

STATE OF MICHIGAN  
COURT OF APPEALS

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PETER H. KOSICK and JUDITH M. KOSICK,

Plaintiffs-Appellants,

v

NORMAN ARCHER, VIOLET ARCHER,  
HAROLD MENZIES, ALICE MENZIES and CYD  
ARCHER,

Defendants-Appellees.

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UNPUBLISHED

December 27, 1996

No. 189972

Allegan County

LC No. 91-013479

Before: Hood, P.J., and Neff and M.A. Chrzanowski\*, JJ.

PER CURIAM.

Plaintiffs brought this action to block enforcement of an easement to waterfront. They appeal as of right following remand by this Court. We affirm.

The facts of this case are set forth in *Kosick v Archer*, unpublished opinion per curiam, decided April 6, 1995 (Docket No. 163576), and we will not reiterate them in detail here. In the original proceedings, the trial court determined that the easement was nonexclusive, but ordered that a dock had to be removed from the easement and that the parties' use of the easement was on a first come basis. Plaintiffs appealed, and this Court affirmed the trial court's decision in part, but reversed that portion of the judgment allowing first come use of the easement. *Id.* at 2. The Court concluded that plaintiffs had priority over the Archers with respect to the easement. *Id.*

The case was remanded, and the trial court modified its earlier order to comply with this Court's decision. Plaintiffs moved the trial court for an order permitting them to construct a dock on the easement. They argued that because this Court determined that they had priority to use the easement, they were impliedly given the right to install a dock in the easement. The trial court concluded that this Court ruled on the issue, finding that placement of a dock on the easement contravened the original easement agreement, and denied plaintiffs' motion. Plaintiffs now appeal that decision.

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

Plaintiffs now assert that the trial court erred in concluding they had no right to install a dock on the easement. We disagree.

This Court previously ruled:

[P]laintiffs argue that the trial court erred in finding that the Menzies' 1972 agreement with the easement holders over Lot 25 did not include the right to place a dock at the end of the easement. The agreement clearly provided that the parties were to have "[d]ocking and mooring rights along the full fifty feet of the easement." The placement of a dock at the end of the seawall contravenes the parties' 1972 agreement. Accordingly, we conclude that the trial court did not err in ordering the removal of the dock at the end of the easement. [*Id.*, citation omitted.]

Under the doctrine of law of the case, "issues previously decided by this Court will not be decided differently in a subsequent case where the facts remain materially the same." *Clemens v Lesnek*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (1996). This Court clearly decided that no dock could be installed on the easement. The trial court did not err in refusing to grant plaintiffs' motion to modify its order to permit them to install a dock.

We also find that this appeal is vexatious under MCR 7.216(C)(1)(a) and (b). Our prior opinion specifically held that there was no right to place a dock within the easement. An appeal is vexatious when "the result is apparent and should have been apparent even to the appellant." *McIntosh v Chrysler Corp*, 212 Mich App 461, 470; 538 NW2d 428 (1995). In addition, appellants failed to apprise this Court that it had already adversely ruled upon the dock issue in its prior decision, in violation of MCR 7.212(C)(6).

Affirmed, and remanded solely for the determination of the reasonable costs and attorney fees associated with this appeal. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Janet T. Neff

/s/ Mary A. Chrzanowski