STATE OF MICHIGAN

COURT OF APPEALS

OTTAWA COUNTY and OTTAWA COUNTY PARKS & RECREATION COMMITTEE,

Plaintiffs/Counter-Defendants-Appellees,

v

KERRY SHAFFER, JASIU MILANOWSKI, WENCEL A. MILANOWSKI, RICHARD VANDAM TRUST, and FRED VAAS,

Defendants,

and

EDWIN CONGER TRUST,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
March 18, 2010

No. 288142
Ottawa Circuit Court
LC No. 07-060272-CH

OTTAWA COUNTY and OTTAWA COUNTY PARKS & RECREATION COMMITTEE,

Plaintiffs/Counter-Defendants-Appellees,

v

KERRY SHAFFER, JASIU MILANOWSKI, WENCEL A. MILANOWSKI, and FRED VAAS,

Defendants,

EDWIN CONGER TRUST,

Defendant/Counter-Plaintiff-Appellee,

No. 288163
Ottawa Circuit Court
LC No. 07-060272-CH

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and

RICHARD VANDAM TRUST,

Defendant-Appellant.

OTTAWA COUNTY and OTTAWA COUNTY PARKS & RECREATION COMMITTEE,

Plaintiffs/Counter-Defendants-Appellees,

v

No. 288167
Ottawa Circuit Court
LC No. 07-060272-CH

KERRY SHAFFER, JASIU MILANOWSKI, WENCEL A. MILANOWSKI, and RICHARD VANDAM TRUST,

Defendants,

EDWIN CONGER TRUST,

Defendant/Counter-Plaintiff-Appellee,

and

FRED VAAS,

Defendant-Appellant.

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Defendants, the Edwin Conger Trust, the Richard VanDam Trust, and Fred Vaas, appeal as of right the September 15, 2008 final order enjoining them from installing or maintaining any fixtures on the Park 12 parcels in the Plat of West Michigan Park. We affirm.

The Edwin Conger Trust (Conger Trust) is the owner of a lot in the Plat of West Michigan Park (West Michigan Park), as is the Richard VanDam Trust (VanDam Trust) and

Vaas. The Park 12 parcels, or the park areas, of West Michigan Park have been the subject of three Michigan Supreme Court cases,[1] as well as three published cases from this Court. In *West Michigan Park Ass'n v Dep't of Conservation*, 2 Mich App 254, 267; 139 NW2d 758 (1966), this Court held that Ottawa County (County) owned the Park 12 parcels of West Michigan Park in trust for the public.[2]

In December 2005, pursuant to a stipulation entered between the County and the West Michigan Park Association (WMPA), the County obtained a survey of West Michigan Park. According to John Scholtz, the County's Park and Recreation Director, the survey revealed that the Conger Trust encroached on the Park 3 parcel with seating and miscellaneous encroachments associated with a deck or patio; the VanDam Trust encroached on the Park 3 parcel with parking, boat storage, and an installed gate; and Vaas encroached on the Park 10 parcel with parking and a driveway. After the County was unable to resolve the encroachments with defendants, plaintiffs[3] filed the present lawsuit.

The trial court granted the County's motions for summary disposition, and enjoined defendants from installing or maintaining any fixtures on the Park 12 parcels. The trial court directed the Conger Trust to remove its patio and deck structure, the VanDam Trust to remove its gate and boat storage structure, and Vaas to remove his driveway.

I. Standards of Review

We review de novo a trial court's decision on a motion for summary disposition. *E R Zeiler Excavating, Inc v Valenti Trobec Chandler Inc*, 270 Mich App 639, 643; 717 NW2d 370 (2006). Summary disposition is appropriate under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." In reviewing a motion for summary disposition under MCR 2.116(C)(10), we must consider the documentary evidence in the light most favorable to the nonmoving party. *Lee v Detroit Medical Ctr*, 285 Mich App 51, 59; 775 NW2d 326 (2009). Summary disposition is proper under MCR 2.116(C)(9) if "[t]he opposing party has failed to state a valid defense to the claim asserted against him or her," and summary disposition is appropriate under MCR 2.116(C)(8) if "[t]he opposing party has failed to state a claim on which relief can be granted." In reviewing a summary disposition motion brought under either MCR 2.116(C)(8) or (9), we may only consider the pleadings, accepting as true the well-pleaded allegations. *USA Cash #1, Inc v Saginaw*, 285 Mich App 262, 265; 776 NW2d 346 (2009); *Capitol Properties Group, LLC v 1247 Center Street, LLC*, 283 Mich App 422, 425; 770 NW2d 105 (2009).

