

STATE OF MICHIGAN
COURT OF APPEALS

DAVID JONASSEN and JEJOSA, L.L.C.,

Plaintiffs,

and

STANTON CORNERS ENTERPRISES, INC.,
d/b/a THE BARN, and 31 PLUS, L.L.C.,

Plaintiffs-Appellants,

v

DeBOER BAUMANN & COMPANY, WILLIAM
BASSOW and GEORGE GARDNER,

Defendants-Appellees.

UNPUBLISHED

November 19, 2009

No. 286438

Ottawa Circuit Court

LC No. 07-059957-NM

Before: Talbot, P.J., and O'Connell and Davis, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the trial court's opinion and order granting summary disposition to defendants on the grounds that there was insufficient service of process and the running of the statute of limitations. The trial court found that defendants had been served only with the summons and not with the complaint. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's sole argument on appeal is that the trial court's factual finding that the defendants were not served with the complaint, which was made at the conclusion of an evidentiary hearing, was clearly erroneous. Findings of fact by the trial court should not be set aside unless they are clearly erroneous. MCR 2.613(C). A finding of fact is clearly erroneous when (1) there is no evidence to support such a finding, or (2) there is evidence to support such a finding, but this Court is left with a definite and firm conviction that a mistake was made. *A&M Supply Company v Microsoft Corp*, 252 Mich App 580, 588; 654 NW2d 572 (2002). Due deference must be given to findings of fact made by the trial court because of its superior position to determine the credibility of witnesses. *Badon v GMC*, 188 Mich App 430, 438; 470 NW2d 436 (1991).

Here, the determination whether the complaint was properly served on defendants involved an assessment of the competing testimony of the witnesses. There was evidence that would have supported either the conclusion that the complaint had not been served or the conclusion that it had been served. The trial court found that the complaint had not been served with the summons. This finding was supported by the testimony of two of defendants' witnesses, both of whom testified they had not received a copy of the complaint. Although there was contrary testimony by plaintiffs, we must defer to the trial court's determination because it involved weighing the credibility of the witnesses. *Badon, supra*.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis