Lake Access: Michigan Appellate Court Addresses Scope of Servient Easement

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The Michigan Court of Appeals ("Court") addressed in a February 1st opinion the scope of a prescriptive easement in a riparian context. See *Astemborski v. Manetta*, 2022 WL 301296 (Mich. Ct. App. Feb. 1, 2022).

The question considered was whether dominant tenements had the ability to engage in certain activities on riparian lake property.

The dispute involved three parcels. They were originally part of a single property that had unfettered access to a lake.

The original property owner was Henry Groak ("Groak"). He divided the property into three parcels. One parcel was retained ("Lakeside Parcel"). The other two were sold to the Scott and Diehl families.

Groak's lakeside parcel was the only that still bordered the lake. Therefore, Groak granted the Scott and Diehl parcels a 20 ft easement ("Easement") across the lakeside parcel for lake access.

The Scotts and Diehls installed a dock ("Dock") extending from the Easement onto the lake. They used it to dock their boats and for recreational activities such as sunbathing and picnicking. The Dock was stored on the Easement during the months it was not in use. There is no evidence that Groak or his son ever gave the Diehls or Scotts verbal or written permission to build and use the Dock.

Groak sold his lakeside parcel to the Russoms ("Plaintiffs"). Mr. Diehl indicated he and Mr. Russom had a verbal agreement and permission was given to "put his boat and stuff" on the Easement. However, the Plaintiffs never gave the Scotts such verbal permission.

The Scotts later transferred the ownership of the Scott parcel to their family trust ("Scott Trust"). The Diehls sold the Diehl parcel to other individuals. A series of owners ("Diehl successors") obtained the property. It was subsequently purchased by the Unruhs.

The Russoms told the Scott Trust and the Unruhs ("Defendants") that the Easement merely granted them access to the lake. They indicated it did not provide them the right to build a Dock on the Easement or use the Easement for recreational activities.

The Defendants were told to remove the Dock. They refused.

The Plaintiffs then filed suit alleging Defendants were trespassing and impermissibly using the Easement. This was based on Defendants' retention of the Dock and use for recreational and boating purposes.

The Defendants argued that the Easement granted them a "full range of riparian rights [rights associated with accessing and using bodies of water and the land that borders them]." This was argued to include the

ability to use the Easement's beach area for recreational activities and construction of a Dock. The failure to object to the Defendants building and use of the Dock for over 35 years was referenced.

The trial court held that the Easement did not include a full range of riparian rights. Instead, it only granted the Diehls and Scotts and their successors access to the lake.

Yet, the trial court also found that the Defendants were not liable for impermissibly using the Easement. They were determined to have acquired a prescriptive easement that provided access and the ability to engage in the referenced activities.

The Plaintiffs argued on appeal that the trial court erred by finding that the defendants had proven that they and their predecessors had obtained a prescriptive easement.

The Court agreed with the trial court's rulings. The Court found that Groak had originally granted the Diehl and Scotts a limited-use easement. It only provided the neighbors access to the lake from the Easement (i.e., not the right to build or store a dock on it.) Nevertheless, the Diehls and Scotts and their successors changed this limited-use easement into one with more rights by acquiring a prescriptive easement.

The Court defined a prescriptive easement to include a party's interest in a piece of land acquired through an adverse possession to which the true owner of the land does not object. Michigan law holds that this includes a party that obtains a prescriptive easement by openly, peacefully, and continuously trespassing on land it does not truly own for more than fifteen years without the objection or express permission of the actual owner of the land ("true owner"). The trespassing party asserts a claim of ownership by its accessing and using the land like the true owner would.

The true owner can destroy this claim of ownership by either objecting to the trespassing party's use or granting the trespassing party express permission to use the land. The true owners of the land are said to have presumptively acquiesced to the trespassing party's adverse claim of ownership by doing neither. Further, such an easement can be inherited by the party's successors.

The Defendants and their predecessors were deemed to have openly and continuously used the Easement for activities in addition to accessing the lake. The Defendants and their predecessors had openly used and stored the Dock on the Easement for over 35 years before the Plaintiffs finally objected to it. The Groaks and then the Russoms had seen the Defendants and their predecessors:

- Building the Dock
- Storing the Dock
- Mooring boats on the Dock
- Socializing on the Dock

The Plaintiffs did not properly grant a license to either of the Defendants. While the Plaintiffs agreed to let the Diehls use the Easement to store their boat, this express permission expired when the Diehls sold their land in 1993. The Diehl successors never had this same license to use the Easement for boating or recreational purposes. The Diehl successors owned the land for more than 15 years—from 1993 until 2014. This gave the Diehl successors a prescriptive easement that the Unruhs inherited when they bought the Diehl parcel in 2014.

The Plaintiffs also never gave the Scotts a license to use the Easement for storing or using a Dock on it either. The Scotts and their successors also owned the Scott land for over 15 years. Therefore, both the Defendants were held to have a prescriptive easement over the Easement. This could be transferred to subsequent owners of the Diehl and Scott parcels.

A copy of the opinion can be downloaded here.