

STATE OF MICHIGAN
COURT OF APPEALS

MARTIN J. HAAG, WELDON FAIN and BILL
WOOLWINE,

UNPUBLISHED
February 15, 2002

Plaintiffs-Appellants/Cross-
Appellees,

V

No. 223658
Roscommon Circuit Court
LC No. 98-720283-CH

ERNEST A. CALLARD, KATHY M. CALLARD,
HOWARD DIEM, GLORIA DIEM, JANICE
HOLBROOK, HUBERT M. JONES, FRANCIS L.
JONES and MARK S. GATLIN,

Defendants-Appellees/Cross-
Appellants,

and

DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Defendant.

Before: Bandstra, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Plaintiffs, owners of two riparian lots on Houghton Lake in northern Michigan, appeal as of right from a declaratory judgment allowing nonriparian owners in their subdivision to place a dock and seasonally moor their boats offshore from a landing dedicated to the use of all subdivision residents. Defendants are nonriparian owners who used the landing for access to Houghton Lake.¹ Defendants cross-appealed arguing that the trial court should not have allowed plaintiffs to use the landing to access their properties and should not have limited most of defendants' uses of the landing to daylight hours. We affirm.

¹ The Department of Environmental Quality initially was a named defendant in the action, but was dismissed from the case before trial. Accordingly, the term "defendants" refers only to the nonriparian owners.

Plaintiffs contend that the trial court erred in holding that permissible uses of the landing by the nonriparian subdivision residents included placement of a common dock offshore from the landing and the seasonal mooring of boats at the dock, and sunbathing, picnicking and swimming during daylight hours. The extent of a party's rights under an easement is a question of fact. Accordingly, this Court reviews for clear error the trial court's determination of the parties' respective rights under the easement. *Dobie v Morrison*, 227 Mich App 536, 541; 575 NW2d 817 (1998).

Land that includes or is bounded by a natural watercourse is defined as riparian. *Thies v Howland*, 424 Mich 282, 287-288; 380 NW2d 463 (1985). Persons who own an estate or have a possessory interest in riparian land enjoy certain exclusive rights, including the right to erect and maintain docks along the owner's shore and the right to anchor boats permanently off the owner's shore. *Id.* at 288. Nonriparian owners who via an easement gain a "right of access" to a navigable body of water have the right to use the water for such activities as boating, fishing and swimming. *Delaney v Pond*, 350 Mich 685, 687-688; 86 NW2d 816 (1957). Unless specified otherwise, the nonriparian easement holder's right of access for boating encompasses the right to temporarily anchor boats within the easement area, but not the right to permanently store boats as the riparian owners are entitled to do. *Id.* at 688.

In determining the scope of permissible use by nonriparian owners, the intent of the plattors should be determined with reference to the language used in connection with the facts and circumstances existing at the time of the grant. *Dobie, supra* at 540. The extent of the nonriparian owners' dedicated use also may be determined according to the traditional and historical use of the easement area. *Id.* at 541-542.

The instant grantors significantly employed the word "landing" in their dedication. Black's Law Dictionary defines the word "landing" in relevant part as follows:

1. A place on a river or other navigable water for loading and unloading goods, or receiving and delivering passengers and pleasure boats. 2. The termination point on a river or other navigable water for these purposes. [Black's Law Dictionary (7th ed), p 883.]

The general rights and prohibitions incident to the use of a landing are set forth in American Jurisprudence 2^d as follows:

The public easement of navigation is not limited to the passage and repassage of ships with their goods, but includes incidental rights, such as those of stopping, anchoring, and the like, although not to the extent of obstructing navigation. The right to moor boats and other craft at well-known or accustomed landings and wharves on a stream is as well secured and protected by law as that of actual navigation. In such case, however, the owner or person in control is bound to leave sufficient room for the passage of other craft, and also to exercise reasonable care to prevent injury thereto or interference in other respects with the rights of other persons. [70 Am Jur 2d, Shipping, § 639.]

At trial, none of the parties presented evidence of facts or circumstances existing at the time the grantors dedicated the landing. Testimony regarding one grantor's actions in the years

following the dedication, however, suggested that he continued to live in the subdivision for an unspecified number of years following the dedication and did not object to the placement of a dock and the mooring of boats offshore from Center Landing. This evidence raised the reasonable inference that the grantor would have made it known if the subdivision residents were behaving in a manner inconsistent with his intent at the time of dedication. In light of this evidence and the grantors' selection of the word "landing," we cannot characterize as clearly erroneous the trial court's finding that the grantor intended the dedication to include the right to erect a dock and seasonally moor boats offshore from Center Landing. Furthermore, in light of the testimony at trial regarding the longstanding traditional and historical use of Center Landing as a picnic and recreation spot, the trial court did not clearly err in finding that the nonriparian residents of Westfall Heights were entitled to picnic, swim and sunbathe there. *Dobie, supra* at 541.

Defendants argue that the trial court erred when it found that plaintiffs could use the landing "as their private driveway and parking area." Defendants misstate the trial court's judgment, however, which provided only that plaintiffs "may access their respective properties through Center Landing." With respect to the trial court's finding that plaintiffs had the right to access their parcels by driving across Center Landing, we cannot conclude that the trial court clearly erred in light of the trial testimony that plaintiffs, previous riparian lot owners and their guests had driven across Center Landing for many years. *Dobie, supra*.

Defendants lastly assert that the trial court erred by limiting certain uses of the landing to daylight hours. Besides requiring that the use of an easement fall within the scope of a plat's dedication, Michigan courts also have demanded that any permitted uses not unreasonably interfere with the adjoining lot owners' use and enjoyment of their properties. *Dobie, supra*; *Thies, supra* at 289. In this case, we find no clear error in the trial court's restrictions of sunbathing, picnicking, swimming and parking to daylight hours. The daylight use restriction imposed by the trial court struck a reasonable balance between the nonriparian owners' rights to use Center Landing as the grantors intended and plaintiffs' entitlement to use and enjoy their properties.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage