

STATE OF MICHIGAN
84TH JUDICIAL DISTRICT (CADILLAC, MICHIGAN)

CHERRY GROVE TOWNSHIP,

PLAINTIFF,

v

Case No. 19-725-SN

CHAD AARON EDWARDS,

DEFENDANT.

FORMAL HEARING

VOLUME I of II

BEFORE THE HONORABLE AUDREY VAN ALST, DISTRICT JUDGE

Cadillac, Michigan - Thursday, April 11, 2019

APPEARANCES:

For the Plaintiff: MR. RICHARD M. WILSON (P29717)
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WITNESSES: PEOPLE

PAGE

None.

WITNESSES: DEFENDANT

None.

EXHIBITS:

IDENTIFIED

RECEIVED

None.

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Cadillac, Michigan

Thursday, April 11, 2019 - 11:23 a.m.

THE COURT: Court calls 19-725-SN, People of the State of Michigan versus Chad Edwards. Appearances, please? It's not People, it's -- I don't know why the notice went out that way, but it's Cherry Grove Township.

MR. WILSON: Cherry Grove Township, your Honor, yes. I'm Richard Wilson on behalf of the Township.

MR. GURUMURTHY: Thank you, your Honor. Ravi Gurumurthy on behalf of Mr. Edwards who's here. He is seated to my right.

THE COURT: Counsel, have you perhaps resolved this case?

MR. WILSON: Unfortunately we have not, your Honor.

MR. GURUMURTHY: No, your Honor.

THE COURT: All right. All right. Have a seat everyone. I see this was adjourned once and I don't exactly know what the problem is here, but there was a citation issued on March 1, 2019, to Chad Edwards regarding parcel number 2110-08-2202, in Cherry Grove Township. The remarks on the citation say, "Use and promotion prior to permitting and --" "-- and committing --"

MR. WILSON: Commencement of use, your Honor.

1 THE COURT: "Commencement of use under 3703.G
2 without permitting".

3 MR. WILSON: Correct.

4 THE COURT: Okay. So, all right. And the -- I
5 think I printed the -- nope.

6 MR. WILSON: Your Honor, I have copies of the
7 relevant provisions of the ordinance if you --

8 THE COURT: Does that look like this?

9 MR. WILSON: No.

10 THE COURT: All right. Let's see. It's so
11 hard on these.

12 MR. WILSON: This is 8401 and 8402, the entire
13 section, and this is the relevant land use.

14 THE COURT: All right. Mr. Gurumurthy, do you
15 have those?

16 MR. GURUMURTHY: I did see them, but I'm gonna
17 review those with my client briefly.

18 THE COURT: All right. So by way of opening,
19 why don't you explain -- let's have an opening statement
20 so you can tell me what's going on here?

21 MR. WILSON: Your Honor, this case is very
22 simple. The respondent, Mr. Edwards, has for the last
23 couple of years been conducting what is called mud
24 bogging events. I -- when I first heard that word, was
25 absolutely clueless as to what that meant, but I have

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since been educated.

THE COURT: I know what it is.

MR. WILSON: Okay. He has been conducting these events on his property in Cherry Grove Township. These events attract a large number of people and Mr. Edwards has no zoning permit or land use permit to conduct these types of operations on his property.

In the Wexford Joint Zoning Ordinance, his property is zoned rural residential, and I have given the Court a copy of that. That's described in article 37. And under article --

THE COURT: And where -- where in 37?

MR. WILSON: It's --

THE COURT: That just is the residential --

MR. WILSON: That's the residential district, your Honor.

THE COURT: All right.

MR. WILSON: And if the Court would direct it's attention to 3703(g), that allows temporary outdoor arts, entertainment and recreational events as a special use.

THE COURT: All right.

MR. WILSON: Mud bogging falls within the definition of temporary art -- outdoor arts, entertainment and recreation according to the North American Industrial Classification System.

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So he is -- this is a use that is allowed in this district.

THE COURT: All right.

MR. WILSON: He needs to get a permit, however, to do that. And he has not applied for a permit and apparently has refused to apply for the permit. And that's why we're here. He continues to promote these events, he continues to conduct the events, and we are here today to ask the court to enter an order that would prevent him from going forward without applying and obtaining a permit.

THE COURT: And how often do these events occur, do you know?

MR. WILSON: Three, four times a year, I understand.

THE COURT: Okay.

MR. WILSON: And they've occurred for the last, at least, two or three years.

THE COURT: Thank you. Mr. Gurumurthy, any opening?

MR. GURUMURTHY: Yes. Thank you, Judge. Your Honor, what Mr. Wilson stated is accurate in part. So Mr. Edwards owns 30 acres. That's his private property. It's gated, he has the key to that property, and he uses this three times a year and he promotes these mud bogging

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events as a charitable giving to the community three times a year.

That's the intended use of that property. He has started doing this since 2014. That's the first year it occurred. I think we're all in agreeance that that's when it started, and it has been continued every year since then.

The ordinance that went into effect was in 2016, after -- two years after -- in fact, I think three years after the mud bogging event that Mr. Edwards has been performing. There is a statute that's in point that says -- and it's MCL 125.3208, that talks about non-conforming uses or structures, and that reads:

"If the use of a dwelling, building, or structure, or of the land is lawful at the time of the enactment of the zoning ordinance, or an amendment to a zoning ordinance, then that use may be continued, although the use does not conform with the zoning ordinance amendment."

So, he's already been in use of that property in that manner, prior to the ordinance that was in effect in 2016. So it doesn't apply to him. He's essentially grandfathered in. That would be true if Mr. Edwards started doing these events in 2017, and so on, then he would have to apply for a special use, and then he would

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have to apply for a permit to continue with these activities. But he's grandfathered in.

And again, this was primarily passed to prevent Mr. Edwards from performing these -- this -- this -- whatever he does on this mud bogging event that he does on his land.

And again, it's open to his friends and family in this community and they show up. He doesn't charge them money, it's not a way to -- you don't pay to get in, you show up and you -- you have an activity there. It's no different than having a big family barbeque, except he has --

THE COURT: So, it's not a charity? It's not raising money for a charity, it's a free event?

MR. GURUMURTHY: It's a free event, people can come in there and then they -- if they choose to donate, they do, and then --

THE COURT: To what?

MR. GURUMURTHY: For using his land. They give him \$10.00, they give him \$100.00, they give him \$5.00.

THE COURT: So it's not charitable, it goes to him?

MR. GURUMURTHY: No. And then he turns it around and gives it to either Salvation Army -- he turns it around and gives it to a -- a qualified recipient, and

1 he just turns around and gives that money, but he doesn't
2 (inaudible). He's the sole holder of the key of the
3 property. He only opens the property -- the gates are
4 open on the days of the event and there is no pay to get
5 in, but people donate whatever they do. He doesn't sell
6 water, beer, he doesn't sell food, chips, nothing. The
7 lands available, people come and use their vehicles there
8 and he does whatever he does with the money and it goes
9 to whatever charity he chooses to donate it to, three
10 times a year.

11 He does it with -- we see signs all around time
12 with -- with benefits that occur for a family that may
13 have lost a house in -- in a fire or somebody having
14 cancer and so on, and again, the money goes to either the
15 Elks or the Moose Lodge, or whatever it is the benefit,
16 and he donates the money there.

17 So there is no money made with this, but again,
18 this is -- this activity has been going on since 2014.
19 The ordinance was passed after the third event that
20 occurred in 2016. There was no complaint, there was
21 nothing filed or indicated that the township was
22 complaining about the noise, there's a nuisance and is
23 simply an ordinance that was passed after an activity was
24 already in place. There's a statute that's on point that
25 says you can't do that.

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THE COURT: Could you print that statute for me?

MR. GURUMURTHY: I do. So, if I may approach, Judge?

THE COURT: Yes.

MR. GURUMURTHY: And I believe I did share that with --

MR. WILSON: I'm familiar with the non-conforming use statute, your Honor.

MR. GURUMURTHY: So --

MR. WILSON: It doesn't apply in this case as the Court will find out.

THE COURT: We'll come back to that. Anything else, Mr. Gurumurthy?

MR. GURUMURTHY: No, that's it, Judge.

THE COURT: All right. Mr. Wilson, I'll give you a chance again, and both of you as much as you want, because it sounds like there's a stipulation. The land is in Cherry Grove Township. It is being used for this three times a year event. There is a statute -- a zoning statute -- was that -- was the statute that we're talking about, the article 37, is that -- was that enacted in 2016?

MR. WILSON: Your Honor, yes, the -- we're here today under the Wexford Joint Zoning Ordinance, which was

1 adopted by 11, 12 -- 11 townships following Wexford
2 County's decision not to continue with zoning. The point
3 I wanted to make earlier, however, was that under the
4 former ordinance, the Wexford County ordinance, mud
5 bogging was not a permitted use on this property either,
6 and Mr. Edwards has no permit. We have confirmed that
7 with the Wexford County officials. There was never a
8 permit issued to Mr. Edwards under the Wexford County
9 ordinance at any time to conduct this activity. And
10 therefore, he does not qualify as a non-conforming use,
11 because the activity was not lawful at the time he
12 commenced it.

13 MR. GURUMURTHY: May I respond to that, Judge?

14 THE COURT: Just a minute. So before, article
15 37 of the Wexford Joint Zoning Ordinance, do you -- can
16 you point me to what would've been in effect?

17 MR. WILSON: It was the Wexford County
18 Ordinance, your Honor. It was a county-wide ordinance,
19 and perhaps the Court recalls that in early 2016, the
20 County announced that it was going to get out of the
21 zoning business --

22 THE COURT: Right.

23 MR. WILSON: -- then was going to repeal their
24 ordinance as of December 31st of 2016. This ordinance
25 was adopted the final week of December 2016, so there

1 would not be a gap between the expiration of the County
2 ordinance and the adoption of the new ordinance.

3 THE COURT: Okay. So, then I would just have
4 to look back to what the ordinance was before December
5 2016 -- what the Wexford County --

6 MR. WILSON: Yes.

7 THE COURT: And you're saying that would not
8 have -- that would not have permitted mud bogging on
9 private property?

10 MR. WILSON: No, it would not -- not on Cherry
11 Grove Township, your Honor. And even if it had, it would
12 have required a permit which was never asked for, applied
13 for, or granted.

14 THE COURT: Okay. Mr. Gurumurthy?

15 MR. GURUMURTHY: Thank you, Judge. Your Honor,
16 the Wexford County Joint -- the County zoning ordinance
17 does not address mud bogging. It addresses daycare, it
18 addresses strip clubs, it addresses churches, breezeways,
19 it does not address mud bogging. It is silent as it is
20 to mud -- I haven't seen it and that was pinpointed to me
21 as to where it says mud bogging is not allowed in any
22 Wexford County property that is zoned as a residential or
23 rural property I think we would not be here, but it
24 doesn't exist.

25 So, my position is, again, the -- that the

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County at that point zoned all these other activities, did not address mud bogging. Mr. Edwards starts -- starts his mud bogging in 2014. The County never issues a citation, never warns him. He does it in '15, he does it in '16, the County gets out of the business of zoning the county and says, townships, you guys can zone it on your own.

So Cherry Grove Township then, in 2016, adopts, you know, (inaudible) and amends their zoning and then they tell him, well, you can't participate in this activity because now we've zoned our Cherry Grove Township to provide -- or prevent this activity, but it was never addressed in the first place. So he's essentially grandfathered in, because the Wexford County Ordinance is silent.

THE COURT: Well, the only piece of -- the only document I'm missing is the -- what the ordinance was before --

MR. WILSON: Yes, your Honor, and I did not have a copy of that. If we could adjourn, I'd be happy to --

THE COURT: I think you both should, so I make sure I'm looking at the thing that you agree to.

MR. WILSON: Mm-hmm.

THE COURT: Because is the Township just

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looking for -- I mean, there's no -- what is the Township looking for, here?

MR. WILSON: The Township is looking for an --

THE COURT: Enforcement?

MR. WILSON: -- order from this Court to make him stop doing this until he applies and gets permit.

THE COURT: They're not looking for fines or anything, just follow -- follow the current --

MR. WILSON: Just follow the --

THE COURT: -- ordinance?

MR. WILSON: -- ordinance, your Honor. Yes.

THE COURT: Almost like a declaratory judgment?

MR. GURUMURTHY: Correct.

MR. WILSON: Correct.

THE COURT: Okay. So gentlemen, how about this? Ten days each to get me the prior Wexford County Ordinance.

MR. WILSON: Okay.

THE COURT: I'll read everything and I'll do this in writing if I can. If not, I'll bring you all back.

MR. WILSON: Okay.

THE COURT: But I just want to make sure you give me the same thing for the prior ordinance.

MR. GURUMURTHY: Well, and like I said, Judge,

1 if the prior ordinance it was -- pinpoint coming, mud
2 bogging is an activity that is precluded in Wexford
3 County --

4 THE COURT: Well --

5 MR. GURUMURTHY: -- my client will understand -

6 -
7 THE COURT: -- you know it's not going to say
8 that. I know it's not going to say, "Mud bogging is
9 precluded."

10 MR. WILSON: Right.

11 THE COURT: So, I'm --

12 MR. GURUMURTHY: Or mud bogging as an outdoor
13 activity or anything. I mean --

14 THE COURT: It's not gonna say mud bogging at
15 all.

16 MR. GURUMURTHY: Well --

17 MR. WILSON: No, no. No, and as the Court is
18 aware, zoning ordinances are drafted in such a way, as
19 was the Wexford County Ordinance, that if it's not
20 permitted, it's prohibited. So if the Wexford County
21 Ordinance did not specifically prohibit or permit this
22 activity, then it was prohibited.

23 THE COURT: Same 10 days to brief anything if
24 you want.

25 MR. WILSON: Okay. Thank you, your Honor.

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MR. GURUMURTHY: Judge, would have I have 10
days after Mr. Wilson submits his, because I would --

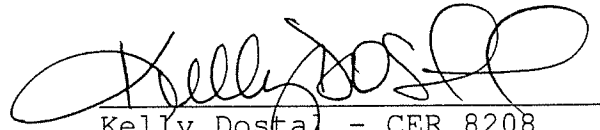
THE COURT: Yes.

MR. GURUMURTHY: Okay.

(At 11:38 a.m., proceeding concluded)

I certify that this transcript, consisting of 16 pages,
is a complete, true, and correct transcript, of the
Formal Hearing, Volume I of II, held on Thursday, April 11,
2019.

Date: July 17, 2019



Kelly Dostal - CER 8208
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Approved, SCAO

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Plaintiffs attorney, bar no., address, and telephone no. MR. RICHARD M. WILSON P29717 414 WATER STREET MANISTEE, MI 49660 (231) 723-8333		Defendant's attorney, bar no., address, and telephone no. MR. BRION B. DOYLE P67870 333 BRIDGE STREET NW; SUITE 1700 GRAND RAPIDS, MI 49504 (616) 336-6000

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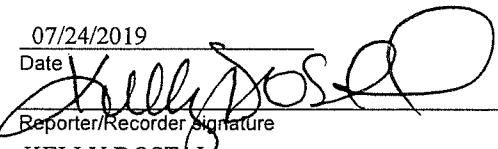
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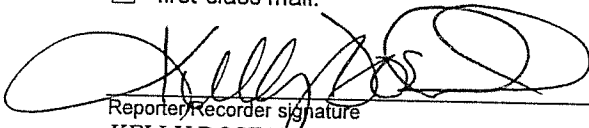
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My commission expires: 5-14-25 Date Signature: Nina Seilletter

Notary public, State of Michigan, County of WEXFORD