

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS N. BILLS and E. JANENE BILLS,

Plaintiffs/Counter-Defendants-
Appellants,

v

WADE KAPPEN,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

July 15, 2008

No. 278059

Tuscola Circuit Court

LC No. 05-023172-CH

Before: Fitzgerald, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court order denying their challenge to the taxation of costs, following dismissal of plaintiffs' trespass/conversion action and the trial court's declaration that Sweet Road is a public road. We affirm in part and reverse in part.

Plaintiffs argue on appeal that defendant lacked standing to bring a counterclaim because defendant's claim to the alleged road was no greater than that of the general public. We disagree. We review de novo the trial court's determination regarding standing. *Michigan Ed Ass'n v Superintendent of Pub Instruction*, 272 Mich App 1, 4; 724 NW2d 478 (2006).

To establish standing, a party must show (1) a concrete and actual injury in fact, and (2) a causal connection between the injury and the action of the opposing party, (3) that can be redressed by a favorable decision of the court. *Michigan Citizens for Water Conservation v Nestle*, 479 Mich 280, 294-295; 737 NW2d 447 (2007).

Defendant established the existence of an injury by showing that he owned a parcel of property that, without Sweet Road, would be land locked and accessible only by traveling across the property of a neighbor. Defendant also established a causal connection between the injury and plaintiffs' actions, with evidence that plaintiffs attempted, by placement of a padlocked gate, to deny defendant the use of Sweet Road. Finally, the injury was capable of redress by the circuit court's decision that Sweet Road was a public road, which gave defendant access to his property. Defendant had a personal stake in this matter, because access to his property was not an interest shared by the general public. *Donaldson v Alcona Co Bd of Rd Comm'rs*, 219 Mich App 718, 723-724; 558 NW2d 232 (1997). The trial court did not err in finding that defendant had standing to bring his counterclaim after plaintiffs filed their trespass/conversion action.

Plaintiffs also argue that the trial court erred when it found that Sweet Road had not been abandoned by non-use. We review findings of fact in a bench trial for clear error, and review de novo the trial court's conclusions of law. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001); MCR 2.613(C).

Common law abandonment can be proven by (1) an intent to relinquish the property and (2) an outward action that carries out that intent. *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003). Non-use is not sufficient in itself to prove abandonment. *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 718; 583 NW2d 232 (1998). Here, there was evidence to support the trial court's conclusion that Sweet Road had not been abandoned. Sweet Road appeared on township plat maps. Although the township did not maintain the road, there was no evidence that it considered or represented to the public that Sweet Road was abandoned, denied responsibility for it, or took any action to abandon it.

Plaintiffs' third claim is that the trial court erred when it found that defendant did not trespass on plaintiffs' property and cause damage. As plaintiffs recognize, the burden is on the plaintiff in a trespass action to show possession or title to the subject property. *Tittiger v Johnson*, 103 Mich App 437, 440; 303 NW2d 26 (1981). There was evidence to support the trial court's conclusion that Sweet Road was a township road and not plaintiffs' private property. The trial court did not err in denying plaintiffs' claim.

Finally, plaintiffs argue that the award of attorney fees and costs was in error. Plaintiffs argue that their claim was not frivolous, that the amount of the award was excessive, and that the award should not have been granted because it was untimely. We agree that defendant failed to timely present a bill of costs, and so decline to address plaintiff's other claims regarding attorney fees.

On December 8, 2006, the trial court signed an order for plaintiffs to pay defendant reasonable costs and fees. Defendant had 28 days from that date to provide his bill of costs and fees to the clerk of the court. MCR 2.625(F)(2). Defendant failed to provide his taxation of costs until February 22, 2007 and therefore exceeded the allowable 28 days.

It is well established that court rules are construed in the same manner as statutes. *Marketos v American Employers Ins Co*, 465 Mich 407, 413; 633 NW2d 371 (2001). The plain language of the court rule is examined, and if unambiguous, this Court enforces the meaning plainly expressed, without further construction or interpretation. *Id.* Here, MCR 2.625(F)(2) plainly states that when costs are to be taxed by the clerk, the party entitled to costs must present a bill of costs within 28 days after the judgment is signed. Further, the court rule provides that "failure to present a bill of costs within the time prescribed constitutes a waiver of the right to costs." These statements are not ambiguous and do not require our interpretation. Defendant waived his right to costs, and the trial court erred in denying plaintiffs' motion to strike.

Affirmed in part, reversed in part.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

/s/ Pat M. Donofrio