

STATE OF MICHIGAN
COURT OF APPEALS

POINTE OF THE WOODS CONDOMINIUM
ASSOCIATION,

UNPUBLISHED
March 25, 2003

Plaintiff-Appellee,

v

DR. ZOE K. DOEL and FARBOD TALAB, a/k/a
PATRICK TALAB,

No. 236617
Oakland Circuit Court
LC No. 00-027115-CH

Defendants-Appellants.

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Defendants appeal as of right the order granting plaintiff's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action for injunctive relief and money damages, asserting that defendants violated the condominium's by-laws by failing to timely remove holiday decorations, allowing personal property to accumulate on their front porch, and failing to maintain their front yard. The trial court found the by-laws were properly applied to defendants and granted summary disposition.

On appeal, defendants argue that the by-law restriction was improperly applied to their property and that it violates the civil rights act because it restricts the use of property based on religion. MCL 37.2505.

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Defendants failed to raise an issue of material fact regarding the application of the by-law where they did not present any factual evidence to the trial court. MCR 2.116(G)(4). They did

not argue that the by-law was applied retroactively, and they have not preserved this issue for appeal. *Bowers v Bowers*, 216 Mich App 491, 495; 549 NW2d 592 (1996).

There is no showing that the by-law violated defendants' rights under the civil rights act. Defendants never identified themselves as members of a protected group, and they refused to state what holiday they intended to commemorate with their seven-month display of icicle lights. The rule adopted by plaintiff's board of directors is phrased in neutral terms to apply to all holidays. "The purpose of the . . . [c]ivil [r]ights [a]ct is to prevent discrimination against persons based on their membership in a certain class . . ." *Bryant v Automatic Data Processing, Inc*, 151 Mich App 424, 430; 390 NW2d 732 (1986). Defendants have failed to show that plaintiff imposed a condition, restriction, or prohibition that limits the use of real property on the basis of religion, race, color, or national origin. MCL 37.2505. The trial court properly granted summary disposition where defendants failed to show a protected interest.

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray