STATE OF MICHIGAN

COURT OF APPEALS

LOCUST LAND RESORT, LLC, ERIC WHITE, and KELLY WHITE,

Plaintiffs-Appellees,

v

JAY THIEBAUT, YBONNE THIEBAUT, THOMAS THIEBAUT, ROBIN THIEBAUT, and MARGURITE COOK and DIANE OIFER, as Trustees of the DONALD L. COOK TRUST,

Defendants-Appellants,

and

DENNIS COOK, DAVID AVERILL, KRISTIN AVERILL, DONNA MCCORMICK TRUST, CALVIN H. SEELYE, BEVERLY J. SEELYE, JAMES E. BARNES, MARK J. DUCHENE, KATHLEEN J. DUCHENE, MICHELE D. MILLER TRUST, TODD DEITRICH, CARLENE DIETRICH, HUGH CAROLSON, SUZNNE CARLSON, JOHN A. DERSCH, and RUTH B. DERSCH,

Defendants.

UNPUBLISHED
February 24, 2009

No. 279061
Wexford Circuit Court
LC No. 05-019114-CZ

Before: Saad, C.J., and Fitzgerald and Beckering, JJ.

PER CURIAM.

This case concerns property rights of "front lot" owners in the Mitchell Park subdivision on Lake Mitchell in Wexford County. The parties' lots abut a private park. The park abuts the lake. Plaintiffs asked the trial court to declare the boundaries of the parties' respective riparian rights along the lakeshore. Defendants-appellants (defendants) appeal by leave granted the January 31, 2007, circuit court order apportioning the parties' riparian rights proportionally between all of the property owners whose lots are considered "front lots."

FACTS AND PROCEDURAL HISTORY

Mitchell Park subdivision contains "front lots" that are closer to the lake than the "back lots." Mitchell Park is a private park that separates the front lots from the shoreline, and the park spans the entire length of the lakefront within the subdivision. The park is the only property that touches Lake Mitchell; none of the front lots abut the lake. When the subdivision was platted in 1908, the park was dedicated "to the joint use of the lots owners of this plat." The front lots abut the park, and the back lot owners have access to the park through a series of driveways and alleys. The front lot lines are not parallel to the shoreline in most places. The front lots are arranged in a snake-like curve, with some lots closer to the lake than others.[1] The total front lot lake frontage is 991 feet, but the lakeshore is only 751 feet.

This case arose after some front lot owners installed permanent docks, fences, and other structures along the shorelines and in the park area. All of the parties own front lots. The Thiebaut defendants own lots 158 and 153.[2] Plaintiffs own front lot numbers 151 and 152, and back lot 223. Although lot 223 is a back lot, it is separated from the park by only a driveway; no other lot separates lot 223 from the park. Plaintiffs' lots are located at the "bottom" of the curve in the lot frontage line, furthest from the water. The Thiebaut defendants own lot 153, adjacent to plaintiffs' property on the west.

Because of the curvature of the lot frontage line as compared to the relatively straight shoreline, many of the docks and other structures are not in line with their owners' lot line. That is, the docks are not directly in front of the respective owners' lot in many places, but rather in front of plaintiffs' lot lines because plaintiffs' lots are situated at the bottom of the curve.

Plaintiffs filed a complaint for trespass and nuisance, and sought various forms of relief including (1) a declaration that defendants have placed structures and other property on plaintiffs' riparian land; (2) quiet title on grounds that plaintiffs are entitled to exclusive use and possession of the park, subject to the easement, and exclusive use of the bottom lands extending from the shoreline to the center of Lake Mitchell, and (3) injunctive relief to prevent certain defendants from installing docks and fences on plaintiffs' riparian lands. Plaintiffs asserted that their three lots comprise lake frontage that is 26% of the 751 feet of shoreline, but they are only able to use 9% of the shoreline because of the uses that defendants are making of the shoreline. Plaintiffs recognized that because of the curvature of the lot lines, it is not possible for each front lot owner to have as much shoreline as his front lot line bordering the park. Plaintiffs essentially argued that defendants were using more lake frontage than they are entitled to claim. Plaintiffs did not dispute that defendants had riparian rights, but rather only disputed defendants' exercise of those rights in a way that interfered with plaintiffs' exercise of their own riparian rights.

