

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER M. TAPPING and LINDSEY E.
TAPPING,

Plaintiffs/Counterdefendants-
Appellees/Cross-Appellants,

v

EDDIE T. SLACK, KATHY M. SLACK, THOMAS
R. POULTER, and KERI A. POULTER,

Defendants-Appellants/Cross-
Appellees,

and

SLACK MICHIGAN, LLC,

Defendant/Counterplaintiff-
Appellant/Cross-Appellee.

UNPUBLISHED
October 15, 2026
11:17 AM

No. 369588
Jackson Circuit Court
LC No. 2020-003620-CH

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

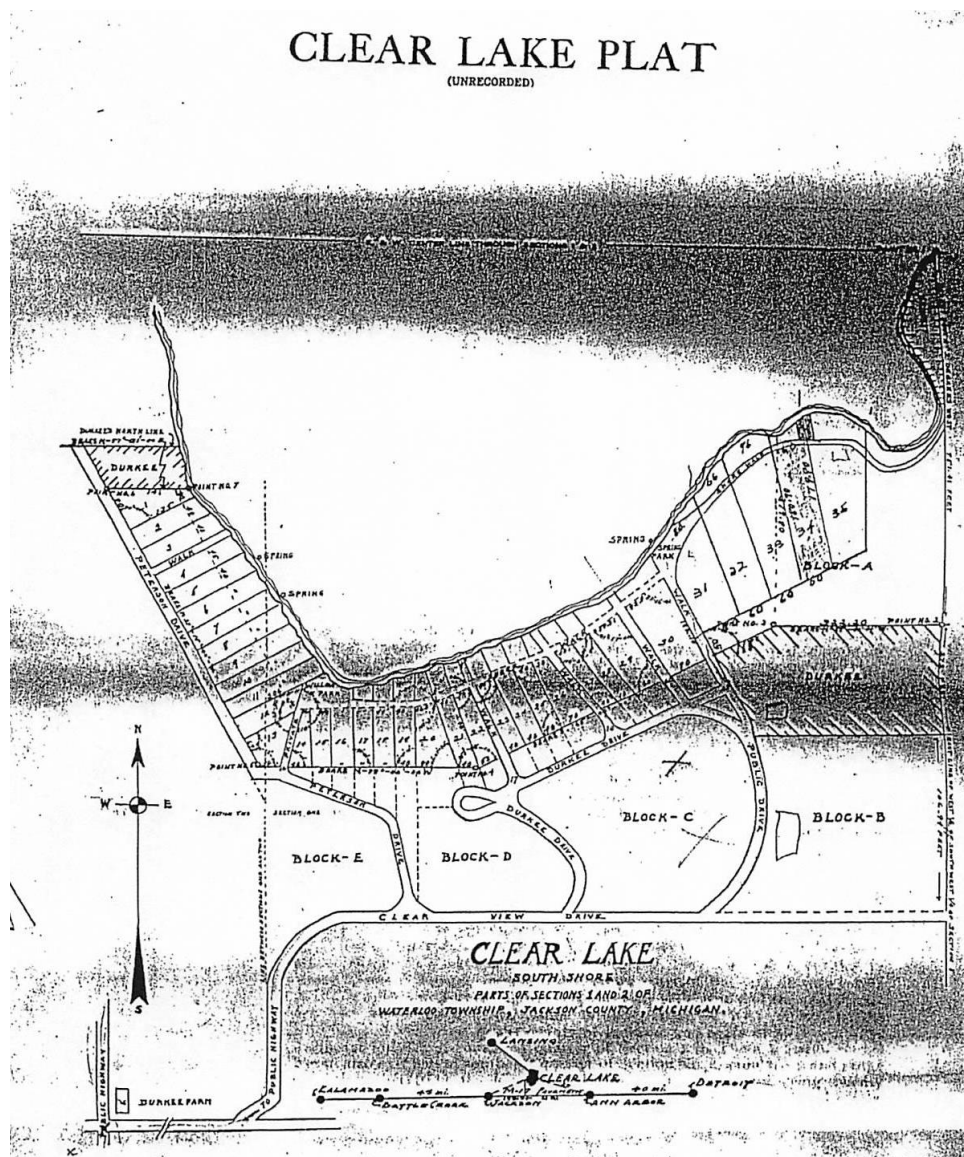
PER CURIAM.

Defendants appeal as of right the trial court’s order resolving issues of property ownership and use in this dispute between neighboring property owners. Plaintiffs cross-appeal the same order. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

This property dispute primarily involves a strip of land between a parcel owned by plaintiffs Christopher and Lindsey Tapping and a parcel owned by defendants Eddie and Kathy

Slack through their limited liability company, defendant Slack Michigan, LLC.¹ Other areas of land along the lake shore are also involved in this dispute. The properties involved in this dispute are located along the southern shore of Clear Lake, as depicted in the unrecorded plat reproduced below:



The Slacks purchased Lot 31, Lot 32, and part of Lot 33 in 2016. The Tappings purchased Lot 30 in 2018, which was vacant and apparently undeveloped at the time, and they subsequently built a home on the lot. Defendants Thomas and Keri Poulter own Lot 35. The Slacks are Keri's parents. The plat map depicts a strip that is designated as "WALK" that runs approximately north-south between lots 30 and 31, which is a continuation of what is designated on the plat as "PUBLIC

¹ Although the parcel is technically owned by the LLC, it will be referred to as the Slack property for the sake of convenience.

DRIVE.” This strip between lots 30 and 31 has been referred to as “Pebble Drive.” During the construction of the Tappings’ house, a dispute developed over Pebble Drive regarding ownership and use of the strip of property. The dispute also extended to a strip running parallel to the lakeshore designated as “SHORE WALK” and another area near the lakeshore designated as “SPRING PARK.”

The Tappings filed this action, alleging that the Clear Lake subdivision plat contained “numerous drives/ rights of way /walks intended for the exclusive use of all landowners in the Clear Lake subdivision” and that Pebble Drive specifically was used as a “drive” for motor vehicles “to access a right of way entitled ‘Shore Walk’ and ‘Spring Park’ and other areas accessible to all owners of land in the Clear Lake subdivision.” The Tappings further alleged that even if the Slacks owned the fee interest in Pebble Drive, the other owners of property in the Clear Lake subdivision had an established easement to use Pebble Drive. The Tappings maintained that they were therefore entitled to use Pebble Drive to access the lake shore property between their house and the lake.

Slack Michigan filed a countercomplaint against the Tappings. It was alleged in the countercomplaint that the disputed strip of land between lots 30 and 31 had been part of the Lot 31 property since 1980 because previous Lot 31 owners had obtained quit claim deeds in 1979 from “various individuals with an interest in the strip of property between lots 30 and 31.” The countercomplaint further alleged that since 1980, Pebble Drive was used solely for access by owners of the lots east of Lot 31. This use had also allegedly been established by historical practice since at least 1958. Slack Michigan sought a declaratory judgment that it was the sole owner of Pebble Drive.

Evidence was submitted during the litigation regarding the historical ownership and use of the land at issue. Both Lot 30 and Lot 31 were once part of a larger plot of land owned by Cora A. Holmes, which she obtained in 1920. Both the Tappings’ deed for Lot 30 and the Slacks’ deed for Lot 31 specifically reference the earlier recorded Holmes deed and indicate that each of these respective lots is within the larger area described by the earlier Holmes deed.²

Two plat drawings were referenced throughout this litigation, and both were attached to and incorporated into the final judgment in this case. Neither plat was recorded, and neither contain a date or the name of a proprietor. Both plats, although somewhat difficult to read, appear to depict the same area described in the 1920 Holmes deed.³ Both plats are substantially similar with the exception that one plat does not include lots 31-35 and only shows “Block-A” to the east

² Although there appears to be a typographical error in the Slack deed regarding where the Holmes deed is located within the Jackson County records, the property descriptions appear to be consistent. Thus, this Court believes the incorrect Liber citation to merely be a typographical error.

³ The various copies of the plats in the record are of varying quality, and the writing is somewhat difficult to read. However, the numbers, labeled points, and bearings appear consistent with the property description in the 1920 Holmes deed, and there does not appear to be any dispute in that regard.

of a “walk” that runs along the eastern boundary of Lot 30. The other plat, reproduced earlier in this opinion, depicts lots 31-35 within Block-A.

In 1941, Roy and Cora Holmes granted Lot 31 to William J. Jend by warranty deed. The deed specifically designates the conveyed property as “Lot—31—, on the southerly shore of Clear Lake” and describes the property by reference to the recorded 1920 Holmes deed.⁴ This deed also contained the following pertinent language:

Grant is also made of the right to use (in common with other owners in this subdivision) all driveways connecting this land with the Public Highway on the south.

. . . Reservation is made of a right of way for a walk and driveway across said land between the water’s edge and the building line. [Illegible] to be for the use of the owners of any lot or parcel of land in this subdivision. Said right of way to be [illegible] as “Shore Walk.”

In 1967, attorney Carl Conrad provided written advice to George Dygert and his wife⁵ regarding the roads in the subdivision at issue, specifically including “the forty foot strip bisecting Lots 30 and 31 of Holmes unrecorded plat.” Conrad concluded that there was no public right of record to the water’s edge over this drive, that the “ostensible title is still in the Holmes, who never conveyed this drive to the public, nor to the lot owners of 30 and 31,” and that “[a]ny right of access over this drive must then derive from usage; or by the inferred intention of the Holmes that such right should exist to lot owners.” Conrad explained that Mr. Greenwood, a former owner of property in the area, was contacted and stated that lot owners had previously used that strip to access a well near the lake and obtain water. Furthermore, Conrad opined that “while no rights appear of record, it is highly likely that a right exists for the use of this strip by the lot owners” and that it “may be also that the owners of either lot 30 or 31 have taken over ownership by [adverse] possession by simply posting it private and declaring hostile ownership for the required number of years.”

In 1968, Lot 31 was conveyed to Wesley and Henrietta Jend. The conveyed property was again specifically described as Lot 31 of the property described in the recorded 1920 Holmes deed.⁶ This deed also contained the language that the “Grant is also made of the right to use (in common with other owners in this subdivision) all driveways connecting this land with the Public Highway on the South.”

In 1979 and 1980, Wesley and Henrietta Jend obtained a series of 13 quit claim deeds granting to the Jends “all land between Lots 30 and 31 of the unrecorded Holmes Plat of the South

⁴ As with the Slack deed, this 1941 deed appears to contain a typographical error regarding where the 1920 Holmes deed is located within the Jackson County records, but the property descriptions appear to be consistent. Thus, we believe this incorrect Liber citation to also be a typographical error.

⁵ Mrs. Dygert’s first name does not appear in the record.

⁶ The same typographical error from the earlier deeds regarding the Liber citation is again present.

Shore of Clear Lake as extended to the water of Clear Lake.” One deed further stated that they were given as an “adjustment” to the description in the Jends’ 1968 deed for Lot 31. Recorded along with these quit claim deeds was an affidavit by Chester Perreault. Perreault indicated that he had owned Lots 32 and 33 of the unrecorded Clear Lake plat since 1958. He averred that Wesley and Henrietta Jend had been in continuous, open, notorious, and adverse possession of the strip of land between Lots 30 and 31 since 1968 when they acquired Lot 31 following the death of Wesley’s father, William Jend, who previously owned Lot 31. Perreault further averred that William Jend had also continuously and openly used the strip of land in the same manner since 1958. According to Perreault, this adverse use included the maintenance of landscaping and a boundary line along the western boundary of the strip. The adverse use was with the exception of a “driveway servicing parcels to the east running over the southerly portion of said strip.” Finally, Perreault averred that nobody else had ever used, possessed, or claimed in interest in the strip of land between lots 30 and 31.

Wesley and Henrietta Jend conveyed Lot 31 to the Slacks in 2016 by warranty deed that included language that the conveyance was “Subject to easements and building and use restrictions, if any” This deed also included the same description of the land between lots 30 and 31 that was contained in the aforementioned quitclaim deeds.

Defendants also produced four affidavits from individuals who had historical ties to property in the subdivision. Judith Cavanaugh averred that she resided at “various residencies on Clear Lake” from 1964 to 2020 and that the driveway between lots 30 and 31 been used solely by owners of Lot 31 and lots east of that lot for accessing those lots. She also averred that the driveway was not used by owners of Lot 30. Jeffrey Holzhausen, who had spent time at his grandparents’ residence on Clear Lake since 1974, Tami Houle, who had resided at “various residences” on Clear Lake since 1964, and Terry Koch, who had resided at “various residences” on Clear Lake since 1989, all averred similarly. Furthermore, Kathy Slack averred that she “grew up on the south side of Clear Lake” and had personal knowledge about the historical use of the driveway since 1963. Slack also maintained that the driveway was used solely for Lot 31 and lots east of that lot.

As previously stated, the Tappings purchased Lot 30 in 2018. The Tappings’ deed for Lot 30 included the following pertinent language:

Lot 30, “Holmes Plat” (unrecorded) of the Southerly shore of Clear Lake, being a portion of the land in Sections 1 and 2, T2S, R2E, described in Liber 266 of Deeds, Pages 20 and 21, Jackson County Records Together with all of the land lying between the land above described and the water of Clear Lake on the North, and the North line of Durkee Drive on the South, bounded Easterly and Westerly by said side lines extended; together with Durkee Drive, as shown on the unrecorded plat of Clear Lake, South Shore, and as now used, said drive to be used as a right of way in common by the grantees in Quit Claim Deed recorded in Liber 575, Page 417, Jackson County Records, their heirs and assigns, and the owners of Lots 20 to 30, inclusive, and Blocks C and D, according to said unrecorded plat, and also granting the use of all drives touching or crossing any portion of said land and providing ingress and egress to and from the public highway to the South.

The parties engaged in protracted motion practice. The trial court ultimately ruled on summary disposition that (1) the Tappings held an easement right to use and access Pebble Drive and Shore Walk, which included “the right to use motor vehicles in these areas and the right (among other rights coincident with an easement for use and access) to access their own property from any point on Pebble Drive and Shore Walk”; (2) Spring Park did not exist, the Tappings did not have any interest in the area depicted as Spring Park, and fee ownership of the area depicted as Spring Park was vested in Slack Michigan; (3) defendants owned a fee title interest in Pebble Drive as depicted in their deeds; (4) defendants were required to remove any trees and fence sections south of the Shore Walk along the west side of Pebble Drive, as well as all obstructions limiting or interfering with the Tappings’ access to Pebble Drive and Shore Walk; (5) defendants were enjoined from further action blocking the Tappings’ use of Pebble Drive and Shore Walk; and (6) defendants were required to pay \$7,500 in damages to the Tappings. The judgment provided that any additional claims and counterclaims were dismissed with prejudice, that all rights to appeal the judgment were reserved to the parties, and that a stay preventing enforcement of the judgment was entered pending the exhaustion of appellate rights.

This appeal followed.

II. STANDARD OF REVIEW

A trial court’s summary disposition ruling is reviewed de novo on appeal. *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152, 159; 934 NW2d 665 (2019). The propriety and effect of a dedication of land for private use is a question of law that is reviewed de novo. *Little v Hirschman*, 469 Mich 553, 557; 677 NW2d 319 (2004). Adverse possession is an equitable claim, and “decisions regarding equitable claims, defenses, doctrines, and issues are reviewed de novo.” *Beach v Lima Twp*, 283 Mich App 504, 508; 770 NW2d 386 (2009), *aff’d* and *remanded* 489 Mich 99 (2011).

III. ANALYSIS

Defendants argue in their appeal that the trial court erred by ruling that the Tappings had an easement to use Pebble Drive and Shore Walk because the trial court really granted an implied easement of convenience, which is not permitted in Michigan. Furthermore, defendants argue that even if this easement existed, it was extinguished by adverse possession or the Marketable Record Title Act.

This appeal presents questions regarding title and easement rights in three parcels of land, designated as Pebble Drive, Shore Walk, and Spring Park. During this litigation, two similar plats have been referenced; their only distinction is the inclusion of lots 31-35 in one plat, which are absent from the other. It is undisputed that neither plat was recorded. Additionally, both plats lack dates, proprietor names, or other identifying information, except for certain parcels labeled with ownership designations rather than lot numbers. Subsequent conveyances of properties depicted on these plats reference an unrecorded Holmes plat and utilize property descriptions consistent with those found in the 1920 Holmes deed.

In addressing the issues on appeal, the threshold determination concerns the nature of the property interests originally created and the identity of the initial holders of those interests. Our Supreme Court has articulated the general history of plat legislation as follows:

In the earliest days of this state, indeed, even before statehood, in order to allow townships to be subdivided into discrete areas containing, for example, residential lots, dedicated streets, alleys, parks, etc., plat legislation was enacted. After Michigan became a state in 1837 there were numerous statutes amending and revising the requirements for recording and changing plats over the years. Further, in 1873 Michigan began centrally maintaining a file of all plats with the State Treasurer so that interested individuals could inspect them and ascertain the rights and limitations of a given plat. That practice has continued to this day with over 66,000 subdivision plats on file that may be reviewed on a website maintained by the Department of Labor and Economic Growth. [*Martin v Beldean*, 469 Mich 541, 543-544; 677 NW2d 312 (2004).]

With respect to dedications, both public and private dedications are recognized as legally valid in Michigan. *Redmond v Van Buren Co*, 293 Mich App 344, 352; 819 NW2d 912 (2011). Public dedications have been defined as appropriations “of land to some public use, accepted for such use by or in behalf of the public.” *Id.* (quotation marks and citation omitted). A public dedication may be accomplished by either a statutory dedication or a common-law dedication. *Id.* Two elements are required to establish a statutory dedication: (1) “a recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use,” and (2) “acceptance by the proper public authority.” *2000 Baum Family Trust v Babel*, 488 Mich 136, 149; 793 NW2d 633 (2010) (quotation marks and citation omitted). A valid common-law dedication, however, requires three elements: (1) “intent by the property owner to offer the land for public use,” (2) “an acceptance by, and maintenance of the road by, public officials,” and (3) “use by the public generally.” *Id.* at 147.

Here, the parties do not dispute that the plat at issue was not recorded, nor do they assert that any portion of the subject land was intended for public dedication. Accordingly, this case does not concern a public dedication. See *id.* at 147, 149. Nevertheless, the principles governing public dedication are analogous to those applicable to private dedication, which is the central issue in this appeal.

Michigan courts have long recognized the validity of private dedications, predating their first statutory recognition in the 1925 Plat Act, 1925 PA 360, and subsequently in the Land Division Act, MCL 560.101 *et seq.*, also known as the Plat Act of 1967. *Redmond*, 293 Mich App at 354. Summarizing our Supreme Court’s holdings in *Little v Kin*, 469 Mich 553, and *Martin v Beldean*, 469 Mich 541, this Court has explained that, in general, a private dedication in a plat executed prior to January 1, 1968—the effective date of the Land Division Act—conveys at minimum an irrevocable easement to the grantees in the dedicated land, whereas a private dedication made after that date conveys a fee interest. *Redmond*, 293 Mich App at 354; see also *Little*, 469 Mich at 564 (“[D]edications of land for private use in plats before 1967 PA 288 took effect convey at least an irrevocable easement in the dedicated land.”)

In *Little*, our Supreme Court determined that the dedicatory language in a 1913 recorded plat—specifically, that the parks depicted therein were “dedicated to the owners of the several lots”—served to grant the lot owners an irrevocable right to use those parks. *Little*, 469 Mich at 555, 562-564. The Court affirmed that private dedications are recognized in recorded plats and clarified that “a purchaser of platted lands receives not only the interest described in the deed, but also whatever rights are reserved to the lot owners in the plat.” *Id.* at 561, 563.

In *Redmond*, this Court considered, as an issue of first impression, the validity of private dedications not memorialized in a plat—referred to as “common-law private dedications.” *Redmond*, 293 Mich App at 356. This Court held that the same elements required for a public common-law dedication—intent to dedicate, acceptance and maintenance, and use—apply with equal force to private common-law dedications. *Id.*

The dispute in *Redmond* centered on two drives situated on four lots within a subdivision, which provided vehicular access to other lots in the subdivision. *Id.* at 346–347. A locked gate controlled access to these drives. *Id.* In 1956, the four lots containing the drives and gate were purportedly conveyed to a homeowners’ association. *Id.* at 347. However, because the homeowners’ association had not been formally established as a legal entity, this Court determined that the 1956 conveyance was ineffective. *Id.* at 356. Noting that “a common-law dedication need not be in writing and that ‘dedications have been established in every conceivable way by which the intention of the dedicator could be evinced,’ ” *Id.* at 355, quoting *Badeaux v Ryerson*, 213 Mich 642, 647; 182 NW 22 (1921), this Court proceeded to examine both the deed of the failed conveyance and additional historical evidence regarding the use of the drives to determine whether a common-law private dedication had in fact occurred. *Redmond*, 293 Mich App at 355–359.

This Court concluded that the failed deed, together with the surrounding circumstances, demonstrated an intent to dedicate the four lots for the private use of subdivision lot owners to provide access to their properties. The record further established that private individuals in the subdivision had accepted, maintained, and used those lots both before and after the failed conveyance. *Id.* Accordingly, this Court held that a common-law private dedication had occurred, resulting in the creation of a benefit to those lot owners whose sole means of access was through those lots. *Id.* at 359.

Here, it is undisputed that the subdivision at issue was not memorialized in a *recorded* plat at the time that it was initially developed, and the unrecorded plats that exist in the record do not include a date to indicate when they were made.⁷

From the present record, it is reasonable to infer that the plats were created sometime between 1920 and 1941. This is supported by the 1941 deed from Roy and Cora Holmes to

⁷ At one of the hearings, defense counsel indicated that the earlier plat that did not include lots 31-35 was recorded in 1984, but the parties agreed that this did not satisfy the requirements of the relevant plat act in effect when the subdivision was initially developed. Accordingly, we have continued to refer to these plats as unrecorded plats, which is also consistent with how they have been treated throughout this litigation.

William J. Jend, which conveyed Lot 31 and specifically referenced both Lot 31 and the 1920 deed in which Cora Holmes acquired the property depicted on the plats as a subdivision of individual lots. Had this pre-1968 plat been properly recorded, any dedication of land for private use contained within the plat would have created at least an irrevocable easement. *Little*, 469 Mich 564. The absence of recording, however, does not render the plat entirely meaningless. See *Quinnin v Reimers*, 46 Mich 605, 606; 10 NW 35 (1881) (“Objection was taken to the plat that it was not properly acknowledged; but as it appeared that the conveyances under which both parties claimed referred to and were made in reference to it, the objection has no force.”). More than 150 years ago, our Supreme Court recognized that an unrecorded plat could provide evidence of real property interests when justified by the circumstances:

None of our statutes in reference to town plats go so far as to render deeds of conveyance between individuals void, because made by reference to an unacknowledged or unrecorded plat. But any such plat, or any other map or plat, whether to be found in a public office or in the possession of any person, may still be used for the purpose of identifying the land intended to be conveyed, though no description be given except by reference to such plat by which the property conveyed could be ascertained. [*Johnstone v Scott*, 11 Mich 232, 239 (1863).]

The fact that a plat was not actually recorded, even if it was incorrectly claimed to have been properly recorded, is generally “an incidental circumstance of much less importance than the fact of the existence of the plat itself” *Id.* at 240.

Here, although the creator of the plat failed to properly record it, we apply the analytical framework set forth in *Redmond*, 293 Mich App at 355-359, which addressed a comparable scenario involving a failed deed conveyance. Under *Redmond*, the dispositive inquiry is whether a common-law private dedication is established by the unrecorded plat and the relevant historical evidence. As our Supreme Court has explained, a dedication is distinct from a grant. *Badeaux*, 213 Mich at 647. The validity of a common-law dedication does not require a specific formality; unlike the transfer of real property by deed, a written instrument is unnecessary for an effective dedication. *Id.* Dedication may be established by any means sufficient to demonstrate the dedicator’s intent. *Id.* As previously articulated, a common-law private dedication requires proof of the dedicator’s intent, acceptance and maintenance by the public or intended beneficiaries, and actual use. *Redmond*, 293 Mich App at 356.

Our Supreme Court has generally defined a plat as “a description of the physical property interests on a particular area of land.” *Beach v Lima Twp*, 489 Mich 99, 111; 802 NW2d 1 (2011) (quotation marks, citation, and emphasis omitted). “When interpreting deeds and plats, Michigan courts seek to effectuate the intent of those who created them.” *Tomecek v Bavas*, 482 Mich 484, 490-491; 759 NW2d 178 (2008) (opinion by KELLY, J.). “Exacting ‘magic words’ are not required on a plat to create an easement.” *Id.* at 490.

Considering the plats in the present case, there is no specific language expressly purporting to dedicate any streets or walks to the lot owners, or anyone else. The plats show a strip between what is now lots 30 and 31, designated as “Walk,” that runs toward the lake and dead ends into an area designated as “Spring Park.” The plats also show a strip, designated as “Shore Walk,” that runs parallel to the lakeshore and intersects the Walk at issue. Shore Walk runs on both sides of

the Walk at issue and through Spring Park. The plats also depict other similar “Walks” that run roughly parallel to the Walk at issue, between various lots and from Durkee Drive to the lakeshore.

Generally, when a plat has been recorded, “the platting and sale of lots constitute a dedication of streets, etc., delineated on the plat as between the grantors and the purchasers from them.” *Kirchen v Remenga*, 291 Mich 94, 100, 104; 288 NW 344 (1939) (quotation marks and citation omitted). In *Kirchen*, the Court stated:

The purchasers of lots in the original plat took not only the interest of the grantor in the land described in their respective deeds, but, as an incorporeal hereditament appurtenant to it, took an easement in the streets, parks and public grounds mentioned and designated in the plat as an implied covenant that subsequent purchasers should be entitled to the same rights. The grantors could not recall this easement and covenant any more than they could recall other parts of the consideration. They added materially to the value of every lot purchased. And the rule has been established in this State that such an easement appurtenant to the lots sold is valid and enforceable not only against the plat of such land, but as against all who hold under the original grantor [T]he rule is thus stated: ‘Where land is represented on a map or plat as a park, public square, or common, the purchasers of adjoining lots acquire as appurtenant thereto a vested right to have the space so designated kept open for the purpose and to the full extent which the designation imports. The sale and conveyance of lots according to such plat implies a covenant that the land so designated shall never be appropriated by the owner or his successors in interest to any use inconsistent with that represented on the original map. And the purchaser of an adjoining lot acquires such an easement in the park or public square in front of it as entitles him to proceed in equity to prevent by injunction the appropriation of the park or square to any use other than that designated on the map or plat by reference to which he purchased his lot; he is not a mere volunteer seeking to enforce the rights of the public; he has a special interest of his own to protect.’ [*Id.* at 108-109 (citations omitted).]

Had the plat in this case been recorded, then the designations of streets, walks, and parks on the plat would have created an easement appurtenant in favor of the owners of lots in the subdivision, running with the land. *Id.* “An appurtenant easement attaches to the land and is incapable of existence apart from the land to which it is annexed. An easement appurtenant is necessarily connected with the use or enjoyment of the benefited parcel and may pass with the benefited property when the property is transferred.” *Heydon v MediaOne*, 275 Mich App 267, 270; 739 NW2d 373 (2007) (citation omitted). Although a plat of the subdivision in this case was not recorded, the depiction on the plat of the walks, streets, and parks is nonetheless evidence that the plat creator intended the same outcome—an easement in favor of the lot owners. *Redmond*, 293 Mich App at 355-359.

Further historical evidence in the record supports that this was the original intent. In the 1941 warranty deed conveying Lot 31 from Roy and Cora Holmes to William J. Jend, Lot 31 is specifically described by reference to the recorded 1920 Holmes deed. Furthermore, the 1941 deed also contains the following pertinent language:

Grant is also made of the right to use (in common with other owners in this subdivision) all driveways connecting this land with the Public Highway on the south.

. . . Reservation is made of a right of way for a walk and driveway across said land between the water's edge and the building line. [Illegible] to be for the use of the owners of any lot or parcel of land in this subdivision. Said right of way to be [illegible] as "Shore Walk."

Given that Cora Holmes owned the property from 1920 to 1941, and considering the earlier inference that the plats were created during that period, it is reasonable to conclude that the Holmeses were responsible for the creation of the plats. Accordingly, the language in the 1941 deed constitutes a clear expression of their intent regarding the driveways or "walks" leading to the lakeshore, as well as Shore Walk. Notably, the deed does not reference Spring Park. The record supports the conclusion that the plat creators intended to establish an irrevocable easement in favor of the lot owners over the Walk at issue and Shore Walk. Spring Park appears to be a portion of Shore Walk or an area traversed by Shore Walk. With respect to acceptance, maintenance, and use, evidence demonstrated that lot owners historically used the Walk at issue to access a well near the lake for water. Further, since approximately 1958, the Walk has been used as a driveway for access to Lot 31 and the lots to its east. On this record, the evidence supports the conclusion that a common-law private dedication of the Walk at issue and Shore Walk was created for the benefit of the subdivision's lot owners. See *Redmond*, 293 Mich App at 356. Ordinarily, the private dedication of an easement in a pre-1968 recorded plat becomes irrevocable upon the sale of a lot, and "a landowner is considered to have accepted any private dedication in a plat when property is purchased pursuant to a deed that references the plat." *Beach*, 283 Mich App at 510-511 (quotation marks and citation omitted).

Defendants contend that an easement did not arise because the Tappings sought and obtained an implied easement of convenience. However, the trial court's written opinion contains no indication that it relied upon a theory of implied easement of convenience. A "way of necessity is just what it purports to be, a way arising by implication of law out of the necessities of the case and which, being based upon necessity, ceases to exist when the necessity for it ceases." *Waubun Beach Ass'n v Wilson*, 274 Mich 598, 608; 265 NW 474 (1936). The classic example of such an implied easement arises when a landlocked parcel is conveyed and an easement for ingress and egress is implied as a matter of law by the circumstances. *Id.* "No implication of a grant of an easement arises from proof that the easement will be convenient in the occupation or use of the land granted; the foundation of the easement being necessity and not convenience." *Id.* at 611-612. Contrary to defendants' characterization, the trial court did not grant the easement based on implication by necessity or convenience. Rather, the court relied on the plat and historical evidence of the Holmeses' intent. Accordingly, defendants' argument on this point does not establish error by the trial court.

