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STATE OF MICHIGAN

COURT OF APPEALS

KRISTIN L. KERN-SPIEKERMAN,

Plaintiff-Appellant,

UNPUBLISHED
April 22, 2021

v

No. 353648
Huron Circuit Court
LC Nos. 18-105565-CH
19-105623-CH

FREDERICK LeBLANC, RUSSELL LeBLANC, Their Unknown Heirs, Devisees, and Assignees, HURON COUNTY ROAD COMMISSION, DAVID VANDERBERGHE, TERESA FARNUM, NORMA OLES, THOMAS M. BOROWKSI and MARILYN BOROWSKI, Trustees of the THOMAS M. and MARILYN BOROWSKI LIVING TRUST Dated February 19, 2016, KELLY MEYER, TODD MEYER, TIMOTHY D. QUINN, PAMELA L. COLLINS, BRIAN EILOLA, LESLIE EILOLA, CHRISTOPHER A. O'DELL, AMY G. O'DELL, BRADEN BEAVER, KAYLA BEAVER, DEANA RICHARDSON, JERRY RICHARDSON, ELIZABETH MAJCHRZAK, EDWARD C. GENORD, JR., TRESSA LANE GENORD, MATTHEW BUFFO, BRIAN A. YOUNG, CHARLES T. GAVIN, LYNN M. GAVIN, JAMES A. BELK, GAIL J. BELK, DENNIS A. TALOREK, PENELOPE L. TUCKY, TERRY TUCKY, MARK H. KREBS, Trustee of the MARK H. KREBS, ANNE LEWANDOWSKI, VICTOR T. ROHNER, TIFFANY ROHNER, CHRISTOF NELU, and MARY ANN NELU,

Defendants-Appellees.

Before: O'BRIEN, P.J., and STEPHENS and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant Huron County Road Commission's (the Road Commission) motion for summary disposition under MCR 2.116(C)(10), which the remaining defendants (the lot owner defendants) joined.[1] We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiff and the lot owner defendants are owners of subdivided lots in the platted property known as Sandy Heights Beach, on the shore of Lake Huron in Lake Township. The Sandy Heights Beach Plat (the plat) was executed in 1941 by proprietors Frederick, Alice, and Russell LeBlanc. The plat indicates that the subdivision is bisected by highway M-25, and that the land to the north of M-25 is divided into 11 lots running from M-25 to the water's edge; there are a total of 22 lots on the south side of M-25, which are further divided into a group of eight lots and another group of 14 lots, on either side of Russell St. The plat dedicates the "streets and alleys and walks as shown in" the plat "to the use of the public," with the exception of Russell St., which is a strip of land running from the southern end of the plat to M-25 in approximately the middle of the property, and which was dedicated to the use of the plat owners. The plat shows an area labeled "Lake Road," which is a strip of land, 33 feet in width, running the length of the plat, on its easternmost side, to the water's edge. The plat contains signed certificates of approval from the Lake Township Board, the Huron County Board (consisting of the County Treasurer, County Clerk, and a Probate Judge), the County Plat Board, and the Road Commission, and was recorded with the Huron County Register of Deeds in 1942.

In 1972, the living proprietors of the plat and the heirs of the deceased proprietors executed a "Release of Right of Way" (the Release) which stated that the undersigned released and conveyed to Huron County "all right, title and fee" in the property described as "All of Lake Road, 33 feet wide, as dedicated for public use in the plat of Sandy Heights Beach . . . ." The Release also stated:

> This release is executed for the sole and only purpose of conveying to said County of Huron, a right of way over the above described lands and to confirm the

[1] In Case No. 18-105565-CH, plaintiff originally filed suit against defendants Frederick and Russell LeBlanc (seeking, in a single unlabeled count, a judgment quieting title to certain property, in part based on the doctrine of adverse possession). The trial court entered a default judgment. The Road Commission moved to set aside the default judgment and to intervene, and also separately filed what it labeled an Intervention Complaint, thereby initiating Case No. 19-105623-CH, in which it named plaintiff as the defendant and in part also sought to quiet title to the property in question. Plaintiff filed a counterclaim in that case. The trial court subsequently granted the Road Commission's motion to set aside the default judgment and to intervene in Case No. 18-105565-CH. Plaintiff then filed an amended complaint bearing both case numbers, adding the lot owner defendants as named defendants. It appears that the two cases were then treated as one consolidated case, although there is no official order of consolidation in the record provided to this Court. For simplicity, we will also treat the cases as consolidated, with the Road Commission's case essentially subsumed within plaintiff's case. As we will discuss, the issue at hand in both cases is whether ownership of certain property lies with plaintiff or the county.

dedication of said Lake Road to the use of the public as recorded in said plat of Sandy Heights Beach.

