

STATE OF MICHIGAN
COURT OF APPEALS

MALCOLM SMITH and EVELYN SMITH,

Plaintiffs-Appellants,

v

DUANE R. ACKERMAN, PATRICIA A.
BACKOS, WILLIAM S. BACKOS, MARILYN J.
BAIRD, JOSEPH A. BARCIA, KAREN A.
BARCIA, GERTRUDE F. BATHUM, EDGAR
BATHUM, FRANK BEACH, SHIRLEY V.
BEEBE, HAROLD J. BEEBE, ROBERT
BENSCH, JANET BERISH, RONALD BERISH,
BEVERLY BOLIN, FRANK R. BOMMARITO,
RAYMOND J. BREWER, DENNIS R. BROWN,
MARY BURRELL, LAWRENCE C. BURRELL,
DENNIS BURRELL, DENISE BURRELL, ERIC
P. CALUS, JOAN E. CALUS, SUSAN A.
CHAMBERS, JAMES L. CHAMBERS, EILEEN
CILLI, CHARLES CILLI, GERTRUDE CROSS,
HENRY G. CROSS, KEITH A. DILLEY,
BRENDA M. DILLEY, CHERIE R. DODT,
DAVID M. DODT, HELEN DOMBROWSKI,
JOHN DUDA, STEPHEN DUDA, CARL E.
ELBING, MARILYN ELBING, DALE M.
ESPER, EDWARD A. ESTEP, JEAN ESTEP,
CAROLINE H. FANGERT, LARRY E. FLEGEL,
DAN GLINIECKI, BARBARA A. GOINGS,
LARRY J. GOINGS, BRENDA L. GOODIN,
GRETCHEN R. GORE, DONALD B. GORE,
DAVID L. GOTTSCHALK, ELEANOR G.
GOTTSCHALK, MARLENE WUTKA, DENNIS
L. WUTKA, THOMAS J. HARMON, HAROLD
H. HEILNER, MARY HENDERSON, JOHN J.
HENDERSON, ROY O. HENSON, JULIE A.
HIRSCHMANN, THOMAS C. HOFFMANN
a/k/a THOMAS C. HOFFMAN, DEBORAH L.
HOFFMANN a/k/a DEBORAH L. HOFFMAN,
MARCEA K. HYLEN, ERIC J. HYLEN,
ELIZABETH J. HYLEN, BRUCE F. HYLEN, ED
JEZIORSKI, DONNA JOHNSON, RICHARD A.

UNPUBLISHED
March 27, 2003

No. 238408
Roscommon Circuit Court
LC No. 00-721770-CH

JOHNSON, KAREN L. JONES, HENRY E.
JONES, VAN HARRIS, JR., DEBRA J. KERN,
HENRY D. KERN, SANDRA L. LANDRY,
LAWRENCE J. LANDRY, PATRICIA N.
LARMORE, CRAIG S. LEDDY, ANNE M.
LEDY, DAVID R. LINDSEY, KATHLEEN R.
MAHONEY, ELMER L. MAHONEY, LOIS ANN
MALIK, LOUIS R. MALIK, JUDITH
MANVILLE, JOANN MARCHWINSKI,
DONALD T. MARCHWINSKI, GREGORY S.
MARSHALL, RICHARD MCKONE, DEBRA
MCKONE, PRISCILLA MCNELLIS, a/k/a
PRISCILLA MCNELIS, EDWARD MCNEILL,
THOMAS C. MCNELIS, DEBORA A. MEYER,
WILLIAM R. MEYER, JOYCE I. MILLER,
GERALD A. MROZINSKI, JOSEPH
MUSTEFFE, LADISLAY PACUT,
JACQUELINE L. PACUT, THOMAS PANOS,
NORMAN D. PARRISH, VICTOR F.
PECKINPAUGH, DEANNA PECKINPAUGH,
GERALDINE A. PETTIT, MARY J,
POSZYWAK, DAVID R. POSZYWAK, KEITH
D. PURZYCKI, JOANNE K. PURZYCKI,
ROSALIE G. RIEGLE, RAYMOND B. RILEY,
CHERYL A. ROAT, DARROL E. ROAT,
CHARLES W. ROBBINS, MICHELLE M.
SCOGGINS, DAVID L. SCOGGINS, KURT N.
SEIFERT, JOANNE E. SEIFERT, ROGER L.
SHUMAKER, DONALD S. SITARZ, ALICE
STARKEY, SANDRA S. STEVENS, ROBERT J.
STEVENS, MARCIE A. OGGER TRUST,
NANCY A. WILLIAMS TRUST, ROBERT F.
SLY TRUST, EUGENE C. FLORE TRUST,
BEVERLY E. FLORE TRUST, SCHIHL
FAMILY TRUST, RONALD J. WALKER,
NANCY J. WALKER, SIDNEY J. WALTON,
KRISTINE C. WERTHMANN, DAVID G.
WERTHMANN, PATRICIA A. WILBER, GARY
L. WILBER, DANIEL P. ZINSER, KAREN
ZINSER, RITA MARIANNE WOIDKE, CARL
G. HARMON, KAREN L. HARMON, MELVIN
J. WITZMAN, CATHERINE A. WITZMAN,
CASIMIR E. OBUCHOWSKI, LEONA C.
OBUCHOWSKI, BARBARA L. POTES, and
BRUCE A. POTES,

Defendants-Appellees,

and

JOHN J. HIRSCHMANN, JR., PAULY A
SCHAIBLY, DAWN M. ALLEN, EARL G.
PONDER, JR., WILLIAM D. MAURER,
DONALD L. WELCH, ANNIE M. LEVERETT,
WILLIAM R. MAYO, CHARLES K.
RICHARDSON, PEGGY A. RICHARDSON,
DOROTHY M. ALLEN, MARVIN R. ALLEN,
STEPHAN S. ALLEN, SUSAN K. ARB, DWANE
T. ADMITDOMC, COLLEEN D. AUCTION,
DAVID AUSTIN, MARIE AUSTIN, LUELLA M.
BARROW, WILLIAM G. BARROW, GUY W.
BENN, CHRISTINE BENN, GENE R. BIRELEY,
STANLEY R. BIXBY, CAROLE A. BIXBY,
NORMA BLANDFORD, EDWARD L. BOHDE,
HOBART E. BOSTIC, JOYCE A. BOSTIC,
SANDRA J. BREWER, ANTHONY E. BRIGGS,
FLORENCE M. BURRELL, TERRELL
CAPNERHURST, EDWARD P. CASE, SABINA
CASE, WILLIAM H. CHADWICK, MARGARET
CLARK, WILLIAM R. CLARK, RONALD D.
CLARK, KAY S. CLARK, MARY M. COBURN,
JAMES J. COLE, ALMA CAROLINE
COMPEAU, CHRISTINE DREWYER,
RICHARD G. DREWYER, DOUGLAS DRURY,
GEORGE J. DRUSKINIS, HELEN A.
DRUSKINIS, FLOYD C. ELLSWORTH,
CAROLINE M. ELLSWORTH, KAREN L.
ETHINGTON, MARC D. ETHINGTON,
SHELLY ANN FARER, THOMAS E. FARRER,
KENNETH G. FEIGHNER, BARBARA K.
FEIGHNER, NORMAN H. FISCHER, EVELYN
B. FLOYD, WILLIAM L. FLOYD,
JACQUELINE C. FULLER, RONALD F.
FULLER, IRVING T. GALLINAT, DONALD B.
GORE, PATRICIA A. GRANT, DANIEL K.
GRANT, PAULA GUCZ, ROBERT E. GUCZ,
WANDA HARRIS, YVONNE HARRIS, TERRY
HARRIS, WANDA J. HOLT, ROY F. HYNAN,
SUZANNE M. HYNAN, ROSE JACKSON,
CHARLES R. JACKSON, NORA J. JAMES,
GERALD JENKINS, CHARLOTTE JENKINS,
GARY A. JOHNSTON, DOUGLAS L. JONES,
JAMES E. JORDAN, LOWELL C. LEVERETT,
JR., CLYDE LINDSEY, JR., STANLEY F.
NORTHCOTT, JR., PETER MERKO, JR.,
SHIRLEY KIDLE, DAVID M. KIDLE, DANIEL

G. LAVIOLETTE, JULIANN LINK, GERALD H. LINK, BARBARA A. MADISON, DONALD E. MAIERS, EMMA L. MAIERS, TERRY MAIERS, ALICE K. MARKS, CATHERINE E. MARTEL, JOHN J. MARTEL, GRANVILLE P. NANCE, RICHARD T. NASARZEWSKI, JOSEPH NASARZEWSKI, DONNA M. NOREYKO, RONALD W. NOREYKO, RITA J. OSTERHOUT, EVELYN PASCHE, MARY P. PATTON, ANGELINE POULOS, STEVE POULOS, JIMMY R. POWELL, MARILYN A. POWELL, PRICILLA REHM, JACK REHM, CHARLES A. RICHARDSON, HELENA RICHARDSON, DONALD W. RIEGLE, TORRES DEE A. RIEGLE, DOLORES RISCH, PHILLIP G. ROBERTS, MAIDA E. ROBERTS, KEITH D. ROBERTS, MILDRED ROSE, GEORGE A. ROSE, PAUL A. SCHMIDT, ALVIN H. SCHMIDT, WALLACE SIETZ, GUY E. SMITH, MICHAEL L. SNYDER, MAUREEN K. SNYDER, DONALD A. STARKEY, MARY H. STARKEY, JOHN T. STEELE, RANDALL P. STEELE, NETTIE SULLIVAN, VIRGINIA RUTH SWENSON, WANDA S. SZKUBIEL, RITA M. THOMSON, EDMUND M. TROESTER, ANNE MIDDLEMISS TRUST, EMMETT V. STURTEVANT TRUST, FRANCES W. MACKKEY TRUST, WILLIAM MCKENZIE TRUST, JOANNE COLLAR TRUST, JODY WEBER, PAULA S. WELCH, BETTY J. WILLIAMS, ROSS L. WINDEN, ARTESIA BEACH PROPERTY OWNERS, KATHLEEN M. ALLAN, RANDALPH P. IVES, MARY L. IVES, JEANETTE JONES, LOUISE MAGADINI, HARRY SEDIK, HELENE SEDIK, WANDA S. SZUBIEL, MARK F. WILLIAMS, and KELLY WILLIAMS,

Defendants.

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting defendants' motion for involuntary dismissal. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties own property in the Artesia Beach subdivision on Lake St. Helen. The dedicator of the plat created two lakefront parks. Plaintiffs brought this action asserting that they had acquired the adjacent park lands by adverse possession, and sought to quiet title to the property. At the close of plaintiffs' case, the court granted defendants' motion to dismiss.

Plaintiffs have abandoned their adverse possession claim on appeal, arguing only that they are fee holders of the park property by reason of the dedication language of the plat and that their fee ownership is subject to an undefined right-of-use by defendants. Essentially, plaintiffs' argument is that they are owners in fee of the park property and that ownership is subject to an easement. This theory was not pled in plaintiffs' complaint or raised in their trial brief.¹ The issue was first raised at the beginning of trial when plaintiffs' moved for summary disposition. The motion was denied and the trial proceeded on plaintiffs' adverse possession theory.

The trial court granted defendants' motion for involuntary dismissal, holding that plaintiffs failed to prove the necessary elements of hostile and exclusive possession of the parks property for purposes of the adverse possession claim. Based on our review of the record, we agree with the trial court's finding and, as noted, plaintiffs do not challenge this ruling on appeal, so they apparently also agree that their proofs failed in this regard.

The trial court went on to address the quiet title count of plaintiffs' complaint, although the trial court expressed its own question whether it was properly pled. The trial court ruled that the claim was based solely² on the dedication language, and that the language in question³ unequivocally does not grant fee simple title of the parks to plaintiffs. We agree.

¹ The language of dedication of the parks in the plat document is nowhere mentioned in plaintiffs' complaint or trial brief. At trial, plaintiffs maintained that their quiet title claim was based on the dedication language and the trial court addressed it in his dispositive ruling. We have doubts whether this issue was even properly before the trial court or before us on appeal. Nevertheless, because the trial court decided the issue, we will address it.

² Plaintiffs' counsel readily admitted that there was no other documentation or proof of conveyance of the parks property to plaintiffs and that the claim to quiet title in his clients in fee simple absolute was based on the dedication language alone.

³ The dedication language reads:

[A]nd that the streets and parks as shown on said plat are hereby dedicated to the use of the various owners of lots in the above named subdivision, Artesia Parks are hereby dedicated for recreational purposes only and not for the erection of any structure which will be objectionable to other owners or for camping.

This Court will review a decision in a quiet title action de novo. *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). The intent of the plattors should be determined with reference to the language used in connection with the facts and circumstances existing at the time of the grant. *Dobie v Morrison*, 227 Mich App 536, 540; 575 NW2d 817 (1998). The language of the plat in this case provides that the parks and streets are dedicated to the use of all owners of lots in the subdivision. Unlike *Dobie*, here the plat did not distinguish between the use of the property by lake front owners and others. Plaintiffs did not identify any facts or circumstances that would indicate the plattor wished to give their property an ownership interest in the park land superior to that of the other lot owners in the subdivision.

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage