

Riparian Rights: North Carolina Court Addresses Non-Navigable Lake Access Issue



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The Court of Appeals of North Carolina (“Court”) addressed in an October 16th opinion whether Lewis Edward Dye, Jr (“Defendant”), through his chain of title in a small tract of land on Everett’s Lake (the “Lake”) also has the right to access this waterbody. See *Everett’s Lake Corporation v. Dye*, No. COA18-360, 2018 WL 4996362 (N.C. Ct. App. 2018).

Everett’s Lake Corporation (“Plaintiff”) owns the Lake.

In 1948, the Lambs conveyed a thirty-acre tract which abutted to the Lake to the Entwistles. The Lambs also conveyed certain rights to use the Lake for noncommercial purposes.

The Entwistles subsequently conveyed in 1988 a 3.55-acre portion abutting the Lake to the Bakers.

In 1989, the Bakers conveyed two-tenths of an acre abutting the lake to the Defendant in each of the above-described conveyances. The grantor conveyed riparian rights as well as the land.

Ten years after the Lambs conveyed the thirty-acre tract to the Entwistles (1958), they conveyed the Lake itself to the Plaintiff by warranty deed.

Plaintiff formed a fishing club (the “Club”), charging members for the right to fish. It expected that adjacent landowners would join the Club and pay the annual dues if they desired to fish. However, the Defendant began fishing on the Lake without joining the Club.

As a result, the plaintiff brought suit for civil trespass.

The Court upheld the trial court’s ruling that the Defendant, as the owner of his small tract, has “riparian rights” in the Lake. These rights include the ability to make personal use of the Lake.

The opinion includes an analysis of the relevant aspects of the riparian rights doctrine.

In the Court’s analysis, it concludes that the riparian rights in the Lake were part of the ‘bundle of sticks’ that the Lambs conveyed to Defendant’s predecessor in title. The Lambs conveyed their fee simple interest in the Lake itself to the Plaintiff. However, the Lambs could only convey the sticks they still owned in the Lake. These did not include the “riparian rights” or the “right to exclude” sticks already conveyed to the Defendant’s predecessor in title.

Valid riparian rights in the Lake include the right to fish.

The Court further notes that the trial court did not base its ruling on the “public trust doctrine.” The public trust doctrine only applies to bodies that are determined to be navigable. The Lake is non-navigable and privately owned. Further, the Court notes that the trial court did not base on a theory that the Defendant’s riparian rights arise from common law.

Therefore, the Defendant was deemed to have riparian rights to make reasonable use and enjoyment of the Lake for noncommercial purposes based on the grant of “riparian rights” in the Defendant’s chain of title.

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