

STATE OF MICHIGAN
COURT OF APPEALS

HELEN BURROUGHS,

Plaintiff-Appellee,

v

PAUL G. RAND, III and BERNADINE M.
RAND,

Defendant-Appellants,

and

STERLING BANK AND TRUST formerly known
as STERLING SAVINGS BANK, a federal savings
bank,

Defendant.
.

UNPUBLISHED
November 2, 1999

No. 204279
Calhoun Circuit Court
LC No. 95-3654 CH

Before: Griffin, P.J., and McDonald and White, JJ.

McDONALD, J. (*concurring in part and dissenting in part*).

I dissent in part from my colleagues' opinions and would reverse the trial court's decision.

The decision of a trial court in an equity action is subject to de novo review. *Day v Lacchia*, 175 Mich App 363, 372; 437 NW2d 400 (1989). A trial court's decision in an equity action will not be reversed unless its findings are clearly erroneous or the reviewing court is convinced that it would have reached a different result. *Id.* Citing *McDonald Ford Sales, Inc v Ford Motor Co*, 165 Mich App 321, 325; 418 NW2d 716 (1987). If sitting as the trial court I would have reached a different result.

A license gives permission to do some act or series of acts on the land of the licensor without any permanent interest in the land. *McCastle v Scanlon*, 337 Mich 122, 133; 59 NW2d 114 (1953). Defendants did not give plaintiff permission to use the gravel road or the well. Moreover, any license plaintiff may have had from the previous owners of defendants' land was revoked when the property

was conveyed to defendants. *Fletcher Oil Co v Bay City*, 346 Mich 411, 417; 78 NW2d 205 (1956). Even if defendants had given plaintiff a license and plaintiff expended some money in reliance upon the license, it was defendants' prerogative to revoke the license at any time. *McCastle, supra*, at pp 128 and 133.

The lead opinion's reliance on *Hunter v Slater*, 331 Mich 1; 49 NW2d 33 (1951), is misplaced and not applicable to the facts in this case. In *Hunter* the licensee owned the land adjacent to the property over which he sought an easement for access to his property. The licensor promised in writing to "complete any arrangements that maybe necessary" to give the licensee a road across its property. In reliance upon this written promise the licensee expended approximately \$1,000 to construct a road to his property. The Supreme Court affirmed the trial court's findings that the intent of the parties was to create an easement and not a mere naked license.

In the present case, plaintiff had no interest in any real property and could not receive an easement under any circumstances. Plaintiff did not build the road or sink the well in this case. Further plaintiff did not claim reliance on any promises made orally or in writing by defendants. Thus plaintiff had a mere naked license at best which was revocable at any time by the defendants.

I agree with the lead opinion's disposition of the remaining issues but I would reverse.

/s/ Gary R. McDonald