STATE OF MICHIGAN

COURT OF APPEALS

WAYNE ABEN, PATRICIA K. ABEN, ROSS A. DEKEYSER, PATRICIA DEKEYSER, RONALD MICALLEF, MARY E. MICALLEF, CLIFFORD FUNKA, DEANNA FUNKA, HELEN M. KARN, LOIS J. CRAIN, and MJM PARTNERSHIP,

Plaintiffs/Counter Defendants-Appellees,

v

CHAD R. HEHL, KAREN HEHL, RONALD G. WITT, JR., ERVIN S. SWEET, MARILYN L. SWEET, LAWRENCE REAUME, FLORENCE REAUME, TONI WESTHEIMER, KARY J. WATSON, WENDY WATSON, BRADLEY A. GROSS, and EDGAR M. WESTHEIMER,

Defendants/Counter Plaintiffs-Appellants,

and

JASON A. HUBBARD and ROSANNA S. ECIE,

Defendants/Counter Plaintiffs,

and

MAGGIE RENE HESTER and RONALD MICALLEF TRUST,

Defendants.

UNPUBLISHED
January 25, 2005

No. 249978
Lenawee Circuit Court
LC No. 02-000854-CH

Before: Schuette, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order granting plaintiffs' requested relief and enjoining defendants from maintaining wharves and mooring boats at the end of the walks dedicated to all lot owners in the subdivision plat. We affirm.

Plaintiffs are owners of lots that affront Silver Lake ("lake lots") and defendants are owners of lots that are separated from Silver Lake by plaintiffs' properties and a road ("backlots") in Silver Lake Grove Subdivision, which was platted in early 1967, before 1967 PA 288 took effect.[1] Plaintiffs filed suit against defendants seeking an injunction barring defendants from maintaining wharves and permanently mooring boats at the end of three walks (Walks "A," "B," and "C") dedicated to all the subdivision lot owners in the subdivision plat.

Defendants first argue that the trial court clearly erred when it found that the plat dedication did not convey fee simple ownership in the walks to the lot owners. We disagree. Determining the extent of a party's rights under a plat dedication is a question of fact reviewed for clear error. *Dyball v Lennox*, 260 Mich App 698, 704; 680 NW2d 522 (2003).

The intent of the grantor controls the scope of the grantor's dedication. *Id*. at 88. Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted. *Dyball*, *supra*. If, on the other hand, the text of the instrument is ambiguous, extrinsic evidence may be considered in order to determine the scope of the conveyance. *Id*. The plat in this case simply states that "walk 'A', walk 'B', walk 'C' and the private drive 'A' are dedicated to the lot owners of the Plats of Silver Lake Grove, aforesaid, and any addition to same." The trial court rested its decision on the plat itself. It found that the areas granted were narrow and oddly shaped, suggesting that they existed to create parallel lot lines and uniformity among the principal riparian lots in addition to providing backlot owners with some, albeit limited, access to the lake. The trial court correctly found that the walkways were so narrow that the construction of a wharf by one backlot owner actually restricted access by other owners for non-boating purposes. Defendants' argument that the dedication amounted to the grant of a fee interest was further belied by the act of dedication rather than an outright grant and the fact that the plat denominated the areas "walks." In accordance with *Little v Hirschman*, 469 Mich 553, 555, 563-564; 677 NW2d 319 (2004), the dedication of the land itself did not automatically convey a fee simple interest or the riparian right to establish a wharf, but rather, presumably provided an irrevocable easement for access to the lake. See also *Martin v Beldean*, 469 Mich 541, 548 n 18; 677 NW2d 312 (2004). Therefore, the trial court did not clearly err when it concluded that defendants did not have the authority to establish and maintain wharves at the end of the walks. It follows that the trial court's grant of injunctive relief was not an abuse of discretion. *Higgins Lake Property Owners Assoc v Gerrish Township*, 255 Mich App 83, 105; 662 NW2d 387 (2003).

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[1] This is important because the Land Division Act, MCL 560.101, *et seq*. (1967 PA 288), decrees that a private dedication in a plat transfers a fee simple interest to the donees. MCL 560.253(1); *Martin v Beldean*, 469 Mich 541, 548; 677 NW2d 312 (2004). To be exact, the plat was registered on February 23, 1967, and 1967 PA 288 took effect on January 1, 1968. MCL 560.293; *Martin*, *supra* at 542.

While defendants argue that they obtained the disputed riparian rights by prescriptive easement, defendants did not prove or even raise this argument before the trial court, instead relying solely on the plat's language to support their claims at trial. *Brown v Loveman*, 260 Mich App 576, 599; 680 NW2d 432 (2004). Defendants substantially abandoned the assertions in their answer that the statute of limitations had run and they had "an express and/or prescriptive easement to construct docks and moor boats at the end of their walks." Because we are not persuaded that the court's failure to address the issue sua sponte resulted in manifest injustice, we will not address the issue here. *Id*.

Affirmed.

/s/ Bill Schuette
/s/ David H. Sawyer
/s/ Peter D. O'Connell