

STATE OF MICHIGAN
COURT OF APPEALS

TRAVIS L. PARR and MARGARET A. PARR,

Plaintiffs/Counter-Defendants-
Appellants,

v

SALVATORE P. SERRA and SUZANNE M.
SERRA,

Defendants/Counter-Plaintiffs-
Appellees.

UNPUBLISHED
December 29, 2005

No. 257278
Oakland Circuit Court
LC No. 03-048431-CH

Before: Hoekstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order denying them recovery of costs under MCR 2.625, because certain costs sought were not specified with sufficient particularity, and the recovery of others was not authorized by statute. Defendants appealed the underlying judgment in plaintiffs' favor on claims to quiet title and for trespass. In docket number 254322, this Court reversed the lower court judgment as to the quiet title claim, finding that defendants had established acquiescence and therefore, that the trial court erred in ruling that plaintiffs' had established title in themselves to the common boundary line depicted in a survey prepared by Joseph Bishop. This Court did affirm plaintiffs' minimal damage award for defendants' trespass to the soils under plaintiffs' deck. However, given that plaintiffs' claims for trespass and quiet title arose from a single transaction or occurrence – the dispute as to the proper location of the common boundary - they comprise a single cause of action for the purposes of MCR 2.625. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 81; 577 NW2d 150 (1998) (citing *Klinke v Mitsubishi Motors, Corp*, 219 Mich App 500, 519-520; 556 NW2d 528 (1996), *aff'd* 458 Mich 582 (1998)). As such, plaintiffs are only entitled to recover costs if they prevailed on the entire record. MCR 2.625(B)(2). This Court has noted that the “mere recovery of some damages is not enough; in order to be considered a prevailing party, [a] party must show, at the very least, that its position was improved by the litigation.” *Forest City Enterprises, supra*, 228 Mich App at 81. Given that their claim to quiet title was the true gravamen of their complaint, even though they recovered minimally on their trespass claim, clearly plaintiffs did not prevail on the entire record. Therefore, we affirm the trial court's ruling that plaintiffs not be awarded costs, albeit for the reason that plaintiffs are not the prevailing party entitled to recover costs under MCR 2.625.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder