

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

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CLARENCE HEIDENSCHER VELMA  
HEIDENSCHER, and GLEN ANN PLACE LLC,

UNPUBLISHED  
June 22, 2004

Plaintiffs-Appellees,

v

WEBER AND WEBER LIMITED  
PARTNERSHIP 1,

No. 247069  
Washtenaw Circuit Court  
LC No. 01-001027-CH

Defendant-Appellant.

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Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

PER CURIAM.

In this action to determine interest in land, defendant appeals as of right the order granting summary disposition in favor of plaintiffs pursuant to MCR 2.116(C)(10) and (I)(1). The trial court determined that defendant did not have any interest in a disputed eight-foot strip of land that crossed plaintiffs' property. We reverse and remand.

This lawsuit concerns property in the City of Ann Arbor bordered on three sides by Catherine Street on the north, Glen Avenue on the east, and Ann Street on the south. Defendant owns the parcel on Catherine Street on which the Bradford House Apartments are located. Plaintiffs Clarence and Velma Heidenschler own the parcels on Glen Avenue on which two single-family homes and a gas station are located. An eight-foot wide alley running in an east-west direction perpendicular to Glen Avenue crosses the Heidenschler parcels. The Heidenschlers entered into a sales agreement to sell their property to plaintiff Glen Ann Place LLC, which intends to construct a five-story building on the site.

Plaintiffs filed a "Complaint to Determine Interest in Land" pursuant to MCL 600.2932. Plaintiffs alleged that they are the owners of the eight-foot wide alley that crossed their property and that defendant claimed an interest in the alley that substantially impaired the Heidenschler's ability to sell their property and Glen Ann Place's ability to construct a building on the property. Defendant answered the complaint, claiming that defendant owned the alley and that the Heidenschlers had only an easement to use the alley.

Plaintiffs moved for summary disposition, arguing that defendant abandoned any right to use the alley and that the Heidenschlers acquired any rights defendants had in the alley by adverse possession. Defendant argued not that they had an easement over the Heidenschler's property

but, rather, that they had title to the alley and that it was the Heidenschers who had an easement. Documentary evidence, including deeds, was submitted to support each party's respective position.

Following the hearing, the trial court found that defendant did not own or have an interest in the alley. In granting summary disposition in favor of plaintiffs, the trial court explicitly concluded that "the interest that plaintiffs have in the eight foot strip of land is irrelevant to the question of whether defendants [sic] have either title to or an easement over the eight foot strip of land."

In MCL 600.2932(1), the Legislature codified actions to quiet title and authorized suits to determine competing interests in land. *Republic Bank v Modular One LLC*, 232 Mich App 444, 448; 591 NW2d 335 (1998), overruled on other grounds by *Stokes v Millen Roofing Co*, 466 Mich 660, 672; 649 NW2d 371 (2002). The statute provides in relevant part:

Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, or right to possession of land, may bring an action in the circuit courts against any other person who claims (or might claim) any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

In an action to quiet title to land, the plaintiff has the burden of proof and must make out a prima facie case of title. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Road Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). If the plaintiff fails to carry this burden of proof, the trial court properly enters judgment for the defendant. *Ray v Bentley*, 39 Mich App 578, 579; 197 NW2d 827 (1972). Once the plaintiff makes out a prima facie case, the defendant then has the burden of proving superior right or title in themselves. *Beulah Hoagland, supra*.

A civil action to determine an interest in land, brought pursuant to MCL 600.2932, is governed by MCR 3.411. Pursuant to MCR 3.411(D)(1), "[a]fter evidence has been taken, the court shall make findings determining the disputed rights in and title to the premises."

In this case, the trial court made no findings with regard to whether plaintiffs made out a prima facie case of title and made no findings with regard to title to the alley. Rather, the court made only a finding that defendant failed to establish that it owned or had any interest in the alley. The trial court failed to determine whether plaintiffs established a prima facie case of title. The court also violated MCR 3.411(D)(1) by failing to make any findings regarding plaintiffs' interest in the land. Indeed, the court specifically stated that "the interest that plaintiffs have in the eight foot strip of land is irrelevant to the question of whether defendants [sic] have either title to or an easement over the eight foot strip of land." This is an erroneous statement of the law, and placed the burden of proof on defendant alone. The trial court erred by granting summary disposition in favor of plaintiffs without determining that plaintiffs made out a prima facie case of title and without determining whether plaintiffs had any rights in the property.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald

/s/ Richard A. Bandstra

/s/ Bill Schuette