

MSC Opinion: Dedication of base fee in a public road running parallel to water does not convey riparian rights to county road commission

30. December 2010 By Madelaine Lane

On Wednesday, December 29, 2010, the Michigan Supreme Court published its opinion in [2000 Baum Family Trusts v. Babel](#), Case No. 139617. In a 4-3 opinion authored by Justice Markman, the Court reversed both the trial court and Court of Appeals to hold that the plaintiff-landowners did not convey riparian rights when they dedicated a portion of their waterfront property to Charlevoix County. Justice Davis authored the dissenting opinion and stated that the Court's holding ignored the long-settled Michigan precedent that base fee ownership is capable of cutting off riparian rights.

Babel concerns a lawsuit filed by front-lot property owners who reside on the northern shore of Lake Charlevoix. Their property does not touch the shoreline. Rather, Beach Drive, a public roadway maintained by the Charlevoix Road Commission, abuts the shore and cuts-off the plaintiffs' property from the water. This litigation was initiated after various back-lot property owners began using the beach to maintain docks and store boats. In response, plaintiffs filed suit against the back-lot owners and the County alleging the back-lot owners were liable for nuisance and trespass. They sought both injunctive and equitable relief. Charlevoix County filed a counter-claim asserting plaintiffs were liable for trespass and nuisance for encroaching on the shoreline property. The County assert plaintiffs had no riparian rights in the shoreline pursuant to a 1911 dedication of the land necessary to construct Beach Drive.

The plaintiffs filed for partial summary disposition against Charlevoix County asserting there was no genuine issue of material fact regarding who owned the riparian rights. Plaintiffs argued that the County had the right to use Beach Drive only as a roadway. The County responded that because it held Beach Drive in fee simple, pursuant to the 1911 statutory dedication, plaintiffs had no riparian rights. The trial court agreed with the County. The court concluded that the dedication of the road for public use, which was done under the 1887 Plat Act, vested the public with a fee title interest in the road. Because the dedication vested the public with title in fee simple to the Beach Drive property, the front-lot owners did not have riparian rights.

The Court of Appeals granted plaintiffs' application for interlocutory appeal. The Court of Appeals agreed that the language of the dedication controls the extent and scope of the fee interest. But the Court of Appeals examined the exact language in the 1911 dedication, and concluded that the broad dedication of the road for the public's "use" did not limit the scope of the fee interest to maintenance and does not vest the property owners with any riparian rights.

The Supreme Court granted the plaintiffs' application for leave to appeal and reversed the trial court and Court of Appeals. Specifically, the Court examined the language of the 1911 dedication and noted that the dedication conveyed only nominal title, a base fee, in the Beach Drive property. In particular, the Court noted that the dedication states that the property is "to vest in

fee...in trust to and for the uses and purposes therein designated and for no other use or purpose whatsoever.” Unlike the trial court and Court of Appeals, the Supreme Court considered this to be a limited conveyance. The County only received a nominal fee for a limited purpose, not title in the nature of a private ownership.

In light of this conclusion, the Court reviewed the long-history of Michigan jurisprudence concerning riparian rights. Justice Markman and the majority concluded that no Michigan case has ever held that dedication of a base fee in a public roadway running parallel to the water divests the front-lot owners of their riparian rights. In fact, the majority comments that every Michigan case holds the opposite—that property owners retain their riparian rights under these circumstances. The Court reversed and vacated the Court of Appeals opinion and remanded the case back to the trial court for further proceedings consistent with its opinion.

Justice Davis authored the dissenting opinion, joined by Justices Cavanagh and Hathaway. The dissenting Justices asserted that Michigan case law has long supported the conclusion that a base fee is a title ownership capable of cutting off riparian rights.