STATE OF MICHIGAN

COURT OF APPEALS

OTTAWA COUNTY and OTTAWA COUNTY PARKS & RECREATON COMMISSION, Plaintiffs/Counter-Defendants-Appellees,	UNPUBLISHED November 13, 2008
v	No. 279963 Ottawa Circuit Court
F. BRETTMAN FLIPSE and JOANN FLIPSE, Defendants/Counter-Plaintiffs-Appellants.	LC No. 06-054794-CH

Before: Markey, P.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Plaintiffs filed a complaint to quiet title to a piece of property that was labeled as a park on an 1886 plat. The piece of property is commonly known as "Park 12." Plaintiffs allege that when Park 12 was platted, it and all other park properties were publicly dedicated, and plaintiffs hold the property in fee simple for the benefit of the residents of the West Michigan Park Plat and the public. Defendants allege they own the Park 12 property and a wooden structure located on the property. Defendants only have a bill of sale, dated May 1, 2000, for the structure and some equipment.

Defendants filed an answer and counterclaim asserting that plaintiffs did not own the property, defendants were entitled to the property through adverse possession of previous owners, and the court should declare defendants the fee title owners of the property. Plaintiffs and defendants cross-motioned for summary disposition under MCR 2.116(C)(10). On July 26, 2007, the Ottawa County Circuit Court granted summary disposition for plaintiffs, dismissed with prejudice defendants' counter-complaint, and ordered defendants to remove the wooden structure and any personal property from Park 12. Defendants now appeal this order, arguing that the trial court erred in finding that the park was dedicated to the public, finding that the park property was accepted, and dismissing their adverse possession claim. We affirm.

In an action to quiet title, 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 Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999), citing *Stinebaugh v Bristol*, 132 Mich App 311, 316; 347 NW2d 219 (1984). If the plaintiff establishes a prima facie case, the burden of proof shifts to the defendant to establish that defendant has superior right or title to the

property. *Beulah, supra*, citing *Boekeloo v Kuschinski*, 117 Mich App 619, 629; 324 NW2d 104 (1982). On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue on which reasonable minds could differ. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

Plaintiffs have presented sufficient prima facie evidence that they have some interest in the property. Since 1912, this property has been the subject of much litigation, and courts consistently, through dicta and holdings, have indicated that the property was publicly dedicated and accepted. The following are some examples and the most relevant in this situation. In a 1912 case, the West Michigan Park Association (WMPA) claimed the park areas were dedicated to the public. *West Mich Park Ass'n v Pere Marquette R Co*, 172 Mich 179, 186; 137 NW 799 (1912). In 1939, the Michigan Supreme Court recognized that the WMPA dedicated the park areas to the public. *Kirchen v Remenga*, 291 Mich 94, 114; 288 NW 344 (1939). Finally, in 1966, the Court held both that the parks had been dedicated to the public and that the parks had been accepted. *West Mich Park Ass'n v Dep't of Conservation*, 2 Mich App 254, 259; 139 NW2d 758 (1966).

Defendants have not met the burden of proving superior right or title in themselves. The only evidence they offer this Court is a bill of sale for a structure and some equipment. Clearly this does not prove superior right or title in themselves. Additionally, defendants have not presented evidence showing privity of estate with predecessors in title and, therefore, cannot assert an adverse possession claim.

Affirmed.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly