

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Appeal from The Michigan Court Of Appeals
Hon. Elizabeth L. Gleicher, Presiding Judge

SUSAN REAUME
Plaintiff-Appellant

Supreme Court Case No: 159874

Court of Appeals Case No: 341654

v.

TOWNSHIP OF SPRING LAKE,
Defendant-Appellee.

Ottawa County Circuit Court
No.: 17-004964-AA

**BRIEF ON APPEAL – AMICUS CURIAE
OF THE REAL PROPERTY SECTION
STATE BAR OF MICHIGAN**

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STATEMENT OF JURISDICTION

This Court entered an order dated November 27, 2019 to consider the application for leave to appeal by Plaintiff-Appellant and it has jurisdiction under MCL 600.215 and MCR 7.303(B)(2) to grant leave to appeal or take other action on the application.

STATEMENT OF QUESTIONS ADDRESSED

I. Did the Appellant meet the requirements for the Appellee to be estopped from enforcing its ordinances relating to short term residential rentals?

Court of Appeals Answered: No.

Appellant Answers: Yes.

Appellee Answers: No.

Amicus Curiae Answer: No.

II. Was the Appellant's use of her property as a short term rental barred under the Appellee's prior ordinances?

Court of Appeals Answered: Yes.

Appellant Answers: No.

Appellee Answers: Yes.

Amicus Curiae Answer: Yes.

I. INTRODUCTION/STATEMENT OF INTEREST

This Court's November 27, 2019 Order invited the Real Property Law Section of the State Bar of Michigan ("RPLS") to file an amicus curiae brief. RPLS is a voluntary membership society of the State Bar of Michigan, and generally comprises attorneys who practice and are interested in real property law. Currently, there are 3,328 members of the section. The mission of RPLS is to provide education and information on real property law issues as well as advocacy in the Legislature and in precedential cases involving important legal and policy considerations in the area of real property law.

RPLS authorized preparation of this amicus curiae brief in accordance with its bylaws at a meeting of the RPLS Council on December 16, 2019. The State Bar of Michigan has no position in this matter; the positions expressed herein are those of RPLS only.

Appellant Susan Reaume ("Appellant") seeks to reverse the published decision of the Court of Appeals dated May 21, 2019 (the "COA Opinion"). The Court of Appeals addressed two issues: (1) whether the Township of Spring Lake ("Township") should be equitably estopped from enforcing its ordinance on grounds that Appellant reasonably relied to her prejudice on representations made by Township employees that Appellant's short-term rental use was lawful; and (2) whether Appellant's use of the property is a lawful non-conforming use on the grounds that, prior to the enactment of Township ordinances that expressly prohibited short-term rentals without a license ("Ordinance Nos. 255 and 257"), such use was permitted under prior Township ordinances (the "Prior Ordinances").

In a unanimous decision, the Court of Appeals rejected Appellant's equitable estoppel claim, holding that there was "no basis for estopping, formally or substantively, the Township from enforcing its zoning or regulatory ordinance to preclude plaintiff from using the property

for short-term rentals.” The court also rejected Appellant’s claim that her short-term rental use was grandfathered from application of Ordinance Nos. 255 and 257, concluding that the Prior Ordinances also forbade short-term rental uses.

The Court of Appeals correctly decided this case. The estoppel issue was properly decided in accordance with long-standing Michigan precedent. The issue may also be moot—Appellant denies making an estoppel argument in her Supplemental Brief,¹ so this issue is not even properly before this Court. Further, the Court of Appeals’ conclusion that Appellant’s use did not comply with the Prior Ordinances based on the language of the Prior Ordinances “[r]ead as a whole” was reasonably decided.

Most importantly, though, this case turns solely on narrow matters of statutory construction specific to the Township’s Prior Ordinances. It will not have any bearing on interpretation of other zoning ordinances, because each ordinance is unique and is dependent on the precise language of the ordinance. Thus, the COA Opinion offers no broad principle of law that could be applied elsewhere. Therefore, RPLS urges this Court to deny Appellant’s application for leave to appeal.

If the application for leave to appeal is granted, RPLS urges this Court to: (a) affirm the Court of Appeals’ rejection of the equitable estoppel argument (to the extent such argument has not already been abandoned by the Appellant); and (b) affirm and narrowly construe the COA Opinion to make clear that, while correctly decided, the case involves narrow issues of statutory construction specific to the Township’s ordinances and should not be relied upon more broadly.

¹ See, Appellant Br on Appeal 4-11.

II. STATEMENT OF MATERIAL FACTS

RPLS relies upon the Statement of Facts presented in Appellee's Brief, which can be summarized as follows.

Appellant purchased her home in 2003 and occupied it as her full-time residence until 2014. The home is in the Township's R-1 District. In 2015, she engaged a property management company to rent the home for short-term rentals. The property manager contacted by telephone a representative of the Township who, it is alleged, said that the Township had no restrictions on short-term rentals. The property was used for short-term rentals in 2015 and 2016.

Appellant initially listed the property as having separate units available for rent. In February, 2016, Township Zoning Administrator wrote a letter to Appellant stating that she could not use the property as a multifamily building. In response, Appellant amended the listing by offering the entire home for rent as a single unit. Following this amendment, Appellant also contacted the Township's Zoning Administrator who indicated that Appellant's revised listing did not improperly hold out the property as a multi-family dwelling in an R-1 zone.

On July 22, 2016, the Township Supervisor offered some advice to Appellant's neighbors about actions they could take after the Township received a complaint regarding Appellant's rental use. In December, 2016, the Township adopted Ordinance 255 prohibiting short-term rentals in areas zoned R-1. This new ordinance allowed long-term rentals of more than 28 days, and provided for registration and licensing to govern short-term rentals. Ordinance 257 was also adopted, permitting short-term rentals outside the R-1 zoning classification. Appellant thereupon applied for a short-term rental license, which was denied. The zoning board of appeals affirmed that decision, as did the circuit court and the Court of Appeals.

III. ARGUMENT

A. Standard of Review

The grounds for granting an application for leave to appeal are set forth in MCR 7.305(B).² This Court reviews *de novo* constitutional questions concerning the proper construction of an ordinance and rulings on motions for summary disposition. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003) ([a]n appellate court reviews *de novo* matters of statutory construction, including the interpretation of ordinances).

Rules governing the construction of statutes apply equally to the interpretation of municipal ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). Assuming the Legislature acted within its constitutional authority, the purpose of statutory construction is to discern and give effect to the intent of the Legislature. *Bush v Shabahang*, 484 Mich 156, 166; 772 NW2d 272 (2009).

² “The Application must show that

- (1) the issue involves a substantial question about the validity of a legislative act;
- (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer’s official capacity;
- (3) the issue involves a principle of major significance to the state’s jurisprudence;
- (4) in an appeal before a decision of the Court of Appeals,
 - (a) delay in final adjudication is likely to cause substantial harm, or
 - (b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branches of state government is invalid;
- (5) in an appeal of a decision of the Court of Appeals,
 - (a) the decision is clearly erroneous and will cause material injustice, or
 - (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or
- (6) in an appeal from the Attorney Discipline Board, the decision is clearly erroneous and will cause material injustice.”

B. The Court of Appeals Properly Decided this Case.

1. The COA Opinion correctly found that the Township should not be estopped from enforcing its ordinance.

To the extent the issue has not already been abandoned by Appellant, the COA Opinion's ruling on the equitable estoppel issue is consistent with longstanding Michigan precedent that a municipality is not bound by the acts of an employee unless the employee had authority to act. *Blackman Twp v. Koller*, 357 Mich 186, 189; 98 NW2d 538 (1959) (“[a] municipality cannot be estopped from enforcing a zoning ordinance because of the unauthorized action of its agents and administrative employees in granting permissive authority contrary to the terms of the ordinance”); *City of Hillsdale v. Hillsdale Iron & Metal Co.*, 358 Mich 377, 383–84; 100 NW2d 467 (1960) (“[t]he city cannot be estopped to enforce its valid ordinance by acts of its officers in violation thereof”); *Superior Ambulance Serv v City of Lincoln Park*, 19 Mich App 655, 660–61; 173 NW2d 236 (“[p]ersons dealing with a municipal corporation through its officers must at their peril take notice of the authority of the particular officer to bind the corporation, and if his act is beyond the limits of his authority, the municipality is not bound”).

2. Short term rental use was barred by the Township's Prior Ordinances.

The only other issue is whether Appellant's use was consistent with the Prior Ordinances. The Court of Appeals correctly held that Appellant's use of the property for short-term rental was, at all relevant times, a prohibited use within the Township's R-1 zone, based on the language and construction of the Prior Ordinances. Section 205 of the Prior Ordinances defines a “dwelling” as “[a]ny Building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, by one (1) or more Families, but not including Motels or tourist rooms.” Section 207 of the Prior Ordinances defines the term “family” as:

“A single individual or individuals, domiciled together whose relationship is of a continuing, non-transient, domestic character and who are cooking and living together as a single, nonprofit housekeeping unit, but not including any society, club, fraternity, sorority, association, lodge, coterie, organization, or group of students, or other individuals whose relationship is of a transitory or seasonal nature, or for anticipated limited duration of school terms, or other similar determinable period of time.”

R-1 zones permit “Dwelling, Single-Family” use, which means “a Building designed for use and occupancy by one (1) Family only.” R-1 zones do not permit “Dwelling, Two-Family” or “Dwelling, Multiple-Family” uses. In contrast, R-4 zones permit Dwelling, Two-Family” or “Dwelling, Multiple-Family” uses.

As the Court of Appeals noted, the Prior Ordinances’ definition of the term “Dwelling, Single-Family” emphasizes occupancy by one “family” only, and the term “family” expressly excludes transitory or seasonal or otherwise temporary relationships. Additionally, the COA Opinion compared the descriptions of the R-1 through R-4 zones and found that temporary occupancy might be permitted in R-4 zones, but not in R-1 through R-3 zones.

RPLS agrees with the Court of Appeals that “[r]ead as a whole, the definition of ‘Dwelling, Single-Family’ unambiguously excludes transient or temporary rental occupation” and thus, the Prior Ordinances “clearly forbids short-term rental uses of property in R-1 zones, irrespective of whether the Ordinance does so in those exact words” *Reaume v. Twp. of Spring Lake*, 328 Mich App 321, 333; 937 NW2d 734 (2019). Accordingly, the Court of Appeals’ ruling that, based on the Prior Ordinances “[r]ead as a whole,” Appellant’s use did not comply with the Prior Ordinances was proper given the applicable statutory terms. RPLS does not consider the character of the relationship that defines the term “family” to be dispositive of the issues in this case. As noted above, the Court of Appeals looked to the totality of the Prior Ordinances’ structure in order to conclude that the permitted use of a “Dwelling, Single Family” in the

Township's R-1 district does not include short-term rentals. To the extent that the character of the relationship that defines the term "family" raises constitutional issues, RPLS takes no position on whether the Prior Ordinances violate state or federal constitutional principles.

C. This Court Should Deny Appellant's Application for Leave to Appeal.

Since Appellant does not assert an equitable estoppel argument in her application for leave to appeal, the analysis here is based upon statutory construction of specific and unique provisions of the Township's ordinances. While RPLS believes the Court of Appeals reached the correct result, the COA Opinion would not establish broad precedent to be applied to potential future cases involving short-term rentals. First, when a municipal ordinance is the subject of a case or controversy, it is this Court's position that:

"[i]t is not our function to approve the ordinance before us as to wisdom or desirability. For alleged abuses involving such factors the remedy is the ballot box, not the courts. We do not substitute our judgment for that of the legislative body charged with the duty and the responsibility in the premises...our function is to determine whether a township ordinance is within the range of conferred discretionary powers and then determine if it is reasonable. The reasonableness of an ordinance, while a question of law, depends upon the particular facts of each case." *Square Lake Hills Condo. Ass'n v. Bloomfield Twp.*, 437 Mich 310, 317-318; 471 NW2d 321 (1991).

The analysis in *Square Lakes Condo Ass'n* mandates a case-specific judicial review. Therefore, any subsequent case involving the permissibility of short-term rentals would require its own analysis of the precise facts and ordinances at issue. Second, no two ordinances are exactly alike. Each municipality in Michigan has the authority to approve its own ordinances. In doing so, municipalities may take into consideration such factors as: geographic conditions, potential impact on local businesses, preferences of the public and cost of enforcement.

RPLS urges this Court to deny Appellant's application for leave to appeal. This case involved interpretation of multiple provisions of the Township ordinances, and offers no principle of law applicable to all municipal ordinances generally. As demonstrated in the COA

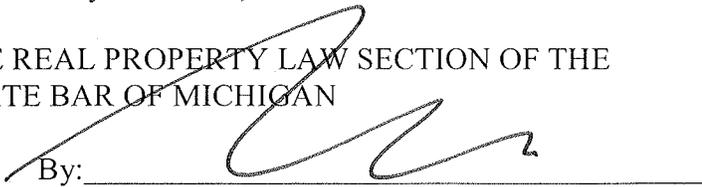
Opinion, this case turns solely on matters of statutory construction specific to the Township's ordinances. Therefore, Appellant's application for leave to appeal does not satisfy any of the grounds for leave to appeal under MCR 7.305(B).

IV. CONCLUSION

For the reasons stated above, Appellant's application for leave to appeal should be denied. If the application for leave to appeal is granted, this Court should: (a) affirm the Court of Appeals' rejection of the estoppel argument (to the extent such argument has not already been abandoned by the Appellant); and (b) affirm the Court of Appeals' decision to make clear that, while correctly decided, the case involves narrow questions of statutory construction specific to the Township's ordinances that do not apply more broadly to municipal ordinances generally.

Respectfully submitted,

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