

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY J. HANLON,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 179329
Cheboygan County
LC No. 92-3355-CH

CRAIG M. WALDRON,

Defendant/Third-Party
Plaintiff-Appellant,

v

CHEBOYGAN COUNTY
ROAD COMMISSION,

Third-Party Defendant-Appellee.

Before: MacKenzie, P.J., and Markey and J.M. Batzer*, JJ.

MacKENZIE, P.J. (concurring).

I agree with the majority that the trial court did not err in granting plaintiff a permanent injunction against defendant to prevent defendant from constructing a boat well at the end of Prospect Street. I write separately in order to explain why I conclude that the court's ruling was correct.

An 1880 plat map of the village of Indian River showed Prospect Street extending southeastward to the edge of the Indian River where the Indian River and the Little Sturgeon River converge. A north-south road then named Townline Road, and later known as Gratiot Street, also ended at the river's edge, at its intersection with Prospect Street. Gratiot Street was vacated by court order in 1969.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant's property is located on the north side of Prospect Street and runs east to the edge of the Indian River. The vacated Gratiot Street bisects the property. Plaintiff's property is on the south side of Prospect Street and also extends to the river.

Unlike the 1880 plat map, the so-called 1969 Doyle survey indicated that the Indian River was approximately thirty to fifty feet from the southeasterly end of Prospect Street. Plaintiff's witness, surveyor Delmar Porter, attributed this difference to the accretion of land along the banks of the Indian River since 1880 -- including the accretion of the land where defendant proposed to build his boat well. Defendant's witness, surveyor Richard Dunn, on the other hand, testified that the banks of the Indian River had not changed appreciably from 1840 to the present. He described the 1880 plat map as very poor in its documentation of dimensions, suggesting that Prospect Street had always ended short of the river rather than at the river's edge. Witnesses called by third-party defendant road commission indicated that a channel cut sometime between 1880 and 1902 altered the flow of the Little Sturgeon River, resulting in a shift and a reduction in the flow of the Indian River where the rivers converged, and hence the accretion of land in the area of plaintiff's property, Prospect Street, and defendant's property.

The trial court found that Prospect Street extended to the edge of the Indian River in 1880, that the court order vacating Gratiot Street did not vacate the southeasterly end of Prospect Street, that Prospect Street had not been abandoned, and that land had accreted between the end of Prospect Street to the present edge of the river. Based on these findings, the court concluded that Prospect Street extends to the accreted edge of the Indian River, and that defendant's property was subject to a public easement extending from the end of Prospect Street southeastward to the river's present edge. Accordingly, the court determined that defendant should be enjoined from constructing the boat well at the end of the street.

Like the majority, I reject defendant's claim that the trial court erred in finding that accretion had occurred along the banks of the Indian River. Although Dunn testified that the banks of the river had remained unchanged, his measurements (which relied on the location of Prospect Street) were based on a survey made in 1840, before Prospect Street existed. Further, the trial court's finding that accretion had occurred is supported by a comparison of the 1880 plat map and a 1902 plat map with the 1969 Doyle survey and Dunn's 1991 survey. It is also supported by Porter's testimony, as well as that of engineer James Muschell concerning the effect of the channel constructed from the Little Sturgeon River. Under these circumstances, the court did not clearly err in finding that accretion had occurred. Nor did the court err in relying on the 1880 plat map in deciding that the accreted land on which defendant planned to build the boat well was part of Prospect Street. As recognized by the court, the 1880 plat map may not have been perfectly accurate, but both it and the 1902 plat map showed that Prospect Street ended at the edge of the Indian River. Based on the evidence, the trial court did not clearly err in finding that Prospect Street continued across the accreted land to the present edge of the river.

Moreover, the court correctly applied the law to the facts before it. The general rule is that land bordering water is riparian land. *Williamson v Crawford*, 108 Mich App 183, 186; 310 NW2d 419 (1981). The general rule of riparian rights includes the right to acquire accretions that add to the original riparian land. *Tennant v Recreation Development Corp*, 72 Mich App 183, 186; 249 NW2d 348

(1976). Because Prospect Street ended at the river before the accretion occurred, it was riparian land and the accreted land at the southeastern end of the street became an extension of the street.

I also agree with the majority that the 1969 order vacating Gratiot Street did not have the effect of ending Prospect Street where the two roads had intersected. Under the Subdivision Control Act of 1967, a complaint seeking to vacate a platted street must describe what is to be vacated. MCL 560.223; MSA 26.430(223). In this case, the order that vacated Gratiot Street does not purport to vacate or alter the location of Prospect Street; it does not even mention Prospect Street. In the absence of any indication of an intent to vacate both Gratiot Street and the end of Prospect Street, I agree with the trial court's conclusion that the 1969 order did not operate to establish a new end for Prospect Street that would fall short of the river's edge.

Finally, like the majority, I find no error in the trial court's extension of the full width of Prospect Street to the Indian River. The court recognized that when a dedicated, platted street ends at the water, it is presumed to provide public access to the water unless contrary evidence is shown. *Backus v Detroit*, 49 Mich 110, 119-120; 13 NW 380 (1882). When accretions occur, public access is preserved by extending the way to the water. See *Cass County Park Trustees v Wendt*, 361 Mich 247, 250-252; 105 NW2d 138 (1960); *Meridian Twp v Palmer*, 279 Mich 586, 590; 273 NW 277 (1937); *Kemp v Stradley*, 134 Mich 676, 679; 97 NW 41 (1903); *Backus, supra*, and cases cited therein. See also 78 Am Jur 2d, Waters, § 273, pp 716-717. The trial court properly followed these rules and extended Prospect Street by its full width to the Indian River.

/s/ Barbara B. MacKenzie