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Zoning Ordinance Restricting Cultivation of Medical Marijuana Preempted by State Statute

FACTS:

Under York Township's zoning ordinance, the use of property by a medical marijuana caregiver for marijuana use and cultivation was permitted only under its Home Occupation provisions. The provisions required that medical marijuana be contained within the main building of the dwelling with access only by the registered primary caregiver or qualifying patient. The provisions further required that all building-related permits be obtained for any portion of the residential structure that supported the cultivation of marijuana.

Brothers Donald Miller and David Miller resided in Donald's home. Both were qualified medical marijuana patients. Katherine Null served as David's registered medical marijuana primary caregiver. Null rented a bedroom at the house but did not reside there. In 2014, Null directed David to construct a structure in the backyard for the cultivation of medical marijuana. Null rented space in the backyard for that purpose. No one applied for construction permits or certificate of occupancy.

York Township maintained that the Millers and Null violated the Home Occupation zoning ordinance since 1) Null did not reside at the property, and 2) the marijuana was grown not entirely within Donald's house. All parties agreed that, except for the defendants' zoning and construction code violations, the defendants' medical marijuana use and outdoor growing facility complied with the Michigan Medical Marijuana Act (MMMA). York Township filed a declaratory judgment seeking validity of its zoning and construction regulations and its right to enforce them as they applied to the cultivation and use of medical marijuana in residential-zoned locations.

QUESTION:

Are the township's Home Occupation zoning ordinance provisions relating to outdoor medical marijuana growing and residency requirements preempted by the state's MMMA?

ANSWER:

ACCORDING TO THE TRIAL COURT AND COURT OF APPEALS: YES.

The trial court ruled that the township's Home Occupation zoning ordinance directly conflicted with provisions of the MMMA. The court noted that in 2012, the Legislature amended the MMMA specifically to permit outdoor cultivation of marijuana in an enclosed, locked facility. The court found that the township's ordinance allowing medical marijuana growing only as an indoor home occupation was in direct conflict with the state statute. In addition, the court held that the township's requirement that Null live on the premises was also in direct conflict with the MMMA. The trial court further held that the structure was subject to construction regulations and zoning so long as the zoning did not forbid outdoor cultivation of medical marijuana. The court of appeals affirmed. The court disagreed with the township's assertion that its authority under the Michigan Zoning Enabling Act permitted it to restrict caregivers' marijuana growing to indoors in areas zoned residential. Since the MMMA permits outdoor medical marijuana growing, the court held that the zoning regulation was preempted by the state statute as a direct conflict. The court further affirmed the trial court's ruling that construction code and building permit regulations applied to the outdoor medical marijuana facility. *Hardrick v City of Detroit*, Nos. 16-2704/17-2077 (November 22, 2017)

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