STATE OF MICHIGAN

COURT OF APPEALS

RONALD BECKWITH, JOAN BECKWITH, JEROME ULATOWSKI, ELAINE ULATOWSKI, and DORIS COX,

Plaintiffs/Counter-defendants-Appellants,

v

MABEL DEEG, CHARLES DUGAS, and MARGARET DUGAS,

Defendants/Counter-plaintiffs-Appellees,

and

GRAYLING TOWNSHIP,

Defendant/Counter-plaintiff/Cross Plaintiff-Appellee,

and

TERESA STEMPKOWSKI, PHILIP HALL, RUSSELL MARKLEY, DIANE MARKLEY, RONALD DUBE, GARY BOFYSIL, COLLEEN BOFYSIL, MARK NOSS, RICHARD MATHENEY, ROSE MATHENEY, BRUCE SCHROEDER, GERALDINE SCHROEDER, CHARLES MCBRIDE, CATHERINE MCBRIDE, WEST BAY RESORT CLUB, INC., RONALD GRUSE, LORETTA GRUSE, DEPARTMENT OF TREASURY, DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES, and DEPARTMENT OF NATURAL RESOURCES,

Defendants-Appellees,

UNPUBLISHED
August 24, 2001

No. 218975
Crawford Circuit Court
LC No. 96-004027-CZ

and

JOHN D PARMERLEAU, NANCY PARMERLEAU, DEPARTMENT OF TRANSPORTATION, CRAWFORD COUNTY DRAIN COMMISSION, and CRAWFORD COUNTY ROAD COMMISSION,

Defendants.

Before: Holbrook, Jr., P.J., and McDonald and Saad, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

Plaintiffs are owners of lots located in the plat of Portage Lake Park. In 1968, a group of lot owners, including plaintiffs or their privies, filed an action under the Subdivision Control Act,[1] MCL 560.221 *et seq.*, in which they sought to vacate a portion of Portage Lake Drive on the ground that there had been no timely acceptance of the dedication of the drive to a public purpose. The trial court initially granted summary disposition in favor of the plaintiffs, but this Court reversed, finding that the defendants had presented questions of fact on whether the dedication had been accepted by other means. *Jones v Crawford Co Rd Comm*, 45 Mich App 110; 206 NW2d 267 (1973).

On remand, the trial court found that there was no evidence establishing an acceptance "by the township or county through repair, maintenance, expenditure of funds or user . . . ." The court also found that the offer of dedication was no longer open in 1968, when the Crawford County Road Commission attempted acceptance by resolution. Finally, the court found as follows:

> The Court finds that as to the intervening back lot owners, plaintiffs have no cause for action. That is, by the creation of the plat, Portage Lake Drive was dedicated to the private use of the lot owners of that plat, including intervening defendants. The intervening defendants . . . took not only the specific lot described in their respective deeds *but also as an incorporeal hereditament appurtenant to that lot, that is an easement in the streets designated in the plat* . . . .
>
> The Court further finds that plaintiffs cannot obtain a vacation of the subject portion of Portage Lake Drive as a private drive inasmuch as two-thirds of

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[1] This act was renamed the Land Division Act by 1996 PA 591, § 1.

> the proprietors who own two-thirds of the area of land in the subdivision did not request the same as required by MCLA 560.222 . . . [Emphasis added.]

The present plaintiffs moved for declaratory relief some twenty years later. In Count V of the plaintiffs' fourth amended complaint, they sought vacation of the same portion of Portage Lake Drive, and defendants moved for summary disposition on that claim.[2] The trial court granted defendants' motion, finding that "essentially the same plaintiffs" brought the earlier action to vacate "the same portion of a street," and the earlier court's finding that the back lot owners had an easement appurtenant over Portage Lake Drive precluded the present action.

Plaintiffs argue that the trial court erred in granting summary disposition to defendants on the ground that the prior action barred the present one. We disagree. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiffs argue that in 1976, the trial court determined that the plaintiffs could not obtain a vacation of the subject portion of Portage Lake Drive because two-thirds of the proprietors who owned two-thirds of the area of land in the subdivision did not request the vacation, as then required by MCL 560.222.[3] However, we read the 1976 opinion as indicating that the motion for vacation of the private road was being denied because the back lot owners had acquired private rights of easement over the streets shown on the plat. *Nelson v Roscommon Co Rd Comm*, 117 Mich App 125; 323 NW2d 621 (1982), (observing that "[a] grantee of property in a platted subdivision acquires a private right entitling him '"to use of the streets and ways laid down on the plat," regardless of whether there was a sufficient dedication and acceptance to create public rights'"[citation omitted]). See also 25 Am Jur 2d, Easements and Licenses, § 26, p 596. The reference to the two-thirds requirement of the former statute served as additional support for the denial. Accordingly, we agree that the prior judgment barred the present action. MCR 2.116(C)(7). See *Husted v Auto-Owners Ins Co*, 213 Mich App 547, 556; 540 NW2d 743 (1995).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad

McDonald, J., did not participate.

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[2] The trial court had granted plaintiffs' request for injunctive relief on their claim that certain lot owners and the general public were utilizing the roads and boulevards in the plat in a manner that exceeded the scope of the original dedication. The parties stipulated to the dismissal of all other claims and counterclaims except Count V.

[3] MCL 560.222 was amended by 1978 PA 367, § 1, and the two-thirds requirement was eliminated.