

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT E. HOISINGTON and JOAN A.
HOISINGTON,

UNPUBLISHED
March 12, 1999

Plaintiffs/Counter-
Defendants/Appellants,

v

No. 204515
Lenawee Circuit Court
LC No. 96-007165 CH

VERNA PARKES,

Defendant/Counter-Plaintiff/Appellee.

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Plaintiffs appeal by right a bench trial verdict in favor of defendant in this real property action. On appeal, plaintiffs argue that the trial court erred in finding that the easement plaintiffs' predecessors in interest granted to defendant permits defendant to construct a dock and permanently moor a boat in the water at the terminus of the easement. We reverse.

Plaintiffs own Lot 14 in the Plat of Kennedy, Franklin Township, Lenawee County, Michigan. This lot borders Sand Lake. Defendant owns a back lot which does not border the lake. Defendant holds an easement over a portion of plaintiffs' property that allows her access to the lake. When defendant constructed a dock and boat hoist at the terminus of the easement, plaintiffs brought suit seeking to enjoin her from constructing a dock or permanently mooring a boat at this site. Following a bench trial, the trial court found that the easement permitted defendant to construct a dock and permanently moor a boat at its terminus, but it did not permit her to construct a boat hoist.¹

"This Court reviews equitable actions under a de novo standard. We review for clear error the findings of fact supporting the decision," including the extent of the parties' respective rights under an easement. *Dobie v Morrison*, 227 Mich App 536, 541-542; 575 NW2d 817 (1998); *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997).

Plaintiffs first argue that the trial court erred in holding that the easement permitted defendant to construct a dock and permanently moor a boat at the terminus of the easement. We agree.

The easement provides:

An easement and right of way over and across a strip of land of the uniform width of 10 feet, Northwest to Southeast from off and across the Southeast side of Lot 14 on the Plat of “Kennedy”, according to the recorded plat thereof, being a part of the Northwest Quarter of Section 7, Town 5 South, Range 3 East, for the use of said Grantees and their guests and successors in title as a means of ingress and egress to and from the shore and water of Sand Lake. Said land to be used for travel by pedestrians and for the movement of boats to and from said Lake but in no event to be used for motor vehicle traffic or parking purposes.

Defendant argues that the easement granted her riparian rights that permit her to place a dock and permanently moor one boat in the water at the terminus of the easement. Alternatively, defendant argues that the grantors, plaintiffs’ predecessors in interest, intended that she be allowed to place a dock and permanently moor a boat at the terminus of the easement. We disagree.

“Land which includes or is bounded by a natural watercourse is defined as riparian. Persons who own an estate or have a possessory interest in riparian land enjoy certain exclusive rights. These include the right to erect and maintain docks along the owner’s shore, and the right to anchor boats permanently off the owner’s shore” (citations omitted). *Thies v Howland*, 424 Mich 282, 287-288; 380 NW2d 463 (1985); cf. *Thom v Rasmussen*, 136 Mich App 608, 612; 358 NW2d 569 (1984). Riparian rights “are appurtenant only to lands which touch on the water course . . . not to any lands physically separated from the stream and the land bordering on it.” *Thompson v Enz*, 379 Mich 667, 678; 154 NW2d 473 (1967) (emphasis deleted). Our Supreme Court in *Thompson, supra* at 686, held that

riparian rights are not alienable, severable, divisible, or assignable apart from the land which includes therein, or is bounded, by a natural water course.

While riparian rights may not be conveyed or reserved—nor do they exist by virtue of being bounded by an artificial water course—easements, licenses and the like for a right-of-way for access to a water course do exist and oftentimes are granted to nonriparian owners.

Because defendant’s parcel does not touch the shore of Sand Lake, it is not riparian, and defendant accordingly has no riparian rights to Sand Lake. *Thies, supra*; see also *Dobie, supra* at 539 (property separated from a body of water only by a right of way may have riparian rights while others authorized to use the right of way merely possess an easement). An easement or right of way does not give rise to riparian rights unless the grant of easement or right of way evidences an intent to grant a specific riparian right, such as the construction of docks. *Thies, supra* at 294-295; see also *Thompson, supra* at 685.

The intent of the plattors or grantors in conveying an easement should be determined with reference to the granting language used in connection with the facts and circumstances that existed at the time of the grant. *Thies, supra* at 293; *Dobie, supra* at 540.

The use of an easement must be confined strictly to the purposes for which it was granted or reserved. A principle which underlies the use of all easements is that the owner of the easement cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden. [*Delaney v Pond*, 350 Mich 685, 687; 86 NW2d 816 (1957).]

In the present case, the easement was granted “*for the use of said Grantees and their guests . . . as a means of ingress and egress to and from the shore and water of Sand Lake. Said land to be used for travel by pedestrians and for the movement of boats to and from said Lake but in no event to be used for motor vehicle traffic or parking purposes.*” [Emphasis added.] Despite defendant’s contention, “the term ‘joint use’ standing alone does not evidence an intent to grant a right to construct docks, a right which normally is reserved to riparian owners.” *Thies, supra* at 294. Moreover, the easement language specifically permits the easement holders to use the easement for moving their boats to and from the lake, but it is silent regarding the mooring or docking of boats. Thus, we find no reservation of docking rights, which are unquestionably rights inherent in riparian ownership. *Thies, supra* at 287-288. One could also read the prohibition against “parking purposes” as evidencing that neither cars nor boats should permanently or temporarily be left on or at the easement. And, clearly, nothing in the easement language establishes the grant of any riparian rights in connection with the easement.

Rather, the deed states that the easement is to be used for ingress and egress to the lake by pedestrians who may also move boats across the easement to the water but are not to drive or park on it. Incidental to this access, defendant may also hand-carry a boat across plaintiffs’ property. Because (1) defendant is not a riparian owner, (2) the easement gives her the right to *use* a portion of the grantors’ parcel, and (3) “use” does not generally evidence an intent to grant riparian rights, such as the right to construct a dock or permanently moor a boat in the water, we hold that the easement does not give defendant the right to construct a dock or permanently moor a boat at the terminus of the easement. Defendant “cannot store [her boat] permanently on the easement way, nor attach [it] to stakes driven into the land” in light of the easement’s clear language. *Delaney, supra* at 688.

Plaintiffs also argue that the trial court erred in finding that use of the easement was exclusive to defendant and the Jewells. We agree. The language of the easement itself clearly sets forth that the easement is for “. . . the use of said Grantees and their guests and successors in title. . .” Moreover, the owner of the fee subject to an easement may rightfully use the land for any purpose not inconsistent with the rights of the easement owner. *Lakeside Assoc v Toski Sands*, 131 Mich App 292, 300; 346 NW2d 92 (1983). Accordingly, we hold that the trial court’s finding that the use of the easement was exclusive to defendant and the Jewells was clearly erroneous.

Our resolution of the above issues renders moot plaintiffs remaining arguments on appeal, and we therefore find it unnecessary to address them.

We reverse.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Jeffrey G. Collins

¹ Plaintiffs' predecessors in interest granted an identical easement to the Jewells. While the Jewells are not parties to the instant suit, the trial court determined that they, along with defendant, could permanently moor one boat to the dock. Only one dock, however, could be installed at the terminus of the easement at any given time.