

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN FATA, ANNA FATA, DENNIS
REILLY and ROSEMARY REILLY,

UNPUBLISHED
March 14, 2006

Plaintiffs/Counter-Defendants-
Appellees,

v

No. 257936
Roscommon Circuit Court
LC No. 02-723576-CH

ROSCOMMON COUNTY ROAD
COMMISSION,

Defendant/Counter-Plaintiff-
Appellant,

and

LYON TOWNSHIP, DEPARTMENT OF
TRANSPORTATION, DEPARTMENT OF
TREASURY and DEPARTMENT OF NATURAL
RESOURCES,

Defendants-Appellees.

Before: Murphy, P.J., and White and Meter, JJ.

PER CURIAM.

Defendant¹ appeals as of right the circuit court judgment, rendered after a bench trial, vacating a platted road end. We affirm.

Plaintiffs, two couples who own lakefront cottages on Higgins Lake, brought suit to vacate Struble's Avenue,² a twenty-foot wide avenue between their properties that was dedicated

¹ The singular defendant refers to defendant-appellant Roscommon County Road Commission only. Lyon Township is referred to as the township. The state agency defendants filed an answer below generally denying the allegations for lack of information, but did not otherwise participate at trial and have not filed a brief on appeal.

for public use in a 1902 plat. Plaintiffs Steven and Anna Fata own the property to the north of the avenue, which is in a platted subdivision called Struble's Addition. Plaintiffs Dennis and Rosemary Reilly own a cottage on the parcel immediately to the south of Struble's Addition.

Plaintiffs alleged that "since the creation of [the subdivision], no Defendant named herein has taken any action, formal or informal, to accept the offer of dedication made by the original plattor," and that "no formal acceptance has been made by any Defendant" and "no informal acceptance has been made." Plaintiffs asked the court to grant them "fee simple title absolute" to the avenue and to enjoin the public from using it to gain access to Higgins Lake.

Defendant claimed that it had accepted the avenue "pursuant to a McNitt resolution" and asserted other arguments and defenses as well, which are not at issue in this appeal.³ The trial court rejected defendant's reliance on the McNitt resolutions, following our Supreme Court's decision in *Kraus v Dep't of Commerce*, 451 Mich 420; 547 NW2d 870 (1996), found no other acceptance, and granted judgment to plaintiffs.

On appeal, defendant raises a single issue: "Whether the trial court erred in determining that a resolution identifying the plat was not sufficient evidence of formal acceptance." Defendant acknowledges that this case involves the same resolutions that the *Kraus* Court found to be insufficient to establish acceptance. Defendant asserts that *Kraus* was wrongly decided and that it is not collaterally estopped by the *Kraus* decision because, although it was a party to that case, plaintiffs were not. Neither argument supports reversal.

Clearly, any argument that *Kraus* was wrongly decided must be addressed to the Supreme Court. *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993). Further, the doctrine of collateral estoppel is not applicable. Rather, the Supreme Court's decision in *Kraus* is controlling as a matter of judicial precedent, and defendant's participation as a party in *Kraus* is relevant only in that it makes it impossible to distinguish the case.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Patrick M. Meter

(...continued)

² The name was changed from Michigan to Struble's Avenue in October, 1992.

³ The township also answered, denying that the avenue had not been formally or informally accepted.