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STATE OF MICHIGAN

COURT OF APPEALS

WAYNE COUNTY AIRPORT AUTHORITY, Plaintiff/Counterdefendant-Appellee,	UNPUBLISHED November 03, 2026 9:14 AM
v	No. 375283 Wayne Circuit Court
MICHELLE BALDWIN, Defendant/Counterplaintiff-Appellant.	LC No. 23-001548-CH

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

Defendant/counterplaintiff Michelle Baldwin appeals as of right the trial court's order granting plaintiff/counterdefendant Wayne County Airport Authority summary disposition under MCR 2.116(C)(7) (immunity granted by law) and MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

I. FACTS AND PROCEDURAL HISTORY

This case involves the parties' dispute over certain trees on defendant's property.[1] In 1997, defendant acquired real property on Vining Road south of Detroit Metropolitan Wayne County Airport. Plaintiff owns land bordering defendant's property to the north. In 2006, the Wayne County Roads Division closed the road that bisects the two properties at issue, a portion of Vining Road, to public access.

In July 2016, the Joint Airport Zoning Commission for Wayne and Washtenaw Counties approved a zoning ordinance, which regulated "Airport Hazard[s]" within a 20-mile radius of Metro Airport. Joint Airport Zoning Ordinance of Wayne and Washtenaw Counties, § 1.3 and 1.4. The ordinance stated: "Structures and trees which project above the height limitations under this Ordinance are considered hazards to flying and endanger lives and property." *Id*. at § 2.4. The ordinance prohibits "plant[ing] or allow[ing] any tree to grow to a height in excess of the

[1] The record indicates that the property is a few acres and is mostly, or entirely, a wooded area.

limitations prescribed by the terms of this Ordinance . . . ." *Id*. at § 3.3.[2] According to the zoning map incorporated by the ordinance, the height limit for objects in Zone B, which includes defendant's property, is set at 50 feet above Metro Airport's elevation. The parties stipulated that defendant allowed several trees on her property to grow above the 50-foot height limit.

Defendant claimed that plaintiff's employees trespassed on her property multiple times from 2018 to 2022 and cut down between 8 and 11 trees. According to Joseph McCabe, plaintiff's representative, plaintiff's employees removed at least one tree that exceeded the height limit from defendant's property.[3] In addition, plaintiff's contractors performed obstruction surveys of the land surrounding Metro Airport in 2018, 2021, and 2022, respectively. In February 2022, McCabe notified defendant that eight trees exceeded the ordinance height limit and were airport hazards. Defendant declined McCabe's offer to remove the trees in May 2022. McCabe said that plaintiff offered defendant compensation, although he was not sure of the amount, while defendant denied that McCabe offered compensation.

Plaintiff filed its complaint against defendant in February 2023, alleging that the 2021 survey identified 10 trees on defendant's property that exceeded the height limit. Plaintiff asserted that the trees were a public nuisance and requested an injunction requiring defendant to remove or trim the trees, or allow plaintiff to enter her property to do so. Defendant filed a counterclaim, alleging that the zoning ordinance interfered with the use of her property and was a regulatory taking that required just compensation (Count I). She also alleged that plaintiff's employees entered her property without permission and cut down or trimmed certain trees, entitling her to treble damages under MCL 600.2919 (Count III).[4]

Plaintiff moved for summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(10). Plaintiff argued that no regulatory taking occurred because defendant created a public nuisance by allowing her trees to exceed the height limit, and because its actions did not interfere with defendant's use of her property. Thus, plaintiff contended, it was entitled to summary disposition of Count I. Further, with regard to Count III, plaintiff argued that governmental immunity barred defendant's timber-trespass claim because trimming or removing the trees on her property was a governmental function. Finally, plaintiff again requested that the trial court enter an injunction requiring defendant to comply with the 50-foot height limit or allowing plaintiff to enter her property to ensure compliance.

The trial court granted plaintiff's motion for summary disposition and dismissed defendant's counterclaim. Regarding Count I, the regulatory-taking claim, the trial court ruled that the trees that exceeded the height limit were a public nuisance, and abating the nuisance was not a taking of defendant's property. The trial court also ruled that plaintiff did not deny defendant productive use of her property, adding that "this Court has no way of determining what adequate compensation for the trimming of trees below the 50 foot height restriction would be." The trial

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[2] The ordinance authorizes plaintiff to file an action to abate any zoning violation. *Id*. at § 6.4.

[3] McCabe asserted during his deposition for this case that plaintiff did not know its employees were on defendant's property at that time.

[4] Count II is not relevant to this appeal.

court further ruled that since the Wayne County Roads Division, not plaintiff, closed Vining Road, defendant could not seek relief against plaintiff for the closure. Finally, as to Count III, the trial court ruled that governmental immunity barred defendant's claim for timber trespass. Accordingly, the trial court entered the requested injunction and closed the case. Defendant moved for reconsideration, which the trial court denied. Defendant now appeals.

II. SUMMARY DISPOSITION—REGULATORY TAKING

Defendant primarily argues that the trial court improperly dismissed Count I, her regulatory-taking claim, under MCR 2.116(C)(10) because plaintiff cut trees on her property and blocked access to her property. Defendant also argues that the trial court erred by granting summary disposition in favor of plaintiff under MCR 2.116(C)(10) on the basis that she did not show a precise amount of damages. We disagree with both arguments.

A. STANDARD OF REVIEW

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Id*. at 120. "All well-pleaded allegations are viewed in the light most favorable to the nonmoving party unless documentary evidence is provided that contradicts them." *Haksluoto v Mt Clemens Regional Med Ctr*, 500 Mich 304, 309; 901 NW2d 577 (2017). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden*, 461 Mich at 120. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

This Court reviews issues of statutory and constitutional interpretation de novo. *Toll Northville LTD v Twp of Northville*, 480 Mich 6, 10-11; 743 NW2d 902 (2008). Because municipal ordinances are subject to the same rules of interpretation as statutes, this Court also reviews the interpretation of an ordinance de novo. *Great Lakes Society v Georgetown Charter Twp*, 281 Mich App 396, 407; 761 NW2d 371 (2008).

B. DISCUSSION

"The Takings Clauses of the Michigan and United States Constitutions both prohibit the taking of private property for public use without just compensation." *Gym 24/7 Fitness, LLC v Mich*, 341 Mich App 238, 260; 989 NW2d 844 (2022) (quotation marks and citation omitted). "When a governmental taking results from an actual, physical invasion of the property, a reviewing court need not apply a case-specific analysis, and the owner should automatically recover for a taking of his property." *Ligon v Detroit*, 276 Mich App 120, 132; 739 NW2d 900 (2007) (quotation marks and citations omitted). "In contrast, a regulatory taking is one in which the government effectively takes a person's property by overburdening it with regulations." *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 130; 680 NW2d 485 (2004) (quotation marks and citation omitted).

"A categorical taking occurs when there has been a physical invasion of a landowner's property or when a regulatory taking has deprived an owner of all economically and beneficial use of the land." *Gym 24/7 Fitness*, 341 Mich App at 260 (citation modified). "Regulatory taking claims that do not rise to the level of a categorical taking are governed by the standard set out in [*Penn Central Trans Co v City of New York*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978)]." *Id*. at 260-261 (quotation marks and citation omitted). *Penn Central* requires "balancing factors such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action." *Cedar Point Nursery v Hassid*, 594 US 139, 148; 141 S Ct 2063; 210 L Ed 2d 369 (2021).

In this case, Count I of defendant's counterclaim alleged a physical invasion and regulatory taking of her property, although she styled her claim exclusively as a regulatory-taking claim. Defendant alleges that plaintiff's employees entered her property without permission to cut down trees that exceeded the applicable ordinance's height limit. She also alleged that plaintiff's enforcement of the ordinance denied her productive use of her property. Defendant claims that the denial of productive use is an inverse condemnation of her property. "A claim of inverse condemnation is a cause of action against a governmental defendant to recover the value of property which has been taken even though no formal exercise of the power of eminent domain has been attempted by the taking agency." *Mays v Governor of Mich*, 506 Mich 157, 173; 954 NW2d 139 (2020) (citation modified).

The parties stipulated that defendant allowed about eight trees on her property to exceed the ordinance height limit. Defendant and McCabe both acknowledge that plaintiff's employees entered defendant's property to cut down or remove at least one tree. Regardless of whether we categorize this action by plaintiff as an alleged physical invasion or an alleged regulatory taking, because of the nuisance present on her property, plaintiff did not take defendant's property for the purposes of the Takings Clauses, and she is not entitled to just compensation. "[B]ecause no individual has the right to use his or her property so as to create a nuisance, the State has not taken anything when it asserts its power to enjoin a nuisance-like activity." *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 272; 761 NW2d 761 (2008) (citation modified). Thus, compensation is not required when a governmental agency diminishes property value by abating a public nuisance. *Id*.

The use of land that violates a zoning ordinance is a public nuisance. See MCL 125.3407; *Ansell v Delta Co Planning Comm'n*, 332 Mich App 451, 461; 957 NW2d 47 (2020). Further, the creation or maintenance of an airport hazard is a public nuisance under MCL 259.441, which provides that "the creation or establishment or maintenance of an airport hazard is a public nuisance and an injury to the community served by the airport in question . . . ." Defendant allowed certain trees on her property to grow at least 50 feet above Metro Airport's elevation, which the zoning ordinance prohibited for safety reasons. This constituted a public nuisance and, as a result, plaintiff was entitled to abate that nuisance. See *Ypsilanti Charter Twp*, 281 Mich App at 272. Therefore, plaintiff did not take defendant's property by enacting the ordinance height limit or by cutting down trees on her property. See, e.g., *Kimberlin v City of Topeka*, 238 Kan 299, 306; 710 P2d 682 (1985) (holding that an ordinance placing a height restriction on property near an airport

did not constitute a "taking" under the Fifth Amendment); *La Salle Nat'l Bank v Cook Co*, 34 Ill App 3d 264, 277; 340 NE2d 79 (1975) (holding same).[5]

In addition, defendant argues that plaintiff closed Vining Road and blocked access to her property, entitling her to just compensation. However, the record shows that the Wayne County Roads Division, not plaintiff, closed Vining Road to public access. Moreover, defendant never presented any evidence showing that plaintiff itself blocked road access to her property. Therefore, defendant is not entitled to relief for this issue. See *Grabow v Macomb Twp*, 270 Mich App 222, 230 n 4; 714 NW2d 674 (2006) (observing that a plaintiff must name the correct party to be entitled to relief).

Finally, in a related argument, defendant contends that the trial court erred by improperly considering the amount of damages when granting summary disposition in favor of plaintiff. Entry of summary disposition under MCR 2.116(C)(10) is proper when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." Defendant relies on the trial court's comment that it "has no way of determining what adequate compensation for the trimming of trees below the 50 foot height restriction would be." We are inclined to agree with defendant that summary disposition under MCR 2.116(C)(10) would be improper on this basis, but this isolated comment was not the basis of the trial court's decision to dismiss Count I. Rather, the trial court determined that plaintiff did not take defendant's property because plaintiff was abating a public nuisance. As previously noted, compensation is not required when a governmental agency abates a public nuisance. See *Ypsilanti Charter Twp*, 281 Mich App at 272.[6] In other words, the trial court granted plaintiff summary disposition because no taking occurred, not because defendant failed to demonstrate the amount

[5] In *Ackerman v Port of Seattle*, 55Wash 2d 400; 348 P2d 664 (1960), abrogated in part on other grounds by *Highline Sch Dist No 401 v Port of Seattle*, 87 Wash 2d 6; 548 P2d 1085 (1976), the Washington Supreme Court suggested that a constitutional "taking" may occur if the height limit is not "reasonable" or if "continuing and frequent low flights . . . amount to a taking of an air easement for the purpose of flying airplanes over the land." *Id*. at 411-412. Here, however, there is nothing in the record to suggest that either of those instances are present in the matter before us. Thus, contrary to appellant's suggestion, our opinion today affirming the trial court does not allow plaintiff "the Authority *carte blanche* to cut down all of the trees on [her] Property and to do so without providing any compensation." Such conduct would, in all likelihood, not be "reasonable." See *id*. It also likely would constitute a categorical taking. See *Gym 24/7 Fitness*, 341 Mich App at 260.

[6] There is a possible exception to this rule when the government takes the entire property to abate a nuisance. See generally, *Mich ex rel Wayne Co Prosecutor v Bennis*, 447 Mich 719, 743; 527 NW2d 483 (1994). Here, however, that exception is not applicable as plaintiff simply trimmed or cut down a few trees on defendant's multiacre property.

of her damages. Therefore, the trial court properly dismissed defendant's taking claim and properly granted summary disposition in favor of plaintiff as to its requested injunction.[7]

III. SUMMARY DISPOSITION—TRESPASS

Defendant argues that the trial court erred by dismissing Count III, her timber-trespass claim, under MCR 2.116(C)(7) on the basis of governmental immunity. We disagree.

A. STANDARD OF REVIEW

"A motion for summary disposition brought under MCR 2.116(C)(7) may be granted when a claim is barred by immunity." *Mays*, 506 Mich at 181. "When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them." *Id.* (quotation marks and citation omitted). "Whether governmental immunity applies is a question of law that this Court reviews de novo on appeal." *Eplee v City of Lansing*, 327 Mich App 635, 644; 935 NW2d 104 (2019).

B. DISCUSSION

Defendant alleges in her counterclaim that plaintiff's employees trespassed on her property and cut down trees without her permission. Under MCL 600.2919(1)(a), any person who "cuts down or carries off . . . trees" on another person's property without permission is liable to the other person for treble damages. However, MCL 691.1407(1) of the Governmental Tort Liability Act, MCL 691.1401 *et seq*., provides that "[e]xcept as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." A governmental function is "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b).

The trial court properly granted summary disposition in favor of plaintiff under MCR 2.116(C)(7) with regard to defendant's claim for timber trespass. As previously explained, the creation or maintenance of an airport hazard is a public nuisance that endangers public safety. See MCL 259.441. MCL 259.443 authorizes political subdivisions to protect public safety by adopting

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[7] Defendant argues that plaintiff may only trim or remove her trees in accordance with MCL 259.462, which allows for avigation easements "to remove, lower, or otherwise terminate a non-conforming structure, tree or use." In this regard, we note that MCL 259.452 provides that "[n]o airport zoning regulations adopted under this act shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in [MCL 259.453 and MCL 259.455]." Arguably, under MCL 259.452, plaintiff would have needed an avigation easement under MCL 259.462 to trim or remove trees that exceeded the 50-foot height limit when the ordinance at issue was enacted in 2016. However, because that factual question has not been argued or developed below or in this appeal, we assume that all trees exceeding the 50-foot height limit on defendant's property have done so after the ordinance was enacted.

and enforcing zoning regulations for airport hazard areas within their jurisdiction, and MCL 259.443(1) specifically provides that those subdivisions may "regulate and restrict the height to which structures and trees may be erected or allowed to grow." It is undisputed that the Joint Airport Zoning Commission for Wayne and Washtenaw Counties enacted the zoning ordinance at issue to regulate the land surrounding Metro Airport for safety purposes. The ordinance prohibited any person from maintaining trees that exceed the 50-foot height limit, consistent with MCL 259.443(1). Because plaintiff's actions to enforce the height restriction were authorized by both ordinance and statute, plaintiff was engaged in a governmental function when it cut down trees on defendant's property. See MCL 691.1401(b). Moreover, defendant does not allege any statutory exception to governmental immunity, and we have recognized that governmental immunity applies to intentional torts such as conversion. See *Genesee Co Drain Comm'r v Genesee Co*, 309 Mich App 317, 331-332; 869 NW2d 635 (2015). Therefore, the trial court properly dismissed defendant's timber-trespass claim on the basis of governmental immunity.[8]

IV. CONCLUSION

For the reasons discussed above, we affirm.

/s/ Christopher M. Murray
/s/ Mark T. Boonstra
/s/ Michael J. Riordan

[8] Defendant asserts that governmental immunity does not apply to constitutional taking claims. Certainly, we agree with defendant as a general proposition that the government cannot rely upon governmental immunity to defeat the requirements of the Takings Clauses, including their requirement of just compensation. *Peterman v State Dep't of Natural Resources*, 446 Mich 177, 204-205; 521 NW2d 499 (1994). In this case, however, governmental immunity only is being applied to bar a statutory conversion claim, not a constitutional taking claim.