

2026 WL 1883086

District Court of Appeal of Florida, Third District.

Jack KESSLER, Appellant,

v.

Alexander AYZEN and Alla Ayzen, Appellees.

No. 3D25-0117

|

Opinion filed July 1, 2026

Synopsis

Background: Northern upland riparian landowner brought declaratory judgment action against southern landowners, seeking determination that neighbors' proposed marginal dock and boatlift on Intracoastal waterway impermissibly infringed upon his riparian right to unobstructed view of waterway. Southern landowners counterclaimed for declaratory judgment that proposed dock and boatlift did not violate owner's riparian rights. The Circuit Court, 11th Judicial Circuit, Miami-Dade County, [Reemberto Diaz, J.](#), granted southern landowners' motion for summary judgment. Northern landowner appealed.

[Holding:] The District Court of Appeal, [Gooden, J.](#), held that proposed marginal dock and boatlift was a reasonable and lawful use of southern landowners' rights, even if it partially obstructed northern landowner's view of the water.

Affirmed.

See also [365 So.3d 1230](#).

Procedural Posture(s): On Appeal; Motion for Declaratory Judgment; Motion for Summary Judgment.

West Headnotes (8)

[1] Water Law 🔑 **Title and rights in general**

In addition to the general water use rights available to public, upland riparian owners hold certain special rights that are incidental to their ownership, including right to access, right to use, right to unobstructed view, and rights of alluvion

and dereliction. [Fla. Const. art. 10, § 11](#); [Fla. Stat. Ann. §§ 161.201, 253.141](#).

[2] Constitutional Law 🔑 **Water**

Eminent Domain 🔑 Easements and other rights in real property

Water Law 🔑 Extent of right in general

Upland riparian owner's special rights to access and view are easements incident to the riparian holdings, and are property rights that may be regulated by law, but may not be taken without just compensation and due process of law. [U.S. Const. Amends. 5, 14](#); [Fla. Const. art. 10, § 11](#); [Fla. Stat. Ann. §§ 161.201, 253.141](#).

[3] Water Law 🔑 **Nature and Extent of Rights in General**

Special riparian rights may not be so exercised as to injure others in their lawful rights. [Fla. Stat. Ann. §§ 161.201, 253.141](#).

[4] Water Law 🔑 **Correlative Rights of Riparian Owners**

Each riparian landowner's special riparian rights must be measured in reasonable relation to one another. [Fla. Stat. Ann. §§ 161.201, 253.141](#).

[5] Water Law 🔑 **View of water**

Water Law 🔑 Wharves, docks, piers and similar structures

Southern riparian landowners' proposed marginal dock and boatlift directly in back of their home on Intracoastal Waterway constituted a reasonable and lawful use of their special riparian rights which did not unreasonably obstruct or violate northern landowner's riparian rights, even if it partially obstructed northern landowner's view of the water to the south; northern landowner only had a right to a direct, unobstructed view of the water, and did not have a right to an unobstructed view in all directions to the exclusion of all other's rights. [Fla. Stat. Ann.](#)

§§ 161.201, 253.141; Fla. Admin. Code Ann r. 18-21.004(3)(C).

[More cases on this issue](#)

[6] **Water Law** 🔑 [Extent of right in general](#)

Riparian landowner's right to access and use the water is an "affirmative easement," as it entitles one to enter and use the property of another: the servient tenant who owns the bed of the navigable water. Fla. Stat. Ann. §§ 161.201, 253.141.

[7] **Water Law** 🔑 [Authorization by public authority to construct, and application therefor; permits](#)

Water Law 🔑 [Wharves, docks, piers and similar structures](#)

In accordance with their special riparian rights and with permission from the appropriate authority, an upland owner may erect a dock in front of their property to access and use the water; the dock must be built in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland owners. Fla. Stat. Ann. §§ 161.201, 253.141; Fla. Admin. Code Ann r. 18-21.004(3)(C).

[8] **Water Law** 🔑 [View of water](#)

Riparian landowner's right to an unobstructed view of the water is a "negative easement" as it restricts the use of the property of the servient tenant who owns the bed of the navigable water. Fla. Stat. Ann. §§ 161.201, 253.141; Fla. Admin. Code Ann r. 18-21.004(3)(C).

An Appeal from the Circuit Court for Miami-Dade County, [Reemberto Diaz](#), Judge. Lower Tribunal No. 23-16851-CA-01

Attorneys and Law Firms

Dentons US LLP, and [Jonathan H. Kaskel](#), Miami, and Elizabeth C. DeGori, for appellant.

Heise Suarez Melville, P.A., and [Thomas S. Ward](#), for appellees.

Before [FERNANDEZ](#), [GORDO](#) and [GOODEN](#), JJ.

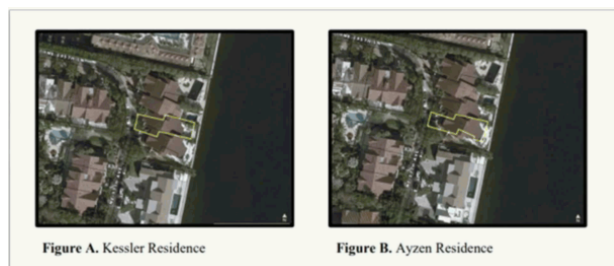
Opinion

[GOODEN](#), J.

*1 This case concerns competing riparian rights of neighbors along the Intracoastal Waterway. Finding no reversible error, we affirm the trial court's final summary judgment in all respects, but write to address one issue.

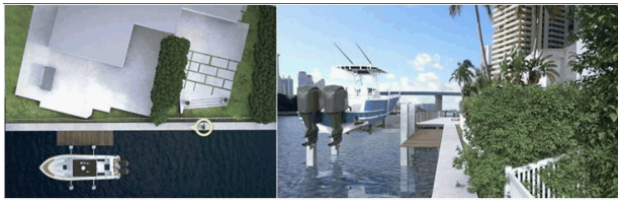
I.

Appellant Jack Kessler and Appellees Alexander and Alla Ayzen are neighbors in a townhome community in Aventura. Both own homes on the Intracoastal Waterway. The Kessler home is directly north of the Ayzen home. Both are upland properties that have direct, unobstructed views of the Intracoastal.



In 2020, the Ayzens sought to build a marginal dock¹ and boatlift immediately behind their home. They applied for a Class I permit with the Miami-Dade Division of Environmental Resources Management. The proposed dock is approximately five feet wide and twenty-one feet long. It would have a 20,000-pound capacity boatlift. The dock would not extend in front of any neighbor's property. The homeowners' association consented to the construction of the proposed dock.

But the installation would partially obstruct Kessler's view of the Intracoastal on one side by 32 degrees.



As a result, he objected.

Despite his objection, the Division of Environmental Resources Management recommended that the Class I permit be approved. The County's Department of Regulatory and Economic Resources similarly did so. So did the U.S. Army Corps of Engineers.

The Board of County Commissioners considered the permit at two separate public hearings. Kessler appeared and opposed the request. At the second meeting, the Board approved the application by adopting Resolution No. R-933-22 in an 11-0 vote.

Kessler then filed a petition for writ of certiorari in the appellate division of the Eleventh Judicial Circuit. In its response, the County noted that the permit did not adjudicate rights of the parties, recognizing that riparian rights were not at issue in those challenges. The appellate panel affirmed the Board's decision. Kessler sought second-tier certiorari relief. Our Court denied the petition. See [Kessler v. Miami-Dade Cnty.](#), 365 So. 3d 1230 (Fla. 3d DCA 2023).

While the petition was pending in our Court, Kessler filed a one-count complaint against the Ayzens for declaratory judgment, seeking to determine “whether the Ayzens’ current plan for a dock impermissibly infringes upon Mr. Kessler’s riparian or littoral right to an unobstructed view of the Intracoastal Waterway and regarding the extent of the parties’ riparian or littoral rights.” The Ayzens counterclaimed, seeking a declaratory judgment that the proposed dock and boatlift did not violate Kessler’s riparian rights.

Subsequently, the Ayzens moved for summary judgment. They argued the dock and boatlift will not impermissibly infringe on Kessler’s riparian rights since it only partially obstructed the view on one side. Kessler, however, focused on whether the dock and boatlift was necessary.

*2 After hearing arguments from the parties, the trial court granted the Ayzens’ motion and entered final summary judgment. Citing [Hayes v. Bowman](#), 91 So. 2d 795 (Fla. 1957), the trial court reasoned that “Kessler has a right to an unobstructed view over an area in the direction of the

Waterway, such right is not exclusive against all interference when looking upon the Waterway from the upland property in a particular direction.” It deemed that the dock and boatlift did not “substantially and materially” interfere with Kessler’s view of the Intracoastal Waterway. Therefore, no reasonable jury could find that the construction violated Kessler’s riparian rights. This appeal followed.

II.

We review the trial court’s final summary judgment de novo. See [Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.](#), 760 So. 2d 126, 130 (Fla. 2000).

III.

Like other aspects of property law, riparian rights are rooted in Roman and English common law traditions. See generally [PAJ Inv. Grp., LLC v. El Lago N.W. 7th Condo. Ass’n, Inc.](#), 405 So. 3d 401, 406–07 (Fla. 3d DCA 2024); Cynthia J. Bannon, *A Short Introduction to Roman Water Law*, 66 *Memoirs of the American Academy in Rome* 1–18 (2021). Under these traditions, the sovereign held title in the beds of navigable waters for the benefit of and in trust for its people. See Sir Matthew Hale, *A Treatise Relative to the Maritime Law of England* 10–11 (Hargrave’s Law Tracts 1787). See also [Shively v. Bowlby](#), 152 U.S. 1, 13, 14 S.Ct. 548, 38 L.Ed. 331 (1894); [Martin v. Waddell’s Lessee](#), 41 U.S. 367, 422, 16 Pet. 367, 10 L.Ed. 997 (1842). Its citizens retained public rights of “navigation, commerce, fishing, bathing, and other easements allowed by law in the waters.” [Brickell v. Trammell](#), 77 Fla. 544, 82 So. 221, 226 (1919). See also James Kent, *Commentaries on American Law* 344 (1828); Joseph Angell, *A Treatise on the Right of Property in Tide Waters* 20 (1826).

After the Revolutionary War, these rights were vested in the states and the people, respectively. [Brickell](#), 82 So. at 226. When Florida was later admitted into the Union, it did so on equal footing. [Broward v. Mabry](#), 58 Fla. 398, 50 So. 826, 829–30 (1909); [State v. Black River Phosphate Co.](#), 32 Fla. 82, 13 So. 640, 644 (1893). These principles are known as the public trust doctrine and have been enshrined in our Constitution. See [Art. X, § 11, Fla. Const. \(1970\)](#) (“The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below

mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people.”).

[1] In addition to those general rights available to the public, Florida upland owners hold certain special rights that are incidental to their ownership. [Ferry Pass Inspectors' & Shippers' Ass'n v. White's River Inspectors' & Shippers' Ass'n](#), 57 Fla. 399, 48 So. 643, 644–45 (1909). These rights include the right to access, the right to use, the right to an unobstructed view, and the rights of alluvion and dereliction. *Id.* See also [Bd. of Trs. of the Internal Improvement Tr. Fund v. Sand Key Assocs., Ltd.](#), 512 So. 2d 934, 936 (Fla. 1987); [Thiesen v. Gulf, F. & A. Ry. Co.](#), 75 Fla. 28, 78 So. 491, 507 (1917). These rights were codified in 1953. Ch. 28262, § 1, Laws of Fla (1953) (codified at § 253.141, Fla. Stat. (2024)); see also § 161.201, Fla. Stat. (2024) (noting upland owners have “common-law riparian rights ... including but not limited to rights of ingress, egress, view, boating, bathing, and fishing”).

[2] “These special rights are easements incident to the riparian holdings, and are property rights that may be regulated by law, but may not be taken without just compensation and due process of law.” [Broward](#), 50 So. at 830. Indeed, Florida courts have found unconstitutional takings when such rights were “substantially and materially” impaired. See [Game & Fresh Water Fish Comm'n v. Lake Islands, Ltd.](#), 407 So. 2d 189, 193 (Fla. 1981) (holding regulation was unconstitutional as to upland owner because it substantially denied the right of access); [Lee Cnty. v. Kiesel](#), 705 So. 2d 1013, 1016 (Fla. 2d DCA 1998) (finding an unconstitutional taking where bridge substantially and materially obstructed upland owners’ right to view). Cf. [Duval Eng'g & Contracting Co. v. Sales](#), 77 So. 2d 431, 434 (Fla. 1954) (concluding that there was no taking where there was only a slight impairment of rights and owners did not show a material obstruction to the rights to access and view).

*3 [3] [4] [5] Both the Ayzens and Kessler have special riparian rights. Neither party's rights takes precedence. Importantly, “these rights may not be so exercised as to injure others in their lawful rights.” [Ferry Pass](#), 48 So. at 645. See also [Taylor v. Tampa Coal Co.](#), 46 So. 2d 392, 394 (Fla. 1950) (“[E]ach riparian owner has the right to use the water in the lake for all lawful purposes, so long as his use of the water is not detrimental to the rights of other riparian owners.”). Each right “must therefore be measured in reasonable relation to one another.” [Geise v. Fleck](#), 51 Fla. L. Weekly D694, —

So.3d —, —, 2026 WL 904860, at *6 (Fla. 6th DCA Apr. 2, 2026). So we must examine each right at issue.

[6] [7] The Ayzens seek to exercise their rights to access and use the water. This is an affirmative easement as it entitles one to enter and use the property of another—the servient tenant who owns the bed of the navigable water. [Walton Cnty. v. Stop Beach Renourishment, Inc.](#), 998 So. 2d 1102, 1112 (Fla. 2008). In accordance with these rights and with permission from the appropriate authority, an upland owner may erect a dock in front of their property to do so. [Williams v. Guthrie](#), 102 Fla. 1047, 137 So. 682, 685 (1931); [Freed v. Miami Beach Pier Corp.](#), 93 Fla. 888, 112 So. 841, 844 (1927); [Ferry Pass](#), 48 So. at 645. The dock must be built “in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland owners.” Fla. Admin. Code R. 18-21.004(3)(C).

The Ayzens’ plans are for a marginal dock that is approximately five feet wide and twenty-one feet long. It would have a 20,000-pound capacity boatlift. The dock and boatlift are immediately in front of their property. This is a reasonable and lawful use of their rights.

[8] On the other hand, Kessler seeks to exercise his right to an unobstructed view of the water. This is a negative easement as it restricts the use of the property of another—again, the servient tenant who owns the bed of the navigable water. [Walton Cnty.](#), 998 So. 2d at 1112. Yet this right only entitles Kessler to a “direct, unobstructed view” of the water. [Hayes](#), 91 So. 2d at 801. It does not include an unobstructed view in all directions—to the exclusion of all other's rights. *Id.* (holding that appellants still had a direct, unobstructed view of channel even though another sought to fill in submerged waters and the appellants could no longer see Stetson Law School across the water); [Broward](#), 50 So. at 830 (“Those who own land extending to ordinary high-water mark of navigable waters are riparian holders, who ... have in general certain special rights in the use of waters opposite their holdings....”). See also [Geise](#), — So.3d at —, 51 Fla. L. Weekly D694, at *15 (“Appellants argue they have a right to an unobstructed access to and view of the lake adjacent to their private property. But we reject Appellants’ framing of the issue. Appellants have a right to a *reasonably* unobstructed access to and view of the lake—not a completely unobstructed access to and view of the lake.”); [Mickel v. Norton](#), 69 So. 3d 1081, 1083 (Fla. 2d DCA 2011) (“The Nortons still have a direct and unobstructed view of the Sunrise Waterway, which is the only body of water adjoining their lot. At most, the

Nortons established that the fence obstructed their view of the Mickels' side yard and Alligator Bay which lies to the west on the other side of the Mickels' lot. Because the Nortons' lot is not bordered by Alligator Bay, they are not entitled to the private or special riparian rights incident to the ownership of land bordered by that body of water, including the right to a view of the bay.”).

*4 When viewing these competing rights in relation to each other, the Ayzens are entitled to build a dock and boatlift, provided they do not infringe upon Kessler's rights. We find that the Ayzens' proposed structure, situated directly in front of their own property, does not injure Kessler's “direct, unobstructed” view of the water in front of his. [See *Ferry Pass*, 48 So. at 645](#). Ultimately, both parties can reasonably exercise their rights without injuring the other. The dock and boatlift do not unreasonably obstruct or violate Kessler's riparian rights.

Nonetheless, Kessler claims that the trial court erred by applying the wrong test to analyze his rights. He asserts that the trial court applied the analysis in takings cases—whether

the dock and boatlift substantially and materially obstructed his right to a view. [See *Lee Cnty.*, 705 So. 2d 1013](#); [Game & Fresh Water Fish Comm'n](#), 407 So. 2d 189. While it is true that the trial court included this in its analysis, a careful review of the order shows that was not the singular focus of the trial court. It also properly considered whether the Ayzens' dock and boatlift injured Kessler's rights. But even if it had not, we would still find that the trial court correctly held that Kessler was not entitled to relief. [See *Gessner v. S. Co.*, 51 Fla. L. Weekly S143, — So.3d —, — n.10, 2026 WL 1488160, at *7 n.10 \(Fla. May 28, 2026\)](#). No reasonable jury could find that the marginal dock and boatlift violates Kessler's riparian rights. [See *Ibarra v. Ross Dress for Less, Inc.*, 350 So. 3d 465, 467 \(Fla. 3d DCA 2022\)](#). So, we affirm.

Affirmed.

All Citations

--- So.3d ----, 2026 WL 1883086, 51 Fla. L. Weekly D1332

Footnotes

- 1 A marginal dock is “a dock placed adjacent to and parallel with and no more than 10 feet waterward from the shoreline or seawall, bulkhead or revetment.” [Fla. Admin. Code R. 18-21.003\(36\)](#). Notably, the property located directly south of the Ayzen property has a marginal dock.