

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN O. BAUGHMAN, GWENDOLYNN P. BAUGHMAN, EDWARD C. BERGERON, KATHLEEN T. BERGERON, JOHN M. CAHILL, JR., JULIE CAHILL, EARL J. CAMPBELL, PENELOPE A. CAMPBELL, SCOTT J. CAMPBELL, ROBERT D. CAMPBELL, MAURICE V. CARTIER, ANN CARTIER, ANDREW B. CASTLE, MICHELLE M. CASTLE, DANIEL T. DREHER, DENISE R. DREHER, EDWARD G. EICK, Trustee of the EDWARD EICK LIVING TRUST DATED 2/9/2005, KATHLEEN ABELA, CRAIG HITCHCOCK, SHARON HITCHCOCK, RONALD F. KRAUSS, Trustee of the RONALD F. KRAUSS TRUST DATED 2/1/2001, KARL R. LINDFORS, Trustee of the KARL R. LINDFORS FAMILY TRUST DATED 6/20/2001, CHARLES LYMBURNER and GLADYS M. LYMBURNER, Trustees of the LYMBURNER FAMILY TRUST AGREEMENT DATED 1/10/2002, TIMOTHY R. MILLS, KAROLE L. MILLS, ANTONIO P. PALAZZOLO, BARBARA A. PALAZZOLO, RALPH PLUMMER, MARTHA PLUMMER, JEROME VANDENBULCKE, ANNETTE VANDENBULCKE, BEVERLY R. WAULDRON, and JILL M. LEIDER,

UNPUBLISHED
March 24, 2022

Plaintiffs/Counterdefendants-
Appellees/Cross-Appellants/Cross-
Appellees,

v

ALAN A. BELTZ, MIRIAM C. BELTZ, MARY K. DEBOE, EDWARD J. DEBOE II, THOMAS SCHEUFFELE, and COREEN SCHEUFFELE,

No. 354909
Roscommon Circuit Court
LC No. 18-724287-CH

Defendants/Counterplaintiffs-Cross-
Appellees/Cross-Appellants,

and

JAMES O. ELLIOTT and REBECCA ELLIOTT,

Defendants-Appellees/Cross-
Appellees,

and

WAYNE MARTIN, SONYA MARTIN, JERRY
RITTER, and JUDY HEADLY,

Defendants/Counterplaintiffs-
Appellees/Cross-Appellees,

and

JONATHAN FUDGE,

Defendant/Counterplaintiff-
Appellant/Cross-Appellee.

Before: REDFORD, P.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

This case involves riparian rights¹ regarding property on the shore of Lake St. Helen in the Lakewoods Beach plat in Roscommon County. Defendant Jonathan Fudge appeals as of right and defendants Alan and Miriam Beltz, Mary and Edward Deboe, and Thomas and Coreen Scheuffele cross-appeal the trial court's final opinion and order.² Plaintiffs cross-appeal a portion of the trial

¹ As explained in *2000 Baum Family Trust v Babel*, 488 Mich 136, 138 n 1; 793 NW2d 633 (2010):

As others have done, we observe that strictly speaking, land which includes or abuts a river is defined as riparian, while land which includes or abuts a lake is defined as littoral. However, the term "riparian" is often used to describe both types of land, and will be used in such a manner in this opinion. [Quotation marks, ellipsis, and citations omitted.]

² Appellant Jonathan Fudge and cross-appellants Alan and Miriam Beltz, Mary and Edward Deboe, and Thomas and Coreen Scheuffele have filed a combined appellant's and cross-appellants' brief. For ease of reference, we will jointly refer to these parties as defendants.

court's order concerning the use of pathways that run to the edge of Lake St. Helen and platted Lakeshore Reserve property. We affirm the trial court's ruling but modify it to specify that temporary parking is permitted on the pathways and to clarify that the trial court's final order does not apply to defendants, James and Rebecca Elliott, or their Lot 7.

I. FACTS

This case involves the determination of property rights in the Lakewoods Beach subdivision on the shore of Lake St. Helen in Richfield Township. The subdivision is comprised of 20 "front" or "lakefront" lots and additional "back lots." The initial lakefront lots were designated as Lots 1 to 8 and an "Outlot A" area, which was later divided into 12 lakefront lots, designated as Lots I to XII. Between the lakeshore and the lakefront lots is an area labeled the "Lakeshore Reserve," which extends from the "end" of the lakefront lots to the water's edge. In addition, three pathways run from the street behind the lakefront lots to the Lakeshore Reserve. One pathway, designated Pathway #1, runs between Lots 4 and 5. A center pathway, Pathway #2, runs between Lot 8 and Lot I. A third pathway, Pathway #3, runs between Lots VI and VII in former Outlot A. The instant appeal concerns the trial court's decisions regarding the riparian rights of the front lots, the ownership and permitted use of the Lakeshore Reserve and the pathways, and whether back-lot owners are permitted to moor or dock boats at the ends of the pathways.

Carters, Inc., ("Carters") a Michigan corporation, dedicated the Lakewoods Beach plat on or about January 12, 1952. The subdivision dedication provides that "the streets, pathways and Lakeshore Reserve, as shown on said plat, are hereby dedicated to the use only of any of the owners of the lots included in the plat." A "Declaration" containing restrictions was executed on February 11, 1952. This initial declaration provided, in pertinent part, that it was designed to "[establish] building and use restrictions governing the use and occupancy of the property within said plat, for the purpose of rendering the same more desirable for residential and recreational use." The initial declaration also provided that a portion of "lot 29" could be used for a grocery store or "recreation center" and that Outlot A could either be divided and sold, or used as a headquarters for fishing and boating. Regarding the issues on appeal, the initial declaration also contained the following about the permitted use of the pathways and the Lakeshore Reserve area:

6. No vehicle, either motor driven or horse drawn, shall be permitted to park or be driven, excepting by CARTERS INC. in improving or maintaining said plat, upon Lakeshore Reserve. *All streets, reserves, and pathways are for the use and convenience of all property owners within the plat.* The landing of boats and conduct of individuals on all streets, reserves and pathways shall be such that it will not be objectionable to property owners *and all streets, reserves and pathways are for roadway use only.*

7. All docks, boat-house devices or structures built, maintained or used, fronting on Lakeshore Reserve shall be so built and maintained that they will not be objectionable, annoying or detract from the general beauty of the surroundings, *and all property owners within said plat have an equal right to the building and use of docks or devices, excepting boat-houses.* No owner shall have the right to use any street, pathway or lakeshore for permanent parking or storage of personal

property. No boathouse may be built or maintained on any portion of the shores of Lake St. Helen as a permanent structure nor may it be built of a size larger than 10'x30' and must be built on skids so that it may be pulled from or pushed into the water to a depth sufficient to admit a boat to enter said house from the front or lake end. Boathouses and devices may be parked or stored on the lakeshore during the winter months only. [Emphasis added.]

The declaration also permitted discontinuance or amendment of the restrictions by “a majority of the property owners within said plat.” Carters remained a majority owner and in 1958 it amended ¶ 7 of the declaration to provide as follows:

No dock, structure or device shall be erected or maintained on Lakeshore Reserve and on or in the adjacent water, except that it shall be with the written approval of Carters, Inc., and such approval will be granted only in the event that such dock, structure or device is and shall be for the use of several owners within Lakewood Beach, shall be erected and maintained at the pro rata expense of the several owners using such dock, structure or device and shall be so built and maintained that, in the sole opinion of Carters Inc., it will not be objectionable, annoying or detract from the general beauty of the surroundings. No boathouse may be built or maintained within the boundaries of Lakewoods Beach without written consent of Carters, Inc.

Plaintiffs are the owners of lakefront lots in the subdivision, as are defendants, James and Rebecca Elliot, who own Lot 7. The remaining defendants are back-lot owners. Plaintiffs brought this lawsuit seeking determinations of their riparian status, the scope of the dedication for the Lakeshore Reserve, the scope of the dedication of the initial Pathways #1 and #2, and the scope of the dedication of Pathway #3.

Following a bench trial, the trial court held that plaintiffs owned to the lake in fee simple, including the portion of the Lakeshore Reserve adjacent to their respective lots, subject to the Lakeshore Reserve, pathways, and streets easements. The trial court ruled that the 1958 changes to the declaration expressed Carters' intent to prohibit back-lot owners from installing docks along the Lakeshore Reserve absent Carters' approval, and also prohibited back-lot owners from using the Lakeshore Reserve for activities beyond transitory use for access, such as picnicking or sunbathing. It held that lot owners could use vehicles on the pathways, but could not park or store personal property on them and that lot owners could “land boats” on the lake in front of the pathways and put a single dock on each for ingress and egress, but could not moor boats overnight.

II. RIPARIAN RIGHTS

Defendants first argue that the trial court erred by holding that plaintiffs possessed a fee simple interest in the portions of the Lakeshore Reserve by their respective lots and to half of a pathway for those lots immediately adjacent to a pathway, with full riparian rights.

“This Court reviews a trial court’s findings of fact following a bench trial for clear error and reviews de novo the trial court’s conclusions of law.” *Redmond v Van Buren Co*, 293 Mich App 344, 352; 819 NW2d 912 (2011). “The extent of a party’s rights under an easement is a

question of fact, and a trial court's determination of those facts is reviewed for clear error." *Blackhawk Dev Corp v Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005) (citations omitted); see also *Morse v Colitti*, 317 Mich App 526, 534; 896 NW2d 15 (2016). We also review for clear error a trial court's decision regarding the scope of a plat dedication. See *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 92; 662 NW2d 387 (2003). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed." *Id.*

"The purchaser of property recorded in a plat receives both the interest described in the deed and the rights indicated in the plat." *Minerva Partners, Ltd v First Passage, LLC*, 274 Mich App 207, 219; 731 NW2d 472 (2007) (citations omitted). When interpreting a plat, this Court seeks to effectuate the intent of the platter, and the scope of a dedication is also governed by the dedicator's intent. *Higgins Lake Prop Owners Ass'n*, 255 Mich App at 88, 100-101. "A 'dedication' of land is an 'appropriation of land to some public use, accepted for such use by or in behalf of the public.'" *2000 Baum Family Trust*, 488 Mich at 144 (citation omitted). Dedications may be either public or private. *Redmond*, 293 Mich App at 352. For private dedications in a recorded plat that occurred between 1835 and 1966, as in this case, the grantees have "'at least an irrevocable easement in the dedicated land.'" *Id.* at 354, quoting *Little v Hirschman*, 469 Mich 553, 561-562, 564; 677 NW2d 319 (2004).³ An easement is the right to use the land that is burdened by the easement, as opposed to the right to occupy and possess the land as an estate owner. See *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 131; 737 NW2d 782 (2007). When disputes arise over a dedication, its use is determined by examining the extent of the right granted by the owner and acquired by the recipients. *2000 Baum Family Trust*, 488 Mich at 147. "Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted." *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003) (citation omitted). Only if the text of a dedication specifying an easement is ambiguous may the trial court consider extrinsic evidence to discern its scope. *Id.*; see also *Dyball v Lennox*, 260 Mich App 698, 704; 680 NW2d 522 (2004).

At issue are the various parties' "riparian" rights. "Owners of riparian land enjoy certain exclusive rights, including the rights to erect and maintain docks and to permanently anchor boats off the shore." *Morse*, 317 Mich App at 536, citing *2000 Baum Family Trust*, 488 Mich at 166; see also *Holton v Ward*, 303 Mich App 718, 725; 847 NW2d 1 (2014). Whereas, "[n]onriparian owners and members of the public who gain access to a navigable waterbody have a right to use the surface of the water in a reasonable manner for such activities as boating, fishing and swimming. An incident of the public's right of navigation is the right to anchor boats temporarily." *Dyball*, 260 Mich App at 707-708, quoting *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985). "[W]hile full riparian rights and ownership may not be severed from riparian land and transferred to nonriparian backlot owners, Michigan law clearly allows the original owner of riparian property to grant an easement to backlot owners to enjoy certain rights that are traditionally regarded as exclusively riparian." *Dyball*, 260 Mich App at 706 (quotation omitted). "Reservation of a right of way for access does not give rise to riparian rights, but only a right of

³ Conversely, private dedications occurring after the 1966 effective date of the Land Division Act "convey[] a fee interest." *Redmond*, 293 Mich App at 354.

way.” *Id.* If an easement providing access to the lake exists, the language of the easement determines whether the easement holder has been granted any riparian rights. *Id.* at 708.

“Generally, it is an ‘indispensable requisite’ that land actually touch water to be riparian, but there are exceptions to this rule.” *Morse*, 317 Mich App at 536. For example, in *Croucher v Wooster*, 271 Mich 337; 260 NW 739 (1935), our Supreme Court held that actual contact with the water is not necessarily required for riparian rights to exist. Specifically, the Court held that a lot separated from the water by a highway that is contiguous to the water is riparian land. *Id.* at 345. Although *Croucher* involved land dedicated to public use, the Court in *Thies* extended the holding to land dedicated to private use, such as a private right-of-way like a walkway along the edge of a body of water, so that the owner of a lot separated from the body of water by the right-of-way owns the land and has riparian rights, but others authorized to use the right-of-way have only an easement. *Thies*, 424 Mich at 290-293. In *Thies*, the subdivision front lots were separated from the lakeshore by a 12-foot “walk” that ran along the lakeshore. A notation on the plat maps provided “that the Driveways, Walks and Alleys shown on said plat are hereby dedicated to the joint use of all the owners of the plat.” *Id.* at 286. Our Supreme Court considered the applicability of the *Croucher* rule to a case involving a private road or path that runs between a lot and the lake. The Court held:

Although *Croucher* . . . discussed only land abutting public ways, the holding of [this case] can be stated more broadly: Unless a contrary intention appears, owners of land abutting any right of way which is contiguous to the water are presumed to own the fee in the entire way, subject to the easement. Since the owner’s property is deemed to run to the water, it is riparian property. [*Thies*, 424 Mich at 293 (citations omitted).]

Thus, the Court held that the plaintiffs were presumed to own the fee in the walk running along the front of their lots unless the platters intended otherwise. *Id.* The Court turned to the question whether the dedication intended to convey a fee to all of the subdivision owners or only grant them an easement along the shore. The Court held that the use of the dedication for “‘joint use’ standing alone does not ordinarily denote the passing of a fee interest in land.” *Id.* The Court also found that the defendants had not identified any evidence in the record that required a different conclusion and, as such, the back-lot owners possessed only an easement over the walk. *Id.* at 293-294.⁴ Similarly, this Court has held that language in a legal instrument that dedicates land for the use of others generally constitutes the “grant of an easement, not a grant of fee ownership.” *Morse*, 317 Mich App at 534 (citation omitted).

The trial court also relied on *Dobie v Morrison*, 227 Mich App 536; 575 NW2d 817 (1998) to hold that even land separated by a park provides for a fee simple interest in the park property for front-lot owners, including riparian rights, and only an easement for other owners. The holding in *Dobie*, however, was not so broad and its factual background differs from the case at bar. *Dobie*

⁴ In addition to *Thies*, in *Jonkers v Summit Twp*, 278 Mich App 263; 747 NW2d 901 (2008), this Court further clarified what constitutes a “contrary intention.” It held that a contrary intention must be “clearly expressed.” *Id.* at 269, citing *Croucher*, 271 Mich at 344.

involved a platted subdivision in which a “relatively large park” separated the plaintiff’s property from the lake. *Dobie*, 227 Mich App at 537, 540. The facts in *Dobie* were somewhat unique because the plaintiffs were successors in interest to the initial owners and platters, and the plaintiffs had the only lakefront lot. *Id.* at 537. This Court discussed the park dedication, which provided that it was for “the use of the owners of lots in this plat which have no lake frontage.” *Id.* The Court discussed *Thies* and found that the presumption concerning a walk did not apply to the relatively large park, stating:

Defendants distinguish *Thies* by arguing that the holding should be confined to a right of way and not extended to the park in this case. We agree that this case is not controlled by *Thies*. Although the park in this case was primarily created to provide the back lot owners with access to the lakefront, a park is not the same as a right of way. The reasoning in *Thies* was predicated on a mere walkway dividing the riparian owners from the body of water in that case. *Id.* at 289-290. We do not regard it as appropriate to compare a narrow walkway along a body of water to the relatively large park in this case. Absent a contrary indication, it is eminently reasonable to presume that a walkway along a lake was placed merely as an easement to provide access to the lake and not with the intent to convey actual fee ownership of the land containing the walkway. The same is simply not true of the relatively large park in this case. [*Dobie*, 227 Mich at 539.]

The Court, however, explained:

Nonetheless, we affirm the trial court’s decision that plaintiffs retained their ownership in fee and, thus, their riparian rights, to the park because the undisputed facts in the record establish that the platters intended that the park dedication convey merely an easement, not a fee in the park, to all back lot subdivision owners. The intent of the platters should be determined with reference to the language used in connection with the facts and circumstances existing at the time of the grant. The dedication provided that the park was dedicated to “*the use* of the owners of lots in this plat which have no lake frontage” (emphasis supplied), but did not explicitly purport to transfer ownership of the park from plaintiffs’ predecessors, the Fedewas, to all the back lot owners. We find the language used to be more consistent with the grant of an easement rather than a grant of fee ownership rights. Further, undisputed testimony that Orlo Fedewa had supplied the park with electricity, portable toilets, and picnic tables supports the conclusion that the Fedewas intended to retain general control and, accordingly, ownership of the park. [*Id.* at 540 (citations omitted).]

In this case, we first must decide whether the Lakeshore Reserve is more like a park or a right-of-way. The language of the dedication, the location and width of the easement, and the initial declaration all support the trial court’s determination that the Lakeshore Reserve is in the nature of a right-of-way. In particular, the Lakeshore Reserve is not set out as a separate parcel, with metes and bounds descriptions. The Lakeshore Reserve runs along the lakeshore in a strip approximately 15 feet wide from the water’s edge. Paragraph 6 of the initial declarations specifically provided that “all streets, reserves and pathways *are for roadway use only.*” (Emphasis added.) This limitation supports the conclusion that Carters regarded the Lakeshore

Reserve as similar to a street or path, rather than a park where lot owners in the plat could picnic or hold other activities. Initial ¶ 7, which provided for the placement of docks or temporary boathouses, contained a limitation that no owner could use the “lakeshore for permanent parking or storage of personal property.” This language supports the conclusion that the Lakeshore Reserve is in the nature of a right-of-way. Testimony at trial indicated that back-lot owners had not regularly used the Lakeshore Reserve as a right-of-way, and no person testified that this area, apart from perhaps the pathway ends, were used for other activities. We further note that the initial declarations contemplated that Outlot A might serve akin to a park. The initial declaration provided that a portion of “lot 29” could be used for a grocery store or “recreation center” and that Outlot A could either be divided and sold or used as a headquarters for fishing and boating. These are more extensive uses than “roadway purposes.” For these reasons, we are persuaded that the presumption in *Thies* applies to the Lakeshore Reserve.

We also conclude that the evidence did not establish that Carters “clearly expressed” a contrary intention to overcome the general presumption that owners of land abutting any right-of-way that is contiguous to the water are presumed to own the fee interest and riparian rights in the entire way, subject to the easement. *Thies*, 424 Mich at 293; *Jonkers v Summit Twp*, 278 Mich App 263, 269; 747 NW2d 901 (2008). As in *Thies*, the similar dedication language supports the conclusion that the front-lot owners retained a fee simple interest in the Lakeshore Reserve subject to an easement.

Respecting the initial dedication and restrictions, we agree with the trial court that ¶ 7 of the initial declaration did not provide a clear intention that the fee to the Lakeshore Reserve remain with Carters. Instead, it can reasonably be read as a limitation on the easement for the back-lot owners. However, the trial court and the parties improperly rely on the 1958 changes to the declaration. That change was not made contemporaneously with the initial dedication. Even though Carters changed the declaration, it did so by virtue of its majority lot ownership; it did not rely on a claim that it could change the declaration by virtue of its retention of a fee interest in the Lakeshore Reserve. Moreover, the reservations themselves do not support a finding that Carters retained a fee interest. In particular, the uses to which back-lot owners at least are restricted can be changed, apparently even now, by a majority of the lot owners, under ¶ 9. The grant of the power to change the uses of the Lakeshore Reserve by a majority of lot owners in the plat does not demonstrate the platlor’s intention to retain sole control of the Lakeshore Reserve or a fee interest.

For these reasons, we affirm the trial court’s decision that the dedication and other language in the initial declaration does not provide a clear intent to rebut the *Thies* presumption.

III. USE OF PATHWAYS

Plaintiffs argue on cross-appeal that the trial court erred by finding that lot owners were permitted to use vehicles on the pathways. We disagree.

As discussed, respecting Pathways #1 and #2, the restrictions in ¶ 6 and Amended ¶ 7 of the declaration provide for only limited use of the pathways. Specifically, ¶ 6 provides, in pertinent part, that “[a]ll streets, reserves, and pathways are for the use and convenience of all property owners within the plat” and that “all streets, reserves and pathways are for roadway use only.” This paragraph also provides that only Carters may park or drive on the Lakeshore Reserve.

Respecting Pathway #3, plaintiffs presented two deeds to parcels in Outlot A. “Deed CC,” which appears to be dated December 25, 1956, states that the pathway is to be used for “perpetual walk or pathway to the lakeshore” and also contains language noting the further restrictions in “Liber 2 and 21 on pages 52 and 436 respectively, in the register of deeds for said county.” Deed “DD,” dated June 3, 1957, contains language providing that the pathway is “restricted for pathway purposes to the lakeshore” and contains the additional restriction language as well. The trial court determined that the front-lot owners immediately adjacent to each pathway were owners in fee of their respective halves of such pathways. However, the court also held that all of the pathways could be used for vehicle travel and for the landing of boats, and that Carters intended to allow the use of a single dock at each pathway to assist with ingress and egress while temporarily landing a boat.⁵

Regarding the issue of who owns the fee interest to the land under the pathways, the trial court did not err by holding that the landowners adjacent to each pathway hold the fee interests. The effect of a dedication of a path or street that runs perpendicular to the water, such as in this case, is discussed in *Morse*, 317 Mich App 526. That case involved a dispute over a “park,” which ran between the front lots and the lakeshore, as well as a separate “walk” that ran between two lots perpendicular to the lake. *Id.* at 532. The 1928 West Beach plat dedicated the “streets, alleys and parks” to “the use of the present and future lot owners.” *Id.* at 531-532. This Court held that each adjacent landowner held a fee interest to one-half of the walk, subject to the other lot owners’ easement right to use the walk. *Id.* at 541-543.

In this case, like the dedication in *Morse*, the pathways were reserved “for the use and convenience of all property owners within the plat.” This language does not provide a contrary intent to rebut the general rule that land owners abutting a street are presumed to own the fee in the street to the center. The language in the deeds for the Outlot A properties also supports this conclusion regarding Pathway #3. The language that the pathway is a “perpetual walk or pathway to the lakeshore” or “restricted for pathway purposes to the lakeshore” does not refute the application of the general rule.

Plaintiffs also argue that the trial court erred when it determined that the scope of the pathway easements include the right to drive vehicles on the pathways, as opposed to only permitting foot traffic. Plaintiffs’ arguments are not persuasive. Although plaintiffs note that the pathways are not described as “roadways” or “streets”, they have not provided any ground for concluding that this distinction makes a difference. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.” *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Plaintiffs also note that the pathways are only 25 feet wide, whereas the streets are 66 feet wide. Plaintiffs, however, again have not presented anything to explain why this distinction should make a difference in analyzing the scope of the pathway easements. *Id.*

Plaintiffs also rely on the fact that, respecting Pathway #3, Deeds CC and DD provide that the pathway is to be used for, with respect to Deed CC, a “perpetual walk or pathway to the

⁵ The parties do not challenge this latter holding.

lakeshore” or, in Deed DD, “for pathway purposes to the lakeshore,” whereas the deeds also contain a 66-foot wide easement for “perpetual street or roadway purposes.” Plaintiffs argue that the difference in this language means that the pathways cannot be used for vehicular travel. However, plaintiffs again present nothing to support the conclusion that the use for “pathway” purposes serves as a restriction on the use of vehicles. More significantly, this argument ignores the language in the initial declaration that the pathways may be used for “roadway” purposes.

Plaintiffs assert that the pathways have been traditionally used for foot traffic and that the use of the pathways for vehicle traffic would impede foot traffic or make it more dangerous. However, plaintiffs have not provided factual support for this claim nor presented any legal authority that would support the prohibition of vehicle use contrary to the declaration’s express intent.

Plaintiffs also discuss the additional language in ¶ 6 of the dedication, which provides that no vehicle, apart from those owned by Carters, shall be permitted to park or be driven on the Lakeshore Reserve. Plaintiffs argue that, because the pathways are intended to provide access to the Lakeshore Reserve, “it would not be logical or beneficial to allow vehicle use on the pathways.” This argument lacks merit. Plaintiffs’ argument is undercut by the fact that, as the trial court noted, no party has presented any actual metes and bounds of the Lakeshore Reserve, or how much of it exists at the ends of the pathways. Plaintiffs instead argue only that this language should be used to find that vehicle use of the pathways is not permitted. Plaintiffs’ argument, however, runs afoul of the clear language that the pathways may be used for “roadway” purposes.

Concerning parking on the pathways, the initial ¶ 7 prohibited any lot owner from using “any street, pathway, or lakeshore for *permanent* parking or storage of personal property.” This restriction is not contained in the 1958 Amended ¶ 7, even though the trial court read this into the restrictions reasoning that such use would not be for “roadway purposes.” The trial court did not specifically discuss whether temporary parking on the pathways is allowed. Temporary parking on the side of a public roadway is not inconsistent with using such for roadway purposes, and is ordinarily permitted on roadways unless specifically prohibited. Such temporary use is not prohibited under either declaration version of ¶ 7. Accordingly, we modify the trial court’s order to reflect that temporary parking on the pathway is permissible as an ordinary use for roadway purposes as specified in ¶ 7, as long as it does not interfere with the use of the pathways by other lot owners.

IV. LOT 7

The Elliotts argue that the trial court’s order should not be construed as applying to them or their Lot 7 because their property rights to that lot were previously adjudicated in a separate lawsuit. We agree. Not only were the Elliotts’ property rights previously determined in a prior lawsuit, the trial court entered a stipulated order in this case providing that the Elliotts were not required to participate in the matter and that its decision “shall not in any way impact the Defendants Elliott or their property[.]” Although portions of the trial court’s final order can be read as encompassing Lot 7, in recognition of the adjudication of the previous lawsuit involving

Lot 7, and consistent with the uncontested stipulated order in this case, we modify the trial court's final order in part to clarify that it does not adjudicate any property rights related to Lot 7.

Affirmed as modified.

/s/ James Robert Redford

/s/ David H. Sawyer

/s/ Christopher M. Murray