

STATE OF MICHIGAN
COURT OF APPEALS

MITCHELL WARUSZEWSKI,

Plaintiff-Appellant,

v

DALTON TOWNSHIP and MUSKEGON
COUNTY ROAD COMMISSION,

Defendants-Appellees.

UNPUBLISHED

April 28, 2000

No. 214879

Muskegon Circuit Court

LC No. 97-337884-CH

Before: Gribbs, P.J., and Doctoroff and T. L. Ludington*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motions for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1912 a subdivision was created in Dalton Township, and the lots and streets were dedicated for public use. The offer of dedication was not withdrawn, and was not formally accepted. In 1997 plaintiff purchased lots in the subdivision. His application for building permits was denied on the ground that the lots did not have access to a public street. The Township considered the streets in the subdivision to be private roads, and informed plaintiff that he would be required to improve the streets in accordance with the Township ordinance.

Plaintiff filed suit, alleging that because the 1912 offer of dedication had not been withdrawn, it was continuing, and was deemed accepted by operation of MCL 560.255b(1); MSA 26.430(255b)(1). Plaintiff requested a writ of mandamus requiring the Township to issue the building permits, sought damages based on inverse condemnation, and sought a declaration that the Township's private road ordinance was invalid. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Initially, the trial court held that the roads in the subdivision were deemed accepted by the Road Commission pursuant to MCL 560.255b(1); MSA 26.430(255b)(1). Nevertheless, the court concluded that plaintiff was not entitled to the relief

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

requested on the grounds that the Road Commission had no duty to open the roads, that the decision that the roads were not public streets did not constitute a taking, and that plaintiff's plan to improve the roads did not comply with the Township ordinance. Subsequently, the trial court, in response to the Road Commission's motion to set aside a portion of the original decision, held that the roads in the subdivision were private roads subject to the Township ordinance. The court found that the offer of dedication, made in 1912, lapsed prior to the enactment of MCL 560.255b(1); MSA 26.430(255b)(1) in 1978.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A valid dedication of land for public use requires a recorded plat designating the public areas, evidencing a clear intent to dedicate the areas to public use, and acceptance by the proper public authority. Public acceptance must be timely, and disclosed through a manifest act by the public authority. An offer of dedication can lapse; however, whether an offer lapses or continues depends on the circumstances of each case. *Kraus v Dep't of Commerce*, 451 Mich 420, 424, 426-427; 547 NW2d 870 (1996).

Plaintiff argues that the trial court erred by denying his requested relief. We disagree and affirm. An offer of dedication can lapse if acceptance is not made within a reasonable time. See, e.g., *Shewchuck v City of Cheboygan*, 372 Mich 110, 113-114; 125 NW2d 273 (1963) (acceptance eighty-seven years after dedication unreasonably late); *Marx v Dep't of Commerce*, 220 Mich App 66, 79; 558 NW2d 460 (1996) (ostensible acceptance sixty-eight years after dedication unreasonably late). No authority holds that an attempt to vacate the dedication must be made before the timeliness of an acceptance thereof becomes relevant for consideration. In the instant case, sixty-six years passed between the offer of dedication and the enactment of MCL 560.255b(1); MSA 26.430(255b)(1), under which acceptance of the offer could be presumed. We hold that the trial court correctly found that the offer of dedication lapsed, *Shewchuck, supra*; *Marx, supra*, and that the roads in the subdivision were private roads subject to the Township ordinance.

Furthermore, plaintiff has not challenged the trial court's findings that he was not entitled to relief for the reasons that the Road Commission had no duty to open the roads in the subdivision, no taking occurred, and his plan for improvement of the roads did not comply with the requirements of the Township ordinance. Any such challenges are waived.

Affirmed.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington