STATE OF MICHIGAN

COURT OF APPEALS

JOHN MESHKIN and VICKI TEN HAKEN,

Plaintiffs/Counterdefendants-Appellants,

v

PAUL KOMINSKY, SR. and ESTHER COFFINDAFFER,

Defendants/Counterplaintiffs-Appellees.

UNPUBLISHED
October 19, 2004

No. 249916
Allegan Circuit Court
LC No. 02-030886-CH

Before: Neff, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

In this action to quiet title, plaintiffs appeal as of right from the judgment of the trial court, following a bench trial, finding that plaintiffs did not present a prima facie case that they had title to the land in dispute. We affirm in part, reverse in part, and remand.

Plaintiffs allege that they have owned lakefront property in a plat which abuts defendants' property, located in another plat, since 1975. They allege that their lot, at the time it was purchased, included land that now extends beyond the shoreline and is submerged (bottomland). Plaintiffs assert that in 1987, defendants constructed a seawall which extends onto plaintiffs' property. Plaintiffs brought this suit to quiet title to the land on which defendants' seawall extends. Defendants counter-claimed alleging that they had title to the land where the seawall was built based on adverse possession.[1]

Following a bench trial, at which both parties presented testimony of experts regarding the drawing of riparian boundary lines, the court found that plaintiffs did not have title to the disputed area, but rather that both parties have riparian rights to the submerged land. The court found that the lake to which the property abuts is irregular, and that therefore the riparian

[1] Defendants also alleged that plaintiffs' dock encroaches on their property, and that they have a right, in the form of a prescriptive easement, in plaintiffs' bottomlands for the purpose of placing a dock. Neither of these issues, nor the adverse possession claim, are involved in this appeal.

boundary lines should be drawn according to the survey taken by defendants' expert, Steven Lampen.

Plaintiffs first argue that the finding of the trial court that defendants' land was riparian, therefore entitling them to riparian rights to bottomlands, was in error. We disagree. Issues of law are reviewed de novo, while findings of fact of a trial court are reviewed under the clearly erroneous standard. *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 8; 596 NW2d 620 (1999).

Generally, "riparian land" is defined as a parcel of land which includes therein a part of -- or is bounded by -- a natural watercourse. *Thompson v Enz*, 379 Mich 667, 677; 154 NW2d 473 (1967), citing 4 Restatement Torts, § 843, p 326. "The basis of the riparian doctrine, and an indispensable requisite to it, is actual contact of the land with the water." *Thompson*, *supra* at 678-679, quoting *Hilt v Weber*, 252 Mich 198, 218; 233 NW 159 (1930). See also *Little v Kin*, 249 Mich App 502, 507-508 (2002).

There is no dispute that at the time this suit was filed, and for some time before then, defendants' land actually abutted the water. Plaintiffs argue, however, that such a determination must be made based on whether the parcel of land is separated from the water's edge by another piece of land at the time of the original government plat, regardless of whether the water level had subsequently risen to fully submerge the separating piece of land, and cites to *Cutliff v Densmore*, 354 Mich 586, 590; 93 NW2d 307 (1958, for that proposition.

The question of whether the land originally abutted the water in the original plat was disputed at trial. Plaintiffs presented the testimony of experts stating that according to the survey of the government plat, defendants' land did not touch the water, while defendants presented experts who stated that based on the same survey, the property should be extended to the water's edge. We review the finding for clear error, which requires us to not disturb the finding the trial court unless we are left with the definite and firm conviction that a mistake has been made. *Cipri*, *supra* at 9. In light of the conflicting testimony on this matter, we are not left with such a conviction. Accordingly, we do not disturb the trial court's finding that defendants' land is riparian.

Plaintiffs next argue that the submerged land is not riparian, but is actually part of the parcel of land conveyed to them in 1975.[2] Specifically, plaintiffs argue that the disputed submerged land was not submerged in 1948, when the land was originally platted. Although the shoreline had moved inward by 1961, when the land was re-platted, the re-plat uses the term "annexed," indicating that the original boundaries should be incorporated into the re-plat.

[2] Unlike with the Great Lakes, owners of inland lake shoreline property may have exclusive title to submerged land. See *Hall v Wantz*, 336 Mich 112, 115; 57 NW2d 462 (1953).

A court generally construes a contract or deed according to its plain and ordinary meaning. If a contract's terms are clear and unambiguous, its meaning is a question of law. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). The language of the deed from the previous owners clearly conveys to plaintiffs "the north half of Lot 11 of the Replat of Jirik Plat." Turning then to the re-plat of the Jirik plat, it is clear from the maps, and not disputed by plaintiffs, that a large portion of what was originally lots 12 and 13 under the original plat, are not included in the boundaries of the new re-platted lot 11. This area is the same area which defendants claim to have riparian rights and to which plaintiffs claim to hold title by virtue of their deed. It is clear, however, that the deed's reference to lot 11 does not include within its borders the disputed land. Likewise, we find that plaintiffs' attempt to enlarge the portion of land granted by the plain and unambiguous language in the deed as well as the clear boundaries contained in the re-plat of the Jirik plat lacks merit. Accordingly, we find that the trial court did not err in holding that plaintiffs did not have title to the land by virtue of their deed to lot 11 of the re-plat of the Jirik plat.

Plaintiffs next argue that even if the land is riparian, the riparian boundary lines which the trial court adopted are inconsistent with Michigan law. We agree.

The case law on the issue of how to draw riparian lines mandates that such lines must be drawn from the meander line as established at the time of the original government plat. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505; 534 NW2d 212 (1995); *Gregory v LaFaive*, 172 Mich App 354; 431 NW2d 511 (1988). In *Gregory,* in a scenario unlike the one at bar, the Court was faced with allocating land created due to accretion. *Id.* at 363. After reviewing other disputes regarding the lots, the Court instructed how the riparian lines should be drawn in order to properly allocate the accreted shoreline: "[T]he trial court must apportion that land by drawing a line from the point where the originally platted boundary line meets the original shoreline as represented by the meander lines on the original plat to a point on the currently existing shoreline . . . ." *Id.* at 364.

In *Weisenburger v Kirkwood*, 7 Mich App 283; 151 NW2d 889 (1967), this Court was also faced with the task of allocating land created due to accretion as well as determining riparian boundaries of submerged land. The Court restated the three accepted methods in dividing ownership of the lake bed:

> If the lake is circular the shore line is the base and the center line is the vertex of a triangle. If the lake is oblong the lines are drawn perpendicular to the median center. If neither of these methods are possible, the lake bed is divided in proportion to the shore line owned. [*Id.* at 291, quoting Thompson on Real Property, 1962 Replacement, vol. 6, s 3078, Supp. 1965, p. 18.][3]

[3] Citing *Weisenburger*, the *Gregory* Court reiterated these methods and also offered helpful additional comments relating to dividing land pursuant to these methods. *Gregory, supra* at 363-364.

This Court later stated that the shore line is the point where the property line met the original lakeshore. *West Michigan Dock, supra* at 507-508.

While defendants do not directly dispute that these are the generally the accepted methods for drawing riparian lines under Michigan case law, they instead characterize this rule as a "starting point" for drawing the lines. They argue, that in some instances, following this rule can lead to an inequitable apportionment of riparian rights. They then offer an elaborate alternative method for drawing the boundaries. However, their proposed method runs afoul of the case law. Moreover, defendants cite absolutely no authority in support of their proposed method. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position,'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959), nor may he give issues cursory treatment with little or no citation of supporting authority, *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). Defendants' failure to properly address the merits of their assertion of error constitutes abandonment of the issue. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003), citing *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

We find that the rules found in the case law cited were not followed when the adopted survey was taken. Accordingly, the trial court erred in finding that the riparian lines represented in this survey were accurate. Unable to find authority in support of the methods used in the adopted survey, we find that the judgment of the court adopting the survey must be vacated and this matter must be remanded to the trial court for a determination of the proper riparian lines consistent with the methods discussed above. Because the parties agree that the shape of the lake is irregular, the trial court [deleted text] should apply the appropriate method for allocation.

Affirmed in part, reversed in part and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Bill Schuette