

STATE OF MICHIGAN
COURT OF APPEALS

MARK CHAUVETTE and ZENA CHAUVETTE,

Plaintiffs-Appellees,

v

MARTIN OWCZAREK, RICHARD L. SMITH,
VICKIE V. SMITH, BARRY W. DIESING, and
PAMELA A. DIESING,

Defendants-Appellants.

UNPUBLISHED

October 26, 2006

No. 262473

Cheboygan Circuit Court

LC No. 01-006936-CH

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Defendants, back lot property owners in the Parrott's Point Resort Subdivision, appeal as of right from the trial court's order granting judgment in favor of plaintiffs and restricting defendants' use of a private road that abuts Mullett Lake to accessing the lake. We affirm.

The subdivision was dedicated by Irene Parrott on September 13, 1949, and received approval by various governmental bodies in 1949 and 1950. The dedication language in the plat map provides in relevant part "that all streets and alleys as shown on said Plat are hereby dedicated to the use of the Lot Owners only." Plaintiffs brought suit to enjoin certain uses of the private road (Cedar Lane) that they believed were beyond the scope of the dedication, such as picnicking, sunbathing, partying, and the placement of boat hoists and mooring items. The trial court agreed with plaintiffs that the dedicator had only intended that Cedar Lane be used as an easement for accessing the lake.¹ The trial court rejected defendants' alternative claims of a prescriptive easement and their asserted right to continue the disputed activities under the doctrine of acquiescence.

This Court reviews a trial court's holding in an equitable action de novo. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003). However,

¹ The court entered an order restricting overnight mooring, non-temporary docking, and recreational activities not incidental to the use of the surface waters of the lake. The court permitted the construction of one nonexclusive dock.

the trial court's findings of fact are reviewed for clear error. *Id.*; see also MCR 2.613(C). "A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). We give due regard to the trial court's superior ability to judge the credibility of witnesses who appeared before it. MCR 2.613(C); *In re Clark Estate*, 237 Mich App 387, 395-396; 603 NW2d 290 (1999).

The question to be decided in this case concerns the extent of defendants' rights to use the end of Cedar Lane, which terminates at the waters' edge. Riparian property owners enjoy exclusive rights that include permanently anchoring boats and erecting and maintaining docks. *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985). In this case, defendants own back lots in the subdivision and not waterfront property. Defendants assert that the plat dedication gives them a private easement, which permits them to use Cedar Lane for the activities in dispute and beyond merely accessing the lake in light of the historical use of the easement.

A dedication of land for private use, including a road or way, in a recorded plat gives lot owners in the plat an irrevocable easement or right to use such privately dedicated land. *Little v Hirschman*, 469 Mich 553, 560-562; 677 NW2d 319 (2004). To determine the extent of defendants' rights and the scope of the easement, we must first look to the language of the grant. *Dyball v Lennox*, 260 Mich App 698, 703; 680 NW2d 522 (2004). Courts should consider the circumstances existing at the time of the grant to determine the scope of the dedication but only if the language of the grant is ambiguous. *Id.* at 703-704. In this case, while the language of the dedication unambiguously grants use of Cedar Lane to the subdivision lot owners, it is silent regarding the parameters of that use. Therefore, it is appropriate to consider the circumstances surrounding the grant of the easement to determine the dedicator's intent. No evidence, however, was presented concerning how the property was used around the time the plat was dedicated or concerning other pertinent circumstances surrounding the dedication of the property. Rather, the earliest evidence presented related to disputed activities occurring approximately 15 years after the dedication. Therefore, we rely on certain presumptions that arise based on the language of the dedication.

Specifically, language in a plat dedicating certain property for "the use" of lot owners is generally considered to grant an easement to those lot owners to whom the use is dedicated. *Dobie v Morrison*, 227 Mich App 536, 540; 575 NW2d 817 (1998). Further, "[t]he use of the terms 'streets' and 'alleys' implies passage, and public roads that terminate at the edge of navigable waters are presumed to provide public access to the water. . . . [Thus,] the burden rests with defendants to establish that anything other than mere access to the lake was intended." *Higgins Lake, supra* at 102.

Defendants argue that the presumption of mere access should not apply in this case because Cedar Lane is a private road dedicated to subdivision lot owners and not to the general public. However, in *Thies, supra* at 295-296, our Supreme Court, after noting that public ways that terminate at the waters' edge are generally deemed to provide public access to the water, stated, "The fact that only subdivision owners can use the alleys and docks would not require a different result." Moreover, we see no sound reason why private roads should be distinguished from public roads relative to the presumption. Accordingly, we reject defendants' argument on this point.

Defendants' reliance on *Dobie* is misplaced. Determination of the dedicator's intent is a factual inquiry. *Higgins Lake, supra* at 101. The facts of this case are clearly distinct from those at issue in *Dobie*. Most importantly, streets and alleys are at issue here and not a park as in *Dobie*. *Higgins Lake, supra* at 103 ("First, *Dobie* involved rights to a park, not to road ends, which this Court recognized as a meaningful distinction."). Defendants have failed to come forth with any evidence of circumstances existing at the time of the grant that indicate that something more than an easement for access was intended. *Id.* at 103. As held by the panel in *Higgins Lake, id.*, "in the absence of evidence that the historical uses of the road ends were contemporaneous with the dedication, the road-end activity occurring *after* the dedication are [sic] not helpful in determining the dedicators' intent." (Emphasis in original.) Thus, defendants have failed to overcome the presumption that they simply have an easement for access to the water, and we conclude that the trial court did not clearly err in determining the scope of defendants' rights under the dedication.

Nevertheless, defendants assert that even if the dedication itself did not give them the right to use Cedar Lane as if they were riparian owners, they have acquired such rights through a prescriptive easement or through the doctrine of acquiescence. "An easement by prescription results from use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years." *Higgins Lake, supra* at 118. In this case, the trial court rejected defendants' claim of a prescriptive easement on the basis that defendants had failed to cite to any authority suggesting that the prior usage of the end of Cedar Lane by a number of different back lot owners could be tacked together to establish prescriptive use for the requisite period of time. Defendants have failed to address the basis of the trial court's decision in their appellate brief and again cite no authority to this Court on this point in support of their claim for a prescriptive easement. Because it would be necessary to resolve this issue in order to grant defendants a prescriptive easement, we need not even consider granting defendants the relief they seek here, i.e., a prescriptive easement for certain uses of Cedar Lane. *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987). Moreover, assuming that a prescriptive easement can arise with respect to property already subject to an easement for the benefit of an entire subdivision that was created through a private dedication, the evidence at trial simply does not support the establishment of the necessary elements to prove that a prescriptive easement arose. We also note that the argument of a prescriptive easement is almost entirely undeveloped in defendants' brief.

Defendants also assert that they are entitled to use Cedar Lane as they have under the doctrine of acquiescence. The doctrine of acquiescence is supported by three distinct theories: "(1) acquiescence for the statutory period, (2) acquiescence following a dispute and agreement, and (3) acquiescence arising from intention to deed to a marked boundary." *Walters v Snyder*, 239 Mich App 453, 457; 608 NW2d 97 (2000). Again, defendants' appellate argument is underdeveloped and no citation of authority is given with respect to applying the doctrine outside the context of a boundary dispute. See *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d

224 (2001) (observing that the doctrine of acquiescence arose to promote peaceful resolutions of boundary line disputes). Therefore, we decline to address the issue any further.²

Affirmed.

/s/ William C. Whitbeck

/s/ William B. Murphy

/s/ Michael R. Smolenski

² In *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), our Supreme Court, quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959), stated:

"It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow."