

STATE OF MICHIGAN
COURT OF APPEALS

IRVING FELLER, CYNTHIA FELLER and
CAVANAUGH LAKE ESTATES
DEVELOPMENT COMPANY, a Michigan
corporation,

UNPUBLISHED
January 7, 2000

Plaintiffs-Appellees,

v

SYLVAN TOWNSHIP, a Michigan municipal
corporation,

No. 212624
Washtenaw Circuit Court
LC No. 97-008265 CH

Defendant,

and

DAVID MCLAUGHLIN and JANE
MCLAUGHLIN,

Defendants-Appellants.

Before: Fitzgerald, P.J., and Hoekstra and Markey, J.J.

PER CURIAM.

This case arises out of defendants' objection to plaintiffs' petition to have portions of Ridge Road near Cavanaugh Lake in Sylvan Township vacated and relocated. Defendants appeal by right from the circuit court's grant of summary disposition and judgment in favor plaintiffs. We affirm.

Defendants claim that the court erred in granting summary disposition to plaintiffs pursuant to MCR 2.116(C)(10), whereby part of Ridge Road was vacated and relocated. We disagree.

A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim or defense. *Lyle v Malady (On Rehearing)*, 458 Mich 153, 176-177; 579 NW2d 906 (1998). Our review of the court's grant of summary disposition is de novo. *Id.* at 177. Our task is to review the record evidence, and all reasonable inferences drawn from it, and decide whether a genuine issue

regarding any material fact exists to warrant a trial. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994).

Vacation of part of a recorded plat is governed by the Land Division Act, MCL 560.101 *et seq.*; MSA 26.430(101) *et seq.* [hereinafter “the act”], as amended by 1996 PA 591, effective March 31, 1997. The act states that “upon trial and hearing of the action, the court may order a recorded plat or any part of it to be vacated, corrected, or revised.” MCL 560.226(1); MSA 26.430(226)(1). The act, however, does not set forth the burden of proof that applies when an objection is made to a petition to vacate part of a recorded plat. In *In re Gondek*, 69 Mich App 73; 244 NW2d 361 (1976), this Court construed the Subdivision Control Act of 1967, which preceded the instant act and which also did not set forth the burden of proof for an objection to a petition for vacation of part of a recorded plat. In attempting to determine what the applicable burden of proof should be, this Court noted that a prior version of the act, known as the Plat Act of 1929, had stated:

“[T]he court shall proceed to alter or vacate, correct or revise, the plat or part thereof, *unless there is reasonable objection to making the alteration or vacation, correction or revision*, in which case the court shall not proceed to alter or vacate, correct or revise the plat, or part thereof unless it is deemed necessary for the health, welfare, comfort or safety of the public.” Former MCLA 560.62; MSA 26.492 [*Gondek*, *supra* at 74; emphasis supplied in *Gondek*.]

This Court reasoned that “it is more appropriate to perpetuate prior law that has not been expressly rejected by the Legislature than it is to fashion a new doctrine out of thin air.” *Id.* at 77. This Court held that the “reasonable objection” standard should continue to be applied to challenges to petitions seeking vacation of part of a recorded plat. *Id.* In accord, see *Brookshire-Big Tree Ass’n v Onieda Twp*, 225 Mich App 196, 201; 570 NW2d 294 (1997). Although the statute has been amended numerous times since this Court’s decision in *Gondek*,¹ the Legislature has failed to suggest any intention to modify or eliminate this Court’s construction. We therefore conclude that the Legislature’s silence over the past twenty years is an affirmation of this Court’s construction of the appropriate burden of proof to be applied, i.e., the “reasonable objection” standard. *Craig v Larson*, 432 Mich 346, 353; 439 NW2d 899 (1989).

Under the reasonable objection standard, the instant defendants had the burden of convincing the trial court that there existed a reasonable objection to plaintiffs’ petition to vacate and relocate part of Ridge Road. Because plaintiffs’ motion for summary disposition was made pursuant to MCR 2.116(C)(10), plaintiffs had the initial burden of presenting the court with affidavits, depositions, admissions or other documentary evidence to support their contention that defendants could present no reasonable objections. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Plaintiffs met this burden by submitting documentary evidence of the agreement between plaintiffs and Robert Fite which gave defendants access to their easement from the relocated Ridge Road. Lack of access to the easement was the basis of defendants’ objection to the vacation and relocation of Ridge Road. Thus, plaintiffs had shown, through documentary evidence, that the basis for defendants’ objection had been eliminated.

The burden then shifted to defendants to show that there were still existing questions of material fact. *Id.* Defendants could not overcome this burden by relying “on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.” *Id.* Defendants had the burden of presenting documentary evidence showing that their objection to plaintiffs’ petition to vacate and relocate Ridge Road was reasonable, even though defendants would not be denied access to their easement if the court approved the petition. Defendants argued at the summary disposition hearing that the access to the easement granted under the agreement with Fite was unsatisfactory because the incline of the route was too severe. However, because defendants failed to present the court with any documentary evidence to support their argument, they failed to raise an issue of material fact in this regard and summary disposition against them was properly granted. *Quinto, supra* at 363.

In addition to being reasonable, defendants’ objection had to be of substance and of value to the public. *Yonger v Oceana Co Rd Comm*, 17 Mich App 436, 443; 169 NW2d 669 (1969). Defendants’ argument that plaintiffs misrepresented the location of defendants’ easement was not materially relevant because the argument related to the location of the easement where it provides access to the lake shore, which was not at issue in this case and which was not affected by the trial court’s decision. We note that no change to defendants’ recorded easement was either requested by plaintiffs or ordered by the trial court--the judgment changed the *ingress and egress* to defendants’ easement, not the location of defendants’ recorded easement. Moreover, defendants’ objection related solely to their private inconvenience and involved a purely private interest. Thus it did not warrant a denial of plaintiffs’ petition to vacate and relocate Ridge Road. The trial court correctly granted summary disposition in favor of plaintiffs.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

¹ See, e.g., PA 367, 1978 PA 556, and 1996 PA 219.