

STATE OF MICHIGAN
COURT OF APPEALS

PETER V. GREGORY and LOUIS GREGORY,

Plaintiffs/counterdefendants-
Appellees,

v

CLARENCE A. LAFAIVE and DELORES H.
LAFAIVE,

Defendants/counterplaintiffs-
Appellants.

UNPUBLISHED

June 14, 2002

No. 232158

Marquette Circuit Court

LC No. 00-014646

Before: Griffin, P.J., and Hood and Sawyer, JJ.

MEMORANDUM.

Defendants/counterplaintiffs appeal as of right from the entry of a judgment in favor of plaintiffs/counterdefendants. We affirm.

Defendants first allege that the trial court erred in failing to dismiss the action based on plaintiffs' failure to prosecute. We cannot conclude that the trial court abused its discretion by denying the motion to dismiss. *In re Contempt of Tanksley*, 243 Mich App 123, 127; 621 NW2d 229 (2000). The property division had been ruled on by the trial court, and the preparation of the judgment and survey were the only procedural requirements remaining. It was permissible for either party to submit a judgment, MCR 2.602, and any dismissal would have resulted in the refilling of the action or a motion for reinstatement, MCR 2.502(C). The court's transition from a manual to computer docketing system also attributed to the dormancy of the litigation. Based on these circumstances, there was no abuse of discretion. *Tanksley, supra*.

Defendants next allege that the law of the case doctrine does not apply to prior erroneous appellate factual findings. On the record available, see *Band v Livonia Associates*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989), we cannot conclude that the prior appellate decision, *Gregory v LaFaive*, 172 Mich App 354; 431 NW2d 511 (1988), contained erroneous factual determinations. Furthermore, the appellate decision did not preclude the trial court from making additional factual findings on remand. In fact, the opinion invited further factual findings on remand. *Id.* at 360 n 5. We also note that the trial court stated that its ultimate division of property did not comport with the appellate decision on remand, but was based on the parties'

agreement regarding the drawing of the line. Rather, the decision was based on practical assimilation of the land to the original plat.

Affirmed.

/s/ Richard Allen Griffin

/s/ Harold Hood

/s/ David H. Sawyer