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STATE OF MICHIGAN

COURT OF APPEALS

RONALD PACKER and ROBIN PACKER,

Plaintiffs/Counterdefendants-Appellants,

v

MARGENE K. TAGG, also known as MARGENE K. BLASHKIW, FREDRIC D. AINSWORTH, also known as FREDERIC D. AINSWORTH, LINDA K. AINSWORTH, and DIXIE JEAN SCHULTZ,

Defendants/Counterplaintiffs-Appellees,

and

MICHAEL D. MOORE and BETSY M. MOORE,

Defendants-Appellees.

UNPUBLISHED
August 18, 2026
10:29 AM

No. 370563
Barry Circuit Court
LC No. 2022-000182-CH

Before: BOONSTRA, P.J., and YOUNG and KOROBKIN, JJ.

PER CURIAM.

Plaintiffs/Counterdefendants Ronald Packer and Robin Packer (collectively, the Packers or plaintiffs) initiated this property action against certain neighbors owning back-lot properties within the Arhana Crest Subdivision (the Plat) in Yankee Springs Township, alleging that defendants' use of a lakefront neighborhood park (Park A, or the park) interfered with plaintiffs' riparian[1] rights. Defendants Margene K. Tagg, Frederic D. and Linda K. Ainsworth, and Dixie Jean Schultz

[1] We recognize that "[s]trictly speaking, land which includes or abuts a river is defined as riparian, while land which includes or abuts a lake is defined as littoral." *Thies v Howland*, 424 Mich 282, 288 n 2; 380 NW2d 463 (1985). However, "the term 'riparian' is often used to describe both types of land, and will be used in such a manner in this opinion." *2000 Baum Family Trust v Babel*, 488 Mich 136, 138 n 1; 793 NW2d 633 (2010) (quotation marks and citation omitted).

filed a counterclaim, alleging in relevant part that they held riparian rights to the park or, in the alternative, that they were entitled to use the park by virtue of an easement. These defendants also alleged that plaintiffs may be encroaching on those rights or trespassing by building beyond their own property line and onto the park. On February 12, 2024, the trial court entered an order regarding the parties' cross-motions for summary disposition, holding in part that "those properties that are separated from the lake only by the Park have riparian rights." Following a bench trial on the remaining issues, the trial court held that Tagg, Schultz, the Ainsworths, and the owner of Lot 60 "own the land under Park A" and, alternatively, have a prescriptive easement affording them various allowable uses of Park A, including continued use of the four-fingered dock currently present at Park A.

Plaintiffs appealed, raising numerous claims, which we distill into two questions to answer: (1) what are the parties' legal rights with respect to Park A, and (2) what is the scope of those rights? In answering these questions, we vacate in part and reverse in part the trial court's ruling and remand for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

The Plat was created in 1941 and runs adjacent to Barlow Lake (the lake). It contains 60 lots and four parks; each of the parties own properties located within the Plat. This litigation specifically involves the ownership rights and permissible uses of Park A. Park A and the properties of all involved parties to this litigation are highlighted below on the relevant portion of the map of the Plat:



Figure 1 - Image of Plat Dedication

The Plat Dedication states that "the drives, courts and parks as shown on said plat are dedicated to the use of lot owners of Arhana Crest only." It is uncontested that all Plat lot owners are entitled to "use" the four platted parks, including Park A, but the parties disagree as to who owns Park A and the scope of ownership/usage rights. The Packers own Lot 3 in the Plat. It is immediately adjacent to Park A and also has its own separate lakefront. Gerriet Bekkering owns Lot 60, a sliver of Lot 59, and Lot 2. Schultz owns Lot 55, Tagg owns Lots 56 and 57, the

Ainsworths own Lot 58 and part of Lot 59, and the Moores own Lots 52, 53, and 54. Each of these parties purchased their properties in the Plat at different times, as further described in the trial testimony below.

The Packers bought their property in 2011 from the Wustmans and built and moved into their home in 2013. By the spring of 2018, Robin Packer had noticed increased activity on Park A that she found concerning. Robin went to Yankee Springs Township to complain and reviewed the Plat Dedication and Yankee Springs Zoning Ordinance for the first time. Robin believed that defendants' placement and use of docks and boats at Park A violated Section 3.8 and Article XVIII of the Zoning Ordinance. Specifically, Robin claimed that Section 3.8C "does not permit multi-family (i.e., more than one family) uses or activities within the . . . Zoning District" and that Article XVIII "prohibit[ed] the type of dockage and boat mooring, docking, and storage by Defendants on or at Park A."

Per Robin's request, Yankee Springs Township notified defendants that they were violating the Zoning Ordinance and asked them to remove their docks and boats from Park A. None of defendants responded, nor did they remove their docks or boats from Park A. The Township took no further action, and the Packers filed this suit in 2022.

The Parties' Claims And Cross-Motions For Summary Disposition

Plaintiffs filed their complaint, alleging the following claims against defendants:

Count I: Declaratory Relief/The Improper Use of Park A by Defendants Exceeding the Scope of the Dedication

Count II: Declaratory Judgment/Misuse of Park A by Defendants
Count III: Interference with the Packers' Riparian Rights

Count IV: Declaratory Judgment/Ownership of the Land of Park A

Count V: Violation of the Yankee Springs Township Zoning Ordinance

Count VI: Trespass

Count VII: Nuisance

Count VIII: Violation of State Law – Failure to Obtain a State Permit for the Permanent Piers

Count IX: Violation of State law – Failure to Obtain a Marina Permit

Count X: The Little v Kin Balancing Test

Count XI: Preliminary and Permanent Injunctive Relief

In response, defendants filed a counterclaim[2] against plaintiffs, alleging:

Count I (sic): Ownership of Park A with alleged riparian rights by Defendants Tagg, Schultz, and Ainsworth[3]

Count II: Prescriptive Easement

Count III: Adverse Possession

Count III (sic): Acquiescence

Count IV: Trespass

Count V: Violation of Plat Restrictions

Count VII (sic): Swim Raft

The parties conducted discovery and then filed cross-motions for summary disposition. Plaintiffs argued that defendants are back-lot owners with no riparian rights and that plaintiffs, as waterfront owners, do hold riparian rights. Under Michigan law, they claimed, defendants have no right to "maintain a marina or install or use docks, boat hoists, etc. within [Park A]" and defendants "do not have the right to moor, dock, store, etc. boats or watercraft overnight." Plaintiffs argued that the case upon which defendants relied to support their position, *Dobie v Morrison*, 227 Mich App 536; 575 NW2d 817 (1998), was factually distinguishable because the configuration of Park A in the Plat here is different than the configuration of the park and plat in that case. Plaintiffs also argued that defendants' use of the park violated the Zoning Ordinance and constituted a nuisance per se, and that defendants "cannot expand their normal common law usage rights as to the platted park via a prescriptive easement." Further, plaintiffs argued that defendants' use of Park A violated the corelative rights of other lot owners and that their uses overburdened plaintiffs' servient rights. Finally, plaintiffs argued that defendants' "uses and activities constitute a 'marina' under Michigan law for which they do not have the required state permit."

Defendants' motion for summary disposition conversely argued that the defendants have riparian rights to "most all of Park A." Specifically, either the properties immediately abutting the park had riparian rights by virtue of Park A being lakefront or they had a prescriptive easement by virtue of their continuous control and operation of Park A.

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[2] References to the counterclaim throughout this opinion refer to the First Amended Countecomplaint filed by defendants on August 1, 2023. We use the proper term "counterclaim." See MCR 2.110(A) (defining a "pleading" as including a "counterclaim").

[3] Count I in the counterclaim did not have a title, but the phrasing provided here for this count was used by the trial court and is an accurate reflection of the claim asserted based on the corresponding allegations.

The trial court heard the parties' cross-motions for summary disposition on January 2, 2024. After hearing arguments, the trial court stated its findings from the bench. The court began by criticizing plaintiffs' attempt to distinguish *Dobie* on the basis that the park in that case ran parallel to the properties and lake at issue, as opposed to here, where Park A is perpendicular to the lake. The court found that plaintiffs' factual distinction was without legal import. It continued:

> *Dobie* says [if] your property is separated from the lake by a park then you have those riparian rights. So, in applying *Dobie* to this case, I think the . . . proper finding is that those properties that are separated from the lake only by the park have riparian rights.

Thus, according to the court, it remained to be decided "[w]hether the [defendants] in this case have by virtue of exercising riparian rights, have made it so that no one else who has the right to use the easement can use the easement."

Following the hearing, the trial court issued a written order granting summary disposition to plaintiffs on Count III (sic) (Acquiescence) and Count V (Violation of Plat Restrictions) of the counterclaim, and granting summary disposition, in part, to defendants on Count I (sic) (Ownership of Park) of the counterclaim. Specifically, the court ruled that "those properties that are separated from the lake only by the Park have riparian rights." All other claims were preserved for trial. The case proceeded to a six-day bench trial on the remaining claims beginning on February 12, 2024.

Bench Trial

At trial, Robin Packer testified that over the past several years, she became concerned by changes she observed at Park A. Specifically, Robin did not like that "there were more boats . . . There was more traffic. There [were] more trucks coming down. There was more on the beach." In the spring of 2018, before going to the Township, Robin noticed that a then-resident, Paul Dykgraaf, added an extension to his dock and "install[ed] a shore station[4] and had a wake boat." When asked whether and how the increased activity at Park A personally affected Robin, she replied,

> Yes. I could see that it was starting to become over-burdened. There was more – there just never seemed to be an end to more stuff going in. And we thought we didn't have any rules so what was to stop them. That's why I started to inquire about what the rules were and how to protect from all the stuff being stored on the beach because we couldn't walk the beach. My grandkids couldn't fish. Or there was a swim – we could use the swim raft; we couldn't see them because all the boats were in the way. It was – and with all their traffic and the boats or the trucks

[4] ShoreStation is a brand of boat lift: "A boat lift, like a ShoreStation boat lift, can be used to lift a boat out of the water and hold the boat in a cradle above the dock." What Is The Advantage Of A ShoreStation Boat Lift? *Recreational Services, LLC* <https://www.recreationalservicesllc.com/what-is-the-advantage-of-a-shorestation-boat-lift/> (accessed July 29, 2026).

> coming, the fishing boats parking there. There was just more, every – every year it was getting more and more.

Robin was also concerned by what she perceived as an inability to "spray" for weeds in the areas that are covered by boats. She did not like that anyone was launching boats from the park. Robin stated that if the trial court did not find Zoning Ordinance violations by defendants, she at least hoped it would "determine rules for the park." Furthermore, if the trial court allowed docks to remain at the park, Robin wanted the court to impose the restriction of "[a] single boat – a single dock." On cross-examination, Robin clarified that the swim raft referenced in Count VII (sic) of the complaint "doesn't matter to [her]. So, it can stay." She did not recall if she saw boats or a dock in the water at the time plaintiffs bought their property. Robin testified that plaintiffs "have riparian rights" and should not "have to share [their] property."

Ronald Packer testified that he and Robin bought their home from the Wustman family in 2011. Up until 2018, there were only four pontoons, a rowboat, and a paddle boat at Park A; Ronald did not have any concerns during that time. Then in spring 2018, Dykgraaf put in a boat lift and extended the dock. Ronald did not believe that defendants should have boats at Park A and objected to launching boats at the park. Ronald testified that the shore station installed by Dykgraaf blocked his view and was "very disturbing" which is why plaintiffs initiated this suit. He believed defendants' use of the park had a negative effect on his property. Similar to Robin, Ronald wanted "rules for the park." He also did not mind the swim raft remaining at Park A. When plaintiffs purchased the property, Ronald "didn't notice [the docks] but [he] assume[d] they were there."

Each of defendants testified at trial, as well as some nonparty current and former Arhana Crest residents; Schultz was first. Schultz purchased her properties in the Plat in 1968. Schultz received a deed for Lots 55, 56, and 57. She built a house on Lots 56 and 57 that she later sold to Tagg. Schultz was told by the seller when she bought the property that she was allowed to install a dock at Park A. When Schultz first moved in, no one was using Park A, and there was a sunken rowboat, trash, glass, and cans along the shoreline. In 1973, Schultz and her husband cleaned up Park A and installed a straight dock that then turned into a "T" shape and later turned into a two-finger dock. There was another dock installed by then-neighbor Ben Card in or around 1993—meaning there was a two-finger dock and Card's straight dock for some time until Card moved out and took the dock with him. Schultz had various boats in the water beginning in 1979, including a speed boat and a pontoon. In 1992, when her husband died, she removed the speed boat briefly from the water, but her pontoon remained in the water. The speed boat was put back shortly after. Schultz said the boats and docks have never interfered with anyone else and that the dock stays in year-round. She described the area surrounding Park A as a "friendly environment" where everyone got along and "never had problems" until plaintiffs moved in. All the neighbors would contribute to making repairs and changes to the dock over time. Schultz always had a boat at Park A until 2021, when she was diagnosed with a debilitating disease that paralyzed her.

Current Arhana Crest resident and nonparty to this case, Dwain Reynolds, testified that he has been acquainted with the Plat for 63 years, as his parents bought the first lakefront property in 1954 near a different park in the Plat, Park C. Reynolds has had a boat and dock at Park C since his parents first bought it and testified that the man who sold them the house previously had a dock as well. Reynolds testified there have been docks at Park B as well since the 1960s and that Park

D has a dock and a boat launch resulting from previous litigation. According to Reynolds, "when you bought a back lot, whoever sold you the lot informed you that the parkways are for your use and to put a dock and a boat in. And that's been that way since the 50s."

Dykgraaf bought his property (Lots 52, 53, and 54) from Paul Novara in November 2017 and sold it to the Moores in fall 2021. Dykgraaf testified that he bought the property specifically because he was told that he could have a dock and a boat. When he sold to the Moores, Dykgraaf told them that they could dock a boat at Park A too. Dykgraaf kept a boat lift and a boat at the dock during the four summers he lived in the Plat until selling his property and moving out of Arhana Crest. Plaintiffs complained, and Dykgraaf tried to accommodate them by moving the boat as far down as possible. Dykgraaf and Fred Ainsworth would maintain the park by mowing it, raking leaves, and putting in new sand. The atmosphere was friendly among all the neighbors with the exception of plaintiffs. Other people would launch their boats at the park and the Ainsworths, Schultz, and Tagg all kept their boats there too.

Tagg bought her property (Lots 56 and 57) from Schultz and her husband in July 1978. Tagg testified that Schultz told her when she bought the property that she could use the dock and have a boat at Park A. In 1979, Tagg bought a speedboat that she kept at the dock for over 20 years. Tagg also had a rowboat that she kept in the water since 1978 but recently took it out because she "wanted to make the Packers happy." Tagg's son has kept a boat at the dock during the times that Tagg has not had a boat there. Tagg never heard any of the neighbors complain about others' uses of Park A other than plaintiffs.

Former Plat resident Brad Harmon testified that he purchased his property from the Wustmans in 2003 and that he sold to the Novaras in 2014. Harmon specifically bought his property because the Wustmans told him that he would "have lake access and . . . a boat and [there was] a dock down [at Park A] so [he] could use the dock." Harmon also read the Plat Dedication and understood the language as giving him the right to have boats and docks. He put his boat in the water the first spring that he lived in the Plat (2004) and kept his boat in the water "the whole time he lived there." Harmon helped modify the dock to resemble its current form (four-fingered), in 2005. He testified that the four-fingered model was constructed so that all the neighbors could fit their boats at the dock "for safety reasons." Harmon testified that there was plenty of room for everyone to swim and fish and that no one ever had safety concerns. People would launch their boats from the park in the spring and fall. Harmon explained that he ultimately moved because "the Packers built a house in front of [him]." When Harmon sold to the Novaras in 2014, he "explained [the park] the same way it was explained to [him]," meaning, "[t]here's the dock, this is where you put your boat, this is a shared access for these people on the Arhana Crest plot, these people use it, they will have parties, everybody gets along, use it."

Michael Moore testified that he bought his property (Lots 52, 53, and 54) from Dykgraaf in 2021 and put his boat in the water during spring 2022. Having a boat and using the dock at Park A was one of the main reasons that Moore bought the property. No one ever told Moore that he could not keep his boat at the park until he received a letter from "an attorney asking [him] to remove [his] boat once [he] had placed it." The park is well-maintained, primarily by Fred Ainsworth, and the codefendant neighbors are very friendly.

Fred Ainsworth testified that he purchased his property from Ben Card in 1994. He has always had a dock at the park since moving in and there was an existing dock there prior to him moving in. He remembered Card had a boat in the water when the Ainsworths bought the house and that Card left the rowboat and swim raft for them to keep as part of the purchase. Ainsworth always understood that the neighbors in the Plat had shared access to the park and he had always observed boats there. Decisions about the park or dock or boats are always made "as a committee" by the defendants and its always "worked great." Ainsworth has always launched his boat from the park and has observed others doing the same. He has never heard anyone complain about dangerous conditions at Park A. Ainsworth installed a shore station at some point, but that was only after plaintiffs installed theirs. He made sure to put the shore station on the other side of the dock to accommodate plaintiffs by not blocking their view. The Ainsworths got a survey of the park done which indicated that plaintiffs' dock crossed over the property line onto Park A. In 2005, Ainsworth worked with Harmon to remodel the prior three-fingered dock into a the current four-fingered version there today. Ainsworth reviewed exhibits presented at trial consisting of photos of the park from 2004 through 2006 and confirmed the conditions of the park, observing the Wustmans' boat and Ainsworths' jet ski, and a 30 to 40 foot area to swim. Ainsworth confirmed that he received the township's September 2020 letter which claimed that defendants were violating the Zoning Ordinance, but that Ainsworth believed the boats and docks could remain based on his communications with his attorney.

Two expert witnesses testified at trial. Greg Vaughn testified as an expert in surveying for defendants. Based on his review of the Plat and a survey of the land, Vaughn opined that Lots 55, 56, 57, 58, 59, and 60 (those belonging Schultz, Tagg, the Ainsworths, and Bekkering) are riparian "due to the fact that they have frontage on Park A." Vaughn opined that Lots 52, 53, and 54 (those belonging to the Moores) do not have riparian rights, but that they have rights to use Park A as property owners in the Plat. Vaughn confirmed that he reviewed the *Dobie* decision and that much of his expert opinion was based on his interpretation of *Dobie*. The second expert witness, Corey Hughes, testified as an expert in surveying for plaintiffs. Hughes stated he was unaware of any authority that would give riparian rights to defendants. Hughes' opinion was based on MCLA 560.227(a), a statute that did not reference parks specifically, but rather vacated streets and alleyways.

The parties delivered closing arguments, and the trial court stated its findings and conclusions from the bench. The trial court ruled in favor of defendants on nearly all issues. On Counts I and II, the court reiterated its previous ruling on summary disposition that Tagg, Schultz, the Ainsworths, and non-party Bekkering have riparian rights based on *Dobie*. It stated that, alternatively, should the Court of Appeals disagree with the trial court's interpretation of *Dobie*, "the Defendants have a prescriptive easement for shared use of Park A for the maintaining of docks and docking of boats." Specifically, the court found "by clear and cogent evidence" that the docks and boats have been "open, notorious, adverse, and continuous for the required 15 years. Much more than the required 15 years." On Count III of plaintiff's complaint, the court found there was no evidence showing that defendants had interfered with plaintiffs' riparian rights. The court found no cause of action as to Count IV, the claim for plaintiffs having ownership of Park A, because the case law plaintiffs used to support their position "related to the vacation of streets and walkways, not to parks." It held there was no cause of action for Count V, alleging violations of the Zoning Ordinance, because plaintiffs failed to show special injury. Plaintiffs failed to show evidence to support their assertions of safety hazards and decreased property value and made no

showing of trespass on Count VI. There was no evidence to support Count VII, claim of nuisance per se. Plaintiffs also failed to show that defendants' failure to maintain a permit for a marina constituted any violation of law because plaintiffs failed to show the existence of a marina and plaintiffs also admitted they do not take their docks in or have a permit either. Thus, Counts VIII and IX failed.

Turning to the counterclaim, the court held that defendants' use of Park A is not limited to ingress and egress for Count I. It reiterated that a prescriptive easement existed under Count II. It found no cause of action on Count III because adverse possession was not argued at trial. On Count IV for trespass, the court stated the evidence was conflicting and therefore ordered that a survey be conducted to determine whether or not plaintiffs' dock is encroaching on Park A. Should the survey reveal that plaintiffs' dock is encroaching on Park A, the court would require plaintiffs to remove their dock and pay the costs of the survey. For Count VII (sic) regarding the swim raft, the court stated that the issue was abandoned at trial and that the raft "will be allowed to continue." The court turned next to apply the *Little v Kin*, 468 Mich 699; 664 NW2d 749 (2003) (*Little II*), balancing test which is alleged in Count X of plaintiffs' complaint, finding that the shared dock had worked for many years. The court also denied injunctive relief sought in Count XI.

Following these rulings, the court outlined its findings regarding defendants' rights with regard to the use of the park and certain restrictions that it was imposing on the use of the park. The trial court entered its final judgment on April 2, 2024. The judgment provided for the following:

- A judgment of "no cause of action" on Counts I through IX of plaintiffs' complaint;

- With respect to Count X of plaintiffs' complaint (and the *Little II* balancing test), the following "allowable and prohibited uses of Park A":

    (i) The defendants may continue to share the four-fingered dock currently present at Park A.

    (ii) Boats can be launched from Park A with vehicles, however, those vehicles cannot be parked at Park A. There can be no day or overnight parking of vehicles at Park A.

    (iii) On a seasonal basis and not on a year-round basis, defendants may only moor the number of boats that can be accommodated by the four-finger dock in its current configuration.

    (iv) The defendants cannot enlarge the four-fingered dock at Park A, however, the defendants may reduce the size of the dock at Park A.

    (v) The swim raft may continue to be present at Park A.

    (vi) Park A may be maintained by the defendants and other lot owners in the Plat of Arhana Crest, which includes that Park A may be mowed, and flowers, bushes and trees may be planted. However,

the planting of flowers, bushes and trees cannot interfere with the reasonable use of Park A by an Arhana Crest lot owner.

(vii) The firepit may remain at Park A.

(viii) A reasonable number of picnic tables and chairs may be left overnight at Park A for picnicking and lounging by Arhana Crest lot owners.

(ix) In the event of special events, while additional chairs and tables may be brought in for those special events, those additional chairs and tables may not be maintained at Park A overnight and are limited to "day use" only.

(x) No one may store boats, including paddle boats and rowboats, kayaks, jet skis, or other watercraft items etc. in or on Park A, its beach, or its shoreline.

(xi) No boat hoists or shore stations are allowed at the dock at Park A or in or on Park A.

- With respect to Count XI of plaintiffs' complaint, granting relief in favor of plaintiffs "only as set forth above as respects Count X or otherwise as set forth by the Court in its rulings for the reasons set forth from the Bench on March 1, 2024," and otherwise entering a judgment of "no cause of action."

- Denying plaintiffs' motion to strike the affidavit and testimony of defendant's expert witness, Greg Vaughn.

As for defendants' counterclaim, the judgment provided for the following:

- With respect to Count I of defendants' counterclaim, the court previously granted summary disposition to defendants on the issue of ownership of riparian rights to Park A as set forth in its February 12, 2024 order.

- With respect to Count II of defendants' counterclaim, the court ruled alternately in favor of defendants "for the reasons set forth from the Bench on March 1, 2024."

- A judgment of "no cause of action" on Count III.

- With respect to Counts III (sic) and Count V of defendants' counterclaim the court previously granted summary disposition to plaintiffs in its February 12, 2024 order.

- With respect to Count IV of the counterclaim, the court ruled that a survey should be performed to determine whether plaintiffs' dock encroaches on the bottomlands of Park A and that if the survey shows that plaintiffs' dock

is on the bottomlands of Park A, plaintiffs would be required to pay for the survey and move their dock onto their own lot's bottomlands. However, if the survey shows that plaintiffs' dock is not on the bottomlands of Park A, plaintiffs would not need to move their dock and defendants would be required to pay for the survey.

- With respect to Count VII (sic) of the counterclaim, the court ruled that the swim raft at issue may remain.

- The court ruled that all lot owners in the Plat of Arhana Crest have easement usage rights in and through Park A to the lake (except that defendants Tagg, Schultz, the Ainsworths and the owner of Lot 60 own the land under Park A that is subject to the easement).

Plaintiffs appealed.

II. THE TRIAL COURT ERRED BY HOLDING THAT THE BACK-LOT OWNERS HAVE RIPARIAN RIGHTS BY VIRTUE OF FEE OWNERSHIP OF PARK A

This Court reviews de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Under MCR 2.116(C)(10), summary disposition is appropriate "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018) (quotation marks and citation omitted). "Because a motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint, the circuit court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012).

At the summary disposition phase, the trial court found that "that those properties that are separated from the lake only by the Park have riparian rights," meaning all defendants' properties had riparian rights except for the Moores' back-lot property that did not border Park A. Because the trial court misread *Dobie* in reaching this conclusion, we vacate this portion of the trial court's ruling.

In *Dobie*, the park in question, like Park A, had lake frontage and also bordered lots in the subdivision. *Id* at 537. The plaintiffs in *Dobie* owned Lot 17, which unlike this case was not waterfront property per se, as Lot 17 was separated from the water by a park. *Id.* The defendants, referred to as back-lot owners, were separated from the waterfront park by Lot 17 itself or other additional land and roads. *Id*. This Court reviewed the applicable plat dedication language, which provided that the park was for the "use of the owners of the lots in this plat which have no lake frontage" to determine the plattors' intent as to the ownership and related rights of the park. *Id*. at 540. The plat was silent as to ownership of the park, but at the time of the dedication, the park was owned by the plattors, who resided on Lot 17. *Id*. This Court concluded that the plattors intended merely to grant an easement to properties without lake frontage and that they intended to retain fee ownership of the park. *Id*. Because the plaintiffs in *Dobie* were direct successors to the plattors, they owned the park. *Id*. And because they owned the park, they had riparian rights. *Id*.

While we agree with the trial court that the factual distinction plaintiffs emphasize between the *Dobie* plat and this plat (namely, the shape of the park) is unavailing, the trial court overlooked the critical legal conclusion that the *Dobie* plaintiffs were the owners in fee of the park by virtue of their being "successors in interest to the plattors" *and* the fact that the plat dedication did not indicate otherwise. *Dobie* was not a generalized grant of riparian rights to all properties separated from waterfront by a park.[5] To the contrary, the Court in *Dobie* expressly distinguished a waterfront park from a right of way along the water like a highway or walkway; only the latter was recognized as not cutting off the adjoining landowner's riparian rights. *Id*. at 539-540.

We vacate this legally erroneous conclusion as to the ownership of Park A and thus the parties' riparian rights that would flow from such ownership. Moreover, even if those defendants whose parcels abut the park were determined to be fee owners of portions of the park, we see no scenario in which those portions would extend to the lakefront so as to convey riparian rights. See, e.g., *Morse v Colitti*, 317 Mich App 526; 896 NW2d 15 (2016); *Otto v Batdorfer*, unpublished per curiam opinion of the Court of Appeals, issued February 17, 2022 (Docket No. 355936). With that said, we decline to engage further in the ownership question because, as the parties conceded at oral argument, we need not decide the ownership of Park A to resolve this case. See *Kosmyna v Botsford Cmty Hosp*, 238 Mich App 694, 702; 607 NW2d 134 (1999) ("This Court may decline to address issues not necessary to the resolution of the case at hand.").

III. THE PLAT DEDICATION EASEMENT DOES NOT GIVE DEFENDANTS THE RIGHT TO MOOR OR DOCK BOATS AT THE PARK

"The scope and extent of an easement is generally a question of fact that is reviewed for clear error on appeal." *Wiggins v Burton*, 291 Mich App 532, 550; 805 NW2d 517 (2011). Likewise, a "trial court's factual findings in a bench trial are reviewed for clear error." *Prentis Family Foundation v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 59; 698 NW2d 900 (2005). Further, we review a trial court's conclusions of law in a bench trial de novo. *Chelsea Inv Group, LLC v Chelsea*, 288 Mich App 239, 250; 792 NW2d 781 (2010).

"When interpreting a plat, this Court seeks to effectuate the intent of the plattor." *Morse*, 317 Mich App at 534. The intent of plattors is determined by the language they used. *Thies v Howland*, 424 Mich 282, 293; 380 NW2d 463 (1985). The Plat Dedication in Arhana Crest states that "the drives, courts and parks as shown on said plat are dedicated to the use of lot owners of Arhana Crest only." "Because language dedicating land for 'the use' of others is consistent with a grant of an easement, not a grant of fee ownership, the plat granted an easement in the Park." *Morse*, 317 Mich App at 534 (citations omitted). And, given the Plat Dedication date of 1941, an irrevocable easement was created in favor of the Arhana Crest lot owners. *Little v Hirschman*, 469

[5] The Plat Dedication language here resembles that in *Dobie* in that the dedication is silent as to ownership of the park. Given this Court's holding in *Dobie* that the fee title remained with the plattor or the successor to the plattor, *id.* at 540, we cannot conclude that by merely sharing a border with the park, all defendant property owners except the Moores would have fee ownership rights to Park A, all the way to the lakefront.

Mich 553, 561-562; 677 NW2d 319 (2004).[6] "The private dedication became irrevocable on the sale of the lots." *Id.* at 558-559. "A landowner is considered to have accepted any private dedication in a plat when property is purchased pursuant to a deed that references the plat." *Beach v Lima Twp*, 283 Mich App 504, 510-511; 770 NW2d 386 (2009) (citation omitted).

Further, caselaw provides some parameters on activities included under the word "use," and "use" of a waterfront park does not include mooring and docking boats. Mooring and docking boats are riparian rights. See *Thies*, 424 Mich at 288 (riparian owners enjoy "the right to erect and maintain docks along the owner's shore, and the right to anchor boats permanently off the owner's shore"). A deeded easement does not include riparian rights. See *Little v Kin*, 249 Mich App 502, 509; 644 NW2d 375 (*Little I*) ("a deed reservation or restriction does not constitute a grant of riparian rights, but merely a right of way to access the beach and waters"); see also *Schofield v Dingman*, 261 Mich 611, 613; 247 NW 67 (1933) (a grant of "riparian rights" in a deed "can be given no greater meaning than right of access to the beach and enjoyment thereof for the purposes of recreation").

Additionally, there is no record evidence that the plattors intended, at the time the Plat Dedication was enacted, that all lot owners would have use of Park A that resembled riparian rights, including mooring boats and installing docks and boat lifts. While ample evidence was presented as to how the property was used by defendants historically, that evidence only speaks to the property usage from the 1960s through today, beginning with Schultz purchasing her first property in 1968. Although Schultz testified about her consistent dock and boat usage since moving into the Plat, there is no indication that the activities she described were occurring at the time the easement was granted in 1941. The very earliest testimony came from Reynolds, who stated that his parents first bought property in 1954, but again that comes 13 years after the Plat Dedication was enacted. Reynolds did not testify at any point about the plattors themselves or their intent. Generic testimony regarding the activities at Park A at some time after the Plat Dedication was written is not sufficient to establish "that the disputed activities are properly within the scope of the plat dedication." *Jacobs v Lyon Twp (After Remand)*, 199 Mich App 667, 671-672; 502 NW2d 382 (1993).

Accordingly, although defendants (and all lot owners in the Plat) hold an easement to use Park A, we conclude that the plain language of the Plat Dedication providing the easement does not permit defendants to use the park in the way that riparian owners may (e.g., mooring and

[6] "There is a distinction between pre-1968 private dedications and ones contained in plats filed thereafter, which is that a private dedication made before 1967 PA 288 took effect conveyed an irrevocable easement, whereas MCL 560.253(1) now indicates that a private dedication conveys a fee interest. . . . ' " *Beach v Lima Twp*, 283 Mich App 504, 510; 770 NW2d 386 (2009), quoting *Martin v Beldean*, 469 Mich 541, 548 n 18; 677 NW2d 312 (2004). "But even though a fee simple interest is conveyed, lot owners in the subdivision cannot use the dedicated land for any purpose they desire. Rather, use must be compatible and consistent with the dedicatory language." *Beach*, citing *Martin*, 469 Mich at 549 n 19.

docking boats). The trial court, however, found that defendants had established a *prescriptive* easement that allowed them to engage in these riparian activities. We turn to that conclusion next.

IV. DEFENDANTS FAILED TO ESTABLISH AN EASEMENT BY PRESCRIPTION

"An easement by prescription results from use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years." *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 679; 619 NW2d 725 (2000). "Thus, a prescriptive easement is 'no more than an unopposed, continuous trespass [on another's property] for 15 years." *Astemborski v Manetta*, 341 Mich App 190, 198; 988 NW3d 857 (2022) (citation omitted). "Mere permissive use of another's property . . . will not create a prescriptive easement." *Plymouth Canton*, 242 Mich App at 679. "An action for a prescriptive easement is equitable in nature. This Court reviews de novo the trial court's holdings in equitable actions." *Mulcahy v Verhines*, 276 Mich App 693, 698; 742 NW2d 393 (2007).

Given that there is a private dedication giving an easement to all Arhana Crest property owners, an initial question is whether one can expand the parameters of that easement by an additional prescriptive easement. Both parties point this Court to *Astemborski* for the answer.

In *Astemborski*, a back-lot property owner had an easement to access a lake through a servient estate (waterfront property). *Astemborski*, 341 Mich App at 193-194. The waterfront property owners allowed the back-lot property owner greater rights, including the docking and mooring of boats, thereby granting that specific back-lot property owner a license. *Id.* at 201-202. When the back-lot owner's property was sold, that license ended under the law. *Id*. However, the next owners continued to use the servient estate in a similar way, thus expanding what was a mere "use" easement to something that resembled a use that would flow from riparian rights. *Id.* at 202. The plaintiffs alleged that the defendants could not expand their rights merely by overusing an express shared-access easement. *Id.* at 203. The trial court held, and this Court affirmed, that "defendants established by clear and cogent evidence that they had a prescriptive easement." *Id.* at 204.

Astemborski does differentiate in what is arguably dicta between an easement granted privately and an easement through dedication of land:

> Plaintiffs also cite several unpublished opinions to support their argument. However, unpublished opinions are not binding authority. *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). Moreover, the cases plaintiffs cite are not persuasive because they involve dedications of land, as opposed to private easements. See *2000 Baum Family Trust v Babel*, 488 Mich 136, 144; 793 NW2d 633 (2010) ("A 'dedication' of land is an 'appropriation of land to some public use, accepted for such use by or in behalf of the public. The essence of a dedication is that the covered land will be for the use of the public at large.") (quotation marks and citation omitted). [*Astemborski*, 341 Mich App at 203.]

Plaintiffs, citing the above passage, argue that defendants are foreclosed from expanding upon an easement granted by private plat dedication. But that argument falls short. As plaintiffs recognize, in the above passage this Court cited *2000 Baum Family Trust*, a case regarding a

public-dedicated easement. And again, as plaintiffs recognize, "the Legislature has decided that a claim of adverse possession against state lands is against public policy and, therefore, will not be recognized."[7] *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 118; 662 NW2d 387 (2003). Plaintiffs point to unpublished cases from this Court and argue, essentially, that that same bright-line rule applies to private dedicated platted easements. But the cases that plaintiffs cite ultimately held that the required elements of a prescriptive easement claim were not met. See, e.g., *Banacki v Howe*, unpublished per curiam opinion of the Court of Appeals, issued March 20, 2012 (Docket No. 302778), p 6 (holding "[b]ecause defendants and other lot owners used East Court for an extended time period openly and without any dispute arising, this permissive and accepted use of the subject property was not adverse or hostile,[8] and therefore, a prescriptive easement could not arise"). We need not conclusively decide whether a private-dedicated easement can be subject to a prescriptive easement because, contrary to the trial court's ruling, the required elements of a prescriptive easement claim are also not met here.

The trial court found "by clear and cogent evidence" that the docks and boats have been "open, notorious, adverse, and continuous for the required 15 years. Much more than the required 15 years." In reaching that determination, the trial court addressed the elements of prescriptive easement, finding defendants had met them:

> The docks are clearly visible to anyone who is in Park A, is on the lake, who has any access, they're easily seeable. The Packers could see them when they purchased, they – w[ere]n't important to them at the time so they're claiming to not be aware that they were there or not having a conscious understanding that they were there but they were open and easily discoverable.
>
> They were clearly without permission because no one testified that anyone ever gave them authority to do so, they all believed that had it by right.
>
> Adverse, contrary to the title owner, not sure anyone even knows who the title owner is, but they have certainly using that property contrary to the – the dedication and have been for as long as 50 years in some cases and as little as 28 years in others. I think the – the least has been 17 years for the Ainsworths I believe – and continuous.
>
> Regular use, even if it's not constant, as long as it is regular use, such as seasonal. These parties have used this property in a manner that is no doubt that the owner's

[7] "The elements necessary to give rise to a prescriptive right are the same as those of title by adverse possession, with the exception that it does not have to be exclusive." *Marlette Auto Wash, LLC v Van Dyke SC Properties, LLC*, 501 Mich 192, 202-203; 912 NW2d 161 (2018) (citations omitted).

[8] The terms "adverse" and "hostile" are used interchangeably in this context. The term "hostile" "is a term of art and does not imply ill will." *Plymouth Canton*, 242 Mich App at 681 (citation omitted).

> rights have been invaded. Anyone who was at the park who is on the lake, on that side of the lake, could see that these docks were there, that these boats were there.

Even accepting as true that all other elements of a prescriptive easement claim were met, the trial court found "clear and cogent evidence" that defendants' use of the park was adverse. Specifically, the trial court found that the use was "contrary to the dedication" and without permission. We agree with that conclusion in part—as we stated above, defendants' use of Park A *was* outside the scope of the Plat Dedication language. That alone does not make the possession adverse, though.

This Court has reiterated the "inarguable proposition that a mutual, permissive use of another's land does not constitute adverse use that may ripen into a prescriptive easement." *Plymouth Canton*, 242 Mich App at 683. See also *Wood v Denton*, 53 Mich App 435, 441; 219 NW2d 798 (1974) (holding that consensual, "mutual use of an area will not mature into a prescriptive easement until the mutuality has ended").

By defendants' own testimony, the use of Park A was not adverse until some time after the arrival of plaintiffs. As Schultz described, the area surrounding Park A was a "friendly environment" where everyone got along and "never had problems" until plaintiffs moved in. Irrespective of who the owner(s) of Park A were during that time, the shared use of the park in the manner that proceeded over the years was mutual, consensual, and pursuant to an informal understanding that all of the landowners abutting the park were entitled to use the park in that manner. Such "mutual, permissive use of another's land does not constitute adverse use that may ripen into a prescriptive easement." *Plymouth Canton*, 242 Mich App at 683.

Plaintiffs became concerned about the use of Park A in 2018, complained about defendants' use of Park A to the Township in 2020, and filed this suit in 2022. That is an insufficient duration of adversity to support a claim of prescriptive easement. Even if we were to assume the myriad uses of Park A outside the scope of the Plat Dedication became adverse the day the plaintiffs purchased Lot 3, which this record does not support, the period of adversity still would not satisfy the 15-year period required to establish a prescriptive easement.

As a result, we reverse the trial court's holding that defendants have a prescriptive easement and vacate all subsequent findings with respect to the scope of the easement.[9] We remand this case for the trial court to determine what uses of Park A, if any, are within the scope of the Plat Dedication.

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[9] We note that the trial court applied the *Little II* balancing test when reviewing whether defendants acquired a prescriptive easement. This Court has previously observed that "the language of *Little II*, 498 Mich at 700, indicates that it singularly applies to the determination of the scope of an express easement." *Bloomquist v DePree*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2024 (Docket No. 362167), p 15. We do not address whether the application of *Little II* to a prescriptive easement was legal error because, as stated above, we determine the elements of a prescriptive easement were not met.

V. CONCLUSION

Accordingly, we vacate in part and reverse in part the trial court's ruling and remand for further proceedings consistent with this opinion.[10] We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Adrienne N. Young
/s/ Daniel S. Korobkin

[10] The relief granted obviates the need to address plaintiffs' remaining arguments. We therefore decline to address them.