

STATE OF MICHIGAN
COURT OF APPEALS

FRANK MUSTAZZA and ESTHER
MUSTAZZA,

Plaintiffs-Appellants,

v

CHEBOYGAN COUNTY ROAD
COMMISSION,

Defendant-Appellee.

UNPUBLISHED
September 14, 2004

No. 247234
Cheboygan Circuit Court
LC No. 01-006934-CH

PAUL R. BOYD,

Plaintiff-Appellant,

v

CHEBOYGAN COUNTY ROAD
COMMISSION,

Defendant-Appellee.

No. 247235
Cheboygan Circuit Court
LC No. 02-006990-CH

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the judgment in favor of defendant in this dispute over road width. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs own property on either side of Owens Road in Cheboygan County. They brought these actions to quiet title after defendant sought to widen the road. The trial court found that defendant established a highway by user and granted judgment in its favor.

This Court reviews de novo the legal requirements for establishing a highway by user, but reviews the trial court's factual findings for clear error. *Kalkaska Co Bd of Co Rd Comm'rs v Nolan*, 249 Mich App 399, 401; 643 NW2d 276 (2002).

MCL 221.20 provides:

All highways regularly established in pursuance of existing laws, all roads that shall have been used as such for 10 years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used 8 years or more, shall be deemed public highways, subject to be altered or discontinued according to the provisions of this act. All highways that are or that may become such by time and use, shall be 4 rods in width, and where they are situated on section lines, such lines shall be the center of such roads, and the land belonging to such roads shall be 2 rods in width on each side of such lines.

Property subject to the statute is treated as impliedly dedicated to the state for public use. *Kentwood v Sommerdyke Estate*, 458 Mich 642, 652; 581 NW2d 670 (1998). Highway by user requires (1) a defined line, (2) that the road was used and worked on by public authorities, (3) public travel and use for ten consecutive years without interruption, and (4) open, notorious, and exclusive public use. *Nolan, supra*, 401-402. The statute provides for a presumptive right-of-way of 66 feet, however, this presumption may be rebutted by proof that the width of an easement was expressly or impliedly restricted. *Boone v Antrim Co Bd of Rd Comm'rs*, 177 Mich App 688, 694; 442 NW2d 725 (1989).

Plaintiffs do not contest that defendant established the four required elements of highway by user. Rather, plaintiffs argue that the act of subsequently obtaining an invalid right-of-way from plaintiffs' grantor precludes defendant from relying on the highway by user statute. However, where a highway by user was established before defendant obtained an express right-of-way from plaintiffs' grantor, plaintiffs have failed to show that the right of way precludes the application of the statute. Once the highway by user presumption arose, the original property owner's action in giving an express right of way did not defeat it. The later grant of a right-of-way could not revive the grantor's rights and was of no consequence.

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot