

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES L. WILLEMS,

Plaintiff/Counter-Defendant-
Appellant,

v

CHARTER TOWNSHIP OF MERIDIAN,
INGHAM COUNTY ROAD COMMISSION, and
CHRISTOPHER A. DROBNEY,

Defendants-Appellees,

and

EMANUEL BLOSSER, BRIAN BISHOP, and
NICOLE BISHOP

Defendants/Counter- Plaintiffs-
Appellees.

UNPUBLISHED

October 18, 2005

No. 262161

Ingham Circuit Court

LC No. 04-001037-CZ

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

In this case involving an abandoned road and an abandoned unpaved alley, plaintiff appeals as of right from the summary dismissal of his suit for declaratory and injunctive relief. We affirm.

The land at the center of this dispute is located in the Hickory Island subdivision, which abuts Lake Lansing in Meridian Township. Plaintiff's wife and her daughter own lot 24 and half of lot 25 in the subdivision (plaintiff refers to this as the "homestead" property). Defendants Drobney and Blosser own lakefront property situated on either side of the homestead property; the other half of lot 25 and lot 23, respectively. Blosser's lot also abuts a segment of Hickory Island Drive that defendant road commission abandoned in 1995. Also in 1995, plaintiff's wife deeded to plaintiff a one-tenth interest in lot 34, an undeveloped lot that lies across from her and Blosser's parcels, on the other side of an unnamed alley that runs perpendicular to Hickory Island Drive. The alley was abandoned in 1997 and was the subject of a prior appeal to this Court, in which we affirmed dismissal of plaintiff's complaint against defendant township.

Willems v Meridian Twp, unpublished, opinion per curiam, issued March 18, 2004 (Docket No. 247291) (applying governmental immunity to dismiss plaintiff's suit claiming that a sewer line that was supposed to run in the alley trespassed on lot 34).¹

Plaintiff first argues that in summarily dismissing his claim, the trial court erred in concluding that title to the abandoned road and alley vested in the abutting lot owners. We disagree. A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118-119; 597 NW2d 817 (1999).

This issue involves three separate abandonments: (1) in 1995, the abandonment of that portion of Hickory Island Drive between lots 4 and 23; (2) in 1997, the abandonment of that portion of Hickory Island Drive extending from the 1995 abandonment to the water's edge; and (3) in 1997, the abandonment of the unnamed alley. In reliance on MCL 224.18, the trial court resolved the 1997 abandonment of a portion of Hickory Island Drive as follows:

The 1997 abandonment proceedings of Hickory Island Drive to the water's edge resulted in the land reverting to the adjacent landowners. Section 18(8) of the County Road Law makes provisions for who receives title to the property if the "county road or portion of the road that is abandoned borders on, crosses, is adjacent to, or ends at a lake" Following abandonment, the township may either retain the land or allow it to revert to adjoining landowners. If the township retains the land, a quitclaim deed is given and the township must maintain the property. . . .

Of the several scenarios contemplated in MCL 224.18 following abandonment of a county road, the one not mentioned is forcing the local unit of government to assume responsibility for the road. Plaintiff's complaint is, in effect, an assertion that Meridian Township should be forced to maintain the property. The statute provides that a township may chose not to retain the property, and may instead allow it to revert to adjacent landowners. Meridian Township chose not to retain the property By failing to take a quitclaim deed, Meridian Township has allowed the land to revert to the adjacent landowners by operation of law. [Citations and footnote omitted.]

We agree with this analysis. MCL 224.18(8) provides in relevant part as follows:

Subject to subsection (5), if the board of county road commissioners determines pursuant to this section to relinquish control, discontinue, abandon, or vacate any county road or portion of a county road that borders on, crosses, is adjacent to, or ends at a lake or the general course of a stream and the township, if applicable, or the department of natural resources decides to maintain the road as

¹ The Bishop property at issue therein is now owned by defendant Drobney. The Bishops are not pursuing this appeal.

a public access site, it shall convey by quitclaim deed or relinquish jurisdiction over the property if the interest is nontransferable to the township or the state. If the township obtains the property or jurisdiction over the property as an ingress and egress point and later proposes to transfer the property or jurisdiction over the property, it shall give the department of natural resources first priority to obtain the property or jurisdiction over the property. . . . The local unit of government shall either maintain the property as a site of public access or allow it to revert to the adjoining landowners.

The county road law does not define the term “road.” We have defined the term for purposes of the no-fault act, MCL 500.3101 *et seq.*, as “[a] highway, an open way or public passage; a line of travel or communication extending from one town or place to another, a strip of land appropriated and used for purposes of travel and communication between different places.” *Detroit Edison Co v Spartan Express*, 225 Mich App 629, 633; 572 NW2d 39 (1997), quoting Black’s Law Dictionary (6th ed). *The American Heritage Dictionary of the English Language* defines road as “[a]n open, generally public way for the passage of vehicles, people and animals. . . . A course or path.” Under these definitions, we consider both Hickory Island Drive and the unnamed alley county roads for purposes of section 18(8).

Section 18(3) provides that a county road commission may at any time (1) “relinquish jurisdiction” over a county road or portion thereof, or (2) “absolutely abandon and discontinue any county road.” MCL 224.18(3). If the former course is chosen, jurisdiction and control over the road or part thereof “revert[s] to the municipality within which the road is situated.” *Id.* If the latter course is chosen, “the road or part of the road shall cease to exist unless the unit of government that acquires the property or control of the property permits use as a public highway.” *Id.* Here, defendant road commission clearly chose the latter path.

Because the road segment in issue “ends at a lake,” the clear language of section 18(8) allowed defendant township to either “maintain the property as a site of public access or allow it to revert to the adjoining landowners.” If defendant township had chosen to maintain the road as a public access, defendant road commission was required to either convey the property “by quitclaim deed or relinquish jurisdiction.” MCL 224.18(8). If relinquishment of jurisdiction were chosen, control over the road would revert to defendant township. MCL 224.18(3). There is no evidence that defendant township chose to maintain the road “as a site of public access.” Accordingly, the portion of Hickory Island Drive extending from the 1995 abandonment of the drive to the water’s edge reverted to the adjacent landowners by operation of statute.

Regarding the 1995 abandonment of the identified portion of Hickory Lane Drive, the court reasoned as follows:

The abandonment proceedings of Hickory Island Drive between lots 4 and 23 are governed by Section 18 as it existed prior to its amendment in 1996. These proceedings also resulted in the land reverting to the adjacent landowners. At the time of the 1995 abandonment proceedings, Section 18 provided:

“The board of county road commissioners of any county which has adopted the county road system is hereby authorized and empowered to, at any time, relinquish jurisdiction of or absolutely abandon and discontinue

any county road, or any part thereof, by a resolution adopted by a majority vote. . . . After proceedings to absolutely abandon and discontinue have been had, such road or part thereof shall cease to exist as a public highway.”

This was the pertinent statute in *Dalton Twp v Muskegon Rd Comm'rs*, 223 Mich App 53; 565 NW2d 692 (1997). Noting that the statute did not provide for title following abandonment, the *Dalton* Court applied the common law rule that a street or alley that is vacated reverts to the abutting landowner. The common law rule cited in *Dalton* applies in the instant case. [Citation and footnote omitted.]

Again, we agree with this reasoning. *Dalton* also involved the abandonment of a portion of a road by a county road commission. *Id.* at 54. As noted, *Dalton* states that “[w]hile the statute does not state who obtains title when there is an absolute abandonment of a road . . . , under common law a street or alley that is vacated reverts to the abutting landowner.” *Id.* at 57. *Dalton* did not draw any distinction between an abandoned road and a vacated road. Plaintiff argues that *Dalton* is distinguishable because it failed to address the procedures for correction of a plat in the land division act. The trial court dismissed this argument because “the issue of abandonment of a county road is the controlling issue in *Dalton* and that is the issue that makes *Dalton* applicable to the instant matter.” We agree with this reading of *Dalton*.

Further, in language that mirrors MCL 224.18(8), MCL 560.226(2) provides that a township that decides to maintain a road providing ingress and egress to a lake shall either receive the property by quitclaim deed or gain control over nontransferable property by means of a relinquishment of control by the governing body. There is no evidence that defendant road commission ever deeded or relinquished control over the portion of the road in issue to defendant township. Therefore, defendant township presumably did not choose to maintain it as a site of public access. If not maintained, MCL 560.226(1)(b) expressly provides that while “[u]pon trial and hearing” a trial court may order a recorded plat “to be vacated, corrected, or revised,” it shall not do so to the extent that a county road is involved. Such action taken with respect to a county road is governed by MCL 224.1 *et seq.* MCL 560.226(1)(b). Thus, the fact that *Dalton* did not address the interplay of the land division act does not render its reasoning inapposite.

Accordingly, we agree that under the prior version of MCL 224.18 and *Dalton*, title to the abandoned portion of Hickory Island Drive reverted to the adjacent landowners. This includes defendant Blosser. Further, under the rule of *Dalton*, the alley also reverted to the adjacent landowners after abandonment.

Plaintiff claimed that the land between the western edge of the homestead property and the water’s edge was to be used exclusively for public purposes, and he cited two deeds (the Benson deeds) from the early 1960s in support of this claim. The Benson deeds each gifted “[a]n undivided one-half interest” in the land therein described. The trial court concluded that “[t]he Benson deeds unambiguously conveyed property that extends no farther north than Lot 30.” This conclusion is in accord with the language of the deeds, which traces a boundary that begins “at a point on the Consumers Power Co. right of way,” then travels in a northeastern direction along the Lake Lansing shoreline “to a point on the shore opposite the line between lots 30 and 31 of the Plat of Hickory Island,” and then “southeasterly along the west line of the Plat . . . to

Carlton Street; thence south along Carlton Street to consumers right of way; thence southwesterly along the north line of said right of way to point of beginning.” The identified point between lots 30 and 31 is several parcels south of lots 24 and 25. Thus, as the court correctly observed, while “it has been argued that the property description in the Benson deeds does not ‘close,’ the deeds nevertheless do not cover any of the property from the west lot lines of Lots 23, 24 and 25 to the water’s edge.”

We also agree with the trial court that defendant township has no interest in the abandoned property. Again, defendant township decided not to retain the property or maintain it as a site of public access following abandonment by defendant road commission. As noted above, by operation of statute and case law, those lands have reverted to the adjacent landowners. However, pursuant to MCL 560.221 *et seq.*, the plat should be formally corrected to reflect the changes that have occurred.

Finally, we agree with plaintiff that the trial court applied the wrong statute of limitations to this matter. Plaintiff’s claim is an assertion of an interest in land, so the fifteen-year limitations period in MCL 600.5801(4) applies, not the “catch all” period in MCL 600.5813. However, given that the suit was properly dismissed, any potential error was harmless.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Patrick M. Meter

/s/ Alton T. Davis