

MICHIGAN SUPREME COURT

Thomas Haan, Connie Haan, Kristin Brooks, and Jill Rhodes v. Lake Doster Lake Association

SC No. 161017; COA No. 345282; Allegan Circuit Court No. 17-057955-CH · No. SC No. 161017; COA No. 345282; Allegan CC No. 17-057955-CH · Decided June 11, 2021

SUMMARY

The Michigan Supreme Court reversed the Court of Appeals and reinstated the Allegan Circuit Court's order granting summary disposition to the Lake Doster Lake Association. The Court held that the plaintiffs' dock-use rights arose, at most, from revocable licenses rather than permanent easements, because there was no written conveyance and the membership agreement did not clearly create an easement.

CASE DETAILS

COURT	Michigan Supreme Court
WRITING FOR THE COURT	Bridget M. McCormack, Chief Justice; Brian K. Zahra, Justice; David F. Viviano, Justice; Richard H. Bernstein, Justice; Elizabeth T. Clement, Justice; Megan K. Cavanagh, Justice; Elizabeth M. Welch, Justice
JURISDICTION	Michigan
DECIDED	June 11, 2021
DOCKET	SC No. 161017; COA No. 345282; Allegan CC No. 17-057955-CH
DISPOSITION	reversed
PROCEDURAL POSTURE	The Michigan Supreme Court reconsidered the application for leave to appeal after oral argument and, in lieu of granting leave, reversed the Court of Appeals and reinstated the circuit court's order granting summary disposition to the Lake Doster Lake Association.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review.
PRECEDENTIAL VALUE	Published Michigan Supreme Court order
PARTIES	Lake Doster Lake Association v. Thomas Haan, Connie Haan, Kristin Brooks, Jill Rhodes

TOPICS

easements

real estate

contracts

appellate procedure

PRACTICE AREAS

real estate

property law

appellate procedure

contracts

QUESTIONS PRESENTED

1. Whether oral approvals to install docks created a permanent easement or other permanent interest in real property.
2. Whether plaintiffs' reliance on the oral approvals created an irrevocable license or easement by estoppel.
3. Whether the Lake Doster Lake Association membership provision concerning continuation of “all past permitted rights” created a permanent and irrevocable dock easement.

HOLDINGS

1. The oral approvals did not create a permanent easement or other permanent interest in real property because no written conveyance manifested a clear intent to create an easement and an attempted conveyance of an interest in real estate is void if not in writing.
2. Because the formal requirements for creating an express easement were not satisfied, the oral approvals created only a revocable license rather than an easement.
3. Long-term reliance and expenditures based on the oral approvals did not create an irrevocable license or easement by estoppel.
4. The membership application did not create a permanent and irrevocable property interest in dock erection and maintenance.

KEY QUOTATIONS

“We agree with dissenting Chief Judge MURRAY that plaintiffs’ use and maintenance of their docks is subject to the oversight and regulation of the Lake Doster Lake Association (the LDLA) and is not a permanent and irrevocable property interest.” (at 2)

“When there was no observance of the formalities required for creating an express easement, only a mere license was created.” (at 2)

“Michigan does not recognize “irrevocable licenses” or “easements by estoppel” stemming from a licensee’s expenditures made in reliance on representations about the duration of a license.” (at 2)

FACTUAL BACKGROUND

Plaintiffs and their predecessors obtained oral approval from the Lake Doster Development Corporation to install docks on or near the lake. Plaintiffs later relied on a Lake Doster Lake Association membership provision concerning the continuation of “all past permitted rights.” Plaintiffs claimed these approvals and the membership provision created a permanent and irrevocable property interest in the erection and maintenance of their docks, while the Association maintained authority to regulate and oversee those dock rights.

PROCEDURAL HISTORY

The Allegan Circuit Court granted summary disposition to the defendant on August 17, 2018. The Court of Appeals reversed in a January 16, 2020 judgment. After hearing oral argument on the application for leave to appeal, the Michigan Supreme Court reversed the Court of Appeals and reinstated the circuit court's decision.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Court reinstated the Allegan Circuit Court's August 17, 2018 opinion and order granting summary disposition to the defendant.

CASES CITED

- Forge v Smith, 458 Mich 198, 205 (1998)
- Kitchen v Kitchen, 465 Mich 654, 660 (2002)
- Morrill v Mackman, 24 Mich 279, 282-283 (1872)

OPINION

Thomas Haan v. Lake Doster Lake Association

PER CURIAM.

Order Michigan Supreme Court Lansing, Michigan June 11, 2021 Bridget M. McCormack, Chief Justice 161017 Brian K. Zahra David F. Viviano Richard H. Bernstein Elizabeth T. Clement Megan K. Cavanagh THOMAS HAAN, CONNIE HAAN, KRISTIN Elizabeth M. Welch, BROOKS, and JILL RHODES, Justices Plaintiffs/Counterdefendants- Appellees, and WILLIAM RHODES, CASEY ALLEN, LAURA ALLEN, TRAVIS STEPHENSON, MARCIANN STEPHENSON, KEVIN MARCY, and SUSAN MARCY,

Plaintiffs/Counterdefendants, v SC: 161017

COA: 345282

Allegan CC: 17-057955-CH

LAKE DOSTER LAKE ASSOCIATION,

Defendant/Counterplaintiff- Appellant. _____/ On May 5, 2021, the Court heard oral argument on the application for leave to appeal the January 16, 2020 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REINSTATE the Allegan Circuit Court's August 17, 2018 opinion and order granting summary disposition to defendant. We agree with dissenting Chief Judge MURRAY that plaintiffs'

use and maintenance of their docks is subject to the oversight and regulation of the Lake Doster Lake Association (the LDLA) and is not a permanent and irrevocable property interest. “An easement is an interest in land that is subject to the statute of frauds.” *Forge v Smith*, 458 Mich 198, 205 (1998). Plaintiffs can point to no written conveyance manifesting a clear intent to create an easement granting dock rights. See *id.* Rather, plaintiffs argue that a property interest was created when (1) the Lake Doster Development Corporation (the LDDC) orally approved plaintiffs’ request or a predecessor’s request to install a dock and (2) the LDLA agreed, as a benefit of membership, that it would agree to allow the continuance of “all past permitted rights.” Neither of these bases, whether considered separately or in tandem, satisfies the requirements for establishing a permanent interest in realty. Assuming the LDDC intended to convey an interest in real estate when it orally approved plaintiffs’ or their predecessors’ requests for dock installation, and absent any indication of fraud, an attempted conveyance of an interest in real estate is void if it is not in writing. See *Kitchen v Kitchen*, 465 Mich 654, 660 (2002). When there was no observance of the formalities required for creating an express easement, only a mere license was created. See *Morrill v Mackman*, 24 Mich 279, 283 (1872); 1 Cameron, *Michigan Real Property Law* (3d ed), Easements, § 6.2, p 212 (“A license may be created when the kind of interest that would normally be the subject of an easement is granted but the formal requirements for the creation of an easement are not met.”). Although a license may grant permission to be on the land of the licensor, unlike easements, they are not interests in real estate and are generally revocable at will by the licensor. *Forge*, 458 Mich at 210. It makes no difference that plaintiffs or their predecessors might have relied on the oral approvals over the course of many years. Michigan does not recognize “irrevocable licenses” or “easements by estoppel” stemming from a licensee’s expenditures made in reliance on representations about the duration of a license. See *Kitchen*, 465 Mich at 660. Assuming the LDLA membership application is enforceable as a contract, it also cannot support the creation of a permanent and irrevocable property interest in the erection and maintenance of docks. Rather, the contractual agreement states only that the LDLA will allow the LDLA member and their successors-in-interest to continue “past permitted rights.” The inclusion of this “past permitted rights” language, which is conditioned on plaintiffs and all future owners abiding by the LDLA’s overall governance and control, is consistent with our conclusion that the prior oral approval process created a revocable license, i.e., “a permission to do some act or series of acts on the land of the licensor without having any permanent interest in it.” *Morrill*, 24 Mich at 282 (citations omitted). The membership application manifests no clear intent to create an easement granting dock rights. See *Forge*, 458 Mich at 205 (“Any ambiguities are resolved in favor of use of the land free of easements.”). I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court. June 11, 2021 t0608 Clerk

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/michigan-michigan-supreme-court/2021/thomas-haan-connie-haan-kristin-brooks-and-jill-rhodes-v-zlji1eph>