

Lake Property Ownership: Montana Supreme Court Addresses Riparian Boundary Dispute



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

02/20/2018

Co-Author: Celina Walker

The Supreme Court of Montana addressed a dispute between two neighbors over ownership of a portion of a non-navigable lake. *Ash v. Merlette*, 407 P.3d 304, 307 (Mont. 2017).

A lower court (District Court) held that a Montana landowner owned certain disputed land between the high and low-water marks of the lake.

Larry and Serena Streeters (“Streeters”) acquired approximately 43 acres of property in 1986 surrounding a small lake known as Parker Lake. The Streeters subdivided the property in 1991 into a 5.66 acre tract and a 37.17 remainder. Both tracts included lake frontage on Parker Lake.

The Streeters sold the 37.17 acre remainder (“Merlette Property”) in 1992 to John Bradshaw Merlette (“Merlette”). However, they retained the 5.66 acre tract (“Ash Property”) for themselves. Brenda Ash acquired the Ash Property from the Streeters in 2000.

As created and particularly described, the Streeters’ 1991 Certificate of Survey 10404 (“COS 10404”) of the 5.66 acre Ash Property included approximately 577 feet of frontage on Parker Lake. COS 10404 described the Ash Property boundary along the lake by a particularized metes and bounds plot running from a referenced starting point on the high-water mark and then “on and along” the high water mark three specified courses marked by pin locations.

The subsequent 1992 transfer of the 37.17 acre remainder from Streeters to Merlette specifically excluded the Ash Property from the conveyance deed by reference to COS 10404 and a verbatim metes and bounds description lifted verbatim therefrom. The 2000 Ash Property Deed (“Ash Deed”) also described the property by reference to COS 10404. The Ash Deed included the same metes and bounds description encompassing the referenced point on the high-water mark “on and along” the high-water mark three specified courses of “577 feet more or less.”

Ash installed a dock in 2015 on the Parker Lake shoreline in front of her home in advance of listing her property for sale. Merlette protested that he owned all of the land below the high-water mark bordering Ash’s property. filed suit for declaratory judgment, trespass in tort, a temporary restraining order and a preliminary injunction asking the District Court to enjoin Merlette from interfering with her lake access.

The parties filed cross-motions for summary judgment. The District Court granted summary judgment for Ash. The basis for the ruling was Ash’s ownership of the land between the high- and low-water marks of Parker Lake bordering the Ash Property.

In Montana, a conveyance of land bordering on a water body conveys at least to the low-water mark unless otherwise provided by the conveyance. Mont. Code Ann. § 70-16-201. The parties agreed that the Ash Property lake frontage descriptions in the COS 10404 and deed are consistent, clear, and unambiguous. However, they disagreed about their meaning. Contrary to the District Court's decision, Merlette asserted that the metes and bounds description of the Parker Lake boundary line in COS 10404 and the Ash Deed limit the property to the high-water mark.

The Montana Supreme Court stated it would construe instruments of conveyance to give full effect to the grantor's intent at the time of the conveyance. Further, it construes the instrument in its entirety, giving effect to all four corners.

The Court stated that in the United States there is a well-settled methodology for surveying and describing riparian boundaries. This methodology accepts the "meander line" ("a line showing the place of the water course and its sinuosities, courses, and distances") as a boundary line for lands bounded by water bodies.

Consistent with this practice, a federal and state common law rule developed that "unless the language of a conveyance clearly and unequivocally manifests a more limited intent to fix a riparian boundary to the precise course specified in a property description, a riparian boundary specified or depicted in an instrument of conveyance, or incorporated survey or plat map, is merely a meander line, i.e., a mere approximation of the ever-fluctuating and meandering edge of a water body intended as the actual boundary line of the property." (emphasis in original). Accordingly, unless expressly provided on the face of the instrument, an instrument of conveyance describing a riparian boundary by reference to a meander line conveys title at least to the low-water mark of the body of water rather than the line precisely described by metes and bounds. Mont. Code Ann. § 70-16-201.

While neither the COS 10404 nor the Ash Deed used the term "meander," the court stated that this was not outcome determinative. Further, a conveyance of riparian property by reference to a specific metes and bounds description along the high-water mark is insufficient alone to overcome the presumption of Mont. Code Ann. § 70-16-201, that the grantee takes at least to the low-water mark.

The Court concluded that the Ash Property lake frontage descriptions in COS 10404 and Ash Deed were unquestionably meander line descriptions. Nothing in either instrument indicated an intent to strip the parties' common grantors (Streeters), or successors, of the grantors' preexisting ownership of the land between the high- and low-water marks of Parker Lake along Ash Property. Thus, Streeters retained ownership of the land between the high- and low-water marks along the Ash Property in COS 10404 until the transfer of the parcel to Ash.

The prior Merlette Property deed had specifically excluded the Ash Property description as defined in COS 10404. Consequently, Merlette never owned the disputed land below the high-water mark and under Montana law the metes and bounds description was a meander line establishing the riparian boundary of the Ash Property at least to the low-water mark of Parker Lake.

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