The next issue is whether this easement was extinguished by adverse possession. "An easement created by a private dedication cannot be revoked and binds the original owner-platitor and successors. But these principles do not preclude adverse possession of such an easement." *Beach*, 283 Mich App at 511. "The heart of an adverse possession claim is that a party is effectively and unlawfully intruding on a real property interest lawfully held by another." *Id.* Hence,

[a] claim of adverse possession requires clear and cogent proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years. These are not arbitrary requirements, but the logical consequence of someone claiming by adverse possession having the burden of proving that the statute of limitations has expired. To claim by adverse possession, one must show that the property owner of record has had a cause of action for recovery of the land for more than the statutory period. A cause of action does not accrue until the property owner of record has been disseised of the land. MCL 600.5829. Disseisin occurs when the true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership. [*Wengel v Wengel*, 270 Mich App 86, 92; 714 NW2d 371 (2006).]

Where a claim involves an easement interest, the evidentiary burden for proving adverse possession is heightened. See *Beach*, 283 Mich App at 524. An easement may be enforced at any time until it is extinguished by adverse possession; however, use of an easement by the owner of the servient estate will not mature into adverse possession unless such use is inconsistent with the easement. *Id.* at 514. Thus, even extensive use of an easement by the servient estate owner will not extinguish the easement by adverse possession unless the use seriously interferes with or blocks the easement holder's passage. *Id.* at 514-515. The establishment of adverse possession requires sufficient evidence of hostile prevention of the use of the easement or use wholly inconsistent with the easement. *Id.* at 515. Termination of an easement by adverse possession is difficult to establish. *Id.*, quoting 1 Cameron, Michigan Real Property Law (3d ed), § 6.30, p 241.

Here, there is no evidence that the Walk—i.e., Pebble Drive—was ever used in a manner inconsistent with the easement. Although the record shows that Pebble Drive was used for a substantial period by the owners of lots to the east, there is no evidence that other lot owners in the subdivision were prevented from using Pebble Drive until the present dispute arose. The record further reflects that Lot 30 was previously undeveloped and that similar walks exist west of Lot 30, suggesting that other lot owners simply had no need to use Pebble Drive. An easement is not lost by mere neglect of use. See *Day v Walden*, 46 Mich 575, 583; 10 NW 26 (1881) (“An accepted grant cannot be waived or abandoned, and the neglect of the grantee to enjoy the easement would be no more significant in its bearing upon his rights than the neglect to enjoy the freehold to which the easement was appurtenant.”). Defendants have therefore failed to demonstrate the hostile use necessary to extinguish the easement by adverse possession. *Beach*, 283 Mich App at 514-515.

The effect of the quitclaim deeds is not entirely clear. On appeal, defendants assert—without further explanation or legal analysis—that the quitclaim deeds executed by “various individuals with an interest in the Walk,” together with the 1979 Charles Perrault affidavit regarding the historical use of Pebble Drive, serve to extinguish any easement over Pebble Drive. “A quitclaim deed is, by definition, [a] deed that conveys a grantor’s *complete interest or claim in certain real property* but that neither warrants nor professes that the title is valid.” *Mich Dep’t of Natural Resources v Carmody-Lahti Real Estate, Inc.*, 472 Mich 359, 377-378; 699 NW2d 272 (2005) (quotation marks and citation omitted; alteration in original). “A deed of quit claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.” MCL 565.3. “A quitclaim deed is generally

construed as conveying all the grantor's interest in the described property unless some interest is expressly excepted or reserved." *Eastbrook Homes, Inc v Treasury Dep't*, 296 Mich App 336, 349; 820 NW2d 242 (2012) (quotation marks and citation omitted). A "quitclaim deed transfers any interest the grantor may have in the lands, whatever its nature." *Id.* (quotation marks and citation omitted).

However, the easement at issue was created by private dedication in favor of all lot owners in the subdivision. A private dedication becomes irrevocable upon the sale of the lots, as the dedication enhances the lots' value, which is reflected in the sale price and creates a reliance interest for purchasers. See *Little*, 469 Mich at 559. Accordingly, a single lot owner—or even several lot owners—cannot unilaterally extinguish the beneficial easement interest by conveying their individual interests. "The sale and conveyance of lots according to such plat implies a covenant that the land so designated shall never be appropriated by the owner or his successors in interest to any use inconsistent with that represented on the original map." *Kirchen*, 291 Mich at 109. "The rights granted under the dedicatory clauses in the plat to the owners of lots in the subdivision may not be infringed by one lot owner for his own convenience to the detriment of his fellow lot owners." *Minnis v Jyleen*, 333 Mich 447, 454; 53 NW2d 328 (1952).

Assuming without deciding that the various quitclaim deeds were intended to terminate the easement rights of the grantors, there is no evidence that every lot owner in the subdivision was included among the grantors. The quitclaim deeds do not indicate that the grantors owned property in the subdivision or identify which lots they allegedly owned. Although a quitclaim deed transfers any interest the grantor may have in the conveyed property, defendants have provided no evidence that these grantors held any interest in Pebble Drive, nor any evidence that all lot owners with an easement interest in Pebble Drive relinquished their interests. Although the Slacks averred that quitclaim deeds were obtained from "any individual having any interest in that portion of the property between Lots 30 and 31," there is no indication that the Slacks possess any information supporting that assertion beyond the recorded quitclaim deeds themselves, which do not contain such evidence.

In their appeal, defendants have failed to support their assertions regarding the effect of the quitclaim deeds with citations to any evidence in the record that would sufficiently justify those assertions and have failed to address, much less grapple with, the legal quandaries identified above. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations omitted). Defendants have therefore abandoned any argument relying on the quitclaim deeds. *Id.*

With respect to defendants' Marketable Record Title Act argument, defendants only raised this argument in the trial court with respect to Spring Park after the court had already ruled regarding the existence of an easement over Pebble Drive. Defendants did not argue that the Marketable Record Title Act extinguished the easement over Pebble Drive. This argument is therefore waived for appeal. The "litigants in a civil case have a duty to raise claims of error in the trial court or waive them: Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute."

Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC, 347 Mich App 280, 293; 14 NW3d 472 (2023) (quotation marks and citation omitted). Because defendants failed to timely raise this precise argument in the trial court, they waived the claim of error for appeal. *d.* at 289-290.

For the reasons above, defendants have not demonstrated any error requiring reversal.

Turning to the Tappings' cross-appeal, they first argue that because the trial court concluded that the easement had not been terminated by adverse possession, the trial court could not have also concluded that the Slacks had obtained title to the underlying land through adverse possession. This argument is without merit because it is based on a fundamental misunderstanding of the difference between ownership and mere use rights. "An easement is a limited property interest; it is the right to use the land burdened by the easement for a specific purpose." *Smith v Straughn*, 331 Mich App 209, 215; 952 NW2d 521 (2020). However, the "fee owner may use his or her land on a servient estate for any purpose not unreasonably inconsistent with the rights of the easement holder." *Id.* at 216. Having failed to address this distinction and its effect on the argument, the Tappings have abandoned this argument on appeal. *Johnson*, 256 Mich App at 339. The Tappings therefore have failed to demonstrate that appellate relief is warranted on this basis.

The Tappings next argue that under *Morse v Colitti*, 317 Mich App 526; 896 NW2d 15 (2016), they own a fee interest to the center of Pebble Drive and Spring Park. In *Morse*, there was a 1928 plat that depicted a 10-foot-wide "walk" that ran between the lot owned by the plaintiffs and the lot owned by the defendants. *Id.* at 531-532. The plat "dedicated the 'streets, alleys and parks' to 'the use of the present and future lot owners.'" *Id.* A dispute arose between the parties over the walk. *Id.* at 532. This Court held that there had been a private dedication of the walk in the plat and that the parties each owned the fee in the walk to its center, "subject to an easement given to the lot owners generally." *Id.* at 541-543.

Assuming without deciding that the Tappings are correct that the initial effect of the private dedication in this case was to grant lot owners abutting Pebble Drive the underlying fee to the center of the road, rather than only an easement, the Tappings do not engage in the necessarily required next step of analysis under the circumstances of this case, which is to address the effect of subsequent events on title to that strip of land. The record indicates that the Slacks' predecessors in interest to Lot 31, over the course of decades, acted as if they owned the strip of land constituting Pebble Drive. Although, as previously discussed, there was insufficient evidence to establish that this use was not still subject to the easement rights of the other lot owners, the strip of land nevertheless became part of the land described in the Slacks' deed for Lot 31. The Tappings do not address these facts on appeal in the context of their argument that they own fee to the center of Pebble Drive under *Morse*. The Tappings also do not address the trial court's ruling that defendants held title to Pebble Drive as result of their recorded deeds, and the Tappings do not explain how the rule in *Morse* could somehow overcome the language in the Slacks' deed. The Tappings have therefore abandoned this argument. *Johnson*, 256 Mich App at 339.

Finally, the Tappings argue that the trial court erred by ruling the Spring Park did not exist. The trial court ruled that fee ownership of the area designated as Spring Park was vested in Slack Michigan and that the Tappings did not have any rights or interest in that area. The court reasoned that Spring Park was not specifically referenced in any conveyances of property in the subdivision

and that there was no evidence that the area was ever used as a park. The court also concluded that Spring Park was not part of the Shore Walk and that the Shore Walk ran through the area that had been designated on the unrecorded plat as Spring Park. The Tappings argue that Spring Park does exist, but they do not provide any understandable legal argument specifically addressing the actual basis of the trial court's ruling. They instead attempt to relitigate the issue anew as if they were in the trial court. By failing to properly address the trial court's actual reasoning and ruling, the Tappings have abandoned this issue on appeal. *Johnson*, 256 Mich App at 339.

The Tappings have therefore failed to demonstrate any error requiring reversal in their cross-appeal.

Affirmed. No costs are awarded. MCR 7.219(A).

/s/ Stephen L. Borrello

/s/ Mariam S. Bazzi

/s/ Andrew J. Lievens