

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH A. FERWERDA and EDITH J.
FERWERDA,

UNPUBLISHED
April 19, 2002

Plaintiffs/Counter-Defendants-
Appellees,

v

No. 228268
Mason Circuit Court
LC No. 99-000475-CH

ROBERT E. SMITH, SR., CAROL SMITH,
ROBERT E. SMITH, JR., NANCY SMITH, and
R.E. SMITH CONSTRUCTION, INC., d/b/a
PONCHO'S POND,

Defendants/Cross-
Defendants/Cross-Plaintiffs-
Appellants,

and

PERE MARQUETTE TOWNSHIP,

Defendant/Counter-Plaintiff/Cross-
Plaintiff-Appellee,

and

TOWNSHIP SUPERVISOR EUGENE JORISSEN,

Defendant/Cross-Defendant-
Appellee.

Before: Gage, P.J., and Griffin and G. S. Buth*, JJ.

PER CURIAM.

Defendants Smith appeal as of right the trial court's order denying their motion for summary disposition and their request for a writ of mandamus. We vacate and remand for

* Circuit judge, sitting on the Court of Appeals by assignment.

further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants own a recreational vehicle park in Pere Marquette Township. Defendants began the park on a parcel of land, known as Parcel E, located immediately south of property owned by plaintiffs. Defendants gained access to Parcel E via an easement, known as Wallace Road, over plaintiffs' property. Defendants expanded the park onto property known as Parcels C and D, located immediately east of Parcel E, and used Wallace Road to gain access to Parcels C and D. Plaintiffs filed suit and in *Ferwerda v Smith*, Mason Circuit Court Docket No. 98-000115-CH (hereinafter referred to as "the 1998 case"), the trial court entered an order permanently enjoining defendants from using Wallace Road to gain access to Parcels C and D.

Defendants submitted an application to the township pursuant to the Private Roads Act (PRA), MCL 229.1 *et seq.*, seeking the establishment of a private road through plaintiffs' property that would serve Parcels C and D. The private road sought would encompass, in whole or in part, Wallace Road. Plaintiffs filed suit seeking a judgment declaring that the PRA is unconstitutional and that defendants were not entitled to the establishment of a private road under the PRA. Plaintiffs sought an injunction permanently enjoining defendants from commencing proceedings under the PRA. Defendants filed a cross-claim against the township supervisor, seeking a writ of mandamus to compel him to commence proceedings under the PRA. Defendants moved for summary disposition pursuant to MCR 2.116(C)(4), (8), and (9), arguing that the constitutional challenges to the PRA were premature, and that they were entitled to a writ of mandamus as a matter of law. The trial court denied defendants' motion for summary disposition and request for a writ of mandamus, concluding that its ruling in the 1998 case that defendants were permanently enjoined from using Wallace Road to gain access to Parcels C and D constituted the law of the case.

The law of the case doctrine provides that an appellate ruling on a particular issue binds the appellate court and all lower tribunals with regard to that issue. A question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case. *Reeves v Cincinnati, Inc (After Remand)*, 208 Mich App 556, 559; 528 NW2d 787 (1995). The doctrine applies to questions specifically decided in an earlier decision and to questions necessarily determined to arrive at that decision. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 209; 568 NW2d 378 (1997). Whether the law of the case doctrine applies is a question of law subject to de novo review. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

We vacate the trial court's order denying defendants' motion for summary disposition and request for a writ of mandamus and remand this case for further proceedings consistent with this opinion. No prior appellate court ruling exists in this case. The trial court erroneously relied on its own ruling in an entirely separate case that did not address the issue of the applicability of the PRA. The doctrine of the law of the case has no applicability under the circumstances. *Reeves, supra*; *Webb, supra*. Plaintiffs' argument that defendants should be estopped from attempting to rely on the PRA was not presented to the trial court. Our review is limited to issues actually decided by the trial court. *Michigan Mutual Ins Co v American Community Mut Ins Co*, 165 Mich App 269, 277; 418 NW2d 455 (1987).

We note that in *Tolksdorf v Griffith*, 464 Mich 1, 11; 626 NW2d 163 (2001), our Supreme Court held that the PRA is unconstitutional because it authorizes the taking of private property for a predominately private purpose. *Id.*, 11. On remand, the trial court must consider this authority in determining the continuing viability of the instant matter.

Vacated and remanded for further proceedings. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth