

STATE OF MICHIGAN
COURT OF APPEALS

DUCK LAKE RIPARIAN OWNERS
ASSOCIATION, RON DUNWELL, BRUCE
RISSI, JOE SIEDENSTRANG, JAMES KOBZA,
DAVID PEQUET, and TONY DENICOLO,

Plaintiffs-Appellants/Cross-
Appellees,

v

FRUITLAND TOWNSHIP, RICHARD DURELL,
LINDA DURELL, and HUGO J. FERRARI, JR.,

Defendants,

and

JUDITH M. TRAYNOR TRUST, DOUGLAS A.
ZWEMER, JENNIFER L. ZWEMER, GERALD
HENNING, GWENDOLYN HENNING,
RONALD B. PEEL, KELLEY J. PEEL, JOEL
BOYDEN, JR., FRANKLIN-KAREN GORDON
TRUST, and JOSEPH SHELTON,

Defendants-Appellees/Cross-
Appellants,

and

RONALD RANDS, JR., BRENDA RANDS,
JAMES H. TELLAM, FAY J. TELLAM, JEROME
K. RUMPS TRUST, ROBERT HUBERS, RUTH
HUBERS, JAMES D. SCHWEIGERT, and LISA
M. SCHWEIGERT,

Defendants-Cross-Appellants.

UNPUBLISHED
October 30, 2008

No. 276265
Muskegon Circuit Court
LC No. 05-043891-CH

Before: Meter, P.J., and Hoekstra and Servitto, JJ.

PER CURIAM.

In this easement dispute case, involving whether defendants have the right to build and maintain docks on Duck Lake in Muskegon County, plaintiffs appeal as of right from the trial court's order granting defendants the Judith M Traynor Trust, Douglas A. and Jennifer L. Zwemer, Gerald and Gwendolyn Henning, Ronald B. and Kelley J. Peel, Joel Boyden, Jr., the Franklin-Karen Gordon Trust, and Joseph Shelton (collectively "the Marcus Dunes defendants"), owners of condominiums in the Marcus Dunes condominium complex, summary disposition, pursuant to MCR 2.116(C)(10). On cross-appeal, the Marcus Dunes defendants and defendants Ronald Rands, Jr., Brenda Rands, James H. and Fay J. Tellam, the Jerome K. Rumps Trust, Robert and Ruth Hubers, and James D. and Lisa M. Schweigert (collectively "the Winterwood defendants"), assert that plaintiffs lacked standing to bring this action. We agree with defendants on cross appeal. We reverse the trial court's ruling with regard to standing and remand this case to the trial court for entry of summary disposition for the Marcus Dunes and Winterwood defendants pursuant to MCR 2.116(C)(5) ("[t]he party asserting the claim lacks the legal capacity to sue").

We review a trial court's decision to deny summary disposition under MCR 2.116(C)(5), as well as whether a party has standing, de novo. *Franklin Historic Dist Study Comm v Village of Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000). In reviewing a motion under MCR 2.116(C)(5), we consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties to determine whether the moving party is entitled to judgment as a matter of law. MCR 2.116(G)(5); *Kuhn v Secretary of State*, 228 Mich App 319, 332-333; 579 NW2d 101 (1998).

To establish standing, a plaintiff must show: (1) an injury in fact, consisting of an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) a causal connection between the injury and the conduct of which he complains; and (3) that it is likely that the injury will be redressed by a favorable decision. *MOSES, Inc v Southeast Mich Council of Gov'ts*, 270 Mich App 401, 413; 716 NW2d 278 (2006). A private citizen does not have standing if he or she is unable to establish that he or she has been harmed in a manner different than a member of the general public. *Detroit Fire Fighters Ass'n v City of Detroit*, 449 Mich 629, 634; 537 NW2d 436 (1995). Additionally, an organization has "standing to advocate the interests of its members 'where the members themselves have a sufficient stake or have sufficiently adverse and real interests in the matter being litigated.'" *MOSES, Inc, supra* at 414, quoting *Trout Unlimited, Muskegon-White River Chapter v City of White Cloud*, 195 Mich App 343, 348; 489 NW2d 188 (1992). "In other words, 'organizations . . . have standing to bring suit in the interest of their members where such members would have standing as individual plaintiffs.'" *Moses, Inc, supra* at 414, quoting *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 629; 684 NW2d 800 (2004).

The trial court ruled that the individual plaintiffs had standing because, as riparian landowners, they have a legally protected interest in Duck Lake that may be affected by defendants' activities. In addition, the trial court opined that plaintiff Duck Lake Riparian Owners Association (DLROA) had standing because "[t]he fourth and fifth purposes listed therein [in the DLROA's articles of incorporation] give the DLRO [sic] standing and confer the status of a real party in interest to bring this action which relates to the rights of riparian owners as they may be affected by the land/water development involved herein." The trial court also

concluded that both the individual plaintiffs and DLROA are affected differently than the public at large by defendants' conduct. We disagree that plaintiffs had standing.

Plaintiffs never pleaded or demonstrated a particularized injury, which is necessary to confer standing. In the complaint, the individual plaintiffs alleged that they were riparian landowners on Duck Lake, and members of DLROA. They further alleged that DLROA is a nonprofit corporation dedicated to preserving the lake's natural amenities, "including the rights accruing to the owners of riparian property." Plaintiffs stated that defendants have constructed and maintained seasonal docks on the Marcus Park parcel, and alleged that Fruitland Township sanctioned such activity. However, plaintiffs failed to explicitly state any injury they suffered or would imminently suffer as a result of docks, other than a generalized claim regarding "overburdening." Moreover, plaintiffs again failed to identify their injury in their response to defendants' motions for summary disposition. Instead, plaintiffs asserted their ownership interests in Duck Lake riparian lands and concluded that "the requirements of a 'sufficient stake,' a 'legally protected interest in jeopardy of being adversely affected' and the 'adversity' of the interest of the parties [sic] plaintiffs and defendants are surely met to assure the court that there is standing." Plaintiffs also focused on the fact that their interest in the lawsuit is greater than the public at large because they own riparian lands on the lake.

We emphasize, in ruling that plaintiffs lacked standing, that no injury was alleged, let alone an actual or imminent concrete and particularized injury that is required to confer standing. *MOSES, Inc, supra* at 413. At the time the trial court denied summary disposition, the trial court had no evidence showing that any riparian landowner had been injured by defendants' conduct, nor did it have specific allegations regarding the aspects of the docks that harmed plaintiffs, other than generalized concerns. Moreover, plaintiffs had not produced a single deposition or affidavit alleging an injury. Because the individual plaintiffs did not allege an injury, and, consequently, did not have standing, DLROA also did not have standing. *Id.* at 414. The trial court erred when it denied summary disposition to defendants based on a lack of standing.¹

Because the standing issue is dispositive, we decline to address the additional issues on appeal.

The trial court's ruling with regard to standing is reversed, and this case is remanded to the trial court for entry of summary disposition on behalf of defendants pursuant to MCR 2.116(C)(5). We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto

¹ We find this case distinguishable from *Higgins Lake Property Owners Ass'n v Garrish Twp*, 255 Mich App 83, 91; 662 NW2d 387 (2003), in which the plaintiffs at issue set forth a sufficient injury to confer standing.