

STATE OF MICHIGAN
COURT OF APPEALS

LOREN FICK, a/k/a LORAIN FICK,

Plaintiff-Appellant,

v

OGEMAW COUNTY ROAD COMMISSION,

Defendant-Appellee.

UNPUBLISHED

August 2, 2002

No. 231469

Ogemaw Circuit Court

LC No. 99-652686-CH

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the judgment entered for defendant after a bench trial in this road dispute. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After defendant ordered the removal of a gate, plaintiff brought this action asserting that .26 miles of Stillwagon Road ran on his property and formed a private road, outside of defendant's jurisdiction. Defendant asserted that the road was public, based on a 1936 mcnitt act resolution, public expenditure on the road, and seasonal road designation.

For a road to become public property, there generally must be a statutory dedication and acceptance on behalf of the public, a common-law dedication and acceptance, or a finding of highway by user. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 554; 600 NW2d 698 (1999).

A valid statutory dedication of land for a public purpose requires two elements: a recorded plat designating the area for public use, and acceptance by the proper public authority. *Kraus v Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996). A county resolution under the McNitt Act, 1931 PA 130, can qualify as a formal acceptance where it expressly identified a platted road, however a county cannot take over privately owned streets by such a resolution. *Id.*, 429. Defendant conceded that the road was not platted, thus there could not be a statutory dedication.

A valid common-law dedication of land for public use requires (1) intent by the property owners to offer the land for public use, (2) an acceptance of the offer and maintenance of the road by the public officials, and (3) use by the public generally. *Appleton Trust*, *supra*, 554. Establishing a public highway by user under MCL 221.20 requires (1) a defined line, (2) that the

road was used and worked on by public authorities, (3) public travel and use for ten consecutive years without interruption, and (4) open, notorious, and exclusive public use. *Id.*, 554-555.

There is no showing of public use of the disputed section. The 1952 highway planning survey shows that road stopped at a dead end at a locked gate. Plaintiff's father testified that the road commission refused to extend the road, and he and the other property owners built the disputed portion in the early 1950's. The road replaced a two-track road that was abandoned. There was no evidence that the public used the road despite the gate.

The 1983 seasonal road designation was also insufficient to place a road under defendant's jurisdiction. MCL 247.655a allows counties to place roads under their jurisdiction into a system of seasonal county roads. It does not provide a separate basis for asserting jurisdiction over roads that were not included in the county system.

Where there was insufficient evidence to establish that the disputed road became public property, the trial court erred in granting judgment for defendant.

Reversed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Brian K. Zahra