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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0020**

Ryan Carlson, et al.,  
Appellants,

vs.

Township of Livonia,  
Respondent.

**Filed July 25, 2022  
Affirmed  
Reilly, Judge**

Sherburne County District Court  
File No. 71-CV-20-23

Jevon C. Bindman, Evan Nelson, Maslon LLP, Minneapolis, Minnesota (for appellants)

Bradley A. Kletscher, Tyler W. Eubank, Barna, Guzy & Steffen, Ltd., Minneapolis,  
Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Cochran, Judge; and Kirk,  
Judge.\*

**NONPRECEDENTIAL OPINION**

**REILLY**, Judge

This is the second appeal arising from a lake-access dispute. In 2020, appellants brought a declaratory judgment action against respondent, arguing that they own fee title

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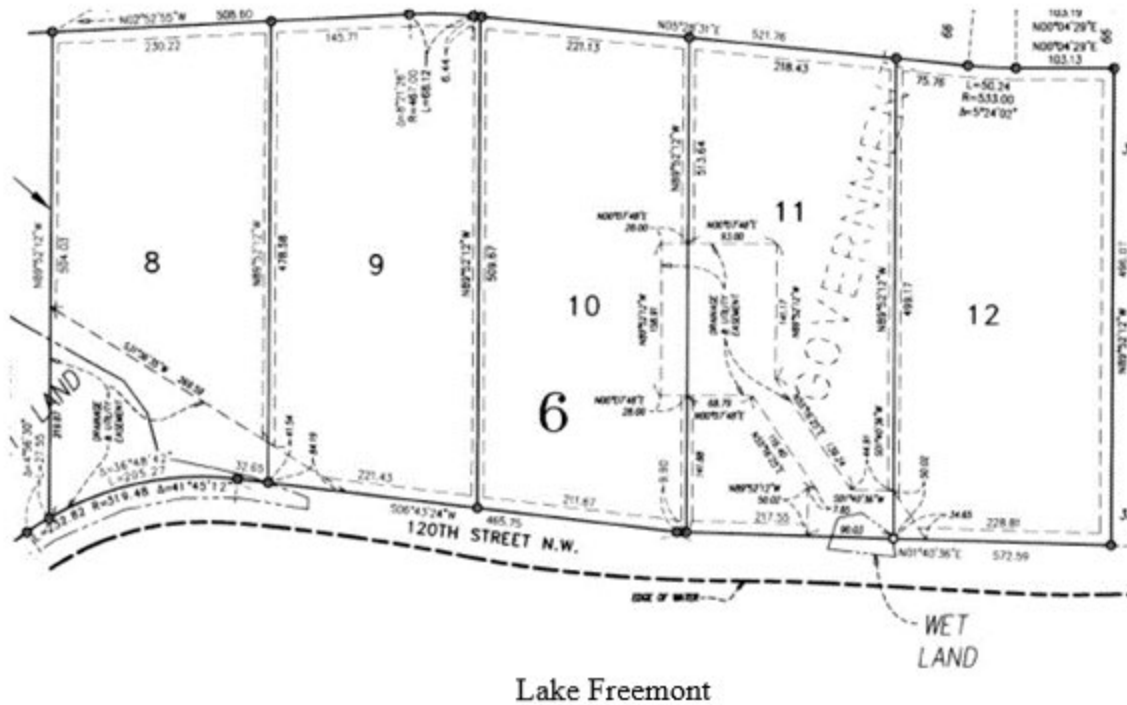
\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

to a street adjacent to their property and are entitled to exclusive riparian rights to the bordering lakeshore. The district court granted summary judgment for respondent. Appellants appealed and we reversed the district court's grant of summary judgment and remanded for further proceedings. *Carlson v. Township of Livonia*, No. A20-0993, 2021 WL 1344043 (Minn. App. Apr. 12, 2021) (*Carlson I*), *rev. denied* (Minn. June 29, 2021).

On remand, the district court determined that appellants possess fee title to the street and share riparian rights to the lake with the public. In this appeal, appellants argue that the district court (1) violated the law-of-the-case doctrine by concluding that appellants lack exclusive riparian rights; and (2) erred by concluding that respondent possesses an easement on a bordering street which confers riparian rights to the public. Because the district court did not violate the law-of-the-case doctrine and did not err in concluding that appellants share riparian rights with the public, we affirm.

## FACTS

Appellants Ryan and Tanya Carlson (“the Carlsons”) own fee title to real property (“the property”) located within the boundaries of respondent Township of Livonia (“the township”). 120th Street Northwest (“the street”) lies on the western border of the property line. It is unpaved and has been designated a minimum maintenance road. The shoreline of Lake Freemont (“the lake”) is immediately next to the western border of the street. The property is part of the residential housing development known as The Woods at Lake Freemont (“the development”) and is legally described as LOT 12, BLK 6 The Woods at Lake Fremont, Sherburne County, Minnesota.



The facts here are undisputed and were stated fully in our opinion for the first appeal. *Carlson I*, 2021 WL 1344043. Thus, we summarize only relevant facts and the procedural posture of this matter.

The Carlsons purchased the property in November 2018. Five months later, they placed a dock and boat on the shoreline of the lake next to the property.<sup>1</sup> The township sent the Carlsons a notice that the property did not include the shoreline of the lake and requested that they remove the dock. The Carlsons did not remove the dock. In January 2020, the Carlsons filed a complaint for declaratory judgment against the township. The

<sup>1</sup> We note that when the Carlsons purchased the property, they were aware of an existing covenant stating that “[n]o docks are permitted along the shore of [the lake].” *Carlson I* determined that “the township is without legal authority, under its local ordinance, to enforce the covenant prohibiting the placement of docks on the lake, or otherwise prohibit the Carlsons’ placement of a dock on the lake.” *Carlson I*, 2021 WL 1344043, at \*9.

Carlsons asserted that they were entitled to declaratory judgment on four counts: (1) they own fee title to the street and lakeshore; (2) they have exclusive use of the lakeshore and the public and township have no rights or entitlements to the lakeshore; (3) the Carlsons have a right of ingress and egress upon the street; and (4) the township has an easement interest in the street and must open and maintain the street throughout the year. The township answered and counterclaimed, seeking to enjoin the Carlsons from placing a dock on the lake.

The Carlsons moved for summary judgment on all four counts. The township filed a motion to dismiss counts three and four and cross-moved for summary judgment on counts one and two. Following a hearing, the district court denied the Carlsons' motion for summary judgment on counts one and two and granted the township's motion for summary judgment on those same counts. The district court also granted the township's motion to dismiss with prejudice counts three and four. In doing so, the district court determined that the Carlsons were not fee owners of the street and did not enjoy riparian rights to the water abutting the street.

The Carlsons appealed to this court, and we reversed. *Carlson I*, 2021 WL 1344043, at \*9. We determined that the fee title to the street was not conveyed to the township and thus remained with the developer before passing to the Carlsons when they purchased the property. As a result, we held that the district court erred by finding that the Carlsons did not own fee title to the street. *Id.* We also determined that because the Carlsons own fee title to the street, "the district court improperly determined that the Carlsons do not have riparian rights to the lake." *Id.* at \*8. Thus, we concluded that "the district court erred by

denying the Carlsons’ motion for summary judgment and granting the township’s motion for summary judgment related to counts [one] and [two] of the Carlsons’ complaint.” *Id.* Accordingly, we reversed the dismissal of the Carlsons’ remaining claims and remanded for reconsideration given the decision. *Id.* at \*9 n.4.

The district court held a hearing on remand from this court. The district court requested that the parties submit written arguments on the remaining issues and asked that the Carlsons submit a proposed order for judgment on those issues. Following the hearing, both the Carlsons and the township submitted proposed orders. The Carlsons’ order stated that they had exclusive riparian rights to the lakeshore. The township’s order stated that the parties shared riparian rights to the lakeshore.

In August 2021, the district court vacated the previous judgment and found that the Carlsons were entitled to judgment on counts one and two. The district court adopted the township’s proposed order, finding that the Carlsons own the underlying fee interest in the street, subject to the public’s terminable easement, and that “they have shared riparian rights with the township and the public as to the waters abutting that portion of [the street] that is immediately adjacent to their property.” The district court determined that the Carlsons cannot place signs, fences, or other obstructions on the street or lakeshore that in any way suggests the public does not have the right to use the lakeshore because the Carlsons have shared riparian rights, not exclusive riparian rights.

The Carlsons requested reconsideration of the district court’s August order. The district court denied the Carlsons’ motion for reconsideration on counts one and two, finding that it rightfully determined that the parties have shared riparian rights. The district

court also found that the township could consider the street to be a “minimum maintenance road,” and thus did not have to pave or plow it. Finally, the district court found that the Carlsons could not use the street for vehicular ingress and egress from their property. This appeal follows.

## DECISION

### **I. *Carlson I* did not establish, as law of the case, that the Carlsons enjoy exclusive riparian rights to the lakeshore.**

The Carlsons argue that because we decided that the district court erred by denying their motion for summary judgment in *Carlson I*, the law-of-the-case doctrine applies and supports a determination that they possess exclusive riparian rights. We review the district court’s compliance with remand instructions for an abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). But we review de novo whether the law-of-the-case doctrine applies to an issue on remand. *Sigurdson v. Isanti County*, 448 N.W.2d 62, 66 (Minn. 1989) (reviewing the application of the doctrine de novo); *Sylvester Bros. Dev. Co. v. Great Cent. Ins. Co.*, 503 N.W.2d 793, 795-96 (Minn. App. 1993).

The law-of-the-case doctrine is a well-established rule intended to “effectuate the finality of appellate decisions.” *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994). The doctrine provides that “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990) (emphasis omitted) (quotation omitted). The law-of-the-case doctrine applies when an appellate court rules on a legal issue and remands to the district court for further proceedings. *Sylvester*, 503 N.W.2d at 795.

To determine whether the law-of-the-case doctrine applies, we must discern whether we decided that the Carlsons have exclusive riparian rights when we concluded the district court erred in granting summary judgment to the township. “[T]he scope of the finality of an appellate decision depends on what the court intends to be final.” *Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 720 (Minn. 1987). We determine what the appellate court intended to be final by examining the court’s decision. *Id.* If an appellate court cannot completely decide an issue or if something remains to be done at the district court, the appellate court will usually say so, typically by remand with directions. “[I]ssues not determined in the first appeal may, on remand, be litigated.” *Id.* And district courts are generally given broad discretion on remand to act in a way that is not inconsistent with remand instructions. *Janssen*, 704 N.W.2d at 763.

In *Carlson I*, we reversed the district court’s denial of the Carlsons’ motion for summary judgment, determining that “the district court erred by concluding that the Carlsons did not own fee title to the street.” *Carlson I*, 2021 WL 1344043, at \*8. And because the district court erred in concluding that the Carlsons do not own fee title to the street (count one), we concluded that “the district court improperly determined that the Carlsons do not have riparian rights to the lake” (count two). *Id.* But the opinion did not discuss whether the Carlsons had *exclusive* riparian rights. Instead, the opinion reversed the district court’s dismissal of the Carlsons’ claims and remanded “for reconsideration of those claims in light of our decision.” *Id.* at \*9 n.4. Nothing in *Carlson I* establishes that we intended to rule on whether the Carlsons possess *exclusive* riparian rights. Rather, the opinion only addressed whether the Carlsons had *any* riparian rights.

The Carlsons cite *Mattson* to argue that the appellate judgment on count two<sup>2</sup> was intended to be final because this court reversed count two. 414 N.W.2d at 717. In *Mattson*, plaintiff-appellants sued defendant-respondents for an outstanding portion of their tort judgment. *Id.* at 718. The district court granted partial summary judgment for plaintiff-appellants holding that their bad-faith claim was not time-barred, and defendant-respondents appealed to this court. *Id.* On appeal, this court reversed as to the bad faith claim, determining that it was time-barred. *Id.* at 719. Eight months later, plaintiff-appellants returned to the trial court, seeking summary judgment on several grounds. *Id.* The Minnesota Supreme Court determined that “the court of appeals, in reversing plaintiffs’ judgment, intended its reversal to conclude finally the litigation.” *Id.* at 720.

But in *Mattson*, this court did not remand for further proceedings following the reversal, nor was remand necessarily implied. *Id.* The Minnesota Supreme Court determined that “nothing remained to be litigated, and the case was completely concluded.” *Id.* In this case, while this court did reverse the district court’s dismissal of count two, this court only concluded that the Carlsons “have riparian rights to the lake.” *Carlson I*, 2021 WL 1344043, at \*9 n.4. This court never explicitly stated that the Carlsons have *exclusive* riparian rights.

District courts are generally given broad discretion on remand to act in a way that is not inconsistent with remand instructions. *Janssen*, 704 N.W.2d at 763. Here, this court

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<sup>2</sup> Count two of the Carlsons’ declaratory judgment action sought an order declaring that the Carlsons have “exclusive use of the lakeshore” and that “[t]he public and [the township] have no rights or entitlement” to the lakeshore.



reversed the district court's decision to grant summary judgment for the township. But this court did not give explicit instructions on the scope of remand and instead ordered the district court to reconsider the remaining claims given the decision. *Carlson I*, 2021 WL 1344043, at \*9 n.4. Thus, whether the Carlsons possessed exclusive riparian rights was not decided in *Carlson I*. Accordingly, the law-of-the-case doctrine does not apply.

## **II. The district court did not violate the Carlsons' due-process rights.**

The Carlsons next argue that if the district court did not violate the law-of-the-case doctrine, then the district court deprived them of their right to assert exclusive riparian rights without due process of law. The United States and Minnesota Constitutions prohibit the state from depriving any person of liberty or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. To analyze a due-process challenge, courts first determine whether a protected liberty or property interest is at issue. If such an interest is at issue, courts then examine what process is due. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Whether the government violated a person's procedural due process rights is a question of law that we review de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012).

“Due process requires reasonable notice, a timely opportunity for a hearing, the right to counsel, the opportunity to present evidence, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record.” *In re Welfare of Child. of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). On remand to the district court, the Carlsons detailed what they believed to be outstanding issues. Following the hearing, the Carlsons submitted a proposed order and brief to the court. The Carlsons were also able to

object to the township's proposed order through a letter to the district court. In doing so, the Carlsons argued that "the [t]ownship's proposed order contains language that is completely and utterly contrary to the law of this case." The district court received the letter but still adopted the township's proposed order. The Carlsons were then provided the opportunity to move for reconsideration. Although the district court denied reconsideration, the district court reviewed the request and explained the reasons for the denial in the modified order.

In sum, the Carlsons had an opportunity to be heard as to the remaining issues on remand and had the chance to object to the township's memorandum. The Carlsons were not denied notice or an opportunity to be heard. Thus, the district court did not violate the Carlsons' due-process rights.

**III. The district court did not err when it determined that the Carlsons and the public share riparian rights.**

Finally, the Carlsons argue that if the law-of-the-case doctrine does not apply, then the district court erred in granting shared riparian rights to the public. In Minnesota, a riparian owner has the "right to make such use of the [waterway] over its entire surface, in common with all other abutting owners." *Johnson v. Seifert*, 100 N.W.2d 689, 697 (Minn. 1960). These rights include the right to "build and maintain, for private or public use, wharves, piers, and landings and extending into the water," and the right to use the water for "hunting, fishing, boating, sailing, [and] irrigating." *McLafferty v. St. Aubin*, 500 N.W.2d 165, 168 (Minn. App. 1993).

In *Carlson I*, we determined that the Carlsons own fee title to the street and the township has a terminable easement to the street. 2021 WL 1344043, at \*8. The township argues that when a public entity holds an easement for a street and that street is on the edge of water, the public has riparian rights based on that easement. We agree. As the district court correctly noted, where a street is dedicated to public use and that street borders public water, the street is “presumed to have been intended to enable the public to have access to the water for all proper public purposes.” *In re Application of Baldwin*, 15 N.W.2d 184, 186 (Minn. 1944) (quotation omitted).

Established caselaw supports our conclusion that the owner of an easement and the owners of the underlying fee share the riparian rights. See *Brisbine v. St. Paul & Sioux City R.R. Co.*, 23 Minn. 114, 129-130 (1876) (determining that riparian rights appurtenant to a strip of property belonged to the fee owner of the property and thus the city did not hold exclusive riparian rights, only a street easement bordering the river); *McLafferty*, 500 N.W.2d at 167 (applying *Brisbine* to conclude that the city did not have exclusive riparian rights as an easement holder but shared riparian rights with the property owner).

The Carlsons argue that the caselaw applies only when the road leads directly to the body of water and not when the road borders the body of water. This argument misstates the law. The rule that an easement owner and fee owner share riparian rights does not depend on whether the road leads to the lake. When a public entity possesses riparian rights because of a street easement along or bordering a lake, the public and the fee owner share riparian rights. *Id.*

Here, the parties agree that the township possesses an easement and that the Carlsons possess the underlying fee title to the street. It is also undisputed that the lake is a public lake and that the western edge of the road is the edge of the lake. Finally, although unpaved and dedicated as a minimum maintenance road, the road is available for use by the public. Thus, the district court correctly applied the relevant law in its analysis and came to the correct conclusion that the Carlsons possess shared riparian rights with the public and are not entitled to interfere with the public's right to use the road and access the lake.

**Affirmed.**