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DISTRICT II

November 18, 2020

To:

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You are hereby notified that the Court has entered the following opinion and order:

2019AP1429-FT

David Ochab and Natalie Ochab v. Lake Elizabeth Manor
Improvement Association (L.C. #2018CV42)

Before Reilly, P.J., Gundrum and Davis, JJ.

Summary disposition orders 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).

David and Natalie Ochab appeal an order entered in favor of the Lake Elizabeth Manor Improvement Association (the Association) following a court trial. Pursuant to a presubmission conference and this court's order of August 27, 2019, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2017-18).¹ Upon review of those memoranda and the record,

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

The Ochabs are riparian owners of shoreline property on Lake Elizabeth. They purchased the property subject to a riparian easement granted in 1991 by then-owner Francis D. Stumpf, to the Association, prior to its incorporation.² Every year since at least 1980, the Association has managed the placement of piers for its members in the water along the shoreline of what is now the Ochabs' property.

The Ochabs filed suit against the Association, seeking a judicial declaration that the “ingress and egress to the existing boat channel” granted in the 1991 easement did not include a right for the Association to place and maintain piers along the easement. The Ochabs also sought tort damages, alleging unjust enrichment, trespass, and nuisance. As stated by the Ochabs' counsel at a summary judgment hearing, the central issue before the circuit court was discerning Stumpf's intent with respect to the Association's pier placement along his shoreline when he granted the 1991 easement.³

Following a bench trial, the circuit court found that Stumpf intended for the 1991 easement “to include the right of the [Association] to annually transport its piers to and from the

² Stumpf developed the Lake Elizabeth Manor Subdivision. The 1991 “Easement to Lake Elizabeth Boat Channel” granted to the “Lake Elizabeth Manor Improvement Association ... a perpetual easement of five feet in width for the purpose of ingress and egress to the existing boat channel.” The Association was then and is now a group of subdivision property owners operating and maintaining a boat harbor for its residents. Stumpf's attempt to incorporate the Association in 1985 was unsuccessful due to a procedural defect. The Association was incorporated in 1995.

³ The circuit court denied summary judgment, stating that it wished to hear testimony at trial before making a finding as to Stumpf's intent.

Lake Elizabeth Boat Channel and maintain such piers along the five-foot easement described and depicted in said easement.” The court further found that the easement’s pier rights were “granted to, and are exercisable by,” the Association, “without limitation relative to such organization’s formal corporate status with the State of Wisconsin then or now.”⁴ The court determined that the Ochabs failed to establish their tort claims and declined to award damages in their favor.

On appeal, the Ochabs change tack and argue that regardless of Stumpf’s intent, and pursuant to WIS. STAT. §§ 30.133(1) and 30.131, the 1991 easement cannot permissibly grant pier-placement rights to the Association. In broad strokes, § 30.133(1) prohibits riparian landowners from conveying riparian rights to another person “[b]eginning on April 9, 1994,” while § 30.131 sets forth exceptions by which “persons other than riparian owners” can lawfully place and maintain piers “[n]otwithstanding s. 30.133....” *See* § 30.131 (1) and (2).

We agree with the Association that by its terms, WIS. STAT. § 30.133(1) applies to easements granted after “April 9, 1994,” and does not apply to the easement in this case, which was granted in 1991. We also agree with the Association that the fact of its 1995 incorporation, which occurred after April 9, 1994, was not akin to the grant of a new riparian easement subject to the terms of § 30.133(1). The circuit court properly determined that the Association’s corporate status was not material to Stumpf’s intent when granting the easement. The Ochabs

⁴ The circuit court made additional findings concerning the scope of the 1991 easement, some of which favored the Ochabs. For example, the court ordered that the Association could neither store its piers on the easement “when not installed in the water,” nor maintain an existing boat launch gate post on the Ochabs’ property.

The circuit court also found that a prior easement granted in 1963 was extinguished by operation of law in 1986. For the sake of completeness, we clarify that the 1963 easement, which did not affect what is now the Ochabs’ property, is not the easement at issue in this appeal.

offer no meaningful authority for their proposition that a grantee's act of formalizing its organizational structure somehow extinguishes or modifies its rights under an existing easement.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals