



2000

Recent Developments: Koch v. Strathmeyer: Implied Easement over Subdivided Lots Extended from Public Road to the Water's Edge, Entitling Interior Lot Owners to Waterfront Access

David Schmitz

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Schmitz, David (2000) "Recent Developments: Koch v. Strathmeyer: Implied Easement over Subdivided Lots Extended from Public Road to the Water's Edge, Entitling Interior Lot Owners to Waterfront Access," *University of Baltimore Law Forum*: Vol. 30 : No. 2 , Article 12.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol30/iss2/12>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

Koch v. Strathmeyer

Implied Easement Over Subdivided Lots Extended from Public Road to the Water's Edge, Entitling Interior Lot Owners to Waterfront Access

By David Schmitz

The Court of Appeals of Maryland recently held that access to a public navigable creek was within the scope of an easement granted under the general rule of implied easements over roads bordering conveyed property. *Koch v. Strathmeyer*, 357 Md. 193, 742 A.2d 946 (1999). The court reasoned that the general rule, limiting the reach of the easement to the next street or public way, was naturally extended to include navigable waterways when such was the original intent of the grantor of the land.

In 1940, George Hazard ("Hazard") began selling lots from his seven parcel waterfront subdivision. Through the subdivision, and bordering each lot, was a 16-foot gravel road that connected the county road to the shoreline of Lerch's Creek. Through subsequent years, the original seven parcel subdivision was consolidated into four lots; two waterfront lots, owned by Mr. and Mrs. Koch and Mr. Brewer, and two interior lots, owned by Mr. and Mrs. Strathmeyer and Mr. and Mrs. Hantske. The four lots were still partially bisected by the gravel road; however, the gravel road no longer extended to the water's edge but rather stopped some 85 feet therefrom. The two waterfront parcels covered the original gravel road with grass and placed

obstructions within its path. This had the deleterious effect of denying the two interior lot owners the full use and enjoyment of access to the waterfront.

In a two-count complaint, the two interior lot owners petitioned the Circuit Court for Anne Arundel County, asking it to take various actions. First, Plaintiffs asked the court to recognize an implied easement over the path of the original gravel road to the water's edge; second, to enjoin the waterfront lots from interfering with their right-of-way to the waterfront; and third, to have the waterfront lots pay damages resulting from the denied access to the waterfront. The circuit court ruled in favor of the interior lot owners, however, it denied their damages claim. In a timely appeal, the court of special appeals affirmed the lower court's decision. The court of appeals granted a petition for a writ of certiorari in order to determine "whether the creation of a 16 foot road bounding . . . lots in a waterfront subdivision . . . is sufficient evidence of the clear manifestation of the common grantor's intent necessary to establish that the present interior lot owners enjoy an implied easement to the water over that 16 foot road."

In its review of the case, the court of appeals first turned to the language found in the original conveyance of the land by George Hazard. In all seven of the original

deeds, the court found that the gravel road was used as a metes and bounds description to separate the lots and that each lot abutted the gravel road. *Id.* at 198, 742 A.2d at 948. "The existence, location, and size of the road is undisputed." *Id.* at 198, 742 A.2d at 949. The court held that under well-settled Maryland law, "when Hazard conveyed the property by a metes and bounds description naming the 16 foot road as a boundary, each lot owner acquired fee simple title up to the center of the road contiguous to his or her property." *Id.* at 198, 742 A.2d at 949 (citing Md. Ann. Code art. 21 § 114 (1939)). The court noted that although all the parties stipulated to the existence of the easement, the issue in question centered on whether or not the easement extended to the waterfront. *Id.* at 199, 742 A.2d at 949.

After recognizing that an easement did exist in favor of all the lot owners, the court next turned to the scope of the easement. The court of appeals found that case law defined the general rule of implied easements over roads bordering conveyed property as extending "until it reaches some other street or public way." *Id.* (citing *Hawley v. Baltimore*, 33 Md. 270 (1870)). When a common grantor conveyed land bordering streets, there existed

a rebuttable presumption that the common grantor intended “to offer to dedicate the streets [for] public use,” or “... grant the purchasers an implied right-of-way over the streets contiguous to their lots to the next closest street or public way.” *Id.* at 200, 742 A.2d at 949 (citing *Hackerman v. Baltimore* 212 Md. 624, 625, 130 A.2d 735, 736 (1957)). The court, by analogy, reasoned that if the waterfront were considered a street or public way, under *Hawley*, the easement would extend to both the waterfront and the opposite county road. *Id.* at 200, 742 A.2d at 950.

The court of appeals rejected the waterfront lot owners’ assertion that the existence of the navigable waterway cut off the interior lots’ implied easement at the border of the waterfront lots. *Id.* at 201, 742 A.2d at 950. The argument that the closest street or public way was the county road was soundly rejected by the court. Rather the court opined that this case squarely fit within the general rule of implied easements over roads bordering conveyed property. *Id.* Not only was the waterfront owned and maintained by the state, but it was a “public way” as well. *Id.* The court concluded that the original gravel road was bounded on one side by a public county road and on the other side by a public waterway. *Id.* Therefore, the interior lot owners enjoyed an implied easement that extended not only to the county road, but also to the water’s edge. *Id.*

In the last portion of its opinion, the court distinguished the cases proffered by the interior lot owners.

The court rejected the notion that under the facts of the instant case, the waterway was a special exception to the general rule. *Id.* Rather, the court reasoned that the general rule of implied easements was clearly applicable to a waterway. *Id.* When the lots were conveyed, the court concluded the original grantor bisected the development so that each lot was contiguous to the gravel road. *Id.* at 203, 742 A.2d at 951. It was only logical for the easement to extend to the waterfront so that each lot could have full use and enjoyment of the waterfront. *Id.*

The Court of Appeals of Maryland rejected the notion that a public way does not include a public waterway. This case clarifies and extends the common law notion of “public way” regarding implied easements to include waterways. Although this common law clarification might seem somewhat nugatory, in a state where most of its inhabitants live near the coast, this case is an important clarification for waterfront property law.

THE CAREER SERVICES CENTER

would like to assist you with

ALL YOUR PROFESSIONAL STAFFING NEEDS

Please turn to us to find the finest

**LAW CLERKS
RESEARCH ASSISTANTS
ASSOCIATES
TEMPORARY ATTORNEYS
STAFF ATTORNEYS**

To list a position, or for more information, please contact

Karen Rae Hammer
Associate Dean for Career Services
at

**THE UNIVERSITY OF BALTIMORE
SCHOOL OF LAW**

1420 North Charles Street
Baltimore, Maryland 21201
(410) 837-4404