

STATE OF MICHIGAN

COURT OF APPEALS

---

MICHIGAN BOATING INDUSTRIES  
ASSOCIATION and LAKE FENTON MARINA,  
INC.,

UNPUBLISHED  
August 9, 1996

Plaintiff-Appellants,

v

No. 178328  
LC No. 92-15416-CZ

CHARTER TOWNSHIP OF FENTON,

Defendant-Appellee.

---

Before: Markey, P.J., and McDonald and M. J. Talbot\*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an August 17, 1994, order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this action in which plaintiffs challenge an ordinance enacted by defendant requiring marinas to receive approval by the Fenton Township Planning Commission to increase the number of watercraft allowed to be docked at existing marinas. We affirm.

The trial court did not err in finding the contested ordinance regulating the construction and expansion of marinas within defendant's borders was not preempted by state law. A municipality may not enact an ordinance if the state statutory scheme preempts the ordinance by occupying the field of regulation the municipality seeks to enter, to the exclusion of the ordinance, even where there is not direct conflict between the two schemes of regulation. *People v Llewellyn*, 401 Mich 314; 257 NW2d 902 (1977); *John's Corvette Care v Dearborn*, 204 Mich App 616; 516 NW2d 527 (1994). Plaintiffs contend defendant's ordinance number 429 was preempted by the Inland Lakes and Streams Act of 1972 (ILSA) MCL 281.951 *et seq.*; MSA 11.475(1) *et seq.*. Plaintiffs do not contend ILSA expressly preempted the field of inland water regulation. Instead, plaintiffs claim ILSA is "clearly all inclusive with respect to construction and operation of marinas."

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

ILSA provides as follows:

Except as provided by the act, a person without a permit from the department [of natural resources] shall not . . . erect, maintain or operate a marina. [MCL 281.953(c); MSA 11.475(3)(c).]

Defendant's ordinance recognizes the state's power under ILSA by requiring defendant's approval for expansion of marinas "above that allowed by the Department of Natural Resources of the State of Michigan at the time of the adoption of the ordinance." There is no indication the state legislature intended to occupy the field of marina regulation. Thus, although both the state statute and defendant's ordinance deal with marinas, ILSA did not present a barrier to defendant's more stringent regulation of marina expansion. *Detroit v Qualls*, 434 Mich 340; 454 NW2d 374 (1990); *John's Corvette, supra*. Plaintiffs have failed to support their claim the legislative history of the act, the pervasiveness of the state regulatory scheme, or the need for state-wide uniformity require a finding ILSA preempts defendant's ordinance.

We also find no error in the court's finding plaintiffs' claims were not ripe for judicial review. Plaintiffs' failure to seek a permit under the ordinance renders this question unripe for adjudication. A plaintiff must be subject to "a real and immediate threat to protected constitutional rights" in order to have standing to challenge an ordinance. *DSS v Emmanuel Baptist Preschool*, 434 Mich 380; 455 NW2d 1 (1990). The threat of injury must be more than speculative or hypothetical. *Id.* at 410, n 43; *ABATE v Public Service Commission*, 205 Mich App 383; 522 NW2d 140 (1994).

In this case there is no indication the ordinance will ever be applied to plaintiffs. Plaintiffs have never declared an intent to construct or expand a marina in defendant township. Additionally, there is no indication that, if such construction was proposed, defendant would deny plaintiffs' application for a permit. Plaintiffs' claims of injury are merely speculative and hypothetical. The trial court properly granted defendant's motion for disposition on the basis plaintiffs' claims of violation of their constitutional rights were not ripe for review.

Finally, even had plaintiffs' claims been ripe for review summary disposition would have been properly granted. The ordinance did not violate plaintiffs' equal protection or due process rights. Plaintiffs are not similarly situated with lakefront property owners and defendant's ordinance bears a rational relationship to a legitimate governmental interest. *Doe v Department of Social Services*, 439 Mich 650; 487 NW2d 166 (1992); *Attorney General v Public Service Commission*, 165 Mich App 230; 418 NW2d 660 (1987). In addition the ordinance bore a reasonable relation to a permissible legislative objective, and was a proper exercise of defendant's police powers. *Square Lake Hills Condominium Ass'n v Bloomfield Twp*, 437 Mich 310; 471 NW2d 321 (1991); *Butcher v Detroit*, 131 Mich App 698; 347 NW2d 702 (1984). Plaintiffs' claim the ordinance violated due process because it did not provide the planning commission with adequate guidelines for determining whether to grant a requested permit under the ordinance is

now moot. Following the filing of this lawsuit the ordinance was amended to include standards to be applied by the commission in reaching its decision.

Affirmed.

Costs to defendant.

/s/ Jane E. Markey  
/s/ Gary R. McDonald  
/s/ Michael J. Talbot