

STATE OF MICHIGAN  
COURT OF APPEALS

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CEVIL BROOKS and ELAINE BROOKS,

Plaintiffs-Appellants,

v

JAMES K. WALSER, JOYCE WALSER,  
RICHARD GREEN, and MAGGIE GREEN,

Defendants-Appellees.

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UNPUBLISHED

July 17, 1998

No. 193040

Kent Circuit Court

LC No. 92-079744 CH

Before: Murphy, P.J., and Young, Jr. and Michael R. Smith\*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from directed verdicts in favor of defendants entered immediately following plaintiffs' opening statement. We affirm.

A directed verdict after an opening statement is a limited and disfavored action, which is only proper where, in addition to the pleadings, facts are conceded that demonstrate, as a matter of law, no cause of action exists or that the action is barred. *Ambrose v Detroit Edison Co*, 380 Mich 445, 458; 157 NW2d 232 (1968); *Vida v Miller Allied Industries, Inc*, 347 Mich 257, 264; 79 NW2d 493 (1956); *Young v Barker*, 158 Mich App 709, 720; 405 NW2d 395 (1987); *Superior Products Co v Merucci Bros, Inc*, 107 Mich App 153, 161; 309 NW2d 188 (1981); *Welniak v Alcantara*, 100 Mich App 714, 716; 300 NW2d 323 (1980). The power to direct a verdict after opening statement should never be exercised without providing the plaintiff's counsel a full opportunity to set forth expected proofs and to qualify or supplement counsel's opening statement, so far as the truth will allow. *Vida*, 347 Mich 264; *Tyus v Booth*, 64 Mich App 88, 90; 235 NW2d 69 (1975). The record reflects that, on motion for directed verdict, the trial court afforded plaintiffs an opportunity to cure any deficiencies in their opening statement.

The directed verdict in favor of defendants Green on plaintiffs' adverse possession claim was properly entered. Factual representations made by plaintiffs' trial counsel during opening statement established that plaintiffs attempted to ascertain and respect the true southern boundary line of their

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\* Circuit judge, sitting on the Court of Appeals by assignment.

property, while failing to do so. See *DeGroot v Barber*, 198 Mich App 48, 51-53; 497 NW2d 530 (1993). Accordingly, because plaintiffs intended to hold to the true lot line, their possession of twenty-five to thirty feet of defendants Green's property was not hostile and, hence, not adverse. *Id.*

Plaintiffs have abandoned their challenge to the directed verdict entered on the trespass claim asserted against defendants Walser by failing to discuss the law of trespass in their appellate brief or how the content of their trial attorney's opening statement demonstrated that they had a colorable claim for recovery against the Walsers. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Affirmed.

/s/ William B. Murphy  
/s/ Robert P. Young, Jr.  
/s/ Michael R. Smith