IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

BRADLEY GEISE and SARAH GEISE,

Plaintiffs,

v. CASE NO. 2021-CA-11826-O

PETER FLECK and KARI FLECK,

Defendants.
_____/

Amended Final Judgment

This action came before the Court for a non-jury trial on April 2, 3, and 4, 2024. After entry of the original Final Judgment on August 2, 2024, Plaintiffs filed a Motion for Rehearing and Clarification. A hearing on that motion was held on December 9, 2024. This Amended Final Judgment is issued in accordance with the Court's Order on Plaintiffs' Motion for Rehearing and Clarification.

The Court has heard and weighed the testimony of Bradley Geise, Peter Fleck, Dr. Tony Nettleman, and the stipulated testimony of a witness from the Florida Department of Environmental Protection.[1] The Court has also carefully considered the documentary evidence admitted. Having considered the evidence and law, the Court finds and concludes as follows.

1. **Background**

This action arises from a dispute between neighbors. Twenty-five years ago, Peter and Kari Fleck acquired title to property located at 10820 Wonder Lane,

[1] Plaintiffs made a *Daubert* challenge to the expert testimony of Defendants' expert George C. Young, Jr. The Court reserved ruling on the challenge and permitted the testimony to be taken subject to the Court's ruling on the issue. Having considered Plaintiffs' *Daubert* objection, the Court agrees with Plaintiffs that Young's testimony does not satisfy the *Daubert* standard and the requirements of section 90.702, Florida Statutes. Young's testimony is rejected. His testimony does not inform the Court's findings and conclusions.

Windermere, Florida 34786. A home was on the property when the Flecks purchased it, and they have resided there ever since. The Fleck property borders Lake Down. When they purchased the property, it included a dock extending from the Fleck property into Lake Down. The dock included a boathouse. In fact, photographic evidence shows the existence of a dock/boathouse dating back to at least 1983 in the same location.

The Fleck's original dock/boathouse was torn down in approximately 2001 to build a new dock and boathouse. This work was performed under Florida Department of Environmental Protection Notification of Exemption Request No. 48-174184 ("DEP Exemption") issued to Mr. Fleck on September 19, 2000. The DEP Exemption contained the following condition:

> In the event that any part of the structure(s) consented to herein is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, [you] agree to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of adjudication. Failure to comply shall constitute a material breach of this consent and shall be grounds for termination.

Eighteen years after the Flecks purchased their property, Sarah Geise acquired title to the neighboring property located at 10828 Wonder Lane, Windermere, Florida 34786 on August 30, 2017. When she acquired the property, it was an empty lot with no dwelling. Sarah Geise was engaged to Bradley Geise at the time, and they intended to build a home on the property upon their marriage. On October 15, 2018, Sarah deeded the Geise property to the Geises as tenants by the entirety. Like the Fleck property, the Geise property borders Lake Down. The Geises built a home and a dock/boathouse of their own.

The Geises complained to the Flecks, DEP, and the Orange County Environmental Protection Division (EPD) about their concerns with the Flecks' dock/boathouse. As a result of compliance and other issues raised by the DEP and the EPD, the Flecks removed and reconstructed the dock in the 2019-2020 timeframe. In connection with this second rebuild, the Flecks (1) reconfigured the boathouse to

allow for water dependent activities by opening the floor and creating a boat slip, (2) installed a boat lift, (3) altered the boathouse layout and added a platform, (4) added pilings to support the new design, (5) relocated the northern wall to allow for a stairwell to a new second story deck and railing which created a larger roof line, (6) further enclosed what was a porch like area at the southwest corner of the boathouse structure, and (7) added two barn doors to the southern portion of the expanded boathouse structure. The result was the structure that still exists today. There is also a mooring area on the west side of the dock where the Flecks store a pontoon boat.

There was some dispute at trial regarding whether the rebuilt dock/boathouse was in the same footprint as the original dock. As it turns out, that issue is essentially not relevant to the issue for the Court's determination – interference with riparian rights. That said, the dock/boathouse was found by EDP to be within the original footprint as set forth in Defendants' Exhibit 10 as follows:

> - The dimensions of the "grandfathered" structure on the plans submitted in the original dock application (BD-00-235) were incorrect and appear to be for the boathouse only (does not appear to include the original decking surrounding the boathouse).
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> * * * *
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> - The replacement boathouse was built larger than the original, however the footprint is consistent with the grandfathered dock's original size and this configuration was approved in a March 2002 compliance inspection.

The construction of the new dock/boathouse culminated with a letter from the DEP in June of 2022 indicating that the structure was now considered compliant with the DEP rules and regulations as it was determined to be a water dependent type structure.

The Geises assert five claims for relief in this action. The first four all relate to allegations that the dock/boathouse interferes with their riparian rights. Count I is for ejectment; Count II is for trespass; Count III seeks declaratory relief; and Count IV seeks injunctive relief. At trial, the Geises confirmed that they are not seeking damages but only declaratory and injunctive relief. They seek to require the Flecks

to "remove those portions of the dock and mooring area that extend into Plaintiffs' riparian rights." (Complaint at pg. 10). Count V is a claim for injunctive relief regarding the Flecks' installation and usage of a floodlight. The facts giving rise to that claim are discussed more fully below.

2. The Nature of Riparian and Littoral Rights

Technically speaking, this action involves littoral rights (not riparian rights). Riparian rights refer to rights of landowners that abut rivers and streams, while littoral rights refer to rights of landowners abutting navigable oceans, seas, or lake waters. *Brannon v. Boldt*, 958 So. 2d 367, 372 n.3 (Fla. 2d DCA 2007). However, it has been considered "accepted usage in Florida cases" to simply use "riparian." *Id.* The terms will be used mostly interchangeably in this Judgment. "Upland owners have common law littoral rights, including: (1) the right to have access to the water; (2) the right to reasonably use the water; (3) the right to accretion and reliction; and (4) the right to the unobstructed view of the water." *BB Inlet Prop., LLC v. 920 N. Stanley Partners, LLC*, 293 So. 3d 538, 543 (Fla. 4th DCA 2020) (internal quotations omitted). One other recognized littoral right is the right to erect a dock subject to lawful regulation.[2] *Id.*

These rights "are easements under Florida common law." *Id.* The right of access and use are affirmative easements, while the right to a view is a negative easement. *Walton Cnty. v. Stop Beach Renourishment, Inc.*, 998 So. 2d 1102, 1112 (Fla. 2008). An easement is "not an estate in land; it is an incorporeal hereditament." *Platt v. Pietras*, 382 So. 2d 414, 416 (Fla. 5th DCA 1980). "Riparian rights are property rights," but they are "incorporeal interests in real estate." *Belvedere Dev. Corp. v. Dep't of Transp., Div. of Admin.*, 476 So. 2d 649, 653 (Fla. 1985).

Blackstone described the concept of an incorporeal hereditament as follows:

> An incorporeal hereditament is a right issuing out of a thing corporate (whether real or personal) or concerning, or annexed to, or exercisable

[2] Riparian rights have also been codified. "Riparian rights are those incident to land bordering upon navigable waters." § 253.141(1), Fla. Stat. The rights include "ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law." *Id.* These rights inure to the owners of the land but they "are not proprietary in nature." *Id.*

> within the same. It is not the thing corporate itself, which may consist in lands, houses, jewels, or the like; but something collateral thereto, as a rent issuing out of those lands or houses, or an office relating to those jewels. In short, as the logicians speak, corporeal hereditaments are the substance, which may be always seen, always handled: incorporeal hereditaments are but a sort of accidents, which inhere in and are supported by that substance; and may belong, or not belong to it, without any visible alteration therein. Their existence is merely in idea and abstracted contemplation; though their effects and profits may be frequently objects of our bodily senses. And indeed, if we would fix a clear notion of an incorporeal hereditament, we must be careful not to confound together the profits produced, and the thing, or hereditament, which produces them.

Blackstone, II *Commentaries on the Laws of England* (11th ed. 1791). Thus, riparian and littoral rights are property rights to use and enjoy the adjoining water. But they are not territorial or "real property" in the traditional sense. And "we must be careful not to confound together [the benefits of exercising the rights], and the [upland property] which produces [the rights]." *Id.*

Consistent with this understanding, the Florida Supreme Court in *Hayes v. Bowman*, 91 So. 2d 795 (Fla. 1957), rejected the notion that riparian rights could be decided by resorting to mathematical or geometrical rules. There, unlike here, the court considered a dispute between a riparian owner and a submerged landowner (not two riparian owners). Both sides took competing positions that relied upon the drawing of boundary lines to decide the territorial scope of the riparian rights. *Id.* at 801. But the court stated:

> It is absolutely impossible to formulate a mathematical or geometrical rule that can be applied to all situations of this nature. The angles (direction) of side lines of lots bordering navigable waters are limited only by the number of points on a compass rose. Seldom, if ever, is the thread of a channel exactly or even approximately parallel to the shoreline of the mainland. These two conditions make the mathematical or geometrical certainly implicit in the rules recommended by the contesting parties literally impossible.

Id.

The Florida Supreme Court emphasized that its precedents were "completely inconsistent" with the view that riparian "rights extend over an area measured by lines at right angles to the Channel." *Id.* at 802. Because riparian rights "are appurtenances to ownership of the uplands" and "not founded on ownership of the submerged lands," the "area within which the rights are to be enjoyed" cannot be defined "with mathematical exactitude or by a metes and bounds description." *Id.* Rather, "riparian rights to an unobstructed view and access to the Channel over the foreshore across the waters toward the Channel must be recognized over an area as near 'as practicable' in the direction of the Channel so as to distribute the submerged lands between the upland and the Channel." *Id.* at 801. This is an "equitable" determination that must be made by giving "due consideration to the lay of the upland shore line, the direction of the Channel and the co-relative rights of adjoining upland land owners." *Id.* at 802.

More recently, the Fifth District Court of Appeal reiterated the skepticism to claims that riparian rights can fixed by "riparian boundaries" or "riparian lanes." *Marlowe v. City of St. Augustine*, 369 So. 3d 356 (Fla. 5th DCA 2023). Relying on *Hayes*, the court recognized that "there is no exclusive right to any geometrically drawn 'riparian lane.'" *Id.* at 367. To be sure, *Marlowe*'s holding was merely that the trial court erred by concluding that "the fact that [one owner's] property is not directly adjacent to [another owner's] property does not show, beyond a genuine dispute of material fact, that a determination of [the latter's] riparian rights could not possibly affect the [former's] own riparian rights." *Id.*at 368. Thus, *Marlowe* is not binding here. However, the court's skepticism of "riparian surveys," "riparian boundaries," and "riparian lanes," represents Florida's latest judicial expression of doubt regarding whether such a precise territorial inquiry is appropriate when considering riparian rights.

How, then, is a court to assess competing riparian claims when (as here) the dispute is between two riparian owners? The answer is a framework that assesses whether one riparian owner's use unreasonably interferes with another riparian owner's use. "[E]ach riparian owner has the right to use the water in the lake for all

lawful purposes, so long as his use of the water is not detrimental to the rights of other riparian owners." *Taylor v. Tampa Coal Co.*, 46 So. 2d 392, 394 (Fla. 1950); *see also Ferry Pass Inspectors' & Shippers' Ass'n v. White's River Inspectors' & Shippers' Ass'n*, 48 So. 643, 645 (Fla. 1909) (riparian "rights may not be so exercised as to injure others in their lawful rights."). Florida applies "the rule that when one's lawful use for such purposes as fishing, recreation and irrigation is unreasonably interfered with, the owner of riparian rights . . . will have the remedy of injunction." *Duval v. Thomas*, 107 So. 2d 148, 153 (Fla. 2d DCA 1958). In other words, when a use "amounts to transgression of the rights of his neighbors, the violation can be remedied by recourse in the courts." *Duval v. Thomas*, 114 So. 2d 791, 794 (Fla. 1959); *see also Conrad v. Whitney*, 141 So. 2d 796, 798 (Fla. 2d DCA 1962) ("Each owner of riparian rights is entitled to the reasonable use of the lake, and where an owner's lawful use is unreasonably interfered with, the owner is entitled to injunctive relief."). The question for the Court here is whether the Flecks' dock/boathouse unreasonably interferes with the riparian rights of the Geises.[3]

The Geises contend that the Court is required to draw riparian boundary lines. While ably argued, the Court is not convinced. The Geises cite several cases to support the view that a line in the water must be drawn. First, they cite *Worth v. City of West Palm Beach*, 132 So. 689 (Fla. 1931). The "line where riparian rights begin" referred to in the case is the upland property boundary line and not a "riparian line." *Id.* at 689-90.

Second, they cite *Board of Commissioners of Jupiter Inlet District v. Thibadeau*, 956 So. 2d 529 (Fla. 4th DCA 2007). There, the court concluded that a

[3] The Flecks contend that that the interference must "substantially and materially" effect the Geises' riparian rights before relief may be awarded. However, this "substantial and material" formulation appears to be derived from takings (inverse condemnation and eminent domain) cases. *See Lee Cnty. v. Kiesel*, 705 So. 2d 1013, 1015-16 (Fla. 2d DCA 1998); *Palm Beach Cnty. v. Tessler*, 538 So. 2d 846, 849 (Fla. 1989) (requiring a substantial loss of access). As far as the Court can tell, this formulation has not been used in non-takings cases. That said, this is mostly semantics. The requirement for an "unreasonable" interference encompasses similar considerations to an assessment of materiality and substantiality. And the Florida Supreme Court has made clear that it is a holistic and equitable determination. Thus, the *degree* of the alleged interference is an appropriate consideration for the Court. But the Court is operating under the "unreasonable interference" standard.

special inlet district lacked standing to challenge the issuance of a residential dock permit by the DEP on grounds that the permit did not comply with a regulatory riparian line setback requirement. That setback requirement, discussed more below, is an administrative permitting requirement. Nothing in *Thibadeau* suggests that a court must divvy up riparian zones.

Third, the Geises cite *Gillilan v. Knighton*, 420 So. 2d 924 (Fla. 2d DCA 1982). *Gillilan* concerned a riparian right not at issue here – "the right to additional lands formed by accretions or relictions." *Id.* at 925. The trial court was engaged in the process of equitably apportioning (between two riparian owners) lands formed by accretion or reliction. Lands formed by accretion are *real* property that requires a boundary, not riparian rights that attach to real property ownership. The boundary lines that were to be drawn were not "riparian lines," but traditional property lines.

Fourth, the Geises cite *Johnson v. McCowen*, 348 So. 2d 357 (Fla. 1st DCA 1977). There, the parties were adjoining waterfront owners. The action was filed for a declaratory judgment because "the lot had increased in area as the result of natural accretion and, therefore, a portion of the accretion was their property." *Id.* at 358. The trial judge "established the seaward boundary lines between the parties." *Id.* In this sense, the case is the same as *Gillilan* – a determination of real property lines following natural accretion. But the trial court also established a line "defining the littoral rights of the parties." *Id.* at 360. That said, there is no indication that the party challenging this line made any arguments that a line "defining the littoral rights" was not a proper manner for assessing infringements to riparian rights. And the case did not involve an alleged infringement at all. It was a classic boundary line dispute, resulting from accretion.

It is one thing to affirm a trial court's drawing of a line as an appropriate equitable result and quite another to conclude that line drawing was required. The *Johnson* court reiterated that the "aim of all rules applied to the rights of adjoining littoral proprietors on an irregular shore is to give each, as far as may be, a fair and reasonable opportunity of access to the channel." *Id.* at 360. The court discussed the goal "to give each proprietor a fair share of the land and to secure to him convenient

access to the water from all parts of his land by giving him a share of the outward line proportioned to a share of the line of the original shore owned by him." *Id.* It is clear that this is referring to apportioning the increased land resulting from accretion (not the submerged land). Like *Gillilan*, *Johnson* is primarily a case about the littoral right to lands formed by accretions and how to apportion those lands. The Court concludes that *Johnson* does not require littoral line drawing out into the sovereign submerged land.

Lastly, the Geises rely on *Hayes* itself. Specifically, they point to the language providing that an "equitable distribution" should be made. 91 So. 2d at 802. But a closer look at *Hayes* demonstrates that "equitable distribution" does not necessarily mean drawing riparian lines. Unlike here, the case involved a dispute between a private submerged landowner and an upland riparian rights owner. The private owner proposed to dredge and fill its submerged land. *Id.* at 798. The riparian owners claimed this would infringe on their riparian rights to view and access. *Id.* The court recognized the general principle that submerged landowners "must so use the land as not to interfere with the recognized common law riparian rights of upland owners." *Id.* at 799. Below, the chancellor resolved the case via a summary final decree in favor of the submerged landowner. *Id.* at 798. Specifically, the chancellor "held that the [submerged landowner] had not encroached upon or threatened to encroach upon appellants' right of view or right of approach to the Channel. . . ." *Id.* at 801. There is no indication that the chancellor adopted a riparian boundary or drew any riparian lines. The Florida Supreme Court affirmed, concluding that the riparian owners "still have a direct, unobstructed Channel, as well as a direct and unobstructed means of ingress and egress to the Channel of the Bay." *Id.* The fact that the riparian owners would "be deprived of the 'bright, white tower of Stetson Law School'" was not a special riparian right. *Id.*

It was in this context that the Florida Supreme Court rejected the riparian owners' claim of entitlement to "an unobstructed view toward the Channel over a corridor measured by extending their northeasterly-southwesterly lot lines directly to the Channel." *Id.* at 801. And the court also rejected the submerged landowners'

assertion that the "corridor is to be bounded by imaginary lines drawn at right angles from the thread of the Channel to the corners of [the owners'] lot." *Id.* at 801. Critically, the court did not send the case back to the chancellor to draw riparian lines. The court affirmed the chancellor's summary final decree. The chancellor did "no violence to the rights of [the riparian owners]" because "[t]hey still may enjoy their riparian rights over the waters . . . in an area as 'near as practicable' of the Channel with a resulting equitable distribution . . . ." *Id.* at 802. The critical point from *Hayes* is this: because "littoral or riparian rights are appurtenances to ownership of the uplands . . . . we cannot define the area within which the rights are to be enjoyed with mathematical exactitude or by a metes and bounds description." *Id.*

Nor have the Geises cited any statute mandating that the Court draw a territorial riparian boundary. In a supplemental authority filing, they cite to Article V, section 20(c)(3) of the Florida Constitution and section 26.012(2)(g), Florida Statutes for the proposition that circuit courts have exclusive jurisdiction in actions involving titles and boundaries of real property. These citations beg the question, however. Of course, circuit courts have exclusive jurisdiction over the boundaries of real property. But riparian rights that attach to the upland properties are not themselves real property. To be sure, they are property rights. But they are rights of access and use that are appurtenant to the real property.

The only legal text identified by the Geises that directly addresses the concept of a riparian line is in the Florida Administrative Code. Specifically, rule 18-21.004(3)(d) provides that "all structures . . . must be set back a minimum of 25 feet inside the applicant's riparian rights lines." This is a regulatory requirement for regulatory consideration in approving or rejecting applications for activities on sovereign submerged land. It does not purport to require (nor could it) a court to draw "riparian rights lines." Notably, the subsection immediately before (3)(d) provides that "structures and other activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent

upland riparian owners." Fla. Admin. Code. R. 18-21.004(3)(c). This parrots the standard that has been applied by Florida courts and is being applied here.

The administrative decisions cited by the Geises[4] support the notion that the DEP will not itself draw a riparian line to determine whether the administrative setback requirement is met. The agency will not do so under the view that only courts can draw such lines. "Although the agency's rules require a 25-foot setback of a dock (10-foot setback for marginal docks) from the applicant's riparian rights line, the agency does not measure the setback of a dock by that rule unless there has already been a determination of a riparian rights line by a court of law." *Hageman*, 1995 WL 812077 at *14. Apparently, however, the agency may still approve applications when an applicant provides "reasonable assurances that the proposed dock will be located within the required twenty-five foot setback (if no exceptions apply), and that . . . the structure will not 'unreasonably infringe upon' or 'unreasonably interfere with' traditional common law riparian rights of upland owners." *Thibadeau*, 2005 WL 2293491, at *7. These administrative decisions, like rule 18-21.004 itself, are not authority for the proposition that a court must draw riparian boundaries in circumstances like the one presently before the Court.

Moreover, it is not clear why an agency charged with enforcing permitting requirements cannot determine whether its own regulatory requirements are met before approving or rejecting an application. And, if a party believes an agency determination is erroneous, they would have an avenue for judicial review under the Administrative Procedure Act. *See* § 120.68(1)(a), Fla. Stat. ("A party who is adversely affected by final agency action is entitled to judicial review."). For example, *Parlato v. Secret Oaks Owners Association*, 793 So. 2d 1158 (Fla. 1st DCA 2001) involved an appeal from a final administrative order denying an application to build a dock. The final administrative "order adjudicate[d] an issue of law concerning the riparian rights of the parties." *Id.* at 1162. The court reversed the administrative order, not because the agency had no authority to adjudicate the relative riparian rights, but

[4] *See Bd. of Comm'rs. of Jupiter Inlet Dist. v. Thibadeau*, 2005 WL 2293491 (Fla. Dept Ent'l Prot.) and *Hageman v. Dept of Envt'l Prot.*, 1995 WL 812077 (Fla. Dept. Envt'l Prot.).

because the agency got the issue wrong. There is no suggestion in the opinion that the agency acted improperly in adjudicating riparian rights. But, because the issue was one of law, the First DCA reviewed the decision *de novo* and determined that the agency's assessment of rights was wrong on the merits.

In sum, the Court maintains that the proper inquiry is whether one riparian owner's exercise of his rights unreasonably interferes with another riparian owner's rights. To the extent that a riparian boundary is ever appropriate, it would only become necessary in contexts where there is an unreasonable interference. At that point, a court may have occasion to assess an appropriate territorial area over which certain riparian rights may be exercised. But when the riparian rights themselves are not sufficiently infringed upon, drawing lines is an unnecessary exercise. *See Potter v. Crawford*, 797 A.2d 489, 493 (R.I. 2002) ("Consequently, we conclude that even if his 'riparian boundary' had been infringed upon, there was no showing that his 'riparian rights' in fact had been adversely affected despite that infringement.").

The Court declines the invitation to render corporeal what is incorporeal. Rather, the Court will take an equitable view of the evidence to determine whether the dock/boathouse (as it exists today) unreasonably interferes with the Geises' littoral rights of access and view.

3. **Right of Access (Ingress and Egress)**

The Court rejects the Geises' claim that the Flecks' dock/boathouse unreasonably interferes with their right of access (ingress, egress, boating, bathing, etc.). In weighing the evidence, the Court finds that the Fleck dock/boathouse and the associated mooring area do not unreasonably interfere with the Geise's riparian rights to ingress or egress.

The Flecks' dock/boathouse does not obstruct or interfere with the Geises' ability to swim in Lake Down from their beach, access Lake Down from their property, or to go in and out of Lake Down by boat or jet ski from their property. In short, the testimony of Mr. Fleck and Mr. Geise shows that the Flecks' dock/boathouse does not interfere with the Geises' ability to navigate into and out of Lake Down. These findings of fact are supported by the testimony of Mr. Geise who admitted that

the Geises own a boat, jet ski, and boathouse with a boat hoist which are located at the end of a dock protruding from the Geise Property.

The Geises are able to walk from their house, to their pool, onto their beach, onto their dock, into their boathouse, let their boat down into Lake Down from their boat hoist, back their boat out of their hoist, and go boating on Lake Down without the Fleck dock/boathouse obstructing or otherwise interfering with the Geises' ability to do so. The Flecks' dock/boathouse does not obstruct or interfere with the Geises' ability to navigate from Lake Down back into their boat hoist within their boathouse, and return to their upland property. Furthermore, photographic evidence shows that the Flecks' boathouse does not obstruct or interfere with the Geises' ability to access Lake Down from the Geises' boathouse or the Geise property. *See* (Defendants' Exhibit 67).

In short, the Flecks dock/boathouse does not unreasonably interfere with the Geises riparian rights of access to Lake Down.

4. Right to a View

While a closer call, the Court likewise concludes that the Flecks have not unreasonably interfered with the Geises' right to an unobstructed view of Lake Down. To understand this conclusion, it is important to emphasize the size of Lake Down and the location of the properties in relation to the lake. The Geises and Flecks live on the northwest corner of the lake where it bends. And the positioning of the properties renders it inevitable that any dock or boathouse can be seen when looking into the lake. Certainly, if you look right at the boathouse, you cannot see the lake beyond it. But there is ample lake to be seen from the Geises' property.

The Flecks' dock/boathouse was observed in its present location in 2017 by the Geises when they walked the property before Sarah Geise eventually purchased the property in 2017. The Restricted Use Easement permitted the Geises to build their own dock and boat hoist. The Restricted Use Easement preserves an area of view from the Geise property permanently toward Lake Down. The Geises home (including their pool and outdoor beach area) is oriented towards Lake Down and not towards the Flecks' dock/boathouse. Specifically, the home is oriented to the Geise boathouse

and the other neighbor's (the Anouges) boathouse. *See* (Defendants' Exhibit 9, Plaintiffs' Exhibit 47, and Defendants' Exhibit 67).

The Geises' claim that they are entitled to a view to the center of the lake. This is presumably based on the *Hayes* court's discussion of a right to a view "over an area as near 'as practicable' in the direction of the Channel . . . ." *Hayes*,, 91 So. 2d at 801. But the Geises' property is not located on a channel and does not face a channel. It is located on and faces the open waters of Lake Down. They have an excellent view that is not unreasonably interfered with by the Flecks' boathouse. And the Court is not aware of any authority requiring an unobstructed view to the center of the lake. But, even if that were the case, the Geises have a view to the center of the lake that is not unreasonably obstructed.

Assessing the question of view is a challenge, and the precedents recognize the inexactness of the inquiry. With respect to whether the Flecks' dock/boathouse unreasonably interferes with the Geises' view of Lake Down, this Court must balance the equities and co-relative rights of the Geises, the Flecks, and adjoining property owners. Having done so, the Court finds that the Fleck dock/boathouse does not unreasonably interfere with the Geises' right to an unobstructed view of Lake Down.

5. The Equities of Mandatory Injunctive Relief

On this record, the Court concludes that the Geises are not entitled to the requested mandatory injunctive relief of removal of the Flecks' boathouse. "The decision to grant or deny injunctive relief rests largely in the sound judicial discretion of the trial court." *Davis v. Joyner*, 409 So. 2d 1193, 1194 (Fla. 4th DCA 1982). In short, the traditional requirements for injunctive relief (including the balancing of the equities) must be satisfied.

Special care must be taken when a party seeks a mandatory injunction requiring the removal of an encroachment. "The remedy of a mandatory injunction for removal of encroachments is a drastic one and should be granted only cautiously and sparingly, depending in each controversy upon circumstances peculiar to it." *City of Eustis v. Firster*, 113 So. 2d 260, 263 (Fla. 2d DCA 1959). "Mandatory injunctions are looked upon with disfavor," and should only be granted "'in situations which so

clearly call for it as to make its refusal work real and serious hardship and injustice.'" *Johnson v. Killian*, 27 So. 345, 346 (Fla. 1946) (quoting *Lyons v. Walsh*, 101 A. 488, 490 (Conn. 1917)).

The drastic relief sought here – a mandatory injunction requiring the removal of a boathouse that has existed in some form since at least 1983 – is not warranted when balancing the equities of the case. The Court appreciates that the boathouse is not quite the same boathouse that existed in 1983, but its footprint is basically the same. And its footprint is the same as when the Geises purchased their empty lot to build their home. They knew about the boathouse but still chose this lot to build their home and their boathouse.

To be sure, the Geises took actions to attempt to have the Flecks' boathouse removed including complaints to regulatory authorities and this lawsuit. But the Court cannot say that the refusal of a mandatory injunction is necessary to avoid "serious hardship and injustice." *Johnson*, 27 So. 3d at 346. The Geises have access to Lake Down and a view of Lake Down. The degree of imposition caused by the Flecks' dock/boathouse, even if it crossed the line to become an interference with the Geises' riparian rights, would not warrant the drastic relief of a mandatory injunction to remove the dock/boathouse. *See Freed v. Miami Beach Pier Corp.*, 112 So. 841 (Fla. 1927) (concluding that the inconvenience of an adjoining riparian owner's pier did "not constitute such an injury to substantial rights of the complainant as would warrant relief by injunction sought after defendant had made large expenditures under permits, there being no showing that the pier is inherently injurious to the rights of complainant.").

6. Floodlight Nuisance Claim

Count V of the Geises' Complaint does not turn on riparian rights. The Geises assert that the Flecks "installed or otherwise engaged a flood light on the southwest corner of their dock . . . aimed directly at the dwelling on the Geise Property." (Complaint at ¶ 79). They claim that the light constituted a nuisance.

The evidence presented at trial proves this allegation. After receiving a demand letter from the Geises, they engaged the floodlight. And the light illuminated

into the Geises' home. When engaged, the floodlight turns on and off several times in a minute and shines light onto the Geise property and into the back of the Geises' home. The floodlight illuminates no portion of the Fleck property. Exhibits introduced at trial show that the floodlight does not even illuminate as far as the northwest portion of the pontoon boat moored to the west of Fleck Dock 3. This is true even though Mr. Fleck testified that the purpose of the floodlight is to purportedly deter otters from getting onto the pontoon boat moored to the west of the boathouse. The Court rejects Mr. Fleck's testimony regarding his purported reasoning for the light. Mr. Fleck admitted that there is no floodlight on any other portion of the Flecks' boathouse and that the light could be relocated and still serve his purported purpose for the light (i.e. keeping otters off of the pontoon boat).

A private nuisance is an unreasonable interference with another's use and enjoyment of real property. *Jones v. Trawick*, 75 So. 2d 785, 787 (Fla. 1954) (recognizing that "the law of private nuisance is bottomed on the fundamental rule that every person should so use his own property as not to injure that of another" and that anything "which annoys or disturbs one in the free use, possession, or enjoyment of his property, or which renders its ordinary use or occupation physically uncomfortable, is a nuisance and may be restrained" (internal quotations omitted)). There are four basic elements of a private nuisance. First, the plaintiff had a property interest affected by the nuisance. *Page v. Niagara Chem. Div. of Food Mach. & Chem. Corp.*, 68 So. 2d 382, 384 (Fla. 1953). Second, the defendant interfered with the plaintiff's use or enjoyment of its property, which can include intangible interferences, such as noise or light. *State ex rel. Pettengill v. Copelan*, 466 So. 2d 1133, 1135 (Fla. 1st DCA 1985); *see also Roebuck v. Sills*, 306 So. 3d 374, 377 (Fla. 1st DCA 2020) (holding that neighbor's exterior lighting which would come on throughout the night and shine outside plaintiff's bedroom window created a common law nuisance). Third, the interference was unreasonable. *Beckman v. Marshall*, 85 So. 2d 552, 555 (Fla. 1952); *see also Durrance v. Sanders*, 329 So. 2d 26, 29 (Fla. 1st DCA 1976) (noting that reasonableness of the interference does not require intentional conduct or other facts showing the defendant's state of mind). Fourth, the

interference caused harm to the plaintiff, where the plaintiff suffered damages and the defendant's interference was the proximate cause of those damages. *See Roebuck*, 306 So. 3d at 378.

The floodlight appears to serve no legitimate purpose and was engaged following receipt of a demand letter. The testimony established that at no time prior to the Flecks' receipt of the letter from the Geises' attorney regarding the alleged violation of the Geises' riparian rights was the floodlight engaged. The floodlight is positioned such that it provides little, if any, benefit to the Fleck property. Instead, it is positioned in a matter that shines a light into the back of the Geises' home (including their kitchen, living room, master bedroom and daughter's bedroom). This unreasonably interferes with the Geises' use and enjoyment of their home (without their consent) and is the proximate cause of this harm. The Geises met their burden of establishing that the Flecks created a nuisance by engaging the light.

That said, the Court ultimately declines relief. The Geises request injunctive relief only. And the evidence was clear that the Flecks stopped engaging the light shortly after the lawsuit was filed and have not done so since. There "can be no finding of irreparable harm where there is no continuing threat of injury or any indication that harm will come in the future." *The Stephan Co. v. Faulding Healthcare (IP) Holdings, Inc.*, 844 So. 2d 676, 678 (Fla. 4th DCA 2003). It is also true that a "voluntary cessation of wrongful conduct does not necessitate a denial of injunctive relief against acts presently discontinued." *Sarasota Beverage Co. v. Johnson*, 551 So. 2d 503, 509 (Fla. 2d DCA 1989). But there still must be a showing "that there is a reasonable well grounded probability that such course of conduct will continue in the future." *Dolgencorp., Inc. v. Winn-Dixie Stores, Inc.*, 2 So. 3d 325, 328 (Fla. 4th DCA 2008) (citations omitted). No such showing was made here.

In sum, the floodlight issue is "as a practical matter, moot." *Id.* The Flecks conduct was discontinued shortly after this action was filed and has not continued since. The Court does not condone the conduct in any sense. And given the Court's conclusion that the conduct constituted a nuisance, the Flecks would certainly be wise

to avoid it in the future. But the extraordinary remedy of an injunction is not warranted at this time.

7. Conclusion

In sum, the Court concludes as follows:

a. The Flecks' dock does not unreasonably interfere with the Geises' riparian rights of access to Lake Down or a view of Lake Down.

b. Even if the Geises established an interference with their riparian rights, the Court would decline to award the mandatory injunctive relief sought based on the balancing of the equities.

c. Judgment is entered in favor of Defendants and against Plaintiffs with respect to Count I (ejectment), Count II (trespass), Count III (declaratory relief), and Count IV (injunctive relief).

d. The engagement of the floodlight towards the Geises' residence constituted a nuisance.

e. Injunctive relief relative to the floodlight is not appropriate given the discontinuation of the conduct and absence of evidence showing a well-grounded probability that it will continue. Count V (injunctive relief) is denied.

f. The Court reserves jurisdiction to consider any timely filed motions under Florida Rule of Civil Procedure 1.525. Untimely motions will not be considered.

g. This Amended Final Judgment concludes the Court's judicial labor in this action. The Clerk is **directed** to close this case.

DONE AND ORDERED in Orange County, Florida on February 13, 2025.

eSigned by Eric J Netcher 02/13/2025 15:36:56 BJKIG6wA

Eric J. Netcher
Circuit Judge

Certificate of Service

The Court certifies that this Order was electronically filed and served to all counsel of record via the Florida Court's e-Filing Portal on February 13, 2025.