Plaintiff is the owner of Lot 1 on the north side of M-25, which abuts Lake Road. In 2018, plaintiff filed suit, seeking a determination of the rights of the parties with respect to Lake Road north of M-25. As noted, plaintiff then filed a First Amended Complaint in 2019, delineating, in four counts, claims for declaratory judgment and adverse possession, both as to Lake Road north of M-25 (which it labeled "Lake Road as Dedicated")[2] and as to what we will describe as the "Lake Road Shoreline."[3] Plaintiff alleged that some of defendants or their predecessors had been using Lake Road north of M-25 to operate all-terrain vehicles; engage in sports and other loud activities; consume marijuana, alcohol, and controlled substances; hold parties and build bonfires; urinate and defecate; launch boats and flotation devices; and engage in sexual activities, and that these activities were contrary to the use of Lake Road as a public road. Plaintiff sought a declaration from the trial court that (1) the Lake Road Shoreline was not part of the plat and was not subject to the dedication of Lake Road to the public (Count I)[4]; and (2) the dedication of Lake Road to the public was never accepted (or, alternatively, that Lake Road north of M-25 could only be used as a public road, and not for other purposes) (Count II). Plaintiff also asserted claims for adverse possession, both as to the Lake Road Shoreline (Count III) and as to Lake Road north of M-25 (Count IV).[5]

In February 2020, the Road Commission moved for summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that Huron County owned Lake Road and the Lake Road Shoreline by virtue of its dedication to the public in the plat and the language of the Release; the lot owner defendants joined in the Road Commission's motion. After a hearing, the trial court granted the motion under MCR 2.116(C)(10). It found that the dedication of Lake Road had been accepted in 1941, noting that "As to approval or acceptance by the County, you see that on the plat itself if [sic] 1941. You see the municipal approval. You see the actual acceptance, that is, by the County." The trial court noted that the Release provided additional support for its conclusion that Lake Road belonged to the county, finding that "there, one, was a formal dedication; there was, in essence, an acceptance based upon a recorded plat; but more importantly, when [the Release] is considered, title, the Court finds, is conveyed to the County at fee simple." The trial court also found that, because the property at issue was owned by the public, "there is no acquiescence or adverse possession relative to the properties in question."

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[2] We note that, notwithstanding this descriptor, the dedication in the plat relates to the whole of Lake Road (both north and south of M-25) as reflected in the plat.

[3] Plaintiff's First Amended Complaint described this area as the "property between Lake Road as Dedicated and the water's edge of Saginaw Bay, and labeled it the "Disputed Property." We note that, notwithstanding this descriptor, it is apparent from the record and from the briefs on appeal that the area in question is essentially the shoreline, limited by the width of Lake Road and extending up to traversable portion of Lake Road north of M-25.

[4] Plaintiff appears to have abandoned this position on appeal.

[5] Plaintiff raises no argument on appeal relating to her adverse possession claims.

This appeal followed.

II. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Moser v Detroit*, 284 Mich App 536, 538; 772 NW2d 823 (2009). Summary disposition is proper under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We consider the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009). All reasonable inferences are to be drawn in favor of the nonmovant. *Dextrom v Wexford County*, 287 Mich App 406, 415; 789 NW2d 211 (2010). If it appears that the opposing party is entitled to judgment, the court may render judgment in favor of the opposing party. MCR 2.116(I)(2); *Bd of Trustees of Policemen & Firemen Retirement Sys v Detroit*, 270 Mich App 74, 77-78; 714 NW2d 658 (2006).

We review de novo issues of statutory interpretation. *Beach v Lima Twp (Beach I)*, 283 Mich App 504, 508; 770 NW2d 386 (2009), aff'd 489 Mich 99 (2011). The issue of whether a plaintiff is required to bring her action under the Land Division Act (LDA), MCL 560.101, *et seq*., is a question of law that we review de novo. *Beach v Lima Twp (Beach II)*, 489 Mich 99, 107; 802 NW2d 1 (2011). We also review de novo the application of equitable doctrines, such as the doctrine of adverse possession. *Beach I*, 283 Mich App at 508. We review for an abuse of discretion a trial court's decision to grant or deny declaratory relief. *Shuler v Mich Physicians Mut Liability Co*, 260 Mich App 492, 509; 679 NW2d 106 (2004).

III. LAKE ROAD DEDICATION

Plaintiff argues that the trial court erred by holding that the dedication of Lake Road to public had been accepted by the county. We disagree.

As a threshold issue, we disagree with defendants' assertion that plaintiff was required to bring an action under the LDA rather than a declaratory judgment action, and that this Court should affirm the trial court's summary disposition order as to Count II on that ground. Our Supreme Court has noted that "the LDA provides a process for surveying and marking subdivided property, as well as for recording with a local municipality the information compiled on a plat. The LDA also permits a circuit court to vacate, correct, or revised a recorded plat . . . ." *Beach II*, 489 Mich at 108. The LDA provides specific procedures for filing a complaint to "vacate, correct, or revise a recorded plat or any part of a recorded plat." See, e.g., MCL 506.221 through 560.229. A lawsuit filed under the LDA is the exclusive means to accomplish alteration of a recorded plat. *Beach II*, 489 Mich at 109. However, an action under the LDA is not required to *establish* a disputed property right; rather, "the act allows a court to alter a plat to reflect property rights already in existence." *Id*. at 110 (citation omitted). Plaintiff's suit sought to determine existing rights with respect to Lake Road north of M-25; therefore, a declaratory judgment action was appropriate. *Id*. The trial court did not err by declining to dismiss Count II on this ground; if plaintiff were able to

establish rights to the property, a claim under the LDA could then be filed to correct the plat to reflect those rights. *Id.*

A "dedication" of land is the donation of privately-owned land to some public use; "[t]he essence of a dedication is that the covered land will be for the use of the public at large." *2000 Baum Family Trust v Babel ("Baum")*, 488 Mich 136, 144; 793 NW2d 633 (2010) (citation omitted).[6] In resolving a dedication dispute, "the use to which the dedication was made has always been at the fore." *Id.* at 146.

For a road to become public property by dedication, there must be "(a) a statutory dedication and an acceptance on behalf of the public, (b) a common-law dedication and acceptance, or (c) a finding of highway by public user." *Id.* at 147.[7] Here, likely because common-law dedications do not ordinally convey an interest in fee, but only a right of way or an easement, see *id.* at 149, citing *Dept' of Conservation Dir v LaDuc*, 329 Mich 716, 719; 46 NW2d 442 (1951), the parties' dispute centers on whether Lake Road is a public road by statutory dedication. To create a public road by statutory dedication, there must be (a) a recorded plat designating the areas for public use and (b) acceptance by the proper public authority. *Id.* at 149 (citation omitted). These two elements correspond to the essential elements of a contract, i.e., offer and acceptance. *Id.* at 149. Acceptance is necessary to prevent "duties and financial responsibilities [from being] imposed on the government for dedicated roads that it never knowingly or intentionally accepted." *Id.* at 150. Before acceptance, an offer to dedicate may be withdrawn by the land owner, either formally (by vacating the plat or other methods found in the LDA), or informally (by using the property in "a way that is inconsistent with public ownership"); the dedication may also be formally rejected by the governmental entity with the authority to do so. *Id.* at 150-151 and n 7. "If a platted roadway is never accepted, the public acquires no rights in the roadway, and "the owners of the lands fronting thereon, may again take possession of the property, and treat it as though, in all respects, no offer of dedication had ever been made." *Id.* at 151. In other words, "by either mode of dedication, and without regard to the road's location, title to a street that is vacated or abandoned vests in the owners of the lots abutting the street." *Id.* at 156.

The mere recording of a plat containing a dedication does not constitute acceptance of that dedication. See *Marx v Dep't of* Commerce, 220 Mich App 66, 75; 558 NW2d 460 (1996). A municipal authority may manifest acceptance of a dedication either (1) formally, by confirming or accepting the dedication by resolution or similar method, or (2) informally, by expending public money for repair, improvement and control of the roadway, or by otherwise exercising authority over the road. *Id.*, see also *Kraus v Dep't of Commerce*, 451 Mich 420, 425; 547 NW2d 870 (1996).

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[6] For a thorough discussion of the law of dedication and its history, see generally *Baum*, 488 Mich at 144-158.

[7] A "finding of highway by public user" is a method by which, under the highway-by-user statute, MCL 221.20, "the public may acquire title to a highway by a sort of prescription where no formal dedication has ever been made." *Villadsen v Mason Co Road Comm'n*, 268 Mich App 287, 292; 706 NW2d 897 (2005). No party argues that MCL 221.20 applies in this case.

Under the LDA, "[t]en years after the date the plat is first recorded, land dedicated to the use of the public in or upon the plat shall be presumed to have been accepted on behalf of the public by the municipality within whose boundaries the land lies." MCL 560.255b(1). However, the LDA was enacted as part of the Subdivision Control Act of 1967, and became effective on January 1, 1968. See 288 PA 1967; see also *Beach II*, 489 Mich at 108. The plat in this case was recorded in 1942, before the effective date of the LDA. In cases decided after the LDA became effective, but involving dedications made before the effective date of the LDA, this Court and our Supreme Court have not applied the presumption of acceptance, but rather have analyzed whether acceptance was manifested in a timely manner. See *Kraus*, 451 Mich at 425; see also *Marx*, 220 Mich App at 78. The analysis is fact-specific; there is no bright-line rule for what constitutes acceptance in a timely manner. See *Kraus*, 451 Mich at 427 (noting that "the outer limit for acceptance within a reasonable time has not been set" but that the Court had held that the acceptance of a dedication 87 years after it was made was "unreasonably late"). Rather, acceptance is timely if it takes place before the offer to dedicate lapses or before the property owner withdraws the offer. *Marx*, 220 Mich App at 78 (stating that, because 68 years had passed between the dedication of the land at issue and the township's ostensible acceptance, this Court would consider whether the offer had lapsed or been withdrawn).

"As long as a plat proprietor or his successors take no steps to withdraw an offer to dedicate land for public use, the offer is treated as continuing." *Id*. at 79. Our Supreme Court has rejected the argument that the 15-year statutory period of limitation for adverse possession is relevant in analyzing whether an acceptance was timely. *Id*. This Court and our Supreme Court have found 26-year and 28-year periods between dedication and acceptance to be reasonable when there are no circumstances indicating that the offer was withdrawn, or acts by the platters or their assignees that were inconsistent with public use. See *In re Vacation of Cara Ave*, 350 Mich 283, 289; 86 NW2d 319 (1957); *Ackerman v Spring Lake Twp*, 12 Mich App 498, 501; 163 NW2d 230 (1968).

In this case, plaintiff argues that the dedication of Lake Road in 1941 was never accepted by the county. Accordingly, plaintiff maintains that at some point the offer to dedicate must have lapsed and the disputed property must have reverted to the abutting landowners, i.e., to plaintiff's predecessors. In order for plaintiff's argument to be successful, however, this reversion must have taken place before the original proprietors or their heirs executed the Release in 1972, which purported to convey the land in fee simple to the county.

Plaintiff has not established that the offer to dedicate was not accepted, or that it lapsed, in the 30 years between the recording of the plat and the execution of the Release. It is undisputed that the proprietors or their assignees never formally withdrew the offer to dedicate and never acted towards Lake Road in manner inconsistent with public use. Moreover, the evidence presented at trial shows that the Road Commission did order the expenditure of public funds for the use of Lake Road as a public road, and otherwise acted in a manner consistent with its control over the property. *Kraus*, 451 Mich at 425. These acts included: ordering a survey crew to stake out the contours of Lake Road in 1956, as well as paying for sections of the road to be cleared; notifying a lot owner in 1968 that he was required to remove a boat lift; and taking steps, from 1968 to 1972, to secure the Release and to establish the county's interest in the property. Although plaintiff argues that the maintenance of Lake Road was minimal, she provides no authority for the proposition that a particular amount of work must be done on a dedicated roadway to manifest acceptance of that roadway. Further, although plaintiff invites this Court to analyze the sections of Lake Road on

either side of M-25 separately, both sections were indisputably part of the same dedication; plaintiff provides no authority for the proposition that each particular *part* of a dedicated roadway must receive specific attention or maintenance from a municipal authority in order for acceptance to be manifested. In fact, this Court has stated otherwise. See *Haynes v Village of Beulah*, 308 Mich App 465, 470; 865 NW2d 923 (2014) ("[E]xpenditure of public funds on a road in a dedicated right-of-way is sufficient to constitute public acceptance of the entire width, even if a municipality never improved specific strips of land within the right-of-way.").

On balance, even if the Lake Road dedication was never formally accepted, the circumstances show that the offer to dedicate was either informally accepted by the Road Commission's acts, or, at a minimum, that the offer remained open until the Release was executed in 1972. The Release further demonstrates the proprietors' continued intention to dedicate Lake Road to the public; further, the Release indicates that it was made for nominal consideration that was "in hand paid by the Board of County Road Commissioners of the County of Huron" and that it was properly executed, witnessed, and recorded in the office of the Register of Deeds. Plaintiff does not contest the validity of the Release other than by arguing that the grantors lacked any interest in Lake Road at the time the Release was executed. And that argument is inapposite because it incorrectly presumes that the dedication was not accepted, that the offer to dedicate had lapsed, and that the reversionary interests of abutting landowners had therefore been triggered. However, because, at a minimum, the offer to dedicate had *not* lapsed by the time the Release was executed, the only way the grantors would have lacked an interest in Lake Road at the time of the Release would have been because the dedication had already been accepted. In either event, plaintiff's reversionary interest would not have been triggered.

Essentially, either the dedication recorded in the plat was accepted at some point before plaintiff filed suit, or the dedicated property was nevertheless conveyed to the county via the Release in 1972. In either event, the trial court correctly determined that the county possessed an ownership interest in Lake Road as a public highway and that plaintiff had no ownership interest. The court therefore correctly granted summary disposition in favor of defendants. *Moser*, 284 Mich App at 538; see also MCL 247.190 (stating that title to a highway dedicated to public use may not be acquired by encroachment); *Haynes*, 308 Mich App at 470 (holding that the term "highway" in MCL 247.190 applies to unimproved portions of platted rights-of-way and that MCL 247.190 protects such highways against adverse possession and acquiescence claims).

IV. USE OF LAKE ROAD

Plaintiff also argues that the trial court erred by granting summary disposition in favor of defendants with respect to her request for a declaration that the lot owner defendants may only use Lake Road north of M-25 to access the lake. We disagree. The trial court did not specifically address this claim in its ruling, but did state that "considering what was stated by the Plaintiff relative to what people were doing on this particular parcel -- the proper course of action, in this matter, is to call law enforcement, unfortunately. That's the best the Court can do." Again, we review for an abuse of discretion a trial court's decision to grant or deny declaratory relief. *Shuler*, 260 Mich App at 509.

In *Baum*, our Supreme Court noted that landowners whose property abuts a dedicated public road "sustain a threefold relation to the street," possessing rights as members of the public,

as holders of a reversionary interest (should the government vacate or abandon the property or the dedication be found invalid),[8] and as the possessor of a private right to the use of the roads in a plat for the purposes of ingress and egress, separate from the rights of the public. See *Baum*, 488 Mich at 152-158. Plaintiff is correct that, as an abutting lot owner, she possesses these rights. In fact, all lot owners in a platted property have the right to the use of the roads and streets in the plat as roads. *Id*. However, she is incorrect that they require the trial court to have ruled differently with respect to her claims that the lot owner defendants were using the property in inappropriate ways.

"[A] public entity's use of the land dedicated to the public is limited to the purpose of the dedication." *Id*. at 154. Neither the public entity nor the general public has any power to use the property for any other purpose than the one designated. *Id*. Plaintiff has not alleged or shown that the county ever used Lake Road for any purpose other than as a road; therefore, the county's interest in Lake Road remains valid. See *Baum*, 488 Mich at 160-161 (noting that the property dedicated as a public road may revert if the government abandons the road by using it a manner other than as a road). Further, none of the lot owner defendants have made a claim that the property that constitutes Lake Road should be used as anything other than a road; instead, they dispute whether the acts of which plaintiff complains occurred. And plaintiff has not made, much less proven, specific allegations against specific lot owners regarding the ways in which their use exceeded the scope of the permissible use of Lake Road.

In short, it would serve little purpose for the trial court to declare that Lake Road may be used by the public only a road; such use is inherent in the very nature of Lake Road as a public road. The remedy for a landowner who is aggrieved by the conduct of members of the public using an abutting public road is generally found, as the trial court noted, in contacting law enforcement, or otherwise in our laws regarding nuisance and trespass. It does not typically lie in an action for declaratory judgment. Moreover, to the extent plaintiff claims that the lot owner defendants are using Lake Road in a manner different than the general public's use of it as a road, she has not specified which defendants allegedly committed which acts that were in conflict with Lake Road's use as a road. Under these circumstances, the trial court did not abuse its discretion by declining to declare the rights of the lot owners of Sandy Heights Beach with regard to Lake Road. *Shuler*, 260 Mich App at 509; see also MCR 2.605(A)(1) (specifying that a court may declare the rights and legal relations of interested parties "[i]n a case of actual controversy within its jurisdiction").

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[8] Plaintiff incorrectly argues that her reversionary interest arises by virtue of the fact that the dedication was never accepted. This is wrong. She does have a reversionary interest, but that interest is that of an abutting landowner to a public road, should that road become private property again in the future. See *Baum*, 488 Mich at 152-158.

Affirmed. No costs may be taxed, a public question being involved. MCR 7.216(A)(7); MCR 7.219(A). *City of Bay City v Bay County Treasurer*, 292 Mich App 156, 172; 807 NW2d 892 (2011).

/s/ Colleen A. O'Brien
/s/ Cynthia Diane Stephens
/s/ Mark T. Boonstra