

Water: Michigan Court of Appeals Lakefront Property Owner Littoral and Riparian Rights

Arkansas Environmental, Energy, and Water Law Blog



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

03/11/2016

Co-Author: Waymon Peer

The Michigan Court of Appeals (“Court”) in a January 21 opinion assessed the rights of a property owner in regards to littoral and riparian rights. See *Bildstein v. Hasler et al*, 2016 WL 298982.

The Court addressed the parameters of a beach easement along lakefront properties, and the parties’ rights to use Woodland Court, the property in question.

Richard Bildstein and Connie Yuska (collectively “Plaintiffs”) filed suit against Earl and Dianna Hasler (collectively “Haslers”). The Haslers are backlot owners around a dock extending from Woodland Court.

Plaintiffs challenged the Haslers’ activities on the property. The challenged activities included mooring a boat on a dock for extended periods of times, engaging in water activities, and generally “partying.”

Plaintiffs asserted that the activities in question were beyond the scope of use for the property and that as littoral owners, they possessed rights accompanying that interest.

The plaintiffs were deemed littoral owners. However, these rights did not affect how the Haslers were able to use the property.

The Haslers responded that all lot owners were necessary parties to the suit because they sought to define the rights of all property owners on Woodland Court. The appellate court affirmed the circuit court’s decision to proceed with the matter despite the absence of several lot owners.

A key issue was the Circuit Court’s description of the defendants’ rights to use and enjoy Woodland Court, a strip of land that culminates at Crooked Lake. The Haslers argued that the circuit court improperly limited the length of time they were able to moor boats to a nonexclusive dock. The plaintiffs argued that the defendants had no right to install, maintain, or use any dock.

The appellate court focused on the scope of “use” in relation to Woodland Court. It held that caselaw supports the circuit court’s conclusion that the defendants could construct a nonexclusive dock in Crooked Lake, which borders the plaintiffs’ lot. The Court cited *Thies v. Howland*, 424 Mich. 282, 293; 380 N.W.2d 463 (1986), which held that the right to construct a dock is not dependent on the public owning a roadway, but rather it is based upon the presumption that the plattor intended to give access to the water and permit the building of structures to aid in that access.

The Court addressed defendants right to use Woodland Court in the context of their littoral and riparian rights. Such rights include the right to permanently anchor boats off shore. *2000 Baum Family Trust v.*

Babel, 488 Mich. 136, 793 N.W.2d 633 (2010). However, incidentally within this right is the public's right of navigation to anchor boats temporarily. *Thies*, 424 Mich. at 288, 380 N.W.2d at 466.

The Court acknowledged that the defendants did not have littoral interests because that right is only given to owners whose land abuts a lake. The Haslers are backlot owners with a right to access the water through land dedicated for that purpose on the plat map. They did not have littoral rights nor have grounds to assert a right to moor boats on the lake for an extended period of time.

The Court then held that use in relation to Woodland Court for the defendants includes regular beach activities of fishing, swimming, and boating. It notes non-riparian owners and members of the public who gain access to a navigable waterbody have a right to use the surface of water in a reasonable manner for activities such as swimming, boating, and fishing. *Thies*, 424 Mich. at 288, 380 N.W.2d at 466. The Haslers activities were deemed permissible.

[Click here to download a copy of the decision.](#)