

STATE OF MICHIGAN
COURT OF APPEALS

CHARTER TOWNSHIP OF WEST
BLOOMFIELD,

UNPUBLISHED
March 18, 2004

Plaintiff-Appellee,

V

No. 243507
Oakland Circuit Court
LC No. 98-009080-CH

GREENPOINTE CONDOMINIUM
ASSOCIATION,

Defendant-Appellant.

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

PER CURIAM.

Defendant appeals as of right from a judgment, following a bench trial, declaring a sixty-foot wide easement in favor of plaintiff for the purpose of construction, use, and maintenance of a paved eight-foot wide safety path, open to the general public, as measured from the center of Halstead Road, in West Bloomfield Township. We affirm.

Defendant is a nonprofit corporation composed of co-owners of the Greenpointe Condominium development (Greenpointe) located in the northwest corner of Fourteen Mile Road and Halstead Road, the latter being a designated natural beauty road established by resolution of the Oakland County Road Commissioners in 1981, pursuant to 1970 PA 150, MCL 247.381 *et seq.* (now Part 357 of the Natural Resources and Environmental Protection Act, MCL 324.35701 *et seq.*).

In October 1985, Greenpointe's developer, Bernard Gliberman, obtained from plaintiff's planning commission conditional approval of a site plan of Greenpointe, which contained in excess of 190 planned units to be developed under the Condominium Act, MCL 559.101 *et seq.* The planning commission's conditions included adherence to woodlands procedures, obtaining a necessary wetlands permit, dedication of a bike path along Fourteen Mile Road, and the resolution of a scenic easement agreeable to the planning commission. The site plan included an eight-foot wide asphalt pedestrian/bicycle path on the west side of the development, but Gliberman was unable to obtain a state permit to construct that path. The site plan also contained a sixty-foot "R.O.W." (right-of-way) on the east side of the development, measured from the center of Halstead Road.

Gliberman, as president of Greenpointe Condominiums, Inc., executed the master deed for Greenpointe in July 1986, subjecting it to “all easements and restrictions of record and all governmental limitations.” Greenpointe then consisted of fifty-three units, but was expanded over the years through a series of amendments to the master deed. In approximately 1989, defendant’s co-owner members acquired operational control over Greenpointe from Gliberman. This occurred before Gliberman’s execution of a seventh amendment to the master deed to enlarge the development to 193 units in June 1992. The condominium subdivision plan in the master deed showed both a sixty-foot “R.O.W.” and a nature area easement running along Halstead Road.

This action arose because of actions taken by plaintiff to relocate the pathway planned for the west side that Gliberman was unable to construct because he could not acquire a necessary state permit to the sixty-foot “R.O.W.” indicated on the 1985 site plan and in master deed documents. We find that the trial court’s decision regarding plaintiff’s claim of a common-law dedication is dispositive of this appeal.

Although we review this equitable action de novo, the trial court’s factual findings are reviewed for clear error. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997). The trial court’s conclusions of law are reviewed de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

“A common-law dedication is an intention on the part of the owner to dedicate the land for public use, which is accepted by the public.” *Kentwood v Sommerdyke Estate*, 458 Mich 642, 653; 581 NW2d 670 (1998). A dedication may be without restriction, in which case, any reasonable public use may be permitted, or for a particular purpose, in which case it must be devoted to that purpose. *Baldwin Manor, Inc v Birmingham*, 341 Mich 423, 430; 67 NW2d 812 (1954). The dedication must be construed with reference to the object with which it was made. *Id.* at 430. No particular form is necessary to give effect to a common-law dedication. *Badeaux v Ryerson*, 213 Mich 642, 647; 182 NW 22 (1921). But the facts and circumstances used to prove the dedicator’s intent must have a positive and unequivocal character. *Hawkins v Dillman*, 268 Mich 483; 256 NW 492 (1934); *Boone v Antrim Co Bd of Rd Comm’rs*, 177 Mich App 688, 693; 442 NW2d 725 (1989).

Initially, we must determine whether Gliberman originally intended to dedicate a sixty-foot right-of-way for public use along Halstead Road, measured from the center of the road. We conclude that defendant has not shown clear error with respect to the trial court’s finding that Gliberman intended to dedicate a sixty-foot right-of-way. Consistent with the sixty-foot “R.O.W.” designations on the site plan and master deed documents, Gliberman’s own testimony established that he intended to dedicate a sixty-foot right-of-way and understood that a pathway could be built there. His intended offer was not limited to a nature area easement.

We find no support for defendant’s position that Gliberman made the offer to dedicate to the Oakland County Road Commission (County Road Commission). The evidence established that Gliberman dealt with plaintiff’s planning commission. Indeed, as the trial court’s decision reflects, it was unclear from the evidence whether anyone submitted an offer to dedicate to the County Road Commission.

Defendant's challenge to the trial court's decision unduly confuses jurisdictional and property issues. Unlike an easement that passes to the public by common-law dedication, a governmental entity's jurisdiction over a road is not a property right. *Badeaux, supra* at 647; *Attorney General ex rel Dep't of Natural Resources v Cheboygan Co Bd of Rd Comm'rs*, 217 Mich App 83, 87-89; 550 NW2d 821 (1996).

Here, the evidence indicated that the County Road Commission had jurisdiction over Halstead Road and recognized a thirty-three foot right-of-way, measured from the center of Halstead Road, that existed before Gliberman's undertaking to develop Greenpointe. But Gliberman testified that he did not pay attention to which governmental entity had jurisdiction over Halstead Road. It may be inferred from the evidence that Gliberman may have done an unnecessary act by offering to dedicate a right-of-way to the public that partially duplicated an existing public right-of-way. But defendant has not established any clear error in the trial court's finding that Gliberman intended to dedicate a sixty-foot right-of-way measured from the center of Halstead Road. Sidewalks, paths, and roads, all being reasonable uses of a right-of-way intended by Gliberman, fall within his intended offer to dedicate.

Having concluded that Gliberman made an offer to dedicate a sixty-foot right-of-way, we now turn to the question whether plaintiff was a proper public authority to accept the offer. The trial court's decision is unclear regarding the legal basis for its determination that plaintiff was a proper authority to accept the offer. We agree with defendant that the trial court erred to the extent it relied on MCL 560.253, which is part of the Land Division Act, because Greenpointe was established under the Condominium Act.

Nonetheless, this Court will not disturb a trial court's decision when the right result is reached. *Dobie v Morrison*, 227 Mich App 536, 540; 575 NW2d 817 (1998). Here, the trial court's decision was correct because given the generality of the dedication, either plaintiff or the county could accept the offer to dedicate the right-of-way. Plaintiff's authority to accept the offer stemmed from its authority to accept a property by gift. MCL 42.14.

There being no evidence that plaintiff's acceptance of a sixty-foot right-of-way would conflict with any preexisting easement, such as to raise a question regarding which easement would provide superior property rights, *Deputy Comm'r of Agriculture v O & A Electric Co-operative, Inc*, 332 Mich 713; 52 NW2d 565 (1952), we turn to the question whether the trial court clearly erred in finding that plaintiff accepted Gliberman's offer to dedicate a right-of-way, at least with regard to the pathway that plaintiff proposed for the right-of-way in the area located outside the thirty-three foot easement recognized by the County Road Commission.¹

The burden of proving an acceptance of an offer to dedicate is on the public authority. *Kraus v Dep't of Commerce*, 451 Mich 420, 425; 547 NW2d 870 (1996) (discussing the dedication of platted roads). Acceptance may be formal or informal, but a manifest act is required to prevent the public from becoming responsible for land that it did not want or need

¹ We note that the basis of the easement itself that was recognized by the County Road Commission was not established at trial.

and to prevent land from becoming wasted property. *Id.* at 424. At common law, “[t]he acceptance may be evidenced either by express declaration or by acts of user indicating an intention to accept such property for the public use or purpose to which the owner has by his declarations or acts set it apart.” *Chene v Detroit*, 262 Mich 253, 258; 247 NW 172 (1933), *aff’d* on reh 263 Mich 512; 248 NW2d 884 (1933). A formal means of acceptance can be effectuated by resolution. *Christiansen v Gerrish Twp*, 239 Mich App 380, 389; 608 NW2d 83 (2000) (discussing a McNitt Act resolution). Informal means of accepting an offer to dedicate include activities such as public use and expenditures. *Eyde Bros Development Co v Roscommon Co Bd of Rd Comm’rs*, 161 Mich App 654, 664; 411 NW2d 814 (1987) (discussing a municipality’s acceptance of a plat).

Here, we again note that the trial court erred insofar that it relied on MCL 560.253 to find that plaintiff accepted Gliberman’s offer to dedicate. But the trial court reached the right result because the facts and circumstances establish that plaintiff’s planning commission’s approval of the site plan containing the sixty-foot right-of-way in 1985, followed by its actions toward obtaining funding, including a \$50,000 letter of credit provided by Gliberman in 1991 and plans for a pathway in the sixty-foot right-of-way, were sufficient informal means to accept the offer to dedicate. It was not necessary that plaintiff actually construct the pathway to manifest its acceptance of the offer to dedicate.

We are not persuaded that defendant has demonstrated any basis for disturbing the trial court’s finding of a common-law dedication stemming from Gliberman’s transfer of operational control over Greenpointe to defendant’s co-owner members in approximately 1989, under terms of the master deed or the Condominium Act’s reservation of rights provision in MCL 559.190(3) for condominium documents, that is, “the “master deed, recorded pursuant to this act, and any other instrument referred to in the master deed or bylaws which affects the rights and obligations of a co-owner in the condominium.” MCL 559.103(9). The condominium documents included a sixty-foot right-of-way, not merely a nature area easement.

To the extent there was a question whether defendant’s co-owner members, as successors in interest to Gliberman, withdrew the offer before plaintiff’s acceptance, *Kraus, supra* at 427; *White v Smith*, 37 Mich 291, 295-296 (1877), the burden of showing a withdrawal is on the property owner. *Kraus, supra* at 425. Because defendant does not argue that the offer to dedicate was withdrawn before the dedication was completed by plaintiff’s acceptance, we deem this issue abandoned. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001).

We also conclude that defendant has not established any basis for disturbing the trial court’s finding of a common-law dedication stemming from the site plan provisions in MCL 125.286e(3) of the Township Zoning Act. Defendant’s cursory treatment of this issue precludes appellate review. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). In passing, we note that defendant has not established that site plan approval was required for plaintiff to act within a public right-of-way. Even if required, the evidence established that plaintiff’s own staff acted as the petitioner to amend the site plan in order to provide for a pathway within the sixty-foot right-of-way. The fact that plaintiff acted on its own petition is consonant with its acceptance of the sixty-foot right-of-way reflected in the original site plan. Even if there was some procedural deficiency in the manner in which plaintiff acted, the salient fact is that it may reasonably be inferred from plaintiff’s actions that it accepted Gliberman’s offer of a sixty-foot

right-of-way. We therefore conclude that plaintiff's actions with respect to the site plan afford no basis for disturbing the trial court's finding of a common-law dedication.²

Finally, we note that defendant gives undue emphasis to plaintiff's use of the phrase "safety path" for the proposed pathway to challenge plaintiff's plan to install a "safety path" in the right-of-way. A court is not bound by the labels attached to the pathway by a municipality, but rather may analyze the facts to determine its correct legal category under statutory law. See, e.g., *Hatch v Grand Haven Charter Twp*, 461 Mich 457, 465 n 4; 606 NW2d 633 (2000). Here, plaintiff's zoning ordinance, as codified in Chapter 26 of its ordinance code and amended in 1992, defined a "safety path" as including both pedestrian and bicycle uses. Plaintiff had statutory authority to construct both sidewalks and bicycle paths, as well as other improvements. See MCL 41.722. Although the particular statutory word or phrase that should attach to the planned pathway might affect applicable statutory provisions or procedures that plaintiff must follow, it does not prohibit plaintiff from constructing a pathway for use by both pedestrians and bicycles.

The material question, for purposes of determining whether a common-law dedication occurred, is whether both uses fell within Gliberman's intended offer to dedicate a right-of-way. For the reasons previously discussed, both uses fell within the intended offer. Hence, while we express no opinion regarding the correct legal label for plaintiff's planned pathway, we affirm the trial court's declaration that plaintiff has a sixty-foot easement, measured from the center of Halstead Road, for the purpose of constructing, using, and maintaining a paved eight-foot wide "safety path" open to the general public.

In sum, we uphold the trial court's finding that a sixty-foot right-of-way easement was established by common-law dedication. We also uphold the trial court's declaration that plaintiff could use the easement to construct, use, and maintain a paved eight-foot "safety path" open to the general public but express no opinion with regard to the correct legal characterization of that "safety path" for purposes of applicable statutory law.

Because the common-law dedication issue is dispositive of the issues on appeal, it is unnecessary to address plaintiff's estoppel argument or defendant's claims concerning plaintiff's alternative theories for relief under count II (zoning ordinance) and count III (Condominium Act) of plaintiff's complaint. Finally, we decline to address defendant's arguments concerning its counterclaim, given defendant's failure to properly state these arguments in its statement of questions on appeal and the parties' stipulation, as set forth in the judgment, that the counterclaim would be relevant only if the trial court declined to grant relief on plaintiff's

² Although the evidence regarding plaintiff's actions is sufficient to support the trial court's finding that plaintiff accepted the offer to dedicate, we express no opinion regarding whether plaintiff will be able to fulfill all necessary legal requirements for constructing the pathway. If plaintiff does not construct the pathway, then a question might arise regarding whether plaintiff should be found to have abandoned this use. See, generally, *Clark v Grand Rapids*, 334 Mich 646; 55 NW2d 137 (1952). Because the question of abandonment is not before us, we do not address it.

complaint. See *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995); MCR 7.212(C)(5).

Affirmed.

/s/ Richard Allen Griffin

/s/ Helene N. White

/s/ Pat M. Donofrio