

STATE OF MICHIGAN
COURT OF APPEALS

JANET L. CONE and ALLAN E. CONE,

Plaintiffs-Appellants,

v

PAUL ZELONY, HARRY ROSTKOWSKI, TISH KENNY, WILLIAM L. SUMPTER, MERRILL J. MUDD; JOHN M. GORE, THOMAS E. ROBINSON, HIGHLAND HEIGHTS SUBDIVISION ASSOCIATION, GEORGE M. TRITES, RICHARD LAW, GORDON A. ROTHFUSS, RICHARD D. MCFARLAND, GREGORY BOYNTON, DALE E. YOUNG, JR., STEVEN R. TOLONEN, MARK A BUSICK, FRANCIS P. PALAZZOLO, JOSEPH PASTUSZKA, PIERRE C. HUBBARD, DANNY MURPHY, CARL O'BERRY, J. COYLE, JODI L. STOVER, DUANE WAGNITZ, DONNA L. CASE, ROY M. TORNOW, GARY DAVIS, ANDREW KIRCHOFF, MARLIN TORNOW, HEIDI A. STANLEY, SCOTT J. HYVONEN, DOUGLAS DAVES, GTE TELEPHONE OPERATIONS, ANNE M. OSBORNE, WILLIAM COMPTON, SUZANNE COMPTON, EDWARD BRADLEY, ELLEN LAWRENCE, THOMAS M. JONES, JAMES F. KOCH, JOHN FERRIER, JAMES H. HOUSER, DYNASTY INVESTMENTS, ROBERT D. SCHANG, PAUL B. O'CONNOR, DONALD CHARTER, ROBERT W. McKIERNAN, ALAN STOFFER, ROLLAND M. BRENGLE, MICHAEL A. THOMPSON, MARK W. IRVIN, DOUGLAS J. BROOM, DAVID J. RAINEY, SR., CHARLOTTE THROOP, DOUGLAS L. BALL, DOUGLAS E. HAINES, PAUL L. TRITES, SHERRY DUNLEAVY, MICHAEL J. HUNT, HARRY J.

UNPUBLISHED

August 21, 2003

No. 233034

Oakland Circuit Court

LC No. 1999-019571-CH

MOORE, JR., EDWARD A. GREBIK, PAUL L.
SMAZA, MICHAEL BADACZEWSKI, JAKIW
WADYSZ, JIMMY L. TURNER, ALEX
LANDRY, DAVID JOHNSON, ARLENE
BJORNHOLM, PAUL L. VALLETTE,
JENNIFER TESCHKER, EVA S. ARKINSON,
DANA J. BESSEN, DEAN KLEBAN, WILLIAM
LINDSAY, BRIAN L. CROWE, FAITH D. POPE,
PATRICK RYAN, CHARLES
DELAMIELLEURE, PETER FOLEY, JAMES W.
SMITH, LARRY W. BONDES, MERIBETH L.
PAGE, MICHELLE R. WILLIS, JERRY N.
BODE, ANTHONY J. ZAWACKI, JEFFERY L.
JACOBSEN, PAUL ARMSTRONG, LISA D.
HALL, ARTHUR L. HIGGINS, ALFRED H.
GRAMMER, JR., MICHAEL J. ROSS, DANIEL
A. HINEY, MICHAEL L. DERRY, LINDA S.
PALLISTER, MICHAEL J. WHELAN, BILLY J.
DUBS, DONOVAN J. McCABE, ROBERT J.
IRVIN, THOMAS G. LEWIS, DOUGLAS A.
BECK, TIMOTHY D. RUGGLES, CLARA M.
PEARSALL, PATRICIA S. PAZZANI, JAMES
A. MORAN, MARK McCLEOD, HELEN M.
ANDRES, WALTER J. COMIS, SHANNON L.
COMIS, KEVIN A. THOMPSON, ROBERT E.
LESSNER, JR., DANIEL L. PARKS, KENNETH
D. DYE, AGNES M. PARKS, DENNIS R.
GOTTERSON, SHEILA TABACZK, JASON
TABACZK, GERALD ASHENBRENNER,
MARY PHIPPS, RICHARD CHAMNESS,
HARRY A. CARMACK, WILLIAM B.
CHITTENENDEN, DAVID A. LAYTON,
RALPH W. GORA, BETTY RUDOLPH,
CHESTER SENIOR, FRANCES M. BRUNSON,
KRITINA L. KUPCZAK, GLORIA A.
SCHMIDT, CHARLES D. AHLFIELD, DAWN
M. MAZUREK, SCOTT E. VORE, ANNA
CLEVELAND, KELLIE A. COOPER, PATRICK
N. BABIN, THOMAS A. REGAN, JOSEPH
COYLE, DONALD SANDERSON, JUDITH
ELKINS, PATRICIA E. COX, WAYNE S.
HOPKINSON, MICHAEL L. WOLVERTON,
CHARLES SHINN, CLAUDE R. TUNISON, SR.,
CHRISTINE A. BARON, PAUL J. EICHLER,

DANIEL C. BOYD, SUSAN BOYD,
CHRISTOPHER W. CULHAM, CHARTER
TOWNSHIP OF HIGHLAND, STATE OF
MICHIGAN TREASURER, OAKLAND
COUNTY DRAIN COMMISSIONER,
OAKLAND COUNTY ROAD COMMISSION,
CONSUMERS ENERGY COMPANY, DETROIT
EDISON COMPANY, and RANDY SAYLOR,

Defendants-Appellees.

AFTER REMAND

Before: Whitbeck, C.J., and Sawyer and Saad, JJ.

PER CURIAM.

Plaintiffs appealed from an order of the circuit court, entered following a bench trial, dismissing plaintiffs' action seeking to quiet title to certain property by virtue of adverse possession. In our original opinion, we remanded the matter to the trial court to determine whether plaintiffs could obtain title by adverse possession in light of the fact that the property was owned by a governmental entity. The trial court concluded that plaintiffs could not, in fact, maintain an adverse possession claim. The matter is now before us following remand. We affirm.

Plaintiffs argue that the trial court erred in concluding that MCL 600.5821 applies to this case because (1) the property is titled in the township as a passive trust and, therefore, under MCL 555.5, legal title vests in the beneficiaries rather than the township and (2) because the deed does not allow for use by the general public. With respect to the first argument, the trial court rejected plaintiffs' claim that this was a passive trust:

This Court did, however, previously reject plaintiffs' passive trust argument in [sic] December 19, 2000. The Court stated then the Court rejects plaintiffs' position, that the original conveyance is passive in nature. As noted by defendants, the case law cited by plaintiffs is not directly on point with the facts of this suit. Additionally, a passive suit arises when the trustee has no duties and is argued by defendants. The trustee here was charged with holding title.

Similarly, the trial court also rejected plaintiffs' second argument, finding that the property was held for public use:

As defendant indicated, the subject property is held for public use. The term public use is given its plain and ordinary meaning.

A trial court's findings of fact are reviewed for clear error. *Killips v Mannisto*, 244 Mich App 256; 624 NW2d 224 (2001). We are not persuaded that the trial court erred in concluding that the trust was not passive and that the property is held for public use.¹

Affirmed. Defendants may tax costs.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Henry William Saad

¹ The trial court's findings on the second point were comparatively brief. We do note that public ground does not necessarily mean open to the general public. For example, the county jail is undoubtedly "public ground," but it is not open to the general public to visit and use at will.