

IN THE COURT OF COMMON PLEAS, MONTGOMERY COUNTY, OHIO  
CIVIL DIVISION

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|-------------------------------------|-------------------------|
| Miami Township Board of Trustees, : | Case No. 2019 CV 05444  |
| Plaintiff, :                        | Hon. Richard S. Skelton |
| v. :                                |                         |
| Darren Powlette, et al., :          |                         |
| Defendants. :                       |                         |

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**DECISION AND ENTRY ON CROSS-MOTIONS FOR  
SUMMARY JUDGMENT**

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This matter is before the Court on the motions of both plaintiff and the defendants for summary judgment in their favor. 9/30/2021. Both motions address whether the township has the legal authority to prohibit the defendants from engaging in celebratory events, such as weddings, at a former “horse barn” on the property located at 7757 Upper Miamisburg Road, Miami Township, in Montgomery County, Ohio. The parties disagree as to whether such events constitute “agritourism” that exempts the activity from regulation by zoning limitations.

R.C. 519.21 creates an exemption from restrictive zoning by townships. It provides: “(A) Except as otherwise provided in divisions (B) and (D),. sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission . . . to prohibit the . . . use of buildings or structures incident to the use for agricultural purposes . . . including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is

used for viticulture, and no zoning certificate shall be required for any such building or structure.” Division (C) specifically rejects township zoning authority to prohibit in a district zoned for agricultural, industrial, or commercial uses, “the use of any land for \* \* \* (4) Agritourism.” The parties do not dispute that the term “agritourism” is statutorily defined in R.C. 901.80(A)(2), as referenced in R.C. 519.21(D)(2). That section provides that agritourism is an “agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity.”

Defendants argue that hosting weddings in the former horse barn is agritourism because it allows the invitees or participants “to observe, participate in, or enjoy” the “agricultural” setting of the farm on which the barn is located, that includes farm animals and alpacas. The Township Trustees argue that such events do not constitute “agritourism” as defined in the statute, but are commercial events designed to produce income for defendants from non-agricultural use and not to “observe, participate in, or enjoy that [agricultural] activity.” R.C. 901.80(A). Plaintiff also argues that the barn is not “used primarily for vinting and selling wine”, as part of viticulture activity for which “no zoning certificate shall be required for any such building or structure.” R.C. 519.21(A). Defendants concede that “Powlette has never claimed he was using the barn ‘primarily’ (sic) for the vinting and selling of wine.” Def. Reply Mem. In Support of Mot., at 5.

To enforce township zoning regulations, the General Assembly authorized seeking “injunctive, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful” use. R.C. 519.24. It is the plaintiff’s burden to prove a violation of the zoning resolution by clear and convincing evidence. *Concord Twp. Trustees v. Hazelwood Builders, Inc.*, 11<sup>th</sup> Dist. Lake No. 96-L-075, 1997 Ohio App. LEXIS 2140 (May 16, 1997), \*5-

\*6, with string of citations. The Resolution sought to be enforced is Miami Township Zoning Resolution Section 307 that addresses the Agricultural Exemption to a Zoning Certificate. The specified provision of the Zoning Resolution is that use must be for or incident to agriculture, which includes “agritourism.” The Defendants state: “The question before this Court is straightforward. Does Powlette’s use of the Property constitute agritourism?” Def. Mot., at 13. In other words: “Simply put, if the agricultural activities Powlette is engaged in on the Property constitute agritourism, he is zoning compliant.” Id.

The Court has reviewed the memoranda from the parties and the depositions and affidavits offered. As defendants concede, “statutory interpretation presents a question of law.” Def. Mot., at 9. The Court looks at the statutory provisions as a whole and construes them *in pari materia*. Thus, statutes on the same subject “may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject.” Black’s Law Dictionary, 7<sup>th</sup> Ed. Deluxe. at 794. The Court finds that the distinctions in the applicable zoning provisions are best understood by the purpose of the activity. In other words, “agritourism” addresses “agriculturally related” activities that allow the public to “observe, participate in, or enjoy” the agricultural activity. It is not that the activity brings people to the farm where they may observe animals, like alpacas or chickens or sit on bales of hay while they are there for a social event like a wedding. The definition is limited to “agriculturally related” activity such as “you-pick operations or farm markets . . . that allows or invites members of the general public to observe, participate in, or enjoy *that* activity.” (emphasis added.)

The Court finds the plain language principle controls and there is no ambiguity that would require strictly construing the language against the Trustees or against the zoning authority. Furthermore, the Court finds that there is no material issue of fact that defendants are not using the

barn “primarily for vinting and selling wine and that [the barn] are located on land any part of which is used for viticulture”. Thus, the zoning authority over the defendants’ barn is not prohibited by R.C. 519.21(A).

The Court finds that construing the Civ. R. 56 evidence against the moving party and in favor of the non-moving party where appropriate with cross-motions for summary judgment, there is no genuine issue of material fact in dispute and that the Township Board of Trustees is entitled to injunctive relief as authorized in R.C. 519.24 based on clear and convincing evidence that no reasonable fact-finder could construe in favor of the defendants. Moreover, as the parties agree, the issue in dispute is the legal interpretation of the statute. Based on that interpretation as applicable to the record before the Court, Plaintiff is entitled to summary judgment as a matter of law.

The motion of the plaintiff is GRANTED and the motion of the defendants is DENIED. Counsel for plaintiff is directed to submit to the Court, within fourteen days of this entry, a proposed Judgment that is consistent with Civ. R. 65, Ohio R. Civ. P., enjoining the unlawful activity as alleged in the complaint. No bond is required.

SO ORDERED.

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Richard S. Skelton, Judge

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General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Case Number:**  
2019 CV 05444

**Case Title:**  
MIAMI TOWNSHIP BOARD OF TRUSTEES vs DARREN  
POWLETTE

**Type:**

Decision

So Ordered,