

STATE OF MICHIGAN
COURT OF APPEALS

DGM LAND CO,

Plaintiff-Appellant,

v

MARK DOWNEY and KELLEY DOWNEY,

Defendants-Appellees.

UNPUBLISHED

March 20, 2007

No. 265815

Washtenaw Circuit Court

LC No. 00-000532-CH

Before: Smolenski, P.J., and Saad and Wilder, JJ.

PER CURIAM.

In this quiet title action, plaintiff appeals as of right the trial court's declaratory judgment determining that title to most of the tract of land at issue belongs to defendants. We affirm.

Plaintiff and defendants are owners of adjacent riparian lots on Half Moon Lake. The instant dispute arose when plaintiff built a seawall, which defendants claimed encroached on their property. The original 1927 plat does not clearly reveal the location of the shoreline at that time. The current distance from the lot line to the shoreline is approximately 30 feet. Plaintiff claimed that erosion had occurred, i.e., that the water came toward its property and reduced the area of its land. Defendants, on the other hand, claimed that accretion had occurred, i.e., that the water receded and increased the area of their land. Thus, the parties disputed where the original shoreline was located.

The trial court found as a fact that the original shoreline was approximately ten feet from the meander line,¹ and was represented on the 1927 plat by one of several wavy lines. Therefore, the trial court held that it was appropriate to use the scale on the original 1927 plat to determine the distance to the original water's edge, and then to use that distance in employing the long lake

¹ A meander line is a survey line (not a boundary line) on a portion of land, following the course of a body of water. *Black's Law Dictionary* (7th ed.). "A meander line is simply a surveyor's line. When used in connection with inland lakes, it [sometimes] refers to a line run by the government land office surveys, upon which titles to Michigan real estate were originally patented to individual owners by the United States." *Pigorsh v Fahner*, 386 Mich 508, 522-523; 194 NW2d 343 (1972).

method of calculating the proper apportionment of the tract of land at issue. Based on a survey using that method, the trial court entered a declaratory judgment determining that title to most of the tract of land at issue belongs to defendants.

We review de novo equitable actions, including actions to quiet title. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). We also review de novo a declaratory judgment. *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 469; 556 NW2d 517 (1996). However, we review for clear error a trial court's factual findings. *Id.* Clear error exists when the reviewing court, on the whole record, is left with a definite and firm conviction that a mistake has been made. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 140; 719 NW2d 553 (2006); *City of Riverview v Sibley Limestone*, 270 Mich App 627, 636; 716 NW2d 615 (2006).

In actions to quiet title, "plaintiffs have the burden of proof and must make out a prima facie case of title." *Boekeloo v Kuschinski*, 117 Mich App 619, 628; 324 NW2d 104 (1982). "If plaintiffs make out a prima facie case defendants then have the burden of proving superior right or title in themselves." *Id.* at 629.

A boundary line between adjoining landowners should generally be determined in accordance with the original government survey. *Boekeloo, supra* at 624. "Where land is disposed of by reference to an official plat, the boundary lines shown on the plat control." *Mumaugh v McCarley*, 219 Mich App 641, 649; 558 NW2d 433 (1996). "When a plat shows a lot is bounded by the meander line of a lake, the grant of land is to the water's edge." *Id.* The purchaser of land abutting water "takes title to the shore line, regardless of the meander line." *Boekeloo, supra* at 627. A riparian owner "own[s] to the water's edge subject to accretion and reliction unless a contrary intention is expressed in the conveyance." *Farabaugh v Rhode*, 305 Mich 234, 242; 9 NW2d 562 (1943).²

² "[R]eliction is the gradual withdrawal of the water from the land by the lowering of its surface level from any cause." *Ziamba v Zeller*, 165 Neb 419, 421-422; 86 NW2d 190 (1957).

"Accretion" is the increase of riparian land by the gradual and imperceptible deposit, by water, of solid material, whether mud, sand, or sediment, called "alluvion," so as to cause that to become dry land which was before covered by water. . . . Accretion occurs when the line between water and land bordering thereon is changed by the gradual deposit of alluvial soil upon the margin of the water. The term "alluvion" is applied to the deposit itself, while accretion denotes the process, although the terms are sometimes used synonymously.

"Reliction" (or, as it is sometimes called, "dereliction") differs from "accretion" in that the term reliction is applied to land made by the withdrawal of the waters by which it was previously covered, from any cause, instead of the building up of the bottom by deposits displacing the waters. Reliction connotes the uncovering of land by a permanent

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“[T]itle of a riparian land owner extends to the middle line of the lake” *Gregory v LaFaive*, 172 Mich App 354, 361-362; 431 NW2d 511 (1988). “The method to be employed in determining the ownership of lands formed by accretion varies somewhat depending on the shape of the body of water involved.” *Gregory, supra* at 362.

“If the lake is circular the shoreline is the base and the center line is the vertex of a triangle. *If the lake is oblong the lines are drawn perpendicular to a median center.* If neither of these methods [is] possible, the lake bed is divided in proportion to the shoreline owned. *The theory on all events is that the shore owners take ratably.*” *Weisenberger v Kirkwood*, 7 Mich App 283, 291; 151 NW2d 889 (1967) (internal quotation marks and citation omitted; emphases added). Because Half Moon Lake is oblong in shape, the proper method to divide the disputed land is to draw a line “*from the point where the boundary line met the original shoreline to the center line of the lake . . . as nearly perpendicular as possible.*” *Gregory, supra* at 363 (emphasis added).

In *Aalsburg v Cashion*, 384 Mich 236, 237; 180 NW2d 792 (1970), our Supreme Court determined the property rights of riparian owners of accreted land on an inland lake. There, the Court based its decision on a 1916 plat, which provided a “scale for determination of the required distances from the easterly corners of the . . . lot out to the shoreline[,]” as well as a 1925 deed by the original developer. *Id.* at 239-241. The Court noted that it was employing the “presumption of continuance” in determining the descriptive intent of the 1916 survey, supplemented and supported by a 1936 survey by the county. *Id.* at 242. That is, “[w]hen things are once proved to have existed in a particular state, they are presumed to have continued in that state until the contrary is established by evidence, either direct or presumptive.” *Id.* at 243. Based on the record evidence, the Court used scaling to determine the necessary measurements to determine the designated boundaries of the parties. *Id.* at 239.

Here, the parties agreed³ that to divide the disputed land, the side lot line shared by their parcels should be extended to its point of intersection with the original water’s edge. The dispute was over the location of the original water’s edge. The trial court determined that it was appropriate to use the 1927 plat to determine the location of the original water’s edge. As a result, the trial court drew a line extending the shared side boundary of the parties’ lots, to the location that it found to be original shoreline. *Gregory, supra* at 363. Then, from that point of

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recession of a body of water, rather than a mere temporary or seasonal exposure of the land.

78 Am.Jur.2d *Waters* § 311 (2002) (internal footnotes omitted). Reliction has also been defined as the “process by which a river or stream shifts its location, causing the recession of water from its bank.” *Black’s Law Dictionary* 1317 (8th ed.2004). [*Wilson v Lucerne Canal & Power Co*, 150 P3d 653, 664-665 (Wyo, 2007).]

³ Plaintiff’s witness, Mr. Todd Shelly, testified that the proper procedure would be to extend the side lot line to the original water’s edge.

intersection (of the shared lot line and the original shoreline), the trial court drew a line perpendicular to the centerline of the lake. *Wiesenberger, supra* at 291; *Gregory, supra* at 363.

The trial court did not clearly err in its finding of fact of where the original water's edge was located. Although plaintiff's expert witness, Mr. Shelly, opined that there was erosion (indicating that the original water's edge was much more than ten feet from the meander line), the trial court rejected Shelly's testimony. There was documentary evidence to support the trial court's rejection of Shelly's testimony, namely, the 1927 plat, from which the trial court concluded that the original water's edge was approximately ten feet from the meander line. On the whole record, we are not left with a definite and firm conviction that a mistake has been made regarding the location of the original (1927) shoreline.

The trial court also did not err in applying the above-cited cases dealing with accretion or reliction of land, given that the dispute was about where the original shoreline was located in 1927, and given Shelly's testimony that to divide the disputed land, the side lot line shared by the parties' parcels should be extended to its point of intersection with the original water's edge. That is the rule applied by the cases when there is accretion. *Wiesenberger, supra* at 291; *Gregory, supra* at 363.

As a result of the trial court's adoption of defendants' survey, the trial court divided the disputed land by drawing a line "from the point where the boundary line met the original shoreline to the center line of the lake . . . as nearly perpendicular as possible." *Gregory, supra* at 363. Because Half Moon Lake is oblong, the line drawn by the trial court had to be perpendicular to the median center of the lake. *Weisenberger, supra* at 291. The trial court's adoption of defendant's survey did just that. The result was also that both sides took the disputed land "ratably," as required by *Weisenberger*, i.e., in proportion to their original shoreline. Thus, the trial court correctly rejected plaintiff's proposal and adopted defendants'.

The trial court did not err in using the 1927 plat to determine the original shoreline, rejecting plaintiff's urging not to use it because it did not list a measurement of the distance from the lot line to the shoreline, and where the shoreline was depicted by wavy lines. See *Aalsburg, supra*. Likewise, the trial court did not err in accepting defendants' argument that the 1927 plat was controlling, and that, as in *Aalsburg*, its scale could be used to determine the distance from the lot line to the original shoreline, and then to apportion the land using the long lake method. The trial court properly entered a declaratory judgment setting out the parties' property rights, ordering the execution of quit claim deeds describing the parcels to which the parties have title, and ordering plaintiff to remove the encroaching portion of its seawall.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kurtis T. Wilder