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**O'Brien v. Card, No. C3-02-860, 2003 Minn. App. LEXIS 282 (Minn. Ct. App. Mar. 11, 2003)**

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O'Brien v. Card, No. C3-02-860, 2003 Minn. App. LEXIS 282 (Minn. Ct. App. Mar. 11, 2003)

## MINNESOTA

**O'Brien v. Card, No. C3-02-860, 2003 Minn. App. LEXIS 282 (Minn. Ct. App. Mar. 11, 2003)** (holding permission to use riparian rights on a lake may defeat a claim of trespass since the riparian rights allow access to other properties on the lake).

Thomas O'Brien ("O'Brien") brought an action in the Le Sueur County District Court against Larry Card, Thomas Card, and James Card ("Cards") for common law and statutory trespass on his land. The district court found in favor of the Cards. O'Brien appealed to the Court of Appeals of Minnesota which affirmed the district court's determination.

O'Brien owned a tract of land that he claimed contained three basins of water that comprised Mud Lake. William Strangler and Mark Pettis owned land adjacent to O'Brien's land, and they granted permission to the Cards to enter their properties to hunt. Strangler and Pettis contended that Mud Lake was one basin of water, and that as riparian owners, they, or their invitees, had access to the entire basin. The Cards conceded that they hunted on portions of Mud Lake that were within the boundaries of O'Brien's property, but they asserted the affirmative defense that Mud Lake was public water and that they traveled on the Strangler and Pettis properties to the shore of the lake and used a boat to hunt. O'Brien claimed that he acquired Strangler's riparian rights through quitclaim deeds, and that Mud Lake was so low that no access to the water from the Strangler and Pettis properties existed except through a ditch on his own property.

The district court found that: (1) Mud Lake was one basin; (2) Pettis' and Strangler's properties bordered Mud Lake; (3) there was riparian access to the lake from these properties; (4) Strangler did not lose his riparian rights to Mud Lake by the exchange of deeds; and (5) as the holders of riparian rights, Strangler, Pettis, and the Cards, as their invitees, had the right to use the surface waters of Mud Lake.

The appellate court determined that for O'Brien to prove common law trespass he had to demonstrate a rightful possession in himself, and unlawful entry upon such possession by the Cards. The court reviewed the record in the light most favorable to the judgment of the district court, and did not reconcile the conflicting evidence as to the levels of Mud Lake when the Cards traveled upon it. Also, the court did not determine whether the ditch provided legal access to the lake since the district court did not address the issue. The court noted that there were additional ways to reach the water on O'Brien's property other than the ditch.

In addition, the court declined to address the issue of statutory trespass since the statute and its elements were not fully discussed at the district court trial. Further, the court determined that the deed from O'Brien to Strangler reserved Strangler's riparian rights west of

the boundary line and did not extinguish them. Lastly, the court affirmed O'Brien's motion to strike part of the Card's appendix, a color-coded map, since it was never filed with the district court as an exhibit.

*Natalie Lucas*

## MONTANA

**Graveley Simmental Ranch Co. v. Quigley, 65 P.3d 225 (Mont. 2003)**  
(finding that reasonable limitations pertaining to ditch maintenance on easements are appropriate and joint liability for such ditch repair is proper).

Graveley Simmental Ranch Co., Clifford E. Graveley, McIntosh Ranch, and William McIntosh ("Graveley") owned and maintained a ditch ("Graveley Ditch") that carried water from Ophir Creek to their property in Powell County, Montana. James C. Quigley ("Quigley") owned and maintained a separate ditch ("Quigley Ditch") that transported water from Ophir Creek. Quigley's ditch ran across Graveley's land pursuant to a secondary easement, and followed the same course as the Graveley Ditch. Over the past several years, Graveley unsuccessfully contested Quigley's ownership rights to the Quigley Ditch, and sought numerous judicial decrees to limit Quigley's ditch flow right and ditch size due to a breach and subsequent washout in 1948 caused by the Quigley Ditch carrying too much water. On May 23, 1995, the Quigley Ditch broke again, causing a washout that destroyed the Graveley Ditch and damaged Graveley's property. This landslide prompted the initial lawsuit filed by Graveley against Quigley in the Third Judicial District Court in Powell County. The district court limited Quigley's ditch right to 800 miner's inches, limited Quigley's easement rights pertaining to Graveley's property, assigned joint liability to the parties for the 1995 washout, ordered Quigley to pay Graveley's attorneys fees, and refused to grant Quigley a new trial regarding a previous injunction temporarily limiting Quigley's ditch flow to 400 miner's inches. Both parties appealed the district court's judgment.

The Supreme Court of Montana reviewed the lower court's limitation of Quigley's ditch flow right according to the applicable standard of review, which required the court to affirm the ruling absent a determination that it was clearly erroneous. The court reviewed all previous disputes between Quigley and Graveley regarding Quigley's ditch flow right, and found that, in almost all judicial orders, the courts decreed the ditch as having a carrying capacity of 800 miner's inches. Since the district court's ruling was not clearly erroneous, the court affirmed the ruling on this issue.