

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT JONES and DEBRA JONES,

Plaintiffs/Counter-Defendants-
Appellants,

v

TOWNSHIP OF GENOA, WILFRED HAMER
and DAWN HAMER,

Defendants-Appellees.

UNPUBLISHED

October 25, 2002

No. 231537

Livingston Circuit Court

LC No. 99-017084-CN

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order affirming defendant Township of Genoa's denial of their request for a special land use permit, granting the Township's motion for summary disposition, and denying their motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case concerns the application of the Township's riparian lot common use ordinance, also referred to as the keyhole ordinance. That ordinance requires that a common use riparian lot must have a minimum of fifty feet of riparian frontage for each non-riparian lot served. Non-participating defendants/cross-plaintiffs Leonard Littman and Linda Littman own riparian lot 41, one-half of riparian lot 40, and non-riparian lots 55, 56, and 57 in the Webster Park subdivision of the Township. They use lot 41 for access to Pardee Lake. Plaintiffs own non-riparian property located outside the subdivision, and hold an easement over the easternmost twenty feet of lot 41 for lake access. Plaintiffs sought a special land use permit to allow them to build a boat dock on lot 41. The Township Zoning Board of Appeals (ZBA) denied the application on the ground that lot 41 accommodated a dock for non-riparian lots 55, 56, and 57, and thus did not have the requisite frontage to allow access from other non-riparian property owners.

Plaintiffs filed suit, arguing that the keyhole ordinance did not apply or, in the alternative, that their application met the requirements of the ordinance. Plaintiffs and the Township filed motions for summary disposition pursuant to MCR 2.116(C)(10).¹ The trial court granted the

¹ Other parties filed motions for summary disposition that raised issues that are not germane to this appeal.

Township's motion and denied plaintiffs' motion, concluding that the ZBA's denial of plaintiffs' application for a special land use permit was supported by competent, material, and substantial evidence, and should be upheld.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The decision of a ZBA should be affirmed unless it is: (1) contrary to law; (2) based on improper procedure; (3) not supported by competent, material, or substantial evidence on the whole record; or (4) an abuse of discretion. Const 1963, art 6, § 28; MCL 125.293a; *Reenders v Parker*, 217 Mich App 373, 378; 551 NW2d 474 (1996).

Plaintiffs argue that the trial court erred in denying their motion for summary disposition and granting the Township's motion for summary disposition. They assert that assuming arguendo the zoning regulations were applicable, their application met the requirements for a special use permit. Plaintiffs contend that lot 41, one-half of lot 40, and lots 55, 56, and 57, make up a single parcel of land; therefore, the riparian frontage on lots 40 and 41 meets the frontage requirement in the keyhole ordinance and is sufficient to serve their non-riparian lot. We disagree and affirm. The keyhole ordinance requires that a riparian lot dedicated to common use must have a minimum of fifty feet of riparian frontage for each non-riparian lot served. Lot 41 is dedicated to common use because it provides a site for both the Littmans, via their ownership of the property, and plaintiffs, via their easement, for lake access.

The trial court correctly found that the keyhole ordinance was applicable in this matter. Riparian land is defined as land that includes or is bounded by a natural watercourse. *Hess v West Bloomfield Twp*, 439 Mich 550, 561; 486 NW2d 628 (1992), quoting *Thies v Howland*, 424 Mich 282, 287-288; 380 NW2d 463 (1985). Lots 55, 56, and 57 do not include and are not bounded by a natural watercourse; therefore, they are not riparian lots. Lot 41 provides lake access to these lots. The ZBA's conclusion that lot 41 did not have sufficient frontage to provide lake access for plaintiffs' non-riparian lot was supported by the requisite evidence. The trial court's decision was correct. Const 1963, art 6, § 28; MCL 125.293a; *Reenders, supra*. Further, we find without merit plaintiffs' contention that they can rely upon the combined frontage of lot 41 and one-half of lot 40. Plaintiffs have no ownership interest in lot 40 and, therefore, has no basis upon which to assert a claim that includes the combined frontage of the two lots.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra