

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

WILLIAM J. PARSONS and KATHLEEN  
S. PARSONS,

UNPUBLISHED  
August 23, 1996

Plaintiffs-Appellants,

v

Nos. 170274, 171456  
LC No. 92-73130-CH

CHARLES D. WHITTAKER,

Defendant-Appellee.

---

Before: White, P.J., and Fitzgerald and E.M. Thomas,\* JJ.

PER CURIAM.

In docket number 170274, plaintiffs appeal as of right the October 12, 1993, order granting defendant's motion for summary disposition of Count II of its countercomplaint. In docket number 171456, plaintiffs appeal as of right the trial court's December 10, 1993, order denying plaintiffs' motion for sanctions. The appeals were consolidated by order of this Court. We affirm.

Plaintiffs, defendant, and several others own property surrounding an artificial lake that was created when a gravel pit filled with water. Deeds acquired by each of the parties granted the respective parties a portion of the lake bed. Plaintiffs' property, which they purchased in 1991, includes property on both sides of the lake. Plaintiffs were granted an easement over a portion of property now owned by defendant that provided access to the rear of plaintiffs' property. Apparently, a dispute developed between the parties when defendant attempted to maintain a locked gate at the entrance to the easement.

During March through July 1992, plaintiffs erected a forty-eight foot bridge to provide access to the rear portion of their property on the far side of the lake. The bridge was erected across a shallow portion of the lake that is approximately twenty-four inches deep. The bottom of the bridge was thirty-eight inches above the surface of the water. Plaintiffs also erected an earthen embankment. The area of the embankment was partially filled in with existing gravel, and cement blocks, gravel, and limestone were added to make the embankment more suitable for walking.

---

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

Plaintiffs filed a verified trespass complaint on October 27, 1992. They alleged that defendant's locking of the gated entrance to the easement constituted a trespass, and they sought a restraining order enjoining defendant from obstructing plaintiffs' use of the easement.

On November 25, 1992, defendant filed an answer and a countercomplaint for declaratory and injunctive relief. In the second count of the countercomplaint, defendant alleged that plaintiffs' bridge interfered with the rights of defendant and the other riparian owners to use the surface of the lake for recreational purposes, as well as with the natural flow and water quality of the lake. Defendant sought an injunction requiring plaintiffs to remove the bridge and restraining them from interfering with the rights of defendant and others to use the entire surface of the lake.

Plaintiffs filed a motion for summary disposition with respect to their complaint and defendant's countercomplaint pursuant to MCR 2.116(C)(8) and (10). On September 13, 1993, the trial court issued a judgment wherein it held that plaintiffs and their guests and invitees were entitled to unrestricted ingress and egress to their property. The court also issued an injunction that barred interference with the use of the easement. A decision regarding Count II of the countercomplaint was reserved.

On October 12, 1993, the trial court granted defendant's motion for a temporary restraining order and permanent injunction and required plaintiffs to restore the lake to its original condition. The court found that the lake abutted the property of several landowners and that no single party could assert riparian rights over the bottom land or surface waters. In an order dated December 10, 1993, the trial court denied plaintiffs' motion for sanctions under MCR 2.114.

Plaintiffs first argue that the trial court erred as a matter of law in concluding that all of the land that abutted the lake had riparian rights. There are no reported Michigan decisions addressing whether riparian rights arise in connection with an artificial lake where the rights are alleged to stem from shore ownership. The general common law rule is that land abutting on an artificial watercourse has no riparian rights. The rationale for this rule is that:

The natural corporeal right in question is possessed by riparian owners of land on natural channels of water courses only. *Such right does not exist in the water flowing in an artificial channel.* The right of those owning land bordering upon or through which artificial channels pass, to the use of the water flowing therein, is not a natural right, nor a corporeal right, but an incorporeal right, which can be acquired only by grant, express or implied, or by prescription. (Emphasis in original.) [*Thompson, infra* at 679.]

The common law rule has generally applied to artificial channels or watercourses that are designed to connect to a natural body of water. In that context, the land abutting the artificial watercourse does not have riparian rights, because those rights belong to the landowners whose property abuts the natural body of water. See, e.g., *Publix Supermarket, Inc v Pearson*, 315 So2d 98 (Fla App 1975). Here, the artificial lake exists independently of any natural body of water. Therefore, the land abutting the artificial lake is the only land that could possibly have riparian rights. Thus, plaintiff's reliance on the

common law, *Hess v West Bloomfield Twp*, 439 Mich 550, 561; 486 NW2d 628 (1992), and *Thompson v Enz*, 379 Mich 667; 154 NW2d 473 (1967), is not persuasive. Not only are the facts of *Hess* and *Thompson* distinguishable, but in those cases the Courts were not confronted with the task of deciding whether riparian rights attach to land abutting an independently existing artificial lake. Thus, the Court's failure to expand the common law in those cases does not establish that riparian rights may *never* exist in artificial bodies of water.

Thus, while we are of the opinion that the common law would not prevent the owners of the land abutting the artificial lake in this case from having riparian rights, we need not determine the scope of the common law because the issue presented before us is governed by The Inland Lakes and Streams Act of 1972, MCL 281.951 *et seq.*; MSA 11.475(1) *et seq.*, which does not make a distinction between certain natural and artificial waters with respect to riparian rights. Section 2 of the act, MCL 281.952; MSA 11.475(2), states in pertinent part:

- (g) "Inland lake or stream" means a natural or *artificial* lake, pond, or impoundment. . . . It does not include the Great Lakes, Lake St. Clair and a lake or pond which has a surface area of less than 5 acres.
- (n) "Riparian owner" means a person who has riparian rights.
- (o) "Riparian rights" means those rights which are associated with the ownership of the bank or shore of an inland lake or stream.

The language of this statute is clear. Therefore, the Legislature must have intended the meaning plainly expressed, and the statute must be enforced as written. *Gephardt v O'Rourke*, 444 Mich 535, 543-544; 510 NW2d 900 (1994). Here, the body of water was an artificial lake or pond with a surface area greater than five acres. Therefore, under the Inland Lakes and Streams Act, land abutting the artificial lake has riparian rights.<sup>1</sup>

The question, therefore, becomes whether plaintiff's maintenance of the bridge interfered with the reasonable use of the waters by other riparian owners:

[u]se of the water by riparian owners is governed by principles of reasonableness. Thus, where there are several riparian owners on an inland lake, they may use the surface of the whole lake for boating, swimming, fishing, and other similar riparian rights, as long as they do not interfere with the reasonable use of the waters by other riparian owners. (Citations Omitted.) [*West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 512-513.; 534 NW2d 212 (1995).]

See also *Burt v Munger*, 314 Mich 659, 665; 23 NW2d 117 (1946)(riparian owners generally may construct a dock to facilitate use and enjoyment of a lake, but they may not invade the rights of other riparian owners with respect to the lake).

In *West Michigan, supra at 512-513*, this Court, quoting *Three Lakes Ass'n v Kessler*, 91 Mich App 371, 377; 285 NW2d 300 (1979), reiterated a three-pronged test for determining reasonableness:

First, attention should be given to the size, character and natural state of the water course. Second, consideration should be given the type and purpose of the uses proposed and their effect on the water course. Third, the court should balance the benefit that would inure to the proposed user with the injury to other riparian owners.

Here, the lake is approximately eight acres in area. Plaintiffs' sole purpose in constructing the bridge was to facilitate access to the rear portion of their property. Clearly, a forty-eight foot bridge that is only thirty-eight inches above the surface of the water will interfere with recreational use of the lake. The record supports the conclusion that the court properly balanced the benefit that would inure to plaintiffs and the injury to other riparian owners. Plaintiffs still have access to the rear portion of their property via the easement. We cannot say that we would have reached a different result concerning plaintiffs' reasonable use had we been sitting as the trial court. Accordingly, we conclude that the trial court did not err in granting defendant's motion for summary disposition.

Plaintiffs also maintain that the permanent injunction had the effect of destroying their right to access the rear portion of their property. Under the circumstances presented, we disagree. Pursuant to the trial court's order of September 13, 1993, plaintiffs and their guests and invitees are entitled to unrestricted ingress and egress to their property via the easement, and defendant was enjoined from maintaining any obstacle, fixed or permanent, that would block the easement. Consequently, plaintiffs have adequate access to the rear portion of their property despite removal of the bridge.

Next, plaintiffs assert that the trial court erred in denying their motion for reconsideration. We disagree. The new documentary evidence regarding the parties' intent with respect to riparian rights was irrelevant to the legal determination of whether riparian rights exist.

Last, plaintiffs argue that the trial court erred by denying their motion for sanctions under MCR 2.114(E). We disagree. The record reveals that defendant's answer to plaintiffs' complaint was well grounded in fact. The basis of defendant's defense was that a right to maintain a gate across the easement was impliedly reserved. While the court ultimately found this argument unpersuasive, there is no indication that the argument was unwarranted by existing law. Defendant's answer appears to be a good faith response to plaintiff's complaint and does not appear to have been filed for an improper purpose. Consequently, the trial court's determination that defendant's answer did not violate MCR 2.114(D) was not clearly erroneous. *In re Stafford*, 200 Mich App 41, 42; 503 NW2d 678 (1993).<sup>2</sup>

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Edward M. Thomas

<sup>1</sup> Although *Burt* involved a natural lake, we believe that its holding is properly applied to an artificial lake to which riparian rights exist. Thus, we reject plaintiffs' common law argument that the owner of a portion of the land underlying surface waters has the exclusive right to control the water above that property. Under *Burt*, the owner of part of the land underlying a lake has the right to the reasonable use and enjoyment of the entire lake.

<sup>2</sup> The trial court also commented that since both parties prevailed on at least one issue, defendant's pleading could not be in violation of MCR 2.114(E). We note, however, that MCR 2.114 provides for sanctions for abuses of the pleading process and does not require consideration of whether a party "prevails."