

STATE OF MICHIGAN
COURT OF APPEALS

MANOS PROPERTIES,

Plaintiff-Appellant,

v

GORDON J. BIRGBAUER III and MICHIGAN
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Defendants-Appellees,

and

RON'S MARINE, INC.,

Defendant.

UNPUBLISHED

July 3, 2014

No. 314486

St. Clair Circuit Court

LC No. 11-001095-CE

Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

In this dispute over the placement of a culvert in a waterway, plaintiff, Manos Properties, appeals by right the trial court's separate orders granting defendants, Gordon J. Birgbauer III, and defendant, Michigan Department of Environmental Quality (DEQ), summary disposition under MCR 2.116(C)(8).¹ Because we conclude there were no errors warranting relief, we affirm.

In January 2008, Birgbauer filed a joint application with the United States Army Corps of Engineers and the DEQ seeking a permit to install a 36-inch culvert in a waterway known as the Middle Channel in order to facilitate the construction of a driveway. David R. Dortman, who worked as an analyst with the DEQ, reviewed the application. Dortman signed the permit and the DEQ issued it in May 2008. The DEQ classified it as a minor project. Dortman determined that the project would not adversely affect fish and wildlife, recreation and aesthetics, or

¹ Although named in the complaint, defendant Ron's Marine, Inc., was never served, and was dismissed as a party.

navigation. Dortman also determined that the project would not adversely affect riparian rights or the public trust. Birgbauer thereafter had the culvert and driveway installed.

Manos Properties sued Birgbauer and the DEQ in May 2011. The DEQ moved for summary disposition under MCR 2.116(C)(8), arguing that Manos Properties had not exhausted its administrative remedies and, in any event, had no riparian rights in the waterway. Manos Properties argued that it was not required to exhaust its administrative remedies and that MCL 324.30101 provided it with statutory riparian rights.

The trial court agreed that Manos Properties did not exhaust its administrative remedies and did not have riparian rights in the waterway at issue. For those reasons, it dismissed Manos Properties' claim against the DEQ. Birgbauer subsequently moved for summary disposition. He argued that, because Manos Properties' claim against him was premised on riparian rights, it too must be dismissed. The trial court agreed and granted summary disposition in Birgbauer's favor. Manos Properties now appeals.

We first address Manos Properties' claim that the trial court erred when it determined that Manos Properties had no riparian rights in the waterway at issue and dismissed its claims under MCR 2.116(C)(8). This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim on the pleadings alone. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). "The motion must be granted if no factual development could justify the plaintiffs' claim for relief." *Id.*

In its brief, Manos Properties states that it did not and was not asserting common-law riparian rights to the waterway. Rather, it claims that it has statutory riparian rights under MCL 324.30101. In *Holton v Ward*, 303 Mich App 718, 730; ___NW2d___ (2013), this Court recently held that the Legislature did not confer statutory riparian rights on landowners with the enactment of MCL 324.30101:

By its plain meaning, the statute does not grant or enlarge riparian rights—it simply defines those terms as generally understood. See MCL 324.30101(r) ("['r]iparian owner' means a person who *has* riparian rights,") (emphasis added); MCL 324.30101(s) ("['r]iparian rights' means those rights which are associated with the ownership of the bank or shore of inland lake or stream"). The use of "has" indicates that MCL 324.30101(r) refers to landowners who already possess riparian rights—it does not extend riparian rights to new groups of property holders. In addition, the statute nowhere mentions that it abrogates the common law, nor does it evince intent to do so. See *Hamed v Wayne Co*, 490 Mich 1, 22 n 57; 803 NW2d 237 (2011) ("The Legislature is presumed to know the common law, and any abrogation of the common law must be explicit."). See also *Stidham v Algonquin Lake Community Ass'n*, 133 Mich App 94, 98; 348 NW2d 46 (1984) (holding that "[t]he existence of the Inland Lakes and Streams Act [subsequently recodified as Part 301 of NREPA] does not preclude plaintiff's common law remedies").

For each of its claims, Manos Properties premised its right to relief on the violation of its riparian rights. But Manos Properties does not argue that it holds riparian rights under the common law; instead, it asserts that it holds statutory riparian rights under MCL 324.30101. As explained, this Court has held that that statute does not create statutory riparian rights or expand existing riparian rights. *Holton*, 303 Mich App at 730. Accordingly, Manos Properties' claims necessarily fail. MCR 2.116(C)(8).

Because the trial court did not err when it determined that Manos Properties did not have riparian rights and dismissed its claims under MCR 2.116(C)(8), we decline to address Manos Properties' remaining claims of error.

There were no errors warranting relief.

Affirmed.

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly