STATE OF MICHIGAN

COURT OF APPEALS

CHARLES L. WILLEMS and MARY R. WILLEMS, Plaintiffs-Appellants, v RICHARD KERBAWY and CLAUDIA KERBAWY, Defendants-Appellees.	UNPUBLISHED January 26, 2012 No. 300615 Ingham Circuit Court LC No. 10-000301-CZ

Before: WHITBECK, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

This case arises out of a dispute over ownership of a certain section of road located in a subdivision in Haslett, Michigan. Plaintiffs Charles and Mary Willems appeal as of right the trial court's order granting defendants Richard and Claudia Kerbawy summary disposition under MCR 2.116(C)(7). We affirm, but we remand for proceedings consistent with this opinion.

I. FACTS

The road at the center of this dispute is located in the platted subdivision of Hickory Island, Haslett, Meridian Township, Ingham County, Michigan. Hickory Island Subdivision abuts Lake Lansing. The road at issue is called Hickory Island Drive, but it is named on the Hickory Island Plat as Hickory Street. Hickory Island Drive travels east from Lake Drive and ends before the water's edge of Lake Lansing, as the Hickory Island Plat is not drawn to the water's edge. The Charter Township of Meridian accepted the Hickory Island Plat and the dedication of the streets and alleys in 1908. Concerning the roadways in the Hickory Island Plat, the dedication includes the following language: "[T]he streets and alleys herein shown on said plat are hereby dedicated to the use of the public." Thus, Hickory Island Drive, as originally platted, was a public street.

The Willemses own vacant Lot 34 in Hickory Island Subdivision. Lot 34 abuts Hickory Island Drive to the south. Mary Willems and her daughter also own Lot 24 and half of Lot 25, which the Willemses refer to as the "homestead property." Lots 24 and 25 are located to the east of Lot 34. Between Lots 34 and Lots 24 and 25 is what is identified on the current Hickory Island Plat as an "alley," which extends south and perpendicular from Hickory Island Drive. The

alley formerly served as access to the homestead property. But the alley now has a fence running through the middle of it.

The Kerbawys own Lot 4 in the Hickory Island Subdivision. Lot 4 is located across Hickory Island Drive from Lot 23. Emanuel Blosser owned Lot 23. On the Hickory Island Plat, Hickory Island Drive travels between Lots 4 and 23 to the edge of the Plat.

In 1995, the Kerbawys and other landowners petitioned the Ingham County Road Commission to abandon the portion of Hickory Island Drive between Lots 4 and 23, which was allegedly never used as a street and was maintained by the owners of Lots 4 and 23 for over 17 years. The petition alleged that the "[v]alue of properties in this vicinity are being threatened by conflicts between neighbors about the use of this public land. These chronic, protracted frivolous conflicts have caused significant and unnecessary expense to the county, township and adjacent property owners." After a public hearing, the Ingham County Road Commission resolved to approve the abandonment of Hickory Island Drive between Lots 4 and 23.

In 1997, the Kerbawys and Blosser petitioned the Ingham County Road Commission to abandon the alley between Lots 34 and Lots 24 and 25. The Ingham County Road Commission resolved to abandon the alley.

In 2005, the alley between Lots 34 and Lots 24 and 25, the 1995-abandoned portion of Hickory Island Drive between Lots 4 and 23, and a portion of Hickory Island Drive extending from the 1995-abandoned portion to the water's edge were the subject of an appeal to this Court.[1] In that case, the trial court dismissed the suit, concluding that the abandonments on Hickory Island Drive and the abandonment of the alley resulted in the land reverting to the adjacent landowners. On appeal, Charles Willems argued that the trial court erred in this conclusion. However, a panel of this Court agreed with the trial court. The panel explained that there was no evidence that the Township chose to maintain the portion of Hickory Island Drive that extended to the water's edge as a public access site; therefore, by statute,[2] that portion of Hickory Island Drive reverted to the adjacent landowners. With respect to both the alley and the portion of Hickory Island Drive between Lots 4 and 23, the panel affirmed the trial court's decision because, under common law,[3] that portion reverted to the adjacent landowners.

Also, in that 2005 case, the Willemses relied on certain deeds from the 1960s to argue that the land between the western edge of the homestead property and the water's edge was to be used exclusively for public purposes.[4] However, the trial court concluded that the deeds did not actually cover any of the property from the west lot lines of Lots 24 and 25 to the water's edge.

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[1] *Willems v Charter Twp of Meridian*, unpublished opinion per curiam of the Court of Appeals, issued October 18, 2005 (Docket No. 262161).

[2] MCL 224.18.

[3] *Dalton Twp v Muskegon Co Bd of Co Rd Comm'rs*, 223 Mich App 53; 565 NW2d 692 (1997).

[4] *Willems*, unpub op at 4-5.

A panel of this Court agreed that the Township had no interest in the abandoned property because the Township decided not to retain or maintain the site following abandonment, and, by operation of statute and case law, those lands reverted to the adjacent landowners. The panel did note, however, that the plat should be formally corrected to reflect the changes that have occurred.[5]

In March 2010, the Willemses filed the complaint against the Kerbawys in this case. The Willemses alleged that the Kerbawys wrongfully placed their residence and other obstructions in the "dedicated right of way of Hickory Island Drive" between Lots 4 and 23 in contravention of the 2005 panel's direction that "the plat should be formally corrected to reflect the changes that have occurred."[6] More specifically, according to the Willemses, the Kerbawys failed to file a circuit court action, including giving notice and joining various interested parties, as required under the Land Division Act of 1967[7] and the Plat Act of 1839.[8] Accordingly, the Willemses sought an injunctive order requiring the Kerbawys to remove any obstructions in the right of way, enjoining them from placing any other obstructions in the right of way, and ordering them to file a proper action in the circuit court to correct the plat.

In April 2010, the Kerbawys requested a judicial transfer. Pursuant to MCR 8.111(D)(1), "if one of two or more actions arising out of the same transaction or occurrence has been assigned to a judge, the other action or actions must be assigned to that judge." The Kerbawys argued that the case should be transferred from Judge Paula Manderfield to Judge Joyce Draganchuk because Judge Draganchuk presided over the previous lower court action concerning the abandoned portion of Hickory Island Drive between Lots 4 and 23. The Kerbawys explained that, even though "different legal theories were used [in that prior action] to challenge the abandonment and subsequent ownership of the road end[,] the facts and evidence have always remained the same." The trial court granted the request, and the case was ordered reassigned to Judge Draganchuk.[9]

On the same date that the Kerbawys requested the judicial transfer, they also filed a brief in support of their motion for summary disposition, arguing that the doctrine of res judicata barred the Willemses' action because the same parties had already litigated the same issues arising out of the same facts and prior, final decisions on the merits had already been issued. The Kerbawys argued that in addition to dismissal of the case, the trial court should deem the action frivolous and award attorney fees and costs to the Kerbawys.

On May 12, 2010, the Willemses filed an affidavit attesting that the Kerbawys failed to timely file an answer to the Willemses' complaint. Therefore, the Willemses filed a default and

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[5] MCL 560.221 *et seq*.

[6] *Willems*, unpub op at 5.

[7] MCL 560.101 *et seq*.; see MCL 560.221.

[8] 1839 PA 91.

[9] MCR 8.111(D).

notice of entry of default against the Kerbawys. The Kerbawys, however, moved to set aside the default, arguing that they properly filed their motion for summary disposition in response to the complaint.

The Willemses then moved to quash the Kerbawys' motion for summary disposition, the Kerbawys' request for judicial transfer, and the order of reassignment. With regard to the motion for summary disposition, the Willems contended that they never received notice of the Kerbawys' filing. With regard to the judicial transfer documents, the Willems contended again that they did not receive proper notice and that the Kerbawys had ex parte communications with various court personnel regarding the transfer. In sum, the Willems asserted that the motion for summary disposition and the order granting the judicial transfer should be quashed because they were not afforded proper notice and were procured using ex parte communication.

The trial court found that the Willemses received notice of the motion for summary disposition and the judicial transfer on April 22, by way of a letter sent to the Willemses' counsel. The trial court also found that there was no improper ex parte communication and that the communication that did occur was a proper scheduling discussion. Indeed, the trial court pointed out that the Willemses' counsel was actually in violation of the court rules by not notifying the court of the prior actions in their complaint. Accordingly, the trial court denied the Willemses' motion on the basis that it was frivolous, and the trial court ordered sanctions against the Willemses' counsel in the amount of $800.

