

STATE OF MICHIGAN
COURT OF APPEALS

JOAN M. GLASS,

Plaintiff-Appellee,

v

RICHARD A. GOECKEL and KATHLEEN D.
GOECKEL,

Defendants-Appellants.

FOR PUBLICATION
May 13, 2004
9:00 a.m.

No. 242641
Alcona Circuit Court
LC No. 01-10713-CK

Before: O’Connell, P.J., and Wilder and Murray, JJ.

MURRAY, J.

I. Introduction

Plaintiff, a neighbor of defendants, asserts that as a member of the general public, she “has the right to navigate and walk across those portions of the shore and waters of Lake Huron lying below and lakeward of the natural ordinary high-water mark, free from obstruction or interference by defendants.” Defendants argue that their property rights extend to the waters’ edge, and that plaintiff could not walk beyond the waters’ edge and onto their property. The trial court held that plaintiff was entitled to freely traverse the “shore of Lake Huron lying below and lakewards of the natural ordinary high water mark as specifically defined in MCL 324.32502.” We conclude otherwise, and therefore reverse the trial court’s order granting plaintiff’s motion for summary disposition and remand for entry of an order granting defendants’ motion for summary disposition.

II. Material Facts and Proceedings

Since 1997, defendants have owned property east of US-23 in Alcona County that abuts Lake Huron. Plaintiff has, since 1967, owned property in Alcona County west of US-23 and, essentially, on the other side of US-23 from defendants’ property. In the deed to her property, plaintiff was granted a fifteen-foot easement across defendants’ property “for ingress and egress to Lake Huron.”

According to plaintiff's first amended complaint, a dispute between plaintiff and defendants arose in August 2000, when plaintiff trimmed several tree branches that were impeding her use of the easement. In spring 2001, the dispute continued with defendants¹ objecting to any pruning of trees or bushes. According to plaintiff, defendants obstructed the entrance to the easement by parking Mr. Goeckel's vehicle at the entrance. Additionally, plaintiff claimed that defendants threatened or did interfere with her right to walk across the beach area, between the ordinary high-water mark and Lake Huron, in front of defendants' property. As a result, plaintiff filed a three-count first amended complaint, asking the trial court to enjoin defendants from interfering with her rights to the express easement and the usage of the shoreline.

The parties eventually resolved the issues pertaining to the express easement, resulting in plaintiff being able to utilize the easement for ingress and egress to Lake Huron, to use the beach portion of the easement for sunbathing and lounging, and to do certain pruning to ensure that the easement remain unimpeded in at least a ten-foot wide area.

Regarding the remaining issue, defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (9), arguing that, as a matter of law, plaintiff was not entitled, over defendants' objections, to walk across the beach fronting defendants' property between the high-water mark and the lake. Plaintiff filed a response seeking summary disposition in favor of her right engage in such activity. The trial court, stating that "there is no clear precedent here," granted plaintiff summary disposition in favor of plaintiff on the following basis:

However, it appears to this Court that Plaintiff has the better argument and the Court therefore rules in Plaintiff's favor. The Great lakes Submerged Land Act, MCL § 324.32501 *et seq*[], does provide for a specific definition of the high water mark of Lake Huron and does seem to support the argument that the Plaintiff's [sic] have the right to use the shore of Lake Huron lying below and lakewards of the natural ordinary high water mark for pedestrian travel.

III. Analysis

A. Standard of Review

Although the trial court did not indicate under which court rule it granted summary disposition, plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10). Therefore, we will consider the trial court's ruling as if it were granted under that subrule. We review a decision granting summary disposition de novo, *Psaila v Shiloh Industries, Inc*, 258 Mich App 388, 391; 671 NW2d 563 (2003), applying the same standard under MCR 2.116(C)(10) that the trial court was required to utilize:

¹In her first amended complaint, plaintiff only asserts that Mr. Goeckel attempted to interfere with her easement and statutory rights. However, because both Mr. and Mrs. Goeckel are defendants, we will refer to them collectively.

Summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except with regard to the amount of damages, there is no genuine issue about any material fact. When deciding a motion for summary disposition pursuant to MCR 2.116(C)(10), a court must consider all pleadings, affidavits, depositions, and other documentary evidence in the light most favorable to the nonmoving party. *Ritchie-Gamester v Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The nonmoving party has the burden of rebutting the motion by showing, through evidentiary materials, that a genuine issue of disputed fact does exist. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). [*Old Kent Bank v Kal Kustom, Inc*, 255 Mich App 524, 528-529; 660 NW2d 384 (2003).]

Additionally, “[t]he trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law.” *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

B. Riparian Rights and The Public Trust Doctrine

Defendants claim that, as owners of property abutting Lake Huron, they have the exclusive right to use the land up to the waters’ edge, and that they can therefore preclude plaintiff from traversing anywhere on their property above the waters’ edge. In support of this position, defendants principally rely on *Hilt v Weber*, 252 Mich 198; 233 NW 159 (1930). *Hilt*, which we will review in detail later in this opinion, contains a thorough discussion of the rights of riparian owners along our Great Lakes. However, in order to properly understand the context under which *Hilt* was decided, we must first review the so-called “*Kavanaugh Cases*,” *Kavanaugh v Rabior*, 222 Mich 68; 192 NW 623 (1923) and *Kavanaugh v Baird*, 241 Mich 240; 217 NW 2 (1928), which were both overruled in *Hilt*.

In *Rabior*, *supra*, the plaintiff was the owner of Saginaw Bay waterfront property. The defendant built a summer cottage on a 280-foot wide strip of land between the plaintiff’s lots and the shoreline, which the plaintiff claimed ownership to because the strip of land was created through accretions.² The Supreme Court held that the strip of land, which was located between the meander line³ and the water line, was “in the law, submerged land and lake bottom.” *Id.* at

² The terms “accretion” and “reliction” are used frequently in the cases discussed in this opinion. “Accretion” is defined as “the gradual accumulation of land by natural forces, especially as alluvium is added to land situated on the bank of a river or on the seashore.” Black’s Law Dictionary (7th ed) at 21. “Reliction” is defined as “the alteration of a boundary line because of the gradual removal of land by a river or stream.” Black’s Law Dictionary (7th ed) at 1293. These terms are not particularly useful in this case, however, because we are here dealing with land resulting from receding waters, which is defined as, but not always referred to as, “dereliction.” Black’s Law Dictionary (7th ed) at 454.

³ Meander lines were established by surveyors to determine acreage and values of property, not to create a strict boundary. *Whitaker v McBride*, 197 US 510, 512; 25 S Ct 530; 49 L Ed 857 (1905). The meander line for the Great Lakes was originally established by government survey

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69. This conclusion was compelled because, according to the Court, the strip of land had been submerged when the meander line was drawn, the strip of land only appeared because of a gradual recession of the water, and, therefore, the land should continue to be regarded in the law as lake bottom:

We think a fair inference is, from the meager testimony, that the disputed strip was submerged when the meander line was established, and that the disputed strip is the result of the recession of the waters and not of accretions. If this be true, the disputed area must be regarded in the law as lake bottom. When the meander line was established it fixed the status of the disputed strip as lake bottom, and this status in the law would not change even though a portion of it had become dry land. [*Id.* at 70-71.]

This conclusion was based upon the Court's view that "riparian owners along the Great Lakes own only to the meander line, and that title, outside this meander line, subject to the rights of navigation, is held in trust by the state for the use of its citizens." *Id.* at 71, quoting *Ainsworth v Munoskong Hunting & Fishing Club*, 159 Mich 61; 123 NW 802 (1909). Thus, because the plaintiff did not have title to the strip of land that resulted from the water receding, he was not entitled to eject the defendant from the strip of land.

Five years later, the Court decided another case regarding the same property, but involving partially different parties. In *Baird, supra*, the plaintiff brought suit against the defendant, the State Director of Conservation, seeking to quiet title to the same strip of land. Much as he did in the prior case, the plaintiff argued that he held title to the land by means of accretion and reliction. The defendant, on the other hand, asserted title in the name of the state, which held title to the land in trust for the benefit of the people.

The trial court ruled in favor of the defendant. In affirming the trial court, the Court took judicial notice that the land was created by both accretion and reliction, but most potently through reliction, for "Saginaw Bay is very shallow at the shores, and but slight recession of the water uncovers a large area." *Id.* at 242. Relying upon its holding in *Rabior*, the Court held that the land had previously been submerged land, and therefore the relicted land (which had grown in size since *Rabior* was decided) was held by the state in trust for the people:

If the title to the lake bottom passed to the state in trust upon its admission to the Union, and that title did not shift and change with the shifting and changes in conditions, and we so held in that case, then the title to the property here in question is in the State in trust, and is not in the plaintiff, and to sustain the plaintiff's contention necessitates the overruling of the *Rabior Case* and the cases which have preceded it. [*Id.* at 243.]

Although the Court recognized that it would have to reverse *Rabior* in order to hold that the plaintiff owned the land to the waters' edge, it refused to do so even while conceding that its

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in 1851, *Boekeloo v Kuschinski*, 117 Mich App 619, 630; 324 NW2d 104 (1982), fourteen years after our state entered the Union in 1837.

decisions in *Rabior* and *Baird* were “against the overwhelming weight of authority.” *Id.* at 252-253. Thus, the Court held that all land that was Great Lakes bottomland at the time the state entered the Union, but which was now dry because of accretion or reliction, was held by the state and not the riparian owner:

Changes in condition from year to year do not change the title or rights of the state. They are fixed as of the date of the admission of the State into the Union. So, likewise, are the rights of the riparian owner. When the State was admitted into the Union the lands here bordering on Saginaw Bay were owned by the Federal government. It held them as proprietor and when it sold, the right of a riparian owner as of that date passed to its grantee. [*Id.* at 253.]

As noted, *Hilt* expressly overruled the *Kavanaugh* cases. *Hilt, supra* at 227. *Hilt* involved a land contract foreclosure. The property at issue, which the defendants had purchased from the plaintiffs, abutted Lake Michigan. The meander line was some 277 feet from the waters’ edge, and the plaintiffs’ real estate agent had placed a stake in the ground one hundred feet from the water, informing the defendants (at that point prospective purchasers) that the stake represented the boundary of the plaintiffs’ property. The defendants prevailed in the trial court, and were awarded damages for the plaintiffs’ failure to pass title to the 177 feet of land between the stake and the meander line, which under the *Kavanaugh* cases was land held in trust by the state subject to riparian rights of the upland owner. *Id.* at 201. The issue on appeal concerned the damages recovered by the defendants, which required the Court to examine “the respective rights of the State and the riparian owner in the strip of relicted land.” *Id.*⁴ In doing so, the Court had to reexamine the *Kavanaugh* cases, since they specifically dealt with the respective rights between the state and riparian owners to relicted land.⁵

The *Hilt* Court first addressed the proposition from the *Kavanaugh* cases that the meander line was drawn at the waters’ edge and to be considered a boundary line. The Court flatly rejected such a conclusion, instead holding that, at least until the *Kavanaugh* cases, precedent had uniformly established that the meander line was not a boundary, nor was it run at the waters’ edge:

It is well know that, in innumerable instances, as in that at bar, the meander line was not run at the waters’ edge in fact. It is also established that it is not a boundary in law. In *Railroad Co v Schurmeir*[74 US 272; 7 Wall 272; 19 L Ed 74 (1869)], it was pointed out that, by the act of congress providing for the survey, while the straight lines were given the force of boundaries, no mention was made of meander lines in the act; that they were a device of the surveyor for

⁴ The Court noted that some of the land at issue had been upland since the state entered into the Union, but that the remainder became dry by accretion and reliction. *Id.*

⁵ The Court emphasized that its opinion only addressed dry land “extending meandered upland by gradual and imperceptible accession or recession of the water, on the lake side of the meander line,” as opposed to submerged lands. *Id.* at 203.

the purpose of reporting the contents of the subdivision and to enable the surveyor general to make a plat required by law. They were run as merely general, not accurate, representations of the shore. *Blodgett & Davis Lbr. Co. v. Peters*, 87 Mich. 498[; 49 NW 917;] (24 Am. St. Rep. 175) [(1891)]; *United States v. Lane*, 260 U.S. 662[; 43 S Ct 236; 67 L Ed 448 (1923)]. [*Hilt, supra* at 204.]

See, also, *id.*, at 212 (the meander line “was not meant to be strictly accurate in depicting the precise sinuosities of the shore. The boundary was where nature had placed it—at the water’s edge.”).

Having rejected this first proposition underlying the holdings in the *Kavanaugh* cases, the Court turned to “the second proposition of the *Kavanaugh Cases*, that the status of land as lake bottom, fixed when the meander line was run, did not change in law even though a portion of it afterward became dry land.” *Id.* at 213. In rejecting the holding that previously submerged dry land remained submerged land under the law, the Court examined the two cases relied upon by the *Baird* Court: *Sterling v Jackson*, 69 Mich 488; 37 NW 845 (1888), and *State v Venice of America Land Co*, 160 Mich 680; 125 NW 770 (1910). The *Hilt* Court concluded that neither *Sterling* nor *Venice of America* supported the holdings in the *Kavanaugh* cases, *id.* at 216, and instead held that title to private lake front⁶ land follows the shore, even when the shoreline changes over the years:

On the contrary, this court often had declared the effect of a meander line upon the Great Lakes in harmony with authority elsewhere, and, at least inferentially, had recognized that title would follow the shore in case of change of condition under private ownership, in accordance with the common law. [*Id.* at 216-217.]

Indeed, throughout its opinion, the Court noted how the *Kavanaugh* cases had “put the Great Lakes in a legal straightjacket” by deviating from prior Michigan law and common law, which held that riparian owners hold title to the land up to the waters’ edge:

Prior to the *Kavanaugh Cases* there appears to have been little or no conflict of law upon the effect of reliction on title. The law of the sea applies to the Great Lakes. *Hardin v. Jordan*[, 140 US 371; 11 S Ct 808; 35 L Ed 428 (1891)], *supra*. All maritime nations, recognizing the vagaries of the sea, beyond human control and anticipation, have evolved systems of law, founded upon rational conceptions of common justice, to adjust and compensate its effects. *The most ordinary effect of a large body of water is to change the shoreline by deposits or erosion gradually and imperceptibly. In such cases it is the general, possibly universal, rule, except for the Kavanaugh Cases, and except in a few States where riparian rights have been extinguished by Constitution or statute,*

⁶ The rules of riparian rights and the public trust doctrine set forth in *Hilt* and its progeny only apply to the shoreline of the Great Lakes and their connecting navigable waterways. *Bott v Comm of Natural Resources*, 415 Mich 45, 71; 327 NW2d 838 (1982).

that the title of the riparian owner follows the shoreline under what has been graphically called “a movable freehold.” 28 Hallsbury, Laws of England, 361. [*Id.* at 219 (emphasis added).]

As support for its holding, the *Hilt* Court relied upon many state and federal decisions. See *id.* at 220. In particular, the following passage from *Shively v Bowlby*, 152 US 1; 14 S Ct 548; 38 L Ed 331 (1894), clarified both the distinction between the title to submerged lands held by the states, and the riparian right to land as the water recedes and rises over the years:

“The rule, *everywhere admitted*, that where the land encroaches upon the water by gradual and imperceptible degrees, the accretion or alluvion belongs to the owner of the land, is equally applicable to lands bounding on tide waters or on fresh waters, and to the King, or the State as to private persons; and *is independent of the law governing the title* in soil covered by the water.’

“The reason ordinarily given for the rule is that it is necessary to preserve the riparian owner’s right of access. Other reasons sometimes are that it is within the maxim, *de minimis non curat lex*, or that *since the riparian owner may lose soil by the action of the water he should have the benefit of any land gained by the same action.*” 45 C. J. p. 525. [*Id.* at 219-220 (emphasis modified in part).]

Hence, under *Hilt*, a riparian owner has the exclusive right to the use of relicted land subject only to the state’s navigational servitude, and therefore “it has been held that the public has no right of passage over dry land between low and high-water mark but the exclusive use is in the riparian owner” *Id.* at 226.⁷ Although the riparian owner has the exclusive right to utilize such land while it remains dry, because it once again may become submerged, title remains with the state pursuant to the public trust doctrine. *Id.* This is so because a riparian owner cannot interfere with the public’s right to the free and unobstructed use of navigable waters for navigation purposes. *Id.*

As the foregoing demonstrates, the *Hilt* Court placed Michigan riparian law, as it pertains to navigable waters, back in conformity with the common law as it existed in Michigan before the *Kavanaugh* cases. Courts since then have recognized that under *Hilt*, a riparian owner has exclusive use of the dry land to the waters’ edge, and loses the exclusive right to use that same dry land when it becomes submerged by the rising waters. See, e.g., *Peterman v Dept of Natural Resources*, 446 Mich 177, 192-193; 521 NW2d 499 (1994) (quoting *Hilt*, the Supreme Court stated that it “has long held” that “‘the right to acquisitions to land, through accession or reliction, is itself one of the riparian rights.’” *Hilt, supra* at 218. Hence, the ‘title of the riparian owner follows the shoreline under what has been graphically called ‘a moveable freehold.’”);

⁷ This principle in *Hilt* is dicta, since the dispute in that case did not involve the public’s right to access relicted land. However, the principle was endorsed by the *Hilt* Court, and it is consistent with and germane to the actual holding in *Hilt*, i.e., that the riparian owner has exclusive use to the land running to the waters’ edge. *People v Schaub*, 254 Mich App 110, 117 n 2; 656 NW2d 824 (2002).

