Court of Appeals, State of Michigan

ORDER

Arlene Koker v Hurley Michaels

Docket No. 270524

LC No. 03-001091-CK

Mark J. Cavanagh
Presiding Judge

Richard A. Bandstra

Donald S. Owens
Judges

The Court orders that the October 26, 2006 opinion is hereby VACATED, and a new opinion is attached.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

NOV 0 7 2006
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

ARLENE KOKER, RICHARD KOKER, PAUL COX, SUSAN COX, JOHN WARD, and NANCY WARD,

Plaintiffs-Appellants,

v

HURLEY MICHAELS, MIKE CZERWINSKI, TERRY CZERWINSKI, WARREN KRUEGER, DOROTHY KRUEGER, MICHAEL PATTOCK, KAREN PATTOCK, GARY MACLEAN, DENISE MACLEAN, ANDREW SHAW, ROBERT BUSBY, PAUL RICHMOND, and BEVERLY RICHMOND,

Defendants-Appellees.

UNPUBLISHED
November 7, 2006

No. 270524
Washtenaw Circuit Court
LC No. 03-001091-CK

Before: Cavanagh, P.J., Bandstra and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

"The extent of a party's rights under an easement is a question of fact for the trial court," which this Court reviews for clear error. *Little v Kin*, 249 Mich App 502, 507; 644 NW2d 375 (2002), aff'd 468 Mich 699 (2003). However, the trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

It is well established that a riparian owner enjoys "certain exclusive rights" which include "the right to erect and maintain docks along the owner's shore, and the right to anchor boats permanently off the owner's shore." *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985) (citations omitted). A nonriparian owner, on the other hand, has "a right to use the surface of the water in a reasonable manner for such activities as boating, fishing and swimming." *Id*. However, "rights normally afforded exclusively to riparian landowners may be conferred by easement." *Little, supra* at 511.

The parties dispute whether the easement granting plaintiffs the right to use defendants' land "for the purpose of reaching the waters of Joslin Lake for boating, bathing and fishing and also . . . for park purposes" includes such riparian rights. In determining the scope of an easement, a court must first examine the language of the easement itself. "Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted. If the text of the easement is ambiguous, extrinsic evidence may be considered by the trial court in order to determine the scope of the easement." *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003) (citation and footnote omitted).

There is no claim that the easement language is ambiguous. As the trial court found, the phrase "for the purpose of reaching the waters of Joslin Lake" can reasonably be construed only as allowing access to the lake, and a right of way for lake access does not create riparian rights. *Dyball v Lennox*, 260 Mich App 698, 706; 680 NW2d 522 (2003). The phrase, "for boating, bathing and fishing," describes the purposes for which access is afforded and is consistent with the general rights of nonriparian owners as explained in *Thies*. Finally, the grant of an easement to use the property "for park purposes" does not expressly or impliedly refer to riparian rights of any sort. A park is "a public area of land, usu. in a natural state, having facilities for recreation." *Random House Webster's College Dictionary* (1997). Therefore, the term "park purposes" would mean recreational activities normally enjoyed in a park. Such activities do not include building docks. Therefore, the trial court did not err in granting defendants' motion.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens