Three Interesting New Michigan Court of Appeals Decisions

By: Clifford H. Bloom, Esq.
Bloom Sluggett Morgan, PC | Grand Rapids, Michigan | www.bsmlawpc.com

The Michigan Riparian magazine constantly strives to keep its readers informed of new legal developments regarding lakes, streams and riparian matters in Michigan. This issue of the magazine is no different, as we report on three recent Michigan Court of Appeals decisions of interest.

In Hogg v. Four Lakes Association, Inc. _____ Mich App ____ (2014), the Michigan Court of Appeals dealt with issues regarding a Michigan summer resort association pursuant to MCL 455.201, et seq. As discussed briefly in the Attorney Writes column elsewhere in this issue, Michigan has four relatively ancient statutes that deal with summer resorts. Those statutes allow property owners within a given area to incorporate and create a super authoritative private property owners association that mimics a local municipality. In this case, the plaintiff alleged that the summer resort association (the Four Lakes Association) no longer existed because the statute under which it was incorporated limits the corporate existence to 30 years in total. The Court of Appeals noted, however, that another statute, MCL 450.371, allows a corporation in Michigan to exist forever if so stated in its articles of incorporation. Given that the articles of incorporation for the Four Lakes Association contain language indicating that the corporation would last forever, the Court held that MCL 450.371 governs and the Association's corporate existence could last forever. Interesting, the case also contains language implying that the summer resort association statutes are generally constitutional, notwithstanding past concerns by some Michigan courts that those statutes improperly delegate local government-like powers to private property owners associations.

Wiemann v. Randall, an unpublished decision by the Michigan Court of Appeals dated October 14, 2014 (Case No. 315398; 2014 WL 5163835), involved a platted way entitled "private parkway" dedicated to the use of the lot owners in the Locklin Beach subdivision or plat. In that case, a back lot property owner maintained his own dock and boat moorings at the termination of the parkway at the lake. When adjoining riparian property owners objected, the back lot property owner sued them. The Court of Appeals found the parkway to simply be another type of road or drive. The Court noted that, normally, dockage and boat moorage could not occur on the parkway at the lake, as lake access easements and road ends at lakes normally cannot have dockage or seasonal boat moorage. For that proposition, the Court of Appeals cited *Dyball v. Lennox*, 260 Mich App 698 (2004), among other appellate cases. What makes this case somewhat unusual, however, is that before the first lot was sold, the developer inserted a deed restriction in a deed indicating that the parkway could have one private dock and the moorage of non-motorized row boats. The Court held that such deed restriction expanded the scope of usage rights to the parkway. The appellate court decision also addressed a number of other tangential issues. Nevertheless, this decision is yet another in a long line of cases that holds that road ends at lakes and private lake access easements normally cannot be utilized for a private dock or seasonal or overnight boat moorage.

Apportioning bottomlands and shoreline ownership can be difficult, particularly where one of the Great Lakes is involved, as was shown in *Plastow v. Higman* (unpublished decision by the Michigan Court of Appeals dated September 2, 2014; Case Nos. 313653 and 313740; 2014 WL 4337872). This case is fairly technical, however, and probably does not offer any widespread guidance to Michigan Great Lakes riparians. This case involved two subdivisions and a dedicated park on Little Traverse Bay (a part of Lake Michigan) where there was a "gap" between the lake and the plat when it was created. Without holding a trial, the trial court judge held as a matter of law that the park is riparian and that a particular method should be used to allocate the lake shoreline to the various lots involved (i.e., the so-called *Stuart* method). On appeal, the Michigan Court of Appeals in essence held that the trial court acted prematurely. There would need to be a trial regarding whether or not the dedicated park had water frontage when it was originally created. Whether or not that park was or is riparian or waterfront will affect the formula to be used by the trial court to determine the shoreline of the park as well as what portions of the shoreline should be allocated to various adjoining lots. Accordingly, the decisions by the trial court judge were reversed and the case was remanded back to the trial court for a trial regarding the various issues. This case demonstrates the highly technical nature of the processes used by trial courts in Michigan to determine the allocation of shoreline areas and the fact that different apportionment formulas will have to be used by a trial court depending on the circumstances in the case involved.