

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN P. RAND and AMANDA B. RAND,

Plaintiffs-Appellees,

v

JACKSON COUNTY ROAD COMMISSION,

Defendant-Appellant.

UNPUBLISHED

February 3, 2004

No. 242961

Jackson Circuit Court

LC No. 99-097100-CH

Before: O’Connell, P.J., and Wilder and Murray, JJ.

MURRAY, J. (*concurring*)

I concur in the majority’s analysis and conclusion that the trial court did not follow the appropriate law in deciding the issues below. I also believe that remand is necessary in light of the rather low threshold of evidence required to overcome the rebuttable presumption that a road became a public highway under the highway by user statute. *Kent Co Rd Comm v Hunting*, 170 Mich App 222, 231; 428 NW2d 353 (1988). However, I would additionally hold that, for purposes of remand, there is no genuine issue as to any material fact that the road at issue is a public highway under the highway by user statute, MCL 221.20. This holds true because in their response to defendant’s motion for summary disposition, plaintiffs affirmatively indicated that the road was a public one under the highway by user statute. It is well-settled that statements of fact made by an attorney during judicial proceedings are binding on the client. *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 440; 581 NW2d 794 (1998); *Ferndale v Ealand*, 88 Mich App 107, 111; 276 NW2d 534, remanded on other grounds 406 Mich 963 (1979). In light of plaintiff’s admission that the facts presented established that the road became a public highway under the requirements of the highway by user statute, I believe the only issue to be resolved below is whether plaintiffs have produced sufficient evidence to overcome the rebuttable presumption that this is a public road under the highway by user statute.

/s/ Christopher M. Murray