STATE OF MICHIGAN

COURT OF APPEALS

HI-LO HEIGHTS LAKEFRONT PROPERTY OWNERS ASSOCIATION,

Plaintiff-Appellant,

v

COLUMBIA TOWNSHIP, JACKSON COUNTY ROAD COMMISSION, RICHARD BLAIR, WANDA L. BLAIR, ROBERT W. BLUNT, JAY DUBENDORFER, HELEN HAWK, JAMES L. NEITLING, DONALD NESTOR, JILL E. ODONAHOE, MICHAEL ODONAHOE, JACKIE LEE PLUMMER, RYAN SCHRADER, and VIVIAN ZWICK,

Defendants,

and

DEPARTMENT OF NATURAL RESOURCES, CHRISTINE M. BELCHER, DAVID BELCHER, KATHERINE BURR, SHELLIE D. CHEETHAM, SCOTT A. CHEETHAM, SANDRA M. COLE, JACQUELYN DALY, NORMA L. FRANTZ, PHILLIP J. FRANTZ, MICHAEL HEATH, ROY M. HOWARD, WALTER D. SHUBERG, JR., WILLIAM J. REITZ, JR., SHIRLEY L. KISTKA, ROBERT J. KISTKA, NANETTE LONG, JOHN P. LONG, GRETCHEN MARSHALL, VICTOR MARSHALL, DAWN NESTOR, LEHR G. NEVEL, ROBERT NEVEL, HELEN NEVEL, JACK L. PLUMMER, MARGARET PLUMMER, DEBORAH REITZ, PATRICIA J. RICHARDSON, RUDOLPH ROCHESTER, BERNICE ROCHESTER, JEAN SHUBERG, HOLLY M. SMITH, DONALD E. SMITH, ROBERT SNYDER, JOAN S. SNYDER, JERRY L. SPENCER, CHARLOTTE K. SPENCER, PAMELA A. STANSELL, a/k/a PAMELA

UNPUBLISHED
December 15, 2009

No. 286493
Jackson Circuit Court
LC No. 01-002466-CH

STANSELL-KENNEDY, SANDRA J.
THOMPSON, TIMOTHY THOMPSON,
RONALD WHIPPLE, CATHY WHIPPLE,
WILLIAM J. WHITE, ALICE J. WHITE, LARRY
WHITING, RAYMOND WILLIAMS, and
ELIZABETH WILLIAMS,

Defendants-Appellees.

Before: Beckering, P.J., and Cavanagh and M. J. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's opinion and final judgment which held that the October 1927 deed at issue was a deed that conveyed a fee simple interest and that all landowners in the Hi-Lo Heights subdivision are allowed to use the deeded land as a park for all normal park uses, including sunbathing, picnicking, fishing, placing docks, and mooring boats. We affirm.

The law of the case doctrine provides that the decision of an appellate court is controlling at all subsequent stages of litigation, so long as it is unaffected by a higher court's opinion. *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988). In this case, we previously concluded that all lot owners were non-riparian and had identical rights. *Hi-Lo Heights Lakefront Prop Owners Ass'n, Inc v Columbia Twp*, unpublished opinion per curiam of the Court of Appeals, issued January 23, 2007 (Docket No. 260848). Although plaintiff argues on appeal that the trial court, after remand, did not correctly determine that the front lot owners had exclusive riparian privileges, the trial court never made this determination on remand. Rather, the trial court correctly recognized that the issue was not before it because it was already decided by this Court. The front lot owners do not have riparian rights, much less exclusive riparian rights, per this Court's previous decision. The law of the case doctrine applies, and we are barred from reconsidering this issue on appeal. See *Grievance Administrator v Lopatin*, 462 Mich 235, 259-260; 612 NW2d 120 (2000); *Johnson*, *supra*.

Plaintiff also argues on appeal that the activities by back lot owners of picnicking, lounging, and sunbathing are not incidental, nor necessary, to the usage of the walkway; therefore, these activities should be prohibited. We review equitable determinations regarding interests in land de novo and the findings of fact in support of those equitable decisions for clear error. *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997). The interpretation of a deed is a question of law that we also review de novo. See, e.g., *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003); *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 389; 761 NW2d 353 (2008).

The 1927 deed conveyed in fee simple the subject land to all the owners of the lots in the Hi-Lo Heights subdivision, their heirs and assigns, to use as a park and to provide access on foot only to the shore line of the lake, and for no other purpose. The plain language of the deed conveys the use of the land as a park. See *Dep't of Natural Resources v Carmody-Lahti Real*

Estate, Inc, 472 Mich 359, 370; 699 NW2d 272 (2005). It was the conveyance of land itself, not a conveyance of a right of way across the land. See *id*. at 371, 373. Thus, plaintiff's contention that the land should not be treated as a park, but only a walkway, is without merit.

Further, case law supports that even when land is conveyed as an easement that could be used for a walkway or a park, rather than a fee simple interest in a park as here, the land could be used for such activities as sunbathing, picnicking, and essentially lounging. See *Thies v Howland*, 424 Mich 282, 294-295; 380 NW2d 463 (1985); *Dobie v Morrison*, 227 Mich App 536, 541-542; 575 NW2d 817 (1998). Based on the foregoing, we affirm the decision of the trial court, finding that all normal lakeside park uses were allowed, which included, but were not limited to, sunbathing, picnicking, and essentially lounging. See *LaFond*, *supra*.

Plaintiff finally argues that the seasonal mooring of boats, which includes placing seasonal docks into the water, is not temporary; thus, the seasonal mooring of boats by back lot owners should not be permitted because it is beyond the scope of the dedication of the walkway. Non-riparian owners only have the right to use the water's surface in a reasonable manner. *Thies*, *supra* at 288. However, a non-riparian owner may enjoy rights similar to a riparian owner, like anchoring boats permanently off the shore, if these activities are within the scope of the deed. *Id*. at 288-289, 294.

The deed here does not specifically indicate whether placing docks and mooring boats is allowed for any owners, including the front lot owners, who do not have riparian rights. Moreover, no authority relating to the mooring of boats in a situation such as this exists, and cases involving easements appear to be decided both ways. See *Thies*, *supra* at 286, 293-295, 297; *Dobie*, *supra* at 540-541; *Cabal v Kent Co Rd Comm*, 72 Mich App 532, 535-536; 250 NW2d 121 (1976). Nevertheless, "fee" is defined as "in fee" or "in full ownership" and "ownership" is defined as the "legal right of possession; proprietorship." *Random House Webster's College Dictionary* (1997). Accordingly, because the lot owners owned the park, they have the right to use the park in a reasonable manner, which includes placing docks and mooring boats, as long as they do not deviate from the intentions of the grantors. Thus, we affirm the trial court's decision that all the lot owners could use the park to place docks and moor boats. See *LaFond*, *supra*.

Affirmed.

/s/ Jane M. Beckering
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly