Several Interesting Michigan Court of Appeals Decisions Regarding Standing, Injunctions, Deed Restrictions and Easements

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On December 5, 2019, the Michigan Court of Appeals issued an interesting unpublished decision in *Wenners v. Chisholm*, et al, Case Numbers 345830 and 345831 (2019 WL 6646504). The decision involved a narrow land strip utilized by back lot or off lake property owners and their ability to utilize dockage and boat moorage on the land strip at the lake. Although the case is quite complex regarding the facts and legal issues involved, there are two important matters discussed by the Court that could help riparian property owners in similar civil lawsuits in the future.

First, the Court held that the owners of the adjoining lake front (i.e., riparian) properties have "standing" to bring a lawsuit challenging the use of the narrow land strip adjacent to the riparian properties, even if the riparian property owners have no direct ownership interest in the land strip at issue. Second, the Court held that injunctive relief (i.e., a court order) was appropriate to require the back-lot property owners to comply with the court decision even if the riparian property owners did not ask for injunctive relief initially.

The holding in *Wenners v. Chisholm* could benefit riparian property owners in future litigation cases.

The second interesting Michigan Court of Appeals case was decided on January 16, 2020 in *Haan v. Lake Doster Lake Association* (Case No. 345282; 2020 WL 257403). This decision also involved complex factual situations regarding an artificial lake in Allegan County with extensive deed restrictions / restrictive covenants. One of the subdivisions included the dedication of a lakefront parcel for backlot property owners to provide them with access to and use of the lake. The dedicated parcel was called "Parkway", and it consists of a private drive and park. The plat dedication was silent regarding the rights of usage for backlot property

owners and whether they had the right to docks and to seasonally moor boats. Through a series of rules and agreements by the property owners association, several backlot property owners claimed dockage and boat moorage rights. A slim majority of the Court of Appeals held that certain backlot property owners had the right to dockage and seasonal boat moorage at the common property. This decision probably has little precedential impact for other lakes, but it does stand for the proposition that a property owners association must be very careful regarding its rules, bylaws, and agreements.

Finally, on January 30, 2020, the Michigan Court of Appeals released its opinion in *Kraus v Link*, et al. (Case No. 347044; 2020 WL 504 973), which involved the rights of backlot property owners and others to use three waterfront outlots on Walled Lake. The deed restrictions and dedications allowed backlot owners (and potentially others) via easements to utilize the three lakefront outlots to utilize docks built thereon "to be used" by the backlotters

(Continued on page 31)

(Continued from page 30)

and required that everyone who uses the docks "agree to maintain the same and keep said docks in proper repair at their own expense …" Everyone using the outlots also agreed "to keep said weeds and rushes cut and become responsible for the appearance of said shore line …" The dispute involved whether the backlot property owners could moor or keep boats along the docks, and if so, whether such boat moorage is limited to day use only or for the entire season. The court opinion contains good discussions about riparian rights, lake access easements, deed restrictions and similar matters. Although the trial court held that the backlot property owners could use the docks for "day use only," the Court of Appeals reversed the decision and remanded the case back to the trial court for further proceedings. The Court of Appeals held that the language regarding dockage was ambiguous and that the trial court would have to consider historic "extrinsic evidence" (i.e., evidence outside of the language used) to determine the scope of usage rights for the outlot easements. Given that the plat was originally created in 1917 and that the Michigan Supreme Court in *Little v Kin*, 468 Mich 699 (2003) held that the only type of extrinsic evidence that can be considered by a court is evidence at or prior to the time when the easement was created, it is unlikely that there will be much direct evidence of the plattor's intent or usage rights at or within a year or two of 1917.

Although all three of the above Michigan Court of Appeals decisions were "unpublished" and therefore, not technically binding precedent, such cases often do guide Michigan courts in similar cases.