

STATE OF MICHIGAN
COURT OF APPEALS

GEOFFREY J. GLADSTONE, M.D., and
BENORA GLADSTONE,

UNPUBLISHED
October 12, 2004

Plaintiffs-Appellants,

v

FRANK SIMON,

No. 248061
Oakland Circuit Court
LC No. 2002-040309-CH

Defendant-Appellee.

Before: Griffin, P.J., and Saad and O’Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court’s order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs own lakefront property over which defendant holds an easement. The easement prohibited grantees from paving or making topographical changes to the land, but allowed for the temporary anchoring of a boat or other pleasure craft. Plaintiffs filed suit asserting that defendant and his predecessor in interest committed trespass and waste. Plaintiffs sought damages and equitable relief, including extinguishment of the easement. Both parties accepted the case evaluation award. Plaintiffs objected to defendant’s motion for entry of judgment on the ground that the court had not adjudicated their equitable claims, including their requested injunction to prevent the installation of a boat dock. The trial court granted defendant’s motion, concluding that because the parties had accepted the case evaluation, no issues remained to be adjudicated.

Plaintiffs filed the instant suit seeking a declaration that the construction of a temporary boat dock was not authorized by defendant’s easement and constituted a trespass. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiffs’ claims were barred by the doctrine of res judicata. The trial court agreed with defendant and granted the motion. We review de novo a trial court’s decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Res judicata applies when “the matter contested in the second action was or could have been resolved in the first . . .” *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). The issue of defendant’s entitlement to build a temporary dock on the easement property arose before

the first action was submitted to case evaluation. The parties could have, but did not, raise the issue whether the terms of the easement allowed defendant to build a temporary boat dock on the easement property. A case evaluation panel may determine an equitable claim when determining money damages. MCR 2.403(K)(3). A case evaluation award accepted by all parties constitutes a final decision on the merits of all claims raised in the case. MCR 2.403(M)(1); *CAM Construction v Lake Edgewood Condominium Ass'n*, 465 Mich 549, 555; 640 NW2d 256 (2002). The parties accepted the case evaluation award, and the trial court entered an order of dismissal disposing of all claims. Therefore, the trial court in this case correctly found that the doctrine of res judicata barred plaintiffs' claims.

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell