

1-1-2000

West v. Marek, 604 N.W.2d 34 (Wis. Ct. App. 1999)

M. Elizabeth Lokey

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M. Elizabeth Lokey, Court Report, West v. Marek, 604 N.W.2d 34 (Wis. Ct. App. 1999), 3 U. Denv. Water L. Rev. 508 (2000).

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instructions to dismiss the DNR's counterclaims.

A separate concurrence would like the Supreme Court to revisit the private-litigant requirement because existing case law establishing and applying this requirement does not make apparent its purpose. A reexamination of the requirement would provide municipalities and state agencies clarification in the existing case law.

Kris A. Zumalt

West v. Marek, 604 N.W.2d 34 (Wis. Ct. App. 1999) (holding that state statutes did not create rights for an easement holder to build a dock or pier when the easement was opposed by the riparian owner, and that no pier placement or maintenance was granted or implied by the easement).

In 1982, Roland and Jeanine West granted a five-foot easement to Shari Marek and Greg Willis (collectively "Marek") for "private walkway purposes" over the West's property to Wood Lake. Marek built a pier over the water at the end of the walkway easement on the West's property.

The Wests sued Marek to force the pier's removal. The trial court concluded that maintaining the pier violated a state statute because it was inconsistent with the terms of the easement. Marek argued that the easement did not specifically, or impliedly, prohibit the pier; therefore, the right of access to the lake implied a right to construct and maintain a pier. The court, however, asserted that in the absence of a specific grant of permission to build a pier, no such right exists for the easement-holder when the riparian owner opposes the easement. The court held that the easement must be in accordance with, and confined to, the terms and purposes of the grant.

Marek appealed the judgment on the basis that the statute allowed them to place a pier at the end of the easement. Marek argued, again, that the written easement's terms did not expressly prohibit a pier or dock. However, the statute only makes constructing and maintaining a pier lawful. It does not grant rights to the non-riparian owner vis-à-vis the riparian owner.

The court asserted that, as the riparian owner, the West's have certain rights that do not apply to the Marek's unless that right was specifically granted by the easement. In other words, the easement holder did not have title to the shoreline in order to construct a pier unless the riparian owner granted this right. The court held that the language of the easement did not contain a grant of riparian rights, but only rights to use the easement "for private walkway purposes over and across the land." Thus, the West's had the exclusive right to construct a pier. The court thus affirmed the trial court decision.

M. Elizabeth Lokey