

Riparian Zone/Navigable Waterway: Wisconsin Appellate Court Addresses Conflict Regarding Pier/Wet Boathouse



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The Court of Appeals of Wisconsin (“Court”) addressed in a November 26th opinion a dispute regarding the ownership of a pier and a wet boathouse. See *DeSombre v. Bolderbuck*, WL 6314826.

The wet boathouse is described as one that is constructed beyond the ordinary high water mark (“OHWM”) of a navigable waterway.

The DeSombres and Boldebucks own neighboring properties on the lake. The western boundary line of the DeSombres’ property is the eastern boundary line of the Boldebucks’ property. The Boldebucks’ property (Lot 29) and the DeSombres’ property (Lot 30) were owned by an individual named Blair. Lot 30 is stated to contain the following notation in the deed:

Including the right to continue to use and maintain the existing boat house and pier located near the Northwest corner of this parcel.

The Lot 29 warranty deed previously contained the following verbiage:

Subject to the right of the grantor, their heirs and assigns to continue to use and maintain the existing boat house and pier located near the Northeast corner of this parcel, said grantor owning adjoining lands to the East of this parcel.

The DeSombres purchased Lot 30 on November 14, 2007 and the deed contained the following notation:

Including the right to continue to use and maintain the existing boat house and pier located near the Northwest corner of this parcel.

The Boldebucks purchased Lot 29 on June 12, 2012 but there was not a reference to the pier or wet boathouse.

The opinion notes that it is undisputed according to the metes and bounds legal descriptions contained in the parties’ deeds that the pier and wet boathouse extend into Otter Lake from the DeSombres’ property.

A dispute developed after the Boldebucks began using the pier and wet boathouse when the DeSombres were absent. This use was without the DeSombres’ consent.

The Boldebucks asserted they had a right to use the pier and wet boathouse because those structures were located substantially within the Boldebucks’ riparian zone. However, it was conceded that the DeSombres’ deed granted them a permissive right to use and maintain the boathouse. Nevertheless, it was stated this right was concurrent with the Boldebucks’ rights of ownership and use.

The Desombres asked the lower court to:

1. Declare they were the sole owners of the pier and wet boathouse/the Boldebucks did not have any ownership interest in those structures
2. Declare the pier and boathouse did not interfere with the Boldebucks' riparian rights

The lower court granted the DeSombres' Motion for Summary Judgment. The rationale for the decision was its belief that the DeSombres were sold a property containing a boathouse and took title based on verification by survey and legal description that they would have ownership. Also noted was their insuring the boathouse and that any encroachment of the Boldebuck riparian zone did not constitute an actionable violation of riparian rights. The "situation" was deemed "open and obvious" to the Boldebucks at the time of their purchase.

The Court reverses on appeal.

Both parties are deemed riparian owners because they have title to the ownership of land on the bank of Otter Lake. The Court stated:

. . .As relevant to this case, those rights include the right to "construct a pier or similar structure in aid of navigation. . . In addition, a riparian owner has the exclusive right to use any such pier and may therefore "eject others" who attempt to use it.

The three general methods that Wisconsin uses to determine boundaries between neighboring property owners' riparian zones are discussed in the opinion.

The Court concludes that the DeSombres failed to introduce evidence showing the location of the pier and wet boathouse in relation to the parties' respective riparian zone. It held that the determination was material both to whether the DeSombres owned the pier and wet boathouse and whether those structures interfere with the Boldebucks' riparian rights.

Even if the DeSombres established a prima facie case for summary judgment – the evidentiary materials submitted by the Boldebucks were sufficient to raise a genuine issue of material fact as to the location of the pier and wet boathouse in relation to the parties' respective riparian zone. The Boldebucks had submitted an affidavit of a surveyor which included a survey map. The survey map depicted the location of the boundary line between the parties' riparian zones using both the extended lot line method and coterminous method. Using the boundary line method, the survey is stated to have shown that nearly the entire pier and boathouse are on the Boldebucks' side of the line.

Based on certain assumptions, the Court notes that the survey shows that portions of the pier and boathouse are located within the Boldebucks' riparian zone regardless of whether the extended lot line method or the other method is used to determine the boundary between the parties' riparian zone. As a result, this was deemed to be evidence indicating a factual dispute regarding this issue.

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