

STATE OF WISCONSIN**CIRCUIT COURT
BRANCH 15****MILWAUKEE COUNTY**

VILLAGE OF SHOREWOOD,

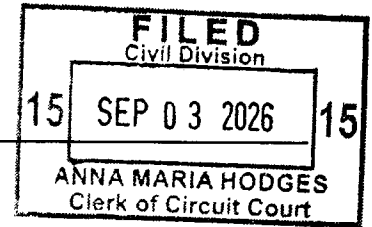
Plaintiff,

v.

Case No. 26CV1769

PAUL W. FLORSHEIM,

Defendant.

Decision and Order**Introduction**

On 2/11/26, Defendant Paul W. Florsheim ("Florsheim") filed an Appeal from a Municipal Court judgment¹ following a trial to the court. Florsheim sought a record review. Municipal Court Judge Margo S. Kirchner ("Judge Kirchner") wrote a decision² upholding the trespassing citation³ that Plaintiff Village of Shorewood ("Village") had issued to Florsheim. The record contained additional exhibits.⁴

At a status conference held on 4/21/26, this Court presented an introductory discussion of the potential issues the parties may consider.⁵ The Court invited the parties to brief any issues they wished to address.⁶

On 5/21/26, the Village filed a brief.⁷ On 6/22/26, Florsheim filed a response brief.⁸ On 7/13/26, the Village filed a reply brief.⁹

On 7/21/26, Florsheim filed a motion to strike portions of the Village's 7/13/26 reply brief.¹⁰ On 8/5/26, Village filed a brief in opposition to Florsheim's motion to strike.¹¹

The issues raised in Florsheim's motion to strike were based upon Florsheim's objections that the Village unfairly raised the issue of Florsheim walking his dogs for the first time in the Village's reply brief; that the issue of Florsheim walking his dogs was immaterial to the issues

¹ Document 1, p. 1.

² *Id.*, Judge Kirchner's Decision and Order, pp. 6-21.

³ *Id.*, p. 3.

⁴ Document 2. *See* Document 20.

⁵ Document 10.

⁶ *Id.*, p. 3.

⁷ Document 12.

⁸ Document 14.

⁹ Document 16.

¹⁰ Document 17.

¹¹ Document 19.

on review; and that the dog walking tickets were no longer at issue because they had been resolved earlier and separately. This Court need not decide the motion to strike and opposition thereto because this dispute, in the larger context of this case, is irrelevant and moot. There is no dispute of fact about Florsheim's dog walking that this court needs to consider. There is no legal conclusion about dogs or Florsheim's dog walking involved in this case that this Court needs to consider. Any significance of Florsheim's *dog walking* does not affect this Court's legal analysis or decision.

Procedural History

Neither party requested a trial *de novo* under Wis. Stat. § 800.14(4). This Court did not issue its own motion for a trial *de novo*. Thus, this case is governed by Wis. Stat. § 800.14(5), which states in part:

If there is no request under sub. (4), or if the appeal is from a judgment or decision in which a trial has not been held, the appeal shall be based upon a review of the proceedings in the municipal court, and the municipal court shall transmit to the circuit court a copy of the entire record, including any electronic recording created under s. 800.13 (1).

The Village filed the record and submitted a flash drive on 2/9/26 in compliance with Wis. Stat. § 800.14(5).¹²

We conclude that “an appeal ... based upon a review of a transcript of the proceedings” under sec. 800.14(5), Stats., does not permit the circuit court to review the record *de novo* and to substitute its judgment for that of the municipal court. Subsection (4) of sec. 800.14, Stats., specifically provides either party with the option for a trial *de novo* without a jury to the circuit court. If there is no such request or motion and if the circuit court does not order a trial *de novo* on its own motion, then subsec. (5) provides for a review of the transcript. Construing sec. 800.14 as a whole, we conclude that subsec. (5) limits the circuit court to an examination of the transcript to determine whether the evidence supports the municipal court decision. Review under subsec. (5) is analogous to appellate review of a trial to the court under sec. 805.17(2), Stats. As a result, findings of fact of the municipal court should not be set aside by the circuit court unless clearly erroneous and due regard should be given to the opportunity of the municipal court to judge the credibility of the witnesses.”

Village of Williams Bay v. Metzl, 124 Wis. 2d 356, 361, 369 N.W.2d 186 (Ct. App. 1985) (citation omitted).

Findings of Fact

The parties do not dispute Judge Kirchner's Findings of Fact. Florsheim admitted that he “entered and walked on the dry sand beach on the portion of Domagala's (“Domagala”) property abutting Lake Michigan” on 8/31/25.¹³ Judge Kirchner found that Florsheim walked “between the ordinary high-water mark and the water line [of Lake Michigan].”¹⁴ Florsheim's presence at the location described above was supported by photographic and video evidence. Florsheim admitted that it was him in the photos and videos. Florsheim walked along the sand beach, not in

¹² Documents 1-2.

¹³ Document 1, p. 11.

¹⁴ *Id.*

the water.¹⁵ Domagala testified that he knew where the ordinary high-water mark (“OHWM”) was on his property.¹⁶ Domagala *marked* where he believed the OHWM was on Exhibit 1.¹⁷ Judge Kirchner did not find that Florsheim ever walked on Domagala’s property *above* the OHWM.¹⁸

Judge Kirchner found that on several days earlier, Domagala told Florsheim not to walk on the beach and that “he did not want Florsheim walking there and that Florsheim needed to leave.”¹⁹

The Village prosecuted the case for violation of municipal ordinance 409-1M which incorporated Wis. Stat. § 943.13. The Village clarified that it was proceeding “under § 943.13(lm)(b), which prohibits a person from ‘[e]nter[ing] or remain[ing] on any land of another after having been notified by the owner or occupant not to enter or remain on the premises.’”²⁰

The municipal court’s findings of fact are supported by the record, and the findings of fact are not clearly erroneous.

Conclusions of Law Generally

The proper standard of review by a circuit court reviewing an appeal from a municipal court decision under Wis. Stat. § 800.14(5) is analogous to the standard applied to appellate review of a trial to the court under Wis. Stat. § 805.17(2).²¹ The court in *Village of Williams Bay* held that while factual findings should not be set aside unless clearly erroneous, the “[a]ppellate court owes no deference to the trial court’s resolution of issues of law.” *Id.* at 360. Therefore, this Court owes no deference to Judge Kirchner’s conclusions of law. This Court’s task is to review Judge Kirchner’s conclusions of law and determine if they are supported by Wisconsin law.

Conclusions of Law in this Case

Public Trust Doctrine

The Public Trust Doctrine dates back to the Northwest Ordinance of 1787. The Wisconsin Const. art. IX, § 1, adopted by the Territorial Convention on February 17, 1848 adopted the words of the Northwest Ordinance regarding navigable waters.

¹⁵ *Id.*

¹⁶ *Id.*, p. 8.

¹⁷ See Document 2, p. 1.

¹⁸ Document 1, p. 12.

¹⁹ *Id.*

²⁰ *Id.*, p. 6.

²¹ In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the ultimate facts and state separately its conclusions of law thereon. The court shall either file its findings and conclusions prior to or concurrent with rendering judgment, state them orally on the record following the close of evidence or set them forth in an opinion or memorandum of decision filed by the court. [...] Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. [...] If an opinion or memorandum of decision is filed, it will be sufficient if the findings of ultimate fact and conclusions of law appear therein. [...] The findings and conclusions or memorandum of decision shall be made as soon as practicable and in no event more than 60 days after the cause has been submitted in final form. Wis. Stat. § 805.17(2).

The state shall have concurrent jurisdiction on all rivers and *lakes bordering on this state* so far as such rivers or lakes shall form a common boundary to the state and any other state or territory now or hereafter to be formed, and bounded by the same; and the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, *shall be common highways and forever free*, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.

Wis. Const. art. IX, § 1 (emphasis supplied).

The *title to the beds of all lakes* and ponds, and of rivers navigable in fact as well, *up to the line of ordinary high-water mark*, within the boundaries of the state, became vested in it at the instant of its admission into the Union, in trust to hold the same so as to preserve to the people forever the enjoyment of the waters of such lakes, ponds and rivers, to the same extent that the public are entitled to enjoy tidal waters at the common law.

Illinois Steel Co. v. Bilot, 109 Wis. 418, 84 N.W. 855, 856 (1901) (emphasis supplied) (involving Lake Michigan).

See also *State v. McDonald Lumber Co.*, 18 Wis. 2d 173, 176, 118 N.W.2d 152 (1962) (involving the lakebed of Green Bay/Lake Michigan); and *State v. Trudeau*, 139 Wis. 2d 91, 101, 408 N.W.2d 337 (1987) (involving Lake Superior). “This [quotation from *Illinois Steel Co.*, above] is as true of the beds of the Great Lakes as it is of lesser inland waters.”

At an early date in its history the Wisconsin court put itself on record as favoring the trust doctrine, that *the state holds the beds underlying navigable waters in trust for all of its citizens*, subject only to the qualification that a riparian owner on the bank of a navigable stream has a qualified title in the stream bed to the center thereof.”

Muench v. Pub. Serv. Comm’n, 261 Wis. 492, 501, 53 N.W.2d 514 (1952) (emphasis supplied).

We have long interpreted this provision broadly and consistent with its sweeping scope, explaining that it protects more than strictly navigable waters or related commercial navigation rights. See, e.g., *Diana Shooting Club v. Husting*, 156 Wis. 261, 271, 145 N.W. 816 (1914); *Muench v. PSC*, 261 Wis. 492, 53 N.W.2d 514 (1952); *Rock-Koshkonong Lake Dist. v. DNR*, 2013 WI 74, ¶72, 350 Wis. 2d 45, 833 N.W.2d 800. For instance, we have held that the doctrine extends to “all areas within the ordinary high-water mark of the body of water in question.” *Movrich*, 379 Wis. 2d 269, ¶27, 905 N.W.2d 807. It protects not only the Great Lakes’ beds but also “lesser inland waters,” including “areas covered with aquatic vegetation” within a particular high-water mark. *R.W. Docks & Slips v. State*, 2001 WI 73, ¶19, 244 Wis. 2d 497, 628 N.W.2d 781. Similarly, we have held that the doctrine safeguards the public’s use of the state’s waters for even “purely recreational purposes.” *Id.*; *Nekoosa Edwards Paper Co. v. R.R. Comm’n*, 201 Wis. 40, 47, 228 N.W. 144 (1930) (explaining that the public has a right to use certain state waters for “sailing, rowing, canoeing, bathing, fishing, hunting, skating, and other public purposes”).

Clean Wisconsin, Inc. v. DNR, 2021 WI 72, ¶ 12, 398 Wis. 2d 433, 961 N.W.2d 611.

The [public] trust reposed in the state is not a passive trust; it is governmental, active, and administrative. Representing the state in its legislative capacity, the Legislature is fully

vested with the power of control and regulation. *The equitable title to these submerged lands vests in the public at large, while the legal title vests in the state, restricted only by the trust, and the trust, being both active and administrative, requires the lawmaking body to act in all cases where action is necessary, not only to preserve the trust, but to promote it.*

City of Milwaukee v. State, 193 Wis. 423, 214 N.W. 820, 830 (1927) (involving lakebed of Lake Michigan).

The Wisconsin legislature enacted Chapter 30 of the Wisconsin Statutes to implement and discharge the state's public trust duties over navigable waters. *See* Wis. Stat. § 30.10(1): "Lakes. All lakes wholly or partly within this state which are navigable in fact are declared to be navigable and public waters, and all persons have the same rights therein and thereto as they have in and to any other navigable or public waters." *See* Wis. Stat. § 30.01(2m): "'Great Lakes water body' means Lake Superior or Lake Michigan and includes any bay or harbor that is part of Lake Superior or Lake Michigan." The Public Trust Doctrine applies to Lake Michigan and Lake Superior because of the Wisconsin Constitution, case law and statutes. Lake Michigan is a navigable, boundary lake. This case involves Lake Michigan, not an inland lake, river, stream or flowage.

Ordinary High-Water Mark (OHWM)

By ordinary high-water mark is meant the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic. (citation omitted). And where the bank or shore at any particular place is of such a character that it is impossible or difficult to ascertain where the point of ordinary high-water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below ordinary high-water mark.

Diana Shooting Club v. Husting, 156 Wis. 261, 145 N.W. 816, 820 (1914).

See also State v. McDonald Lumber Co., 18 Wis. 2d 173, 176, 118 N.W.2d 152 (1962) (involving the lakebed of Green Bay/Lake Michigan); *State v. Trudeau*, 139 Wis. 2d 91, 408 N.W.2d 337 (1987) (involving Lake Superior).

This case involves Florsheim walking on the land below the OHWM of Lake Michigan. As discussed above, the strip of land below the OHWM is *lakebed* owned by the State of Wisconsin.²² The distinction between the OHWM of Lake Michigan and the OHWM of inland lakes, rivers, streams or flowages is critical because the property at issue where Florsheim walked was below the OHWM of Lake Michigan.

The DNR Factsheet²³ color photographs show where the OHWM is in relation to the water's edge and the upper shore for "Coastal Shorelines," "Inland Lakes" and "Rivers and Streams." For Coastal Shorelines, the area of land between the water's edge and the OHWM as depicted in these photographs is approximately 5-9 feet wide. This area corresponds with the

²² *C. Beck Co. v. City of Milwaukee*, 139 Wis. 340, 120 N.W. 293, 296. "The title to the bed of the lake [Michigan] below ordinary high-water mark is in the state."

²³ Document 2, p. 13. *See also* https://dnr.wisconsin.gov/topic/Waterways/general_info/ohwm.html. Exhibit 2 was rescanned as Exhibit 20 to show better the color photographs from the original documents submitted to this Court.

photographs in this case²⁴ showing where Florsheim walked below the OHWM along Lake Michigan. The photographs in the DNR Factsheet depicting *Inland Lakes*²⁵ shows an irregular area that looks to be approximately a few inches wide and areas that are so irregular that walking along an inland lake below the OHWM and not in the water would likely be impossible.

Another explanation of the OHWM is that when the water of Lake Michigan is at the high-water mark it covers the lakebed with water from Lake Michigan. That is, the area where Florsheim admitted walking would be *under the water of Lake Michigan* at the high-water mark. The Key to these photographs confirms this explanation. The area below the OHWM for Coastal Shorelines is designated by Key #1 and is described as, “*Exposed Lake bed*, lack of vegetation due to inundation, aquatic vegetation (below OHWM).”²⁶ (emphasis supplied).

Navigable Waters

We conclude that it is appropriate to *extend the public trust doctrine to include* navigable waters and *the shore appurtenant* in order to ensure the public’s continued access and free use of the waters.

State v. Town of Linn, 205 Wis. 2d 426, 443, 556 N.W.2d 394, 402 (Ct. App. 1996) (emphasis supplied).

Lake Michigan is a public lake that is navigable in fact.²⁷ The state’s title to the lakebeds of Lake Michigan extends up to the OHWM along Lake Michigan. The waters of Lake Michigan were once continuously at a higher level. In the present day, the waters of Lake Michigan have receded. Wisconsin courts’ definition of “ordinary high-water mark”²⁸ is consistent with the state’s title to the lakebeds of Lake Michigan. Contrary to the Village’s assertion,²⁹ the state *does* hold full title to the lakebed of navigable lakes up to the OHWM.³⁰

This case involves a navigable, boundary *lake*, whereas the state’s title to the beds of navigable rivers and streams differs:

The state’s ownership of lake beds was confirmed in *State v. McDonald Lumber Co.*, 18 Wis.2d 173, 176, 118 N.W.2d 152 (1962), *Wisconsin’s Environmental Decade, Inc. v. DNR*, 85 Wis.2d 518, 526, 271 N.W.2d 69 (1978), and *State v. Trudeau*, 139 Wis.2d 91, 101-02, 408 N.W.2d 337 (1987). *The rule is different with respect to the beds under streams* in part because streams can change course, streams can become unnavigable over

²⁴ See Document 20, p. 7 (Florsheim walking along the shore of Lake Michigan).

²⁵ *Id.*, p. 15.

²⁶ *Id.*

²⁷ “All lakes wholly or partly within this state which are navigable in fact are declared to be navigable and public waters, and all persons have the same rights therein and thereto as they have in and to any other navigable or public waters.” Wis. Stat. § 30.10(1).

²⁸ See *State v. Trudeau*, 139 Wis. 2d 91, 408 N.W.2d 337 (1987).

²⁹ Document 12, p. 4: The Village’s argument relates only to navigable streams and rivers, not navigable, boundary lakes.

³⁰ “No private ownership has been conceded which displaces or materially affects such public rights. *As to them the state has not and cannot abdicate its trust.*” *Illinois Steel Co. v. Bilot*, 109 Wis. 418, 84 N.W. 855, 857 (1901) (emphasis supplied).

time, and navigable streams can be very narrow and shallow, so that state ownership of stream beds could be problematic and impractical.

Rock-Koshkonong Lake Dist. v. DNR, 2013 WI 74, ¶ 82, 350 Wis. 2d 45, 833 N.W.2d 800 (emphasis supplied).

Navigation and Its Incidents

Navigable waters are public waters, and as such they should enure to the benefit of the public. They should be free to all for commerce, for travel, for recreation, and also for hunting and fishing, which are now mainly certain forms of recreation. Only by so construing the provisions of our organic laws can the people reap the full benefit of the grant secured to them therein. This grant was made to them before the state had any title to convey to private parties, and it became a trustee of the people charged with the faithful execution of the trust created for their benefit. Riparian owners, therefore, took title to lands under navigable waters with notice of such trust, and subject to the burdens created by it. It was intended that navigable waters should be public navigable waters, and only by giving members of the public equal rights thereon so far as navigation and its incidents are concerned can they be said to be truly public.

Diana Shooting Club v. Husting, 156 Wis. 261, 145 N.W. 816, 820 (1914).

Although the public trust doctrine originally existed to protect commercial navigation, it has been *expansively interpreted* to safeguard the public's use of navigable waters for *purely recreational purposes* such as boating, swimming, fishing, hunting, recreation, and to preserve scenic beauty.

R.W. Docks & Slips v. State, 2001 WI 73, ¶ 19, 244 Wis. 2d 497, 628 N.W.2d 781 (emphasis supplied).

Early decisions frequently spoke of navigation, often in a commercial sense, as the purpose of the trust, but all public uses of water have from time to time been recognized, including pleasure boating, sailing, fishing, swimming, hunting, skating, and *enjoyment of scenic beauty*.

State v. Pub. Serv. Comm'n, 275 Wis. 112, 118, 81 N.W.2d 71 (1957) (emphasis supplied).

Authorizing the DNR to supervise and regulate the adequacy of public access to the waters of the state is not inconsistent with the [Public Trust] doctrine. Rather, the opposite is true. The general public certainly cannot benefit from the public trust doctrine if it is unable to access the waters.

State v. Town of Linn, 205 Wis. 2d 426, 443, 556 N.W.2d 394 (Ct. App. 1996).

Here, Florsheim's walking along Lake Michigan below the OHWM was a recreational activity that was incidental to navigating state-owned lakebeds held in the public trust. Two, Florsheim's walking along Lake Michigan involved enjoyment of scenic beauty which is an incident to navigation. Three, Florsheim, by traveling the common highway of Lake Michigan, was subject to the Public Trust Doctrine that preserved for the people forever the enjoyment of the waters. Therefore, this Court finds that walking along Lake Michigan *below* the OHWM is an incident to navigation (recreational activity, enjoyment of scenic beauty and enjoyment of the waters) and protected by the Public Trust Doctrine.

While state supreme court decisions from Michigan and Indiana regarding the Great Lakes are not binding authority on this Court, their discussions are instructive on this issue of whether the activity of walking below the OHWM of Lake Michigan is included in the traditionally protected rights of fishing, hunting and navigation under the Public Trust Doctrine.

The Michigan Supreme Court in *Glass v. Goeckel*, 473 Mich. 667, 703 N.W. 2d 58, 62 (2005) concluded:

We hold, therefore, that defendants cannot prevent plaintiff from enjoying the rights preserved by the public trust doctrine. Because *walking along the lake-shore is inherent in the exercise of traditionally protected public rights of fishing, hunting, and navigation*, our public trust doctrine permits pedestrian use of our Great Lakes, up to and including the land below the ordinary high-water mark. Therefore, plaintiff, like any member of the public, enjoys the right to walk along the shore of Lake Huron on land lakeward of the ordinary high-water mark. (emphasis supplied).

The court explained:

We can protect traditional public rights under our public trust doctrine only by simultaneously safeguarding activities *inherent* in the exercise of those rights. *Walking the lakeshore below the ordinary high-water mark is just such an activity, because gaining access to the Great Lakes to hunt, fish, or boat required walking to reach the water*. Consequently, the public has always held a right of passage in and along the lakes. *Id.*, 703 N.W. 2d at 74. (citations and footnotes omitted) (emphasis supplied).

The Indiana Supreme Court's analysis reached the same conclusion.

To the extent that we are asked to limit public use to the waters only, as the Gundersons suggest, such a restriction is impractical. *There must necessarily be some degree of temporary, transitory occupation of the shore for the public to access the waters, whether for navigation, commerce, or fishing - the traditional triad of protected uses under the common-law public trust doctrine*. See *Illinois Cent.*, 146 U.S. at 452, 13 S.Ct. 110. Thus, we hold that, *at a minimum*, walking below the natural OHWM along the shores of Lake Michigan is a protected public use in Indiana. This *public right of passage*, inherent in the exercise of the traditional protected uses we recognize today, would not infringe on the property rights of adjacent riparian landowners.

Gunderson v. State, 90 N.E.3d 1171, 1188 (Ind. 2018) (emphasis supplied).

The rationale for including walking along the Great Lakes as *inherent* in the rights protected by the Public Trust Doctrine was that the activity of walking along the Great Lakes was necessary *to gain access* to the Great Lakes to hunt, fish or boat. This was the same concern that the appellate court had in *State v. Town of Linn*, 205 Wis. 2d at 443, "to ensure the public's continued access and free use of the waters." Therefore, Florsheim's walking along Lake Michigan was inherent in the rights protected by the Public Trust Doctrine and one of the rights necessary to gain access to Lake Michigan (*i.e.*, transitory occupation of the shore for the public to access the waters and/or the public's right of passage).

Riparian Landownership Rights

However, subject to the requirements of the public trust doctrine, “Wisconsin has...recognized the existence of certain common law rights that are incidents of riparian ownership of property adjacent to a body of water.” These include:

[t]he right to reasonable use of the waters for domestic, agricultural and recreational purposes; the right to use the shoreline and have access to the waters; the right to any lands formed by accretion or reliction; the right to have water flow to the land without artificial obstruction; the limited right to intrude onto the lakebed to construct devices for protection from erosion; and the right, now conditioned by statute, to construct a pier or similar structure in aid of navigation.

R.W. Docks & Slips v. State, 2001 WI 73, ¶ 21, 244 Wis. 2d 497, 628 N.W.2d 781 (citation omitted).

The rights of riparian owners, however, are qualified, subordinate, and subject to the *paramount interest of the state and the paramount rights of the public in navigable waters*. *Id.*, at ¶ 22 (emphasis supplied) (citing *State v. Bleck*, 114 Wis. 2d 454, 467, 338 N.W.2d 492 (1983)).

The public trust doctrine as an encumbrance on riparian rights is established “by judicial authority so long acquiesced in as to become a rule of property.” It is part of the organic law of the state, and is to be broadly and beneficially construed. *Id.*, at ¶ 23 (citation omitted).

Domagala has the right to use his shoreline and to have access to Lake Michigan. “A riparian owner has certain rights based upon title to the ownership of such lands. These rights are not common to the citizens at large, but exist as natural and inherent incidents of the ownership of riparian land.” *Wendt v. Blazek*, 2001 WI App 91, ¶ 9, 242 Wis. 2d 722, 626 N.W.2d 78 (citations omitted). None of the riparian rights enumerated above were infringed upon by the public’s right to walk on the lakebeds of Lake Michigan. Therefore, Florsheim’s walking below the OHWM along Lake Michigan did not interfere with Domagala’s riparian landowner rights.

Doemel v. Jantz

Doemel v. Jantz, 180 Wis. 225, 193 N.W. 393 (1923) was considered the key legal authority³¹ guiding Judge Kirchner’s decision. However, *Doemel* is distinguished³² from this case because the factual circumstances and legal issues differ significantly.

The Parties and Legal Actions are Different

In *Doemel*, the action involved a riparian landowner and an alleged trespasser. The cause of action was a common law violation of Doemel’s rights in the premises. That is, “by reason of

³¹ See Document 1, p. 14.

³² This Court need not consider overruling *Doemel* because the factual and legal circumstances are significantly different.

being a riparian owner, [Doemel] is possessed of the exclusive right of the use of the shore between ordinary high and low water marks, and that any entry thereon by a stranger, ... constitutes a trespass or a violation or infringement of his riparian rights.”³³ The result of the trespass was “to the plaintiff’s damage.”³⁴ A civil action for trespass is a tort action at common law. The possible remedies for a civil action for trespass are nominal damages, compensatory damages, punitive damages, injunctive relief and ejectment. The penalty for violation of a municipal ordinance is a civil forfeiture.

This case involves a village enforcing a village ordinance.³⁵ *The critical difference is that in this case, there are no riparian landowners and, therefore, no enforcement of riparian landowner rights.* The *Doemel* court was focused upon the riparian landowner’s rights versus the public’s rights regarding this use of the shore between the OHWM and the water’s edge. “The riparian owner’s rights to the shore are exclusive as to all the world, excepting only where those rights conflict with the rights of the public for navigation purposes.”³⁶ In this case, there are no riparian landowner’s rights to limit Florsheim’s walking below the OHWM of Lake Michigan because the riparian landowner is not a party to the case. Therefore, in this case there can be no balancing or conflict between the riparian landowner’s rights and the rights of the public. The only interplay in this case is between the public’s right to access Lake Michigan and the Village’s authority to regulate.

Wis. Stat. § 61.34(1) grants village boards broad authority to act for the government and good order of the village and for the health, safety, welfare and convenience of the public. The Village’s right of enforcement flows from the municipality’s governmental authority or police power, not from the private property rights of riparian landowners. The Village does not stand in the shoes of a riparian landowner to enforce its trespass ordinance.

Generally, the Village has authority to issue municipal ordinance violations for trespass of private property. However, the Villages’ authority to issue municipal ordinance violations for trespass below the OHWM on the lakebed of Lake Michigan is governed by the Public Trust Doctrine.

[A]lthough the state may to some extent delegate its public trust authority over navigable waters, any such delegation must be in clear and unmistakable language and cannot be implied from the language of a general statute (*e.g.*, Wis. Stat. § 61.34(1)) delegating police power to cities or villages.

Village of Menomonee Falls v. DNR, 140 Wis. 2d 579, 600, 412 N.W.2d 505 (Ct. App. 1987)

Delegation of authority under the public trust doctrine is permissible when in furtherance of that [public] trust and where delegation will not block the advancement of the paramount interests appurtenant to navigable waters.

³³ *Doemel*, 193 N.W. at 394.

³⁴ *Id.*, at 393.

³⁵ See Document 1, p. 3.

³⁶ *Doemel*, at 398.

Id., at 601. See *Wisconsin's Environmental Decade, Inc. v. Department of Natural Resources*, 85 Wis. 2d 518, 534, 271 N.W.2d 69 (1978).

There was no *general* grant of authority by the legislature to the Village to issue municipal citations for trespass for walking below the OHWM along Lake Michigan when doing so interfered with the Public Trust Doctrine.³⁷ There was no *specific* state legislation granting the Village such authority, either. Rather,

From this fundamental tenet of our constitution [the Public Trust Doctrine], the State holds the navigable waters and the beds underlying those waters in trust for the public. "This 'public trust' duty requires the state not only to promote navigation but also to protect and preserve its waters for fishing, hunting, recreation, and scenic beauty. The state's responsibility in the area has long been acknowledged."

While it is primarily the State's duty to protect and preserve these resources, "[i]n furtherance of the state's affirmative obligations as trustee of navigable waters, the legislature has delegated substantial authority over water management matters to the DNR. The duties of the DNR are comprehensive, and its role in protecting state waters is clearly dominant." ... *ABKA Ltd. P'ship*, 255 Wis. 2d 486, ¶ 12, 648 N.W.2d 854 ("The legislature has delegated to the DNR broad authority to regulate under the public trust doctrine and to administer ch. 30.").

Lake Beulah Mgmt. Dist. v. DNR, 2011 WI 54, ¶¶ 32-33, 335 Wis. 2d 47, 799 N.W.2d 73 (citations omitted).

In sum, the regulation and enforcement of the public trust doctrine has been reposed with the legislature and the DNR, and occasionally in cooperation with municipalities. *The doctrine mandates that access to the state's navigable waterways be equally available to all users.* The legislature has ordered the DNR to insure equal public access to the waters of the state. We conclude that the DNR's authority *implicitly extends to the shore or public access facilities in its enforcement of the public's rights.* Here, *the parking lot is an integral part of access to the lake* and coupled with the prohibition against parking vehicles with trailers on the streets, *the Village's ordinances overly limit access.*

State v. Town of Linn, 205 Wis. 2d 426, 447, 556 N.W.2d 394 (Ct. App. 1996) (emphasis supplied).

Therefore, this Court finds that the Village lacked authority to enforce a municipal trespass ordinance violation when there is no general or specific delegation of statutory authority to do so and the enforcement of the village ordinance *overly limited access* to the waters under the Public Trust Doctrine. The appropriate enforcement agency would have been the DNR, not the Village.

³⁷ See *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579, 597, 412 N.W.2d 505 (Ct. App. 1987) where the appellate court rejected the application of the home rule amendment (Wis. Const. art. XI, sec. 3) to give a village board authority to proceed with a channelization project without DNR permits because the home rule amendment only gave municipalities power to determine their local affairs subject only to the enactments of the legislature of statewide concern. "*The free and unobstructed use of the state's navigable waters is a matter of statewide concern.*" Chapter 30, Stats., regulates the area. Thus, any authority the Village has in the matter is not constitutional and must depend on a legislative grant of power." (citations omitted) (emphasis supplied).

This holding does not mean that the Village cannot enforce their trespass ordinance, village ordinances in general or state statutes (incorporated into the municipal code) under appropriate circumstances for infractions that occur below the OHWM of Lake Michigan. The key distinction is that the activity, walking along Lake Michigan, is protected by the Public Trust Doctrine as incident to navigation. Other illicit activities, that are not protected by the Public Trust Doctrine, may be fully prosecuted.

Furthermore, as a matter of law, the requirement that Florsheim must be “notified by the owner or occupant not to enter or remain on the premises” can never be met because the State, the legislature and/or the DNR (as owners of the property) have never notified Florsheim not to enter or remain on the lakebed below the OHWM of Lake Michigan.

This discussion highlights the inapplicability of *Doemel* to this case, not only based upon the distinguishing facts and analysis, but based upon the substantial expansion of Public Trust Doctrine law through legislation and subsequent court rulings involving the Public Trust Doctrine.

Lake Winnebago (inland lake) versus Lake Michigan (coastal boundary lake)

The *Doemel* court’s decision is cabined to its specific facts about Lake Winnebago as a *meandered inland lake*. The *Doemel* court noted:

A careful review of all of the cases above referred to fastens the conviction upon the reader’s mind that the public use of the waters in navigable bodies like the *meandered inland lakes* is confined to and is founded upon the original basis adopted by the English courts, and maintained by the American courts, that *such bodies of water constitute highways for navigation purposes*, and that, in the course of time, in the development of the law and in its application to existing local conditions, and in response to public requirements, these rights have been extended so as to include fishing, recreation, boating, bathing, hunting, etc., which are denominated incidents to the rights of navigation. *Therefore the use of these waters for the various purposes enumerated and referred to is open to the public when exercising the right of navigation.* *Doemel*, 193 N.W. at 397 (emphasis supplied).

The *Doemel* court recognized the public’s right of passage pursuant to the Public Trust Doctrine when the rights of the public were incident to navigation. However, the *Doemel* court then focused on the specific facts of the case involving *inland lakes* (*i.e.*, Lake Winnebago).

During certain periods of the year when precipitation is large, and when the waters of the lakes are swelled by the increasing in-flowing volumes coming from springs, rivers, creeks, and the flowage of surface water and the precipitation in the form of rain, the lake exercises its dominion over the land to the high-water mark. This dominion, however, is not permanent. Upon the seashore, where the waters are affected by the tide, it is intermittent. As to *inland lakes* and rivers, such assertion of dominion on the part of nature is periodical. So that it would appear but logical to hold that, when nature in pursuance to natural laws

holds in its power portions of the land which at periods of the year are free from flowage, then during such periods the strip referred to is subject to all the rights of the public for navigation purposes. On the other hand, when the waters recede, these rights are succeeded by the exclusive rights of the riparian owner. So that during periods of high water the riparian ownership represents a qualified title, subject to an easement, while during periods of low water it ripens into an absolute ownership as against all the world, with the exception of the public rights of navigation and with those rights no interference will be tolerated where the acts affect or have a tendency to affect the public rights for navigation purposes. *Id.*, at 398 (emphasis supplied).

The important difference between the *Doemel* case and this case is the difference between Lake Winnebago, an inland meandered lake, and Lake Michigan, a coastal boundary lake. The facts about nature in pursuance to natural laws holding power over the strip of land only applies and makes sense for an inland lake because varying amounts of local precipitation affect the water level of an inland lake. These facts and the logic behind them do not apply to the vast expanse and sheer volume of water in Lake Michigan.

This difference is illustrated by the DNR factsheet³⁸ color photographs for “Coastal Shorelines” (e.g., Lake Michigan) and Inland Lakes” (e.g., Lake Winnebago). The OHWM for coastal shorelines (Lake Michigan) is approximately 5-9 feet wide while the OHWM of inland lakes (Lake Winnebago) appears to be a few inches wide. The difference in width from water’s edge to OHWM corresponds to the different bodies of water and the effect of varying amounts of local precipitation on the water level of the body of water.³⁹ The facts and analysis of the *Doemel* court distinguish its rationale from this case because this case involves a coastal, boundary lake, not an inland lake.

The Critical Difference

The critical difference is the public’s *access* to the body of water. In *Doemel*, Jantz was not a riparian landowner on Lake Winnebago. An inland lake, by definition is surrounded by riparian landowners. Therefore, Jantz had to trespass on Doemel’s pasturage or private property,⁴⁰ as alleged in the complaint, in order to access Lake Winnebago.

In this case, Florsheim accessed the lakebed below the OHWM of Lake Michigan abutting Domagala’s property by following the lakebed below the OHWM of Atwater Beach,⁴¹ a public park in Shorewood. Florsheim’s access to Lake Michigan was *via* Atwater Beach and Park (a public place), not another’s private property.

Based upon this discussion, this Court finds that the *Doemel* decision is cabined to its particular facts and analysis about Lake Winnebago and provides little guidance for this Court when deciding this case involving Lake Michigan.

³⁸ Document 20, p. 15.

³⁹ Of course, the water level of the Great Lakes is affected by many other factors than local precipitation.

⁴⁰ *Doemel* at 394.

⁴¹ See Document 14, p. 43.

Conclusion

Lake Michigan, a navigable, boundary lake, is governed by the Public Trust Doctrine. There is no dispute of fact that Florsheim walked on the shore below the OHWM and the water's edge of Lake Michigan. The title to the beds of Lake Michigan up to the line of OHWM is in the State. The State holds the beds underlying navigable waters in trust for all of its citizens. The Public Trust Doctrine includes Lake Michigan and the shore appurtenant in order to ensure the public's continued access and free use of the waters. Florsheim's walking below the OHWM on the lakebed of Lake Michigan is a protected activity under the Public Trust Doctrine. Florsheim's walking below the OHWM on the lakebed of Lake Michigan is an incident to and inherent in navigation. Florsheim's walking below the OHWM on the lakebed of Lake Michigan did not infringe on any riparian landowner's rights. No riparian landowner rights are present in this case because no riparian landowner is a party to this case. Generally, the rights of riparian landowner's are qualified, subordinate, and subject to the paramount interest of the State and the paramount rights of the public in navigable waters.

For the many reasons discussed above, *Doemel v. Jantz* is distinguished from this case. *Doemel* is cabined to its facts and legal conclusions. *Doemel* may guide decisions in cases involving tort actions for trespass on inland lakes but provides little guidance for this case. Moreover, the Village lacks authority to enforce its ordinance for trespass *in this case* because Florsheim's conduct was protected by the Public Trust Doctrine.⁴²

As a matter of law, the Village has failed to prove a violation of its trespass ordinance. One, the lakebed of Lake Michigan is owned by the State, and, is therefore, not private property.⁴³ As state-owned property, the lakebed of Lake Michigan is subject to the Public Trust Doctrine; Florsheim's walking thereon was an incident to navigation and/or right of the public's access; and *forever free*. Therefore, the element of trespass on "any land of another" cannot be met.

Two, the element that person be "notified by the owner or occupant not to enter or remain on the premises" has not been met because the State, the legislature and/or the DNR (as owners or trustees of the property) have never notified Florsheim not to enter or remain on the lakebed below the OHWM of Lake Michigan.

For these reasons, this Court finds that the Municipal Court's judgment in favor of the Village cannot be upheld. This Court enters judgment for Florsheim.

Order

The judgment in favor of the Village for the violation of the Village's trespass ordinance is reversed, judgment for Florsheim is entered and the municipal case is dismissed.

Dated this 3rd day of September 2026.

⁴² See *State v. Town of Linn*, 205 Wis. 2d 426, 556 N.W.2d 394 (Ct. App. 1996).

⁴³ See Wis. Stat. § 943.13(1e)(e): "'Private property' means real property that is not owned by the United States, this state or a local governmental unit."

BY THE COURT:

J.D. Watts

Hon. J.D. Watts
Milwaukee County Circuit Court
Branch 15



This a final order for the purposes of appeal.