

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

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GLENN JARRELL and LYNNAE JARRELL,

Plaintiffs-Appellants,

V

JOSEPH STARIHA and CINDY L. STARIHA,

Defendants-Appellees,

and

OLD KENT MORTGAGE COMPANY,

Defendant.

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UNPUBLISHED

March 8, 2005

No. 249175

Newaygo Circuit Court

LC No. 01-018329-CH

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Plaintiffs appeal as of right the judgment entered in this easement dispute. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs purchased a backlot at Sylvan Lake that included an easement over land now owned by defendants. Plaintiffs' deed provided in relevant part that plaintiffs were granted:

An easement for use of a stairway to Sylvan Lake, and the private beach thereon, *with pier rights*, said easement to be over and across parts of Lots 11, Block 98, Lots 5 and 20, Block 97, and to the area between said lots 5, Block 97, and Sylvan Lake, all in the Michigan Land and Outing Company's Subdivision Plat . . . and the right of ingress and egress across land of grantor . . . . It is the intent of this easement conveyance to cause the easement rights therein to run with the land of the grantor. [Emphasis added.]

When the easement was granted in 1964, there was a lengthy pier on the lake in front of defendants' property. The pier had been constructed during the lumbering era, and had been in existence for a considerable time. In 1966, the pier was removed after a homeowner's group determined that it was unsafe. No permanent replacement was constructed, but a seasonal dock was placed on the property in 1967. The dock was removed in the mid-1980's, and was not replaced. After plaintiffs purchased their property, they were told by defendants not to place a

dock or park or launch a boat on the easement. Subsequently, defendants posted a sign indicating that the beach was private and that backlot owners had no dock, parking or beach privileges. Plaintiffs filed suit to assert a claim for riparian rights under the easement. Following a bench trial, the trial court found that the easement did not convey the full measure of riparian rights to the backlot holders, but rather was intended to convey rights to the pier then existing when the easement was granted. The trial court further determined that the riparian rights conveyed by the easement terminated when the pier was removed. This appeal ensued.

If the language of an easement is plain and unambiguous, it is to be enforced as written. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003) (*Little II*). The extent of a party's rights under an easement is a question of fact for the trial court, which this Court will review for clear error. *Little v Kin*, 249 Mich App 502, 507; 644 NW2d 375 (2002) (*Little I*), aff'd 468 Mich 699; 664 NW2d 749 (2003) (*Little II*).<sup>1</sup>

Here, the recorded easement grants the backlot owners "pier rights." The trial court, applying the directives of *Little I*, considered both the language of the easement and the surrounding circumstances at the time of the grant to reach its conclusion that the term "pier rights" was intended to refer only to the then existing pier, and that the riparian rights granted to the use of that pier terminated when the existing pier was removed. However, this analysis was erroneous.<sup>2</sup>

The term "pier rights" is not defined within the easement. Nevertheless, this fact does not by itself render the term ambiguous. Rather, undefined words in a legal document are to be given meaning as those words are understood in the common language, taking into consideration the text and subject matter relative to which they are employed. See *Little II, supra* at 700; *Henderson v State Farm Fire & Cas*, 460 Mich 348; 596 NW2d 190 (1999); *Marcelle v Taubman*, 224 Mich App 215, 219; 568 NW2d 393 (1997), citing *People v Lee*, 447 Mich 552, 557-558, 526 NW2d 882 (1994). It is customary to use a dictionary to determine the meaning of an undefined term. *Marcelle, supra* at 219.

*Random House Webster's College Dictionary* (2001) defines the word pier as "a structure . . . used as a landing place for ships. This same dictionary also defines the word dock as "a landing pier." *Id.* Giving the term "pier rights" its plain and ordinary meaning, therefore, we conclude that the easement in question unambiguously granted certain riparian rights to the backlot owners. Under Michigan law, a grantor may confer to nonriparian backlot owners an easement to enjoy such rights.<sup>3</sup> *Little II, supra* at 513-514. While an easement in a building or

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<sup>1</sup> As we note, *infra*, in interpreting the easement language the trial court relied upon this Court's finding in *Little I* that to interpret an easement "the trial court must consider the language of the easement itself and the circumstances existing at the time of the grant." However, in affirming *Little I*, the Supreme Court in *Little II* noted that this Court's statement in this regard was a directive "clearly inconsistent with the well-established principles of legal interpretation." *Little II, supra* at 700 n 2, citing *Little I, supra* at 507 (emphasis in opinion).

<sup>2</sup> See *Little II, supra* at 700; n 1 *supra*.

<sup>3</sup> "The rights associated with riparian ownership generally include: (1) the right of access to (continued...)

other artificial structure *not* coupled with an interest in land is extinguished by the destruction of the building or structure, or the part of it on which the easement can operate, *Hasselbring v Koepke*, 263 Mich 466, 478; 248 NW 869 (1933), the easement survives the destruction of the structure when coupled with an interest in land. 25 Am Jur 2d, Easements and Licenses in Real Property, § 103, p 600 (an appurtenant easement cannot be separated from, or transferred independently of, the land to which it is appurtenant); see also, *Thom v State Hwy Cmm'r*, 376 Mich 608, 614; 138 NW2d 322 (1965) (an interest in real estate in the nature of an easement is a property right of value and runs with the land); *Myers v Spencer*, 318 Mich 155, 164-165; 27 NW2d 672 (1947) (an appurtenant easement runs with the land); *Hustina v Grand Trunk W R Co*, 303 Mich 581, 587; 6 NW2d 902 (1942) (nonuse is insufficient to extinguish an easement absent adverse possession or proof of a clear decisive act of dominant owner showing an intention to abandon and release easement rights); *Mason v Garrison*, 299 Mont 142, 152-153; 998 P2d 531 (2000), citing 25 Am Jur 2d, Easements and Licenses in Real Property, § 120, p 691 (damage to and destruction of the servient tenement, such as a boat dock, caused by an owner of the servient tenement does not terminate or extinguish an easement).

Having concluded that the easement grants plaintiffs certain riparian rights, further findings must now be made by the trial court. If an easement grants the backlot owners the right to construct or maintain a dock, the trial court must determine if the particular dock at issue is permissible under the law of easements, i.e. whether the dock in question is necessary for plaintiffs' effective use of their easement, and whether the dock in question unreasonably burdens the servient estate. *Little II, supra* at 701.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter  
/s/ Kurtis T. Wilder  
/s/ Bill Schuette

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(...continued)

navigable water, (2) the right to build a pier out to the line of navigability, (3) the right to domestic use, etc.” *Tennant v Recreation Development Corp*, 72 Mich App 183, 186; 249 NW2d 348 (1976), citing *Hilt v Weber*,