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Gwynn v. Oursler, 712 A.2d 1072 (Md. Ct. Spec. App. 1998)

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tial secondary source. A potential secondary source is a unit, facility, or site that stores or accumulates at any time more than 50,000 pounds of any deicing agent. The Plaintiff maintained that Stonehedge failed to bring forth evidence that it had never stored more than 50,000 pounds on its site. The court agreed that the record lacked any such evidence. Therefore, the court found that the Plaintiff's allegations as to count III remained a question of fact that precluded summary judgment. The court held that the trial court's grant regarding count III was erroneous and reversed. The court affirmed the trial court's judgment in part, reversed in part, and the cause was remanded.

Lori Asher

MARYLAND

Gwynn v. Oursler, 712 A.2d 1072 (Md. Ct. Spec. App. 1998) (holding that where a right-of-way to navigable water is created, and the party's intent is ambiguous, the easement alone does not constitute a riparian right to construct a dock).

This appeal arose from a property dispute originating in 1957. The Oursler and Gwynn properties bordered one another. In 1957, both families created a deed for a perpetual right-of-way. The easement, a 20 foot-wide strip, ran along the property line separating the two lots and led to both the road on one side and the river on the other. When the deed was executed, a pier was located at the end of the right-of-way leading into the Patuxent River. Due to natural disasters, the pier was destroyed and rebuilt, but not in the same location as when the original deed was issued. After a potential injunction, the Ourslers removed and rebuilt the pier, far removed from the right-of-way.

The Gwynns applied for a permit to construct a new pier at the end of the right-of-way. The county Board of Commissioners would not issue a permit until a decision from the circuit court was granted. The Gwynns filed suit claiming riparian right-of-way across the Oursler land. The trial court ruled that the creators of the right-of-way lacked the intent to convey riparian rights (and therefore gave no authority to construct a pier). In general, a right-of-way leading to the shore of a navigable river did not create a riparian right. The trial court determined that the right-of-way was intended "only to provide access to the various owners of the dominant estates to the road," not to the river. The circuit court reversed. The Ourslers appealed.

Two issues were presented on appeal. First, "does an easement for ingress and egress only to the shore of a navigable river entitle the owner of the dominant estate to construct a pier at the end of the easement?" Second, "[w]as the trial court's evidentiary finding that the deed did not intend that the right-of-way include a pier clearly er-

roneous?"

The court first gave a definition of "riparian owner" and what that owner can do with such a status. As a riparian owner can erect structures "that are connected to the waterfront and build out into the water," the court analyzed whether the Gwynns were riparian owners under Maryland law. In other words, whether an easement to a navigable river carries with it riparian rights. If not, the owner of the dominant estate is not entitled to construct a pier to connect to the river.

Precedent from other states provided the court with guidance. In Minnesota, a court ruled that a grant of an easement alone does not convey riparian rights to the grantee. However, both Oklahoma and Maine ruled that where the language of a deed is ambiguous, parol or extrinsic evidence is admitted to determine whether the parties intended to convey riparian rights.

The court began its opinion by ruling that "the right-of-way to a body of water, alone, does not entitle the grantee the right to construct a dock or a pier." The court determined that a two-part test was necessary to evaluate the particular issue in this case.

First, the court must examine the deed alone to determine whether, on its face, it grants or denies the riparian rights. "If the deed itself contains an express grant or denial of that intent, the language of the deed controls . . ." If, however, the deed is ambiguous as to the intent of the grantor, the court must undertake the second part of the analysis and may consider parol or other extrinsic evidence to discover the grantor's intent.

The deed in this case was silent as to piers or docks and failed to mention riparian rights at all. While the deed was explicit about the ingress and egress right-of-way, it did not discern whether the ingress or egress was to access the water, the road, or both. The court pointed to numerous cases that held when a deed grants an access such as this, the language is deemed ambiguous as to the parties' intent. This question will depend upon the "extent and reasonableness of the use of a private right-of-way in the exercise of an easement."

The trial court allowed both parties to introduce evidence as to the intent of the parties who created the deed. Based on this evidence, the trial court ruled that the right-of-way did not convey a riparian right so as to construct a pier from the dominant estate. Even though the intent of the parties was clear, the judge ruled that because there was nothing in the deed indicating that the pier was to be part of something else, he would not grant the right.

The Court of Special Appeals for Maryland noted that they would not overturn a lower court's finding unless it was clearly erroneous. Based on the evidence submitted, the court determined that the trial court's decision was proper.

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