

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINE JAKUBOWSKI and JAMES
YATES,

UNPUBLISHED
August 16, 2005

Plaintiffs-Appellants,

v

MEADOWFIELD CONDOMINIUM
ASSOCIATION, ANN EDWARDS, JACKIE
MCINTYRE, TERRY POTOK, EVELYN
LATKA, and JAN ROSCZEWSKI,

No. 253169
Oakland Circuit Court
LC No. 2003-049960-CZ

Defendants-Appellees.

Before: Zahra, P.J., and Cavanagh and Owens, JJ

PER CURIAM.

Plaintiff Christine Jakubowski appeals of right from the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Jakubowski is the owner of a unit in the Meadowfield Condominium development ("Meadowfield"), and plaintiff Yates resided with Jakubowski. According to plaintiffs, there was an unassigned general common element, i.e., a parking area, east of plaintiff's unit. Plaintiffs used this parking area for a number of years. In August 2001, plaintiffs received a letter stating that a "no parking" sign was being erected. Plaintiffs, however, continued parking in this area. Eventually, the concrete parking area was removed, and the Meadowfield Board ("Board") placed boulders in the area to obstruct parking. Plaintiffs filed a complaint for declaratory and injunctive relief.

Defendants moved for summary disposition, arguing that plaintiff Yates had no standing to maintain the claims and that plaintiffs' claim that the parking area was abandoned was without merit. The trial court agreed that plaintiff Yates had no standing. The trial court also concluded that the property in question was not abandoned and dismissed plaintiffs' complaint. On appeal, plaintiff Jakubowski contends that the trial court erred in granting defendants' motion for summary disposition. Specifically, plaintiff argues that condominium documents support her claim that the Board abandoned the parking area. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The resolution of this case depends on the construction and interpretation of the Master Deed, which provides that the Condominium Owners Association cannot, without approval of two-thirds of the owners, “seek to abandon, partition, subdivide, encumber, sell or transfer the common elements.” Neither the Master Deed nor the bylaws define the term “abandon.” The trial court relied on *Hough v Brown*, 104 Mich 109, 112-113; 62 NW 143 (1895), where the Supreme Court defined “abandonment” as “a relinquishment or surrender of rights or property by one person to another; a giving up; a total desertion.” Under this definition, the Board’s action, i.e., converting the parking space into a “grassy” area, did not constitute abandonment because the Board did not relinquish or give up its right or interest in this section of property. Rather, the Board merely changed the character of the property. Plaintiff, however, argues that her right to this property was relinquished when the parking area was destroyed and eliminated. The Michigan Condominium Act provides that the owner of a condominium unit, while he or she may have a fee simple interest, does not have an exclusive interest in the condominium property. MCL 559.101 *et seq.* Plaintiff did not have an exclusive interest in the parking space. Rather, plaintiff had the right to use the parking space in a manner consistent with the project and in a manner that would not interfere with or impair the rights of any other co-owner. Plaintiff had the same right to this area following the Board’s action of converting the parking space to a “grassy” area, which is the right to use this new area in a manner that would not interfere with or impair the rights of any other co-owner. Therefore, we find that the Board’s action did not cause plaintiff’s right in this property to be relinquished. Thus, the trial court did not err in concluding that the property in question was not abandoned.

Plaintiff next argues that the trial court erred in granting defendants’ motion for summary disposition because defendants did not comply with MCL 559.167 and 559.190. MCL 559.167 and 559.190 were not cited in the complaint. Although the issue of the violation of section 67 and 90 of the Condominium Act was raised in plaintiffs’ motion for reconsideration before the trial court, this issue was not properly preserved for appellate review because it was not raised in the complaint or directly addressed by the trial court. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993); *Pro-Staffers, Inc v Premier Mfg Support Services*, 252 Mich App 318, 328-329; 651 NW2d 811 (2002).

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens