

Lake and Dock Access Rights: Michigan Court of Appeals Addresses Riparian Rights and Prescriptive Easements



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The Court of Appeals of Michigan, in a May 23rd decision, addressed whether lot owners without lake frontage had certain rights related to a subdivision dock. See *McEwen v. Guthrie et. Al*, 2017 WL 2262882.

The questions addressed included whether dock privileges could be based on:

1. a right to install, maintain, use, or dock in the subdivision under the language of the deeds and plant definition; or
2. a prescriptive easement.

James and Barbara McEwen (“plaintiffs”) appealed a lower court declaratory judgement for the defendants.

The defendants consisted of neighbors who owned backlots, or lots without lake frontage along Patterson Lake (“lake”). Since the 1950’s backlot owners had periodically installed a dock at the end of Lakeview drive. Plaintiffs claimed that the defendants’ rights were limited to the right to access the lake.

The lower court found that the defendants had a right to install, maintain, and use a dock under the applicable deed language and a prescriptive easement.

The Court of Appeals affirmed.

The Court of Appeals concluded that the plain language of the deeds as well as the plat dedication granted the backlot owners limited access to the lakes. The relevant language of the plat stated:

The streets and alleys as shown on said plat are hereby dedicated to the use of the lot owners.

The deeds stated:

. . . with full privileges [sic] to the lot owner the wright [sic] away to the lake and the wright [sic] to have no more than two boats on shore at any time fore [sic] private use only.

The court also found that this access included a commensurate right to build a dock at the road end, citing *Thies v. Howland*, 380 NW2d 463 (1985). In *Thies*, the court stated that:

Public ways which terminate at the edge of navigable waters are generally deemed to provide public access to the water... Any dock which is constructed at the end of a common way must be made available for the use of those to whom the way is dedicated.

The right to erect and maintain a dock is usually an exclusively riparian right, or a right exclusively enjoyed by lake front owners. Technically the rights of the plaintiffs are littoral, as they own land that abuts a lake, and riparian refers to land that abuts a river. However, the terms have been used interchangeably by courts. As a result they are now deemed functionally synonyms.

This stands for the proposition that if a public right of way terminates at the edge of a waterway, it can be presumed that the intent was to provide public access to the water. A dock is an extension of that right, by allowing better access.

The backlot owners were therefore deemed to have a right to construct and maintain a dock for daytime docking and mooring of boats. Further, the court concluded that the defendants had the right to overnight and permanent docking of their boats, due to the creation of a prescriptive easement.

A prescriptive easement is an easement that results “from use of another’s property that is open, notorious, adverse, and continuous for a period of fifteen years.” It was uncontested that the use of the dock was open, notorious, and continuous for more than fifteen years. However, the plaintiffs argued that it was not adverse as the docks were installed pursuant to an agreement between the neighbors.

The court found that it did not matter if there was an agreement, written or oral, for the agreement would not “render their actions in doing less inconsistent with the rights of the property owner.” As a result, the defendants had a prescriptive easement to use the dock.

Consequently, the Court of Appeals upheld the defendant’s right to use the dock:

. . . in the daytime due to the language of the deeds and the plat dedication, and the right to nighttime and permanent use due to a prescriptive easement.

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