STATE OF MICHIGAN

COURT OF APPEALS

HENRY HAIGH, IV, DERRICK BRANDON, ADRAINE JO ALVARADO, RICHARD SCHULTEIS, MICHAEL DEVEREAUX, CYNTHIA DEVEREAUX, RICHARD PAUL MAYNARICH and RANDY L. WILLIAMS, Plaintiffs-Appellants,	UNPUBLISHED June 17, 2010
v	No. 291120 Livingston Circuit Court
CLIFFORD J. STOREY and CAROLYN L. STOREY, Defendants-Appellees.	LC No. 08-024023-NZ

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Plaintiffs appeal by right from the trial court's order granting summary disposition for defendants pursuant to MCR 2.116(C)(8). Because we find that the trial court should have considered whether contemporary statutes created an inference in plaintiffs' favor, we reverse.

The property at issue is in Genoa Township of Livingston County, and was platted in 1920 as McNamara's Subdivision. The plat delineates 76 lots, approximately one-half of which have water frontage on Lake Chemung.[1] The plat dedication states, "the streets and drives as shown on [the] plat are [hereby] dedicated to the use of the public." The plat also contains a statement that appears near the engineer's certification which reads "[a]ll lots extend to the water's edge except the rear lots."

Defendants are a married couple who in 1989 obtained adjacent Lots 33 and 34 in the southeast part of the subdivision. Lot 34 is a waterfront lot; Lot 33 also appears to be a waterfront lot, as opposed to a rear lot. Plaintiffs are a group of property owners who own separate lots in McNamara's Subdivision. According to plaintiffs' deeds, plaintiffs obtained their respective properties between 1991 and 2007. Their lots include Lot 40 through portions of

[1] Lake Chemung was formerly known as Long Lake.

lots 49 and 50; a portion of Lot 53; and Lots 54 through 56. These lots comprise part of the southeast corner of the subdivision abutting James R. Street or South Street whereas plaintiffs' lots are all rear lots.

Plaintiffs allege that the plat dedicates public use of the streets and drives to the public to the water's edge and that defendants constructed a fence and a docking facility that encroaches on a dedicated public easement. Plaintiffs allege that defendants' fence and docking facility invalidly narrowed the 25-foot public easement on Lake View Drive to a four-foot public easement at the water's edge. Plaintiffs sought an order requiring defendants to remove the fence and the docking facility and to restore the easement to 25 feet or in the alternative, plaintiffs requested that defendants pay damages to plaintiffs for the diminished value of their properties.

Defendants brought a motion for summary disposition, and at that motion hearing, defendants stated that the perimeter of the subdivision as described in the plat does not extend to the water's edge. Defendants pointed out that the plat indicates that all "lots" extend to the water's edge, but that the plat contains nothing to indicate that roads extend to the water's edge. Plaintiffs responded that if Lot 33 controlled the water's edge boundary, Lake View Drive would continue to be 25 feet wide to the water's edge. Plaintiffs further argued that identifying the perimeter of subdivision away from the water's edge "was very common back in the days when they were laying out these lakefront subdivisions. And I think that was put in there to allow the people access."

The trial court noted that its ruling must be based on the plat. The court also noted that it would not speculate as to the reasons for the specific manner of platting the subdivision, then granted defendants' motion for summary disposition.

The court's order stated, "[t]he basis for the Court's ruling is that Lakeview Drive, so called, terminate [sic] pursuant to the plat, at the south line of Lot 34 of the Plat, extended westward to the southeast corner of Lot 32 of said Plat and, consequently, Plaintiffs and those similarly situated have no right of access to Lake Chemung via Lakeview Drive." Prior to the final order, plaintiffs objected to the form of the order on the grounds that the trial court had not stated these grounds at the motion hearing. Following a short hearing wherein the trial court rejected plaintiffs' objections, this appeal was brought by plaintiffs.

This Court reviews a trial court's summary disposition order de novo. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). Defendant's brought their motion for summary disposition pursuant to MCR 2.116(C)(8), thereby challenging the legal sufficiency of plaintiffs' pleadings. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). To rule on defendants' motion, the trial court was required to accept all of plaintiffs' factual allegations as true, and to make any reasonable factual inferences in plaintiffs' favor. *Wormsbacher v Seaver Title Co*, 284 Mich App 1, 3; 772 NW2d 827 (2009).

The parties do not cite any statutory authorities in their appellate briefs, nevertheless, the plat at issue is subject to the plat statute that was in effect when the plat was recorded in 1920. See *Martin v Beldean*, 469 Mich 541, 546-547; 677 NW2d 312 (2004). The 1920 statute reads, in pertinent part:

> [m]aps or plats as are by this act required to be recorded shall particularly set forth and describe such portion of the government survey as is intended to be platted . . . . Said maps or plats shall also particularly set forth and describe all the public grounds, *except for streets and alleys* by their boundaries, courses and extent, *and all streets and alleys by their courses, lengths, widths, names, or numbers*, by writing or figures upon that portion of the map or plat intended for those uses. [1915 CL 3351; 1915 PA 251 §2 (emphasis added).]

According to the controlling statute, the plat was not required to identify the boundaries of streets. Rather, streets were to be identified by course, length, width, name, or number.

Defendants argued in the trial court, and maintain on appeal, that the plat boundary and the accompanying notation require the interpretation that Lake View Drive ends at the drawn perimeter of the plat. We are not persuaded by this argument for three reasons. First, the controlling contemporary statute indicated that street boundaries did not appear on plats. 1915 PA 251 § 2. Thus, the perimeter drawn on the plat does not apply to the streets.

Second, defendant's reliance on the plat notation may be misplaced. The notation reads, "[a]ll lots extend to the water's edge except the rear lots." Defendants and the trial court interpreted the notation to mean that the only properties that extend to the water's edge are the waterfront lots. However, the notation is not so limited. The notation is silent with regard to whether the streets extend to the water's edge. Based upon a 1931 amendment to the plat statutes, there is a reasonable inference that the perimeter drawn on the plat is merely an "intermediate traverse" rather than an actual boundary. The amendment reads:

> When plat [sic] is bounded by an irregular shore line of a body of water, the bearings and distances of a closing intermediate traverse should be given. This traverse shall extend across the land so that it intersects the side lines of the shore lots of the plat. The side lines of these lots shall be dimensioned to this traverse line and if lots extend to the waters edge the distance from this traverse to the water's edge or high water line shall be designated. The lot dimensions paralleling the shore shall be given on this traverse line. *This intermediate traverse should be given in the written description and notation made that plat [sic] includes all land to water's edge or otherwise*. [1948 CL 560.5; 1939 PA 319 § 5.][2]

Although the 1931 amendment does not control the plat, the amendment identifies a method that the plattor may have incorporated into the 1920 plat. The amendment also presents a possible

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[2] The parties do not address whether the Land Division Act (the LDA) applies to this case; apparently, the parties and the trial court assumed that the Act does not apply. However we note that similar language concerning an intermediate traverse for water boundaries appears in the LDA. See MCL 560.136(e).

interpretation of the notation. On the limited record presented, the facts are insufficient to determine whether the notation means that streets terminate before the water's edge.

Third, the dotted plat lines depicted at the intersections of the streets and the waterfront area create an inference that the streets extend to the water's edge. In sum, the controlling contemporary statute indicates that the plat does not depict the street boundaries. Absent some indication on the plat that the streets end, the trial court was required to accept plaintiffs' factual allegation that the streets are dedicated for the public use to the water's edge.

Contrary to our observations above, the trial court determined that because the plat's depiction of subdivision perimeter did not show the Lake View Drive extending to the water's edge, the drive must terminate before the waterfront. This determination is not necessarily consistent with the applicable contemporary statute. Accordingly, we reverse and remand to the trial court for further inquiry into whether the statute creates a reasonable factual inference in plaintiffs' favor, or for the presentation of additional evidence to establish the scope of the public use dedication.

Reversed. Plaintiffs', being the prevailing party, may tax costs under MCR 7.219. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens