

## Subdivision Owned Lake: Missouri Supreme Court Addresses Riparian Rights of Adjacent Landowner



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The Supreme Court of Missouri addressed in an April 30th opinion a riparian rights issue associated with an artificial body of water. See *Incline Village Board of Trustees v. Elder*, 2019 WL 1912218.

The question considered was whether a landowner adjacent to a lake that had been built and is owned by a subdivision has riparian rights (including a right of access).

Sherwood Builders, Inc., (“Sherwood”) built the subdivision Incline Village in St. Charles County, Missouri. The amenities included the creation of a man-made lake called Main Lake. The lake was created by damming a creek.

Land not owned by Incline Village abuts other portions of Main Lake. Nevertheless, the lakebed is entirely within Incline Village. Further, no properties outside Incline Village have any ownership in the lakebed.

Sherwood established an Indenture of Trust and Restrictions of Incline Village which included the following language:

No structures or other improvements shall be made on or to any common area, including any body of water, other than such structures or improvements which are made by the trustees for the benefit of all lot owners. Except that, the owner of each lot which abuts any body of water, make construct one boat dock on such body of water, provided that, said boat dock extends from said lot and is first approved in writing by the trustees.

Sherwood subsequently conveyed all the land encompassing Incline Village (including Main Lake) to the Incline Village trustees. Fees were assessed to Incline Village lot owners to maintain the lake, including the heightening of the dam.

Matthew and Andrea Elder own a home and another lot in Incline Village. Neither of these lots abut Main Lake. They also own a lot in a different subdivision that abuts Main Lake. The Elders pay the referenced annual assessment on their Incline Village property to maintain Main Lake. Also, in accordance with the Incline Village Indenture, they have the right to Main Lake’s exclusive use and benefit. However, the Indenture explicitly prohibits building a dock because their Incline Village property does not abut Main Lake.

The Elders built a dock on Main Lake on their non-Incline Village property abutting Main Lake. The dock was stated to have been built despite the fact that at least one of the Incline Village trustees told them they could not do so. Further, the trustees objected to the building of the dock. Incline Village trustees brought suit seeking a Declaratory Judgment, damages for trespass, and the removal of the dock. The

lower court held that the Elders had no riparian rights to Main Lake from their ownership of the adjacent (non-Incline Village lot). It ordered removal of the dock.

The Court on appeal outlines the scope of riparian rights in Missouri. It notes the riparian right includes the ability of a landowner whose property borders on a body of water or water course to make reasonable use of the water. Consequently, owners of land abutting on bodies of water or accorded certain rights by reason of their adjacency.

Nevertheless, the Court notes that as a general rule riparian rights do not ordinarily attach to artificial streams or channels. This distinction is stated to be derived at least in part on the need to maintain artificial bodies of water. It references the monies expended by the Incline Village lot owners on the maintenance of Main Lake.

The Court notes that Main Lake is an artificial body of water. It was built by the founder of Incline Village and has been maintained by the owners of properties in that subdivision. Riparian rights are stated to not typically arise from ownership of land abutting an artificial lake.

The Elders, nevertheless, argued that they acquired riparian rights in Main Lake because it is a permanent addition to the land. The Court rejects this argument. It distinguishes the Greisinger case cited by the Elders, noting it involved acquisition of riparian rights through a theory of implied reciprocal easements.

The Court concludes in part stating:

The law flows like water, down the path of least resistance. The Elders request this Court flow uphill in adopting an unnecessary exception when longstanding Missouri easement law suffices. This Court declines to adopt such an exception and holds the established common law applies, denying riparian rights to landowners abutting artificial bodies of water.

A copy of the opinion can be found [here](#).