In August 2010, the trial court heard oral argument in the Kerbawys' motion to set aside the default. The trial court determined that the Kerbawys' filing of the brief in support of their motion for summary disposition was a proper and timely responsive pleading. The trial court acknowledged that notice of the filing was served four days late. But the trial court found that this minor noncompliance was excusable. Accordingly, the trial court granted the motion and ordered the default set aside.

In September 2010, the trial court heard oral argument on the Kerbawys' motion for summary disposition. The trial court found that the case involved the same parties or their privies because there was "a substantial identity of interest among all the Defendants such that the interest[s] of the Kerbawys were represented and protected in the previous lawsuit." The trial court also found that this case arose of out the same transaction or occurrence as the previous case in which a panel of this Court affirmed the trial court's decision that the abandoned portion of Hickory Island Drive reverted to the adjacent landowners. Therefore, the trial court found that the doctrine of res judicata barred the action. Accordingly, the trial court granted the motion for summary disposition and ordered the case dismissed. Additionally, the trial court found that the action was frivolous because it was nothing more than an attempt to relitigate the same matters from the prior lawsuit.

On the basis of the trial court's ruling that the Willemses' action was frivolous, the Kerbawys moved for costs and attorney fees in the amount of $11,580. The trial court granted the motion, but reduced the requested amount of costs and attorney fees to $4,025. The Willemses now appeal.

II. DUE PROCESS AND EQUAL PROTECTION

The Willemses argue that they were not accorded due process and equal protection of the law. In so claiming, the Willemses briefly discuss the history of Richard Kerbawy's former professional relationship with the court system, as well as his involvement in the prior causes of action stemming from the Hickory Island disputes. However, the Willemses fail to actually articulate any legal rationale regarding how these past relationships allegedly denied them due process and equal protection of the law. Therefore, we decline to address this issue.[10]

III. FRIVOLOUS MOTION TO QUASH

A. STANDARD OF REVIEW

The Willemses argue that their motion to quash was not frivolous; therefore, the fine imposed against their attorney was not justified. This Court will not reverse a trial court's finding that a claim was frivolous unless that finding was clearly erroneous.[11]

B. LEGAL STANDARDS

MCR 2.114(D) provides:

> Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
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> > (1) he or she has read the document;
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> > (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
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> > (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

C. APPLYING THE STANDARDS

In ruling on the Willemses' motion to quash, the trial court found that the Willemses received notice of the motion for summary disposition and the judicial transfer on April 22, by way of a letter sent to the Willemses' counsel. On this point, the trial court stated, "There is no authority presented or any reason whatsoever presented for this Court to quash a brief that was filed and sent by way of letter to opposing counsel." The trial court also found that there was no

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[10] *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

[11] *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002).

improper ex parte communication. The trial court noted, "I hope [the Willemses'] counsel isn't suggesting that an attorney may not speak with the judicial assistant about scheduling a motion." The trial court also pointed out that the Willemses' counsel was actually in violation of the court rules by not notifying the court of the prior actions in their complaint. As the trial court explained, "The only reason that the [Kerbawys'] notice of judicial assignment was necessary is because the [Willemses'] counsel violated MCR 8.111."[12] The trial court further explained,

> This motion to quash is not supported by any law or facts. It contains spurious and inflammatory accusations with complete disregard for any effort in determining whether they are true. It says discussions took place that never took place. It accuses this Court, it accuses parties, it accuses attorneys of being involved in serious misconduct, including, apparently, accepting a bribe. It raises issues of judicial disqualification that should have and could have been raised in a prior case, and are not appropriate in this case.

Accordingly, the trial court found that the Willemses' motion to quash was frivolous.

On the basis of this record, we conclude that the facts belie the Willemses' contentions and, therefore, the trial court's determination that the motion was frivolous was not clearly erroneous.

IV. MOTION FOR SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Under MCR 2.116(C)(7), a party may move for summary disposition on the ground the doctrine of res judicata bars the plaintiff's cause of action. Neither party is required to file supportive material; any documentation that the parties do provide to the trial court, however, must be admissible evidence.[13] The trial court must take the plaintiff's well-pleaded factual allegations, affidavits, or other admissible documentary evidence as true and construe them in

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[12] MCR 8.111(D) provides, in pertinent part:

> (1) if one of two or more actions arising out of the same transaction or occurrence has been assigned to a judge, the other action or actions must be assigned to that judge;
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> * * *
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> (3) the attorney for the party bringing the other action under subrule (1) or the new action under subrule (2) shall notify the clerk of the fact in writing in the manner prescribed in MCR 2.113(C)(2). An attorney who knowingly fails to do so is subject to disciplinary action.

[13] *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

the plaintiff's favor, unless the movant contradicts such evidence with documentation.[14] This Court reviews de novo a trial court's ruling on a motion for summary disposition.[15] The applicability of res judicata is also a question of law that this Court reviews de novo on appeal.[16]

B. SUBDIVISION REPLATTING

The Willemses argue that a "subdivision," like Hickory Island Subdivision, is a special, legally recognized geo-social unit under Michigan law, which provides lot owners with special private rights such that a change in plat or a change in the subdivision's special dedicated features requires a statutory replat. This argument is without merit.

Contrary to the Willemses' contentions, the Kerbawys were not *required* to file a circuit court action to correct the plats for two reasons. First, the 2005 panel's statement that "the plat should be formally corrected to reflect the changes that have occurred" was merely dicta. And, second, the adjoining landowners' (including the Kerbawys) rights were legally and substantively decided by the 2005 panel's decision, which held that the abandoned alley and the abandoned portions of Hickory Island Drive reverted to the adjacent landowners.[17] While an action under the Land Division Act would be advisable to reflect those newly recognized property rights and ensure that the plats on file remain accurate, such an action was not required to confirm or establish those legally recognized rights.[18] That is, "[r]evising a plat ensures that the plat accurately reflects existing substantive property rights; a revision does not, however, establish rights . . . ."[19] "Thus, the LDA does not require a party to proceed under its procedures unless that party is seeking to alter the plat or the dedication language of the plat to which the party has a preexisting substantive property right as the owner of the property or a person of record claiming under the owner."[20] And while the plat will remain inaccurate absent an action to correct it, any of the affected lot owners or the township itself could take it upon themselves to file the corrective action[21]—nothing mandates that the Kerbawys bear that responsibility alone.

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[14] MCR 2.116(G)(5); *Maiden*, 461 Mich at 119; *Smith v Kowalski*, 223 Mich App 610, 616; 567 NW2d 463 (1997); *Gortney v Norfolk & W R Co*, 216 Mich App 535, 538-539; 549 NW2d 612 (1996).

[15] *Tillman v Great Lakes Truck Ctr, Inc*, 277 Mich App 47, 48; 742 NW2d 622 (2007).

[16] *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

[17] *Willems*, unpub op at 5.

[18] *Beach v Twp of Lima*, 489 Mich 99, 102, 105, 109, 110; 802 NW2d 1 (2011).

[19] *Id.* at 110. See also *Tomecek v Bavas*, 482 Mich 484, 496; 759 NW2d 178 (2008) ("The LDA was never intended to enable a court to establish an otherwise nonexistent property right. Rather, the act allows a court to alter a plat to reflect property rights already in existence.")

[20] *Beach*, 489 Mich at 118-119.

[21] *Id.* at 120 n 61, citing MCL 560.222 ("[T]o vacate, correct, or revise a recorded plat or any part of a recorded plat, a complaint shall be filed in the circuit court by the owner of a lot in the

C. RES JUDICATA

The Willemses argue that the doctrine of res judicata does not bar this case from adjudication because there are different parties, different facts, and different applicable law in this case.

1. MCR 3.411

We note that we agree with the trial court's conclusion that MCR 3.411 is not applicable to this action because this action is not, and the prior action was not, an action to determine interest in land. As stated in MCR 3.411(A), that court rule "applies to actions to determine interests in land under MCL 600.2932." And MCL 600.2932 involves actions by "[a]ny person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land[.]"[22] As the trial court explained, the prior action did not involve an interest in land because, in that case, Charles Willems was not claiming any personal title, rights, etc. to the land in question. Rather, he was seeking injunctive and declaratory relief on the basis of his contention that the lands were not properly abandoned and were still public land subject to maintenance by the township. (To the extent that the prior panel determined that Charles Willems' claim in that action was an assertion of an interest in land with respect to application of the applicable statute of limitations, we do not find that conclusion determinative of our conclusion in this instance.) Similarly, here, the Willems do not claim any personal title, rights, etc. to the land in question. Rather, they challenge the Kerbawys' rights to the land for failure to file a circuit court action to correct the plat under the Land Division Act (which, as discussed above, is without merit). Thus, we focus on the four elements of the doctrine of res judicata.

2. APPLICATION OF RES JUDICATA

Res judicata bars a subsequent action between the same parties when the facts and points of law essential to the action are identical to those essential to a prior action.[23] The concerns behind the doctrine of res judicata are economy of judicial resources, finality of litigation, and relieving parties of the cost and vexation of multiple lawsuits.[24] Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision;

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subdivision, a person of record claiming under the owner, or the governing body of the municipality in which the subdivision covered by the plat is located.")

[22] MCL 600.2932(1).

[23] *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001); *Jones v State Farm Mut Automobile Ins*, 202 Mich App 393, 401; 509 NW2d 829 (1993).

[24] *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999); *Jones*, 202 Mich App at 401.

(3) the matter contested in the second case was or could have been resolved in the first; and (4) both actions involved the same parties or their privies.[25]

a. ELEMENTS 1 AND 2

The Willems do not challenge the first and second elements of res judicata. Indeed, there can be no dispute that the prior action was decided on the merits and resulted in a final decision of summary dismissal.[26]

b. ELEMENT 3

With respect to the third element of res judicata, "Michigan has adopted the 'broad' application of res judicata, which bars claims arising out of the same transaction that [the] plaintiff could have brought but did not, as well as those questions that were actually litigated."[27] The test to determine whether the two actions involve the same subject is whether the facts are identical in both actions or the same evidence would sustain both actions, or the claims involve the same transaction.[28]

Here, the facts are identical in both actions and the claims involve the same transaction: the effect of abandonment of the portion of Hickory Island Drive between Lots 4 and 23. In the prior action, Charles Willems argued that the adjoining landowners did not have a proper interest in the land because it was not properly abandoned. Similarly, in this case, the Willemses argue again that the Kerbawys, despite being adjoining landowners, do not have a proper interest in the land because they failed to file an action to correct the plat. And although Charles Willems did not raise the claim brought herein in the prior action—correction of the plat under the Land Division Act—as we have explained above, he certainly could have.[29]

c. ELEMENT 4

With regard to the fourth element of res judicata, the parties to the second action need be only substantially identical to the parties in the first action, in that the rule applies to both parties

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[25] *Washington*, 478 Mich at 418; *Richards v Tibaldi*, 272 Mich App 522, 531; 726 NW2d 770 (2006).

[26] *Willems*, unpub op at 1, app den *Willems v Charter Twp of Meridian*, 476 Mich 863 (2006).

[27] *Jones*, 202 Mich App at 401.

[28] *Adair v State*, 470 Mich 105, 123-124; 680 NW2d 386 (2004).

[29] *Beach*, 489 Mich at 121 (stating that, while not required, a plaintiff may file a claim to correct platting under the Land Division Act in the same action brought to determine substantive rights to land).

and their privies.[30] Privity requires a substantial identity of interests and a relationship in which the interests of the nonparty were presented and protected by the litigant.[31]

Here, the only plaintiff in the prior action was Charles Willems. The difference in this case is that he has added his wife Mary Willems as a plaintiff. But, as Charles Willems' wife, Mary Willems is substantially identical to the plaintiff in the first action. Moreover, Mary Willems is clearly a privy of Charles Willems because, as husband and wife, they have a substantial identity of interests and a relationship in which Mary Willems' interests were presented and protected by Charles Willems in the first action.

Further, the Kerbawys, the defendants in this case, were not parties to the prior action. However, the property that is the subject of this case—the abandoned portion of Hickory Island Drive between Lots 4 and 23—was the very same property at issue in the prior case. And in the prior case, a panel of this Court ruled that the abandoned portion of road reverted to the adjacent landowners—which necessarily included the Kerbawys. Therefore, the Kerbawys were substantially identical to the defendant landowners in the prior case, as they had a substantial identity of interests in their respective lands and a relationship in which their interests were presented and protected by the named landowners in the first action.

3. CONCLUSION

We conclude that the trial court did not err in granting the Kerbawys summary disposition on the ground that the doctrine of res judicata barred the Willemses' cause of action.

D. *DALTON v MUSKEGON CO RD COMM*

The Willemses argue that the common law principle of *Dalton Twp v Muskegon Co Bd of Co Rd Comm'rs*[32]—that an abandoned road by user reverts to the adjacent land owners—does not apply in a platted subdivision with statutorily created areas. Specifically, the Willemses argue that *Dalton* "should not have applied to the prior case. [And] [i]t was wrong for the lower court to apply *Dalton* to the present case, which involves a statutorily dedicated road."

In ruling on the Willemses' motion for summary disposition, the trial court addressed this issue as follows:

> There is also argument made about the application of the Dalton case. And I find this argument being made that Dalton doesn't apply to subdivisions is particularly troubling. Because that is exactly the same argument that was made in the prior case. This Court ruled that Dalton did apply. And the Court of Appeals ruled that Dalton did apply to land, which is the center dispute, which

[30] *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 12; 672 NW2d 351 (2003).

[31] *ANR Pipeline Co v Dep't of Treas*, 266 Mich App 190, 214; 699 NW2d 707 (2005).

[32] *Dalton Twp*, 223 Mich App 53.

> was property located at the Hickory Island Subdivision. That argument was nothing more than a blatant attempt to reargue the same thing argued in the previous case, following failed attempts in the previous case, and, also, an attempt which failed as well to argue it in front of a different judge.

In the prior case, a panel of this Court affirmed the trial court's holding because "'the issue of abandonment of a county road is the controlling issue in *Dalton* and that is the issue that makes *Dalton* applicable to the instant matter.'"[33] The panel further explained,

> *Dalton* . . . involved the abandonment of a portion of a road by a county road commission. As noted, *Dalton* states that "while the statute does not state who obtains title when there is an absolute abandonment of a road . . . , under common law a street or alley that is vacated reverts to the abutting landowner." *Dalton* did not draw any distinction between an abandoned road and a vacated road.[34]

We find no error in the trial court's decision in this case or in the courts' analysis of *Dalton* in the prior action.

V. FRIVOLOUS CAUSE OF ACTION

A. STANDARD OF REVIEW

The Willemses argue that their cause of action was not frivolous; therefore, the fine imposed against them was not justified. This Court will not reverse a trial court's finding that a claim was frivolous unless clearly erroneous.[35]

B. THE TRIAL COURT'S FINDING

In finding that the Willemses' cause of action was frivolous, the trial court explained,

> Really, the complaint . . . focuses on the fact that in the . . . 2005 opinion, the Court of Appeals says . . . : By operation of statute and case law, those lands have reverted to the adjacent land owners. However, pursuant to statute, the plat should be formally corrected to reflect the changes that have occurred. The changes have occurred. The Court of Appeals, in dicta, made a comment about correcting the plat. But they ruled that the land have [sic] reverted to the adjacent landowners. Plaintiff was fully aware of all of this, all of this law, all of these rulings. And, as a matter of fact, the Plaintiff even attached the previous Court of Appeals ruling to his complaint. The Plaintiffs' actions over the past 10 years are like being a neighborhood terrace [sic]. These poor people are held captive and

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[33] *Willems*, unpub op at 4.

[34] *Id.* (internal citations omitted).

[35] *Kitchen*, 465 Mich at 661.

> subjected time and time again into court for frivolous litigation and an endless number of complaints against his various neighbors.
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> This complaint, as I've indicated, is nothing more than an attempt to relitigate, which was what was already litigated, adding Mary Willems as a Plaintiff, is the—it is a low form of cheating, considering how vigorously the Plaintiffs fought against having Mary Willems added as a party in the prior action.
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> [The Kerbawys' counsel] is right, this is exactly what the fear was, it is exactly what has happened. And I think that it is intentional. It is a matter of strategy, if you want to call it that, although, with a malicious intent on Mr. Willems' part, and it simply cannot be tolerated.

We agree with the trial court's finding. And we conclude that this cause of action was not brought for any proper purpose and was not warranted by existing law. Therefore, we conclude that the trial court's determination that the motion was frivolous was not clearly erroneous.

VI. FRIVOLOUS APPEAL

In accordance with our authority, this Court awards costs to the Kerbawys as the prevailing parties pursuant to MCR 7.219(A). Further, pursuant to MCL 600.2445 and MCR 7.216(C)(1)(a) and (2), we also sua sponte order damages against the Willemses for this frivolous and vexatious appeal. The record was devoid of merit supporting any of the Willemses' claims both in the trial court and on appeal. The trial court shall award reasonable attorney fees in favor of the Kerbawys in an amount to be determined by the trial court, together with any other damages or costs it deems appropriate.

We affirm, but we remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Christopher M. Murray
/s/ Pat M. Donofrio