

STATE OF MICHIGAN
COURT OF APPEALS

LARRY C. HOPE and JUDITH M. HOPE,

Plaintiffs/Counter-Defendants-
Appellees,

UNPUBLISHED
November 22, 2002

v

ERIC GUTH and ELLEN M. AIRGOOD,

Defendants/Counter-Plaintiffs-
Appellants.

No. 237868
Alger Circuit Court
LC No. 00-003498-CH

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's declaration of interest concluding that plaintiffs hold clear title to certain property. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1883, Wellington R. Burt platted the town of West Grand Marais. He reserved to himself, and his successors and assigns, the reversion of all streets and alleys when same were discontinued by law. In 1893, Burt conveyed the entire plat and his interests therein to Sidney Hall and Charles Bradley, who in turn conveyed the entire plat and their interests to the Grand Marais Mill Company. On November 9, 1894, the Alger Circuit Court vacated a portion of the plat, including the right of way of Burton Avenue/Summit Street. In 1901, the Mill Company conveyed property described as "The South thirty (30) feet of Lot Three (3), Lot Five (5) and Lot 7 and a piece of land lying South of said land, and foot of bluff, in Block Thirty Two (32) Plat of West Grand Marais." Defendants now own the property described as the south thirty feet of three lots. Plaintiffs now own the property described as the piece of land and bluff.

Defendants began storing wood and other items on a portion of the land deeded to plaintiffs. Plaintiffs filed suit seeking an injunction precluding defendants from trespassing on their land. Defendants filed a counterclaim to quiet title, alleging that they, and not plaintiffs, were the proper owners of the northern half of the former right of way. The parties moved for summary disposition pursuant to MCR 2.116(C)(10). Defendants asserted that when the right of way was vacated in 1894, ownership of the property to the center of the street vested in the owners of the grounds surrounding the street. They cited *Scudder v Detroit*, 117 Mich 77, 79-80; 75 NW 286 (1898), for the proposition that if a grantor conveys lots in a plat bounded by a street, the grantee takes the land to the center of the street. Plaintiffs argued that when that portion of

the plat containing the right of way was vacated, the lands in the right of way reverted to the Mill Company, the owner of the entire plat and the assignee of Wellington Burt. The Mill Company conveyed the former right of way and surrounding lands as separate parcels. Plaintiffs contended that *Scudder, supra*, was inapplicable because the rule in that case was predicated upon a conveyance of platted land with the representation that the land adjoins a street. Plaintiffs emphasized that the right of way had been vacated before the adjoining land, portions of lots 3, 5, and 7, was first conveyed by the Mill Company.

In an initial declaratory judgment, the trial court determined that when a portion of the plat, including the right of way, was vacated in 1894, ownership of the right of way reverted to the Mill Company as Wellington Burt's assignee. The trial court rejected defendants' argument that the northern half of the vacated right of way joined to the property that eventually was conveyed as three lots. The trial court reasoned that because the Mill Company owned all property vacated in 1894, and subsequently conveyed that property, title to the vacated right of way passed with the conveyance. In a final declaration of interest, the trial court held that plaintiffs had clear title to the property described in their complaint, i.e., the property described above as the piece of land and bluff.

We review a trial court's findings of fact in an equitable matter for clear error, and its conclusions of law de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). Defendants argue the trial court erred by concluding that plaintiffs held good title to that land formerly designated as the northern half of the right of way. They contend that application of *Scudder, supra*, mandates a conclusion that the northern half of the vacated right of way joined to the property conveyed as three lots and to which they now hold title. We disagree and affirm.

When a portion of the plat was vacated, title in the former right of way vested in the Mill Company as the assignee of Wellington Burt by operation of the reverter created by Burt. The Mill Company conveyed a portion of several lots and the former right of way as separate parcels. The titles to the separate parcels diverged and eventually came to rest with plaintiffs and defendants as described above. *Scudder, supra*, stands for the proposition that when a grantor conveys a platted lot represented as being bounded by a street, the grantee takes title to the center of the street. The presumption underlying the holding is that there must be a representation that a platted lot is bounded by a street. The Mill Company made no such representation because the right of way had been vacated. The trial court correctly found that because the Mill Company was free to convey the vacated property, including the former right of way, in any manner that it saw fit, plaintiffs, via their successors in interest, held clear title to that portion of the property designated above as a piece of land and bluff.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski