STATE OF MICHIGAN

COURT OF APPEALS

ROXANNE MILLER,

Plaintiff-Appellant,

v

DANIEL E. KING, LORI L. KING, and ST. JOSEPH COUNTY BOARD OF COUNTY ROAD COMMISSIONERS,

Defendants-Appellees.

UNPUBLISHED
July 15, 2008

No. 274604
St. Joseph Circuit Court
LC No. 06-000352-CH

Before: Jansen, P.J., and Zahra and Gleicher, JJ.

PER CURIAM.

In this action to quiet title, plaintiff appeals as of right a circuit court order granting defendants Daniel and Lori King ("the Kings") and the St. Joseph County Board of County Road Commissioners ("road commission") summary disposition pursuant to MCR 2.116(C)(10). Plaintiff also challenges the circuit court's entry of an injunction prohibiting her from using the disputed property. We affirm the summary disposition order in part, reverse it in part, vacate the injunction, and remand for additional proceedings consistent with this opinion.

Plaintiff and the Kings own neighboring lots in Sturgis, Michigan. Both properties abut West Fish Lake Road, a county road controlled by the road commission. Fish Lake is located immediately south of the road. Plaintiff and the Kings are embroiled in a dispute regarding use of the Fish Lake shoreline. The road commission asserts that it owns the shoreline because it is a part of the West Fish Lake Road right-of-way.

Traditionally, the road commission allowed the property owners along West Fish Lake Road to use the portion of the shoreline encompassed by the natural extensions of their property lines. According to plaintiff, the natural extension of her Lot 28 property lines entitles her to use a portion of the beach directly in front of the Kings' property. Defendants collectively argue that plaintiff's property lines naturally extend due south, rather than in the southeasterly direction plaintiff advocates. Plaintiff brought suit to quiet title, asserting that she owned the disputed portion of the beachfront by acquiescence, by virtue of her riparian rights, or by adverse possession. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), and also sought injunctive relief to exclude plaintiff from the disputed property. The circuit court granted summary disposition to defendants and entered the requested injunction. Plaintiff now appeals.

We review de novo equitable issues such as quiet title actions and the applicability of the doctrines of acquiescence and adverse possession, but review the circuit court's findings of fact for clear error. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Id*. If the moving party fulfills its initial burden, the party opposing the motion must provide the trial court with admissible evidentiary materials demonstrating the existence of a genuine and material issue of disputed fact, and may not rest on mere allegations. MCR 2.116(G)(4), (6); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Plaintiff first contends that the circuit court improperly granted defendants' motions for summary disposition because she owns the disputed property by virtue of the doctrine of acquiescence. "The doctrine of acquiescence provides that where adjoining property owners acquiesce to a boundary line for at least fifteen years, that line becomes the actual boundary line." *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). Here, the disputed property adjoins the road, and not plaintiff's property. Because this is not a boundary line dispute between adjoining landowners, the doctrine of acquiescence does not apply.

Further, the doctrine of acquiescence is unavailable to plaintiff because the beachfront at issue abuts a county road and therefore qualifies as government property. MCL 600.5821(1) states:

> Actions for the recovery of any land where the state is a party are not subject to the periods of limitations, or laches. However, a person who could have asserted claim to title by adverse possession for more than 15 years is entitled to seek any other equitable relief in an action to determine title to the land.

Based on the plain language of MCL 600.5821(1), the statute of limitations can never be satisfied when the subject property is government owned. Therefore, the road commission is immune from an action predicated on the doctrine of acquiescence. See e.g., *Higgins Lake Property Owners v Gerrish Twp*, 255 Mich App 83, 118; 662 NW2d 387 (2003).

We reject plaintiff's claim that because the county never deeded, dedicated or condemned West Fish Lake Road, the disputed land does not constitute government property. A road may become public property by: 1) statutory dedication and an acceptance on behalf of the public, 2) a common law dedication and acceptance, or 3) a finding of highway by user. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 554; 600 NW2d 698 (1999). The highway-by-user statute, MCL 221.20 provides:

> All highways regularly established in pursuance of existing laws, all roads that shall have been used as such for 10 years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used 8 years or more, shall be deemed public highways, subject to be altered or discontinued according to the provisions of this act. All highways that are or that may become such by time and use, shall be 4 rods in width [sixty-six feet], and where they are situated on section or quarter section lines, such lines

> shall be the center of such roads, and the land belonging to such roads shall be 2 rods [thirty-three feet] in width on each side of such lines.

"Highways by user are based on an implied dedication by the landowner." *City of Kentwood v Sommerdyke Estate*, 458 Mich 642, 653; 581 NW2d 670 (1998). "Under the highway-by-user statute, a particular period, in this case ten years, creates a presumption of dedication to the public." *Id.* During the ten-year period, a property owner may challenge the presumption and present evidence to rebut the existence and extent of a public highway. *Id.* at 654. If the presumption is not rebutted within the ten-year period, the statutory presumption allows for the dedication of the entire four-rod width. *Id.*

In this case, the road commission asserts that West Fish Lake Road is a highway-by-user, which became a county road by implied dedication; the Kings maintain that it is a public road. In support of its claims, the road commission presented records demonstrating that it assumed West Fish Lake Road in 1935, pursuant to the McNitt Act, 1931 PA 130, repealed by 1951 PA 51, §21. The road commission also proffered an affidavit signed by Bruce M. Jones, a road commission engineer, stating that the road commission claimed and held jurisdiction over the road during his 48-year tenure. The affidavit further averred that since at least 1958, the road commission maintained and repaired the road, including the road right-of-way encompassing the disputed property. Jones' affidavit also stated that the road commission certified West Fish Lake Road to the State of Michigan as a county public road "from at least 1954 through the present date." Therefore, the record evidence amply established that West Fish Lake Road is a highway-by-user that became a public road by dedication long before 2005, when plaintiff or her predecessor-in-interest obtained Lot 28. Accordingly, the circuit court correctly decided that the disputed property is a part of West Fish Lake Road's right-of-way, and that plaintiff could not prevail on her acquiescence claim.

Plaintiff next argues that she has the right to exclusively control the disputed property because she has riparian rights in the beachfront.[1] Plaintiff's lot abuts West Fish Lake Road, but does not abut Fish Lake. Riparian land is generally land that includes or is bounded by a natural watercourse. *Hess v West Bloomfield Twp*, 439 Mich 550, 561; 486 NW2d 628 (1992). Land separated from the water by a highway contiguous to the water is also considered riparian land and enjoys riparian rights. *Croucher v Wooster*, 271 Mich 337, 345; 260 NW 739 (1935); *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998). "'[R]iparian rights' are special rights to make use of water in a waterway adjoining the [riparian] owner's property." *Dyball v Lennox*, 260 Mich App 698, 705; 680 NW2d 522 (2003) (citation omitted). These rights include: the right to erect and maintain docks along the owner's shore, *Hilt v Weber*, 252 Mich 198, 226; 233 NW 159 (1930), the right to anchor boats permanently off the owner's shore, *Hall v Wantz*, 336 Mich 112, 117; 57 NW2d 462 (1953), the right of access to the water, and the right to a

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[1] Although plaintiff uses the term "riparian," the term is actually "littoral." The former, in the strictest sense, applies to such watercourses as rivers or streams, while the latter refers to such standing bodies as lakes or oceans. See Black's Law Dictionary (6th ed). Nonetheless, the Michigan Supreme Court has recognized that the terms are used interchangeably in Michigan case law. *Glass v Goeckel*, 473 Mich 667, 672 n 1; 703 NW2d 58 (2005).

reasonable use of the water as it flows past the land, *Monroe Carp Pond Co v River Raisin Paper Co*, 240 Mich 279, 285; 215 NW 325 (1927). "Such rights do not constitute an independent estate, and are not property rights per se; they are merely licenses or privileges." 65 CJS, Navigable Waters §82.

The circuit court did not decide whether plaintiff had riparian rights, even though plaintiff raised this issue at the motion for summary disposition. The road commission contends on appeal that no riparian rights attach to plaintiff's property. This Court has generally recognized that a property owner has riparian rights in the property opposite his or her lot. See *Croucher*, *supra* at 344; *Kempf v Ellixson*, 69 Mich App 339, 341; 244 NW2d 476 (1976). We conclude that a question of fact exists regarding whether plaintiff has riparian rights to use the beachfront and if so, which portion she is entitled to use. If such riparian rights exist, plaintiff is entitled to erect and maintain a dock, anchor her boat, access the lake and make reasonable use of the lake. See *Hilt*, *supra* at 226; *Hall*, *supra* at 117; 65 CJS, Navigable Waters §82. However, riparian rights do not constitute ownership interests in the disputed property; rather, a property owner with riparian rights is merely allowed the privilege of using the lake and the beach. See 65 CJS, Navigable Waters §82. Therefore, plaintiff is not entitled to exclusively control the disputed property, even if the circuit court decides on remand that she has riparian rights. We remand to the circuit court for further proceedings on this issue.

Plaintiff next contends that the circuit court erred by granting the road commission summary disposition of plaintiff's adverse possession claim. Governmental entities are generally immune from adverse possession actions. MCL 600.5821; *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 647; 528 NW2d 221 (1995). When the Legislature amended MCL 600.5821 in 1988, it reinstated the common-law rule that a party cannot acquire title to state-owned property through adverse possession. In order to acquire title by adverse possession, plaintiff's rights must have vested prior to March 1, 1988, the effective date of the statute. *Gorte v Dep't of Transportation*, 202 Mich App 161, 169; 507 NW2d 797 (1993). Because plaintiff purchased the property in 2005 and Fieberkorn purchased the property in 1983, in order to satisfy the fifteen-year statutory period prior to March 1, 1988, plaintiff's adverse possession claim required tacking the possessory period of Fieberkorn's predecessor-in-interest to Fieberkorn's interest. See *Connelly v Buckingham*, 136 Mich App 462, 474; 357 NW2d 70 (1984). Other than her unsworn statements that her predecessors-in-interest used the disputed property "in excess of 50 years," plaintiff offered no evidence establishing privity of estate between Fieberkorn, her predecessor-in-interest, and Fieberkorn's predecessor-in-interest, nor did she argue that her rights vested before March 1, 1988. Therefore, plaintiff failed to demonstrate the existence of a genuine issue of disputed fact regarding whether her adverse possession rights vested before 1988. Accordingly, the circuit court properly granted summary disposition to defendants regarding this issue.

Plaintiff next argues that the circuit court erred by deciding that the road commission has the authority to determine how the beachfront property is used. We review questions of law de novo on appeal. *Richards v Tibaldi*, 272 Mich App 522, 528; 726 NW2d 770 (2006). As the property owner, the road commission enjoys the general authority to decide how the property is used. See MCL 224.9 (empowering county road commissions to hold title to land acquired in a manner authorized by law). However, if the circuit court decides that plaintiff has riparian rights, she is entitled to use the beachfront directly opposite her lot. *Kempf*, *supra*. Plaintiff's

use is limited by the rights of other riparian owners and is subject to the reasonable use standard. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 512; 534 NW2d 212 (1995).

Plaintiff finally challenges the injunction barring her from using the disputed property. We review a circuit court's decision whether to grant injunctive relief for an abuse of discretion. *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 105; 662 NW2d 387 (2003). An abuse of discretion occurs only when the circuit court's decision is outside the range of "reasonable and principled outcome[s]." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). An injunction is an "extraordinary remedy" granted when the moving party establishes a real and imminent danger of irreparable harm with no adequate remedy at law. *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 15; 654 NW2d 610 (2002). In determining the propriety of issuing an injunction, a circuit court must consider the following factors:

> (a) the nature of the interest to be protected,
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> (b) the relative adequacy to the plaintiff of injunction and of other remedies,
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> (c) any unreasonable delay by the plaintiff in bringing suit,
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> (d) any related misconduct on the part of the plaintiff,
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> (e) the relative hardship likely to result to defendant if an injunction is granted and to plaintiff if it is denied,
>
> (f) the interests of third persons and of the public, and
>
> (g) the practicability of framing and enforcing the order or judgment. [*Kernen v Homestead Dev Co*, 232 Mich App 503, 514-515; 591 NW2d 369 (1998).]

In its bench ruling, the circuit court issued the injunction after stating, "[c]learly that – that would be granted also, as it's not within the – the injunction would prevent them from using the property that's within the Road Commission's right to dispute. And they can grant or not grant permission as they see fit. So, I'll allow the injunction." This statement does not support that the circuit court considered the *Kernen* factors, or otherwise properly analyzed the appropriateness of injunctive relief. The circuit court granted this extraordinary remedy without any factual or legal analysis; therefore, its decision was outside of the range of principled outcomes. *Maldonado*, *supra* at 388. Consequently we conclude that the circuit court abused its discretion by granting the injunction. Therefore, we vacate the injunction.

Affirmed in part, reversed in part, vacated in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher