

STATE OF MICHIGAN
COURT OF APPEALS

MIKULAS KUZDAK and CHRISTY P.
KUZDAK,

UNPUBLISHED
January 8, 2008

Plaintiffs/Counter-Defendants-
Appellants,

v

No. 269777
Macomb Circuit Court
LC No. 2004-002611-CZ

FRANK ELLERO and C. ELLERO,

Defendants/Counter-Plaintiffs-
Appellees.

Before: Owens, P.J., and White and Murray, JJ.

MURRAY, J. (*concurring*).

I concur in the majority’s reasoning and analysis of the issues raised by the parties. Neither party has raised the issue of the trial court’s ability to force a sale of the property absent a finding that plaintiffs proved their claim. Nevertheless, I feel compelled to comment on that issue, even though as mentioned, it has not been raised before us.

It is undisputed that defendant held title to the disputed property, and that plaintiffs had been “utilizing” the property for approximately 25 years. When the dispute arose, plaintiffs filed suit seeking to have the court quiet title to the disputed property to them. Plaintiffs’ theory was that they obtained title to the property through statutory acquiescence.

The trial court’s opinion recognizes that this was plaintiffs’ theory, as it set out the standards necessary for a plaintiff to establish statutory acquiescence. See, e.g., *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Indeed, the court indicated that such a claim is not difficult to prove, “merely requiring a showing that the parties acquiesced in this line and treated the line as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary,” citing *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996).

Despite this, in its analysis the trial court did not make any findings as to whether plaintiff had, or had not, proven the elements of statutory acquiescence. Instead, under the guise of “equity”, the trial court focused exclusively on what impact the defendants’ action in the disputed parcel had on plaintiff and defendant. In doing so, the court concluded that defendants’

actions would “cut off approximately 20-30% of plaintiffs’ view of the water”, and thus ordered defendants to deed the property to plaintiffs, for the price of \$100 a square foot.¹

Although an action to quiet title is equitable in nature, *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001), in applying its equitable powers a court does not have free reign, but must still follow any established standard set out in case law that governs a particular claim. *LaBour v Michigan Nat Bank*, 335 Mich 298, 302; 55 NW2d 838 (1952) (“It is fundamental that equity follow the law.”). Here, the trial court failed to discuss, analyze or otherwise address the standards governing plaintiffs’ cause of action.

The trial court’s discussion at the hearing on plaintiffs’ motion to amend the judgment does not alter this conclusion. There the trial court ruled that it had never intended to (nor did it) hold that plaintiffs established “equitable acquisitions.” Rather, the trial court indicated that the decision was based on its credibility findings. However, the trial court did not articulate what legal principle (other than “equity”) allowed it to order a sale of the property. Absent a legal basis for doing so, I believe the trial court lacked any legal basis in ordering the sale of the property.

/s/ Christopher M. Murray

¹ If I were writing the majority opinion, I would also require on remand that the trial court take evidence on the actual market value of waterfront property in the area.