

Another Lake Road End Case

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On October 25, 2016, the Michigan Court of Appeals released its unpublished decision in *O'Neill, et al. v Moses, et al.* (Case Nos. 329227, 330527, 329475 and 330529; 2016 WL 6269360). For purposes of full disclosure, I was co-legal counsel for three of the individuals involved in the lawsuit.

This case involved an unusual private avenue or easement, in that it is “elbow” or “L” shaped. The private road right-of-way approaches the lake at an approximately 45 degree angle and then turns and runs parallel to the lake. The road was created by a 1947 plat, which dedicated the road “to the use of the owners of lots”. The road right-of-way or easement has approximately 149 feet of frontage on the lake.

A number of off-lake property owners claimed that they have the right to install their own dockage, boat hoists and tethers along the lake frontage of the road and to permanently or seasonally moor their boats thereon. The three plaintiffs are riparian property owners who own lots adjacent to the road.

The litigation at the trial court level was long, complex and contentious. The trial court judge entered summary disposition in favor of the plaintiff riparians regarding most of the lake access issues. The trial court generally held that the road was for access only and cannot be utilized for private dockage, boat hoists or boat tethers and that the backlot property owners could not permanently or seasonally moor, store or keep their boats along the lake frontage of the road. The trial court relied heavily upon *Thies v Howland*, 424 Mich 282 (1985) and *Higgins*

Lake Property Owners Assn v Gerrish Twp, 255 Mich App 83 (2003). The trial court also resolved numerous other issues.

On appeal, the Michigan Court of Appeals generally upheld most of the rulings by the trial court. The Court of Appeals agreed that the private road right-of-way cannot be used by the backlot owners for private dockage, boat hoists or boat tethers and that the backlot property owners cannot seasonally or permanently moor, store or keep boats along the waterfront. The Court held that the configuration of the road, as well as the dedication language “to the use of”, was unambiguous and generally meant access only. The Court of Appeals agreed that evidence of historical use was not relevant or admissible due to the unambiguous nature of the plat dedication for the road. Given that the plaintiffs did not request or pursue relief preventing the backlot property owners from lounging, sunbathing and picnicking on the road right-of-way, the Court of Appeals held that the plaintiffs had conceded that issue and the trial court should not have banned those activities on the road right-of-way.

With regard to lake usage, the Court of Appeals did reverse a portion of the trial court’s decision that deemed one of the plaintiffs to have riparian rights on the claimed parallel portion of the road right-of-way in the plat based on *2000 Baum Family Trust v Babel*, 488 Mich 136 (2010). That matter was remanded back to the trial court.

There is also a discussion of certain prescriptive easement issues in the Court of Appeals’ decision.

The Court of Appeals did decide a number of other issues (which likely would not be of interest to most riparians), but generally upheld most of the trial court’s decisions. Due to all of the complex issues involved, this article is simply a summary for laypeople of the decisions by the Court of Appeals in the case.

A full copy of the written opinion by the Michigan Court of Appeals in *O'Neill v Moses* can be reviewed by going to the Court's website at courts.mi.gov, clicking on "cases, opinions and orders", click "case search", enter case number 329227 and click "Court of Appeals".