Bott v Comm of Natural Resources, 415 Mich 45, 82-84; 327 NW2d 838 (1982) (“In *Hilt*, a recent holding in the *Kavanaugh Cases* that owners adjacent to the Great Lakes hold title to land running along the meander line but not to the waters’ edge was re-examined and overruled.”); *Klais v Danowski*, 373 Mich 262, 279; 129 NW2d 414 (1964) (recognizing under *Hilt* that a riparian owner has use of the land to the waters’ edge, including any new land occurring through accretions or reliction); *Donohue v Russell*, 264 Mich 217, 218; 249 NW 830 (1933) (recognizing that *Hilt* “held that the riparian owner owns the land beyond the meander line to the edge of the water.”); *Boekeloo v Kuschinski*, 117 Mich App 619, 626-627; 324 NW2d 104 (1982); *Turner Subdivision Prop Owners Ass’n v Schneider*, 4 Mich App 388, 391; 144 NW2d 848 (1966) (“*Hilt* established that a riparian owner owns land between the meander line and the water.”); *Nordale v Waxberg*, 84 F Supp 1004, 1006 (D Alas, 1949) (recognizing that in *Hilt* “it was held that the boundary line of riparian owners along the Great Lakes is the waters’ edge, and not the meander line. The riparian owner has the right to accretion.”).

The *Hilt* conclusion that a riparian owner has the right to the exclusive use of relicted land is entirely consistent with the title held by the State under the public trust doctrine. This doctrine, which places lands submerged beneath the Great Lakes and those waters themselves in trust with the state, was explained by the United States Supreme Court in *Illinois Central R Co v Illinois*, 146 US 387, 452; 13 S Ct 110; 36 L Ed 1018 (1892):

That the state holds the title to the lands *under the navigable waters* of Lake Michigan, within its limits, in the same manner that the state holds title to soils under tide water, by the common law, we have already shown; and that title necessarily carries with it control over the waters above them, whenever the lands are subjected to use. But it is a title different in character from that which the state holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to preemption and sale. It is a title held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties. [Emphasis added.]

That the state of Michigan holds in trust the *submerged lands* beneath the Great Lakes within its borders for the free and uninterrupted navigation of the public is without doubt. See *Peterman*, *supra* at 194; *Nedtweg v Wallace*, 237 Mich 14, 16-17; 208 NW 51 (1926); *People v Massey*, 137 Mich App 480, 485; 358 NW2d 615 (1984). Importantly, the public trust doctrine “is not limited to water sufficiently deep to float craft, but extends to the point where it joins the ground of the riparian owner, ‘whether the water be deep or shallow, and although it be grown up to aquatic plants and unfit for navigation.’” *State v Lake St Clair Fishing & Shooting Club*, 127 Mich 580, 586; 87 NW 117 (1901) (Hooker, J., concurring), quoting *People v Warner*, 116 Mich 228, 239; 74 NW 705 (1898).

The law of riparian rights and the public trust doctrine therefore go hand-in-hand. As the *Peterman* Court accurately described the two principles:

The State of Michigan holds in trust the navigable waters of the state in behalf of its citizens, and riparian owners hold “the right to use and enjoy” their riparian property “subject to the public right of navigation” *Hall v Alford*, 114 Mich 165, 167; 72 NW 137 (1897). [*Peterman*, *supra* at 194.]

The dividing line between the two is the waters' edge. *Warner, supra*. After all, an indispensable requisite to the riparian doctrine is actual contact of the land with the water. *Klais, supra* at 279; *Turner Subdivision, supra* at 391. It is therefore clear that, in this case, defendants' riparian rights provided them with the exclusive use of the relicted land and beach in front of their land up to the edge of Lake Huron. *Hilt, supra*. Although the state holds title to land previously submerged, the state's title is subject to the riparian owner's exclusive use, except as it pertains to navigational issues. *Id.*; *Peterman, supra* at 195. However, if and when the Great Lakes rise, the riparian owner no longer has exclusive use to that submerged land, for the state's title in public trust for navigational purposes becomes paramount. *Id.* Accordingly, because defendants have the right to the exclusive use and enjoyment of their land to the waters' edge, we hold that they may properly prohibit plaintiff from traversing beyond the waters' edge while adjacent to defendants' property. *Hilt, supra*.

C. Great Lakes Submerged Land

Plaintiff argues that, despite the foregoing case law, MCL 324.32502 provides her with a statutory right to traverse defendants' property anywhere between the ordinary high water mark and the lake. The trial court, in fact, so held. That statutory provision,⁸ which sets forth how the entire part 325 is to be construed, establishes the ordinary high-water mark for Lake Huron at 579.8 feet above sea level. The remainder of the statute provides as follows:

Sec. 32502. The lands covered and affected by this part are all of the unpatented lake bottomlands and unpatented made lands in the Great Lakes, including the bays and harbors of the Great Lakes, *belonging to the state or held in trust by it*, including those lands that have been artificially filled in. The waters covered and affected by this part are all of the waters of the Great Lakes within the boundaries of the state. This part *shall be construed* so as to preserve and protect the interests of the general public in the lands and waters described in this section, to provide for the sale, lease, exchange, or other disposition of unpatented lands and the private or public use of waters over patented and unpatented lands, and to permit the filling in of patented submerged lands *whenever it is determined by the department* that the private or public use of those lands and waters will not substantially affect the public use of those lands and waters for hunting, fishing, swimming, pleasure boating, or navigation or that the public trust in the state will not be impaired by those agreements for use, sales, lease, or other disposition. The word "land" or "lands" as used in this part refers to the aforesaid described unpatented lake bottomlands and unpatented made lands and patented lands in the Great Lakes and the bays and harbors of the Great Lakes lying below and lakeward of the natural ordinary high-water mark, *but this part does not affect*

⁸ MCL 324.32502 is a section within Part 325 of the Natural Resources and Environmental Protection Act. Part 325 was added by 1994 PA 451, and the predecessor to the part, The Great Lakes Submerged Lands Act, MCL 322.701 *et seq.*, was repealed by 1995 PA 59.

property rights secured by virtue of a swamp land grant or rights *acquired by accretions occurring through natural means or reliction*. [Emphasis added.]

Applying as we must the unambiguous language of this statute, *Charter Twp of Northville v Northville Pub Schools*, 469 Mich 285, 290; 666 NW2d 213 (2003), it is clear that this section merely sets forth the rules for construing the different sections within part 325, and that it provides no substantive rights. Moreover, even if the statute did set forth substantive rights, it would not afford plaintiff relief. The statute addresses six particular matters: (1) it identifies the lands that are covered and affected by the part; (2) it instructs that the part shall be construed to preserve and protect the public's interest in the lands and waters described in the section; (3) it provides for the state's ability to sell, lease, or exchange unpatented submerged lands; (4) it provides for the private or public use of waters over patented and unpatented lands; (5) it permits the filling in of submerged lands whenever the appropriate state department determines it will not substantially affect the public's right to use such lands and waters for hunting, fishing, swimming, pleasure boating, or navigation or impair the public trust in the state; and (6) it declares that the entire part "does not affect property rights . . . acquired by accretions occurring through natural means or reliction." Thus, MCL 324.32502 contains no provision guaranteeing any member of the public the right to walk on a beach fronting private property along one of the Great Lakes. Moreover, it specifically preserves those riparian rights set forth in *Hilt* and its progeny. Therefore, the trial court erred in holding that MCL 324.32502 grants plaintiff the right to walk on defendants' beach over defendants' objection.

Finally, we reject plaintiff's argument that upholding defendants' riparian property rights will preclude residents or visitors to our Great Lakes and connecting waterways from enjoying the vast beaches bordering our state. Our Supreme Court has repeatedly noted that the state has several means available to it in order to preserve Great Lakes beaches for public use without interfering with a riparian owner's property rights:

It is pointed out that public control of the lake shores is necessary to insure opportunity for pleasure and health of the citizens in vacation time, to work out the definite program to attract tourists begun by the State and promising financial gain to its residents, and to conserve natural advantages for coming generations. The movement is most laudable and its benefits most desirable. The State should provide proper parks and playgrounds and camping sites and other instrumentalities for its citizens to enjoy the benefits of nature. But to do this, the State has authority to acquire land by gift, negotiation, or, if necessary, condemnation. [*Hilt, supra* at 224.]

Accord *Peterman, supra* at 193; *Bott, supra* at 83-84.

IV. Conclusion

As riparian owners, defendants have the exclusive right to the use and enjoyment of the land which, once submerged, has now become exposed by receding waters. Plaintiff has neither a statutory nor a common law right to interfere with that use. However, as a member of the public, plaintiff is entitled to utilize the lake bottom until it first reaches dry land, for purposes of navigating the Lake Huron shoreline. The trial court's ruling, to the extent it allowed plaintiff to

traverse between the statutory ordinary high-water mark and the waters' edge, is therefore reversed.

Reversed and remanded. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Kurtis T. Wilder