

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 14, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-0130-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ROLAND WEST AND JEANINE WEST,

PLAINTIFFS-RESPONDENTS,

v.

SHARI MAREK AND GREG WILLIS,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Burnett County:
JAMES H. TAYLOR, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Gordon Myse, Reserve Judge

PER CURIAM. Shari Marek and Greg Willis (collectively Marek) appeal a judgment requiring them to remove a pier they placed in the water at the end of their walkway easement on Roland and Jeanine West's property.¹ They

¹ This is an expedited appeal under RULE 809.17, STATS.

argue that § 30.131(1), STATS., allows them to place a pier at the end of the easement because it is not prohibited by or inconsistent with the terms of the written easement. Because we conclude that the statute does not create rights for the easement holder against the landowner, and the deed creating the easement does not include the right to construct or maintain a pier, we affirm the judgment.

The easement was created by a 1982 deed that allows Marek a five-foot easement for “private walkway purposes” over the West’s property to Wood Lake. The trial court concluded that maintaining the pier was forbidden by § 30.131, STATS., because it was inconsistent with the terms of the easement. Marek argues that the easement does not specifically or impliedly prohibit placement and maintenance of a pier and that the right of access to the lake implies the right to construct and maintain a pier.

Even if placing and maintaining a pier is not unlawful under § 30.131, STATS., that statute does not grant rights to the non-riparian owner vis-a-vis the riparian owner. See *Ellingsworth v. Swiggum*, 195 Wis.2d 142, 151, 536 N.W.2d 112, 115 (Ct. App. 1995). Meeting the statutory criteria only makes constructing and maintaining the pier not unlawful. *Id.* In the absence of a specific grant of permission to build a dock or pier, no such right exists when it is opposed by the title owner. The use of the easement must be in accordance with and confined to the terms and purposes of the grant. See *Hunter v. McDonald*, 78 Wis.2d 338, 343, 254 N.W.2d 282, 282, (1977). Placement and maintenance of a pier is not granted or implied by the easement.

The cases Marek cites do not support the proposition that the holder of an easement for private walkway purposes has the same riparian rights as the title owner. In *Northern Pine-Land Co. v. Bigelow*, 84 Wis. 157, 54 N.W. 496,

(1893), the court reviewed the rights of riparian owners to construct and maintain piers far enough to reach navigable water. The court specifically noted that this right rests on title to the bank. However, an easement holder does not have title to the shoreline. In *Colson v. Salzman*, 272 Wis. 397, 401, 75 N.W.2d 421, 423 (1956), the court again distinguished an easement holder from the title holder, concluding that the riparian owner has exclusive rights, including the right to construct a pier, that do not apply to easement holders unless that right is granted by the easement. Likewise, in *Stroesser v. Shore Drive Partnership*, 172 Wis.2d 660, 666, 494 N.W.2d 204, 207 (1993), the court made clear that riparian owners' rights derive from their ownership of the riparian land. Those rights can be conveyed to others by an easement, but the mere existence of an easement does not confer the status of riparian owner upon the easement holder. *Id.* at 668-69, 494 N.W.2d at 208.

The easement in *Stroesser* reserved the grantor's right to "use of the channel by means of ingress and egress, and also reserv[ed] to themselves and such owners, the right ... to use the lakeshore for bathing, boating or kindred purposes" The court concluded that this language constituted an easement granting riparian rights. In this case, however, the easement contains no such language. An easement "for private walkway purposes over and across the land" does not grant riparian rights to the easement holder.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

