

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STEPHEN W. MYERS and JUDY ANN MYERS,

Plaintiffs-Appellees,

v

JESSIE ARLENE POWELL,

Defendant-Appellant.

And

DELBERT BAKER, ORLENE V. PENNING, and  
BRUCE N. WHEELER,

and

RICHARD L. DUBNICK and CATHERINE A.  
DUBNICK,

Intervening Plaintiffs-Appellees.

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Before: Zahra, P.J., and Kelly and McDonald, JJ.

PER CURIAM.

Defendant Jessie Arlene Powell appeals as of right from an order and declaratory judgment quieting title to disputed land in plaintiffs and extinguishing the rights of defendants. We affirm.

Following a dispute over title to relicted lakeshore produced by the declining water level of Cowden Lake in Maple Valley Township, Montcalm County, plaintiffs sued to quiet title. The parties argued different theories for extending their property sidelines onto the relicted land resulting in a triangle of land claimed by both parties. The original trial court rejected plaintiffs' claim of adverse possession, but devised its own equitable theory for dividing the disputed land. In an unpublished per curiam opinion, this Court reversed the order dividing the land and remanded the matter to the trial court for (1) a determination of the shape of Cowden Lake, and (2) an application of the appropriate fair

apportionment method to the relicted property, as delineated in *Gregory v LaFaive*, 172 Mich App 354, 362; 431 NW2d 511 (1988).

At the hearing on remand, plaintiffs presented a survey of Cowden Lake and the opinion of the surveyor that proposed a median line center for the lake and extended plaintiffs' sidelines accordingly. Defendant did not present any survey or opinion to support her proposed sidelines, but attempted to revive her own adverse possession claim that had not been addressed by the original trial court or by this Court on appeal. In support, defense counsel directed the court's attention to prior testimony that defendant maintained the land, and that plaintiffs' predecessor in interest sought her permission to plant a tree on it.

On rehearing, the court believed itself empowered to address only the issue presented in the remand. The trial judge accepted plaintiffs' survey and entered a "declaratory judgment" accepting plaintiff's proposed extension of the sidelines. However, that judgment listed only one of the four defendants and failed to mention the rights of the others in the body of the judgment.<sup>1</sup> Defendant filed an objection to entry of final judgment in the circuit court, seeking a rehearing of her adverse possession claim. On July 24, 1998, the court entered a final judgment and order against all four defendants and extinguishing their rights. The Dubnicks intervened on April 28, 1999, having purchased the property from the Myers during the litigation.

## I

Defendant argues that upon rehearing, the trial court failed to carry out this Court's order to determine the shape of the lake and fairly apportion it using established methods, and erred by accepting plaintiffs' survey and dividing the land accordingly without benefit of other testimony, and without expressing its justification on the record. Plaintiffs and intervening plaintiffs respond that by accepting their survey, the court adopted the conclusion that the lake is oblong and complied with the direction of this Court.

This Court affirms a trial court's findings of fact unless clearly erroneous. MCR 2.613(C). A finding of fact is clearly erroneous if, after a review of the entire record, this Court is left with a definite and firm conviction that the trial court made a mistake *Trout Unlimited, Muskegon-White River Chapter v City of White Cloud (After Remand)*, 209 Mich App 452, 456; 499 NW2d 188 (1995). The trial court did not err in accepting the opinion of plaintiffs' expert that Cowden Lake is an oblong lake or in awarding the disputed land to plaintiffs.

In Michigan, a riparian owner's title to property extends to the center of an inland lake or stream. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 509; 534 NW2d 212 (1995). When apportioning relicted land, the key consideration should be fairness. *Mumaugh v McCarley*, 219 Mich App 641, 647; 558 NW2d 433 (1996). Each riparian owner should be apportioned a share of the new lakefront that is proportionate to that owner's prior lakefront ownership. *Mumaugh, supra* at 647. The method used to determine ownership of lands formed by reliction depends somewhat upon the shape of the body of water involved. *LaFaive, supra* at 362.

If the lake is circular, the shoreline is the base and the center line is the vertex of a triangle. If the lake is oblong the lines are drawn perpendicular to a median center. If neither of these methods are [sic] possible, the lake bed is divided in proportion to the shoreline owned. The theory on all events is that the shore owners take ratably. [*Id.*, quoting 6 Thompson on Real Property (1962 Replacement), § 3078, 1965 Supp, p 18, as quoted in *Weisenburger v Kirkwood*, 7 Mich App 283, 291; 151 NW2d 889 (1967).]

Thus, riparian boundaries on an oblong lake affected by reliction are established by drawing a line from the point where the original sideline met the original shore line, perpendicular to the median line center of the lake. *West Michigan Dock*, *supra* at 510.

By conducting the motion hearing and considering the evidence in the record, the trial court complied with the order of this Court. The court took the steps prescribed in *LaFaive*, *supra* at 362. Absent the presentation by defendant of a conflicting survey and opinion or some other evidence, the trial judge was entitled to accept the median line proposed by plaintiff's surveyor as well as the perpendicular lines running from it to the original lakeshore corners of plaintiff's parcel.

## II

In the original action, defendant counter-claimed that she had adversely possessed the disputed property based on instruments of title and over fifteen years of exclusive, continuous, open, visible, notorious, distinct and hostile adverse possession. At trial, she presented testimony tending to support her assertion that she used and maintained the land. However, the testimony was directed toward refuting plaintiff's claim of adverse possession rather than toward proving defendant's own adverse possession. A litigant must generally raise an error in the trial court, or it will not be preserved for appellate review. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *Alford v Pollution Control Industries of America*, 222 Mich App 693, 699; 565 NW2d 9 (1997). Defendant knew of the judgment in this case in 1994, but never made any effort to get a determination on her adverse possession claim until the case was on remand in 1997. Defendant did not preserve her right to appeal this error.

Moreover, defendant admitted that she and her neighbors helped each other maintain the property. In closing argument, defense counsel addressed adverse possession only to reiterate that plaintiff could not have adversely possessed the property, because "with joint maintenance there is no exclusivity." Thus, because defendant admitted that she could not have exclusively possessed the property, any claim of adverse possession would fail.

Affirmed.

/s/ Brian K. Zahra

/s/ Michael J. Kelly

/s/ Gary R. McDonald

<sup>1</sup> Defendants Penning and Wheeler did not respond to the original complaint. Defendant Baker was found to have no legal interest in the property.