[Cite as *State ex rel. Dinardo v. Chester Twp.*, 2012-Ohio-5828.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

STATE OF OHIO ex rel. FRANK DINARDO,	:	**O P I N I O N**
Plaintiff,	:	**CASE NO. 2012-G-3063**
FRANK DINARDO, et al.,	:	
Plaintiffs-Appellants,	:	
- vs -	:	
CHESTER TOWNSHIP, et al.,	:	
Defendants-Appellees.		

Civil Appeal from the Geauga County Court of Common Pleas, Case No. 10M001490.

Judgment: Affirmed.

David M. Lynch, 29311 Euclid Avenue, Suite #200, Wickliffe, OH 44092(For Plaintiffs-Appellants).

Abraham Cantor, Johnnycake Commons, 9930 Johnnycake Ridge Road, Suite #4-F, Concord, OH 44060 (For Defendants-Appellees).

THOMAS R. WRIGHT, J.

{¶1} This is an accelerated calendar appeal taken from the final judgment of the Geauga County Court of Common Pleas. Plaintiffs-Appellants, Frank Dinardo, Armand Dinardo, and Maria Dinardo, seek reversal of the trial court's order granting summary judgment in favor of Defendants-Appellees, Chester Township, Chester

Township Board of Zoning Appeals, and the Chester Township Board of Trustees, on appellants' complaint in mandamus.

{¶2} Appellants sought a writ of mandamus in order to compel appellees to initiate land appropriation proceedings within the Probate Court of Geauga County after appellees denied appellants' application for a zoning certificate. Appellants now challenge the trial court's determination that the statute of limitations bars their complaint in mandamus, and that there was no evidence of a wrongful regulatory taking of appellants' property when their application for a zoning permit was denied. For the reasons that follow, we disagree with appellants and affirm the judgment of the trial court.

{¶3} Due to the statute of limitations issue presented in this case, the chronology of events is essential to our analysis. Appellant, Frank Dinardo, filed an application for a zoning certificate with the Chester Township Zoning Inspector on May 15, 2006, seeking permission to use the property located at 8239 Mayfield Rd., Chester Township, Ohio as a garden/nursery store. The application was denied on May 17, 2006, and that decision was affirmed by appellant, Chester Township Board of Zoning Appeals ("BZA"), on December 11, 2006. Appellants appealed the decision of the BZA to the Common Pleas Court pursuant to R.C. Chapter 2506. The Common Pleas Court affirmed the decision of the BZA on January 23, 2009. This court reversed the determination of the Common Pleas Court in *Dinardo v. Chester Twp. Bd. of Zoning Appeals*, 186 Ohio App.3d 111, 2010-Ohio-40 (11th Dist.2010), finding that appellants' proposed use of the property constituted a permitted use under the Chester Zoning Resolution. Following this court's denial of appellees' motion for reconsideration on

March 2, 2010, appellees were also denied acceptance of their appeal to the Supreme Court of Ohio on May 26, 2010.

{¶4} On December 21, 2010, appellants filed the underlying complaint in mandamus, alleging that the denial of their application for a zoning permit constituted a taking of their property without due process. Appellants requested an order compelling appellees to fairly compensate them for their losses by immediately commencing appropriation proceedings to determine the amount of compensation due as a result of the alleged taking. Upon consideration of appellees' motion for summary judgment and appellants' response, the trial court granted appellees' motion on the grounds that the complaint was untimely filed and that appellants had failed to meet their evidentiary burden to show that a regulatory taking had occurred.

{¶5} Appellants timely filed a notice of appeal and assert the following assignments of error:

{¶6} "[1]. Granting Summary Judgment because the four-year statute of limitations ran against Appellant the moment he was denied a permit (instead of when this Court granted his appeal)."

{¶7} "[2]. Granting Summary Judgment in a taking case because no 'bad faith' was alleged against the government."

{¶8} "It is well settled under Ohio law that mandamus constitutes '(* * *) the appropriate action to compel public authorities to institute appropriation proceedings where an involuntary taking of private property is alleged.'" *Painesville Mini Storage, Inc. v. City of Painesville*, 11th Dist. No. 2008-L-092, 2009-Ohio-3656, ¶28, quoting *State ex rel. Shemo v. City of Mayfield Heights*, 95 Ohio St.3d 59, 63 (2002). Pursuant

to R.C. 2305.09(E), an action for relief, based upon a physical or regulatory taking of real property, must be brought within four years after the cause has accrued. *State ex rel. Nickoli v. Erie Metroparks,* 124 Ohio St.3d 449*,* 2010-Ohio-606, ¶29.

{¶9} "A cause of action for injury to real property and relief on the ground of a physical or regulatory taking accrues, and the four-year statute of limitations commences to run, when the injury or taking is first discovered, or through the exercise of reasonable diligence, should have been discovered." *State ex rel. Stamper v. City of Richmond Heights*, 8th Dist. No. 94721, 2010-Ohio-3884, ¶25; *Painesville Mini Storage* at ¶19.

{¶10} In their first assignment of error, appellants contend that the statute of limitations on their complaint in mandamus did not begin to run until March 2, 2010, the date this court reversed the ruling of the trial court and issued its decision on appellees' motion for reconsideration. Appellees counter that the statute of limitations was triggered on May 17, 2006, the date the Chester Township Zoning Inspector denied appellants' application for a zoning permit. In effect, appellants seek a ruling that the denial of their zoning permit constituted a continued taking until appellees' decision was reversed by this court. Appellants' stance does not comport with the law.

{¶11} The Supreme Court of Ohio as well as this court and other appellate districts in Ohio have previously addressed this issue in cases involving similar facts and decided that the statute of limitations emanates from *one* event, the date of the original adverse determination by the governmental entity, in this case the Chester Township Zoning Inspector's denial of appellants' application on May 17, 2006. *See*, *e.g., Nickoli* at ¶31-37 (metro parks board constructed a recreational trail through a

canal corridor that ran across the owners' properties; Ohio Supreme Court held that cause of action accrued when the trail first opened to the public, rejecting relators' claim that their property was continuously materially damaged every day until the decision to open the trail was reversed); *Stamper* at ¶24-27 (statute of limitations began to run on the date the city approved the plan that provided for the property's storm water drainage pattern which had caused several flooding incidents on relators' property); *Painesville Mini Storage* at ¶31 (building permit allowed construction on a tract over which landowner had an easement. This court held a claim for relief accrued when building permit had been granted, and landowner was not newly damaged each day after the permit was issued); *State ex rel. Miami Overlook, Inc. v. Village of Germantown*, 2nd Dist. No. 24017, 2011-Ohio-3419 (date of enactment of zoning ordinance, which allegedly rendered landowner's property unfit for use, commenced the running of the statute of limitations). In sum, the present effects of a single past action do not trigger a continuing violations exception to the statute of limitations as appellants contend. *Nickoli* at ¶32.

{¶12} Accordingly, based on the foregoing, appellants' claim accrued instantly upon the denial of their application for a zoning permit on May 17, 2006, when they first discovered, or should have discovered, that any purported "taking" of their property had taken place. However, appellants did not file the underlying mandamus complaint until December 21, 2010, well over four years from the accrual of its cause of action.

{¶13} Based on the fact that appellants filed their complaint in mandamus outside the four-year statute of limitations set forth in R.C. 2305.09(E), this court concludes that their first assignment of error is without merit and is, therefore, overruled.

{¶14} Given our disposition of appellants' first assignment of error, the merits of appellants' second assignment of error regarding whether a taking actually occurred is moot and will not be addressed here. The judgment of the Geauga County Court of Common pleas is hereby affirmed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.