STATE OF MICHIGAN

COURT OF APPEALS

FREDERICK W. STEFFENS II and PAMELA S. STEFFENS,

Plaintiffs/Counter-defendants-Appellants,

v

VILLAGE OF NORTHPORT,

Defendant/Counter-plaintiff-Appellee,

and

STATE OF MICHIGAN TREASURER,

Defendant-Appellee.

.

UNPUBLISHED
February 26, 1999

No. 199518
Leelanau Circuit Court
LC No. 95-003776 CH

Before: Talbot, P.J., and McDonald and Neff, JJ.

PER CURIAM.

Plaintiffs Frederick and Pamela Steffens appeal as of right from the circuit court's declaratory judgment which ordered them to remove encroachments from the southern thirty-three foot portion of Fourth Street in the Village of Northport. We affirm.

I

The instant action to quiet title concerns a thirty-three-foot southern portion of Fourth Street in the Village of Northport. In their original complaint, plaintiffs sought a declaratory judgment that would have granted them fee title in the disputed property. Specifically, plaintiffs claimed that the 1856 plat of the Village of Northport was ambiguous and that the Village did not properly accept the dedication of Fourth Street or, alternatively, that the dedication lapsed before the Village took any action to accept the dedication, or that the dedication was effectively withdrawn because plaintiffs' predecessors used the property inconsistent with public ownership.

The trial court held that the Village did informally accept Fourth Street and that although it may have only maintained the northern thirty-three foot portion, this acceptance of a portion of Fourth Street was a valid acceptance of the entire sixty-six foot portion. Plaintiffs now appeal.

II

Plaintiffs first argue that the trial court erred in failing to find that the original 1856 plat was statutorily invalid. Specifically, plaintiffs argue that because the plat lacked dedication language and specific lot and road dimensions, it was ambiguous and did not evidence a positive and unequivocal intent to dedicate the property in dispute. We agree with plaintiffs that the 1856 plat is invalid and that the trial court erred in relying on it.

Generally, a valid statutory dedication of land for a public purpose requires two elements: (1) a recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use; and (2) acceptance by the proper public authority. *Kraus v Michigan Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996). Such dedications must comply with the provisions of the then prevailing platting statute. See *Gunn v Delhi Twp*, 8 Mich App 278, 282; 154 NW2d 598 (1967).

In the present case, the applicable statute provided as follows:

> [S]uch maps or plats as are by this act required to be recorded, *shall particularly set forth and describe all the public grounds within such town, by its boundaries, courses and extent, and whether it be intended for streets, alleys, commons, or other public uses, and all the lots intended for sale, by progressive numbers, and their precise length and width*; and the maps made and acknowledged before a Justice of the Peace, a Notary Public of the proper county where the town lies, or before any Judge of any Court of Record, and certified under the hand and seal of the Judge, Justice or Notary Public taking such acknowledgment, and recorded, shall be deemed a sufficient conveyance, to vest the fee of such parcels of land as therein expressed, named or intended to be for public uses, in the county in which such town lies, in trust to, and for the uses and purposes therein named, expressed or intended, and for no other use of purpose whatever. [1 Comp L 1857, p 380 (emphasis added).]

Plaintiffs challenge the statutory validity of the 1856 plat on two grounds. First, plaintiffs argue that the 1856 plat's lack of dedication language evidenced a lack of intent on the part of the plattor, Eusibius Dame, to dedicate the streets to public use. We find this argument is without merit, as the above statute does not require that specific language of dedication be included on the plat.

Plaintiff's second challenge is that the plat's lack of specificity regarding dimensions renders the plat invalid. The trial court noted that the 1856 plat is ambiguous because it does not show the Lake

Michigan shoreline or contain road or plat dimensions. The court did not, however, specifically relate these obvious infirmities to the then prevailing statute. Instead, the court reinforced the plat's infirmities by reference to other evidence, including an 1881 atlas, a 1940 plat, and testimony of a Northport surveyor. This was error. The issue of whether the 1856 plat met the statutory requirements of a valid dedication must be answered without reference to extraneous evidence.

Our examination of the 1856 plat itself reveals that it completely lacks dimension, scale, boundaries, monuments, and proportion. The same deficiencies in specificity were held to render statutorily invalid the plats at issue in *Pontiac Twp v Featherstone*, 319 Mich 382; 29 NW2d 898 (1947) and *Diamond Match Co v Ontonagon Village*, 72 Mich 249, 258; 40 NW 448 (1888):

> Nor is the precise width of the streets, or the width and length of any of the lots, marked upon the map, or anywhere stated or described; nor is the particular land platted anywhere stated or described. . . . There is no known boundary or monument given as a base line or starting point of the survey. All that can be said of it is that it is a mere plat upon paper, and in no sense a compliance with the statute, and was not such a map or plat as, when recorded, vested the fee in the county, or effected a dedication of the streets to the public use. [*Featherstone, supra* at 389, quoting *Diamond Match, supra*, 72 Mich at 258.]

The 1856 plat at issue did not contain sufficient specificity to comply with the then prevailing statute. Accordingly, the plat is insufficient to effectuate a dedication of the land at issue to public use.

III

Although the original plattor's attempted dedication failed, this does not end our analysis. Indeed, the right to make a statutory dedication does not prevent a dedication at common law. *Crosby v City of Greenville*, 183 Mich 452, 150 NW 246 (1914). In order to have a common law dedication there must be (1) an intent by the owners of the property to offer it for public use; (2) acceptance of this offer by the public as evidenced by public maintenance; and (3) use by the public generally. *Bain v Fry*, 352 Mich 299, 305; 89 NW2d 485 (1958).

Although the 1856 plat was statutorily defective, it does evidence a clear intent on the part of the original plattor to dedicate Fourth Street to the Village for public use. Accordingly, the rights of the parties regarding the property in dispute must be determined by the actions of the Village and whether these actions constituted acceptance of a common law dedication.

A

Without question, there was no formal acceptance of the 1856 dedication. However, we find that the record supports the trial court's determination that the Village informally accepted the dedication of Fourth Street all the way to the bay through the expenditure of public funds for maintenance of the road, and by public use generally. See *id.* at 305. Village minutes from 1904 describe various road maintenance and specifically, the "ditching of Fourth Street." In addition, there

was substantial evidence of the public's use of Fourth Street. For example, homes were built pursuant to the lots set forth in the 1856 plat and the owners presumably used Fourth Street to access their homes. Also, timber was hauled along Fourth Street from a dock to a sawmill, and the public generally used Fourth Street to bring cattle and various crops to a "farmer's dock" and to various passenger ships, particularly before the railroad came to Northport in 1903.

After a careful review of the record, we are satisfied that the evidence of public improvement of Fourth Street, combined with the public's use of the street to access the homes thereon as well as the docks on the bay, is sufficient to constitute the Village's acceptance of the dedication of Fourth Street.

B

Plaintiffs also argue that the offer to dedicate made in 1856 lapsed. Specifically, plaintiffs maintain that even if the 1904 Northport Village minutes regarding road maintenance and "ditching" of Fourth Street were sufficient to establish an informal acceptance, the forty-eight years between 1856 and 1904 was unreasonably long and that the 1856 offer to dedicate automatically lapsed. We disagree.

Absent timely acceptance by the public, an offer to dedicate may lapse or be withdrawn. *Kraus, supra* at 424. As long as a plat proprietor or his successors take no steps to withdraw an offer to dedicate land for public use, the offer will be treated as continuing. *Id*. at 427. However, whether an offer to dedicate lapses or continues depends on the circumstances of each case. *Id*. Although no absolute limit has been set by the appellate Courts of this State, some duration of time between an offer and a public acceptance have been held to be unreasonable. See, e.g., *Kraus, supra* at 434-435 (eighty-six years constituted a lapse); *Shewchuck v Cheboygan*, 372 Mich 110, 114; 125 NW2d 273 (1963) (eighty-seven years constituted a lapse); *Marx v Dep't of Commerce*, 220 Mich App 66; 558 NW2d 460 (1996) (sixty-eight years constituted a lapse); but see *Ackerman v Spring Lake Twp*, 12 Mich App 498; 163 NW2d 230 (1968) (twenty-six years did not constitute a lapse).

In light of all the circumstances here, *Kraus, supra*, including the fact that there is no evidence that the offer was withdrawn prior to its acceptance, compare *Marx, supra* at 80, we conclude that the mere passage of forty-eight years is insufficient to constitute a lapse of the offer to dedicate Fourth Street.

C

Plaintiffs also argue that the offer to dedicate Fourth Street was withdrawn by their predecessors in interest before any acceptance by the Village, as evidenced by the improvements to and maintenance of the property. Again, we disagree.

"The withdrawal of an offer differs from the lapse of an offer in that the former requires an affirmative act, while the latter stems from inaction." *Marx, supra* at 80. What constitutes an effective withdrawal depends on the specific circumstances of each case, but generally a withdrawal occurs when the proprietors use the property in a way inconsistent with public ownership. *Kraus, supra* at 430.

