

STATE OF MICHIGAN
COURT OF APPEALS

L. CHARLES MULHOLLAND, ROBERT W.
MULHOLLAND, BETTY MULHOLLAND,
ROBERT MENKE, CATHERINE MENKE and
KENNETH MULHOLLAND,

Plaintiffs-Appellants,

v

MONTCALM COUNTY ROAD COMMISSION,
BILLY ROSE, MARY ELLEN ROSE, WILLIAM L.
WARDELL, MARY WARDELL, L. MAXINE
CURRIE, CARL BOCKMAN, DORIS
BOCKMAN, FREDERICK J. STAAT, JOANNE
STAAT, DUANE M. FORSMA, CAROL A.
FORSMA, DONALD GRUNWELL, JAMES F.
SCHAB, TERESA A. SCHAB, DELBERT C.
BROW, CORNELIA A. BROW, JACK B. HETH,
LLOYD WILLISON, EUGENE W. LEMIEUX,
PATRICIA LEMIEUX, VINCENT PEARSON,
CORNELIA PEARSON, WILLIAM HARRIS,
CHARLES WILTSE, VIRGINIA WILTSE, STEVEN
A. JONES, GLORIA JONES and NANCY
WILSON,

Defendants-Appellees.

UNPUBLISHED
August 14, 1998

No. 199093
Montcalm Circuit Court
LC No. 95-000490 CZ

Before: Murphy, P.J., and Gribbs and Gage, JJ.

PER CURIAM.

Plaintiffs, who are Montcalm County landowners, appeal as of right the trial court's grant of summary disposition to defendant Montcalm County Road Commission regarding the validity of a public dedication of a portion of roadway. We affirm.

Plaintiffs filed suit against defendant road commission, Maple Valley Township, and many other individual owners of property located near Coady Lake in Maple Valley Township, Montcalm County, in an area called the Sandy Beach plat, to establish the parties' rights regarding several parcels of property. Plaintiffs' dispute with defendant road commission involves a twenty-foot wide strip of land running north and south along the western border of a 1.32 acre parcel of property (referred to as "parcel one"). Defendants claim that this twenty-foot wide strip of property is a part of Lakeview Drive, a public road running north and south along the eastern borders of Sandy Beach plat lots one through thirty-four and along the western border of parcel one (Parcel one extends along Lakeview Drive's eastern edge across from where lots twenty through twenty-six are located along Lakeview Drive's western edge). Plaintiffs claim this twenty-foot wide strip of property as their own. In 1962, plaintiffs L. Charles Mulholland and Kenneth Mulholland purchased property, including parcel one, by land contract from their parents. In 1976, their mother dedicated the disputed property to defendant. The trial court concluded that plaintiffs had only an inchoate interest in the property that was defeated by the subsequent dedication, and that therefore defendant held title to the disputed twenty feet.

Plaintiffs first argue that the trial court erroneously granted defendant summary disposition because it incorrectly concluded that, as a matter of law, the subsequent dedication of a portion of the property plaintiffs had previously purchased by land contract defeated their interests. We review de novo the trial court's grant of summary disposition. *Singerman v Municipal Service Bureau*, 455 Mich 135, 139; 565 NW2d 383 (1997). In engaging in this review, we are called upon to interpret the contractual language of the 1976 dedication. "The initial question whether contractual language is ambiguous is a question of law. If the contractual language is clear and unambiguous, its meaning is a question of law." *Brucker v McKinlay Transport, Inc (On Remand)*, 225 Mich App 442, 447-448; 571 NW2d 548 (1997). While we do not entirely agree with the trial court's legal analysis, we conclude that summary disposition for defendant was nonetheless appropriate.

The trial court correctly interpreted the 1976 dedication's language as granting twenty extra feet in width to Lakeview Drive along lots one through thirteen and lots twenty through thirty-four of Sandy Beach plat. The disputed portion of the 1976 dedication stated, "[a]lso included in this dedication is the 40 foot roadway as described and shown in the Lee C. Darling description and sketch dated January 4, 1962." The Darling survey shows both a "loop road" whose dedication the parties do not dispute and Lakeview Drive along lots one through thirteen and twenty through thirty-four as forty feet wide. Darling's written description of parcel one expressly exempts the twenty feet in width of Lakeview Drive along parcel one's western border, and Darling's drawing also shows Lakeview Drive intruding twenty feet into the western boundary of parcel one. In light of the Darling description and sketch showing Lakeview Drive as forty feet wide and intruding onto parcel one, we conclude that the dedication of "the 40 foot roadway as described and shown in the Darling description and sketch" may only be interpreted as establishing a forty foot width for Lakeview Drive along lots fourteen through thirty-four, and that the dedication is clear and unambiguous.

On execution of the 1962 land contract including parcel one, equitable conversion occurred and plaintiffs obtained an equitable interest in parcel one, while plaintiffs' parents retained legal title in the property subject to plaintiffs' equitable interests. *Hooper v Van Husan*, 105 Mich 592, 597; 63 NW

522 (1895); *Charter Twp of Pittsfield v City of Saline*, 103 Mich App 99, 103; 302 NW2d 608 (1981). Plaintiffs subsequently recorded their land contract, thus protecting their interests against subsequent encumbrances. See MCL 565.354; MSA 26.674 and MCL 565.29; MSA 26.547. Therefore, the subsequent dedication of the disputed portion of Lakeview Drive transferred the land contract vendor's legal title to defendant, subject to plaintiffs' recorded, protected equitable interests. However, plaintiffs' interests in the property were extinguished in 1980 when they received a deed pursuant to the land contract that did not include a conveyance of parcel one.

[I]f parties to a prior agreement enter a subsequent contract which completely covers the same subject, but which contains terms inconsistent with those of the prior agreement, and where the two documents cannot stand together, the latter document supersedes and rescinds the earlier agreement, leaving the subsequent contract as the sole agreement of the parties. [*Nib Foods, Inc v Mally*, 70 Mich App 553, 560; 246 NW2d 317 (1976).]

The exception of parcel one from plaintiffs' deed terminated plaintiffs' equitable interests in the property, giving defendant legal title to the disputed property free and clear of plaintiffs' equitable interests. Thus, although the trial court employed an incorrect legal analysis in ruling for defendant, we affirm the trial court's grant of summary disposition based on the foregoing analysis. *Gray v Pann*, 203 Mich App 461, 464; 513 NW2d 154 (1994).

Plaintiffs also argue that the trial court improperly granted summary disposition pursuant to MCR 2.116(C)(10) because factual issues existed regarding the intent of the dedication. However, we have interpreted the disputed dedication's clear language as a matter of law and analyzed the prior land contract's relationship to the subsequent dedication by examining the effect of statutes and legal doctrines. Therefore, because plaintiffs have failed to raise any factual issues necessary to our ruling on this issue, we conclude that summary disposition pursuant to MCR 2.116(C)(10) was proper.

Affirmed.

/s/ William B. Murphy
/s/ Roman S. Gibbs
/s/ Hilda R. Gage