Riparian Rights/Non-Navigable Water: Illinois Appellate Court Addresses Access Issue

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The Appellate Court of Illinois, Third District ("Court") addressed in a June 28th Opinion certain riparian rights associated with a non-navigable waterbody. See *Holm v. Kodat*, 2021 IL App. (3d) 200164.

The case involved a dispute regarding the ability of a riparian landowner to limit access.

Plaintiffs and Defendants own separate parcels of property along the Mazon River. They operate competing fossil hunting businesses. Plaintiffs routinely commute to other parts of their land by kayak along the Mazon River. In doing so, they enter the portion of the river along Defendants' property.

The parties agreed that the Mazon River is not navigable. Consequently, each have riparian rights derived from their ownership of property along the river. This left only a question of law for the Court to resolve.

Illinois law provides that a property owner bordering a body of water has rights to use that water. When two property owners own land that abuts the same body of water, the riparian rights of those owners are equal. Neither landowner may exercise their rights in a way that restricts the rights of the other.

The Plaintiffs argued that they should be permitted to access the entire surface of the Mazon River. They cite a case in which the Illinois Supreme Court adopted a rule entitling owners of a partial bed of a private, non-navigable lake to reasonable use and enjoyment of the entire lake surface.

The Court distinguished this case because of the differences in physical characteristics between the Mazon River and the non-navigable lake. Unlike a private lake, the property lines along the river could be established, verified, and enforced by public record. Further, the Court believed public policy encourages recreational use of an entire lake.

No such policy concerns were believed to exist with respect to a river. Therefore, the Court held that each party owns to the center of the bed of the Mazon River. Consequently, they can bar trespassers along their respective parcels.

The Court noted that it is beneficial to all property owners along non-navigable bodies of water to maintain good relationships with their riparian neighbors if they wish to be granted a right of access to the full body of water.

A copy of the Opinion can be downloaded here.