

# Riparian Rights/Construction of Pier: Wisconsin Appellate Court Addresses Scope of an Easement



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

07/14/2021

Co-Author: Brett Whitley

The Court of Appeals of Wisconsin (“Court”) addressed in a June 23rd Opinion the scope of a lake easement. See *Trahan v. Hinton*, 2021 WL 2577142.

The question considered was whether a pier could be placed within the easement.

A lakefront property owner has riparian rights. Riparian means “[o]f, relating to, or located on the bank of a river or stream (or occasionally another body of water, such as a lake).” *Konneker v. Romano*, 2010 WI 65, ¶15 n.5, 326 Wis. 2d 268, 785 N.W.2d 432. Further, “a landowner’s riparian rights include the right to construct a pier.” *Id.* Such riparian rights can be given to another through the conveyance of an easement.

The legal definition of an easement is similar in most states. For example, the Supreme Court of Arkansas defines an easement as a “liberty, privilege, or advantage, which one may have in lands of another without profit, and which may arise by deed or prescription.” *Sluyter v. Hale Fireworks Partnership*, 370 Ark. 511, 514, 262 S.W.3d 154, 156.

The land upon which the easement sits is called the servient estate. The holder of an easement is “entitled to use the servient estate in a manner that is reasonably necessary for the convenient enjoyment of the servitude.” *Garza v. American Transmission Co.*, 2017 WI 35, ¶129, 374 Wis. 2d 555, 893 N.W.2d 1 (emphasis added).

*Trahan* focused on whether a ten-foot lake easement granted to Albert Hinton in 1973 included the right to construct a pier. Tina Trahan, a current owner of the servient estate, and Stone Manor Condominium Association, Inc. argued that, as a matter of law, a pier is not allowed under the easement. The appellees, the Hintons, cross appealed the denial of their claim preclusion and prescriptive easement arguments.

The Court first assessed whether the deed that conveyed the easement unambiguously granted riparian rights to use the lake shore for access to the lake and for boating. If the deed unambiguously conveyed such rights, then the language is reviewed to determine if the parties intended for the riparian rights to include the ability to construct a pier. There is then a determination as to whether the pier constructed was reasonable in light of the deed’s language. If these steps are satisfied, the trial court would be correct in holding that the Hintons’ pier did not constitute a trespass or a nuisance on the use of the easement.

First, the Court found that the deed clearly conveyed riparian rights to Hinton. The deed states that:

Grantor Hinton, his heirs and assigns, also retains the right to maintain either an existing boat buoy in the lake in front of the above described easement or a boat lift station on the shore of Lake Geneva at lake

end of easement and to store a small row boat on the shore of Lake Geneva at the lake end of said easement.

It also grants the Hintons access to Geneva Lake stating:

. . . such easement [can] to be used for passage of vehicles and persons on and across said real estate to the shore of Lake Geneva.

The Court determined that the clear purpose of the easement was to provide access to Geneva Lake for boating. Thus, the easement implicitly provided the riparian right to construct a pier even though it was not explicitly referenced.

The Court also found that the easement's grant of riparian rights included the right to construct and maintain a pier. The pier placed by the Hintons was "reasonably necessary to enjoy the easement under its plain terms. It reasoned that if the easement was to prohibit construction of a pier, as the appellants argue, the Hintons would have to wade into Geneva Lake to get to their boat lift, lower their boat, and clamber over the sides of the boat from the water. This was not deemed a plausible interpretation of the easement.

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