

## Riparian Rights: Missouri Appellate Court Assesses Whether a Man-Made Lake Has Become Natural



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The Missouri Court of Appeals addressed in a June 19th opinion whether an abutting landowner had riparian rights to a man-made waterbody. See *Incline Village Board of Trustees v. Edler*, 2018 WL 3028993.

The key issue was whether the man-made lake had become a natural body of water.

Matthew F. Edler and Andrea Edler (“Appellants”) owned property adjacent to Main Lake in Missouri. Main Lake had been developed by the Incline Village Board of Trustees (“Respondent”) in 1974 by the damming of a creek. It was built for the recreational enjoyment of the Incline Village lot owners.

The Incline Village subdivision Indenture of Trust and Restrictions provided that Main Lake was a common area. Further it established that only lake-abutting Incline Village lot owners were allowed to construct boat docks or slips. Lot owners were assessed fees to maintain Main Lake.

The property owned by Appellants adjacent to Main Lake had been purchased by an individual and subsequently developed into a different subdivision. The general warranty deed transferring ownership to this individual excepted ownership of the lake.

Besides the non-lake-abutting lots (which contain no contractual rights to the lake) Appellants owned interior lots in the Incline Village subdivision that provided them with contractual rights to use and enjoy the Main Lake. However, such rights did not include the ability to construct a boat dock or slip.

Appellants sought to build a boat dock on the Main Lake.

Respondent petitioned the Circuit Court of St. Charles County, alleging trespass and seeking a declaratory judgment to enjoin Appellants from continuing construction on or using the dock. The trial court held that the Appellants did not have the right to construct a dock on Main Lake because it was an “artificial, man-made body of water created for the sole and exclusive use of Incline Village lot owners.” Further, it held that the Main Lake had not taken on the characteristics of a natural waterway and, therefore, they were provided no riparian or littoral rights to own or use Main Lake.

The Court of Appeals considered on appeal whether the waterbody had become a permanent natural body of water. If so, Appellants would have common law riparian rights to Main Lake.

Appellants conceded that under Missouri law landowners whose property abuts an artificial body of water generally do not have riparian rights. Instead, they contended that riparian rights were in place because the Lake, at some point in time, became a natural body of water due to its intended permanence. As a result, the issue to be decided was whether Main Lake was a natural body of water under the “artificial-becomes-natural” theory.

The Court of Appeals looked at other jurisdictions and noted, for example, that Illinois courts have applied this theory under very select circumstances. This is due in part to the difficulties stated to arise in trying to distinguish man-made from the natural over the course of significant amounts of time. A case is cited by the Court of Appeals in which, at a minimum, the party invoking the theory must demonstrate that it has relied upon the use of the artificial body of water without dispute for a lengthy period of time.

The Court of Appeals found this reasoning to be persuasive with no evidence indicating that the trial court erred in concluding that Main lake was an artificial body of water.

The Court of Appeals also rejects what it describes as Appellants' argument that they should de facto have riparian rights to Main Lake simply because their lot abuts it. It states that there is no evidence Appellants relied upon access to Main Lake for a lengthy period of time. Also noted was the fact that Appellants can already use Main Lake as a non-lake-abutting Incline Village lot owner.

The trial court's finding that the Appellants possess no riparian rights is upheld.

A [copy of the opinion](#) can be downloaded here.