STATE OF MICHIGAN

COURT OF APPEALS

FOUR LAKES DEVELOPMENT, LLC and DOCKSIDE LANDING CONDOMINIUM ASSOCIATION, Plaintiffs/Counterdefendants-Appellants,	UNPUBLISHED December 26, 2025 9:38 AM
v	No. 372405 Cass Circuit Court LC No. 2021-000256-CH
CASS COUNTY ROAD COMMISSION and THE BOARD OF COMMISSIONERS OF THE CASS COUNTY ROAD COMMISSION, Defendants/Counterplaintiffs-Appellees.	

Before: RICK, P.J., and O'BRIEN and MALDONADO, JJ.

PER CURIAM.

In this riparian rights action, plaintiffs, Four Lakes Development, LLC, and Dockside Landing Condominium Association (collectively, "Four Lakes"), appeal by right two trial court orders denying their riparian rights, dismissing their claims, imposing sanctions, and granting summary disposition on claims of interference with an easement and malicious prosecution in favor of defendants, the Cass County Road Commission and the Board of Commissioners of the Cass County Road Commission (collectively, "Road Commission"). On appeal, Four Lakes primarily argues that the trial court erred by relying on principles of res judicata to reach its conclusions of law. We affirm the trial court's April 20, 2024 order denying summary disposition to Four Lakes and granting summary disposition to the Road Commission. We vacate the portion of the trial court's August 20, 2024 order granting the Road Commission's claim for malicious prosecution and imposing sanctions.

I. BASIC FACTS AND PROCEDURAL HISTORY

This dispute involves the real property commonly known as 68687 Eagle Lake Road, Edwardsburg, Ontwa Township, Cass County, Michigan (the "Property"). The Property is

comprised of approximately 9.6 acres and is bordered to the north by a channel, or weir. The western boundary is separated from Eagle Lake by Eagle Lake Road.

At one point, Eagle Lake Road was part of the main traveled highway between Cassopolis, Michigan, and Elkhart, Indiana. Before 1954, Eagle Lake Road had a sand or gravel surface. In July 1954, the Road Commission paved and widened the road. At that time, Harry and Marjorie Rathfon owned the Property. The Rathfons sued the Road Commission seeking to limit public use of the Property to only the road's surface and to restrict public access to the strip of land between the road and the lakeshore. The trial court determined that, although there had never been a dedication of Eagle Lake Road, a highway by user had been established. The trial court further determined that the public had historically used all the land between the road and the lake and that the Road Commission needed to access that same area for road maintenance. Accordingly, all the land from the lakeshore to—and including—the road was subject to public easement. The trial court's memorandum is excerpted below:

> The testimony is clearly persuasive that the public has used all of the land between the main traveled portion of the highway and the lake, and it is also clear that the public authorities need that area for the purpose of building and maintaining protection for the highway against the action of the Lake. . . .
>
> It is my conclusion that the public has acquired by user this established highway, and that the easement acquired by the public in width is represented by the land which lies from a point six feet east of the hard top surface to the waters of Eagle Lake, as it applies to the property of the plaintiffs described in the Bill of Complaint. [*Harry R. Rathfon and Marjorie F. Rathfon v Board of County Road Commissioners, Cass County, Michigan*.]

In its attendant decree, the trial court stated that "the public, through the Defendant, Cass County Road Commission, is entitled to an easement of right of way for highway purposes."

At approximately the same time that the Rathfons sued the Road Commission, their neighbors just north of the weir, the Wendts, filed a similar lawsuit against the Road Commission for trespass in the same trial court before the same judge. *Don C. Wendt and Patricia Wendt, v Board of County Road Commissioners, Cass County, Michigan* (*Wendt I*). Using the same law and reasoning, the trial court determined that a highway by user had been established across the Wendt's property from "six feet east of the hard top surface to the waters of Eagle Lake." The Wendts then erected a barbed wire fence from the road, along the water's edge, and out into the lake. The Road Commission sued the Wends for interference with the easement, which the trial court resolved in the Road Commission's favor. *Park Trustees for Cass County, Michigan and the Board of County Road Commissioners v Don C. Wendt* (*Wendt II*). The Michigan Supreme Court affirmed the trial court's decision in *Park Trustees for Cass County v Wendt*, 361 Mich 247, 257; 105 NW2d 138 (1960).

Regarding the Property at issue in this case, Ron and Mary Linton purchased it in 1972 and charged the public for the use of the beach and boat launch. The Lintons also obtained a permit from the Road Commission to build a seawall to help control the eroding beach. The next Property

owners were Janet and Richard Keen, who owned the Property from 1994 to 2006. Like the Lintons, the Keens also charged the public to use the boat launch.

Paul DeLano acquired the Property in 2006, which he owned in the name of The Dock, LLC. The Dock continued the practice of charging the public for the use of the boat launch. The Dock eventually sued the Road Commission to quiet title to a new strip of beach that had been created following the installation seawall. *The Dock LLC v the Board of Commissioners of the Cass County Road Commission*, No. A 39-0129-CH, Kalamazoo County Circuit Court (2008). The trial court granted summary disposition in favor of the Road Commission on the basis of res judicata "because the same issues and claims were previously litigated by the parties to this action or by their privies in title and were decided in the [*Rathfon* case]." *Id*.

The Property was next owned by Eagle Lake Dock, LLC, from approximately October 2013 until it was purchased by Four Lakes in 2018 to develop a 12-unit condominium.[1] In 2021, Four Lakes installed seasonal docks with 12 boat slips for the exclusive use of the condominium owners. About that same time, Four Lakes blocked the boat launch with boulders. The Road Commission asked Four Lakes to remove the boulders, and when Four Lakes refused, the Road Commission used a front-end loader to push the boulders to the side and reopen the launch. The Road Commission also informed Four Lakes that the Property lacked riparian rights and that the Road Commission would not authorize a private dock.

In response, Four Lakes filed a four-count complaint to assert riparian rights[2]: Count I, declaratory and injunctive relief; Count II, deprivation of Equal Protection under the Michigan Constitution; Count III, trespass; Count IV, inverse condemnation under the Michigan Constitution; and Count V, a writ of mandamus.

The Road Commission filed a three-count counterclaim, alleging that Four Lakes interfered with the public's easement rights by erecting private docks and placing no trespassing signs (Count I); that Four Lakes engaged in malicious prosecution in light of the *Rathfon* and *Dock* decisions (Count II); and that the Road Commission, on behalf of the public, had a prescriptive easement over the Property (Count III). Four Lakes moved for summary disposition on its claim for a declaratory judgment that it has riparian rights in its property, while the Road Commission moved for summary disposition on all of Four Lakes' claims.

The trial court entered its April 20, 2024 order denying Four Lakes' motion for summary disposition and granting summary disposition in favor of the Road Commission. In short, the trial court determined that "riparian rights do not exist in [Four Lakes] under the doctrine of res judicata." Following the April Order, the Road Commission moved for summary disposition on

[1] Notably, the wife of the Four Lakes property developer is Cathy Snow, who is the daughter of the Lintons.

[2] Technically, land that abuts or includes a lake is "littoral," and land that abuts or includes a river is "riparian." But Michigan courts have used the term "riparian" to encompass both types of property, and we will follow that approach. See *2000 Baum Family Tr v Babel*, 488 Mich 136, 138 n 1; 793 NW2d 633 (2010).

its counterclaims for interference with easement and malicious prosecution. The trial court entered its August 20, 2024 order, that (1) granted summary disposition on the Road Commission's claim for interference with easement; (2) enjoined Four Lakes from "engaging in any action that would interfere with the Road Commission's easement," blocking the boat launch, placing "No Trespassing" signs, and erecting seasonal docks without a permit from the Road Commission; (3) granted summary disposition on the Road Commission's claim for malicious prosecution; and (4) ordered "that the [Road Commission] shall be entitled to recover its reasonable attorneys' fees and costs from [Four Lakes] as a sanction for having filed this action." Four Lakes now appeals.

II. STANDARDS OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Summary disposition may be granted only when a claim is so clearly unenforceable that no factual development could possibly justify recovery. *Id*. Four Lakes moved for summary disposition on its claim for riparian rights under MCR 2.116(C)(10), and the Road Commission moved for summary disposition on all of Four Lakes claims under MCR 2.116(C)(7) and (C)(10).

Summary disposition is proper under MCR 2.116(C)(7) if the claim is barred because of a prior judgment (res judicata). "When reviewing a motion under MCR 2.116(C)(7), the trial court must accept as true all of the plaintiff's well-pleaded factual allegations and construe them in favor of the plaintiff unless disputed by documentary evidence submitted by the moving party." *Norman v Dep't of Transp*, 338 Mich App 141, 146; 979 NW2d 390 (2021). "Where there are no factual disputes and reasonable minds cannot differ on the legal effect of the facts," summary disposition under MCR 2.116(C)(7) is appropriate. *Farm Bureau Mut v Combustion Research Corp*, 255 Mich App 715, 720; 662 NW2d 439 (2003).

A motion under MCR 2.116(C)(10) "tests the factual sufficiency of a claim." *El-Khalil*, 504 Mich at 160 (citation and emphasis omitted). In considering a motion under MCR 2.116(C)(10), the trial court "must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id*. The motion "may only be granted when there is no genuine issue of material fact." *Id*. "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id*. (quotation marks and citation omitted).

Questions regarding the application of legal doctrines, including res judicata, are also subject to de novo review. *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, 346 Mich App 197, 202; 12 NW3d 20 (2023). However, we review a trial court's decision on attorney fees and costs for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Id*. We will not disturb a trial court's finding that a claim was frivolous unless the finding is clearly erroneous. *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997). A trial court's decision is clearly erroneous when, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *In re Attorney Fees & Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999).

III. RES JUDICATA

Four Lakes argues that the Property is vested with riparian rights—including the right to erect a private dock and make use of the bottomlands—and that the prior court cases involving the easement did not affect those rights. In fact, Four Lakes contends that this is the first time that riparian rights have been litigated regarding the Property, so the trial court erred when it dismissed Four Lakes' claims on the basis of res judicata. We disagree.

Res judicata bars a second action on the same claim if " '(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first.' " *Foster v Foster*, 509 Mich 109, 120; 983 NW2d 373 (2022), quoting *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). Michigan courts use a transactional test to determine if a matter could have been resolved in the prior case. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 420; 733 NW2d 755 (2007). "The transactional test provides that the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief." *Id*. (quotation marks and citation omitted). "Whether a factual grouping constitutes a transaction for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in time, space, origin or motivation, and whether they form a convenient trial unit . . . ." *Adair*, 470 Mich at 125 (quotation marks, citation, and emphasis omitted).

A. THE *RATHFON* AND *DOCK* CASES

Rathfon was decided in 1956, and the *Dock* was decided in 2010. The parties in the present case do not dispute that those two prior actions were decided on the merits to establish a public easement on the Property "from a point six feet east of the hard top surface [of Eagle Lake Road] to the waters of Eagle Lake." Likewise, the parties do not dispute that Four Lakes is a successor in interest to the plaintiffs in the *Rathfon* and *The Dock* cases. Accordingly, the first two requirements for res judicata are undisputedly satisfied. The parties vigorously dispute, however, whether the riparian rights of the Property were—or could have been—addressed in the prior cases. In particular, Four Lakes urges that the prior cases did not divest Four Lakes of the right to erect a private dock and block public access to the boat launch.

As noted, land that abuts a natural watercourse often is referred to as riparian. *2000 Baum Family Tr v Babel*, 488 Mich 136, 138 n 1; 793 NW2d 633 (2010). Riparian properties generally enjoy certain exclusive riparian rights. *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985) " '[R]iparian rights' are special rights to make use of water in a waterway adjoining the owner's property."[3] *Dyball v Lennox*, 260 Mich App 698, 705; 680 NW2d 522 (2004) (quotation marks and citations omitted). Among other privileges, riparian rights include the right to erect and maintain docks, the right to make natural and artificial use of the water in the watercourse, and the right to use the entire surface of the watercourse for recreational purposes. *Holton v Ward*, 303 Mich App 718, 725-26; 847 NW2d 1 (2014). However, members of the public who gain access

[3] The Natural Resources and Environmental Protection Act defines "riparian rights" as "those rights which are associated with the ownership of the bank or shore of an inland lake or stream." MCL 324.30101(s).

to a navigable waterbody have a right to use the surface of the water in a reasonable manner for recreational activities like boating, fishing, and swimming. See *id*. at 726.

In 1935, the Supreme Court clarified that when a property is separated from a lake by a public highway, the property owner retains riparian rights, "in the absence of an intention of the parties appearing to the contrary." *Croucher v Wooster*, 271 Mich 337, 344; 260 NW 739 (1935). In 2010, the Supreme Court confirmed this rule, determining that property owners of front-tier lots adjacent to a road running along a waterway have riparian rights, unless such rights are expressly excluded in the chain of title. *Baum*, 488 Mich at 172-174.

In *Rathfon*, the issues were framed as trespass and quiet title. The Rathfons argued that the Road Commission trespassed upon the Property when the Road Commission paved and widened Eagle Lake Road. The Rathfons also claimed that the Road Commission improperly claimed a possessory interest in the land "outside of the bounds of the public highway" between the lake and the road and sought to quiet title against the "rights of the public" with regard to that land.

In recognizing a public easement up to the water's edge, the *Rathfon* court explained that a "highway by user" is created when the public has "exclusive possession of" and an "exclusive right" to the road. "If it is a public highway[,] the public authorities have the exclusive use and control of it; if it is not, they have not." The trial court went on to determine that a highway by user *had* been established over the Property. As part of its analysis, the Rathfon court found that "[t]he strip of land between the road and the water has been used for a variety of purposes including the launching of boats, swimming, shore fishing, parking and washing of automobiles, and this use has been constant and over nearly all of the land in dispute."

The *Rathfon* memorandum is excerpted as follows:

> The strip of land between the road and the water has been used for a variety of purposes, including the launching of boats, swimming, shore fishing, parking and washing of automobiles, and this use has been constant and over nearly all of the land in dispute.
>
> Neither party produced any evidence concerning a legal laying out of the highway, or a dedication by a land owner of-a strip of land for highway purposes. Nor is there any record of formal acceptance by the public authorities.
>
> There is, however, another *mode of creating a highway, and that is by user*. To constitute a highway by user there must be a defined line, and it must be used and worked upon by the public authorities and traveled and used for ten consecutive years without interruption. It *must be such a road that the public have exclusive possession of*, as against the owner of the soil or any other person—it must be an *exclusive right. If it is a public highway the public authorities have the exclusive use and control of it; if it is not, they have not*.
>
> * * *
>
> By argument, plaintiffs seek to minimize, if not to overlook, the use of land on both sides of the main traveled portion as an adjunct of the highway. The

> question here is not "How wide is the hard surface of this Road," but rather *to what extent on both sides thereof have the public made use of an area of land for uses incidental to and usually connected with public ways*.
>
> * * *
>
> The testimony is clearly persuasive that the *public has used all of the land between the main traveled portion of the highway and the lake*, and it is also clear that the public authorities need that area for the purpose of building and maintaining protection for the highway against the action of the Lake. I find that the public has increased its use of the width of this road gradually over a period of years, and that such use extends to a point of feet to the east of the edge of the black-top hard surface as it now exists.
>
> It is my conclusion that *the public has acquired by user this established highway*, and that the easement acquired by the public in width is represented by the land which lies from a point six feet east of the hard top surface to the waters of Eagle Lake, as it applies to the property of the plaintiffs described in the Bill of Complaint.

Reading the memorandum as a whole, we conclude that the *Rathfon* court addressed riparian rights, in particular the Property's rights regarding a private dock or boat launch. As noted, the trial court defined the scope of the easement broadly to allow the public to continue activities "including the launching of boats, swimming, shore fishing, parking and washing of automobiles . . . ." Such activities are riparian activities that involve the bank, shore, and bottomlands. See MCL 324.30101(a), (s); *Holton*, 303 Mich App at 725-726. Additionally, in determining that the water's edge was part of the highway by use, the trial court implicitly determined that "*the public authorities have the exclusive use and control of [the water's edge]*." The Rathfons could have sought clarification as to the scope of riparian rights awarded to the public through the Road Commission, but they did not. Nor did they appeal the *Rathfon* decision.

By the time that the *Dock* case was initiated in 2008, the Property owners had installed a seawall that extended the water's edge by at least 25 feet. The Dock filed a three-count lawsuit against the Road Commission regarding the strip of "new" land created by the seawall: (1) quiet title, (2) adverse possession, and (3) trespass. In its opposition to the Road Commission's motion for summary disposition, The Dock argued that:

> The Rathfon Opinion does *not* create or convey to the [Road Commission] any riparian rights to Eagle Lake. It simply creates an easement for highway purposes only through and across the land in question—the western boundary of which was set as the "edge" of Eagle Lake, The [Dock] is seeking to quiet title to land which it contends is outside of the easement. This was not litigated in 1956, nor could it have been. In 1956 the lake was 2 to 10 feet from the road. Today because of the break wall, fill and concrete boat ramp, it is over 35 feet from the paved surface. This case seeks to quiet title to land which was under water in 1956.

In response, the Road Commission argued that the claims were barred by res judicata: "[The Dock's] Complaint makes the same claims about the same public road at the same location that were made by [The Dock's] predecessor in title in the case of *Rathfon v Bd of County Road Commissioners* . . . ."

Judge Giguere's final order in the *Dock* case was sparse, succinctly granting summary disposition in favor of the Road Commission on the basis of res judicata "because the same issues and claims were previously litigated by the parties to this action or by their privies in title and were decided in the prior case of *Rathfon v Board of County Road Commissioners*. . . ." However, at the hearing on the motion for summary disposition, Judge Giguere provided more insight into his analysis of the parties' arguments:

> The Defendant claims that the 1956 Decree cuts off any claim of riparian rights at that location by Defendant (sic). Thus, any activity of Plaintiff or its predecessors in title is not located on riparian land of the Plaintiff. Defendant alleges that the 1956 Decree specifically located the edge of Eagle Lake Road, "on the west by the water's edge of Eagle Lake."
>
> Plaintiff, on the other hand, argues that the claim in this case was not brought in that *Rathfon* case because the land in question didn't ever exist in 1956. Plaintiff alleges that it is seeking to quiet title to the Land that is outside of the easement and that this wasn't litigated in 1956 and could not have been litigated in 1956.
>
> At that time, they claim that the lake was two to ten feet from the road. And because of fill at the ramp, the break wall, the water control device, that now the lake is 35 feet or so from the paved surface.
>
> The Plaintiff alleges that this case seeks to quiet title to this land that was under water in 1956. Plaintiff alleges that this claim is impossible to bring in the first case because the action of the filling of the riparian land and installing the break wall was yet to occur. Also, Plaintiff alleges that the opinion in *Rathfon*, did not create or convey to Defendant any riparian rights to Eagle Lake. Plaintiff argues that while Defendant holds an easement over the property, the opinion in Rathfon does not take away the riparian rights of the Plaintiff.
>
> While it is true that the Plaintiff is seeking to quiet title to the land that did not exist in this exact form in 1956, it was the same subject matter.
>
> I believe that this was litigated in 1956 and the same claim was litigated then and result by Judge Moser.
>
> I agree with the Defendant that the Doctrine of res judicata bars Plaintiff's claim and the motion for summary disposition on this basis is granted.

We conclude that the Dock's arguments demonstrate that it was asking the trial court to address the Property's riparian rights. And Judge Giguere's comments indicate that he did. Accordingly, the issue of riparian rights was addressed in *Dock*, and Judge Giguere determined, at

least implicitly, that the *Rathfon* case did indeed "take away the riparian rights of the [Property owner]."

The trial court in the present case correctly noted that the existence of a public roadway between a lot and the water's edge does not impact riparian rights "unless a contrary intention appears in the chain of title." In light of that legal standard, the trial court did not err by concluding that "[b]ased on the multiple prior decisions affecting this property it is clear to the court that there is certainly a contrary intention appearing in the chain of title and has so appeared in the chain of title through court decree for nearly seventy years." Therefore, we affirm the trial court's determination that Four Lakes' claims were barred by res judicata. See *Foster*, 509 Mich at 120.

B. THE *WENDT* DECISIONS

Four Lakes asserts that the trial court's reliance on the *Wendt* decisions as part of its analysis precludes the application of res judicata and constitutes error requiring reversal. We disagree.

Neither party contends that the *Wendt* cases involved the same property or parties. Indeed, the former *Wendt* property is situated just north of the Property, and the Wendts were not predecessors in interest to Four Lakes. Accordingly, the *Wendt* cases cannot serve as a basis to bar the instant case on res judicata grounds. See *Foster*, 509 Mich at 120.

However, the *Wendt* cases did involve a very similar property and very similar issues. In that way, all of the *Wendt* trial court cases have persuasive value, and the Supreme Court's decision in *Wendt II* has a precedential effect on the present case, to the extent that both cases address interferences with public easements. See *Baum*, 488 Mich at 172 (noting that stare decisis should "be strictly observed" in the realm of property law, particularly in instances when past decisions induced extensive reliance).

Unfortunately, the trial court's language in the order in the instant case was not always precise. Accordingly, it is difficult to determine whether the trial court intended to use the *Wendt* cases *correctly* for their persuasive and precedential value—or *incorrectly* as a basis for res judicata. However, any error involving the *Wendt* cases was harmless in light of our determination that the trial court appropriately relied on *Rathfon* and *Dock* to apply res judicata to bar Four Lakes' claims. See *PC v JLS*, 346 Mich App 233, 242; 12 NW3d 29 (2023) (noting that a "trial court's error is harmless if, based on review of the entire record, it is more probable than not that the error was not outcome-determinative") (quotation marks and citation omitted).

IV. FOUR LAKES' REMAINING CLAIMS

Four Lakes argues that there is a substantial dispute of material fact as to Four Lakes' remaining claims of trespass, violation of Equal Protection, and inverse condemnation. We disagree.

Each of Four Lakes' remaining claims would require intentional and unlawful interference with Four Lakes' established property rights. Trespass requires an intentional, "unauthorized direct or immediate intrusion of a physical, tangible object onto land over which the plaintiff has

a right of exclusive possession." *Wolfenbarger v Wright*, 336 Mich App 1, 15; 969 NW2d 518 (2021). The Equal Protection Clause reaches only intentional or purposeful governmental discrimination, exercised without a rational basis for the difference in treatment. See *Midwest Valve & Fitting Co v City of Detroit*, 347 Mich App 237, 257; 14 NW3d 826 (2023).[4] Inverse condemnation is a cause of action against a government entity to recover the value of property that has been effectively taken by the government. *Mays v Snyder*, 323 Mich App 1, 79; 916 NW2d 227 (2018). A "taking" for purposes of inverse condemnation means that the government has permanently deprived the property owner of possession or use of property without formalized condemnation proceedings. *Rafaeli, LLC v Oakland Cnty*, 505 Mich 429, 454; 952 NW2d 434 (2020). To assert a takings claim, a claimant must first establish a vested property right under state law. *Id*. at 455.

As discussed, the *Rathfon* and *Dock* cases established that the public has an easement to the water's edge of Eagle Lake located within the Property. That easement undermines each of Four Lakes remaining claims. Prior courts have already determined that the Road Commission does not commit trespass when it enters the Property to enforce the easement. Accordingly, the Road Commission was authorized to enter the property to remove the boulders from blocking the boat launch, and no factual development can refute this. Additionally, the easement precludes an Equal Protection violation on the facts of this case because the easement provides the government with a rational basis for preventing Four Lakes from installing a private dock or impeding public access to the lake—despite that other property owners on the lake may be able to engage in such conduct. Finally, the easement divests Four Lakes of the right to exclude the public from the use and enjoyment of the lake, such as by erecting a private dock or prohibiting the use of the boat launch. As a result, the Road Commission cannot deprive Four Lakes of a *vested property right* when the Road Commission compels Four Lakes to permit public access to the beach, boat launch, and any potential docks. Therefore, there is no factual basis for a claim of inverse condemnation or an associated writ of mandamus.

To the extent that Four Lakes argues that the easement does not extend to the bottomlands of the Property, that is a legal argument that did not preclude summary disposition. See MCR 2.116(C)(7) and (C)(10); *El-Khalil*, 504 Mich at 159. Moreover, as discussed, that particular legal argument is unavailing. In *Wendt II*, the Supreme Court affirmed that a similar easement on a similar property included "the right of access to the *waters* of the lake and the use and enjoyment thereof." In that case, a fence on the shore—and in the water, attached to the bottomlands—constituted a wrongful interference with the rights of the public to access the waters. *Wendt II* is analogous to the present case. A private dock installed in the bottomlands or an obstruction to the

[4] The Equal Protection clauses of the Michigan and United States constitutions provide that no person shall be denied the equal protection of the law." *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 318; 783 NW2d 695 (2010), citing Const 1963, art 1, § 2 and US Const, Am XIV. "The essence of the Equal Protection Clauses is that the government not treat persons differently on account of certain, largely innate, characteristics that do not justify disparate treatment." *Grimes v Van Hook-Williams*, 302 Mich App 521, 533; 839 NW2d 237 (2013) (quotation marks and citation omitted).

boat launch via boulders in the water similarly constitutes an unlawful interference with the public's easement to the Property in this case.

Therefore, there are no facts that support Four Lakes' remaining claims, and there are no facts that preclude summary disposition on the Road Commission's claim of interference with an easement. Accordingly, the trial court did not err when it granted summary disposition in favor of the Road Commission on each of these claims. See MCR 2.116(C)(7) and (C)(10); *El-Khalil*, 504 Mich at 159.

Finally, to the extent that Four Lakes argues that the easement established in *Rathfon* constituted a taking, the parties did not brief whether the statute of limitations has run on a claim for compensation. However, we conclude that it has.

An inverse condemnation suit is one instituted by a landowner whose property has been taken for public use "without the commencement of condemnation proceedings." *Hart v City of Detroit*, 416 Mich 488, 494; 331 NW2d 438 (1982). When such a taking has occurred, the property owner is entitled to just compensation for the value of the property taken. *Id*. Generally, an inverse condemnation action is subject to one of two statutes of limitation, depending on the plaintiff's ownership interest in the property. When the plaintiff does not maintain an interest in the property and seeks only compensation for a potential taking, the Michigan Supreme Court has determined that the statute of limitations for an inverse condemnation claim is six years. *Id*. at 497, 503 (comparing such a claim to a personal action for damages, for which the six-year statute of limitations is established by MCL 600.5813). However, the *Hart* Court indicated that when the plaintiff maintains an ownership interest in the subject property and seeks to reclaim it, the cause of action would be akin to a claim of adverse possession, for which the proper statute of limitations is 15 years under MCL 600.5801(4). *Id*. at 496, 498-499.

As discussed at length, the Property was divested of its right to make unfettered use of its shore and bottomlands by *Rathfon* in approximately 1956, and that decision was affirmed by the *Dock* in 2010. Assuming arguendo that the easement recognized in *Rathfon* could be considered a government taking, to the extent that Four Lakes seeks compensation for the loss of riparian rights, the appropriate statute of limitations is six years. See *Hart*, 416 Mich at 503. The latest possible determination on this issue was the *Dock* decision in 2010. Four Lakes filed its claims in 2021. Accordingly, the six-year statute of limitations had run, and any claim for government compensation under a theory of inverse condemnation is time barred.

V. THE ROAD COMMISSION'S CLAIM FOR MALICIOUS PROSECUTION

Four Lakes argues that the Road Commission failed to allege that it suffered any special injury that stems from the filing of this lawsuit. Accordingly, the trial court erred when it granted summary disposition in favor of the Road Commission on its claim of malicious prosecution. We agree.

The elements of malicious prosecution of civil proceedings are: (1) [p]rior proceedings [that] terminated in favor of the present plaintiff; (2) [a]bsence of probable cause for those proceedings; (3) [m]alice, defined as a purpose other than that of securing the proper adjudication

of the claim; and (4) special injury that flows directly from the prior proceedings." *Early Detection Ctr, PC, v New York Life Ins Co*, 157 Mich App 618, 627; 403 NW2d 830 (1986).

Regarding special injury, there are three basic types of damages that satisfy this element: (1) injury to one's fame (as by a scandalous allegation), (2) injury to one's person or liberty, and (3) injury to one's property. *Friedman v Dozorc*, 412 Mich 1, 33; 312 NW2d 585 (1981). However, certain other damages have been determined to fall short of special injury, such as attorney fees, court costs, embarrassment, mental anguish, or damage to reputation. *Early Detection*, 157 Mich App at 628.

In its counterclaim, the Road Commission alleged that it "has sustained a special injury as a result of Plaintiffs' actions." The Road Commission did not allege any facts to support its claim of special injury. However, during the hearing on the Road Commission's motion for summary disposition, the Road Commission argued that it suffered a special injury when Four Lakes blocked the boat launch with boulders:

> And then the last element, Your Honor, is a showing of special injury. In addition to the legal fees that the Road Commission has had to incur, which have been substantial, and it really comes out of the taxpayer's pockets in that regard, the blocking of that boat ramp is a special injury; that, and even to the extent that some of these docks may be, but that the actions that Four Lakes took knowing that this was an issue, knowing that the Road Commission in my letter had said you cannot do this, and then unilaterally going in without a permit, without permission, without anything and going in and putting those big boulders in and blocking that ramp; that, Your Honor, creates a special injury.

The trial court stated, "I do find, obviously, that there have been—has been injury as a result of the filing of this." But the trial court did not characterize the injury as "special" or articulate what that special injury was.

We conclude that the record does not support a determination of special injury in this case. Nor do we think that further factual development can support special injury. Despite plenty of opportunity to do so, the Road Commission has not alleged any special injury except the blocking of the boat launch. Four Lakes installed the boulders in 2018, shortly after it purchased the Property. Four Lakes did not file its claim regarding its riparian rights and trespass until 2021. Accepting as true the Road Commission's argument that the boulders created injury to the Road Commission's easement, the placement of the boulders preceded Four Lakes' lawsuit by three years. Therefore, that injury was not "a special injury that flows directly from the prior proceedings." *Early Detection Ctr*, 157 Mich App at 627. Accordingly, the trial court erred by granting summary disposition in favor of the Road Commission on its claim for malicious prosecution.

VI. ATTORNEYS' FEES AS SANCTIONS AGAINST FOUR LAKES

Four Lakes asserts that its failure to prevail on its claims on a basis of res judicata does not render its dispute frivolous under either MCL 600.2591 or the Michigan Court Rules. Therefore,

Four Lakes argues that the trial court abused its discretion when it imposed attorneys' fees sanctions on Four Lakes. We agree.

"Under the general 'American rule,' attorney fees and costs are ordinarily not recoverable unless a statute, court rule, or common-law exception so allows." *Hark Orchids, LP v Buie, No 165761*, ___ Mich ___; ___ NW2d ___ (2024) (Docket No. 165761) (quotation marks and citation omitted). At common law, this Court has repeatedly recognized that a trial court has inherent authority to impose sanctions—including the imposition of attorneys' fees—on the basis of the misconduct of a party or an attorney. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639; 607 NW2d 100 (1999). By statute and court rule, attorneys' fees are permitted as sanctions when a trial court finds that a lawsuit was frivolous. MCL 600.2591; MCR 1.109(E). For an action or defense to be considered "frivolous," at least one of the following conditions must be met:

> (i) The party's primary purpose in initiating the action . . . was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit. [MCL 600.2591(3)(a).]

In this case, defendants sought sanctions under MCR 1.109(E) on the basis that Four Lakes' lawsuit was frivolous. The trial court did not expressly characterize the filing of the lawsuit as frivolous, and the record does not support such a determination. To the contrary, Four Lakes has repeatedly asserted—and the record indicates—that Four Lakes' primary purpose in filing its lawsuit was to settle the scope of its property rights.[5] And although we have determined that the trial court correctly applied the doctrine of res judicata, we acknowledge that the prior cases were not so obvious regarding the Property's right to a private dock that Four Lakes' claims were devoid of legal merit. See MCL 600.2591(3)(a). Therefore, the trial court's decision to impose sanctions for the filing of this action was "outside the range of reasonable and principled outcomes." *Khouri*, 481 Mich at 526; 751 NW2d 472 (2008).

VII. CONCLUSION

We affirm the trial court's April 20, 2024 order granting summary disposition in favor of the Road Commission on Four Lakes' claims. We also affirm the portion of the trial court's August 20, 2024 order granting summary disposition in favor of the Road Commission on its claim for interference with easement, as well as prohibiting Four Lakes from (1) engaging in any action that would interfere with the Road Commission's easement; (2) blocking the boat ramp or placing no

[5] Four Lakes presented evidence in the trial court that former Property owners charged the public to access the boat launch, which supports our conclusion that Four Lakes asserted its claim to a private dock in good faith. We note, though, that the trial court did not base any of its determinations on this evidence.

trespassing signs on the Road Commission's easement; and (3) erecting seasonal docks in front of its property without obtaining proper permits from the Road Commission.

However, we vacate the portion of the trial court's August 20, 2024 order granting summary disposition to the Road Commission for malicious prosecution, and we grant summary disposition in favor of Four Lakes on this claim pursuant to MCR 2.116(I)(2). We further vacate the portion of the August 20, 2024 order allowing the Road Commission to recover its reasonable attorneys' fees and costs.

Affirmed in part; vacated in part.

/s/ Michelle M. Rick
/s/ Colleen A. O'Brien
/s/ Allie Greenleaf Maldonado