

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

---

CHRIS DICKINSON and SHARON  
DICKINSON,

UNPUBLISHED  
March 20, 2007

Plaintiffs/Counter Defendants-  
Appellants,

v

ROY WALKER, SHIRLEY WALKER, LELAND  
EASTER, PAT EASTER, GLADYS A. ROLL,  
ARNOLD E. ROLL, E. W. WINFIELD, JOANN  
WINFIELD, MIKE WEAKS, DEB WEAKS,  
WILLIAM BARTON, BERNADETTE BARTON,  
JOSEPH O. BRADISH, DEBORAH A.  
BRADISH, SUSAN L. ROBERTS, COLLEEN  
LAY, DONALD LAY, JACK HOLT, CYNTHIA  
HOLT, NANCY L. REYNOLDS, DAVID A.  
REYNOLDS, STEVE WEISS, LYNNE M.  
WEISS, ROBERT BEDARD, DEBRA BEDARD,  
FRANK DICKERSON, TINA M. PROND,  
CHARLES R. RICHARD, DIANE JO RICHARD,  
and KENNETH CUNNINGHAM,

No. 266645  
Lenawee Circuit Court  
LC No. 03-001061-CH

Defendants/Counter Plaintiffs/  
Third Party Plaintiffs-Appellees,

v

ESTATE OF ELIZABETH E. LORBER, ROY E.  
ELDEN, NELLA MAE BROOKS, and BETTY  
JANE KLAG,

Third Party Defendants.

---

Before: Cooper, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a bench trial judgment restricting the use of the lakefront abutting their land and granting a prescriptive easement to defendants in this riparian rights and quiet title action.<sup>1</sup> We affirm.

This action arises out of a dispute between plaintiffs and defendants regarding the reasonable use of the water abutting their lakefront properties. On appeal, plaintiffs argue that defendants did not acquire a prescriptive easement to use the waterfront area at issue because their use of this area was not continuous. Notwithstanding, plaintiffs agreed with the trial court that the only issue before the trial court was the parties' reasonable use of the property at issue. Thus, plaintiffs have arguably waived this issue for appellate review. See *Chapdelaine v Sochocki*, 247 Mich App 167, 172; 635 NW2d 339 (2001) ("A party cannot stipulate to a matter and then argue on appeal that the resultant action was error.") Regardless, plaintiffs have failed to show plain error in this case. See MRE 103(d); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

"An easement is the right to use the land of another for a specified purpose." *Schadewald v Brule*, 225 Mich App 26, 35; 570 NW2d 788 (1997). "An easement by prescription results from use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years." *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 679; 619 NW2d 725 (2000), citing MCL 600.5801.

In *Dyer v Thurston*, 32 Mich App 341, 342-344; 188 NW2d 633 (1971), this Court found that the defendants' use of a pathway across the plaintiffs' land to a lake satisfied the continuous use requirement because "continuous use does not mean constant use." In arriving at this conclusion, this Court elaborated that "[a] pathway easement to a summer cottage is considered to be continuous if it is used merely seasonally . . . [because] this use would be in keeping with the nature and character of the right claimed." *Id.* at 344. Thus, the defendants' seasonal use of the pathway was likewise continuous.

Here, both parties stipulated that Lots 1 and 2 were "primarily used during the summer season." Specifically, defendants stipulated that they would "seasonally" build docks on their lot extending from their shoreline into Devil's Lake and had moored watercraft to these docks for over 15 years before the filing of this suit. Similarly, plaintiffs admitted building docks from their shoreline into Devil's Lake and mooring watercraft to them during the summers of 2002 to 2004 and stipulated that they would mostly use Lot 2 on weekends in the summer. Further, defendants would store pieces of their dock during the "off-season" on Lot 1.

From these facts, it appears that the practice of building docks and mooring watercraft to them was a seasonal activity. In addition, in light of the fact that others owning lots around Devil's Lake had built a total of 720 docks in the lake and moored watercraft to those docks as of

---

<sup>1</sup> Although "[s]trictly speaking, land which includes or abuts a river is defined as riparian, while land which includes or abuts a lake is defined as littoral," the terms may be used interchangeably. *Thies v Howland*, 424 Mich 282, 288 n 2; 380 NW2d 463 (1985). Given that the land at issue was referred to below as riparian, we will use this term for the sake of consistency.

the time of trial, it appears that defendants' mooring their boats in the disputed area in the lake was consistent with "the nature and character of the property involved." *Id.* Therefore, defendants' practice of mooring boats in front of plaintiffs' lot was sufficiently continuous to establish their prescriptive easement.

Plaintiffs claim that defendants' seasonal use was not continuous because the area at issue could be used for other beneficial purposes at different times of the year. In support of this argument, plaintiffs cite *Rose v Green*, unpublished opinion per curiam of the Court of Appeals, issued May 18, 1999 (Docket No. 206524), in which this Court noted that property must lend itself to seasonal use to be continuous.<sup>2</sup> However, in making this statement, *Rose* was merely rearticulating this Court's holding in *Dyer*. *Rose, supra*, slip op at 3-4. Indeed, the central holding of *Rose* was that the defendants' use of the property at issue did not create a prescriptive easement because their use was not adverse. *Id.* at 4. Therefore, plaintiffs' reliance on *Rose* is misplaced, and their argument fails.

Plaintiffs next argue that there were no "indicia of ownership" putting them on notice of defendants' "trespass" before they purchased Lot 2. However, plaintiffs cite to a portion of the record that does not clearly support their contention. Specifically, as the following exchange shows, plaintiff Chris Dickinson's testimony regarding the state of the dock extending from Lot 1 and the watercraft moored to that dock at the time plaintiffs purchased Lot 2 is unclear:

*Q.* When you first looked at this house what was the status of the docks both the dock here and dock next door?

*A.* The previous owner had a dock extended out from the dock parallel [sic]. And the pontoon went in and out in a line with the boats. And those boats there, I don't recall them being there. But it was September so I think a lot of them were already out.

While we acknowledge that this testimony was given at trial on the location at issue, and therefore, may have originally seemed less vague, plaintiffs' bare citation to this portion of the record, without more, hardly establishes plain error in this case regarding notice. See *Kern, supra* at 336. Indeed, it is ambiguous to what docks and boats plaintiff Chris Dickinson is referring in this statement.

Nevertheless, plaintiffs' claim still fails. "[A]ctual notice may be determined by the character of the use. Such use and occupancy, however, must be so open, notorious, and hostile as to leave no doubt in the mind of the owner of the land that his rights are invaded." *Menter v First Baptist Church of Eaton Rapids*, 159 Mich 21, 25; 123 NW 585 (1909). Here, it was undisputed that defendants and their predecessors had seasonally built a dock from Lot 1 into Devil's Lake and moored watercraft to that dock since 1948. Moreover, defendant Roy Walker noted that defendants' usage of their dock has been consistent since 1976 and plaintiffs' predecessor had never complained of this use. Given that plaintiffs purchased Lot 2 in 2001, it is

---

<sup>2</sup> Unpublished opinions of this Court are not binding under the doctrine of stare decisis. MCR 7.215(C)(1).

clear that defendants had already openly, notoriously, and adversely used the area in dispute for more than 15 years before plaintiffs' purchase of Lot 2. Therefore, this claim is without merit.

Plaintiffs also assert that the court's ruling effectively gave defendants exclusive use over the area at issue and, therefore, was akin to a finding of adverse possession. This argument is without merit. Adverse possession requires the same elements as a prescriptive easement with the additional element of exclusivity. *Plymouth Canton Community Crier, Inc, supra* at 679-680. Here, although the temporary order and the judgment restricted the placement of plaintiffs' dock, neither the temporary order nor the judgment precluded plaintiffs from using the area at issue. Indeed, the court's temporary order permitted plaintiffs to use the area at issue to place a volleyball net and to moor their watercraft in the area "as close as reasonably practicable to their dock," and the judgment did not even address the placement of the volleyball net. Plaintiff Chris Dickinson even noted that the only usage he did not have concerned the placement of his dock. Thus, any of the court's restrictions on plaintiffs did not grant exclusive use of the area at issue to defendants, "but merely grant[ed] [defendants] qualified possession only to the extent necessary for enjoyment of the rights conferred by the easement." *Schadewald, supra* at 35.

Plaintiffs next argue that the trial court's determination regarding the reasonable use of the area at issue was erroneous because it was based on the faulty premise that defendants had acquired a prescriptive easement and deprived plaintiffs of the use of 70 percent of their shoreline. We disagree. We review a trial court's factual findings in a bench trial for clear error but review the trial court's legal conclusions de novo. MCR 2.613(C); *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

As previously noted, the trial court's ruling that defendants had acquired a prescriptive easement was not erroneous. Therefore, the trial court's judgment regarding where defendants could moor their watercraft was reasonably based on this easement given that an easement may confer the exclusive right of a riparian landowner to permanently anchor watercraft off of his shore. *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985); *Little v Kin*, 249 Mich App 502, 511; 644 NW2d 375 (2002).<sup>3</sup> Moreover, contrary to plaintiffs' argument, plaintiffs were not enjoined from using 70 percent of their shoreline. Rather, the trial court's restrictions on plaintiffs pertained only to the location of plaintiffs' dock (as plaintiff Chris Dickinson admitted), the mooring of watercraft to their dock, and the requirement not to interfere with defendants' ingress and egress to and from defendants' dock. Therefore, plaintiffs' claim fails.

Plaintiffs next argue that the trial court erroneously found that their use of a volleyball net was not a riparian right. However, regardless of whether the use of a volleyball net in the water constitutes a riparian right, the trial court did not address plaintiffs' volleyball net in its judgment. Therefore, given that "courts speak through their judgments and decrees, not their oral statements or written opinions," *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977), plaintiffs' argument fails.

---

<sup>3</sup> It should be noted that, to the extent defendants' usage of the area at issue did not conform to the scope of the easement, the trial court restricted defendants' usage (specifically, the trial court limited the number and size of watercraft defendants could moor on the eastern side of their dock, specified the angle at which defendants could park these watercraft, and prohibited defendants from swimming in front of plaintiffs' land).

We note that although not incorporated into its judgment, the trial court's bare statement that use of the volleyball net in the water was not a riparian right was incorrect. See *Kurrle v Walker*, 56 Mich App 406, 410; 224 NW2d 99 (1974) (among the rights of littoral landowners is the right to engage in aquatic sports). Nevertheless, given the parties' stipulation that the placement of the volleyball net interfered with some of defendants' ability to navigate their boats, the trial court's statement was proper in the context of reasonable use.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Mark J. Cavanagh  
/s/ Patrick M. Meter