

STATE OF MICHIGAN
COURT OF APPEALS

JAMES LITTLE, CHERYL LITTLE, STEVEN
RAMSBY, MARY KAVANAUGH, STANLEY
W. THOMAS, NANCY G. THOMAS, MICHAEL
McCLUSKEY, GLADYS McCLUSKEY, and
ANN SKOGLUND,

UNPUBLISHED
June 29, 2004

Plaintiffs/Counter-
Defendants/Appellees,

v

No. 227751
Cheboygan Circuit Court
LC No. 98-006480-CH

BETTY H. HIRSCHMAN,

Defendant/Counter-
Plaintiff/Appellant,

and

ON REMAND

GERALD W. CARRIER, SALLY ANN
CARRIER, JOHN P. VIAU, and GENEVIEVE
GUENTHER VIAU,

Defendants/Counter-Plaintiffs,

and

FRANCES J. VANANTWERP, ELIZABETH
VANANTWERP, MASON F. SHOUDER, and
JEAN ANN SHOUDER,

Defendants.

Before: Cavanagh, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant Hirschman appealed from the trial court's decision that gave all the residents in her subdivision the right to use a lakefront park abutting her house and the right to drive cars

through an adjacent “alley” to gain access to the park. In the original plat, the park was dedicated to the subdivision’s lot owners and the alley was dedicated to the public.

In keeping with Michigan’s precedents, we originally found that such a private dedication of land was not valid. Therefore, we concluded that the trial court erred when it found that the owners of the backlots had a right to use the lakefront park. However, in *Little v Hirschman*, ___ Mich ___, slip op p 13-14; ___ NW2d ___ (Docket No. 121836, decided March 31, 2004), our Supreme Court held that such a private dedication was valid, and that the plat’s dedication provided lot owners with an irrevocable right to use the lakefront park. Further, while the plat at issue dedicate the lakefront park itself to the other lot owners rather than its mere “use,” the Court held that the plat’s language created rights identical to those created in *Thies v Howland*,¹ where the plattors dedicated a similar strip of land for the “use” of other owners. *Hirschman, supra* at slip op p 12.

Because we originally found the dedication invalid, we did not address several other legal and factual issues raised by the trial court’s order. A review of the trial court’s order demonstrates several apparent flaws in the trial court’s analysis. Therefore, we remand this case for further consideration in light of the correct legal framework. The trial court apparently spliced aspects of easement and prescription law to form its guiding principles, but failed to describe adequately the factual basis for finding any easement by prescription. For example, our review of the evidence shows that many of the activities the court allowed were permitted by Hirschman and her predecessor, and permission would destroy the “adverse” element of plaintiffs’ prescriptive easement claims.

The trial court also relied heavily on the owners’ past behavior when it defined the easement rather than focusing on the intent of the dedication at the time it was executed. *Thies, supra* at 293. The record reveals that Hirschman’s gregarious predecessor likely encouraged activities on the lakefront that did not correspond with the intent of the original dedicators. For example, plaintiffs failed to present evidence that anyone constructed a fire pit on the beach until Hirschman’s predecessor suggested the idea. This permissive behavior, while neighborly, should not skew the trial court’s interpretation of the dedicator’s original intent.

Further, the trial court did not adequately consider whether the use of the fire pit and other activities on the beach unreasonably interfered with Hirschman’s enjoyment of her property. *Thies, supra* at 289. We leave the trial court free to draft rules such as access times, alcohol and pet restrictions, and rules for mooring watercraft. The trial court should aim to curb and reverse the unreasonable proliferation of litter, waste, noise, and smoke, as well as nocturnal and motorized activity on that portion of beach. We note a complete lack of evidence that Hirschman’s lot was unique because it had a sandy beach. Without more, the trial court’s designation of Hirschman’s beach as the only “group” beach lacks justification.

Further, we disagree with the trial court’s expansion of the alley easement to include vehicular traffic. When the trial court analyzed the dedication of the alley’s use, it failed to give

¹ 424 Mich 282, 288-289; 380 NW2d 463 (1985).

proper credence to the alley's intended use at the time of the dedication and account for any periods where the aggrieved neighbors merely permitted the use of vehicles. Because the evidence did not indicate that the dedicator intended the alley to carry anything but pedestrians, the trial court, without more, should not have expanded the original easement to include vehicular traffic. We remand for a full and accurate review of the facts in the proper legal light.

Vacated and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Peter D. O'Connell