STATE OF MICHIGAN

COURT OF APPEALS

RICHARD RUDOLPH, DAN GRIFFIN, CHRIS WELLS, and CAROLYN ALLEN,

Plaintiffs-Appellants,

v

GUARDIAN PROTECTIVE SERVICES, INC., a/k/a GUARDIAN SECURITY SERVICES, INC., and GUARDIAN BONDED SECURITY,

Defendant-Appellees,

and

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 3, a/k/a SEIU MICHIGAN STATE COUNCIL, METROPOLITAN DETROIT AFL-CIO COUNCIL, MAURICE and JANE SUGAR LAW CENTER FOR ECONOMIC and SOCIAL JUSTICE, INTERFAITH WORKERS JUSTICE, MICHIGAN ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW, CENTRO OBRERO/LATINO WORKERS CENTER, and ASSOCIATED BUILDERS & CONTRACTORS OF MICHIGAN,

Amici curiae.

UNPUBLISHED
September 22, 2009

No. 279433
Wayne Circuit Court
LC No. 06-622199-CZ

Before: Borrello, P.J., and Murray and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendant[1] pursuant to MCR 2.116(C)(8). The trial court found that *Attorney General, ex rel Lennane v Detroit*, 225 Mich 631; 196 NW 391 (1923) precluded a home rule city from enacting a living wage ordinance, so it was bound by the doctrine of stare decisis to find the Detroit Living Wage Ordinance (DLWO) invalid.[2] Because the trial court correctly applied *Lennane* and because we are also constrained by stare decisis, we affirm. However, because it appears that subsequent constitutional and legal developments in Michigan have rendered *Lennane* obsolete, we respectfully urge the Supreme Court to revisit and reconsider the issue.

The doctrine of stare decisis "requires courts to reach the same result when presented with the same or substantially similar issues in another case with different parties." *Topps-Toeller, Inc v City of Lansing*, 47 Mich App 720, 729; 209 NW2d 843 (1973). A decision of the majority of the justices of our Supreme Court is binding on all lower courts. *People v Mitchell*, 428 Mich 364, 369; 408 NW2d 798 (1987). This Court may properly arrive at the conclusion that a decision of our Supreme Court is obsolete. *Id*. at 370. However, this and all other lower courts remain bound by our Supreme Court's precedent until such time as the Supreme Court overrules or modifies it. *State Treasurer v Sprague*, ___ Mich App ___; ___ NW2d ___ (Docket No. 281961, June 4, 2009), slip op at pp 4-5. *Lennane* has not been overruled by our Supreme Court, so it remains binding precedent under the doctrine of stare decisis.

The issue in *Lennane* was directly on point with the instant case. In *Lennane*, our Supreme Court considered the constitutionality of "minimum wage" provisions in Detroit's city charter, and a matching ordinance containing a penal provision, governing workdays, working hours, and wages for city employees and individuals employed by city contractors. *Lennane*, *supra* at 633-634. The DLWO applies to certain contractors who contract with Detroit and requires those contractors to pay their employees "wages which are at least equal to a living wage," as further defined in the DLWO. It also contains enforcement provisions. Even though the DLWO is a "living wage" ordinance instead of a "minimum wage" ordinance, both are clearly intended to accomplish substantially similar goals and would entail exercise of the same power. Thus, *Lennane* and the instant case share the same issue: whether Detroit's implementation of a wage ordinance constitutes a valid exercise of its police power or whether, in the alternative, such an ordinance is ultra vires and thus invalid. Under the binding precedent of *Lennane*, the DLWO is the latter.

However, we are of the view that *Lennane* is obsolete and that the Court would not necessarily arrive at the same result if the issue was one of first impression today. *Lennane* was decided in 1923 on the basis of the Constitution of 1908; in particular, Sections 20 and 21 of

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[1] Because plaintiff's complaint identified a single defendant, which included the named defendants in this case, and because defendant's appellate brief refers to a singular defendant, this opinion will also refer to defendant in the singular.

[2] Defendant's motion for summary disposition raised other arguments in support, but the trial court did not consider those other arguments in light of its decision.

Article 8 of the Constitution of 1908. *Lennane*, *supra* at 637-638. At the time, those sections provided as follows:

> Sec. 20. The legislature shall provide by a general law for the incorporation of cities and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.
>
> Sec. 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state.

The *Lennane* Court observed that the state was the sovereign, and although municipalities presumably had the power "to legislate upon matters of municipal concern," they were merely agents of the state; and the wage ordinance at issue would exercise police power over a state concern in the absence of an explicit delegation of the power to do so. *Lennane*, *supra* at 638-641.

But the foundations for the *Lennane* Court's holding have not remained static. Forty years later, the Constitution of 1963 was adopted. At that time, Const 1908, art 8, § 21 became Const 1963, art 7, § 22, mostly with minor changes but in significant part adding the requirement that "[n]o enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section." More significantly, the Constitution of 1963 added an entirely new provision to the local government provisions, at Section 34 of Article 7:

> The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

The convention comment to this section supports the plain language thereof, that under our present constitution, the courts should "give a liberal or broad construction to statutes and constitutional provisions concerning all local governments."

Our Supreme Court has recognized as much. In the context of township ordinances, the Court observed that "[a]t common law, we narrowly construed township ordinances enacted pursuant to the delegated police power in the township ordinance act," but Const 1963, art 7, § 34 "replaced the common-law rule of strict construction by constitutionally requiring courts to liberally construe all legislative and constitutional powers conferred upon townships." *Square Lake Hills Condominium Ass'n v Bloomfield Twp*, 437 Mich 310, 319; 471 NW2d 321 (1991). Our Supreme Court subsequently observed that home rule cities now enjoy powers not expressly denied, rather than only those specifically granted, and that the relationship between state and local governments "has matured to one of general grant of rights and powers, subject only to certain enumerated restrictions instead of the earlier method of granting enumerated rights and

powers definitely specified." *Detroit v Walker*, 445 Mich 682, 690; 520 NW2d 135 (1994). The approach taken by the *Lennane* Court appears to have been forsaken.

We believe that *Lennane* is obsolete. Even though the provisions of the home rule act have not materially changed since the time *Lennane* was decided – for example, *Lennane* cited Comp. Laws 1915, § 3307(t), which is now MCL 117.4j(3) – we believe the interpretation thereof, in light of the significant changes to our constitution and in our other case precedent, would be different. Under *Lennane*, the test was whether a city's powers were expressly and unmistakably granted; today, the test would be whether they had been restricted.

Lennane is binding precedent and we must follow it. We hold, as we must, that Detroit may not enact an ordinance regulating wages, and we therefore need not consider the parties' other arguments on appeal. However, in light of the changes in Michigan's legal landscape since 1923 pertaining to municipalities' police powers, we respectfully urge our Supreme Court to revisit *Lennane* and reconsider whether the rule therein continues to have a place in today's jurisprudence.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Alton T. Davis