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The Pointe, L.L.C. v. Lake Mgmt. Ass'n, No W2000-00211-COA-R3-CV, 2000 Tenn. App. LEXIS 771 (Tenn. Ct. App. Nov. 6, 2000)

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only to the benefit of the minimum-flow and did not retain any proprietary rights in the water, the City did not violate the Act or the contract when it supplied water to communities not named in the documents.

Thus, the court denied R&R's appeal and affirmed the trial court. Therefore, the court did not rule on the City's cross-appeal.

Julie E. Hultgren

TENNESSEE

The Pointe, L.L.C. v. Lake Mgmt. Ass'n, No. W2000-00211-COA-R3-CV, 2000 Tenn. App. LEXIS 771 (Tenn. Ct. App. Nov. 6, 2000)
(finding a lake owner's conveyance of property with appurtenances and adjacent to a lake included the right to use the water).

Lakewood Development Corp. ("LDC") owned both man-made Garner Lake ("Lake") and its adjacent land. The purpose of the Lake's creation was to develop the surrounding land into lakeside homes. LDC conveyed the land underneath the lake to Lake Management Ass'n ("LMA"). Likewise, LDC conveyed the adjacent land to two individuals, who later formed The Pointe, L.L.C. ("The Pointe"), in order to develop the property. The Pointe's deed included "all the appurtenances and hereditaments thereunto."

LMA sought to impose restrictions and fees on adjacent landowners. In response, The Pointe filed a declarative action to determine whether it could access and use the Lake without paying fees to LMA. LMA responded with a motion for summary judgment. The trial court granted LMA's summary judgment motion. The Pointe appealed.

To determine the propriety of summary judgment, the Court of Appeals of Tennessee first determined whether the deed's language entitled The Pointe to unrestricted use and enjoyment of the Lake. The court found The Pointe's three theories for its legal right to unrestricted use—appurtenances, riparian rights, and implied easements—were related. The three theories described methods through which a property owner may use something to enhance the enjoyment of the property. The court determined The Pointe acquired the right to use freely the Lake as an appurtenance to the riparian property it owned. Further, the right was in the form of an implied easement.

The court determined the appurtenance within the deed included the right to use the Lake. The court recognized that an appurtenance in a deed is meant to enhance the property. The riparian land's inherent value arose from its proximity and accessibility to the water. Furthermore, when a grantor conveys property adjacent to water, a court presumes the right to use and enjoy water accompanies the

grant. Moreover, a conveyance of adjacent land, done by the owner of both the water and the surrounding land, transfers riparian rights, absent express provisions to the contrary. As the Lake was an appurtenance to the deed and the deed did not exclude use of the Lake, the court concluded The Pointe was entitled to free use of the Lake.

LMA argued the non-navigability of the Lake prevented riparian rights from passing in the deed. The court noted that navigability only served to determine ownership of land under the water, and riparian rights concerning use do attach to non-navigable water.

The court then addressed the nature and extent of The Pointe's rights. The court acknowledged that the party attempting to prove an implied easement existed must demonstrate three factors. First, the party must show a separation of title occurred. The court found separation of title occurred when LDC transferred the property to The Pointe and LMA. Second, the party must demonstrate the use continued over a long period. The court found over thirty years prior to LDC's transfer, LDC created the Lake specifically to develop lakeside homes on the adjacent property. Finally, the party must show the easement was necessary for further enjoyment of the land. The court noted that without access to the Lake, the property would be useless for lakeside development. Therefore, the court held The Pointe's rights to use the Lake were in the form of an implied easement.

Sara Wagers

TEXAS

Dyegard Land P'ship v. Hoover, 39 S.W.3d 300 (Tex. App. 2001)
(holding original covenants prohibiting drilling for minerals did not prohibit lot owners from drilling water wells because water is not a mineral).

In May 1994, Dyegard Land Partnership ("Dyegard") with the approval of Oak View Estates, a rural subdivision, filed a subdivision plat and restrictive covenants with the Parker County Clerk. The thirty-eight covenants restricted building design, construction materials, and property use. Covenant eighteen expressly prohibited, on any lot within Oak View Estates, the drilling, quarrying, mining, prospecting, or development of minerals of any kind, and the construction of wells, tunnels, tanks or any other structure used for mineral boring.

In 1997, Robert and Jackie Hoover and Donald and Cynthia Tye (collectively, the "Hoovers") purchased lots from Dyegard with notice that their lots were subject to the original covenants. Dyegard provided Oak View Estates with water from a central water system. After purchasing the lots, the Hoovers discovered problems with