

STATE OF MICHIGAN
COURT OF APPEALS

DONALD R. KRAUSE and BEVERLY KRAUSE,

Plaintiffs-Appellants,

v

KEELER TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED

July 28, 2000

No. 220692

Van Buren Circuit Court

LC No. 98-044325-CH

Before: McDonald, P.J., and Neff and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the Van Buren Circuit Court granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

This case arises out of an ordinance defendant adopted that allegedly infringed upon plaintiffs' use and enjoyment of their lakefront property easement located on Round Lake.

In 1974, defendant township acquired ownership of property on Round Lake subject to all recorded encumbrances. In 1989, plaintiffs acquired property near Round Lake. Conveyed with plaintiffs' property was an easement over defendant's Round Lake property that gave plaintiffs the right to use the easement for "bathing beach and park purposes." Plaintiffs docked and moored boats on the easement property as well as maintained and erected docks and piers.

In 1997, defendant adopted Ordinance No. 97-1, the Keeler Township Public Property Boat Launching and Docking Regulation Ordinance, which essentially prohibited 1) the overnight storing or keeping of boats on a lake or shore adjacent to a separate frontage except a privately-owned separate frontage; and 2) the placing, using, or maintaining of docks and moors that abut a public access site.

In response to defendant's enforcement of the ordinance against plaintiffs, plaintiffs filed a complaint in Van Buren Circuit Court alleging constitutional violations as well as an adverse possession claim. Plaintiffs claimed that the ordinance was unconstitutional and that its enforcement constituted a taking in violation of their due process rights.

Defendant sought summary disposition pursuant to MCR 2.116(C)(8) and (10), asserting that plaintiffs' easement did not contemplate the docking and mooring of boats on the lake or the using, maintaining, or erecting of docks and piers. Additionally, defendant argued that no such rights were acquired by adverse possession. Last, defendant asserted that the ordinance was validly adopted pursuant to the township ordinance act, MCL 41.181; MSA 5.45(1). The trial court agreed and granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10).

We review de novo a trial court's grant or denial of summary disposition based on MCR 2.116(C)(10). *Clark v United Technologies Automotive, Inc*, 459 Mich 681, 686; 594 NW2d 447 (1999). A motion for summary disposition pursuant to MCR 2.116(C)(10) will be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. This Court must consider the pleadings, affidavits, and other documentary evidence in the same manner as the trial court and in a light most favorable to the nonmoving party. *Clark, supra* at 686; see also MCR 2.116(G)(5).

On appeal, plaintiffs argue that summary disposition was improper because there were questions of fact regarding the nature and extent of plaintiffs' easement rights and interests. We disagree.

As a general rule, riparian owners enjoy certain exclusive rights including the right to anchor boats permanently off the owner's shore. *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985). On the other hand, nonriparian owners and the public only have a right to use the surface of the water in a reasonable manner. *Id.* Additionally, Michigan law has held that a holder of an easement that makes contact with a navigable body of water is not a riparian land owner. Thus, a nonriparian easement holder only has a right to use the surface of the water in a reasonable manner. *Id.* at 289, 293-294. However, this does not mean that a nonriparian easement holder may never enjoy rights similar to that of a riparian land owner. To determine if a nonriparian easement holder, such as plaintiffs, is entitled to use the easement for the docking and mooring of boats as well as the construction or maintenance of piers, in essence, rights typically enjoyed by riparian owners, this Court must determine if these activities are within the scope of plaintiffs' easement. *Id.* at 289, 294.

The Michigan Supreme Court has clearly held that "[t]he use of an easement must be confined strictly to the purposes for which it was granted" so to not impose an additional burden upon the servient estate. *Delaney v Pond*, 350 Mich 685, 687; 86 NW2d 816 (1957). Additionally, easements created to provide access to a navigable body of water have been strictly construed to provide no rights to permanently moor or dock boats or erect docks or piers. *Thies, supra* at 294-295; *Delaney, supra* at 687-688.

The express language of plaintiffs' easement gives plaintiffs the right to use the easement for "bathing beach and park purposes." Bathing beach and park purposes would include activities such as swimming, sunbathing, fishing, and picnicking. Bathing beach and park purposes could not reasonably provide plaintiffs with the additional rights to moor or dock boats in the lake or on the shore or erect piers or docks. Interpreting the language to include these activities would impermissibly impose an additional burden upon the servient estate.

Additionally, we note that plaintiffs failed to assert, on appeal, that they had acquired the aforementioned rights by either “adverse possession” or “prescription.” No argument will be considered which is not set forth in the statement of questions involved. *City of Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995); *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995).

We further find that the nature and scope of plaintiffs’ easement is dispositive of plaintiffs’ appeal. Therefore, we need not address the remaining issues raised by plaintiffs, especially the constitutional issues. *Detroit v Sledge*, 223 Mich App 43, 47; 565 NW2d 690 (1997). Because plaintiffs did not have the right to permanently moor boats and erect docks or piers under the language of their easement, they were not deprived of a property right in this regard.

Affirmed.

/s/ Gary R. McDonald

/s/ Janet T. Neff

/s/ Brian K. Zahra