

STATE OF MICHIGAN
COURT OF APPEALS

JASON C. SPROUL,

Plaintiff-Appellant,

v

RYAN JENKINS

Defendant,

and

MICHAEL H. FULLER and MILSAN
CORPORATION, d/b/a SILVER CITY II
CAMPGROUND,

Defendants-Appellees.

UNPUBLISHED

July 18, 2006

No. 267490

Oceana Circuit Court

LC No. 05-005080-NO

Before: Talbot, P.J., and Owens and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition in favor of defendants and dismissal of all of plaintiff's claims. We affirm.

I. Background

Plaintiff was camping with a group of friends at defendants' 31-acre campground, located in Golden Township in Oceana County, on the weekend of June 25, 2004. During the evening of Saturday, June 26, 2004, Ryan Jenkins joined plaintiff's group at their campsite. Jenkins brought with him a five-gallon container of racing fuel, which is 100 percent methanol and highly volatile. Sometime between 9:00 P.M. and 10:00 P.M., Jenkins attempted to pour this racing fuel directly from the five-gallon container onto the campfire, but his fellow campers advised him not to do this because it was extremely dangerous. Instead, someone suggested that Jenkins cut a beer can in half, pour some fuel into the can, and then put the fuel on the fire. Jenkins did this, which caused the fire to briefly flare up four to six feet and made a noise similar to a loud firecracker.

One or two hours later, Jenkins again poured fuel from the open beer can onto the campfire. Then, at 12:20 A.M. on June 27, 2004, Jenkins, without any warning to the other

campers, poured the racing fuel directly onto the fire from the five-gallon container. The fire followed the stream of fuel into the container, causing the container to explode onto plaintiff, and literally lit him on fire. Plaintiff suffered horrific injuries as a result of this incident, including disfiguring facial burns and nerve injuries, which rendered plaintiff's left arm useless. Plaintiff's injuries also led to the amputation of his left leg above the knee and partial amputation of his right foot.

Gary Wilson was serving as the campground attendant and security guard that evening. His shift started at 9:00 P.M. and was scheduled to end at 6:00 A.M. At the start of Wilson's shift, campground personnel advised him to keep a lookout on plaintiff's campsite because there had been reports of a loud party at which fireworks had been lit. The party apparently died down by the time Wilson's shift had started, however, and Wilson testified that there was no significant noise coming from the campsite during the rest of the evening.

Wilson testified that he heard what sounded like a firecracker being discharged near plaintiff's campsite at around midnight. Wilson then went to the campsite to see if he could catch someone trying to light fireworks. After approximately 15 to 20 minutes of observing the campsite, Wilson did not see any inappropriate activity. As he began to leave the area, however, he saw someone make a throwing motion near the campfire, which was followed by an explosion and plaintiff being set on fire.¹

Plaintiff initially brought this suit against Jenkins, as well as the defendants here on appeal, but the lone count against Jenkins was settled and dismissed prior to defendants' motion for summary disposition. The trial court granted summary disposition in favor of defendants on the remaining seven counts of plaintiff's complaint. Plaintiff has only appealed the trial court's dismissal of Count 5 of his complaint, which pertains to plaintiff's claimed cause of action for defendants' alleged violation of Golden Township Ordinance No. 18. With regard to this claim, the trial court found that "the ordinance was not intended to address the situation that occurred in the campground, on June 27th, 2004, and the unfortunate injuries to the plaintiff." We agree.

II. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10), considering the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Rose v Nat'l Auction Group*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.* We also review a trial court's interpretation of a township ordinance de novo. *Twp of Yankee Springs v Fox*, 264 Mich App 604, 605-606; 692 NW2d 728 (2004).

¹ Although the record contains several contradictory statements regarding Wilson's location and activity before the explosion that injured plaintiff, we find these factual discrepancies immaterial to the sole legal question that is before us.

III. Discussion

Plaintiff argues that defendants violated both Section I and Section III of Golden Township Ordinance No. 18, for which Section IV of that ordinance provides plaintiff with a civil cause of action. Golden Township Ordinance No. 18 provides, in pertinent part:

Section I. No person, firm or corporation shall cause or create any unreasonable or unnecessarily loud noise or disturbance, injurious to the health, peace or quiet of the residents and property owners of the Township. No person, firm or corporation shall permit, continue or permit the continuance of any unreasonable or unnecessarily loud noise or disturbance, injurious to the health, peace or quiet of the residents and property owners of the Township. The owner, lessee or occupant of the property on which is located the activity which constitutes a violation of this Ordinance, shall be deemed responsible for the violation.

* * *

Section III. No person, firm or corporation shall create, cause, maintain, permit, continue or permit the continuance of any public nuisance [sic] within the Township by the unreasonable emission of dust, smoke, fly ash, noxious odors, or loud noise or disturbance which are offensive or disturbing to adjacent property owners and residents or persons in the area. Any violation of this Ordinance shall constitute a public nuisance.

* * *

Section IV. Any person, firm or corporation, and any officers of a corporation found violating the provisions of this Ordinance, shall upon conviction, be punished by a fine of [sic] not to exceed \$500.00 or by imprisonment not to exceed 90 days, or both such fine and imprisonment, at the discretion of the court. Each day that a violation shall continue is to constitute a separate offense. Provisions of this Ordinance may also be enforced by suit for injunction, damages or other appropriate legal action which may be brought by any injured person, firm or corporation, or by Golden Township through its Board of Trustees.

With regard to Section I of the ordinance, even considering the discrepancies concerning Wilson's location and activities prior to the explosion, the record clearly shows that defendants did not "cause or create" or "permit, continue or permit the continuance of any unreasonable or unnecessarily loud noise or disturbance." It is undisputed that Jenkins caused or created the loud noises that Wilson mistook for firecrackers and the "disturbance" that injured plaintiff. Wilson's activities show that rather than permitting Jenkins to continue his activities, he was trying to stop him. Moreover, Section I by its own terms only applies to disturbances that are injurious to the health of "the residents and property owners of [Golden] Township." As plaintiff was neither a resident of, nor an owner of property in, Golden Township, Section I is inapplicable.

With regard to Section III, although it applies to “persons in the area,” which would include plaintiff, the record does not support plaintiff’s argument that defendants “create[d], cause[d], maintain[ed], permit[ted], continue[d] or permit[ted] the continuance of any public [nuisance].” Again, the record demonstrates that Wilson took reasonable steps to try to stop what he thought was the lighting of fireworks at the campsite. Furthermore, plaintiff’s injury has nothing to do with the “emission of dust, smoke, fly ash, noxious odors, or loud noise or disturbance” that was “offensive or disturbing.” Rather, plaintiff was injured by an explosion of burning racing fuel caused by Jenkins’ criminal negligence, over which defendants had no control and to which the ordinance does not apply.

Because plaintiff has not demonstrated that defendants violated either Section I or Section III of the ordinance, there can be no cause of action against defendants under Section IV. We, therefore, find it unnecessary to address defendants’ argument that Golden Township lacks the authority to create a civil cause of action that is allegedly contrary to the common law without the Legislature’s express authorization.

Affirmed.

/s/ Michael J. Talbot

/s/ Donald S. Owens

/s/ Christopher M. Murray