

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 19, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 2007AP1527-FT

Cir. Ct. No. 2005CV101

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

EDWIN L. CHRISTIANSON,

PLAINTIFF-APPELLANT,

V.

**TOWN OF CHICOG AND WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,**

DEFENDANTS-RESPONDENTS,

WISCONSIN DEPARTMENT OF TRANSPORTATION AND PERSONS UNKNOWN,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Washburn County:
EUGENE D. HARRINGTON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Edwin Christianson appeals a summary judgment granted in favor of the Town of Chicog and the Wisconsin Department of Natural Resources. Christianson argues that the circuit court erred by recognizing a hierarchy of riparian rights. Christianson also claims he has exclusive riparian rights to the subject land, including the right to restrict lake access at what has historically been used as a public boat launch. We reject his arguments and affirm the judgment.

BACKGROUND

¶2 Christianson owns property on McLain Lake in the Town of Chicog and sought a declaration of interest in land that was being used as a public boat launch. The subject land is located on the eastern edge of Christianson's property and adjacent to the former location of State Highway 77. In 2005, the highway was reconstructed and relocated to the south of its former location. At the conclusion of the construction work, the Wisconsin Department of Transportation transferred its interest in the right-of-way along the former highway, including the area of the boat launch, to the Town.

¶3 Ultimately, the Town and the DNR moved for summary judgment on Christianson's action. The Town argued that Christianson failed to produce evidence to establish the subject land was owned by anyone but the Town, and the DNR argued that state law prevented Christianson from having any ownership interest in the land below the lake's ordinary high water mark ("OHWM"). The court granted summary judgment in favor of the Town and the DNR, and this appeal follows.

DISCUSSION

¶4 This court reviews summary judgment decisions independently, applying the same standards as the circuit court. *Smith v. Dodgeville Mut. Ins. Co.*, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App. 1997). Summary judgment is granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987).

¶5 On appeal, Christianson argues that the circuit court erred by recognizing a hierarchy of riparian rights. Christianson’s argument, however, is based on a misinterpretation of the circuit court’s decision. Under Christianson’s interpretation, the court ruled that both he and the Town have riparian rights “to the same exposed lake bed,” but the town’s riparian rights trump his rights. On the contrary, the court held:

Christianson owns the real property immediately north and adjacent to the right-of-way. His property also has McLain Lake as its east boundary. Christianson “owns” to the OHWM. Further, he has access to McLain Lake and can control access to the lake across the sliver of land existing between the OHWM and the existing water level. ... Where he misses the point is that the State—now township—owns the property within the description of the easement.

The court further acknowledged that as the riparian owner of the land that includes what has been used as a public boat launch, the Town could control access to the lake across that property, including the “sliver existing between the OHWM and the actual lake.” Despite Christianson’s claims, the court did not conclude that the town’s riparian rights “trumped” his rights. Rather, the court noted that Christianson and the Town, on each of their respective properties, controlled access to the lake from the OHWM to the existing water level.

¶6 As the circuit court acknowledged, Edward Slaminski, a water regulator and zoning specialist for the DNR, submitted a survey that identified the OHWM. Slaminski averred that because of the angled property lines involved in this case, the coterminous riparian rights line approach was the proper method to determine each owner's riparian zones. Under this method, the lot lines are extended to the OHWM, the two points at the OHWM are connected for each property, and the angle that the chord line forms is bisected. *See* WIS. ADMIN. CODE § NR 326.07(2)(b) (2005). When applying this method to the Town's property, it creates a riparian zone that includes the public boat launch area.

¶7 Christianson nevertheless argued in the circuit court that extending the southern boundary line of his property into the lake bed affords him rights over the sliver of land between the OHWM and the actual water line, thus allowing him to prohibit access to the lake via the boat launch whenever the water's edge recedes to a point lower than the OHWM. The court implicitly rejected this methodology and, on appeal, Christianson fails to establish that his method of extending boundary lines is more appropriate for determining riparian zones in this case than application of the coterminous rights line method. Moreover, in his response to the motions for summary judgment, Christianson conceded that the southern boundary of his property "ends at the OHWM west of the access used by the public." Because Christianson offers no evidence of title to the subject land and fails to establish how his ownership of adjoining land encroaches on the land conveyed by deed from the DOT to the Town, we affirm the judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