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[1] *Kirchen v Remenga*, 291 Mich 94; 288 NW 344 (1939); *Westveer v Ainsworth*, 279 Mich 580; 273 NW 275 (1937); and *West Michigan Park Ass'n v Pere Marquette R Co*, 172 Mich 179; 137 NW 799 (1912).

[2] The other two published cases from this Court concerning West Michigan park are *West Michigan Park Ass'n, Inc v Fogg*, 158 Mich App 160; 404 NW2d 644 (1987), and *West Michigan Park Ass'n v Dep't of Natural Resources*, 91 Mich App 641; 283 NW2d 744 (1979).

[3] Throughout the remainder of the opinion, plaintiffs will be referred to as the County.

II. Docket No. 288142

The Conger Trust owns lot 104 in West Michigan Park. The lot abuts the Park 3 parcel. In its final order, the trial court ordered the Conger Trust to remove the patio and deck structure built on the park parcel.

A. Complaint

The Conger Trust argues that the trial court erred in granting summary disposition to the County because the evidence submitted by the County in support of its motion for summary disposition failed to resolve factual issues regarding the encroachment. We disagree.

The Conger Trust's argument implicates the parties' evidentiary burdens when a party moves for summary disposition under MCR 2.116(C)(10). The moving party has the initial burden to support its position with documentary evidence. *E R Zeiler Excavating, Inc*, 270 Mich App at 644. "The responding party must then present legally admissible evidence to demonstrate that a genuine issue of material fact remains for trial." *Id.* "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996).

The County supported its motion for summary disposition with an affidavit from Scholtz. Scholtz averred that, according to the December 2005 survey of West Michigan Park, the Conger Trust encroached on the Park 3 parcel with "seating and miscellaneous encroachments associated with deck or patio." Scholtz further averred that he had personal knowledge of the facts contained in the affidavit. Accordingly, the County fulfilled its burden. It presented documentary evidence to establish that the Conger Trust encroached on the Park 3 parcel. The Conger Trust, however, did not respond to the motion for summary disposition. Thus, it failed to sustain its burden. It did not present any evidence to the trial court to demonstrate that a material factual dispute remained for trial. Because the Conger Trust failed to carry its burden, the trial court did not err in granting summary disposition to the County on its claims against the Conger Trust. *Quinto*, 451 Mich at 363.

We decline to address the Conger Trust's argument that summary disposition was premature because the parties had not yet deposed Scholtz. Because the Conger Trust did not raise the issue below, we consider it waived. *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 377; 761 NW2d 353 (2008).

B. Counterclaim

The Conger Trust argues that the trial court erred in granting summary disposition to the County on its counterclaim because the Scholtz affidavit failed to resolve factual issues. The argument is without merit. Summary disposition on the counterclaim was moved for and granted under MCR 2.116(C)(8). Because a motion for summary disposition under MCR 2.116(C)(8) is to be decided by reference only to the pleadings, *Capitol Properties Group, LLC*, 283 Mich App at 425, the content of the Scholtz affidavit had no bearing on whether the County was entitled to summary disposition on the Conger Trust's counterclaim.

The Conger Trust also claims that the trial court erred in characterizing the counterclaim as a claim for trespass. According to the Conger Trust, the counterclaim was a claim "seek[ing] to protect access to lot 104 through use of the wooden walkway which was necessitated by the county's failure to restrict the sand drift." Reviewing the counterclaim, we are unable to conclude that the trial court's characterization as it being a claim for trespass was improper. There were allegations that the County permitted sand to drift onto and over the "wooden walkway" and that the County had failed to remove the drifted sand. There was also an allegation that the County had interfered with the use and enjoyment of the walkway.[4]

Regardless, even if the trial court erred in characterizing the counterclaim as a claim for trespass, the Conger Trust has provided no authority for the proposition that the County had any duty to restrict sand from blowing onto and over the "wooden walkway." Accordingly, the Conger Trust has not established that its counterclaim stated a claim upon which relief can be granted. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (an appellant may not give "issues cursory treatment with little or no citation of supporting authority"). The trial court did not err in granting summary disposition under MCR 2.116(C)(8) to the County on the Conger Trust's counterclaim.

II. Docket No. 288163

In front of the lot owned by the VanDam Trust is a portion of the Park 3 parcel referred to as the "trapezoid." The trial court ordered the VanDam Trust to remove a gate and a boat storage structure from the trapezoid.

A. Collateral Estoppel

The VanDam Trust argues that the County does not own the Park 12 parcels. First, it claims that, because the park parcels were included in the 1897 sheriff's deed and because the County did not bring an action to challenge the deed within five years as required by 1897 CL 9714, title to the Park 12 parcels vested in Charles Heald, the recipient of the sheriff's deed.[5] Second, the VanDam Trust claims that, if the 1886 plat was vacated before the 1942 plat was recorded, the County does not own the Park 12 parcels because the 1942 plat did not expressly dedicate the park parcels to the public.[6] We conclude that the VanDam Trust is collaterally estopped from asserting these claims.

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[4] The County, in its motion for summary disposition, characterized the counterclaim as a claim for trespass. Thus, the Conger Trust was on notice that its counterclaim was being characterized as a claim for trespass. By not responding to the motion for summary disposition, the Conger Trust failed to avail itself of the opportunity to challenge the County's characterization of the counterclaim.

[5] The VanDam Trust does not claim title to the trapezoid through the sheriff's deed. Rather, it claims title through adverse possession against Heald's successors.

[6] The VanDam Trust asks the Court to reverse the trial court's order granting summary disposition to the County so that it may have time to conduct discovery regarding whether the

(continued…)

The parties do not dispute that in *Dep't of Conservation*, 2 Mich App at 267, this Court held that the County owns the Park 12 parcels in trust for the public.[7] Throughout the present case, the County has never expressly asserted that, based on *Dep't of Conservation*, the VanDam Trust is collaterally estopped from arguing that the County does not own the Park 12 parcels.[8] However, the Court may, in its discretion, resolve legal issues not raised by the parties. *Tingley v Kortz*, 262 Mich App 583, 588; 688 NW2d 291 (2004). The application of collateral estoppel is a question of law subject to de novo review. *VanVorous v Burmeister*, 262 Mich App 467, 476; 687 NW2d 132 (2004). Because a holding in the present case that the County does not own the Park 12 parcels would be contrary to the Court's previous holding in *Dep't of Conservation*, we exercise our discretion and address the issue of collateral estoppel. We note that the VanDam Trust was aware of the argument that it could be collaterally estopped from claiming that the County does not own the Park 12 parcels. The VanDam Trust argued before the trial court that the County could not rely on *Dep't of Conservation* to claim ownership of the trapezoid because neither it nor its predecessors were a party to *Dep't of Conservation*. It claimed that it was entitled to its day in court. The VanDam Trust makes the same argument in its brief on appeal.

"The doctrine of collateral estoppel precludes relitigation of an issue in a different, subsequent action between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding." *Dearborn Heights School Dist No 7 v Wayne Co MEA/NEA*, 233 Mich App 120, 124; 592 NW2d 408 (1998). Generally, there are three requirements for the doctrine to apply: (1) a question essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the parties had a full and fair opportunity to litigate the issue; and (3) there is mutuality of estoppel. *Monat v State Farm Ins Co*, 469 Mich 679, 683-684; 677 NW2d 843 (2004). Collateral estoppel, by imposing finality to litigation, eliminates repetitious litigation, eases fears of prolonged litigation, conserves judicial resources, and encourages reliance on adjudication. *Nummer v Dep't of Treasury*, 448 Mich 534, 541; 533 NW2d 250 (1995); *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 348; 657 NW2d 759 (2002).

The VanDam Trusts claims that, because neither it nor its predecessor was a plaintiff in *Dep't of Conservation*, it must be allowed its day in court to present its arguments concerning why the County does not own the Park 12 parcels. The plaintiffs in *Dep't of Conservation* were "members of West Michigan Park Association of Ottawa Beach, Michigan, and lot owners in what is known as Plat of West Michigan Park." They sued the defendants, the County, the

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(…continued)

1886 plat was vacated.

[7] See *Fogg*, 158 Mich App at 165 ("In *Dep't of Conservation*[,] we held that title to all of the park land in the plat of West Michigan Park was held in fee by the County of Ottawa as a result of the recording and accepting of the 1886 plat of the development."); *Dep't of Natural Resources*, 91 Mich App at 642 ("There, we held that Ottawa County held the fee title to certain park lands which are now the subject of this appeal . . . .").

[8] In fact, at the motion hearing below, the County told the trial court that it could not assert collateral estoppel against the VanDam Trust because the VanDam Trust had not previously appeared in court. However, as will be discussed, the County's statement to the trial court is in incorrect statement of law.

County Road Commission, and the Department of Conservation, for an injunction restraining the defendants from using, controlling, or possessing the Park 12 parcels. The County does not dispute the VanDam Trust's assertion that neither it nor its predecessor was a plaintiff in *Dep't of Conservation*. In addition, it is apparent that the arguments raised by the VanDam Trust in the present case were not raised by the *Dep't of Conservation* plaintiffs.

Collateral estoppel not only applies to parties of an earlier proceeding, but also to the parties' privies. See *Dearborn Heights School Dist No 7*, 233 Mich App at 124. "'To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert.'" *Moses v Dep't of Corrections*, 274 Mich App 481, 503; 736 NW2d 269 (2007), quoting *Adair v Michigan*, 470 Mich 105, 122; 680 NW2d 386 (2004). "The outer limit of the doctrine traditionally requires both a 'substantial identity of interests' and a 'working functional relationship' in which the interests of the nonparty are presented and protected by the party in the litigation." *Adair*, 470 Mich at 122. The VanDam Trust is a defendant in the present action because it owns a lot in West Michigan Park. The *Dep't of Conservation* plaintiffs (excluding the WMPA) were owners of lots in West Michigan Park, and they had the same interest that the VanDam Trust has in the current case. They, like the VanDam Trust is doing in the present case, sought to prevent the County and other governmental entities from controlling and possessing the Park 12 parcels. Accordingly, the interests of the VanDam Trust were presented and protected by the *Dep't of Conservation* plaintiffs. The VanDam Trust is a privy to the *Dep't of Conservation* plaintiffs.

The issue to be litigated in the second action must be identical, not merely similar, to the issue litigated in the first action. *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996). "[T]he same ultimate issues underlying the first action must be involved in the second action, and the parties must have had a full opportunity to litigate the ultimate issues in the first action." *VanDeventer v Michigan Nat'l Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988). The ultimate issue to be decided by the VanDam Trust's arguments is whether the County owns the Park 12 parcels. This ultimate issue was decided by the Court in *Dep't of Conservation.* Admittedly, the specific issues raised by the VanDam Trust—whether the 1886 plat was vacated prior to the 1942 plat and whether the County can claim title to the Park 12 parcels because it did not challenge the 1897 sheriff's deed within five years—were not raised by the plaintiffs in *Dep't of Conservation.* However, the VanDam Trust has not suggested, and nothing in the *Dep't of Conservation* opinion suggests, that the plaintiffs in *Dep't of Conservation* did not have a full and fair opportunity to litigate the ultimate issue of who owned the Park 12 parcels. In addition, the VanDam Trust has not claimed that its arguments are specific to the trapezoid and, therefore, could not have been raised by the *Dep't of Conservation* plaintiffs.

Our conclusion that the VanDam Trust is collaterally estopped from relitigating the ownership of the Park 12 parcels will impose finality and encourage reliance on the holding in *Dep't of Conservation* that the County owns the Park 12 parcels in trust for the public. Our conclusion will discourage other lot owners, who also were not plaintiffs in *Dep't of Conservation*, from attempting to locate and assert other bases for why the County should not be declared the owner of the Park 12 parcels.

B. Abandonment

The VanDam Trust next argues that, because the County has only improved a small portion of the trapezoid—installing a bike path on the trapezoid's south end—and obtained judicial approval of the 2005 master plan, which contained no additional plans for the trapezoid, the County has abandoned the trapezoid. We disagree.

"Two requirements must be met to establish abandonment. First, it must be shown that there is an intent to relinquish the property and, second, there must be external acts that put that intention into effect." *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 717-718; 583 NW2d 232 (1998). The VanDam Trust's argument that the County abandoned the property is based on the fact that the County has no plans to use the northern portion of the trapezoid. However, "[n]onuse alone is insufficient to prove abandonment." *Id.* at 718; see also *Ford v Detroit*, 273 Mich 449, 452; 263 NW 425 (1935) ("Misuse or nonuse does not as a rule work a forfeiture. Neither misuse nor nonuse alone will be sufficient to constitute an abandonment of land dedicated to a public use . . . ."). Moreover, the VanDam Trust acknowledges that the County built a bike path on the southern end of the trapezoid. Because the County built a bike path on the trapezoid, any argument that the County abandoned the trapezoid must fails. The bike path on the trapezoid shows that the County has not abandoned the trapezoid. Accordingly, the trial court did not err in holding that the VanDam Trust failed to establish a genuine issue of material fact concerning whether the County abandoned the trapezoid.[9]

We reject the VanDam Trust's request that we reverse the grant of summary disposition as to its abandonment argument so that it can obtain discovery regarding the County's intent as to the trapezoid. Specifically, the VanDam Trust wants the opportunity to depose Scholtz. Although summary disposition is generally premature before the close of discovery, "summary disposition may nevertheless be appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position." *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 160-161; 742 NW2d 409 (2007). Even if Scholtz testifies that the County has no specific plans for the northern portion of the trapezoid, the testimony would not create a factual issue regarding abandonment, because nonuse alone does not constitute abandonment. *Sparling Plastic Industries, Inc*, 229 Mich App at 718.

