

STATE OF MICHIGAN
COURT OF APPEALS

DONNA MARLENE HAUPRICHT and
CAROL JEAN SHANTEAU,

UNPUBLISHED
July 19, 1996

Plaintiff-Appellees,

v

No. 170078
LC No. 91-59153-CH

VINEYARD LAKE ASSOCIATION, INC.,

Defendant-Appellant.

Before: Markey, P.J., and McDonald and M. J. Talbot*, JJ.

PER CURIAM.

Defendants appeal as of right from an October 26, 1993, order granting plaintiffs title to certain property by adverse possession, an easement over lands retained by defendants and an order directing defendants to place association docks so as not to interfere with plaintiffs' use of their own dock. We affirm in part and reverse in part.

The trial court's determination that plaintiffs had established a legal interest by adverse possession in the portion of Outlot A between the block wall and their cottage was not clearly erroneous because there was clear and convincing evidence to support a finding plaintiffs' had occupied the land in a manner inconsistent with their status as co-owners or cotenants of the land. *Caywood v Dep't of Natural Resources*, 71 Mich App 322; 248 NW2d 253 (1976); *Dunlop v Twin Beach Park*, 111 Mich App 261; 314 NW2d 578 (1981). However, the court erred in granting plaintiffs an easement by implication across the portion of Outlot A retained by defendant. Neither the elements required for an easement by reservation, *Schmidt v Eger*, 94 Mich App 728; 289 NW2d 851 (1980), nor those required for an easement by necessity, *Waubun Beach Ass'n v Wilson*, 274 Mich 598; 285 NW2d 474 (1936), were established. Plaintiffs also failed to meet the requirements for an easement by prescription. *Dummer v United States Gypsum Co*, 153 Mich 622; 117 NW 317 (1908). Plaintiffs, as beneficiaries of the conditional grant of Outlot A from the road commission to the

* Circuit judge, sitting on the Court of Appeals by assignment.

association, had a preexisting right to access the property and did not make any use of the property inconsistent with these preexisting rights. The proper remedy for anticipated future interference with plaintiffs' existing right to access Oulot A is the entry of a permanent injunction prohibiting such interference by defendant.

Finally, the trial court did not exceed its authority in ordering defendant to place association related docks in a manner so as to avoid interference with plaintiffs' right to use and enjoy their dock. The Inland Lakes and Streams Act, expressly provides that its provisions "shall not limit the right of a riparian owner to institute proceedings in any circuit court of the state against any person when necessary to protect its rights." MCL 281.961(4); MSA 11.475(11). Accordingly, while not owners of the bottomland, plaintiffs are owners of a private riparian right which they may enforce against defendants and all other riparian users. Thus, the circuit court had jurisdiction to hear the dispute surrounding defendants' alleged interference with plaintiffs' use of their dock and to order defendants to stop interfering in that use. See also, *Pierce v Riley*, 81 Mich App 39; 264 NW2d 110 (1978).

Affirmed in part, reversed in part and remanded. Costs to neither party.

/s/ Jane E. Markey
/s/ Gary R. McDonald
/s/ Michael J. Talbot