STATE OF MICHIGAN

COURT OF APPEALS

JAMES MICHAEL VICK and DIANE L. DEFORTY-VICK, husband and wife,

Plaintiffs-Appellants,

v

KATHLEEN M. WILBUR, director of the State of Michigan Department of Consumer & Industry Services, successor by Executive Order to the Michigan Department of Treasury; K.L. COOL, Director of the State of Michigan Department of Natural Resources; DOUGLAS WAY, Chair of the Charlevoix Country Road Commission; JOANN BEAMAN, Charlevoix County Drain Commissioner; MELROSE TOWNSHIP, a Michigan municipal corporation; AMERITECH, MICHIGAN CONSOLIDATED GAS CO., GREAT LAKES ENERGY CO,. and the following lot owners in the Plat of Walloon Heights or owning property within 300 feet of the premises sought to be vacated: TRUSTEE OF THE PRISCILLA S. RASMUSSEN TRUST; CELIA C. MONTON; JOHN W. CARLILE, Trustee of the JANE W. CARLILE FAMILY TRUST; JOHN B. PICKFORD, Trustee of the GEORGE P. SCULLY TRUST; ANN P. BURR; REBECCA R SPANGLER; STEPHEN J. LAING and SUZANNE R. LAING; JOHN D. SHAFER III; THOMAS H. SHAFER; TRUSTEE OF THE EWEND FAMILY COTTAGE TRUST; ROBERT CULBERTSON, JR. and JOYCE W. CULBERTSON; JOSEPH D. LONGO and LINDA L. LONGO; KENNETH A PICKL and MARGO L. PICKL; CAROLYN ANN MACDONALD, Trustee of the WALLOON LAKE HOUSE TRUST; JANET R. CHAMBERLAIN; RICHARD C. HERMANN and CYNTHIA B. HERMANN; ARLINE E.

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July 8, 2004

No. 243630
LC No. 01-714-19-CH

HOELSCHER; ALICE JANE SMITH; FREDERICK WILLIAMS and FLORENCE WILLIAMS; TRUSTEE OF THE ERB PIERCE TRUST; GEORGE V. WHITFIELD and MAXINE WHITFIELD; JAMES C. WHITFIELD, JR. and DIANA WHITFIELD; and RANDALL H. LIPPS and MARGARET C. LIPPS,

Defendant-Appellees.

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

In this action to vacate land, plaintiffs James and Diane Vick appeal as of right the trial court's grant of summary disposition for defendants pursuant to MCR 2.116(C)(4) and (C)(10). Plaintiffs own several lots in a subdivision on Walloon Lake. A road, Howard Street, bisects their lots and plaintiffs wish to have this road vacated. This road was dedicated by the proprietor of the subdivision for use by the public in 1901. Plaintiffs contend that this dedication was never properly accepted and the land in question should be vacated. Defendants assert that this is a public road and that they accepted the dedication.

I. FACTS AND PROCEDURE

On August 15, 1901, Edwin Sweet and William Knowlton, as executors of the estate of John McConnell, recorded the plat of Walloon Heights in the Charlevoix County Records. As part of that recording, a platted street 300 feet long and 66 feet wide, named Howard Street[1] was dedicated to public use. The dedication was not otherwise recorded. In 1931, the Michigan Legislature passed a bill known as the McNitt Act, MCL 247.1 *et seq.*, which required counties to assume jurisdiction over township road and roads specified as public in recorded plats. In 1938, as part of a statewide road study, Howard Street was determined to be part of the system of Charlevoix county roads that were open and available for public travel at least three months out of the year.

On April 3, 1940, pursuant to the McNitt Act, the Charlevoix County Road Commission ("road commission") submitted color-coded maps of the roads they had taken over as county roads, to the state highway commissioner ("commissioner") for the exclusive purpose of a gas tax reimbursement calculation. The maps depicted all of the platted roads within Walloon Heights as being certified as county roads, including Howard Street, by shading them in green color. In 1941, the road commission again certified to the commissioner that Howard Street was

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[1] Howard Street was one of three platted streets that lead directly to Walloon Lake.

part of its system of roads, and the state accepted that certification for the gas tax calculations. It is factually significant to note that although reproductions of the certification maps were attached to the pleadings, all are in black and white and are void of any color or shading.

The parcels of property immediately surrounding Howard Street changed owners numerous times after the dedication. In the mid-1960's much of Howard Street was paved by the owners of the property adjacent to the road and was used as part of a driveway. Affidavits of neighbors reveal that throughout much of this time, many people used Howard Street as an access to Walloon Lake for recreational activities such as swimming, boating, fishing, and snowmobiling. Moreover, Howard Street has never been taxed as private property by Melrose Township ("township"), Charlevoix County or the state government.

Plaintiffs acquired an interest in parcels of land adjacent to Howard Street in August of 2000 that included lots 28, 29, 30, 50, and a portion of 51. Neither they nor their predecessors have ever prevented the public from using Howard Street. Plaintiffs filed this action in Charlevoix Circuit Court in an effort to have Howard Street (which runs between their lots in the plat of Walloon Lake) vacated pursuant to Section 221 of the Land Division Act, based upon their contention that the dedication of the street for public use was never accepted by public authorities and that there was no reasonable objection by other lot owners in the plat to the vacation of the street.

The complaint was answered by the road commission, the township, and the state defendants (the Michigan Department of Natural Resources and the Michigan Department of Consumer and Industry Services). In March 2001, plaintiffs served requests for admissions upon the road commission and township defendants. In their initial responses, defendants admitted that Howard Street had never been designated as a county road; that the road commission had no record of any resolution accepting Howard Street; that Howard Street had never been taken over by the road commission; and, that neither the road commission nor the township had ever spent public funds on Howard Street.

However, on May 2, 2001 defendants received a packet of information from the assistant attorney general that included maps, resolutions and charts that defendants believe document their rightful ownership of Howard Street. Defendants immediately notified plaintiffs of this newly discovered information which they asserted was legally significant and would change their answers to admissions. Defendants then moved for leave to amend their answers. The trial court granted defendants' motion, and they were permitted to amend their answers to admissions.

Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(4) and (10) based on their contention that the road commission formally accepted the dedication of Howard Street no later that 1940, pursuant to the McNitt Act. On August 16, 2002, the trial court agreed with defendants' arguments and concluded that Howard Street was a public street because the dedication of 1901 was formally accepted by defendants under the 1940 McNitt resolution. Therefore, the trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(4) and (10). This appeal ensued.

II. ANALYSIS

A. The Amendment of Answers to Request for Admissions

Plaintiffs argue that the trial court abused its discretion when it granted defendants leave to amend their answers to request for admissions. We disagree.

1. Standard of Review

Trial courts have the discretion to grant or deny a party's request to amend or withdraw its response to a request for admission, and an abuse of discretion will only be found if an unprejudiced person upon considering the facts on which the trial court acted would say there was no justification or excuse for the ruling. *Medbury v Walsh*, 190 Mich App 554, 556-557; 476 NW2d 470 (1991).

2. Analysis

Defendants provided answers to the request for admissions on March 2, 2001 and based their answers on the knowledge, information and belief they had at that time. When presented with newly discovered pertinent evidence that suggested an acceptance of the 1901 dedication had actually occurred, the road commission and township immediately notified plaintiffs and sought to amend their previously filed answers to plaintiffs' request for admissions.

MCR 2.312(D)(1) provides that upon a showing of good cause a trial court may allow a party to amend or withdraw an admission.

Plaintiffs argue that the amendment to the request for admissions should have been denied because they were not material and relevant to this action. However, the relevance and materiality of the evidence on which defendants based their amended responses to plaintiffs' request for admissions turned on the merits of defendants' motion for summary disposition. Further, the amendment did not prejudice plaintiffs because plaintiffs were immediately informed of their existence, and the reason for the delay was inadvertent.

Given that our Supreme Court has held that an abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000), we conclude the trial court did not abuse its discretion when it allowed defendants to amend their earlier answers to requests for admissions.

B. The County's Acceptance of Howard Street

Plaintiffs argue that the trial court erred in granting defendants' motion for summary disposition. They assert that defendants have not proven that the offer of dedication was formally accepted in 1940 because defendants only produced a map of county roads with Howard Street shaded green certifying that it was a county road for purposes of gas tax reimbursement. Plaintiffs argue that this evidence is not sufficient to establish that there was a formal McNitt resolution. We disagree.

1. Standard of Review

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). This Court must review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). The purpose of summary disposition is to avoid extensive discovery and an evidentiary hearing when a case can be quickly resolved on an issue of law. *Shepherd Montessori Center Milan v Ann Arbor Twp*, 259 Mich App 315, 324; 675 NW2d 271 (2003).

2. Analysis

It is undisputed that there was a dedication of a plat, including the roads adjacent to the north shore of Walloon Lake in 1901. As part of this dedication, Howard Street was given to public use. Plaintiffs' right to a vacation of Howard Street depends upon whether the 1901 dedication of Howard Street for public use was accepted by defendants. Plaintiffs argue that the grant of summary disposition by the trial court was improper because there was never any formal acceptance of this dedication.[2]

When the plat of Walloon Heights was recorded, the Michigan Plat Act provided that a dedication of land for public use was deemed to vest property rights in a city or village (or if outside a city or village then in a township) merely by the recording of a map made in compliance with the statute. 1839 PA, § 1, as amended by 1887 PA 309. Michigan's plat act did not refer to any process of acceptance by the municipality. Rather, the transfer of the fee in lands dedicated for public use was considered complete upon a proper recording of the plat. *Eyde Bros Development Co v Roscommon County Bd of Road Com'rs*, 161 Mich App 654,662; 411 NW2d 814 (1987). Such conveyances became a problem for local municipalities because they were often recipients of land that they did not want. Thus, in *Wayne County v Miller*, 31 Mich 477 (1875), our Supreme Court required that dedications of public land be accepted by the local unit of government.

More recently, In *Kraus v Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996), our Supreme Court further defined the law in relation to the dedication of land for a public purpose. As stated in *Kraus*, a valid dedication requires two elements: (1) a recorded plat clearly offering the land for public use and (2) a subsequent acceptance of the offer by a public authority. *Id.* The acceptance must be timely, and it must be accomplished by a public act "'either formally confirming or accepting the [offer of] dedication, and ordering the opening of such street, or by exercising authority over it, in some of the ordinary ways of improvement or regulation.'" *Id.*, quoting *Tillman v People*, 12 Mich 401, 405 (1864). The question presented in this case is whether there was an acceptance of Howard Street by the county. Defendants claim the county accepted Howard Street under the McNitt Act.

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[2] Offers of dedication may be accepted: (1) formally by resolution; (2) informally through the expenditure of public money for repair, improvement and control of the roadway; or (3) informally through public use. *Marx v Dep't of Commerce*, 220 Mich App 66, 74; 558 NW2d 460 (1996). Only the formal acceptance by resolution is at issue in this case.

The McNitt Act authorized consolidation of the township and county road systems and apportioned state funds for the purpose of doing so. *Missaukee Lakes Land Co v Missaukee County Road Com'n*, 333 Mich 372, 375; 53 NW2d 297 (1952). As a basis for this apportionment, the commissioner was to ascertain the total amount of highway mileage for each township and county. *Id.* Under the McNitt Act, in order to qualify and be certified, a two part test must be satisfied: 1) the roads had to be in use at least three months of the year and, 2) the county must have taken over the road and incorporated it into its roadway system between September 17, 1931, and July 1, 1939. *Id*. at 376. Road commissions were advised to delineate those roadways that satisfied the criteria by shading them green on the maps submitted to the commissioner for approval. *Id.* They were also instructed not to include any roads that did not satisfy both provisions, because the calculation would be based upon their representations to the commissioner. *Id*. To this end, road commissions were even given proposed form resolutions in an effort to ensure the accuracy of the certifications. In April of 1940, the road commission filed its first certification resolution, including maps, purportedly outlining in green those roads which were taken over as part of the county road system pursuant to 1939 PA 36. The 1940 resolution certified that all of the:

> roads, streets and highways shown in green color on the attached maps, no. 1 to 16, inclusive and totals shown on accompanying mileage sheets were as of July 1, 1939, county roads in actual use for public travel at least three months each year taken over by the Board of County Road Commissioners of the County of Charlevoix Michigan as county roads subsequent to September 17, 1931.

Again, in 1941, the road commission certified to the state through the acknowledgement of the total mileage of roads in their county system, and the state accepted this certification. Significantly, the mileage of the county roads declared in the 1941 certification equals a total that is accurate only if Howard Street is included in the county roads. Defendants assert that these certification resolutions, drafted because of the McNitt Act and submitted for the calculation of mileage within the county, satisfy the requirements for formal acceptance. We agree.

In *Morrill v White Pigeon Twp*, 467 Mich 870; 651 NW2d 919 (2002), our Supreme Court reversed an unpublished decision of this Court (Docket no 217365, rel'd 12/11/2001) that upheld the lower court's grant of summary disposition based upon the trial court's finding that a McNitt resolution identifying a street on a map did *not* constitute a formal acceptance of an offer to dedicate. In that case, the only evidence that any governmental authority accepted Stewart Street [the street at issue] by resolution was a McNitt resolution that was passed in February 1940. The resolution indicated that all streets and highways shown in green on the attached maps were in actual use for public travel. Almost all of the roads on the attached maps were highlighted in green. *Id*. at 9. A panel of this Court concluded:

> In this case, the McNitt resolution that was passed did not expressly identify Stewart Street or Bluff Beach Plat. The general resolution was not sufficient under current law to effect manifest acceptance of the offer. Thus, there was no formal acceptance as a matter of law and summary disposition for plaintiff on the issue of formal acceptance was proper. *Id.* at 10.

Our Supreme Court disagreed and reversed this Court's decision:

> [T]o the extent that it affirms the grant of summary disposition to plaintiffs on the issue of formal acceptance of Stewart Street, and REMAND to the St. Joseph Circuit Court for further proceedings not inconsistent with this order. A McNitt resolution that expressly identifies the platted road in dispute or the recorded plat in which that road was dedicated is sufficient to effect acceptance of the offer to dedicate the road to public use. *Krause v Dep't of Commerce*, 451 Mich 420, 430, 547 NW2d 870 (1996). Although in this case the road in dispute is not identified by name or by reference to the recorded plat, appellants argue that the street is identified by a map attached to the resolution. In addition to the issues identified by the Court of Appeals, the circuit court on remand shall reconsider the motions for summary disposition on this question and determine whether there is any genuine issue of material fact regarding the identification of Stewart Street or its formal acceptance by means of the McNitt resolution.

As long as a McNitt resolution expressly identifies the street in question, the resolution suffices as evidence of a formal acceptance of the street. In this case, the certification resolutions of 1940 and 1941, indicate that certain roads were included in the calculation of county road system mileage. Further, an attachment to the resolution depicts Howard Street among those roads shaded in green that are included as part of the county road system. This case is analogous to *Morrill* in that both cases involved a map submitted to the state with the street in question shaded in green indicating that it had been taken over by the road commission. However, unlike, *Morrill,* this case need not be remanded, because the 1941 certification that declared the total mileage of the county road system included Howard Street in that calculation.

We conclude that the trial court correctly granted defendants' motion for summary disposition because Howard Street was specifically identified in 1940 and 1941 certification resolutions as a road that had been taken over by the road commission. These resolutions and the accompanying map suffice as evidence of a formal acceptance of the street. Given our determination that a valid acceptance occurred via McNitt resolution, we need not address the remaining issues presented on appeal.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette