

STATE OF MICHIGAN
COURT OF APPEALS

MAGICIAN LAKE HOMEOWNERS
ASSOCIATION, INC.,

UNPUBLISHED
July 31, 2008

Plaintiff-Appellant,

v

KEELER TOWNSHIP BOARD OF TRUSTEES,

No. 278469
Van Buren Circuit Court
LC No. 06-550506-CH

Defendant-Appellee.

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition for defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Magician Lake is located in Keeler Township. The Magician Lake Woods subdivision was established in 1945. Plaintiff is an association of homeowners who own back lots in the subdivision. The subdivision includes a platted park and walks that terminate in small beaches at the water's edge. The plat dedication states that "the streets, walks, courts, beaches and park in said plat are hereby dedicated to the use of the public. All lots in blocks 1 to 6, inclusive, and the land designated as park and beaches runs to the water's edge." A local ordinance requires township approval to maintain a dock but prohibits overnight (12:00 a.m. to sunrise) docking of boats. Keeler Township Ordinance No. 06-06-2006-01, §§ 3.1(3), 4.1, 4.2. Plaintiff contends that the dedication confers a right to dock boats overnight and thus the ordinance violates the constitutional protections against the taking of property without due process and just compensation. The trial court disagreed and entered judgment for defendant.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Questions of law are also reviewed de novo on appeal. *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 91; 649 NW2d 397 (2002).

It is well established that a riparian owner enjoys "certain exclusive rights" which 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." *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985) (citations omitted). A nonriparian owner, on the other hand, has "a right to use the

surface of the water in a reasonable manner for such activities as boating, fishing and swimming.” *Id.* “An incident of the public’s right of navigation is the right to anchor boats temporarily.” *Id.*; *Jacobs v Lyon Twp (After Remand)*, 199 Mich App 667, 671-672; 502 NW2d 382 (1993). However, “rights normally afforded exclusively to riparian landowners may be conferred by easement.” *Little v Kin*, 249 Mich App 502, 511; 644 NW2d 375 (2002), *aff’d* 468 Mich 699 (2003). A plat dedication generally operates as an easement rather than a conveyance of ownership in fee. *Little v Hirschman*, 469 Mich 553, 559; 677 NW2d 319 (2004); *Thies, supra* at 293.

“Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted. If the text of the easement is ambiguous, extrinsic evidence may be considered by the trial court in order to determine the scope of the easement.” *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003). The plat dedication states in part that “the streets, walks, courts, beaches and park in said plat are hereby dedicated to the use of the public. All lots in blocks 1 to 6, inclusive, and the land designated as park and beaches runs to the water’s edge.” We agree that this language is ambiguous because it dedicates the property “to the use of the public” without specifying what that use might entail. Therefore, extrinsic evidence may be considered to discover its scope.

The only evidence presented by plaintiff was the affidavit from a local owner who stated that when his father and grandfather purchased back lots, one of the original platters, C. W. Coats, informed them “that when they purchased their lots they could put a dock in the water and keep boats there.” Because Coats’s statement is offered for the truth of the matter asserted, it is inadmissible hearsay, MRE 801(c); MRE 802, and plaintiff has not identified an exception to or exclusion from the hearsay rule under which it would be admissible. The law is clear that only evidence admissible at trial may be considered in determining whether a genuine issue of fact exists. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002). The owner also stated that at various times after his relations purchased their lots, they built docks and kept their boats moored there. However, activities on the lake at some unspecified time after the plat dedication is not sufficient to establish “that the disputed activities are properly within the scope of the plat dedication” *Jacobs, supra* at 672. Because plaintiff failed to present sufficient evidence to establish a question of fact that the scope of the easement intended something more than lake access, the grant of land “to the use of the public” did not confer riparian rights and thus did not include anything more than the right to temporarily moor boats. *Higgins Lake Prop Owners Ass’n v Gerrish Twp*, 255 Mich App 83, 101-104; 662 NW2d 387 (2003). Further, the language that the land “runs to the water’s edge” does not change the grant to one including riparian rights. *Dyball v Lennox*, 260 Mich App 698, 708; 680 NW2d 522 (2003).

Although the dedication at issue here expressly included beaches and a park as well as streets and walks, we do not find that inclusion significant on the issue of riparian rights. A park is “a public area of land, usu. in a natural state, having facilities for recreation.” *Random House Webster’s College Dictionary* (1997). A beach is “an expanse of sand or pebbles along a shore.” *Id.* The grant to use a park and a beach does not expressly or impliedly refer to riparian rights of any sort but simply authorizes the uses to which such lands for are normally put, i.e., recreational activities such as swimming, sunbathing, fishing, and picnicking. Accordingly, we conclude that

plaintiff's members' right of access to the lake did not include the riparian right to dock boats overnight.

Affirmed.

/s/ Henry William Saad

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello