STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM EVANS and MAXINE EVANS,

Plaintiffs-Appellees,

v

DAVID GABRIEL and WENDY GABRIEL,

Defendants-Appellants.

UNPUBLISHED
December 28, 1999

No. 212759
Kent Circuit Court
LC No. 96-001350 GC

Before: Murphy, P.J., and Hood and Neff, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting summary disposition in favor of plaintiffs. We affirm.

In 1988, plaintiffs owned two parcels of property. Parcel one consisted of lots 57 and 58. Parcel one was located on Big Brower Lake, and a home was also located on the property. Plaintiffs also owned parcel two which consisted of lots 127, 128, 129, and 130. These "back lots" were located across the street from parcel one. In 1988, plaintiffs sold parcel one to a third party. In order to retain access to Big Brower Lake from parcel two, plaintiffs created an easement. Specifically, an easement was created over the north ten feet of lot 57 for the benefit of lots 128, 129, 130, and the north seven feet of lot 127. This easement was executed and recorded. Defendants ultimately purchased parcel one and erected a dog pen which allegedly encroached upon plaintiffs' easement. Plaintiffs filed suit to enforce their easement. Defendants asserted that plaintiffs' easement was invalid because it was created in violation of a local zoning ordinance. The trial court held that plaintiffs had not violated the zoning ordinance, granted plaintiffs' motion for summary disposition, and enjoined defendants from interfering with plaintiffs' rights.

Defendants argue that the trial court erred in granting plaintiffs' motion for summary disposition because the easement violated a local ordinance at the time of its creation. We disagree. Our review of the trial court's order of summary disposition regarding the validity of the easement is de novo. *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998). "Land that includes or is bounded by a natural watercourse is defined as riparian." *Id.* However, riparian rights may exist without actual

contact with the water. *Id.* An easement which authorizes a right of way for access to water for "back lot" owners of property creates riparian rights despite the lack of contact with the water. *Id.*

In the present case, plaintiffs preserved their riparian rights to the water by creating an easement over the north ten feet of lot 57 of defendants' property. At the time of the creation of the easement, the following ordinance was in effect:

> SECTION 16.30. RIPARIAN ACCESES [SIC]. Any development in any Zoning District which shares a common family dwelling to the use of each thirty (30) feet of lake frontage. Such common lake frontage area shall be measured along the water's edge of the normal high limit in the number of users of the lake frontage to preserve the quality of the waters and to preserve the quality of recreational use of all lakes within the Township. This restriction shall apply to any parcel of land, regardless of whether access to the lake shall be gained by eaement [sic], lease, or fee ownership.

We interpret ordinances in accordance with the rules of statutory interpretation. *Ahearn v Bloomfield Twp*, 235 Mich App 486, 498; 597 NW2d 858 (1999). If statutory language is clear and unambiguous, additional judicial construction is neither necessary nor permitted, and the language must be applied as written. *Id.* The primary goal of statutory interpretation is to give effect to the intent of the legislative body. *Ballman v Borges*, 226 Mich App 166, 168; 572 NW2d 47 (1997). We may refer to dictionary definitions when appropriate to ascertain the precise meaning of a particular term. *Id.* Furthermore, we may depart from a strict literal interpretation of a statute which is inconsistent with the purposes and policies underlying the provision and would lead to absurd and unjust results. *Albright v Portage*, 188 Mich App 342, 350; 470 NW2d 657 (1991).

We review the lower court's interpretation of an ordinance de novo. *Ballman, supra*. In the present case, the trial court held that the ordinance did not apply to the disputed easement. We agree. The ordinance, as written, addresses a "development" which "shares a common family dwelling." The ordinance proceeds to reference thirty feet of lake frontage, but there is no correlation between the development and common family dwelling language to the footage restriction on lake frontage. Accordingly, the ordinance cannot be applied as written. *Ahearn, supra*. Defendants contend that the ordinance provides that a minimum of thirty feet of lake frontage access is required, and plaintiff's reservation of only ten feet in its easement fails to meet this requirement. It appears that the purpose of the ordinance is to limit the "number of users of the lake frontage" which in turn, preserves recreational rights for riparian users. That is, it limits the number of developments and common family dwellings which may access, in this case, each thirty feet of lake *frontage*. It was not designed to require that all right of ways and easements which access the lake be a minimum of thirty feet. There is no correlation between the footage comprising an easement and the number of lake users. The ordinance was designed, not to regulate the size of access right of ways to the lake, but rather, minimize the number of ultimate users upon their arrival at the lake. Indeed, a thirty foot easement could unduly restrict a single family dwellings access to use of its property, causing a challenge to the riparian use of others. Requiring all easements and right of ways to the lake to be a minimum of thirty feet would lead to absurd and unjust results. *Albright, supra*. Accordingly, the trial court did not err in granting plaintiffs' motion for summary disposition.

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Janet T. Neff