Some examples of inconsistent uses cited by the Supreme Court include erecting a building or fence, and planting trees. *Id.* at 431. The burden of proving withdrawal of the offer to dedicate is on the property owner. *Id*. at 425.

In the present case, the record is devoid of any evidence to suggest that the original plattor attempted to withdraw the 1856 offer to dedicate or that he subsequently used the land in a manner inconsistent with public ownership.[1] Although the record reveals that plaintiffs' predecessors in interest erected a fish house in 1918, and later built a fence around the property and planted various trees and shrubs, there is simply no evidence of any similar acts prior to 1918. Consequently, we find that plaintiffs have failed to meet their burden of showing a withdrawal of the offer to dedicate prior to the Village's acceptance of it.

IV

Having found that there was a valid acceptance of the 1856 offer to dedicate Fourth Street for public use, we now turn to the question of its width. At common law, the presumption was that public highways were sixty-six feet wide. See *Bumpus v Miller*, 4 Mich 158 (1856). Although an owner may offer the public more or less than the sixty-six-foot-wide presumption, *Smith v Michigan Hwy Comm'r*, 227 Mich 280, 286; 198 NW2d 936 (1924), there is no evidence in the present case that the original plattor's offer was for anything other than the full sixty-six feet. We further note that plaintiff's surveyor testified that most of the streets in the Village were of this width. The trial court properly concluded that the width of Fourth Street was sixty-six feet.

A similar result would occur under the highway-by-user statute, MCL 721.20; MSA 9.21,[2] which is a form of common law dedication. *Boone v Antrim Co Rd Comm'rs*, 177 Mich App 688, 693; 442 NW2d 725 (1989). See *Grandville Village v Jenison*, 84 Mich 54, 66; 47 NW 600 (1890) (applying the highway-by-user statute upon finding that there was no statutory dedication). Highways by user are based on an implied dedication by the landowner. *Kentwood v Sommerdyke Estate*, 458 Mich 642, 653; 581 NW2d 670 (1998). Under the highway-by-user statute, a particular period, in this case ten years, creates a presumption of dedication to the public of a highway sixty-six feet wide. This presumption may be rebutted within the statutory period by evidence showing that the property owner intended to give the public less than the full width of the road. The property owners bear the burden to provide evidence that this presumption was rebutted during the statutory period. *Id*. at 665-666 n 10.

As we have previously stated, plaintiffs failed to present any evidence from earlier than 1918 which would tend to rebut the presumption of dedication. Therefore, the highway by user statute serves to establish that the width of the disputed portion of Fourth Street is sixty-six feet. The trial court properly held that the Village accepted the sixty-six foot wide dedication of Fourth Street all the way east to the bay.

V

Plaintiffs argue that the trial court should have applied the doctrine of laches to bar defendants' counterclaim. We disagree.

The affirmative defense of laches is the equitable counterpart to the time barring of a claim pursuant to a statute of limitations. *Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982). Laches differs from the statutes of limitation, however, in that it is not measured by the mere passage of time. Rather, the defendant must have also experienced prejudice by the delay. *Id.* As a general rule, where neither party's situation has changed materially, and the delay of one has not put the other in a worse condition, the defense of laches does not apply. *Kuhn v Secretary of State*, 228 Mich App 319, 334; 579 NW2d 101 (1998).

In the present case, plaintiffs argue that because of the prolonged use of the disputed property with little interference from the village, the village's counterclaim should be barred by the doctrine of laches. However, plaintiffs fail to explain how the village's acquiescence prejudiced them. In fact, it appears that plaintiffs relied on the village's delay to advance their claim that the offer to dedicate had lapsed.

Because the doctrine of laches requires specific articulation of how a party was prejudiced by a delay and plaintiffs have failed to do so, the trial court properly denied plaintiffs' request to apply this equitable doctrine.

Affirmed.

/s/ Michael J. Talbot
/s/ Gary R. McDonald
/s/ Janet T. Neff

[1] Indeed, it is unclear whether plaintiffs, who were not the original plattors, have the necessary authority to withdraw the offer of dedication. See *Olsen v Village of Grand Beach*, 282 Mich 364, 368; 276 NW 481 (1937).

[2] The current version of the highway by user statute provides:

> All highways regularly established in pursuance of existing laws, all roads that shall have been used as such for 10 years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used 8 years or more, shall be deemed public highways, subject to be altered or discontinued according to the provisions of this act. All highways that are or that may become such by time and use shall be 4 rods in width [sixty-six feet], and where they are situated on section or quarter section lines, such lines shall be the center of such roads, and the land belonging to such roads shall be 2 rods [thirty-three feet] in width on each side of such lines. [MCL 221.20; MSA 9.21]