

STATE OF MICHIGAN
COURT OF APPEALS

JOHN GUIDOBONO, II, REVOCABLE TRUST
AGREEMENT, and JOHN GUIDOBONO, II,
Trustee,

UNPUBLISHED
January 24, 2013

Plaintiffs-Appellants,

v

SANDRA JONES,

No. 308855
Livingston Circuit Court
LC No. 11-026103-CH

Defendant-Appellee.

Before: SAWYER, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

In this real property dispute, plaintiff John Guidobono II Revocable Trust Agreement, through its trustee, John Guidobono II, appeals by right the trial court's opinion and order dismissing its complaint for injunctive relief. In order to properly resolve this appeal, we must determine whether and to what extent our Supreme Court's order in *John Guidobono II Revocable Trust Agreement v Jones*, 488 Mich 989; 791 NW2d 288 (2010) (*Jones II*) altered the parties' property rights as determined after the appeal to this Court in *John Guidobono II Revocable Trust Agreement v Jones*, unpublished per curiam opinion of the Court of Appeals, issued June 24, 2010 (Docket No. 290589) (*Jones I*). The trial court determined that our Supreme Court's order in *Jones II* did not alter the property rights settled by the trial court when it granted summary disposition in Jones' favor in the original action because the Supreme Court did not reverse this Court's decision in *Jones I*, or otherwise take action to remand the matter for further proceedings. For that reason, the trial court concluded that Guidobono's claim for injunctive relief premised on the Supreme Court's order did not state a viable claim. We agree that our Supreme Court's order did not resolve the original property dispute and, as a result, could not serve as the basis for a request for injunctive relief. Nevertheless, for the reasons more fully stated below, we reverse and remand for further proceedings.

I. BASIC FACTS AND PROCEDURAL HISTORY

In 1970, Jones purchased land near Woodland Lake from Guidobono's predecessor in interest, Bilbie Hall, Inc., on land contract. Although Jones' land was not on the lake, Bilbie granted an easement to Jones that included access to the lake. Jones shared the easement with William and Donna Krist, who also purchased property from Bilbie. William and Donna Krist eventually sold a portion of their property to William Todd Krist and his wife, Cheryl Krist.

In the 1990s, Bilbie sold its remaining property to Brian and Dawn Mullaly, who developed the land under a site condominium project. Guidobono purchased one of the condominium units in 2005.

Guidobono sued Jones for declaratory and equitable relief in 2006. Specifically, Guidobono asked the trial court to declare that Jones was exceeding the scope of her easement by using it for purposes beyond mere ingress and egress to the lake and asked the trial court to permanently enjoin her from doing so. Guidobono eventually amended the complaint to state similar claims against the Kristes.

In November 2008, Jones moved for dismissal of Guidobono's complaint under MCR 2.116(C)(8) and (10). Specifically, she argued that Guidobono's claim must be dismissed under the doctrines of equitable estoppel, laches, and easement by acquiescence. The Kristes also moved for summary disposition in the same month. They argued that summary disposition was appropriate because the easement included riparian rights and under the doctrines of laches, adverse possession, acquiescence, prescriptive easement, and the applicable period of limitations.

The trial court granted Jones' and the Kristes' motion in January 2009. The trial court granted the motion in Jones' favor under the theories set forth in Jones' motion. The trial court granted the Kristes' motion, in relevant part, because they established a prescriptive right to use the easement for riparian purposes.

Guidobono then appealed to this Court. This Court determined that Jones' easement was not ambiguous and conveyed only the right to access the lake. *Jones I*, slip op at 2. The Court rejected the application of equitable estoppel to bar Guidobono's claim against Jones, but noted that the doctrine of laches could bar Guidobono's claim. *Id.* at 3-4. However, it did not affirm on that basis because there was a question of fact as to that doctrine's application. *Id.* at 4. Nevertheless, the Court agreed that the doctrine of acquiescence barred Guidobono's claim and, on that basis, affirmed the trial court's order granting summary disposition in Jones' favor. *Id.* This Court also concluded that the trial court properly granted summary disposition in favor of the Kristes because they established a prescriptive right to use the easement for more than mere access to the lake. *Id.* at 3. The Court did not, however, address whether Jones might too have had a prescriptive right to continue using the easement, because she had not raised that claim before the trial court. *Id.*

Guidobono then appealed to our Supreme Court. In lieu of granting leave to appeal, our Supreme Court vacated this Court's judgment in part—namely, that part of the opinion addressing the doctrine of acquiescence. *Jones II*, 488 Mich at 989. The Supreme Court denied leave in all other respects. *Id.* The Supreme Court did not provide any further guidance; it did not reverse the trial court's grant of summary disposition and it did not remand the matter to either this Court or the trial court. *Id.* After the Supreme Court issued its order, the original suit apparently closed without any further actions by the parties to clarify their rights or obtain further relief.

In June 2011, Guidobono sued Jones for a second time. Guidobono alleged that Jones was again using the easement for more than access to the lake. Guidobono alleged that such use exceeded “the scope of [Jones'] easement, as defined by the Order of the Michigan Supreme Court.” For that reason, Guidobono asked the trial court to permanently enjoin Jones from “engaging in riparian and shoreline activities on the easement or otherwise violating the” Supreme Court's order.

After holding a hearing on Guidobono's request for a preliminary injunction, the trial court concluded that Jones was entitled to summary disposition under MCR 2.116(I)(1). In its February 2011 opinion and order dismissing Guidobono's new suit, the trial court noted that the peculiar procedural history of the dispute left the court in a quandary:

Both sides declare victory in their favor in the prior controversy based on widely contrary views of the effect of the Michigan Supreme Court's Order from December 16, 2010. Defendant Jones emphasizes what the Supreme Court did not say—that is did *not* reverse this Court's judgment even though Guidobono explicitly requested reversal, and therefore, the Supreme Court left that judgment in effect. Guidobono argues that the Order must be given the effect of nullifying the only argument on which the judgment in favor of Jones remained standing and therefore of reversing this Court's grant of summary judgment in Jones's favor.

The trial court did not agree with Guidobono's contention that the Supreme Court's order settled the earlier dispute in Guidobono's favor. Rather, it noted that, at best, the order merely vacated the earlier grant of summary disposition in Jones' favor—it did not “reverse that judgment and grant judgment in favor of Guidobono”:

The Supreme Court effectively vacated the only grounds upon which summary disposition had been granted in Jones' favor that had not previously been reversed by the Court of Appeals, but it did not reverse the judgment and it did not remand the case for a determination of the factual issues that the Court of Appeals had concluded existed regarding the application of the doctrine of laches. [Guidobono's] action is predicated entirely on allegations that Jones's activity is in violation of the Supreme Court's Order. Whatever the effect of the Order, it is certain that it did not result in a judgment in favor of Guidobono. Therefore, the Court finds that Jones is entitled to a judgment dismissing the present action.

Guidobono now appeals to this Court for a second time.

II. SUMMARY DISPOSITION

A. STANDARDS OF REVIEW

On appeal, Guidobono argues that the trial court erred when it interpreted the Supreme Court's order in the prior case and concluded that the order did not settle the parties' prior dispute in Guidobono's favor. Guidobono further maintains that the trial court erred when it dismissed its claim on that basis. This Court reviews de novo a trial court's decision to grant summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo the proper interpretation of a court order. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 460; 750 NW2d 615 (2008).

B. ANALYSIS

In the prior litigation, the parties sought a final resolution of their dispute over the nature and extent of their rights under the easement. Jones contended that the easement included full riparian rights; indeed, she argued that she had used the easement in that way for more than 30 years. In contrast, Guidobono argued that the easement only gave Jones the right to access the lake. The trial court in the prior litigation ultimately determined that Jones had the right to use the easement as she had been using it under various legal theories.

In the original appeal, this Court concluded that the trial court erred to the extent that it determined that Jones acquired rights under collateral estoppel. *Jones I*, slip op at 4. It also determined that the trial court erred to the extent that it might have granted summary disposition under laches because there was a question of fact as to the application of that defense. *Id.* at 3-4. Nevertheless, the Court affirmed the trial court's decision to grant summary disposition in favor of Jones because the Court determined that the trial court had correctly concluded that Jones had established her rights under the doctrine of acquiescence. *Id.* at 4.

When this Court disposes of an appeal by opinion, the opinion becomes the Court's judgment. *Kasben v Hoffman*, 278 Mich App 466, 470; 751 NW2d 520 (2008), citing MCR 7.215(E)(1). By affirming the trial court's order granting summary disposition in favor of Jones, this Court effectively confirmed that Jones had the right to use the disputed easement for more than mere access to the lake. It did so, however, on one basis: Jones had established her rights under the doctrine of acquiescence. But our Supreme Court disagreed with this Court's application of the doctrine of acquiescence and vacated this Court's opinion to the extent that it applied that doctrine. See *Jones II*, 488 Mich at 989.

Typically, when the Supreme Court wishes to annul an improper opinion or order, it will reverse the opinion and order and, in that way, place the affected parties back in the position that they held prior to the improper decree. See *Michigan v Eddy*, 58 Mich 318, 319; 25 NW 299 (1885). The Supreme Court did not reverse this Court's judgment or the trial court's order granting summary disposition in the original action. Instead, it elected to vacate this Court's judgment in part. That is, it chose to alter the effect of this Court's opinion by nullifying the analysis is deemed erroneous. Because this Court affirmed the trial court's decision to grant summary disposition in the original action on the sole basis that Jones had established her rights

through acquiescence, and otherwise determined that there were questions of fact that would preclude the grant of summary disposition, the Supreme Court's order effectively altered this Court's opinion from one affirming the grant of summary disposition in favor of Jones into one reversing the grant of summary disposition in her favor and remanding for trial on the merits. Unfortunately, the Supreme Court did not clarify the effect that its order had on this Court's judgment by remanding the matter to this Court or the trial court with appropriate instructions. To compound the error, the parties apparently did not seek clarification or take further action in the lower court consistent with this Court's revised opinion. Accordingly, the parties' original property dispute remained unresolved.

In the present action, Guidobono sued Jones on the basis of acts that Jones had taken since the original lawsuit, which acts allegedly violated the Supreme Court's order. As explained, the Supreme Court's order did not settle the parties' original property dispute—that dispute remained and the parties should have pursued the original litigation to a final resolution; as such, Guidobono's new suit premised on a violation of the Supreme Court's order failed to state a claim. MCR 2.116(C)(8). Any claim that Guidobono has regarding Jones' use of the easement necessarily involves application of the same property rights at dispute in the original action. Therefore, the trial court did not err when it determined that Guidobono's new lawsuit—to the extent that it was premised solely on the Supreme Court's order—should be dismissed under MCR 2.116(I)(1).

C. RELIEF

Given the unique procedural posture of this case, and notwithstanding our determination that the trial court did not err when it dismissed Guidobono's new lawsuit premised on our Supreme Court's order, we nevertheless decline to affirm. The record shows that the parties have been disserved by the ambiguity in our Supreme Court's order and need the finality that can only come from a final resolution of the property dispute. Further, although the record is not entirely clear, it appears that there is nothing to preclude Guidobono from again suing Jones for exceeding the scope of the easement (as opposed to a purported violation of the Supreme Court's order). Therefore, in the interests of a full and fair resolution of the dispute on the merits, we elect to exercise our discretion to grant further or different relief as the case may require. See MCR 7.216(A)(7); see also *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 431-432; 711 NW2d 421 (2006).

We reverse the trial court's decision to grant summary disposition in Jones' favor, vacate its opinion and order granting summary disposition, and remand for further proceedings consistent with this opinion. On remand, the trial court shall give Guidobono the opportunity to file an amended complaint. The trial court shall also give Jones the opportunity to answer the complaint and raise those defenses or counterclaims that were not specifically resolved in the prior litigation—including laches, the period of limitations, and any related defense, such as the acquisition of prescriptive rights or rights through adverse possession.

We also decline Jones' request for sanctions. Given the peculiar procedural history of this property dispute, we cannot conclude that Guidobono's decision to again sue and seek appellate relief was frivolous. MCR 7.216(C).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. We further order that neither party may tax their costs. MCR 7.219(A).

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Michael J. Kelly