

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS DOWLING and GAIL DOWLING,

Plaintiffs/Counterdefendants-
Appellees,

v

LARAN J. LERNER and ROSE A. LERNER,

Defendants/Counterplaintiffs-
Appellants.

UNPUBLISHED

January 12, 2006

No. 255882

Lenawee Circuit Court

LC No. 03-031296-CZ

Before: Murray, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Defendants appeal as of right a declaratory judgment in favor of plaintiffs. We affirm.

This case arises out of an action for declaratory judgment to enjoin defendants from extending their dock from an area which encroaches upon plaintiffs' property and to require removal of defendants' boat lift and any other boats/lifts interfering with plaintiffs' use of their property. Following a bench trial, judgment was rendered for plaintiffs, and defendants were ordered, in pertinent part, as follows:

The Defendants, as owners of Lot 8 on the Plat of Clark's Cove, in the Township of Woodstock, County of Lenawee, and State of Michigan, and their successors and assigns are hereby allowed to place a dock at their premises, with said dock not to exceed 60 feet in length. The dock shall be parallel with Plaintiffs' dock at the angle as Plaintiffs' dock is now located. The dock shall not exceed three feet in width and shall have no ell. The dock shall commence at the center of their lake shore frontage where it commenced in 1978 to 1996.

On appeal, defendants essentially argue that the trial court's declaratory judgment for plaintiffs was improper. We disagree. We review de novo a trial court's decision with regard to a declaratory judgment action. *Taylor v Blue Cross & Blue Shield*, 205 Mich App 644, 649; 517 NW2d 864 (1994). We review a trial court's findings of fact in a bench trial for clear error, and the court's conclusions of law are reviewed de novo. MCR 2.613(C); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A finding is clearly erroneous where although there is evidence to support the finding, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made. *Walters v Snyder*, 239 Mich App

453, 456; 608 NW2d 97 (2000). An appellate court will give deference to the trial court's superior ability to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Rellinger v Bremmeyr*, 180 Mich App 661, 665; 448 NW2d 49 (1989).

Defendants first argue that the trial court erred in ordering defendants to place their dock parallel to plaintiffs' dock without any basis to determine that defendants' dock actually trespassed on plaintiffs' subaqueous riparian land. We disagree.

In the instant case, the trial court's order to place defendants' dock parallel to plaintiffs' dock was based on its findings that the two docks in question were parallel when plaintiffs purchased their property in 1978, and that plaintiffs had not changed the location of their dock for over twenty-five years, while defendants changed the location as well as the size and length of their dock. The trial court noted that defendants' dock was a "spite" dock based on plaintiff Gail Dowling's credible testimony and defendants' photograph which depicted the obvious obstruction caused when defendants extended and changed the angle of their dock toward the front of plaintiffs' property. We find no clear error in the trial court's findings. See MCR 2.613(C) ("Regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it"). Here, plaintiff Gail Dowling testified that plaintiffs' dock had been placed at the same angle and location since 1978. She testified that after defendants lost their appeal regarding a fence variance in 1997, defendants extended their dock, changed the angle of their dock toward plaintiffs' property and created an "ell" shape on their dock. Also, photographs admitted at trial show that defendants' dock was not parallel to plaintiffs' dock and that defendants' dock and their boat lift were visually in front of plaintiffs' dock. The evidence thus supports the trial court's findings and ruling to move defendants' dock.

We note that it is immaterial whether defendants' dock actually trespassed on plaintiffs' property. The issue raised below was whether defendants' decision to extend their dock and change its angle unreasonably interfered with the use and enjoyment of plaintiffs' property. See *Adkins v Thomas Solvent Co*, 440 Mich 293, 304; 487 NW2d 715 (1992). There was not a trespass, but a nuisance which plaintiffs sought to abate in equity. MCL 600.2940. Also, there was no dispute regarding the parties' ownership of the subaqueous land of Devil's Lake. Thus, it was unnecessary for the court to determine the parties' riparian boundaries or whether defendants actually trespassed on plaintiffs' subaqueous land. As such, we conclude that defendants' argument regarding the trespass issue has no merit.

Defendants next argue that the trial court erred in ordering them to reduce their dock to sixty feet because it improperly determined that defendants' dock extension at 115 feet unreasonably restricted navigation. Also, defendants contend that the judgment deprives them of their riparian rights of access to navigable water and to build their dock out to the line of navigability. We disagree with both arguments.

Defendants are correct in asserting that persons who own riparian land enjoy certain exclusive rights, including (1) the right of access to navigable water; (2) the right to build a pier out to the line of navigability; (3) the right to accretions; and (4) the right to a reasonable use of the water for general purposes such as boating, domestic use, etc. *Tennant v Recreation Development Corp*, 72 Mich App 183, 186; 249 NW2d 348 (1976). However, use of the water by riparian owners is governed by principles of reasonableness. *West Michigan Dock and Market v Lakeland Investments*, 210 Mich App 505, 512; 523 NW2d 212 (1995). Where there

are several riparian owners on an inland lake, they must use the waters in a way that does not interfere with the reasonable use of the waters by other riparian owners. *Id.* at 512-513. “The definition of reasonable use depends on the facts of the case.” *Id.* at 513. The trial court’s findings and decisions with respect to the question of reasonable use will not be disturbed by this Court unless we are convinced we would reach a different result. *Id.*

In this case, the undisputed evidence shows that defendants extended their dock from sixty to 115 feet. As defendant Laran J. Lerner admitted at trial, defendants’ dock was the longest dock in the area. The photographs show that defendants’ dock was 115 feet in length and plaintiffs’ dock was seventy-six feet in length. Defendants’ dock was almost twice the length of all other docks in the area, which did not extend past sixty feet. The photographs also show that defendants’ dock and their boat lift was visually in front of plaintiffs’ dock. Moreover, plaintiff Gail Dowling testified that, because defendants extended and changed the angle of their dock, plaintiffs could not bring their boat in a straight line from the lake to their dock. Charles Douglas James, who lives across from plaintiffs’ and defendants’ properties, also testified that defendants’ extension of their dock blocked plaintiffs’ access at the end of plaintiffs’ dock. Moreover, James testified that all the docks in the cove get closer as they extend further into the lake, and thus, common sense dictates that if defendants continue to lengthen their dock, it would encroach on other people’s usage of the lake. A review of the trial court’s extensive findings of fact indicates that the trial court considered all the above evidence and properly determined that defendants’ use of their dock obstructed navigation and interfered with plaintiffs’ and other lake users’ use and enjoyment of the lake.

Defendants maintain that the judgment deprived them of their riparian rights because the trial court ignored evidence that a sixty-foot dock would not allow defendants to reach a navigable depth for their boat and that they need to dock their boat at the end of a dock that is at least 115 feet in length. Defendants’ claim has no merit.

The evidence shows that there was nothing special about defendants’ boat that required defendants to extend the length of their dock from sixty to 115 feet to reach deeper water. In fact, it is undisputed that the entire lake is shallow and that the water does not get any deeper at 115 feet. Also, the evidence shows that defendants had the same boat when they used the fifty or sixty-foot dock in 1996. The trial court properly considered this evidence and found that defendants unnecessarily doubled the length of their dock “in spite of the fact that he’s got the same boat now that he had when he first used the 55-foot dock on his premises in 1996.” Based on all its findings, the trial court found that 1978 dock sizes and placements were reasonable and fair, and thus, ordered both parties to restore their docks to their status quo ante. Given the overwhelming evidence that defendants changed the length, size and angle of their dock to unreasonably restrict plaintiffs’ navigation and use and enjoyment of their property, we find that no different result could be reached concerning defendants’ reasonable use of their dock. *West Michigan Dock, supra* at 513. In addition, the judgment allowed defendants to place their dock at a reasonable length and location, as well as allowed them to have a boat lift of reasonable size. Accordingly, we hold that the judgment did not deprive defendants of their riparian rights and that it was proper.

Affirmed.

/s/ Christopher M. Murray

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly