STATE OF MICHIGAN

COURT OF APPEALS

HORSESHOE LAKE CORPORATION, ERIC GREGG, BARBARA GREGG, DENNIS LIWOSZ, WILLIAM WAGNER, and JEFFREY SOUZA,

Plaintiffs/Counter-Defendants-Appellees,

v

PAUL R CARLSON and SUSAN K CARLSON,

Defendants/Counter-Plaintiffs-Appellants.

UNPUBLISHED
August 2, 2012

No. 304695
Washtenaw Circuit Court
LC No. 10-000513-CH

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

This case concerns the riparian[1] property rights of a "front lot" owner in the Leocadia Park Subdivision located on Horseshoe Lake in Washtenaw County. Defendants Paul and Susan Carlson's lot (Lot 211) abuts a private park. The private park abuts the lake. Defendants appeal as of right the circuit court's order denying their motion for summary disposition and granting plaintiffs' motion for summary disposition under MCR 2.116(C)(10) on the basis of the circuit court's finding that defendants did not have riparian rights to Horseshoe Lake by virtue of their ownership of Lot 211 and, therefore, had no right to install a dock or dock a boat. We affirm.

[1] "Strictly speaking, land which includes or abuts a river is defined as riparian, while land which includes or abuts a lake is defined as littoral." *Thies v Howland*, 424 Mich 282, 288 n 2; 380 NW2d 463 (1985). The terms are often used interchangeably, and court opinions refer to property rights of owners of land abutting either lakes or rivers as "riparian rights." *Glass v Goeckel*, 473 Mich 667, 672 n 1; 703 NW2d 58 (2005); *Dyball v Lennox*, 260 Mich App 698, 705 n 2; 680 NW2d 522 (2003).

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiff Horseshoe Lake Corporation (HLC) is a Michigan corporation organized under the Summer Resort Owners Act (SROA), MCL 455.201 *et seq*. Leocadia Park Subdivision is located on Horseshoe Lake and within HLC's jurisdiction. The Leocadia Park Subdivision plat was dedicated in 1925 by Joseph and Leocadia Bojarski and contains 211 lots. Immediately south of Horseshoe Lake is Leocadia Park, a private park dedicated in the plat that spans and borders the lakefront (the lake curves along the northern border of the park). Immediately south of Leocadia Park is Lake Shore Drive, a private road dedicated in the plat that spans the length of Leocadia Park and runs roughly parallel to the water on the southern border of Leocadia Park. Two hundred and eight of the 211 subdivision lots are separated from the lake by both Leocadia Park and Lake Shore Drive. Defendants own Lot 211, which they purchased from Ronald and Pamela Pfeifer in 1995.[2] Lot 211 does not border Horseshoe Lake. It is located between Leocadia Park and Lake Shore Drive so that only Leocadia Park separates it from Horseshoe Lake.

The dedication language of the plat reads in part "that the streets and park and right of way are hereby dedicated to the use of the Lot owners." All lot owners have access to Horseshoe Lake via the park and to the park via the private roads within the subdivision that lead to the park. Individual plaintiffs Eric and Barbara Gregg, Dennis Liwosz, William Wagner, and Jeffrey Souza are all members of HLC and own various lots within Leocadia Park Subdivision.

In the summer of 2009, defendants installed a dock in Leocadia Park near Lot 211 and docked their boat in Horseshoe Lake.[3] In response, HLC sent defendants a letter advising them that they did not have riparian rights and were not allowed to install or maintain the dock. Further, HLC stated that defendants' actions violated Article IV, Section 1 (L)(b) of HLC's bylaws, which states that "[a]ll common area access points are for purposes of swimming only and boats shall neither be docked, or personal property stored in such areas." Defendants refused to remove the dock, so plaintiffs filed a complaint for declaratory relief, a permanent injunction, and trespass. In response, defendants filed a counter-complaint seeking a declaration that they have riparian rights to Horseshoe Lake. On June 3, 2011, the circuit court granted summary disposition for plaintiffs under MCR 2.116(C)(10) on the basis of its finding that defendants did not have riparian rights to Horseshoe Lake.

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[2] Defendants also own Lots 208, 209, and 210.

[3] The exact location of the dock was in dispute in the lower court. There was a question of whether it was located within Leocadia Park or whether outside the subdivision, slightly northeast of the park in a location that would put the dock at the end of a public roadway. The dock had been removed for the winter at the time of the hearing, so the exact location of the dock was undetermined. This issue would only implicate HLC's jurisdiction under its bylaws. We do not reach this issue because we affirm the trial court's holding that defendants do not have riparian rights.

II. STANDING

Defendants first argue that HLC and the individual plaintiffs lacked standing to bring the underlying complaint for two reasons: (1) HLC does not have an ownership interest in Leocadia Park and (2) plaintiffs never pleaded or established a particularized injury. We disagree.

"Whether a party has standing is a question of law subject to review de novo." *Groves v Dep't of Corrections*, 295 Mich App 1, 4; 811 NW2d 563 (2011). In *Lansing Sch Educ Ass'n, MEA/NEA v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010), the Michigan Supreme Court held that standing jurisprudence in Michigan would be restored to the following limited, prudential approach:

> [A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605[4], it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.

Moreover, the Supreme Court noted that "an organization has standing to advocate for the interests of its members if the members themselves have a sufficient interest." *Id.* at 373 n 21.

We reject defendants' first argument that HLC lacks standing because it does not have an ownership interest Leocadia Park. Defendants acknowledge that Leocadia Park Subdivision is incorporated under the SROA. This gives HLC broad authority to pass and enforce bylaws concerning land within HLC's jurisdiction. See MCL 455.212. HLC has "jurisdiction over the lands owned by the corporation and over the lands owned by the members of said corporation for the exercise of the police powers herein conferred." MCL 455.211. Because Leocadia Park is within HLC's jurisdiction[5] and HLC has legal rights to enforce its bylaws, its ownership interest is irrelevant.

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[4] MCR 2.605(A)(1) provides that, "[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." An "actual controversy" exists where declaratory relief is needed to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights. *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000). A plaintiff must "plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised." *Id.*

[5] The Horseshoe Lake Corporation bylaws provide that all persons who own property within the boundaries of Leocadia Park Subdivision are members of the Horseshoe Lake Corporation.

With respect to the defendants' second argument that HLC and the individual plaintiffs lack standing because they never pleaded or established a particularized injury, this argument is abandoned because it was not raised in the defendants' statement of questions presented. See *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 553; 730 NW2d 481 (2007), citing MCR 7.212(C)(5). Notwithstanding defendants' abandonment of this argument, we conclude that it lacks merit. As our Supreme Court made clear in *Lansing Schools*, plaintiffs need not meet the federal case or controversy standing requirement, i.e., the establishment of a concrete and particularized injury caused directly by the challenged conduct. *Lansing Sch*, 487 Mich at 363-366, 372. Plaintiffs here met the requirements of MCR 2.605 to establish standing to seek a declaratory judgment as declaratory relief was needed to guide their future conduct in order to preserve their legal rights. See *id.* at 372; *Citizens*, 243 Mich App at 55. Plaintiffs demonstrated "an adverse interest necessitating a sharpening of the issues raised." See *Citizens*, 243 Mich App at 55. Specifically, the individual plaintiffs are all lot owners within Leocadia Park Subdivision and have an easement in Leocadia Park. The easement is a legally protected property interest that is being impacted by defendants' erection of a dock and exclusion of plaintiffs from that area. See *Baum*, 488 Mich at 158; *Lansing Sch*, 487 Mich at 372. Accordingly, both the individual plaintiffs and Horseshoe Lake Corporation have standing. See *Lansing Sch*, 487 Mich at 372-373 & n 21.

III. RIPARIAN RIGHTS

Defendants next argue that the circuit court erroneously granted summary disposition in favor of plaintiffs on the basis of its finding that defendants do not have riparian rights to Horseshoe Lake. Defendants argue that the circuit court erred by relying on *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998), and insist that our Supreme Court's decision in *2000 Baum Family Trust v Bable*, 488 Mich 136; 793 NW2d 633 (2010), controls. We disagree.

We review de novo a trial court's summary-disposition ruling. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); see also *Little v Kin*, 249 Mich App 502, 507; 644 NW2d 375 (2002). When reviewing a motion granted under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 247; 776 NW2d 145 (2009). A motion for summary disposition under MCR 2.116(C)(10) may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Campbell v Dep't of Human Servs*, 286 Mich App 230, 235; 780 NW2d 586 (2009).

"Land that includes or is bounded by a natural watercourse is defined as riparian." *Dobie*, 227 Mich App at 538. People who own an estate or have a possessory interest in riparian land enjoy certain exclusive rights; these rights include the rights to erect and maintain docks along the owner's shore and to anchor boats off the owner's shore. *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985); see also *Dyball v Lennox*, 260 Mich App 698, 705; 680 NW2d 522 (2003) ("Erecting or maintaining a dock near the water's edge is a riparian or littoral right."). However, "actual contact with the water is not necessarily required for riparian rights to exist." *Dobie*, 227 Mich App at 538. For example, Michigan courts have held that a lot separated from the shoreline by a publicly dedicated highway or a privately dedicated walkway in a subdivision

that is contiguous to the water is riparian land. *Thies*, 424 Mich at 290-293 (walkway); *Croucher v Wooster*, 271 Mich 337, 345; 260 NW 739 (1935) (highway).

However, this Court has distinguished a privately dedicated park in a subdivision from a highway and a walkway. See *Dobie*, 227 Mich App at 539-540. In *Dobie*, the southeast side of a park bordered a lake, and the northwest side of the park bordered a lot (Lot 17) in a subdivision. *Id.* at 537. Lot 17 did not border the lake. *Id.* In 1966, the Fedewas, the "plattors" of the subdivision and initial owners of Lot 17, dedicated the park to "the use of the owners of lots in this plat which have no lake frontage." *Id.* The plaintiffs in *Dobie* were the current owners of Lot 17 and the Fedewas' successors in interest; the defendants were owners of lots in the subdivision that did not have lake frontage. *Id.* The issue before the *Dobie* Court was whether the plaintiffs were the riparian owners of the park. *Id.* This Court discussed the Supreme Court's decision in *Thies*, where the Court held that owners of land that abutted a 12-foot walkway that was contiguous to water were presumed to own the fee in the walkway, and concluded that *Thies* was distinguishable. *Id.* at 539. The *Dobie* Court explained:

> Although the park in this case was primarily created to provide the back lot owners with access to the lakefront, a park is not the same as a right of way. The reasoning in *Thies* was predicated on a mere walkway dividing the riparian owners from the body of water in that case. We do not regard it as appropriate to compare a narrow walkway along a body of water to the relatively large park in this case. Absent a contrary indication, it is eminently reasonable to presume that a walkway along a lake was placed merely as an easement to provide access to the lake and not with the intent to convey actual fee ownership of the land containing the walkway. The same is simply not true of the relatively large park in this case. [*Id.* at 539-540 (internal citations omitted).]

Nevertheless, the *Dobie* Court concluded that the plaintiffs were the riparian owners of the park. *Id.* at 540. The Court explained that "the undisputed facts in the record establish that the [Fedewas] intended that the park dedication convey merely an easement, not a fee in the park, to all back lot subdivision owners." *Id.* Thus, "the Fedewas intended to retain general control and, accordingly, ownership of the park." *Id.* Consequently, the plaintiffs—the Fedewas' successors in interest—had both fee ownership in the park and riparian rights. *Id.*

In the present case, the circuit court relied on *Dobie* to conclude that defendants do not have riparian rights. We agree that *Dobie* is the controlling precedent. Lot 211 in this case "does not include a natural watercourse and is not bounded by a natural watercourse." See *id.* at 538. Because Lot 211 is separated from Horseshoe Lake by Leocadia Park, which is not a right of way, the presumption in *Thies*, i.e., that owners of land that abuts a right of way that is contiguous to water own the fee in the right of way, does not apply in this case. See *id.* at 539. Therefore, defendants do not have riparian rights by virtue of Lot 211 abutting Leocadia Park that abuts Horseshoe Lake.

Of course, defendants could have riparian rights if the plat dedication provided for such rights; however, that is not the case. See *id.* at 539-540. The land dedication occurred before the enactment of the Land Division Act, MCL 560.101 *et seq.*, in 1967. "[D]edications of land for private use in plats before 1967 PA 288 took effect convey at least an irrevocable easement in

the dedicated land." *Little v Hirschman*, 469 Mich 553, 564; 677 NW2d 319 (2004).[6] "[A] purchaser of platted lands receives not only the interest described in the deed, but also whatever rights are reserved to the lot owners in the plat." *Id.* at 561. The intent of the grantor controls the scope of the grantor's dedication. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 88; 662 NW2d 387 (2003). When the language of a legal document or instrument is plain and unambiguous, the document is to be enforced as written. *Dyball*, 260 Mich App at 704. Here, the language of the dedication is plain and unambiguous; it states "that the streets and park and right of way are hereby dedicated to the use of the Lot owners." The language "to the use of the Lot owners" is consistent with the grant of an easement to all lot owners in the subdivision—not a grant of fee ownership rights. See *Dobie*, 227 Mich App at 540. Thus, defendants are not the fee owners of the park and, as a result, do not have riparian rights by virtue of the dedication. Moreover, unlike the plaintiffs in *Dobie*, defendants are not the successors in interest of the subdivision's "plattors" and, thus, have not obtained their fee ownership of the park and riparian rights. See *id.* at 537, 540.

Defendants insist that our Supreme Court's decision in *Baum* controls. Defendants' argument lacks merit. *Baum* concerned the riparian rights of lot owners whose lots were separated from the water by a public road. *Baum*, 488 Mich at 140. Lot 211 is separated from Horseshoe Lake by a park. *Baum* is therefore inapplicable. See *Dobie*, 227 Mich App at 539 (a right of way is distinguishable from a park for purposes of determining riparian rights).

Accordingly, we conclude that defendants do not have riparian rights. The trial court did not err when it granted summary disposition in favor of plaintiffs.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Henry William Saad
/s/ Jane M. Beckering

[6] The Land Division Act provides that a private dedication in a plat transfers a fee simple to the donees. *Martin v Beldean*, 469 Mich 541, 548 n 18; 677 NW2d 312 (2004).