

STATE OF MICHIGAN
COURT OF APPEALS

MIRIAM STARKMAN, MONROE
RAPPAPORT, JENNELLE RAPPAPORT,
FRANK TAYLOR, WILMA TAYLOR, EVELYN
MARTIN, WILLIAM MARTIN, THOMAS
MCNABB and FRANCIS MCNABB,

Plaintiff-Appellants,

v

THOMAS E. CHAMBERS and SUSAN J.
CHAMBERS,

Defendants/Third-Party Plaintiffs-
Appellees,

and

ESTATE OF CARL HAMMOND, CAMBRIDGE
TOWNSHIP, MICHIGAN STATE TREASURER,
LENAWEE COUNTY DRAIN COMMISSIONER,
ORIN GREGG, CONSUMERS ENERGY
COMPANY, d/b/a CONSUMERS POWER
COMPANY, RALPH J. KERZKA, SYLVIA
KERZKA, DONNA HICKOK, GARY R. MILLER,
CONNIE M. MILLER, RICHARD M. ZEZAWA,
CAROLE ZEZAWA, JOHN T. EICHOLTZ, LOIS
A. EICHOLTZ, VAN BELLE FAMILY TRUST,
LILLIAN GIROUX TRUST, TODD M.
AITCHISON, JOANN W. AITCHISON, FRANK
COSTA, ROSE MARIE COSTA, ANNALLIECE
ARMSTRONG TRUST, PAUL S. PALASZEK and
JAMES E. PIFER,

Defendants-Appellees,

and

LENAWEE COUNTY ROAD COMMISSION,

UNPUBLISHED
February 8, 2002

No. 221334
Lenawee Circuit Court
LC No. 98-007763-CH

Third-Party Defendant-Appellee,

and

DOUGLAS T. EICHOLTZ and SHARI
EICHOLTZ,

Defendants.

Before: Cavanagh, P.J., and Doctoroff and Jansen, JJ.

PER CURIAM.

Plaintiffs filed this action to quiet title to a roadway known as Twin Lakes Drive and the area surrounding the road. Plaintiffs maintained that Twin Lakes Drive was a private road or, alternatively, if it was a public road, only the portion actually used as a roadway was public property and that they acquired ownership of the remaining portion by adverse possession. The trial court granted summary disposition for defendants Thomas and Susan Chambers, holding that Twin Lakes Drive was a public road by statutory dedication, and that the area surrounding Twin Lakes Drive was also public property. Plaintiffs appeal as of right. We affirm.

Although the trial court never reached the issue of jurisdiction, we agree with plaintiffs that the trial court had jurisdiction to decide the threshold question of whether Twin Lakes Drive was a public road. *Nelson v Roscommon Co Road Comm*, 117 Mich App 125, 131-132; 323 NW2d 621 (1982); *Kraus v Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996).

Plaintiffs argue on appeal that defendants failed to meet their burden of proving that Twin Lakes Drive was a public road. We disagree.

Because the trial court considered matters beyond the pleadings, we review its decision under MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in a light most favorable to the nonmoving party. MCR 2.116(G)(5); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). Summary disposition should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

The trial court held that Twin Lakes Drive was dedicated to the public because it was included on the supervisor's plat and was not labeled as a private road. The plat was prepared in 1955 and filed with the registrar of deeds in 1956; the county road commission accepted the road nine years later, in 1965. The court ruled that members of the public and purchasers of property in the subdivision were entitled to rely upon the supervisor's plat, the county's acceptance of the road, and the public records to conclude that the road was a public roadway, particularly when

over the years no one challenged the fact that the road was taken over for the public's use. The property owners in the area also acquiesced to the county expending money to care for the road. Finally, the court determined that, once a road is dedicated to the public, it cannot be acquired by adverse possession.

There are three ways that private land can become a public roadway: (1) statutory dedication and acceptance on behalf of the public; (2) common-law dedication with acceptance by the public; or (3) highway by public user. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Road Comm*, 236 Mich App 546, 554; 600 NW2d 698 (1999).

Regarding the first of these methods, a statutory dedication under the Land Division Act, MCL 560.101 *et seq.*,¹ two elements are required: (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. *Appleton Trust, supra* at 554.

The dedication of a public road by plat is described in *Kraus, supra* at 424, as follows:

In cases like these, the well-established rule is that a valid dedication of land for a public purpose requires two elements: 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 acceptance by the proper public authority. Public acceptance must be timely and must be disclosed through a manifest act by the public authority either formally confirming or accepting the dedication, and ordering the opening of such street, or by exercising authority over it, in some of the ordinary ways of improvement or regulation. . . . [T]he requirement of public acceptance by a manifest act, whether formally or informally, [is] necessary to prevent the public from becoming responsible for land that it did not want or need, and to prevent land from becoming waste property, owned or developed by no one. [Citations omitted.]

Plaintiffs argue that the plat is not evidence that the original grantor intended to make Twin Lakes Drive a public road. We disagree. The plat was prepared by the township supervisor, not the original grantor. In *Walker v Bennett*, 111 Mich App 40, 43; 315 NW2d 142 (1981), this Court noted that, in 1956, and until certain statutory amendments were enacted in 1968, MCL 560.56 provided that an assessor's plat should be treated the same as a plat prepared by a proprietor.² Furthermore, whenever an individual purchases land that has been platted, that individual is entitled to rely upon the land described in the deed and also whatever rights are indicated in a recorded plat. *Walker, supra* at 43.

¹ Formerly known as the Subdivision Control Act of 1967.

² Under the 1968 amendments, when an assessor now prepares a plat, he or she must provide notice by registered mail to the proprietors of the land so that the proprietors may review the plat and make any objections or disagreements with the boundaries indicated. See MCL 560.205.

It must be presumed that the supervisor who prepared the plat was aware of the circumstances of the subdivision and whether the grantor intended to keep Twin Lakes Drive as a private road or dedicate it for the public's use. See MCL 560.204(1). Under MCL 560.137(c), "[a]ll streets, roads or alleys not dedicated to public use shall be marked 'private' and named." It is significant that when preparing the plat, the supervisor did not indicate that Twin Lakes Drive was to be a private road. Furthermore, there were no objections to the plat by either the original grantor or other owners of parcels in the subdivision. Therefore, the plat is evidence of the original grantor's intent to make Twin Lakes Drive a public thoroughfare.

Although plaintiffs assert that the original grantor promised to convey his interest in the area in question to plaintiffs and other owners in the area, plaintiffs did not produce any documentary evidence in support of this claim. The evidence further showed that the county accepted Twin Lakes Drive as a public road. Thus, contrary to plaintiffs' assertions, this case is factually distinguishable from *Bain v Fry*, 352 Mich 299; 89 NW2d 485 (1958), and both elements of a statutory dedication are met.

Accordingly, we affirm the trial court's decision that there was a valid statutory dedication of Twin Lakes Drive to the public. Because the trial court correctly held that Twin Lakes Drive is a public road by statutory dedication, we need not address whether it became a public road by common-law dedication or under the highway-by-user statute, MCL 221.20. Further, plaintiffs cannot maintain a claim to property adjoining the road based on the doctrine of adverse possession where a valid public dedication exists. See MCL 247.190.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Kathleen Jansen