

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICK KLEINER and MIKE BOMMARITO,

Plaintiffs-Appellees,

v

MICHAEL WACHOWICZ,

Defendant-Appellant

and

ROSCOMMON TOWNSHIP, ROSCOMMON  
COUNTY ROAD COMMISSION,  
DEPARTMENT OF NATURAL RESOURCES,  
ROBERT RIEDEL, JOHN SOPER, JACQUELYN  
REA and JAMES FAIRCLOTH,

Defendants.

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UNPUBLISHED  
February 12, 2004

No. 244053  
Roscommon Circuit Court  
LC No. 01-722794-CH

RICK KLEINER and MIKE BOMMARITO,

Plaintiffs-Appellees,

v

JAMES FAIRCLOTH,

Defendant-Appellant,

and

ROSCOMMON TOWNSHIP, ROSCOMMON  
COUNTY ROAD COMMISSION,  
DEPARTMENT OF NATURAL RESOURCES,  
ROBERT RIEDEL, JOHN SOPER, JACQUELYN  
REA and MICHAEL WACHOWICZ,

Defendants.

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No. 244328  
Roscommon Circuit Court  
LC No. 01-722794-CH

Before: Schuette, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiffs' motion for summary disposition under MCR 2.116(C)(9) was treated as a motion under MCR 2.116(C)(10) and was granted. In Docket No. 244053, defendant Michael Wachowicz appeals as of right. In Docket No. 244328, defendant James Faircloth appeals as of right. This Court consolidated the appeals on November 27, 2002. We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

This case concerns the Hubbard Street and Wells Street road ends in the Houghton Heights Subdivision. Plaintiffs own lakefront property adjacent to these streets and objected to defendant's use of the road end extensions into the lake to erect docks and permanent mooring structures, including boat hoists, and their use of the road ends for recreational activities, including picnicking, sunbathing and lounging. Based on *Jacobs v Lyon Twp (After Remand)*, 199 Mich App 667; 502 NW2d 382 (1993), the trial court held that these uses exceeded the scope of the dedication of the plat, which was "to the use of the public."

Appellants assert (1) that *Jacobs* was wrongly decide; (2) that it was incumbent upon plaintiffs to show that the platter's intent, when dedicating a street to "the use of the public," was to forbid the complained of uses; and (3) that the trial court erred in holding that it was incumbent upon defendants to show that the platter in this case intended something different than the platter at issue in *Jacobs*. These issues were addressed in *Higgins Lake Property Ass'n v Gerrish Twp*, 255 Mich App 83; 662 NW2d 387 (2003). There, this Court held that the dedicator's intent in *Jacobs* could not be imputed to all dedicators, that a factual determination of the dedicator's intent is required in each case, but that factual similarities with *Jacobs* would not be ignored. The Court discerned no difference between the dedication in *Jacobs* and the dedication in *Higgins Lake*, and held that given the presumption that the dedication was for access to the water only, the defendants would bear the burden of establishing a contrary intent. In this case, defendants did not meet this burden. Therefore, summary disposition was properly granted to plaintiffs.

Affirmed.

/s/ Bill Schuette  
/s/ Patrick M. Meter  
/s/ Donald S. Owens