STATE OF MICHIGAN

COURT OF APPEALS

ROSEANNA LARRIN and LINDA REIN, Plaintiffs-Appellants,	UNPUBLISHED November 24, 2009
v INTERIOR TOWNSHIP BOARD, INTERIOR TOWNSHIP PLANNING COMMISSION, INTERIOR TOWNSHIP ZONING ADMINISTRATOR and INTERIOR TOWNSHIP CLERK, Defendants-Appellees, and PROPERTY RIGHTS ORGANIZATION FOR ECONOMIC DEVELOPMENT, UPPER PENINSULA POWER COMPANY and NATERRA LAND, INC., Intervening Defendants-Appellees.	No. 287425 Ontonagon Circuit Court LC No. 07-000025-CZ

Before: Hoekstra, P.J., and Bandstra and Servitto, JJ.

PER CURIAM.

Plaintiffs Rosanna Larrin and Linda Rein appeal as of right the trial court's order granting summary disposition to defendants and intervening defendants on counts I-VIII of plaintiffs' second amended complaint. We affirm in part, reverse in part, and remand for further proceedings.

I. Basic Facts and Procedural History

On March 14, 2006, defendant Interior Township Board (the township board) added Article 5A to the township's zoning ordinance. Article 5A created the lake-residential zoning

classification for the purpose of allowing land surrounding Bond Lake (or Bond Falls Flowage) to be used for residential use. It also permitted seasonal docks to be built on Bond Lake. On August 31, 2006, the township board adopted Amendment 083106, which rezoned property near Bond Lake from a forestry-recreation district to a lake-residential district.[1]

On September 13, 2006, Larrin, a resident of Interior Township and a registered elector, provided a notice of intent that she intended to file a petition regarding Amendment 083106. Over the next three weeks, Rein, with help from Nancy Warren, circulated the petition and gathered the requisite number of signatures. On October 5, 2006, Rein hand delivered the petition to defendant Interior Township Clerk Mikki DeWitt. A copy of the petition was also sent by certified mail from Warren to DeWitt. The purpose of the petition, as stated on the petition, was

> the repeal of the Interior Township Zoning Ordinance Amendment No 083106, changing the property surrounding Bond Falls Flowage from a forestry and recreation district to a lake-residential district (minimum 1.03 acres). We believe private docks on the publicly managed project lands should be prohibited by township ordinance since none of the lands border on Bond Lake.

In December 2006, DeWitt declared the petition inadequate because (1) the person who filed the petition was not the person who filed the notice of intent and (2) the petition addressed both Amendment 083106 and Article 5A.

In their nine-count complaint, plaintiffs asserted various violations by defendants of the Open Meetings Act (OMA), MCL 15.261 *et seq.*, the Michigan Zoning Enabling Act (ZEA), MCL 125.3101 *et seq.*, and Michigan election law. Plaintiffs, in their prayer for relief, requested, in part, that the "[o]rdinance provisions" that established the lake-residential zoning classification be declared invalid.

Defendants filed a motion to dismiss counts I-V and VII of the complaint. The trial court ordered that the motion was granted unless plaintiffs filed an amended complaint within 21 days. Regarding the OMA counts of the complaint, counts I-III and VII, the trial court further ordered:

> [F]or reasons stated on the record, that in the event plaintiffs file an amended complaint pertaining to counts 1, 2, 3, and 7, the relief prayed for in said counts shall not include invalidation of either the subject ordinance, the subject rezoning, or the actions taken by defendant Interior Township Board on 3/14/06 and 8/31/06 and shall not include a request for costs and attorney fees under the Open Meetings Act.

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[1] The land that was rezoned, which is also referred to as the "non-project lands," did not border Bond Lake. Between the lake and the rezoned property were the "project lands."

Plaintiffs filed an amended complaint (the second amended complaint), in which they asserted various violations of the OMA, the ZEA, and the Township Zoning Act (TZA), MCL 125.271 *et seq*.[2]

Defendants moved for summary disposition, under MCR 2.116(C)(8) and (10), on all counts of the second amended complaint. The trial court granted the motion. Regarding count VIII, which alleged that DeWitt violated the ZEA when she declared the petition to be inadequate, the trial court held that DeWitt had the authority to determine the validity of the petition language and that DeWitt correctly found that the petition addressed both Article 5A and Amendment 083106. Regarding the other counts, the trial court adopted the reasoning used in defendants' brief.

II. Standard of Review

The trial court did not articulate under which subrule of MCR 2.116(C) it granted the motion for summary disposition. In granting summary disposition to defendants on count VIII, the trial court relied on matters outside the pleadings. Thus, we review the summary disposition order on count VIII under the standards applicable to MCR 2.116(C)(10). See *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 457; 750 NW2d 615 (2008). Regarding counts I-VII, the law contained in defendants' brief concerned why summary disposition was proper under MCR 2.116(C)(10). Accordingly, we also review the summary disposition order on counts I-VII under the standards applicable to MCR 2.116(C)(10).[3]

We review de novo a trial court's decision on a motion for summary disposition. *Silberstein*, *supra* at 457. Summary disposition is proper under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Amerisure Ins Co v Plumb*, 282 Mich App 417, 423-424; 766 NW2d 878 (2009). We must view the submitted evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Id.* at 423. "A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue on which reasonable minds could differ." *Id.* at 424 (quotation omitted).

III. Invalidation of Article 5A and Amendment 083106

Plaintiffs argue that the trial court erred in granting summary disposition to defendants on counts I-VII because there are genuine issues of material fact regarding whether defendants, by violating the OMA and zoning laws, impaired the rights of the public. At oral arguments, counsel for plaintiffs acknowledged that the only relief plaintiffs were seeking on counts I-VII was the invalidation of Article 5A and Amendment 083106, although this specific relief had not been requested in the second amended complaint.

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[2] The TZA was repealed by the ZEA, which became effective on July 1, 2006. MCL 125.3702(1); 2006 PA 110.

[3] Plaintiffs do not challenge the grant of summary disposition on count IX.

A careful examination of the proceedings in the trial court reveals that, in ruling on defendants' motion to dismiss, the trial court allowed plaintiffs to file an amended complaint, but specifically ordered that any relief requested for the alleged OMA violations shall not include invalidation of Article 5A or Amendment 083106. At oral arguments, counsel for plaintiffs conceded that plaintiffs were not appealing any part of the trial court's order on defendants' motion to dismiss. Indeed, plaintiffs have not presented any argument that the trial court, in allowing them to file an amended complaint, erred in prohibiting them from seeking the invalidation of either Article 5A or Amendment 083106 for defendants' alleged OMA violations. In addition, we are unable to review the propriety of the trial court's order. The trial court's order regarding counts I-III and VII was given for "the reasons stated on the record," but plaintiffs have not filed a transcript of the January 9, 2008 hearing with this Court. Accordingly, plaintiffs have abandoned the issue whether the trial court erred in prohibiting them from seeking the invalidation of Article 5A or Amendment 083106 for the alleged OMA violations. See *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626; 750 NW2d 228 (2008) (an appellant must support argument by citation to legal authority); *PT Today, Inc v Comm'r of the Office of Financial and Ins Services*, 270 Mich App 110, 151-152; 715 NW2d 318 (2006) (this Court will not consider any issue for which the appellant fails to produce the transcript). Thus, even if it was established that defendants violated the OMA with regard to meetings held on November 3, 2005, November 17, 2005, December 10, 2005, and June 7, 2006, plaintiffs are unable to obtain the desired relief of invalidation of Article 5A and Amendment 083106 based on the alleged OMA violations.[4]

The question remains, however, whether genuine issues of material fact exist regarding whether defendants violated the TZA and the ZEA, as alleged in counts IV, V, and VI.

In counts IV and V, plaintiffs alleged that the minutes of the public meetings held by defendant Interior Township Planning Commission (the planning commission) on January 9, 2006, and June 1, 2006, violated the TZA, specifically MCL 125.281, because the minutes "d[id] not reflect the public comments made during the meeting[s]." Defendants have conceded that the minutes of the two public hearings did not contain summaries of the public comments received at the hearings, but claim this was not a violation of MCL 125.281.