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[1] Less park land separates those lots from the lake.

[2] The Thiebaut defendants also own back lots 208 and 209, and portions of lots 210, 211, and 221.

Plaintiffs moved for partial summary disposition, seeking first a determination of the parties' riparian rights to the lakeshore according to the rule of perpendicularity or, in the alternative, the rule of proportionality. Defendants argued that the status quo should determine the rights in the shorelines, relying on doctrines of adverse possession and acquiescence. While the parties disputed the methodology to be employed in apportioning riparian rights, they never raised the issue, and the court never inquired, whether any of the parties have riparian rights in the first place.

On December 28, 2006, the circuit court issued an order and opinion determining that the front lot owners jointly hold riparian rights in the park, and ordering partition of those rights using the rule of proportionality. The court determined that the front lot owners have riparian rights, and own an undivided fee interest in the park. On January 31, 2007, the court entered a judgment dividing the riparian rights of the front lot owners under the proportionality method.[3]

I

Defendants argue that the trial court erred by granting the front lot owners riparian rights in their property when the front lot owners' land does not abut Lake Mitchell. They maintain that the only riparian property is the park itself, and that the plat dedication granted all lot owners an irrevocable easement to use the park. This Court reviews de novo a trial decision regarding a motion for summary disposition in a declaratory judgment action. *Little v Kin*, 249 Mich App 502, 507; 644 NW2d 375 (2002). "An action to quiet title is an equitable action, and the findings of the trial court are reviewed for clear error while its holdings are reviewed de novo." *Fowler v Doan*, 261 Mich App 595, 598; 683 NW2d 682 (2004). The determination of a party's rights under a plat dedication is a question of fact. *Dyball v Lennox*, 260 Mich App 698, 703; 680 NW2d 522 (2003).

"Land which includes or is bounded by a natural watercourse is defined as riparian.[4] Persons who own an estate or have a possessory interest in riparian land enjoy certain exclusive rights. These 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, 287-288; 380 NW2d 463 (1985) (citations omitted). Erecting or maintaining a dock near the water's edge is a riparian right. *Dyball, supra* at 705.

"Actual contact with the water is not necessarily required for riparian rights to exist." *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998), citing *Croucher v Wooster*, 271 Mich App 337; 260 NW2d 739 (1935). A lot separated from the shoreline by a highway or a

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[3] Defendants filed a motion to set the judgment aside. At a hearing on the motion, the trial court stayed any further proceedings pending this appeal.

[4] "Strictly speaking, land which includes or abuts a river is defined as riparian, while land which includes or abuts a lake is defined as littoral[.]" *Thies, supra* at 288 n 2. The terms are often used interchangeably and court opinions refer to property rights of owners of land abutting either lakes or rivers as "riparian rights." *Glass v Goeckel*, 473 Mich 667, 672 n 1; 703 NW2d 58 (2005); *Dyball, supra* at 705 n 2; 680 NW2d 522 (2003).

walkway that is contiguous to the water is riparian land. *Croucher, supra* at 345; *Thies, supra* at 290-293 (it is presumed that the owner of a lot separated from the water only by the right of way owns the land and, accordingly, has riparian rights, while others authorized to use the right of way have an easement."

Two appellate decisions, *Thies, supra* and *Dobie, supra,* addressed the riparian rights of property owners whose property is separated from the water by land dedicated to the use of all subdivision lot owners. Both cases involved disputes between front lot owners and back lot owners with respect to the rights in the land abutting the water, and both cases turned on the language of the respective plat dedications. Both *Thies* and *Dobie* held that dedications of land "for use" of lot owners conveyed easements, not fee interests.

Thies involved a dispute about rights to a twelve-foot-wide walkway along the lakeshore dedicated "to the joint use of all the owners of the plat." The walkway separated the front lots from the water. The front lot owners sought to enjoin back lot owners from maintaining docks and anchoring boats in front of the front lot owners' properties. The Court held that the back lots owners had no riparian rights because the dedication of the walkway to the "joint use" of all lot owners conveyed an easement in the walkway, not a fee interest. *Id.* at 293-294. The front lot owners had riparian rights because they were presumed to own the fee in the walk running along the front of their lots. This conclusion was based on the Court's extension of the rule that owners of land abutting a street are presumed to own the street in fee to the center, subject to the easement. *Id.* at 291.

In *Dobie, supra,* this Court addressed a similar situation, except that the land separating a single front lot from the lakeshore was a private park. The *Dobie* Court distinguished *Thies, supra,* recognizing that "a park is not the same as a right of way." *Id.* at 539. This Court explained: "We do not regard it as appropriate to compare a narrow walkway along a body of water to the relatively large park in this case." *Id.* The Court ultimately concluded on the facts before it that the owner of the front lot abutting the park had a fee interest in the park, and thus riparian rights. The plattors of the subdivision dedicated the park to "the use of the owners of lots in this plat which have no lake frontage." This language distinguishing front lot owners from back lot owners was interpreted to convey an easement in the park to the back lot owners. Therefore, the grantors (and their successors) retained a fee interest in the park and their riparian rights.

Here, the trial court based its ruling that the parties have riparian rights on (1) *Thies, supra,* (2) the parties' agreement that they have riparian rights, and (3) lack of a contrary intent on the part of the subdivision plattors as gleaned from the language of the dedication and surrounding circumstances. We conclude that the trial court erred in finding that the parties have riparian rights.

First, the trial court's reliance on *Thies* was misplaced. The presumption in *Thies* that "owners of land abutting any right of way which is contiguous to water" own the fee in the entire right of way does not apply here. This case involves a park, and this Court clearly stated in *Dobie* that a park is not a walkway or a right of way. *Dobie, supra* at 39. The parties do not have riparian rights by virtue of their land abutting the park that abuts the lake.

Second, the parties' agreement that they have riparian rights is not dispositive where the agreement is contrary to law. The subdivision plattor's intent controls the scope of the dedication of the park, its ownership, and use. *Thies, supra* at 289, 293. Whether the parties have riparian rights depends on the language in the plat dedication. Construction of a legal instrument is a matter of law. "[A] stipulation by the parties regarding a matter of law is not binding on a court." *Staff v Johnson,* 242 Mich App 521, 529; 619 NW2d 57 (2000).

The land dedication in the Mitchell Park subdivision plat occurred before the enactment of the Land Division Act, MCL 560.101 *et seq., in 1967.* "[D]edications of land for private use in plats before 1967 PA 288 took effect convey at least an irrevocable easement in the dedicated land." *Little v Hirschman,* 469 Mich 553, 564; 677 NW2d 319 (2004).[5] "[A] purchaser of platted lands received not only interest described in the deed, but also whatever rights are reserved to the lot owners in the plat." *Id.* at 561. The intent of the grantor controls the scope of the grantor's dedication. *Higgins Lake Prop Owners Ass'n v Gerrish Twp,* 255 Mich App 83, 88; 662 NW2d 387 (2003). When the language of a legal document or instrument is plain and unambiguous, the document is to be enforced as written and no further inquiry is necessary or permitted. *Dyball, supra* at 704.

Here, the language of the dedication is plain and unambiguous. The dedication states that the "streets, drives, alleys, and parks . . . are hereby dedicated to the joint use of the lot owners of this plat." This language providing for "joint use" of the park is more consistent with the grant of an easement than with an outright grant of ownership. "The phrase 'joint use' standing alone does not ordinarily denote the passing of a fee interest in land." *Thies, supra* at 293-294. The plain language of the dedication indicates that the grantor intended to create the private park for the use of all lot owners in the subdivision without regard to whether the lot owner owns a front lot or a back lot. Accordingly, reading the unambiguous language, and keeping in mind the intent of the grantor, there is no evidence to support a finding that the front lot owners have riparian rights. Rather, the language clearly states that the park is for the "joint use" of all the lot owners in Mitchell Park. Thus, the only riparian land is the park itself, and all the lot owners, both front and back, have an irrevocable easement to use the park. The trial court erred by holding that the front lot owners have riparian rights.

Reversed.[6]

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering

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[5] The Land Division Act provides that a private dedication in a plat transfers a fee simple to the donees. *Martin v Beldean,* 469 Mich 541, 548 n 18; 677 NW3d 312 (2005).

[6] In light of our resolution, we need not address the remaining issues raised by defendants as they concern the procedure for partition.