

STATE OF MICHIGAN
COURT OF APPEALS

ALLEN H. SCHIEFELBEIN, JR., and JOAN
ELLEN SCHIEFELBEIN,

UNPUBLISHED
November 2, 2004

Plaintiffs-Appellants,

and

AMANDA MORRILL,

Plaintiff,

v

ST. JOSEPH COUNTY DRAIN COMMISSION,
DEPARTMENT OF CONSUMER & INDUSTRY
SERVICES, DEPARTMENT OF
TRANSPORTATION, DEPARTMENT OF
NATURAL RESOURCES, ALICE C. FIELD,
DENNIS L. KANE, JR., JOHN J. HAGNER,
JENNIFER BELLOWS, a/k/a JENNIFER
HAGNER,

No. 247771
St. Joseph Circuit Court
LC No. 96-000943-CH

Defendants-Appellees,

and

GEORGE F. FIELD, MICHIGAN GAS
UTILITIES, GTE NORTH, AMERICAN
ELECTRIC POWER, WHITE PIGEON
KLINGER LAKE, MICHIGAN GATV,
CITIZENS BANK, JAMES R. GERCHOW,
JEANNIE L. GERCHOW, E.U. SMITH, SUE B.
SMITH, JEAN F. SHANK, CHARLES H.
BABER, MARGARET J. BABER, and
MICHAEL D. MOORE,

Defendants.

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for a directed verdict. We affirm.

Plaintiffs filed suit to quiet title to a portion of Stewart Street in St. Joseph County, Michigan. In a prior consolidated appeal, we concluded that the trial court's sua sponte entry of summary disposition was inappropriate and factual issues required remand. However, we affirmed the trial court's conclusion that summary disposition was proper in favor of plaintiffs with regard to the issue of formal acceptance.¹ The Supreme Court reversed the opinion only with regard to the issue of formal acceptance, stating:

On order of the Court, the applications for leave to appeal from the December 11, 2001 decision of the Court of Appeals are considered, and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we REVERSE the decision of the Court of Appeals to the extent that it affirms the grant of summary disposition to plaintiffs on the issue of formal acceptance of Stewart Street, and REMAND to the St. Joseph Circuit Court for further proceedings not inconsistent with this order. A McNitt resolution that expressly identifies the platted road in dispute or the recorded plat in which that road was dedicated is sufficient to effect acceptance of the offer to dedicate the road to public use. *Kraus v Dep't of Commerce*, 451 Mich 420, 430; 547 NW2d 870 (1996). Although in this case the road in dispute is not identified by name or by reference to the recorded plat, appellants argue that the street is identified by a map attached to the resolution. In addition to the issues identified by the Court of Appeals, the circuit court on remand shall reconsider the motions for summary disposition on this question and determine whether there is any genuine issue of material fact regarding the identification of Stewart Street or its formal acceptance by means of the McNitt resolution.

We do not retain jurisdiction. [467 Mich 870 (September 17, 2002)]

On remand, the trial court granted the renewed motion for summary disposition with regard to the issue of formal acceptance. A bench trial was held to address the issue of abandonment. At the conclusion of plaintiffs' proofs, the trial court granted the defense motion for directed verdict, concluding that plaintiffs failed to meet their burden of proof.

Plaintiffs first allege that the trial court erred in granting the renewed motion for summary disposition. We disagree. We review summary disposition decisions de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The law of the case doctrine provides that where an appellate court has passed on a legal question and remanded the case for further proceedings, the legal question binds lower tribunals. *Grievance Administrator v*

¹ *Morrill v St Joseph Co Rd Comm*, unpublished opinion per curiam of the Court of Appeals, issued December 11, 2001 (Docket Nos. 217365 and 217420).

Lopatin, 462 Mich 235, 259-260; 612 NW2d 120 (2000). We note that plaintiffs present the same arguments to this Court regarding formal acceptance that were raised in the initial appeal. However, the Supreme Court in its order of remand limited the issue to consider whether the identification of Stewart Street was sufficient, although not referenced by name or to the recorded plat, by reference to the map attached to the resolution. *Morrill*, *supra* at 467 Mich 870. Based on our review of the documentary evidence submitted to the trial court, we cannot conclude that the trial court erred in granting the renewed motion for summary disposition in light of the language of the resolution, its accompanying reference to the map, and the footage contained on the map which sufficiently identified Stewart Street as a county road. *Capuzzi*, *supra*; *Lopatin*, *supra*.²

Plaintiffs next allege that the trial court erred in granting the defense motion for directed verdict. We disagree. The grant or denial of a motion for a directed verdict is reviewed de novo. *Cacevic v Simplimatic Engineering Co (On Remand)*, 248 Mich App 670, 679-680; 645 NW2d 287 (2001). However, in a bench trial, the motion for directed verdict is more accurately entitled a “motion for involuntary dismissal.” See *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 235-236 n 2; 615 NW2d 241 (2000). A motion for involuntary dismissal is appropriately granted by the trial court after the presentation of the plaintiff’s proofs where the court is satisfied that, on the facts and the law, the plaintiff has shown no right to relief. *Id.*; see also MCR 2.504(B)(2).

The elements of a claim of abandonment were set forth in *Roebuck v Mecosta Co Rd Comm*, 59 Mich App 128, 132; 229 NW2d 343 (1975):

Abandonment is composed of two elements, namely, an intention to relinquish the right or property, but without intending to transfer title to any particular person, and the external act by which such intention is carried into effect. Both of these elements must concur. Intention alone is insufficient to show an abandonment – it must be accompanied by some act or circumstances showing an intention to relinquish the property.

The party asserting abandonment has the burden of proof, and abandonment occurs only when the use for which the property is dedicated wholly fails. *Richey v Shephard*, 333 Mich 365, 370; 53 NW2d 487 (1952). Mere nonuse does not necessarily operate as an abandonment. *Hoffman v Diekman*, 259 Mich 290, 292; 243 NW2d 8 (1932).

When these rules are applied to the factual findings by the trial court, the trial court did not err in granting the motion for directed verdict. Plaintiffs bore the burden of proof, and

² Review of the contents of the brief on appeal reveals that plaintiffs also raise two additional challenges, namely lapse and withdrawal. However, these issues were not raised in the statement of questions presented, and therefore, are waived on appeal. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). Moreover, these issues are not properly preserved for appellate review because the trial court did not decide them, particularly in light of its ruling regarding formal acceptance. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997).

abandonment occurs when the use for which the property is dedicated wholly fails. *Richey, supra*. There must be an intent to abandon and external acts by which such intention is carried into effect. *Roebuck, supra*. In this case, there was no indication that the use for which the property was dedicated wholly failed. Stewart Street provided access to the lake. Although there was evidence that the terrain was difficult to manage near the gully area, nonetheless, neighboring residents acknowledged that one could walk the street. Despite Jones' letter indicating that the vacation of the road would not be protested, Jones testified that he was mistaken when he wrote that letter. He also indicated that there was difficulty in maintaining consistency in the road commission records because of mislabeling of roads by different names. Irrespective of the letter, external acts did not indicate an intent to abandon. When called with requests for services (albeit infrequently), the road commission addressed gravel and tree removal issues. Additionally, the road commission received petitions for a pier and extension of a sea wall. The road commission did not direct residents to seek permission from the neighboring landowners of the subject road, but acted on the requests. Although neighboring residents may have maintained the area, the entire roadway was not blocked by the maintenance activities. Accordingly, the trial court's grant of the motion for directed verdict was proper. *Roebuck, supra*. Plaintiffs' argument that our prior appellate opinion precluded a directed verdict is without merit. We previously held that factual issues existed for trial. However, the opinion never indicated that a motion for directed verdict could not be granted.

Lastly, plaintiffs allege that the trial court erred in failing to determine the scope of the dedication of Stewart Street. An issue is abandoned on appeal when a party makes a cursory argument, failing to rationalize or explain the position, and fails to cite relevant authority. *Newton v Bank West*, 262 Mich App 434, 437 n 2; 686 NW2d 491 (2004). Review of the brief reveals that plaintiffs fail to cite authority in support of their position. Accordingly, this issue has been abandoned on appeal.³

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood

³ Moreover, to the extent the trial court's ruling may have resulted in the exclusion of evidence, it was incumbent on plaintiffs to submit an offer of proof in order to allow this Court to examine the validity of the issue. MRE 103(a)(2). Without an offer of proof, we cannot analyze this issue.