of the local unit of government. The legislative body shall have 5

years from the effective date of this act to transfer the powers of the zoning commission to the planning commission. Except as provided under this subsection, 5 years after the effective date of this act, the zoning commission shall not have any authority under this act or an ordinance adopted under this act.

MCL 125.3301(1) states that a township must create a zoning commission. It further states that, if the township has an existing zoning board, it may continue to exercise zoning powers as a zoning commission until a zoning commission has been established. The section also provides that, if a planning commission had been exercising the powers and duties of a zoning board before the MZEA became effective, the planning commission may continue to do so. MCL 125.3301(2) states that, if a township board has transferred zoning powers to its planning commission, “the zoning commission shall be the planning commission of the [township].”⁵ It is this language on which plaintiff relies to argue that the Legislature intended

⁵ Pursuant to 2008 PA 12, the Legislature reworded MCL 125.3301. Pertinent portions of the current statute provide as follows:

(1) Each local unit of government in which the legislative body exercises authority under this act shall create a zoning commission unless 1 of the following applies:

(a) A county zoning commission created under former 1943 PA 183, a township zoning board created under former 1943 PA 184, or a city or village zoning commission created under former 1921 PA 207 was in existence in the local unit of government as of June 30, 2006. Unless abolished by the legislative body, that existing board or commission shall continue as and exercise the powers and perform the duties of a zoning commission under this act, subject to a transfer of power under subsection (2).

(b) A planning commission was, as of June 30, 2006, in existence in the local unit of government and pursuant to the applicable planning enabling act exercising the powers and performing the duties of a county zoning commission created under former 1943 PA 185, of a township zoning board created under former 1943 PA 184, or of a city or village zoning commission created under former 1921 PA 207. Unless abolished by the legislative body, that existing planning commission shall continue and exercise the powers and perform the duties of a zoning commission under this act.

(c) The local unit of government has created a planning commission on or after July 1, 2006 and transferred the powers and duties of a zoning commission to the planning commission pursuant to the applicable planning enabling act.

(2) Except as otherwise provided under this subsection, if the powers and duties of the zoning commission have been transferred to the planning commission as provided by law, the planning commission shall function as the zoning commission of the local unit of government. By July 1, 2011, the legislative body shall transfer the powers and duties of the zoning commission to the planning commission. Except as provided under this subsection, beginning

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for a planning commission exercising zoning powers to become a “zoning commission,” subject to all rules and requirements of the MZEA. To that end, plaintiff maintains that subsection 9 applies, MCL 125.3301(9), which provides that a showing of misfeasance, malfeasance or nonfeasance is required for removal.

We disagree with plaintiff’s reading of the statute. While the Legislature contemplated that a planning commission shall perform the functions of a zoning commission for purposes of performing zoning duties and responsibilities, the statute in no way *transforms* a planning commission into a zoning commission. Rather, the statute permits a township to transfer zoning responsibilities to an existing planning commission. The statute does not suggest that, for example, a planning commission shall be restructured or renamed “zoning commission,” that a planning commission shall discontinue its former functions and only perform functions set forth in the MZEA, or that statutes pertaining to the makeup or duties of a planning commission no longer control. Accordingly, subsection 9, which specifically applies to members of a “zoning commission,” does not take precedence over the Township Planning Act, under which the Bois Blanc Township planning commission was created.

As noted, the township board created the planning commission in 1976, pursuant to the Township Planning Act, MCL 125.321 *et seq.* Under the act, the planning commission has various duties and responsibilities other than the zoning duties that were transferred to it by the township board. Specifically, a planning commission has the “power to make, adopt, extend, add to or otherwise amend, and to carry out plans for the unincorporated portions of the township” MCL 125.323(1). In essence, a planning commission is responsible for the comprehensive development plan for the township, with continuing duties to extend, add, revise and amend the plan. See, e.g., MCL 125.331. Further, the Township Planning Act has its own provisions for the qualifications, appointment, terms and compensation for members that remained in effect after passage of the MZEA. See MCL 125.324. The act also provides its own comprehensive scheme covering planning commission rules, meetings and reports. See MCL 125.325. Other than the removal procedure, plaintiff does not contend that the statutory sections for planning commissions and their members have been replaced by those of the MZEA that apply to “zoning commissions” or their members. Indeed, there is no indication in the MZEA that it was intended to replace any laws relating to planning commissions; the MZEA simply states that planning commissions may decide zoning matters in the same manner a zoning commission would.

We further observe that MCL 125.333 of the Township Planning Act states that, “[i]nsofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling” This subsection lends further support to defendants’ argument that, even if the MZEA could be read to require a planning commission to abide by its removal rules under MCL 125.3301(9), its inconsistency with the removal rule in the

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July 1, 2011, a zoning commission's powers or duties under this act or an ordinance adopted under this act shall only be exercised or performed by a planning commission.

Township Planning Act, MCL 125.324(2), would compel the conclusion that the Township Planning Act removal provision is controlling.

For the above reasons, the MZEA did not change the manner in which a planning commission member may be removed from the commission under the Township Planning Act. Here, plaintiff was removed pursuant to the procedure set forth in MCL 125.324(2), and defendants did not have to show that plaintiff committed an act of misfeasance, malfeasance or nonfeasance in office. Because plaintiff was properly removed by a vote of the township board, plaintiff's due process and "fair and just treatment" claims are without merit and they are not entitled to reappointment to the planning commission. The trial court correctly granted summary disposition to defendants.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Jane M. Beckering