

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 8, 2019

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2018AP142

Cir. Ct. No. 2015CV541

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**HAROLD EICK, JANICE EICK, ROBERT KUENZI, VICKY KUENZI,
SCOTT STROBEL, STACY STROBEL, FRANCIS SULLIVAN,
MARY SULLIVAN, BARBARA A. WINTER AND PHILIP ZIMMER,**

PLAINTIFFS-RESPONDENTS,

MARK MAYER AND KATHY MAYER,

INTERVENING PLAINTIFFS-RESPONDENTS,

V.

CHRISTOPHER GORECKI AND PATRICIA LYNN GORECKI,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Washington
County: JAMES G. POURROS, Judge. *Affirmed.*

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Christopher and Patricia Gorecki (hereafter Gorecki) appeal from a declaratory judgment. The case arises from a dispute about piers serving adjoining lakefront properties and whether the circuit court erred in using the coterminous method to apportion the parties' riparian boundaries for purposes of placing their piers. We conclude that the circuit court properly exercised its discretion. We affirm.

¶2 The properties at issue adjoin each other along the shoreline of Big Cedar Lake in West Bend, Wisconsin. Gorecki owns the property to the south. The property to the north, Outlot 1, is owned by a group of owners (the Outlot 1 owners) who have the right to access the lake and Outlot 1's associated pier. The Outlot 1 owners claimed that Gorecki's pier encroached upon their riparian rights and interfered with the use of their own pier. In the circuit court, each party advocated for a different method of determining the riparian boundaries and placement of their respective piers. The Outlot 1 owners urged the circuit court to use the coterminous method; Gorecki urged the circuit court to use the extended-lot-line method.¹ After a court trial, the circuit court made credibility determinations and findings of fact and selected the coterminous method. Gorecki appeals.

¹ *Manlick v. Loppnow*, 2011 WI App 132, ¶¶14-15, 19, 337 Wis. 2d 92, 804 N.W.2d 712 (methods for establishing riparian boundaries discussed).

¶3 Lakefront property owners have riparian rights that extend from the property line to the line of navigability.² *Manlick v. Loppnow*, 2011 WI App 132, ¶13, 337 Wis. 2d 92, 804 N.W.2d 712. Riparian rights confer “exclusive possession [of the waterfront] to the extent necessary to reach navigable water, to have reasonable ingress and egress to navigable water and to have reasonable access for bathing and swimming.” *Id.* (alteration in original; citation omitted). The method “for establishing the extension of boundaries into a lake between contiguous shoreline properties,” is determined by the circuit court based upon “what is fair and equitable under the circumstances.” *Id.*, ¶¶14, 16. The decision about which method to use is within the circuit court’s discretion. *Id.*, ¶¶19, 23.

¶4 In its decision, the circuit court considered testimony from four witnesses: Scott Strobel and Mark Mayer, two of the Outlot 1 owners, Keith Kindred, the surveyor retained by the Outlot 1 owners, and Christopher Gorecki. Exercising its role as “the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness’s testimony,” *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345, the circuit court found that Strobel was more credible than Gorecki. The court found that Strobel provided “concrete information” to the court, and he was more familiar with the history of Big Cedar Lake, the two properties at issue, and the area near the two properties. Strobel’s familiarity predated by many years his purchase of the property that made him one of the Outlot 1 owners and also predated the disputes that arose in connection with the placement of Gorecki’s pier in 2013, the year Gorecki purchased lakefront property. In contrast, the circuit

² The line of navigability separates “the parties’ riparian area from navigable waters.” See *Manlick*, 337 Wis. 2d 92, ¶13 n.2.

court found that Gorecki gave either evasive answers or stated that he did not know or could not recall.

¶5 The circuit court observed that surveyor Kindred had also provided expert opinion in *Manlick*. Here, the surveyor testified that the cotermious method should be used when the shoreline is curved or irregular. He testified that other property owners in the area were using the cotermious method to place their piers. For an explanation of the cotermious and extended-lot-line methods, the circuit court relied upon the surveyor's testimony and resources compiled by the Wisconsin Department of Natural Resources, which were exhibits at the court trial.

¶6 The circuit court selected the cotermious method for the following reasons: Big Cedar Lake's shoreline is curved and irregular; the surveyor's testimony was credible; "the history of the subject properties is that the cotermious method has basically been used for the piers serving them," based on the surveyor's testimony and exhibit 26 (a map of the parties' riparian zones created by surveyor Kindred); the other property owners in the area are using the cotermious method; the cotermious method gives the "property owners their fair share in order to be able to use the lake and to reach the navigable waters;" and Gorecki "will have ample ability to place [a] pier within [Gorecki's] riparian zone by shortening [the] pier and locating it further south."

¶7 On appeal, Gorecki argues that the circuit court misused its discretion when it selected the cotermious method. We disagree. The circuit court considered many of the same factors considered in *Manlick*. In *Manlick*, the circuit court considered "'the historical use of the various lots, the layout of the land, the layout of the riparian areas that historically have been in place,' the

[uncontradicted] experts’ testimony, and a DNR handout on pier placement.” *Manlick*, 337 Wis. 2d 92, ¶¶24-25. The circuit court in *Manlick* selected the coterminous method after considering “the curves that are involved, [that is,] the shape of the shore line, the best approach to maintain fairness among all property owners ... is the coterminous method.” *Id.*, ¶24 (alteration in original). On appeal, the *Manlick* court deemed the circuit court’s decision making a proper exercise of discretion. *Id.* Here, in a proper exercise of its discretion, the circuit court considered the same factors in selecting the coterminous method.

¶8 Gorecki argues that the surveyor used an inaccurate map to lay out the riparian boundaries under the coterminous method. Gorecki did not offer any expert testimony to contradict either the surveyor’s map or the surveyor’s opinions. WIS. STAT. § 907.02(1) (2017-18).³ The circuit court found the surveyor’s uncontradicted testimony credible. This determination was for the circuit court. *Peppertree Resort Villas*, 257 Wis. 2d 421, ¶19.

¶9 Gorecki argues that the circuit court mistakenly found Strobel’s testimony credible. The credibility determination was for the circuit court to make, and we do not ignore that determination on appeal. *Id.*

¶10 Gorecki argues that the circuit court erroneously considered Strobel’s longer association with Big Cedar Lake in selecting a method for determining riparian boundaries. The court considered numerous appropriate factors before selecting the coterminous method. We reject Gorecki’s attempt to cast Strobel’s testimony as determinative.

³ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

¶11 Gorecki complains that the circuit court erroneously considered the size of Big Cedar Lake and that his property is occasionally rented to others. The record does not convince us that in connection with selecting the coterminous method, the circuit court placed any weight on either of these points.⁴

¶12 The rest of Gorecki's arguments are premised upon challenging the uncontradicted surveyor's testimony, including his methodology,⁵ and the circuit court's credibility determinations. We have already rejected all of these grounds for challenging the circuit court's ruling. Therefore, we do not address the balance of Gorecki's arguments.

¶13 Gorecki argues that the circuit court's riparian boundary determination cannot be implemented. For that reason, Gorecki asks us to remand to the circuit court for further determination. We decline to remand as the court's ruling on the coterminous method appropriately addressed the issue of Gorecki's placement of the pier.

¶14 We affirm the circuit court's selection of the coterminous method as the means by which the parties' riparian rights, including pier placement, should be determined. For that reason, we need not consider Gorecki's arguments that the circuit court should have chosen the extended-lot-line method. Our function is

⁴ Gorecki does not argue that he objected on relevance or other grounds to evidence adduced at the court trial. We will not search the record for any such objections. *Keplin v. Hardware Mut. Cas. Co.*, 24 Wis. 2d 319, 324, 129 N.W.2d 321 (1964).

⁵ Gorecki does not establish that he was qualified as an expert to opine regarding the accuracy of the surveyor's map or the application of the coterminous or extension methods to determine the parties' riparian rights. The circuit court's determination that the surveyor was credible controls. *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345.

to review the circuit court's exercise of discretion, not to exercise that discretion on the circuit court's behalf. *Vlies v. Brookman*, 2005 WI App 158, ¶33, 285 Wis. 2d 411, 701 N.W.2d 642.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

