

STATE OF MICHIGAN
COURT OF APPEALS

LINDA M. ROSENCRANTS,

Plaintiff-Appellee,

and

JEFFREY GERARD and DEANNA GERARD,

Plaintiffs,

v

MICHAEL D. MELLON and KATHRYN R.
MELLON,

Defendants-Appellants.

UNPUBLISHED

November 28, 2006

No. 262913

Genesee Circuit Court

LC No. 02-074698-CH

Before: Whitbeck, C.J., and Sawyer and Jansen, JJ.

PER CURIAM.

Defendants appeal as of right the judgment and permanent injunction finding that plaintiffs possess a prescriptive easement on defendants' property. We affirm.

Defendants argue that the trial court erred in finding that a prescriptive easement existed without hearing any testimony on that issue. However, through defendants' trial counsel's actions below, defendants have waived any argument that no easement existed. Waiver is the intentional abandonment of a known right. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 64 n 4; 642 NW2d 663 (2002). One who waives his rights may not then seek appellate review of a claimed deprivation of those rights because waiver extinguishes error. *People v Carter*, 462 Mich 206, 214-219; 612 NW2d 144 (2000).¹ It is fundamental that "[a] party is not allowed to assign as error on appeal something which his or her own counsel deemed proper [in the trial court] since to do so would permit the party to harbor error as an appellate parachute." *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989).

¹ The concepts of waiver and forfeiture as explained in *Carter, supra*, apply equally to civil cases. See *Roberts, supra* at 69.

In this case, defendants' counsel never expressly stated that plaintiffs had a prescriptive easement on defendants' property. Defendants' counsel did, however, affirmatively approve of limiting the issue of the case to what the width of the roadway on defendants' property should be. Defendants' counsel also referred to the roadway as an easement and acknowledged that it was solely on defendants' property. The clear thrust of the testimony defendants' counsel summarized was that the roadway had always been ten feet wide and should remain so. It is clear from the trial court's opinion that it took defendants' counsel's statements as an acknowledgement that an easement existed and as agreement that the only remaining question was how wide that easement was.

Given defendants' counsel's approval of the trial court's handling of the matter and limitation of the issues in dispute, defendants cannot now complain of an error. To hold otherwise would allow defendants to harbor error as an appellate parachute. Accordingly, any claim that there was no easement was waived and there is no error to review. *Carter, supra* at 214-216.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kathleen Jansen