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Six-year Statute of Limitations Applies to Suit for Abatement of Public Nuisance

FACTS:

Fraser Township filed a suit seeking injunctive relief to abate a public nuisance against Harvey Haney and his wife in May 2016. The Township alleged that the Haneys were raising approximately 20 domestic hogs on their property in violation of a township ordinance and creating a nuisance due to the stench and flies drawn to the hog waste. Haney admitted he began raising hogs on the property in 2006. There was no evidence, however, that any new hogs were brought onto the property after 2006.

Although required by court rules, in their first responsive pleading the defendants failed to raise their defense that the township's claim was barred by the statute of limitations. Nor did the township, at that time, object to the defendants' failure to timely raise the defense. Nonetheless, the issue was fully briefed and arguments made as a result of defendants' motion for summary disposition, claiming that the six-year general period of limitations under MCL 600.5813 was applicable. The trial court denied the motion, reasoning that the statute of limitations did not apply against the township because the case constituted an action in rem, i.e., an action against property, not subject to MCL 600.5813.

QUESTION:

Did the defendants waive the statute of limitations defense since they failed to raise it in their first responsive pleading?

ANSWER:

No. The Court of Appeals held that, under the facts of this case, the trial court made an express holding after full participation by both parties with respect to the asserted statute of limitations defense with the township's implied consent.

QUESTION:

What is the applicable statute of limitations that applies to an abatement of a public nuisance?

ANSWER:

Six years. The Court of Appeals reversed the holding that the township's claim was for the abatement by the individual defendants of a nuisance against the public subject to the six-year general period of limitations (MCL 600.5813) and was not an action in rem. Although the township had not specified whether its action was a public or private nuisance, the Court stated that a public nuisance "involves the unreasonable interference with a right common to all members of the general public." Noting that "the period of limitations runs from the time the claim accrues" irrespective of when the damage results under MCL 600.5827, the Court held that the claim accrued when the Haneys first began to keep hogs on the property. The township asserted that each day that the Haneys continued to keep pigs on the property constituted a separate violation for which a new accrual period began. The Court held that the so-called continuing wrongs doctrine was held to be inapplicable in Michigan pursuant to the Michigan Supreme Court's decision in Garg v Macomb Co Community Mental Health Services, 473 Mich 1205 (2005) as applied in Marilyn Froling v Bloomfield Hills Country Club, 285 Mich App 264 (2009). Since there was no evidence of additional swine being added to the property resulting in a newly accrued cause of action since 2006, the Court held that the township's action was barred by the six-year statute of limitations.

Township of Fraser v Harvey Haney, No. 337842 (approved for publication January 17, 2019)