

2018 WL 1473918

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UNPUBLISHED OPINION. CHECK
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Superior Court of New Jersey,
Appellate Division.

James RAPISARDI, Plaintiff–Appellant,

v.

ESTATE OF Harry LANGE and Laurilee
Lange, Christopher Montana and Ronald
Jenkins, Defendants–Respondents.

DOCKET NO. A–3722–16T2

Submitted March 1, 2018

Decided March 27, 2018

On appeal from Superior Court of New Jersey, Chancery
Division, Gloucester County, Docket No. C–000027–16.

Attorneys and Law Firms

James Rapisardi, appellant pro se.

Trimble & Armano, attorneys for respondent Estate of
Harry Lange and Laurilee Lange (Keith R. Trimble, on
the brief).

Thatcher Passarella, PC, attorneys for respondents
Ronald Jenkins and Christopher Montana (David A.
Thatcher, on the brief).

Before Judges Simonelli and Rothstadt.

Opinion

PER CURIAM

*1 In this matter, plaintiff James Rapisardi alleged defendants Estate of Harry Lange, Laurilee Lange, Christopher Montana, and Ronald Jenkins¹ encroached and trespassed on his property by constructing a “boat ramp”² to access Oldmans Creek. The trial court determined the State of New Jersey owns all land up to the mean high water line, and because the property in question was below the mean high water line and plaintiff had no

grant of riparian rights from the State, he had no authority to regulate the use of property. We agree and affirm the March 28, 2017 orders granting summary judgment to defendants and denying summary judgment to plaintiff.

We derive the following facts from evidence submitted by the parties in support of, and in opposition to, the summary judgment motions, viewed in the light most favorable to plaintiff. Edan Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 135 (2017).

Plaintiff's and Jenkins' properties lie adjacent to each other. Jenkins' property lies directly north of plaintiff's property, and the two properties share a common border. Oldmans Creek borders the properties to the west, and both properties extend to the creek. Jenkins' property backs up to Oldmans Creek with the exception of an approximately ten to fifteen-foot-wide “sliver of land” that extends north and runs in between the rear of Jenkins' property and Oldmans Creek. The “boat ramp” starts on Jenkins' property and extends over the “sliver of land” to Oldmans Creek.

Plaintiff claimed he owned the “sliver of land” because the legal description of his property in the deed extended his property to the low water line of Oldmans Creek.³ Plaintiff argued the deed intended to grant the owner of the property the land along the low water line of Oldmans Creek. He also argued that as owner of the “sliver of land,” he had riparian rights adjacent to it and defendants' use of the “boat ramp” was a continuing trespass to his property and riparian rights, as well as an encroachment causing irreparable injury. Plaintiff sought removal of the “boat ramp” or costs to remove it.

Defendants did not dispute that plaintiff's deed demonstrated the “sliver of land” was included in the property's legal description. They argued this was irrelevant because a Tideland Search Certificate confirmed the State owns the waters of Oldmans Creek up to the mean high water mark,⁴ and plaintiff's survey confirmed the “sliver of land” was completely submerged under water and below the mean high water mark of Oldmans Creek. Defendants also argued that a grant search confirmed plaintiff had no grant of riparian rights to the “sliver of land” issued by the State, and thus, had no exclusive right to use of the land or the waters above it. Defendants concluded that without a riparian grant and with the “sliver of land” beneath the mean high water

mark of Oldmans Creek, plaintiff could not restrict access to the waterway from Jenkins' property.

*2 In an oral opinion, Judge Anne McDonnell held as follows, in pertinent part:

Under New Jersey law, deeds are construed to include all the grantor's estate rights, title, and interest unless the grantor expressly limits the conveyance. [*Panetta v. Equity One, Inc.*, 190 N.J. 307, 317 (2007) (quoting N.J.S.A. 46:3–13)].

A deed conveying land is construed to include waters, water courses, rights, liberties, privilege of every part and parcel thereof. N.J.S.A. 46:3–16. Owners of land adjacent to a stream or water body have the right to reasonable use of the waters and co-relative right to ... protect that interest against unreasonable use by others that substantially diminishes the quantity or quality of their use. *Panetta*, 190 N.J. at 318. In other words, a riparian right is a license or privilege to access and make reasonable use of the water, and that's the same cite from *Panetta*.

Sovereign ownership of waters in New Jersey has been and continues to be based on title ... and not navigability. [*Newark v. Nat. Res. Council in DEP*, 82 N.J. 530, 544 (1980).] The State owns in fee simple all lands that are flowed by the tide up to the high water line or mark[.] [*O'Neil v. State Highway Dep't*, 50 N.J. 307, 323 (1967)].

While an upland property owner may obtain title to dry land added by accretion, it also loses to the State of New Jersey land that becomes tidally-flowed as a result of erosion. [*Wildwood Crest v. Masciarella*, 51 N.J. 352, 357 (1968); see also *Garrett v. State*, 118 N.J. Super. 594, 600 (1972) (applying the doctrine of accretion to streams).]. Although the mean high water mark may shift as a result of accretion and erosion, it remains the dividing point between the upland owner's property and that of the State. [*City of Long Branch v. Liu*, 203 N.J. 464, 478 (2010)].

A riparian right is not the same as a riparian grant. [*Panetta*, 190 N.J. at 317]. A riparian grant is the method that the State conveys riparian lands to its citizen[s]. [*Id.* at 318]. After being altered by the State to [an] upland owner, the riparian grant can be granted to persons unconnected with the upland property[. *Ibid.*]

Plaintiff argues that the deed was intended to and did describe property as running to the low waterline of Oldman's Creek. As a result, the plaintiff has riparian rights adjacent to his strip of land, and the use of [a] boat ramp is an encroachment onto the property and an unreasonable use of his riparian rights.

Defendants argue that the land at-issue is entirely submerged under water and completely below the high water mark of Oldman's Creek as that existed at the time of the survey, and that therefore plaintiff does not own the land and does not have the exclusive right to use that land without a riparian grant from the State of New Jersey.

Plaintiff disputes the fact that the land is entirely submerged. This is not relevant as the test uses the mean high water mark, and plaintiff's survey clearly shows the land in dispute as below the mean high water line. Plaintiff was asked to produce a riparian grant and was unable to do so. There's no evidence that plaintiff received a grant from the State of New Jersey. The State of New Jersey owns a fee simple absolute in the disputed land that's below the mean high water mark.

*3 Since plaintiff does not have an exclusive ownership interest in the land, there is no trespass and no encroachment.

This appeal followed. On appeal, plaintiff reiterates the arguments made to Judge McDonnell.⁵

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. *Conley v. Guerrero*, 228 N.J. 339, 346 (2017). Thus, we consider, as the motion judge did, “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A.*, 189 N.J. 436, 445–46 (2007) (quoting *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 536 (1995)). Summary judgment must be granted “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” *Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co.*, 224 N.J. 189, 199 (2016) (quoting *R.* 4:46–2(c)). “To defeat a motion for

summary judgment, the opponent must “ ‘come forward with evidence that creates a genuine issue of material fact.’ ” Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014) (quoting Horizon Blue Cross Blue Shield of N.J. v. State, 425 N.J. Super. 1, 32 (App. Div. 2012)).

If there is no genuine issue of material fact, we must then “decide whether the trial court correctly interpreted the law.” DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (citation omitted). “When no issue of fact exists, and only a question of law remains ... [we] afford[] no special deference to the legal determinations of the trial court.” Templo Fuente, 224 N.J. at 199 (citation omitted). Applying the above standards, we discern no reason to disturb Judge McDonnell’s grant of summary judgment to defendants.

“Generally, the State of New Jersey ‘owns in fee simple all lands that are flowed by the tide up to the high-water line or mark,’ and the owner of [waterfront] property holds title to the property upland of the high water mark. City of Long Branch, 203 N.J. at 475–76 (citations omitted); Panetta, 190 N.J. at 318. New Jersey, as a sovereign, has title to “submerged lands under tidewaters[.]” Schultz v. Wilson, 44 N.J. Super. 591, 596 (App. Div. 1957).

Although “[t]he mean high water mark, generally, is the boundary line that divides private ownership of the dry beach and public ownership of tidally flowed lands[, t]hat boundary line is not fixed, but fluctuates over time through the process of accretion, erosion, and avulsion.” City of Long Branch, 203 N.J. at 476. “Under the common law, the owner of [waterfront] property takes title to dry land added by accretion, but loses to the State title over land that becomes tidally flowed as a result of erosion.” Id. at 477. As the Court held:

*4 Although the mean high water mark may shift due to accretion and erosion, it remains the dividing point between the upland owner’s property and the tidally flowed land held in trust for the people. The doctrine of accretion and erosion is founded ‘on the principle of natural justice’—that ‘[t]he proprietor of lands having a boundary on the sea is obliged to accept the alternation of his boundary by the changes to which the shore is

subject [...] ... [losing] by the same means that may add to his territory[.]’

Ibid. (alterations in original) (quoting Masciarella, 51 N.J. at 257.)

“Riparian lands are lands lying along the banks of a stream or water body.” Panetta, 190 N.J. at 318. “A riparian right is the right of a riparian landowner to make reasonable use of adjacent water and is facially included in N.J.S.A. 46:3–16.” Id. at 317. However, “[a] riparian grant is a separate estate in land.” Ibid. “[R]iparian rights and grants are not identical and are not similarly governed by N.J.S.A. 46:3–16.” Ibid. As the Court held:

Unlike a riparian right, which is a license or privilege, a riparian grant is a conveyance in fee simple of real property. As such, without specific mention in the deed or other evidence that the parties intended its inclusion, a riparian grant will not pass as appurtenant to another distinct parcel.

Id. at 309.]

“A riparian grant ... is the method by which the State conveys riparian lands to its citizens.” Id. at 318.

Here, plaintiff’s deed intended for his property to include the “sliver of land.” However, this is not dispositive. Plaintiff lost title over the “sliver of land” to the State when it became submerged and fell below the mean high water line. See id. There is no dispute the “sliver of land” is now completely below the mean high water line of Oldmans Creek, which vests ownership in the State by law. In addition, the deed does not mention a riparian grant from the State, and there was no evidence the State issued a riparian grant. With the “sliver of land” being owned by the State, and without a grant of riparian rights from the State, plaintiff cannot restrict access to Oldmans Creek from Jenkins’ property. Accordingly, there was no trespass or encroachment by defendants on plaintiff’s property.

Affirmed.

All Citations

Not Reported in A.3d, 2018 WL 1473918

Footnotes

- 1 The Langes are prior owners of Jenkins' property, and Montana is Jenkins' grandson and tenant. Jenkins purchased the property from the Langes while this litigation was pending.
- 2 The "boat ramp" is merely a depression in the ground apparently created by use over time to launch boats.
- 3 The deed, which was recorded on September 11, 1975, contains the following property description:
Beginning at a point, the intersection of centerlines of Township Line Road and Pedricktown-Harrisonville Road, said point being on the line dividing the Townships of Logan and Woolwich; thence from said point of beginning, by the said centerline of Pedricktown-Harrisonville Road ... 408.32 feet to a point, a corner of lands now or late of S. Maugeri; thence by said Maugeri's lands, ... 452.19 feet to a point on the low water line of Oldmans Creek; thence down the creek, by the low water line[.]
[(Emphasis added).]
- 4 The Tideland Search Certificate stated that:
all or a portion of [plaintiff's] property ... is claimed by the State of New Jersey as area now or formerly below mean high water as shown on the applicable tidelands map prepared by the Office of Environmental Analysis and approved by the Tidelands Resource Council, subject to prior grants or leases of State-owned Tidelands and other reservations which appear on the adopted map and overlay.
[(Emphasis added).]
- 5 We decline to address plaintiff's arguments about a drainage ditch. Plaintiff did not allege a cause of action relating to a draining ditch. In addition, he did not raise this issue before Judge McDonnell, and the issue is not jurisdictional in nature and does not substantially implicate the public interest. Zaman v. Felton, 219 N.J. 199, 226–27 (2014).