STATE OF MICHIGAN

COURT OF APPEALS

RUSSELL ELMHIRST, MARILYN ELMHIRST, KENNETH A. KEITH, KATHERINE KEITH, and STAN HOLMES,

Plaintiffs-Appellants,

v

CHEBOYGAN COUNTY ROAD COMMISSION,

Defendant-Appellee.

UNPUBLISHED
September 17, 2002

No. 231947
Cheboygan Circuit Court
LC No. 99-006597-CZ

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment, following a bench trial, of no cause of action. Plaintiffs' lawsuit sought to quiet title in a portion of a county road. We affirm.

Plaintiffs contend that the trial court erred in finding that defendant had not abandoned the disputed portion of Needles Road.[1] Abandonment is established by showing both an intent to relinquish property and "external acts that put that intention into effect." *Sparling Plastic Indus v Sparling*, 229 Mich App 704, 717-718; 583 NW2d 232 (1998).

Specifically, plaintiffs contend that defendant abandoned the property by both: (i) not extending the graveled portion of Needles Road into the disputed portion of Needles Road; and (ii) placing a "Road Ends" sign at the end of the graveled portion of the road. However, the manager of the road commission testified that the commission had no intent to abandon the disputed portion of Needles Road. Accordingly, we do not believe that the trial court clearly erred by finding that plaintiffs failed to establish the "intent" prong of abandonment. *Sparling, supra* at 717-718. Moreover, to the extent that individuals use the disputed portion of Needles

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[1] Generally, we review de novo a trial court's ruling on an action to quiet title; however, we review a trial court's factual findings for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). A finding of fact is "clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

Road as a footpath to the beach, this alone may be sufficient to negate abandonment. See generally *In re Petition of Carson*, 362 Mich 409; 107 NW2d 902 (1961). In addition, "[n]onuse alone is insufficient to prove abandonment." *Sparling*, *supra* at 718. Consequently, the trial court did not err in rejecting plaintiffs' abandonment claim.

Plaintiffs also contend that the trial court erred by failing to quiet title based on MCL 221.22.[2] MCL 221.22 provides: "Every public highway already laid out, or hereafter to be laid out, no part of which shall have been opened and worked within four [4] years after the time of its being so laid out, shall cease to be a road for any purpose whatever." The trial court ruled that this statute did not apply because defendant had developed a substantial portion of Needles Road after acquiring it. Indeed, the evidence indicated that defendant placed gravel on the non-disputed portion of Needles Road after it was acquired. In fact, as noted above, plaintiffs' argument regarding the disputed portion of Needles Road is partially based on defendant's failure to similarly install gravel or otherwise improve the disputed portion. Because MCL 221.22 plainly provides that a road ceases to be a road only if "no part" of the road is opened or worked, we do not believe that the trial court erred by concluding that MCL 221.22 did not support plaintiffs' quiet title action.

Finally, plaintiffs contend that the trial court erred by ruling that it had no power to modify or void the 1968 declaratory judgment, which enjoined plaintiff Elmhirst from interfering with defendant's use and maintenance of Needles Road. However, the trial court's holding merely established that it was not persuaded that it *should* set aside the injunction, not that it felt that it lacked the power to do so. Indeed, plaintiffs correctly note that an equitable decree may be modified as circumstances require. *First Protestant Reformed Church of Grand Rapids v DeWolf*, 358 Mich 489, 495; 100 NW2d 254 (1960). Consequently, we find no error.[3]

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra
/s/ Donald S. Owens

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[2] We review de novo issues of statutory construction. *Hinkle v Wayne Co Clerk*, 245 Mich App 405, 413; 631 NW2d 27 (2001).

[3] Plaintiffs briefly raise an adverse possession argument. However, this issue is forfeited because it was not raised below. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Further, it is not subject to appellate review because it was not included in the statement of questions presented. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).