RENDERED: JANUARY 16, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002548-MR

DAVID E. ZIEGLER AND
PATRICIA ZIEGLER — APPELLANTS

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 02-CI-01013

CITY OF FORT MITCHELL — APPELLEE

OPINION

AFFIRMING

** ** ** ** **

BEFORE: BARBER, GUIDUGLI AND VANMETER, JUDGES.

BARBER, JUDGE: The Appellants, David E. Ziegler and Patricia A. Ziegler, seek review of a declaratory judgment of the Kenton Circuit Court. The trial court determined that Appellants could not claim exemption from zoning regulations, by attempting to unilaterally turn their residentially-zoned property into a farm. The Appellee is the City of Ft. Mitchell. We affirm.

The essential facts are not in dispute. By notice dated February 14, 2002, the City of Ft. Mitchell notified

Appellants of zoning violations on their property which is zoned R-1D Residential -- specifically the keeping and maintaining of a horse and having a fence in the front yard. Appellants subsequently filed a Complaint for Declaration of Rights in the Kenton Circuit Court, seeking a determination that their property is exempt from the zoning ordinance adopted by the City of Ft. Mitchell. Appellants maintained that their residential property in the City was used for agricultural purposes. The City filed a counter-claim, seeking a judgment that Appellants had violated its ordinances.

On November 15, 2002, the circuit court entered a Declaratory Judgment, providing in relevant part:

> Since 1974, the Plaintiffs have owned 2.8711 acres within the City of Ft. Mitchell. They maintain their residence of this land which is zoned for residential use by the City's zoning ordinance. In 2001, the Plaintiffs leased an additional 2.1799 acres adjacent to their property.
>
> . . . The Plaintiffs claim that the City's ordinance and zoning regulations are unenforceable against them since their property consists of five acres and is being used for agricultural purposes, i.e. the keeping of livestock, the production of hay, the presence of pasture, and the growing of flowers and ornamental plants.
>
> The plaintiff's property is, and has been, located in a residential zone. The Plaintiffs do not challenge the authority of the City to place their property in a residential zone, nor do they claim that they have the right to keep a horse on

their premises due to a pre-existing, non-conforming use. . . . Rather, the Plaintiffs argue that since they are currently using their property for agricultural purposes, the City is prohibited from enforcing the zoning regulations against them in accordance with KRS 100.203(4). That statute provides that land which is used for agricultural purposes shall have no regulations except for set back lines, restriction on buildings in the flood plain, and regulation of mobile homes.

The Plaintiffs contend that the use of their property falls within the definition of "agricultural use" as set out in KRS 100.111(2). They argue that they occupy five contiguous acres on which they keep a horse, and raise hay, flowers and ornamental plants. For the purpose of this decision, the Court will accept the Plaintiffs' factual allegations as true.

. . .

The Court agrees with the City that the Plaintiffs' claim must fail, . . . because the Plaintiffs have no legal right to engage in agriculture in a residential zone. The Plaintiffs cannot negate the City's authority to regulate activity in residential zones by unilaterally attempting to convert their property into a farm. The restrictions imposed by the City on property within residential zones is a proper exercise of its authority under KRS Chapter 100. . . .

The Plaintiffs reliance on . . . Grannis v. Schroder, Ky. App., 978 S.W.2d 328 (1997) is misplaced. . . . [There,] the property was zoned for agricultural use. Thus, the agricultural supremacy clause of KRS 100.203(4) was properly invoked . . . .

In the case before this Court, the Plaintiffs' property has been zoned for residential use only. As a result, the Plaintiffs cannot claim that they are exempt from zoning regulations pursuant to the agricultural supremacy clause. Otherwise,

> any owner of at least five acres in any zone could claim exemption by planting a vegetable or flower garden. The City has the authority to restrict the Plaintiffs' use of their residential property under its zoning regulations, as well as pursuant to its separate ordinance §90.07, which prohibits the keeping of livestock on property within the city.

The trial court dismissed the Appellants' claims with prejudice, and declared that the zoning regulations of the City of Ft. Mitchell, §§10.3, 13.3.1 and 9.10D2, and the Code of Ordinances, §90.07C, applied to and were enforceable against the Appellants and the use of their property in the City of Ft. Mitchell.

On appeal, Appellants assert that the trial court erred, because KRS 100.203(4)[1] prohibits the City of Ft. Mitchell from regulating the use of their property, because it is used for agricultural purposes. The logic of this argument is illusory, and ignores the fact that Appellants' property is zoned residential. Appellants also rely upon the case of *Grannis v.*

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[1] Cities and counties may enact zoning regulations which shall contain:
(4) Text provisions to the effect that land which is used for agricultural purposes shall have no regulations except that:
(a) Setback lines may be required for the protection of existing and proposed streets and highways;
(b) All buildings or structures in a designated floodway or flood plain or which tend to increase flood heights or obstruct the flow of flood waters may be fully regulated; and
(c) Mobile homes and other dwellings may be permitted but shall have regulations imposed which are applicable, such as zoning, building, and certificates of occupancy;

Schroder,[2] in support of their argument that land used for agricultural purposes is exempt from zoning regulations. *Grannis* does not apply; there, the subject property is zoned agricultural.

We cannot improve upon the sound reasoning of the trial court that the Appellants "have no legal right to engage in agriculture in a residential zone. . . . [They] cannot negate the City's authority to regulate activity in residential zones by unilaterally attempting to convert their property into a farm. The restrictions imposed by the City on property within residential zones is a proper exercise of its authority under KRS Chapter 100." Accordingly, we affirm.

ALL CONCUR.

BRIEFS FOR APPELLANT:	BRIEF FOR APPELLEE:
Thomas R. Kerr Covington, Kentucky	Robert C. Ziegler Matthew C. Smith Covington, Kentucky

[2] *supra.*