MCL 125.281 provided that "[t]he township zoning board[5] shall transmit a summary of comments received at the public hearing and its proposed zoning plan and text to the township board." If statutory language is clear and unambiguous, the Legislature is presumed to have intended its plain meaning, and the statute must be applied as written. *Burise v City of Pontiac*, 282 Mich App 646, 650-651; 766 NW2d 311 (2009). "[A] court may read nothing into an

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[4] We note that none of the four meetings that plaintiffs alleged violated the OMA were the public hearings held by the planning commission or the township board on whether to adopt Article 5A or Amendment 083106. Thus, plaintiffs cannot establish that the alleged OMA violations impaired the rights of the public, MCL 15.270(2). See *Morrison v East Lansing*, 255 Mich App 505, 521; 660 NW2d 395 (2003).

[5] The planning commission is the township zoning board.

unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). The unambiguous language of MCL 125.281 required the planning commission to transmit a summary of the public comments received at the January 9, 2006 and June 1, 2006 public hearings to the township board. However, nothing in the plain language of the statute required the planning commission to include a summary of the public comments in the minutes of the public hearings. Accordingly, there was no violation of MCL 125.281.[6]

In count VI, plaintiffs alleged that the township board did not provide proper notice of its August 31, 2006 public meeting. Plaintiffs claimed that neither of the notices published in the Ontonagon Herald on August 9, 2006, or August 15, 2006, met the notice requirements set forth in the ZEA.

Notice for the August 31, 2006 public hearing was to be in the manner required by MCL 125.3103. At that time, the statute provided in pertinent part:

> (3) The notice shall be given not less than 15 days before the date the application will be considered for approval. . . . The notice shall do all of the following:
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> (a) Describe the nature of the request.
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> (b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
>
> (c) State when and where the request will be considered.
>
> (d) Indicate when and where written comments will be received concerning the request. [MCL 125.3103.][7]

Defendants admit that the notice published on August 9, 2006, did not meet the requirements of MCL 125.3103, but claim that the longer, more detailed notice published on August 16, 2006, met the requirements. We agree. The notice described the nature of the request: to amend the zoning ordinance to rezone the property adjacent to Bond Falls Flowage to a lakeshore-residential district.[8] It also stated that the township board would receive public

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[6] Plaintiffs have also argued that the planning commission never transmitted summaries of the public comments to the township board. However, plaintiffs have not cited to any documentary evidence to support the assertion.

[7] MCL 125.3103 was amended in 2008. 2008 PA 12.

[8] The notice mistakenly referred to the zoning classification created by Article 5A as "lakeshore-residential" rather then "lake-residential." We do not view this typographical error as one that

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comments on the rezoning request at the hearing. The notice described the property subject to the rezoning request; included in the notice was a legal description of the property. The notice stated when and where the request would be considered. The township board would be considering the request at 7:00 p.m. on Thursday, August 31, at the Interior Township Hall. Finally, the notice indicated when and where written comments would be received, explaining that written comments could be sent to a P.O. box until August 31, 2006, and would also be received at the hearing. Accordingly, plaintiffs' claim that defendants failed to provide proper notice of the August 31, 2006 public hearing is without merit.[9]

Because plaintiffs have failed to establish that a genuine issue of material fact exists regarding whether defendants violated the TZA and the ZEA, as alleged in counts IV, V, and VI, plaintiffs cannot succeed in their request that Article 5A and Amendment 083106 be invalidated. We therefore affirm the trial court's order granting summary disposition to defendants on counts I-VII.

IV. The Petition Language

Plaintiffs argue that the trial court erred in determining that DeWitt had the authority to reject the petition based on her opinion that the language of the petition was inadequate. According to plaintiffs, DeWitt's duties were limited to ministerial tasks, such as determining whether the petition was timely filed, whether the required number of registered voters signed the petition, and whether the petition contained basic information concerning the nature of the zoning action. Plaintiffs also argue that DeWitt and the trial court erred in holding that the petition addressed both Article 5A and Amendment 083106.

The relevant statute is MCL 125.3402, which provides:

> (1) Within 7 days after publication of a zoning ordinance under [MCL 125.3401], a registered elector residing in the zoning jurisdiction of a county or township may file with the clerk of the legislative body a notice of intent to file a petition under this section.
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> (2) If a notice of intent is filed under subsection (1), the petitioner shall have 30 days following the publication of the zoning ordinance to file a petition signed by a number of registered electors residing in the zoning jurisdiction not less than 15% of the total vote cast within the zoning jurisdiction for all candidates for governor at the last preceding general election at which a governor was elected, with the clerk of the legislative body requesting the submission of a zoning ordinance or part of a zoning ordinance to the electors residing in the zoning jurisdiction for their approval.

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renders the notice deficient.

[9] Plaintiffs do not claim that the longer, more detailed notice was not published in the Ontonagon Herald on August 16, 2006.

(3) Upon the filing of a notice of intent under subsection (1), the zoning ordinance or part of the zoning ordinance adopted by the legislative body shall not take effect until 1 of the following occurs:

(a) The expiration of 30 days after publication of the ordinance, if a petition is not filed within that time.

(b) If a petition is filed within 30 days after publication of the ordinance, the clerk of the legislative body determines that the petition is inadequate.

(c) If a petition is filed within 30 days after publication of the ordinance, the clerk of the legislative body determines that the petition is adequate and the ordinance or part of the ordinance is approved by a majority of the registered electors residing in the zoning jurisdiction voting on the petition at the next regular election or at any special election called for that purpose. The legislative body shall provide the manner of submitting the zoning ordinance or part of the zoning ordinance to the electors for their approval or rejection and determining the result of the election.

(4) A petition and an election under this section are subject to the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

Plaintiffs concede that a petition cannot seek the repeal of two amendments to a zoning ordinance. See *Reva v Portage Twp*, 356 Mich 381, 383-387; 96 NW2d 778 (1959) (holding that a petition that sought a referendum on one amendment and part of a second amendment to the township's zoning ordinance was invalid). Based on *Reva*, a township clerk, who is the only official or body to be given authority under MCL 125.3402 to declare a petition invalid, is compelled to declare a petition inadequate if the petition addresses two zoning amendments.[10] Accordingly, the trial court did not err in holding that DeWitt had the authority to reject the petition if the petition addressed both Article 5A and Amendment 083106.

The petition addressed Amendment 083106. This is clear from the first sentence of the petition: plaintiffs petitioned for "the repeal of the Interior Township Zoning Ordinance Amendment No 083106." The second sentence of the petition referenced private docks on the project lands, which were permitted by Article 5A. But, because the sentence began with the prefatory phrase "[w]e believe," it cannot be read to have sought the repeal of any part of Article

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[10] We note that plaintiffs fail to explain which official or public body has the authority to declare a petition invalid on the basis that the petition addresses more than one zoning amendment if that authority does not reside with the township clerk. Plaintiffs claim that a township board has the authority to cure misleading, confusing, or defective language once a petition has been declared adequate by a township clerk. However, a petition is invalid if it addresses more than one zoning ordinance, *Reva*, *supra*, and plaintiffs do not explain how a petition that is invalid because it addresses more than one zoning ordinance can become a valid petition by a subsequent rewriting of the petition's purpose.

5A. Rather, the apparent reason for the sentence was to articulate the basis for why plaintiffs sought the repeal of Amendment 083106; they wanted to repeal Amendment 083106 because they did not want seasonal docks on Bond Lake.[11] The second sentence is a statement of plaintiffs' belief for why Amendment 083106 should be repealed; it is not a statement that Article 5A would be repealed. Accordingly, DeWitt erred in declaring the petition inadequate on the basis that the petition sought to repeal both Article 5A and Amendment 083106, and the trial court erred in affirming DeWitt's declaration of the petition as inadequate. We therefore reverse the trial court's order granting summary disposition to defendants on count VIII of plaintiffs' second amended complaint.[12]

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Deborah A. Servitto

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[11] Whether plaintiffs are correct that a repeal of Amendment 083106 would prohibit seasonal docks on Bond Lake is a question that is not before us and on which we express no opinion.

[12] On appeal, defendants do not properly advance the alternative argument that DeWitt properly declared the petition inadequate because Rein, rather than Larrin, filed the petition with DeWitt. Even if the argument was properly advanced, we would reject it. Larrin herself did not file the petition with, or mail a copy of the petition to, DeWitt; those acts were done by Rein and Warren. However, because Rein and Warren acted at the behest of Larrin, the statutory requirement that "the petitioner shall . . . file" the petition was met.