C. Prescriptive Easement

The VanDam Trust claims that it obtained a prescriptive easement in the trapezoid against the County and that MCL 600.5821(2) does not apply because an easement is not a possessory right. We disagree.

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[9] The VanDam Trust's argument that, because the County moved for summary disposition, the County had the initial burden to produce documentary evidence showing that it had not abandoned the trapezoid is without merit. The issue of abandonment was first raised by the VanDam Trust in its response to the County's motion for summary disposition. Although the County moved for summary disposition on the VanDam Trust's affirmative defenses, the VanDam Trust did not assert abandonment as an affirmative defense.

Generally, adverse possession or a prescriptive easement is obtained after one has openly and notoriously used the property belonging to another for a continuous period of 15 years. See MCL 600.5801(4); *Beach v Lima Twp*, 283 Mich App 504, 512; 770 NW2d 396 (2009); *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676; 619 NW2d 725 (2000). However, MCL 600.5821(2) provides:

> Actions brought by any municipal corporations for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the period of limitations.

In *Elias Bros, Inc v Hazel Park*, 1 Mich App 30, 34-35; 133 NW2d 206 (1965), this Court held that property owned by a municipality is not subject to an easement by prescription. The VanDam Trust requests us not to follow *Elias Bros* arguing that the case was poorly reasoned. Because *Elias Bros, Inc* was decided before November 1, 1990, we are not bound to follow it. MCR 7.215(J)(1); *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 641; 765 NW2d 31 (2009).

However, the Court in *Elias Bros* relied on *Rindone v Corey Community Church*, 335 Mich 311, 316; 55 NW2d 844 (1952), in which the Supreme Court stated:

> It is unnecessary in this case to determine the public rights in First street north of Water, but we do note in passing the following: Prior to 1907 it might have been possible to acquire private rights in public streets by adverse possession. Since the enactment of PA 1907, No 46 (see CL 1948, § 609.1, par 3 [Stat Ann § 27.593]), Michigan has been in line with the general rule which forbids the acquiring of such rights by prescription. The development of the law on this subject is presented in *Pastorino* v. *City of Detroit*, 182 Mich 5 (Ann Cas 1916D, 768).

The Supreme Court's statement in *Rindone* is obiter dictum. See *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 437; 751 NW2d 8 (2008). Statements of obiter dictum, even those in Supreme Court decisions, are not binding under the rule of stare decisis. *People v Sobczak-Obetts*, 253 Mich App 97, 105; 654 NW2d 337 (2002); *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 216; 625 NW2d 93 (2000). However, "[a] decision of the Supreme Court is authoritative with regard to any point decided if the Court's opinion demonstrates application of the judicial mind to the precise question adjudged, regardless of whether it was necessary to decide the question to decide the case." *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 674; 760 NW2d 565 (2008) (quotation omitted).

In *Rindone*, the Supreme Court cited a statute, 1948 CL 609.1(3), and a case, *Pastorino*, to support its statement that private rights cannot be acquired in public municipal property by prescription. 1948 CL 609.1(3) is similar to MCL 600.5821(2). It provided that "the provisions of this section [which require an action for the recovery of any lands to be brought within 15 years] shall not apply to actions brought by any municipal corporation, for the recovery of the possession of any public highway, street or alley, or any other public grounds." In *Pastorino*, 182 Mich at 10, the Supreme Court stated that, with the passage of 1907 PA 46, the Legislature brought Michigan "into line with the general rule" that private rights cannot be obtained in public municipal property through adverse possession or prescription. Based on the Supreme

Court's citations to a statute and case law, the Supreme Court's statement in *Rindone* demonstrates application of the judicial mind to the precise question whether private rights can be obtained in public municipal property through prescription. The Supreme Court made an authoritative statement of what the law is in Michigan concerning private rights in public municipal property. Accordingly, we hold that, pursuant to *Rindone* and *Elias Bros*, the VanDam Trust cannot obtain a prescriptive easement in property owned by the County. Thus, the trial court did not err in granting summary disposition to the County on the VanDam Trust's affirmative defense that it obtained a prescriptive easement in the trapezoid. [10]

IV. Docket No. 288167

Vaas established a driveway on the Park 10 parcel. The trial court ordered him to remove the driveway.

A. *Little v Hirschman*

Vaas argues that *Dep't of Conservation* is no longer good law and, therefore, the trial court's grant of summary disposition to the County must be reversed. According to Vaas, the Supreme Court, in *Little v Hirschman*, 469 Mich 553; 677 NW2d 319 (2004), "overturned and reversed" all case law, including *Dep't of Conservation*, which held that a private dedication to lot owners was invalid.

In *Little*, 469 Mich App at 563, the Supreme Court clarified that private dedications in pre-1967 plats were valid. It expressly disavowed any language in prior cases, including that in *Dep't of Conservation*, stating that the public must be a party to every dedication. *Id.* at 562-563, 562 n 8.

The Supreme Court's disavowment of language in *Dep't of Conservation* does not reverse the holding of *Dep't of Conservation* that the County owns the Park 12 parcels. "[T]o reverse is to change the result in the case at bar; to overrule is to declare that a rule of law no longer has precedential value." *Sumner v Gen Motors Corp (On Remand)*, 245 Mich App 653, 665; 633 NW2d 1 (2001); see also *Kidder v Ptacin*, 284 Mich App 166, 170; 771 NW2d 806 (2009) ("Reversing or vacating a decision changes the result in the specific case before an appellate court. On the other hand, a decision to overrule a particular rule of law affects not only the specific case before the appellate court, but also future litigation. A decision to overrule is an appellate court's declaration that a rule of law no longer has precedential value."). In *Little*, the Supreme Court, by "disavow[ing]" all language stating that private dedications before 1967 were

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[10] Because the County brought this action to quiet title in the trapezoid, we do not pass on the question of a private landowner's ability to acquire property from a municipality where the private landowner, as the plaintiff, brings an action to recover municipal property. See *Mason v City of Menominee*, 282 Mich App 525, 529; 766 NW2d 888 (2009) (holding that "because the language of MCL 600.5821(2) prevents a private landowner from acquiring property from a municipality by acquiescence only if the municipality brings an action to recover the property, it does not preclude plaintiff's claim").

invalid, overruled the particular rule of law, cited in *Dep't of Conservation*, that private dedications in pre-1967 plats are invalid. "However, an appellate court's pronouncement that a rule of law no longer applies does not change the result of an effective judgment." *Kidder*, 284 Mich App at 170. Because there was a valid judgment in *Dep't of Conservation*, which was obtained almost 40 years before the Supreme Court issued the *Little* decision, the Supreme Court's decision in *Little* does not implicate this Court's holding in *Dep't of Conservation*. *Id.* Accordingly, the holding of *Dep't of Conservation* that the County owns the Park 12 parcels in trust for the public remains valid.

B. Kilcare Tavern Exception

Vaas claims that, pursuant to the "Kilcare Tavern exception," articulated in *Kirchen v Remenga*, 291 Mich 94; 288 NW 344 (1939), his driveway on the Park 10 parcel is a protected, historical use. We disagree. Even assuming that the Supreme Court in *Kirchen* established the Kilcare Tavern exception, as it is described by Vaas, Vaas has not established that it protects his driveway. According to Vaas, the Kilcare Tavern exception protects all private uses of the Park 12 parcels that existed before 1937. However, in his affidavit, Vaas averred that the driveway was established "by or about 1950." Thus, by Vaas's own admission, the driveway did not exist before 1937. The Kilcare Tavern exception does not protect Vaas's driveway on the Park 10 parcel.

C. Laches

Finally, Vaas argues that the County's trespass claim is barred by laches. "The application of the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against the defendant." *Yankee Springs Twp v Fox*, 264 Mich App 604, 612; 692 NW2d 728 (2004). The defendant has the burden to show that the plaintiff's lack of diligence caused him prejudice. *Id.* Vaas does not explain how the County's failure to bring an earlier trespass action caused him any prejudice. The only evidence in the record of Vaas expending any funds in building or maintaining the driveway is that he installed brick paving after he learned the County intended to file the present lawsuit. Accordingly, we reject Vaas's claim that the County's trespass claim is barred by laches.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck