STATE OF MICHIGAN

COURT OF APPEALS

CONSUMERS POWER COMPANY,

Plaintiff-Appellee,

v

KIRK LEWIS and BETTY LEWIS, a/k/a BETTYE LEWIS,

Defendants-Appellants.

UNPUBLISHED
April 15, 1997

No. 192359
Clare Circuit Court
LC No. 94-900432-CZ

Before: Young, Jr., P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

Defendants appeal as of right an order permanently enjoining them from interfering with plaintiff's right to access defendants' real property. We affirm.

Defendants first argue that the trial court erred in granting plaintiff's motion for a permanent injunction because there is an issue of fact as to whether plaintiff's use of defendants' land was permissive. However, defendants' argument must fail because this fact must be deemed admitted by defendants. MCR 2.108(A)(1) provides that "[a] defendant must serve and file an answer or take other action permitted by law or these rules within 21 days after being served with the summons and a copy of the complaint . . . ." MCR 2.110(B) requires that "[a] party must file and serve a responsive pleading to (1) a complaint." MCR 2.111(E)(1) provides that "[a]llegations in a pleading that requires a responsive pleading, other than allegations of the amount of damage or the nature of the relief demanded, are admitted if not denied in the responsive pleading." As explained by one leading authority, a "[f]ailure to deny can result either from failure to serve and file a required responsive pleading at all, or failure within that pleading to deny specific matters." Martin Dean & Webster, Michigan Court Rules Practice, Authors' Comments to MCR 2.111, p 190.

In this case, defendants were personally served with a complaint alleging that plaintiff had "a prescriptive right to make lawful and beneficial use of Defendant's land consistent with Plaintiff's needs to install, inspect, operate and maintain its electrical equipment to include tree trimming." Within twenty-one days, defendants responded by filing a "Refusal for cause" and a "Refusal for cause without

dishonor U.C.C. 3-501," in which they argued only that the trial court lacked subject matter jurisdiction over the action. Although plaintiff raised the issue of whether plaintiff had a prescriptive easement at the hearing on plaintiff's motion for a permanent injunction, defendants failed to file a written response to plaintiff's allegations regarding its prescriptive rights. Because defendants failed to file and serve a responsive pleading, plaintiff's allegation that it had a prescriptive right to maintain its electrical equipment is deemed admitted pursuant to MCR 2.111(E)(1). In light of this admission, we find that plaintiff's motion was properly granted. *Vergote v K Mart Corp (After Remand)*, 158 Mich App 96, 103; 404 NW2d 711 (1987).

Next, defendants argue that the trial court erred in determining that it had jurisdiction over their land. Defendants allege that their property was originally owned by the United States government and was conveyed directly to their predecessors through a land patent. Defendants argue that because the State of Michigan never acquired title to their land, this case was not within the jurisdiction of the Clare Circuit Court. We disagree.

As explained in *Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992):

> [J]urisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial.

MCL 600.605; MSA 27A.605 provides as follows:

> Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.

In this case, plaintiff brought a civil claim seeking a civil remedy in circuit court. Defendants have not provided this Court with any legal authority indicating that the constitution or a statute has given another court jurisdiction to hear this case. Moreover, we note that this Court and our Supreme Court have heard and decided a number of cases, included cases cited by defendants, wherein claims involving federally patented land were heard in the circuit court. See e.g., *Jeffries v State ex rel Director Of Dep't Of Conservation*, 373 Mich 287; 129 NW2d 426 (1964); *Klais v Danowski*, 373 Mich 262; 129 NW2d 414 (1964); *People ex rel Director Of The Dep't of Natural Resources v Murray*, 54 Mich App 685; 221 NW2d 604 (1974); *Oliphant v Frazho*, 5 Mich App 319; 146 NW2d 685 (1966), rev'd 381 Mich 630 (1969). Accordingly, we conclude that defendants' contention that the circuit court did not have jurisdiction to hear a claim involving their land is without merit.

Defendants' final argument is that the trial court should have sua sponte suggested that they amend their response at the hearing on plaintiff's motion. We disagree. MCR 2.118(A)(2) provides as follows:

> Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

In this case, defendants never requested leave to amend their responsive pleading. We find no error in the trial court's failure to sua sponte suggest an amendment.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski