STATE OF MICHIGAN

COURT OF APPEALS

KURT McDONALD and RAYLENE McDONALD,

Plaintiffs/Counter-Defendants-Appellants,

v

TODD BRECHT and EDWARD BRECHT,

Defendants/Counter-Plaintiffs-Appellees,

and

LONI LOVELAND, DEB LOVELAND, RON WITCOMB and ROB CLAIRE,

Intervenors.

UNPUBLISHED
April 28, 2009

No. 281063
Lapeer Circuit Court
LC No. 05-036725-CH

BRIAN HARRIS and MELISSA HARRIS,

Plaintiffs/Counter-Defendants-Appellants,

v

TODD BRECHT, EDWARD BRECHT and PRESERVE COMPANY,

Defendants/Counter-Plaintiffs-Appellees.

No. 281064
Lapeer Circuit Court
LC No. 05-037887-CH

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

PER CURIAM.

In this consolidated appeal, plaintiffs Kurt and Raylene McDonald and Brian and Melissa Harris (hereinafter "plaintiffs") appeal the September 19, 2007 final order of the circuit court,

entered after a bench trial, adjudicating the claims made in the counter-complaint. Plaintiffs own property in a subdivision located in Elba Township, Lapeer County, Michigan commonly known as the Highlands. Plaintiffs' lots are designated by numbers 27, 28 (McDonald) and 37 (Harris) on the subdivision plat. At issue is a narrow strip of lakefront property located across the road from plaintiffs' property (hereinafter "the beach"). We affirm.

Cross-motions for summary disposition were presented to the court. On July 9, 2007, the court granted, in part, defendants' motion for summary disposition.[1] Specifically, the court: (1) dismissed the McDonalds' claim to quiet title and for injunctive relief; (2) dismissed the intervening claims of Loni and Deb Loveland and Ron Witcomb for injunctive relief; (3) dismissed the Harris's claims for relief; and (4) granted the intervening claim of Rob Claire for injunctive relief because of an easement granted. Trial was ordered on the counter-complaint. Plaintiffs' issues on appeal relate to the July 9, 2007 order.

On appeal, plaintiffs claim that the circuit court erred in granting defendants' motion for summary disposition. We review an award of summary disposition de novo. *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 553; 640 NW2d 256 (2002). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, we consider the evidence submitted by the parties in the light most favorable to the non-moving party. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). Summary disposition should be granted only where the evidence fails to establish a genuine issue regarding any material fact. *Id*. at 120. Initially, we note that plaintiffs' assertion that the court erred in not holding an evidentiary hearing prior to ruling on the cross-motions for summary disposition has been waived. See *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000); see also *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997) ("Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence."). Review of the record reveals that plaintiffs agreed to allow the circuit court to decide the cross-motions for summary disposition without holding an evidentiary hearing.

Where land is disposed of by reference to an official plat, as is the case here, the boundary lines shown on the plat control. *Mumaugh v McCarley*, 219 Mich App 641, 649; 558 NW2d 433 (1996). Here, the official plat of the Highlands does not indicate that plaintiffs' property goes to the water's edge. There is no indication on the plat that plaintiffs' property extends to the meander line.[2] *Id*. ("When a plat shows a lot is bounded by the meander line of a lake, the grant of land is to the water's edge."). Indeed, the plat, which designates the lots by number, indicates that plaintiffs' property ends at South Shore Drive, the road separating plaintiffs' property from the beach. See *Thies v Howland*, 424 Mich 282, 291; 380 NW2d 463

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[1] In the circuit court's opinion granting defendants summary disposition, the court stated, "Defendants moved for summary disposition as to McDonalds' claims prior to the other intervening Plaintiffs entering the case. Nevertheless, the Court will consider the motion as applying to all Plaintiffs' claims."

[2] A meander line is "[a] survey line (not a boundary line) on a portion of land, usu. following the course of a river or stream." Black's Law Dictionary (8th ed), p 1001.

(1985) (In general, "[w]hen a conveyance refers to a plat which represents lots as bounded by a street and describes the lots by numbers, the reference is equivalent to express language in the deed giving the street as a boundary.").

Plaintiffs admit that on the face of the plat, their lots do not extend to the water's edge. Nonetheless, plaintiffs assert that the two individuals, known as "Hartley and Morgan," who had the Highlands platted in 1942 must have intended to convey the beach to the purchasers of the lots because they did not explicitly reserve the beach or riparian rights to themselves and allegedly circulated a sketch of the subdivision suggesting that they intended to sell lakefront lots.[3] In *Jonkers v Summit Twp*, 278 Mich App 263, 269; 747 NW2d 901 (2008), this Court stated that in 1896, when the property at issue in that case was surveyed and platted, a plat was not required to include language that "explicitly state[d] an intention to extend its boundary to the shore," and sometimes did not. The Court further stated that "[i]n the absence of a clearly expressed contrary intention, 'the conveyance of a parcel of land bordering on a highway contiguous to a lake shore conveys the appurtenant riparian rights.'" *Id*., quoting *Croucher v Wooster*, 271 Mich 337, 344; 260 NW 739 (1935). We find that in this case, the information included on the plat constitutes a clear intention not to extend the lots to the water's edge. The plat indicates that concrete cylinders had been sunk into the ground to mark the boundaries of the platted land. These markers (designated by a circle on the plat) clearly indicate that the platted land ends at the center of South Shore Drive and that lots 27 and 28 end at the edge of the drive. The plat also includes inland coordinates and the depth of each lot, further indicating that lots 27, 28, and 37 were intended to end at the edge of South Shore Drive.

Additionally, plaintiffs argue that they have title to the disputed portion of the beach by chain of title going back to 1925 and 1927, respectively. But, even assuming that plaintiffs could establish a chain of title to lots 27, 28, and 37, the title documents of record do not establish that the property was riparian, as nothing in the metes and bounds descriptions state that the property extended to the water's edge or the meander line. See *Mumaugh*, *supra* at 648 (stating that when the property at issue was sold in 1936, the deed for the transaction "indicated that the lot was riparian, as the metes and bounds description stated that the northern boundary was to run 'to the shore of Lake Huron . . . .'"). Moreover, as indicated, after 1942, plaintiffs' property was conveyed with reference to the official plat for the Highlands, and the boundary lines shown on the plat control. See *Id*. at 649.

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[3] As the circuit court noted, "Plaintiffs argue that there is evidence from various advertising and blue prints of the original owners' intent to convey the beach property to the lot owners. That evidence may give rise to a claim against the Plaintiffs' grantors; however, none of that evidence is sufficient to convey legal title to the beach . . . ."

In sum, the record before us supports the circuit court's decision on defendants' motion for summary disposition.

Affirmed.

/s/ Jane M. Beckering
/s/ Michael J. Talbot
/s/ Pat M. Donofrio