

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT WESTBROOK, NORMA WESTBROOK,
THOMAS WESTBROOK and C. MARGARET
WESTBROOK,

UNPUBLISHED
June 27, 1997

Plaintiffs-Appellees,

v

HAROLD NASH,

No. 189726
Ionia Circuit Court
LC No. 94-S-16249 CH

Defendant-Appellant.

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Following a bench trial, the trial court concluded that to the extent the parties had orally made a contract for the sale of lands, as to which defendant is purchaser and plaintiffs sellers, the sale did not include mineral rights. Defendant appeals by right.

Based on conflicting evidence, the trial court concluded as an issue of fact that the sale did not include the mineral rights. In so holding, the trial court noted that defendant was aware of the existence of commercially exploitable gravel and stone on the premises, and that the value of such resources was well in excess of the price per acre defendant agreed to pay for the land. Where, as here, the trial court's resolution of issues of fact is dependent on the credibility of the witnesses, and this Court is left without a definite and firm conviction that a mistake has been made, the trial court's findings cannot be said to be clearly erroneous. *Gorman v Soble*, 120 Mich App 831; 328 NW2d 119 (1982).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple

* Circuit judge, sitting on the Court of Appeals by assignment.