

STATE OF MICHIGAN
COURT OF APPEALS

JAMES D. AZZAR and DENNIS H. BRODEUR,

Plaintiffs-Appellees,

v

LANISPLACE, INC., and MISSION POINT
RESORT, INC.,

Defendants-Appellants.

UNPUBLISHED
October 31, 1997

No. 193030
Mackinac Circuit Court
LC No. 93-003537-CH

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court order that granted summary disposition in favor of plaintiffs in their suit to quiet title to land. We reverse and remand.

The only issue properly before this Court is whether the trial court erred in holding there was no genuine issue of material fact with respect to whether the disputed site was unpatented filled bottomland in which only the State of Michigan had any rights prior to the 1984 deed to plaintiffs. The remaining issues raised by the parties were not reached by the trial court and are inappropriate for appellate review. *Richmond Twp v Erbes*, 195 Mich App 210, 219; 489 NW2d 504 (1992), lv den 441 Mich 931 (1993). This Court conducts a de novo review of the trial court's ruling on a motion for summary disposition to determine whether the pleadings and the uncontroverted documentary evidence established that plaintiffs were entitled to judgment as a matter of law. MCR 2.116(I)(1); *Trierweiler v Frankenmuth Mutual Ins Co*, 216 Mich App 653, 655; 550 NW2d 577 (1996).

Upon a de novo review of the record, we find that the trial court erred in granting plaintiffs' motion for summary disposition because there was a genuine issue of material fact. The documentary evidence submitted by defendants indicated that: (1) plaintiffs' predecessors deeded the riparian rights of the property to defendants' predecessors that granted defendants the right to use the road; (2) the specific area of the property over which the road traverses was not filled bottomland but had always been upland of the shoreline; and (3) the Department of Natural Resources, which deeded the property to plaintiffs' predecessors, was routinely overly inclusive in describing the area of bottomlands simply

because the state did not warrant title to such areas, but instead only issued quit claim deeds. In light of these proofs, we cannot conclude that plaintiffs were entitled to judgment as a matter of law. Rather, a factual question existed for the trier of fact to decide. *Trierweiler, supra*, 655.

Reversed and remanded for further proceedings on plaintiffs' claim to quiet title. In view of our disposition, we need not address the other issues raised. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Richard A. Bandstra