STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM T. SULLIVAN,

Plaintiff-Appellee,

and

MARY L. SULLIVAN,

Plaintiff,

v

RANDY G. TILLMAN and KAREN S. TILLMAN,

Defendants-Appellants.

UNPUBLISHED
June 2, 2009

No. 285195
Van Buren Circuit Court
LC No. 07-560424-CH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Defendants appeal as of right from the circuit court's order granting summary disposition pursuant to MCR 2.116(C)(10) to plaintiff-appellant, William T. Sullivan.[1] We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties own lots in a subdivision abutting Big Crooked Lake. One of plaintiffs' lots, lot 17, is separated from the lake by a strip of beach. Plaintiffs' other lots, and those of defendants, are back lots, meaning lots that do not face the water.

On one side of lot 17 is a walkway, perpendicular to the water's edge. At the end of that walk area, where it intersects with the strip of beach, defendants constructed a pier extending

[1] Plaintiff Mary Sullivan was dismissed by stipulation of the parties. For convenience, in this opinion the singular "plaintiff" will hereinafter refer exclusively to William Sullivan.

into the lake, permanently moored a boat there, and also stationed a storage container. Asserting riparian[2] rights, plaintiffs filed suit seeking to compel defendants to remove those structures.

The parties filed cross motions for summary disposition. In deciding the matter in plaintiff's favor, the trial court held that plaintiff had riparian rights as owner of lot 17, but that defendants, as back-lot owners, had only easement, not riparian, rights in the beach or walk areas. The court enjoined defendants from erecting piers or docks, from mooring or anchoring watercraft overnight, and from placing storage containers overnight on such areas.

Defendants' sole argument on appeal is that the trial court erred in finding that plaintiff's lot 17 was a riparian one.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215. "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." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

"[T]he intent of the grantor controls the scope of the dedication." *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 88; 662 NW2d 387 (2003). The subdivision in question consists of 62 lots, variously bordered by roadways, walkways, a space designated as a court, and strips of beach. Only lots 1 through 6, and 30 through 34, actually contact the lake. The dedication states that

> the streets and court in said Plat are hereby dedicated to the use of the public, and the beaches and walks are hereby dedicated to the use of those owning Lots in said Subdivision, Lots 1 to 6, inclusive, and Lots 30 to 34, inclusive, and the land designated as beaches runs to the water's edge.

We read this dedication language in light of the principles that generally govern such plats.

Property on a waterfront is deemed to run to the water, and is thus riparian property bringing riparian rights. *Thies v Howland*, 424 Mich 282, 293; 380 NW2d 463 (1985). "These riparian rights include the use of the water for general purposes, as bathing, domestic use, etc., wharfing out to navigability, access to navigable waters, and the right to accretions." *Glass v*

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[2] In fact, the term "littoral" more strictly applies to the present situation than "riparian." "Littoral" refers to the rights of owners of land abutting "an ocean, sea or lake rather than a river or stream . . . ." Black's Law Dictionary (6th ed, 1990), p 934. "Riparian" refers to the rights of owners of land "on the banks of watercourses, relating to the water, its use, ownership of soil under the stream, accretions, etc." *Id.* at 1327. See also *Thies v Howland*, 424 Mich 282, 288 n 2; 380 NW2d 463 (1985). However, because the parties and court below mainly used the term "riparian," and because that term in common usage typically encompasses both riparian and littoral rights, we do not concern ourselves with the distinction.

Goeckel, 473 Mich 667, 694-695 n 24; 703 NW2d 58 (2005) (internal quotation marks, citation, brackets, and ellipses omitted). Riparian rights may exist where the subject property does not actually contact the water. *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998). Where a lot is separated from a body of water only by a private right of way, it is presumed that the owner of the lot "owns the land and, accordingly, has riparian rights, while others authorized to use the right of way have an easement." *Id.* at 539.

Where a plat indicates that lots are bounded by streets, those streets constitute the boundaries of the lots. *Thies, supra* at 291. "Unless a contrary intent appears, owners of land abutting a street are presumed to own the fee in the street to the center, subject to the easement." *Id.* "Public ways which terminate at the edge of navigable waters are generally deemed to provide public access to the water." *Id.* at 295.

"Cases involving a way which terminates at the edge of a navigable body of water are treated differently from those involving a way which runs parallel to the shore." *Id.* at 295. "Unless a contrary intention appears, owners of land abutting any right of way which is contiguous to the water are presumed to own the fee in the entire way, subject to the easement. Since the owner's property is deemed to run to the water, it is riparian property." *Id.* at 293.

In this case, at issue is the piece of beach that intersects the walk separating lots 16 and 17, and the abutting water. In light of the principles set forth above, unless the dedication clearly indicates otherwise, plaintiff's lot 17 should be deemed to extend frontward to the water, subject to the easement for the strip of beach to be enjoyed by all lot owners, and should be deemed to extend sideward to the middle of the walkway separating it from lot 16, again subject to the easement for all lot owners. In that event, given that defendants placed their permanent structures where the end of the walkway crosses the beach and extends into the water, those structures interfere with plaintiff's riparian rights.

Defendants argue that the beach and walk areas were dedicated to all lot owners as a shared fee simple interest, and thus that the only true riparian lots in this instance are those several, not including plaintiff's, that actually abut the water. Defendants suggest that the dedication mentions them specially, "Lots 1 to 6, inclusive, and Lots 30 to 34, inclusive," in recognition of their special status in this regard. However, we conclude that more logical reading is to regard that separate mention as intending only to underscore that owners of lots abutting water instead of beach nonetheless share in the rights to use the beaches.

The words, "the use of," in the context of joint usage, does not normally suggest the passing of a fee interest, but instead indicates the establishment of an easement. *Thies, supra* at 293. In this case, the walks and beaches were dedicated "to the use of those owning Lots," just as the streets were dedicated to "to the use of the public." "To the use of" lot owners no more conveys a fee interest in the walks and beaches than does "to the use of" the public indicate outright donation of the land constituting streets to the general public.

Defendants argue that the provision that "the land designated as beaches runs to the water's edge" reflects the intention to treat those beaches as discrete real estate. However, we think that a strained interpretation of that language, and hold that that provision is better read as indicating the intention to keep the beaches bordered by the water even if those areas may decrease by erosion, or expand by accretion, over time.

For these reasons, the trial court did not err in concluding that defendants failed to present sufficient evidence to challenge plaintiff's assertion of riparian rights as owner of lot 17.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Douglas B. Shapiro