

STATE OF MICHIGAN
COURT OF APPEALS

KIT C. BOWMAN,

Plaintiff-Appellant,

v

THE TREASURER FOR THE STATE OF MICHIGAN, TOWNSHIP OF HARRISON, HARRISON TOWNSHIP WATER DEPARTMENT, CONSUMER'S POWER, DRAIN COMMISSIONER FOR THE COUNTY OF MACOMB, DTE ENERGY COMPANY, MICHIGAN DEPARTMENT OF NATURAL RESOURCES, and OWNERS OF LAND LOCATED WITHIN 300 FEET OF PARCEL OF LAND SOUGHT TO BE VACATED,

Defendants,

and

CHAIRPERSON OF THE BOARD OF COUNTY ROAD COMMISSIONERS FOR THE COUNTY OF MACOMB,

Defendant-Appellee.

UNPUBLISHED

May 2, 2006

No. 256252

Macomb Circuit Court

LC No. 2002-005058-CH

Before: Sawyer, P.J., and Wilder and H. Hood*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order dismissing his claims to quiet title and vacate the dedication of a portion of Island Street in Harrison Township. We affirm.

Plaintiff argues that the township had the exclusive authority to vacate the disputed street without the county's consent and that the trial court erred in failing to conduct the trial pursuant to MCL 560.226(1)(C). However, plaintiff stipulated to this matter being decided on stipulated facts and exhibits and the parties' trial briefs. At trial, he failed to raise the argument that the

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

township had exclusive jurisdiction or authority over the disputed street. In his trial brief, plaintiff argued that, while the parties disputed the designation of the street, the trial court “need not decide” whether the street was a county road because any dedication was never accepted. Plaintiff did not raise these issues or present the trial court with authority to support his arguments until he filed his motion for a new trial. We therefore deem these issues waived. See *Robb v Booms*, 337 Mich 583, 587; 60 NW2d 469 (1953); *DeGrave v Engle*, 328 Mich 565, 569; 44 NW2d 181 (1950).

Plaintiff also argues that the trial court erred in finding that defendant-appellee timely accepted the dedication of the disputed street. Whether an offer to dedicate was timely accepted “amounts to a factual determination by the trial court, because it depends on the circumstances of each individual case,” and is reviewed for clear error. *Christiansen v Gerrish Twp*, 239 Mich App 380, 390; 608 NW2d 83 (2000).

“[T]he well-established rule is that a valid dedication of land for a public purpose requires two elements: a recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use, and acceptance by the proper public authority.” *Kraus v Dep’t of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996). If the public dedication of a road has been effectively and timely accepted by a township or county, a circuit court has no authority to vacate the road absent consent by the township or county. MCL 560.226(1). On the basis of the arguments and stipulated exhibits of the parties, the trial court found that defendant-appellee, by its actions, “accepted the dedication by the mid 1970’s at the latest. The Road Commission’s act of placing a guardrail at the end of the Street and the placement of a storm sewer are sufficient to demonstrate an acceptance of the dedication.” We find no clear error in the trial court’s decision.

The Wilsons, who owned the land abutting either side of the disputed street for 40 years, never challenged the public nature of the street, and plaintiff did not file this action challenging the offer to dedicate until October 2002. We agree with the trial court that plaintiff “failed to offer any evidence of withdrawal of the dedication prior to the Road Commission’s acceptance.”

In addition, acceptance of the street’s dedication is presumed, because no rebutting evidence was presented to challenge that presumption before December 1978. MCL 560.255b; *Higgins Lake Property Owners Ass’n v Gerrish Twp*, 255 Mich App 83, 116; 662 NW2d 387 (2003). Plaintiff filed this cause of action in 2002, long after the statutory presumption took effect.

Affirmed.

/s/ David H. Sawyer

/s/ Kurtis T. Wilder

/s/ Harold Hood