STATE OF MICHIGAN

COURT OF APPEALS

TOWNSHIP OF BROOKS, Plaintiff-Appellant,	UNPUBLISHED May 17, 2011
v	No. 296035 Newaygo Circuit Court
SHERRILYN RUTH DAVIS, Defendant-Appellee.	LC No. 09-019483-AV

Before: DONOFRIO, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

In this case involving an alleged zoning violation, plaintiff Township of Brooks ("Township") appeals by leave granted the circuit court's order enjoining the Township from enforcing its zoning ordinance against defendant Sherrilyn Ruth Davis. We reverse and remand to the district court magistrate.

I. FACTS

Davis asserts that during the winter of 2007-2008, ice buildup on Hess Lake damaged the revetment wall in front of her and her neighbors' properties. According to Davis, she had a patio behind the revetment wall, which was also damaged. The person Davis engaged to conduct repairs stated in an affidavit that he replaced the revetment wall and installed a concrete cap over the preexisting patio, and added that the cap was necessary to protect the patio, which he did not enlarge in any way.

On April 15, 2009, the Township's zoning administrator issued a citation to Davis for placing a concrete slab along the waterfront of her property in violation of the Township's zoning ordinance. Davis did not request a formal hearing before the district court judge on the citation, so an informal hearing was held before the district court magistrate on May 11, 2009. At this hearing, the magistrate found that Davis had violated the ordinance and ordered her to come into compliance with the ordinance within 30 days. After the initial 30-day period, Davis was granted an additional 30 days to comply. The magistrate then determined at a July 27, 2009, hearing that Davis had still failed to comply with the magistrate's orders, imposed a fine of $100, and again ordered her to bring the property into compliance within 30 days. Notably, however, the magistrate never reduced any of these orders to writing.

Davis, for the first time, demanded a formal hearing on July 29, 2009. The Township moved to dismiss the appeal as untimely under MCR 4.101(H)(2), which requires that appeals from an informal hearing "be asserted in writing, within 7 days after the decision . . . ." The district court granted the motion, but retained jurisdiction concerning the issue of compliance with the magistrate's orders. The court ordered Davis to remove the concrete slab and pay the $100 fine imposed by the magistrate.

Davis then sought leave to appeal to the circuit court. At the hearing on Davis's motion for leave, the circuit court held that her due process rights were violated in that the citation referred to a nuisance complaint until two weeks before the hearing, and also because she was not allowed to present her arguments concerning a preexisting nonconforming use. The court then continued as follows:

> I can understand the arguments of jurisdiction and Court rules, but this Court does have superintending control over the District Court; and on that basis and to satisfy that an injustice is not allowed, the Court would enter an injunction against the Township from any further enforcement relative as to this particular fact. This is also due to the fact that the Court understands this greenbelt and thinks that they are appropriate, but that type of situation . . . the Court would take judicial notice does not exist out on Hess Lake all the way around to begin with just looking at the photographs which are attached to these proceedings and the way that the concrete has been built in most instances right to the water's edge.
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> The fact of ripping up now a one-foot by thirty-three foot strip of cement would be more detrimental to the object of the Ordinance than beneficial. And for that reason, any type of tampering with the structure that it appears out there would be detrimental to and contrary to what the object of the Ordinance is.
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> And for that reason, as the Court has indicated, it would take jurisdiction over the case, grant the Application for Leave to Appeal, would sua sponte reverse the Order of the District Court, declare it null and void, and enjoin the Township from further proceedings relative to this matter.

The Township sought leave to appeal the circuit court's decision to this Court, arguing that the circuit court did not have jurisdiction over the case and that an order of superintending control is not authorized by law under these circumstances. We granted leave to appeal.

II. SUPERINTENDING CONTROL AND JURISDICTION

This Court reviews a decision to grant an order of superintending control for an abuse of discretion. *In re Gosnell*, 234 Mich App 326, 333; 594 NW2d 90 (1999). A court abuses its discretion if its decision falls outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). A decision that rests on an error of law falls outside the range of principled outcomes. *Kidder v Ptacin*, 284 Mich App 166, 170; 771 NW2d 806 (2009). Jurisdictional questions are questions of law, which this Court reviews de novo. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 472; 628 NW2d 577 (2001).

The power to issue orders of superintending control is provided under MCL 600.615[1] and MCR 3.302. However, the latter provides that when an appeal is available, a complaint for superintending control must be dismissed. MCR 3.302(D)(2). An order of superintending control may not be used as a substitute for an appeal. *Pub Health Dep't v Rivergate Manor*, 452 Mich 495, 500-501; 550 NW2d 515 (1996). In addition, to obtain an order of superintending control, a party must establish that the inferior tribunal failed to perform a clear legal duty and that there is no adequate legal remedy. *Gosnell*, 234 Mich App at 341.

In this case, the magistrate never entered a written order finding Davis responsible for a zoning violation. As Davis points out, MCL 600.8719(4) requires the magistrate to enter an order upon finding a defendant responsible for a civil infraction, and MCR 2.602(A)(1) requires that orders be in writing. Until the magistrate enters a written order, its decision has no legal effect, because "a court speaks through its written orders and judgments, not through its oral pronouncements." *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009).[2] By failing to enter an order, the magistrate failed to perform a clear legal duty. Further, there is no legal remedy because Davis may not properly appeal the magistrate's decision until a written order subject to appeal has been entered. MCR 4.101(H)(2) controls appeals from informal hearings, and it does not provide for interlocutory appeals. But "[a] person seeking superintending control in the circuit court must file a complaint with the court." MCR 3.302(E)(1). In this case, however, no such complaint was ever filed. Instead, the circuit court invoked its power of superintending control *sua sponte*. Had the circuit court had a complaint for superintending control before it, the court would have been justified in responding by way of an order requiring the magistrate to enter a final order of its own. But the court erred in exercising its power of superintending control in the absence of an attendant complaint.

The court then compounded its error by invoking superintending control as a vehicle through which to address the merits of the case, including Davis's due process claims. Davis may address those issues through the usual course of appeals, once such an appeal is properly set in motion. The circuit court committed an error of law by exercising superintending control over an issue for which there was an appeal available. Therefore, the circuit court's use of the power of superintending control was an abuse of discretion.

It was also entirely unnecessary. As the magistrate never entered a written order, there was yet no final decision from which Davis could properly appeal. The district court thus

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[1] "[T]he circuit court has a general superintending control over all inferior courts and tribunals, subject to supreme court rule." MCL 600.615.

[2] The Township argues that it should not be punished for the magistrate's mistake, and that the magistrate is solely responsible for entering an order finding a zoning violation under MCL 600.8719(4). However, it is well settled that a court speaks through its orders, and the Township should have been aware that the magistrate's decision would not take effect until it was reduced to writing and signed. See *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Hall v Fortino*, 158 Mich App 663, 667; 405 NW2d 106 (1986).

reached the correct result concerning jurisdiction for the wrong reason: it had no jurisdiction over Davis's appeal because she brought the appeal too soon, not too late. We instruct the magistrate on remand to enter an order reflecting its original finding that Davis is responsible for a zoning violation. Davis will then have seven days from the entry of the magistrate's order to bring her appeal de novo to the district court. See MCR 4.101(H)(2). Davis's arguments on the merits of that decision, including any possible due process violations, may be heard in that appeal; they are not properly before this Court at present.

Reversed and remanded to the district court magistrate for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Jane M. Beckering