

ANOTHER COURT CASE THAT RESTRICTS LAKE ACCESS

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On May 23, 2013, the Michigan Court of Appeals issued an interesting unpublished decision in *Studley v. Township of Hill, et al.* (Case No. 303845; 2013 WL 2278075). The case involved the Plat of Shady Shores Park in Ogemaw County. The plat was created in 1928. Between two lakefront lots in the plat is an area label “beachway,” which is about 16 feet wide. A dispute arose regarding how backlot property owners were using the beachway. The owners of the riparian lot adjoining the beachway filed a lawsuit in the Ogemaw County Circuit Court, seeking two forms of relief. First, they asked that the Court vacate (i.e., extinguish) the beachway altogether. Second and alternatively, the riparians asked the Court to determine the proper scope of usage rights by the backlot owners as to the beachway.

The trial court refused to vacate the beachway. However, the trial court also held that the beachway can be used for travel purposes only. The court prohibited the beachway from being used for any dock or overnight boat mooring or storage. The trial court also held that the beachway could not be used for sunbathing, picnicking or parking. Even though the backlot property owners produced a newspaper advertisement from the time that the plat was created promoting boating and swimming, the court held that it was too vague and indefinite to prove that such activities were permitted at the beachway.

On appeal, the Michigan Court of Appeals upheld the decisions of the trial court. Of particular interest, the Court of Appeals agreed that beachway could only be used for ingress and egress (i.e., a right of passage) and not for private dockage, overnight boat moorage,

lounging, sunbathing, picnicking or parking. The trial court did allow one dock, but for “day use” only (i.e., no overnight boat mooring or docking). The Court of Appeals held that the principles are the same, regardless of whether a dedicated way is public or private. In essence, the public road cases of *Jacobs v. Lyon Township*, 199 Mich App 667 (1993) and *Higgins Lake Property Owners Association v. Gerrish Township*, 255 Mich App 83 (2003) also apply to the beachway and other private road-type lake access devices. The Court of Appeals confirmed that backlot owners have “the burden of proving the grantor’s intent to provide an easement for more than mere access to the water.”