STATE OF MICHIGAN

COURT OF APPEALS

GARY E. STOCK and JULIE C. STOCK,

Plaintiffs-Appellants,

v

VAN BUREN COUNTY BOARD OF ROAD COMMISSIONERS,

Defendant-Appellee,

and

FRED L. RUBLE and JOYCE A. RUBLE,

Intervenors-Appellees.

UNPUBLISHED
September 1, 2000

No. 217999
Van Buren Circuit Court
LC No. 97-042812-AS

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition. We affirm.

In 1994, prior to the filing of this case, defendants/intervenors Fred L. Ruble and Joyce A. Ruble filed a lawsuit against plaintiffs Gary E. Stock and Julie C. Stock claiming that the Stocks had restricted the Rubles' easement rights. During this prior lawsuit, it was discovered that the easement had been dedicated as a public road. Therefore, the parties filed a stipulation to dismiss the case, stating that the easement had been dedicated as a public road and that the road had not been abandoned.[1] The case was dismissed, with the court order both incorporating the provisions of the

[1] The stipulation further stated that the "roadway remains a public road and right-of-way." This belies plaintiffs' argument that they had only stipulated that there had been no statutory abandonment, without stipulating as to there being no common law abandonment.

stipulation and providing that it could not "grant a private easement in a public way" and that, thus, the issue presented was "moot."

In the instant proceeding, the Stocks claim that the road has been abandoned by defendant Van Buren County Board of Road Commissioners ("the Board") pursuant to common-law abandonment principles. The Board moved for summary disposition pursuant to MCR 2.116(C)(7) arguing that the Stocks' claims were barred by the doctrine of res judicata or collateral estoppel. The trial court held that the doctrine of judicial estoppel was applicable and granted defendant's motion.

We review motions for summary disposition de novo. *Patrick v US Tangible Investment Corp*, 234 Mich App 541, 543; 595 NW2d 162 (1999). "When reviewing a motion granted pursuant to MCR 2.116(C)(7), this Court considers all affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the plaintiff." *Id*. at 543-544. A motion granted pursuant to MCR 2.116(C)(7) should be granted when no factual development could provide a basis for recovery. *Id*.

On appeal, the Stocks argue that the trial court erred in applying the doctrine of judicial estoppel. We disagree. "'[A] party who has successfully and unequivocally asserted a position in a prior proceeding is estopped from asserting an inconsistent position in a subsequent proceeding.'" *Opland v Kiesgan*, 234 Mich App 352, 362; 594 NW2d 505 (1999) (quoting *Paschke v Retool Industries*, 445 Mich 502, 509; 519 NW2d 441 (1994)). In determining whether a party successfully asserted a position in a prior proceeding, Michigan has adopted the "prior success" rule. *Paschke, supra* at 509; *Opland, supra* at 365. This rule requires that "there . . . be some indication that the court in the earlier proceeding accepted that party's position as true." *Paschke, supra* at 510; *Opland, supra* at 362.

In the prior proceeding, the Stocks stipulated that the contested right of way had been adopted as a public road, that the road had not been abandoned by the commissioners, and that it remained a public road. By adopting this position, the Stocks were successful in having the suit against them dismissed. Had the Stocks not so stipulated but, instead, indicated that they would contest whether abandonment had occurred, the prior suit would likely not have been dismissed; their success on the abandonment question would mean that the issue of whether the Ruble's prescriptive easement rights had been violated would not be moot. This stipulation was given judicial endorsement as evidenced by the language of the prior trial court's order to dismiss. See, e.g., *Madison v Detroit*, 182 Mich App 696, 701; 452 NW2d 883 (1990)[2]; cf. *Edwards v Aetna Life Ins Co*, 690 F2d 595, 599 n 5 (CA 6, 1982).

[2] We recognize that *Madison* involved a consent judgment while the suit between the Stocks and Rubles was resolved by a stipulation to dismiss. *Id*. at 701. However, given the specificity of the facts and conclusions to which the Stocks stipulated in their suit with the Rubles, together with the adoption by the court of the stipulated facts and conclusions, the stipulation to dismiss has the effect of a judgment. This Court has previously recognized that a stipulation to dismiss that provides no basis for the dismissal cannot operate as an admission for purposes of judicial estoppel. *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 474-475; 556 NW2d 517 (1996). Conversely, a stipulation to dismiss

Finally, the Stocks' position in this case is wholly inconsistent with the position they successfully adopted in the prior proceeding. *Paschke*, *supra* at 510. To put it simply, they cannot now claim abandonment of any sort, having previously stipulated that the "roadway remains a public road and right-of-way."

We affirm.

/s/ Richard A. Bandstra
/s/ Kathleen Jansen
/s/ William C. Whitbeck

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that contains admissions as to certain facts may, as in the present case, serve as a bar to the parties later asserting factual positions that directly contradict the stipulated facts.