

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MANISTEE COUNTY ROAD COMMISSION,

Plaintiff-Appellee,

v

NORTHWOODS DEVELOPMENT, LLC,

Defendant/Third-Party Plaintiff-  
Appellant,

and

ONEKAMA TOWNSHIP, DEPARTMENT OF  
CONSUMER & INDUSTRY SERVICES, and  
DEPARTMENT OF NATURAL RESOURCES,

Third-Party Defendants-Appellees,

and

MANISTEE COUNTY DRAIN COMMISSIONER,  
CONSUMERS ENERGY COMPANY,  
AMERITECH, ALLAN AND CATHERINE  
DOMRES, MARY JANE CLARK SWANSON,  
EVELYN SORENSON TRUST, THOMAS W.  
CAREY, JR., PORTAGE POINT DEVELOPMENT,  
and PORTAGE POINT CONDOMINIUM  
ASSOCIATION,

Third-Party Defendants,

and

ALBERT HERZOG, JUDITH HERZOG, DANIEL  
MONAHAN, SANDRA MONAHAN, RICHARD S.  
FORWOOD LIVING TRUST, RICHARD S.  
FORWOOD, SHARON OLSON, DANIEL OLSON,  
ANN M. DILLON, ADAMS FAMILY TRUST,  
HILDEGARD ADAMS, EARL ADAMS, EVELYN

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UNPUBLISHED

May 25, 2004

No. 243971

Manistee Circuit Court

LC No. 96-008236-CH

LYSETT SORENSON TRUST, EVELYN L.  
SORENSON, BARBARA L. VANDERVEEN  
REVOCABLE LIVING TRUST, BARBARA L.  
VANDERVEEN, PETER VANDERVEEN, ANN S.  
WHELAN TRUST, JOHN T. WHELAN, ANN S.  
WHELAN, DONALD WIPER, SALLY WIPER,  
JOHN P. HERZOG, SUSAN B. HERZOG, ALFRED  
A. TURNER, SUSAN TURNER, and GAIL  
DRAKE,

Intervening Appellees.

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Before: Whitbeck, C.J., and Griffin and Borrello, JJ.

PER CURIAM.

Defendant Northwoods Development, LLC appeals as of right from a judgment in favor of plaintiff Manistee County Road Commission. We affirm.

### I. Overview

This appeal concerns the ownership of Portage Lake beachfront property located on 7<sup>th</sup> Street in the Plat of Portage Point in Onekama Township in Manistee County (the 7th Street parcel). Seventh Street is an east/west road that is perpendicular to and ends at Portage Point Drive. In a September 9, 2002, judgment, the trial court ruled that the 7<sup>th</sup> Street parcel was a public road under the jurisdiction of the Road Commission. The trial court's judgment was entered "in accordance with" a February 8, 2000, order granting summary disposition in favor of the Road Commission. In that order, the trial court held that Northwoods Development's ownership claims to the 7th Street parcel were precluded under res judicata or collateral estoppel based on a 1979 order in a previous action. Although the trial court's judgment and February 8, 2000, order involve more than the 7th Street parcel, Northwoods Development has explicitly limited its appeal to the 7th Street parcel.

### II. Basic Facts And Procedural History

#### A. The 1979 Case

On March 6, 1979, Portage Point Inn, Ltd., Northwoods Development's predecessor in interest, filed a "petition to vacate a portion of a street." The Road Commission was named as a defendant in the 1979 case. In the petition, Portage Point Inn sought vacation of, among other properties, the 7th Street parcel. Portage Point Inn filed an amended petition to vacate a portion of a street around May 30, 1979. In contrast to the original petition, however, the amended petition sought vacation of the beach property on both sides of the 7th Street parcel, but the description of the property it sought to vacate did not include the 7th Street parcel.

On July 6, 1979, the Manistee Circuit Court issued a "Judgment and Order of Vacation," in which the court granted Portage Point Inn's amended request for vacation, subject to "several

modifications and exceptions.” In granting the motion for vacation, the trial court’s vacation order did not expressly include the 7th Street parcel, in accordance with Portage Point Inn’s amended petition. However, in its judgment and order, the trial court stated, in relevant part:

It is further ordered and adjudged that no new permanent structures be constructed or located in any part of Seventh or Ninth Streets as they are platted, between Avenue A as constructed and the water’s edge of Portage Lake.

#### B. The Current Case

Seventeen years later, on September 11, 1996, the Road Commission filed a complaint against Northwoods Development seeking, among other things, to quiet title to the 7th Street parcel in favor of the Road Commission. Northwood Development’s amended answer denied that the portion of 7th Street between Portage Point Drive and Portage Lake was a public road and contained a counterclaim in which Northwoods Development sought vacation and correction of the Plat of Portage Point to reflect that the 7th Street parcel was not a public road and to quiet title to the 7th Street parcel in its favor.

The Road Commission moved for summary disposition, arguing that Northwoods Development’s claims to quiet title to the 7th Street parcel and have the 7th Street parcel vacated were barred by the doctrines of res judicata and collateral estoppel based on the trial court’s 1979 judgment and order. Northwoods Development also moved for summary disposition, arguing, among other things, that the public authorities never officially accepted the streets in the Plat of Portage Point in a resolution and never improved or maintained the 7th Street parcel and that the offer of dedication of the 7th Street parcel therefore lapsed; that the dedication of the 7th Street parcel as a public road was withdrawn by Northwoods Development’s encroachment on the property; and that the 1979 order did not address whether the 7th Street parcel was a public road because Portage Point Inn’s amended petition in the 1979 case did not include a request to vacate the 7th Street parcel.

The trial court concluded that Northwoods Development’s claims were precluded, stating on the record:

I think we have a—we have a case of estoppel by judgment. Whether this estoppel by judgment is denominated res judicata or collateral estoppel, I’ll let someone else worry about that. It is, in this Court’s opinion, clear estoppel by judgment.

There’s a prior judgment on the issue by the parties or their privies that has preclusive effect.

In its order granting the Road Commission’s motion for summary disposition, the trial court specifically found that “Seventh Street and Ninth Street as platted between Portage Point Drive and the water’s edge of Portage Lake are public rights-of-way.” The trial court also held that Northwoods Development’s counterclaim seeking to quiet title in the 7th Street parcel and seeking vacation of that parcel was precluded by the 1979 order.

Northwoods Development subsequently moved for reconsideration of the trial court's February 8, 2000, order. The trial court denied the motion and ordered Northwoods Development to pay the Road Commission's costs and attorney fees associated with the motion for reconsideration. On September 9, 2002, the trial court entered a "Final Judgment as to all Parties." Regarding the 7th Street parcel, the order stated, "The portion of 7th Street located easterly of relocated Avenue A (locally known as Portage Point Drive) as presently platted, is a public road and shall remain under the jurisdiction of the Manistee County Road Commission and/or Onekama Township."

### III. Res Judicata

#### A. Standard Of Review

Northwoods Development argues that the trial court erred in holding that its ownership claims to the 7th Street parcel were precluded under the doctrine of res judicata. The applicability of the doctrine of res judicata is a question of law that this Court reviews de novo.<sup>1</sup>

#### B. The Application Of Res Judicata

Res judicata relieves parties of the cost and vexation of multiple lawsuits, conserves judicial resources, and encourages reliance on adjudication.<sup>2</sup> Res judicata applies when (1) the prior action was decided on the merits; (2) the decree in the prior decision was a final decision; (3) both actions involved the same parties or their privies; and (4) the matter in the second case was or could have been resolved in the first.<sup>3</sup> Michigan has adopted the "broad" application of res judicata, which bars claims arising out of the same transaction that plaintiff could have brought but did not, as well as those questions that were actually litigated.<sup>4</sup>

We conclude that the elements of res judicata are satisfied and that the trial court did not err in holding that its ownership claims to the 7th Street parcel were precluded under the doctrine. The first element of res judicata is satisfied because the 1979 action was decided on the merits. According to Northwoods Development, res judicata does not preclude its ownership claims to the 7th Street parcel because the 1979 order was a consent judgment and therefore cannot preclude the trial court's consideration of its claims. However, even if the 1979 order was a consent judgment, the order was still a decision on the merits because the doctrine of res judicata applies to consent judgments.<sup>5</sup>

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<sup>1</sup> *Ditmore v Michalik*, 244 Mich App 569, 574; 625 NW2d 462 (2001).

<sup>2</sup> *Id.* at 576.

<sup>3</sup> *Id.*

<sup>4</sup> *Jones v State Farm Mutual Auto Ins Co*, 202 Mich App 393, 401; 509 NW2d 829 (1993).

<sup>5</sup> *Ditmore*, *supra* at 576.

The second and third elements of res judicata are also met. The 1979 order was a final decision, and both actions involved the same parties or their privies. The Road Commission was a party in both the 1979 and the present case and Northwoods Development does not dispute the Road Commission's assertion that Northwoods Development purchased the resort from Portage Point Inn. Northwoods Development and Portage Point Inn in the 1979 case are therefore privies because Northwoods Development "acquired an interest in the subject matter affected by the judgment . . . by . . . purchase."<sup>6</sup>

We also conclude that the fourth element of res judicata is satisfied in this case. Even though the amended 1979 petition did not seek vacation of the 7th Street parcel, the trial court's 1979 judgment and order of vacation nonetheless addressed the 7th Street parcel. Specifically, the trial court stated in the 1979 order, "It is further ordered and adjudged that no new permanent structures be constructed or located in any part of Seventh or Ninth Streets as they are platted, between Avenue A as constructed and the water's edge of Portage Lake." In granting the Road Commission's motion for summary disposition in the present case, the trial court observed that the above-quoted language from the trial court's 1979 judgment and order of vacation constituted an implicit determination that the 7th Street parcel was public land. We agree.

The portion of the 1979 judgment and order of vacation prohibiting the construction of new permanent structures on the 7th Street parcel constitutes an implicit determination that the 7th Street parcel was a public way because the trial court would not have prohibited the construction of any new permanent structures on privately owned property. "[O]wners of land have broad freedom to make legal use of their property."<sup>7</sup> A component of a landowner's right to freely and exclusively enjoy his property is the right to build on that property.<sup>8</sup> Accordingly, the trial court could prohibit construction of any new permanent structures on the 7th Street parcel only if it was public, not private, property.

The doctrine of res judicata applies to points of law necessarily adjudicated in determining and deciding the subject matter of the litigation.<sup>9</sup> We hold that in ordering that there were to be no new permanent structures built on the 7th Street parcel, the 1979 court necessarily determined, as a matter of law, that the 7th Street parcel was a public way. Accordingly, the matter in the present case was actually resolved in the 1979 case even though the amended petition did not specifically raise it. The fourth element of res judicata is therefore satisfied, and the trial court did not err in entering a judgment in favor of the Road Commission.

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<sup>6</sup> *Rohe Scientific Corp v Nat'l Bank of Detroit*, 133 Mich App 462, 467; 350 NW2d 280 (1984).

<sup>7</sup> *O'Connor v Resort Custom Builders, Inc*, 459 Mich 335, 343; 591 NW2d 216 (1999).

<sup>8</sup> *Nollan v California Coastal Comm*, 483 US 825, 834; 107 S Ct 3141; 97 L Ed 677 (1987).

<sup>9</sup> *Jones, supra* at 401.

#### IV. MCL 565.5

##### A. Standard Of Review

Northwoods Development argues that the 1979 order violated MCL 565.5 because it conveyed title to the 7th Street parcel to plaintiff by implication. The interpretation and application of a statute are questions of law that this Court reviews de novo.<sup>10</sup>

##### B. Effect Of MCL 565.5 On Implied Conveyances

MCL 565.5 provides, “No covenant shall be implied in any conveyance of real estate, except oil and gas leases, whether such conveyance contain special covenants or not.” The clear language of MCL 565.5 prohibits implied covenants in any conveyance of real estate. It does not prohibit implied conveyances. Nothing will be read into a clear and unambiguous statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself.<sup>11</sup> Northwoods Development’s interpretation of MCL 565.5 is contrary to its plain language. We agree that the 1979 order implicitly and necessarily determined that the 7th Street parcel was a public way. However, we conclude that there was no violation of MCL 565.5 because there was no implied covenant in any conveyance.

#### V. Costs And Attorney Fees

Northwoods Development argues that the trial court abused its discretion in ordering it to pay the Road Commission’s costs and attorney fees associated with Northwoods Development’s motion for reconsideration. Northwoods Development’s argument regarding this issue consists of two sentences and cites no court rules, statutes, or case law to support its assertion of error. “[A] mere statement without authority is insufficient to bring an issue before this Court.”<sup>12</sup> A party may not simply announce a position “and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.”<sup>13</sup> An appellant who fails to properly address the merits of his assertion of error has abandoned the issue.<sup>14</sup> Because Northwoods Development merely announced its position without citing authority or properly addressing the merits of its claim of error, it has abandoned this issue on appeal.

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<sup>10</sup> *Lewis v LeGrow*, 258 Mich App 175, 183; 670 NW2d 675 (2003).

<sup>11</sup> *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002).

<sup>12</sup> *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

<sup>13</sup> *Id.*, quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

<sup>14</sup> *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

## VI. Motion For Reconsideration

### A. Standard Of Review

Northwoods Development argues that the trial court erred in denying its motion for reconsideration. We review a trial court's decision denying a motion for reconsideration for an abuse of discretion.<sup>15</sup>

### B. The Trial Court's Grounds For Denying The Motion

Northwoods Development cited MCL 455.20 and MCL 455.21 in support of its motion for reconsideration. In granting the Road Commission's motion for summary disposition, the trial court ruled that the 7th Street parcel was a public right-of-way. Although the trial court did not explicitly address MCL 455.20 or MCL 455.21 on the record at the hearing or in its opinion granting the Road Commission's motion for summary disposition, the trial court's ruling that the 7th Street parcel was a public right-of-way constitutes an implicit rejection of Northwoods Development's arguments in its motion for reconsideration. "Generally . . . a motion for . . . reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted."<sup>16</sup> Accordingly, we conclude that the trial court did not abuse its discretion in denying Northwoods Development's motion for reconsideration.

Affirmed.

/s/ William C. Whitbeck  
/s/ Richard Allen Griffin  
/s/ Stephen L. Borrello

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<sup>15</sup> *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

<sup>16</sup> MCR 2.119(F)(3).