

TRESPASS ON THE BOTTOMLANDS OF ANOTHER

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In the “Attorney Writes” column found in the February, 2000 issue of The Riparian Magazine, trespass is discussed in general. This article deals with trespass on the bottomlands of another in more depth.

Except for unusual circumstances, a riparian property owner on an inland lake in Michigan owns a pie-shaped portion of the bottomlands to the center of the lake. See Hall v Wantz, 336 Mich 112 (1953). Unfortunately, since there are very few (if any) perfectly round lakes, exactly how riparian property lines radiate under the water toward the center of a lake and at what angles are matters of considerable dispute for most lakes. Surveyors with an expertise in attempting to set riparian boundaries can give opinions, but those opinions are nonbinding. Ultimately, only a Michigan circuit court can definitively set bottomland property boundaries under the waters of a lake.

In general, there are three possible techniques which can be utilized by the courts to set riparian bottomland boundaries. If a lake is close to being round, a court can set a specific point in the middle of the lake, with the property lines of various riparian lots radiating in a pie-shaped fashion to the center of the lake. For oval, spider or other irregularly-shaped lakes (which includes most of the lakes in Michigan), there are two techniques frequently used by courts to set bottomland boundaries. The “thread method” involves placing one or more lines roughly in the middle of a lake’s fingers or bays, with the property lines of riparian lots radiating to the nearest thread line or perpendicular to that line. The other alternative for irregularly-shaped lakes is to simply set bottomland areas in proportion to the widths that adjoining riparian lots bear to the overall area of the lake bottomlands in total. Obviously, any of these techniques can result in bottomland boundaries which vary dramatically in angle from boundary lines on dry land.

Why is it important to know one’s bottomland boundaries? It is important because ownership of the bottomlands entitles a riparian to exclude others from most uses of those bottomlands unless they have

permission from the riparian owner. Generally, only the riparian has the right to place docks, shorestations, raft anchors, volleyball nets, buoys, etc., on his or her bottomlands. The same is true of anything other than the temporary mooring of a boat or watercraft. Just as with dry land, a person who owns the bottomlands under a lake generally has the right to exclude others from the use of such bottomlands. There are two exceptions to the rule that a riparian has the right to exercise exclusive control over his or her bottomlands. The first exception states that once someone is on the waters of an inland lake, they have the right to float, boat, swim, snowmobile, ice fish, etc. anywhere on the lake they desire and over the bottomlands of others so long as they do not touch those bottomlands. In other words, although the bottomlands in most inland lakes may be the private property of adjoining riparians, the waters of inland lakes generally belong to the people of the State of Michigan as a group. The second exception involves temporary mooring which is incidental to navigation. Put in lay person’s terms, a person has the right to throw out an anchor temporarily on the bottomlands of another in order to fish or steady their boat while they are in the boat. Obviously, this limited right to anchor temporarily is necessary and practical.

Recently, in the Berrien County Trial Court case of Suva, et al v Currier, et al, (Berrien County Trial Case No. 98-3580-CZ-S), adjoining riparian property owners asserted that users of an easement could not trespass on their adjoining riparian bottomlands. The plaintiffs, in their trial brief, argued as follows:

1 In Michigan, the owners of riparian properties on inland lakes normally own the bottomlands under the water in a pie-shaped fashion to the center of the Lake. See Hall v Wantz, 336 Mich 112 (1953).

1 [T]he owner of property bounded by an inland water course owns the bottomland of the lake or stream to the centerline... As previously noted, the title of a riparian

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landowner extends to the middle of an inland lake. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 509-510 (1995).

2 A person does not have the right to walk on the bottomlands of another without permission. Every unauthorized entry upon the private property of another constitutes a trespass. See *Giddings v Rogalewski*, 192 Mich 319 (1916).

3 In *Johnson v Burghorn*, 212 Mich 19 (1920), the Michigan Supreme Court held that the right of members of the public to float on the water does not include the right to anchor or attach traps to the subaqueous lands of a riparian owner or to the ice covering it for the purpose of catching fur-bearing animals. In *Patterson v Dust*, 190 Mich 679 (1916), it was held that while a riparian owner's property rights to subaqueous lands are subject to the right of the public to float on the waters above and the right to temporarily anchor as an incident to the right of navigation, members of the public do not have the right to anchor indefinitely on the riparian owner's bottomlands, create a nuisance such as littering and impair the riparian owner's use and enjoyment of his property rights.

In *Hall v Alford*, 114 Mich 165 (1897), the Michigan Supreme Court stated:

4 It does not follow that, because a person is where he has a right to be, he cannot be held liable in trespass. A person has the right to drive his cattle along the public highway, but he has no right to depasture the grass with his cattle in the highway adjoining the land of another person. Also a person has the right to travel along a public highway, but this gives him no right to dig a pit, or remove the soil, or encumber it in front of lands belonging to others. The defendant had the right of using the waters of the bay for the purpose of a public highway in the navigation of his boat over it, but he had no right to interfere with

the plaintiff's use thereof for hunting, which belonged to him as the owner of the soil. The public had a right to use it as a public highway, but every other beneficial use and enjoyment belonged to the owner of the soil. 114 Mich 165, 171 (1897).

5 The only exception recognized in Michigan case law for touching the bottomlands of another without permission is the narrow exception recognized in *Hall v Wantz* involving temporary anchoring on the bottomlands of another while fishing or navigating. That narrow exception is based on the premise that such temporary anchoring while fishing in a boat or while navigating is clearly incidental to an exercise of navigability (i.e., floating in deep waters). See also *Delaney v Pond*, 350 Mich 685 (1957); *Thies v Howland*, 424 Mich 282, 288 (1985).

Judge Scott Schofield agreed with the plaintiffs that walking on the bottomlands of another without permission was a trespass and wrote in his opinion as follows:

6 Walking on bottomlands in shallow water without the permission of the riparian owner is a trespass. This does not fall within the narrow exception recognized by Michigan courts for temporary boat anchoring as an incident to navigation. See *Hall v Wantz*, 336 Mich 112 (1953); *Hall v Alford*, 114 Mich 165 (1897); *Giddings v Rogalewski*, 192 Mich 319 (1916). Defendants and their invitees therefore are permanently enjoined from trespassing (i.e., walking without permission) on the bottomlands of Lots 1 and 6.

Although the above is only a portion of Judge Schofield's opinion (the case involved additional issues) and circuit court opinions are not binding outside of the judicial circuit involved, this opinion is interesting in that it is one of the few times where a Michigan court has specifically addressed the bottomlands wading trespass issue.