**STATE OF WISCONSIN** **VILLAGE OF SHOREWOOD MUNICIPAL COURT** **MILWAUKEE COUNTY**

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VILLAGE OF SHOREWOOD

v. Citation 8N8002G29J

PAUL W. FLORSHEIM

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## DECISION AND ORDER

The citation in this case charges Paul W. Florsheim with trespassing, allegedly occurring in the Village of Shorewood, Wisconsin, on August 31, 2025, in violation of Shorewood Village Code § 409-1M.

Shorewood Code § 409-1M provides that it shall be unlawful for any person to trespass within the Village of Shorewood. The code section incorporates the provisions of Wis. Stat. § 943.13 regarding trespass for which the penalty is a forfeiture. Any act required to be performed or prohibited by Wis. Stat. § 943.13 is incorporated by the ordinance.

The matter proceeded to trial on December 2, 2025. At trial, the Village clarified that it pursues this case under § 943.13(1m)(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."

I permitted the filing of short post-trial briefs and took the case under advisement to consider those briefs and review pertinent case law more closely.

The Village has the burden of proof to establish Florsheim's guilt by proof that is sufficient to convince me to a reasonable certainty by evidence that is clear and satisfactory.

## Evidence

The Village presented three witnesses at trial: Daniel Domagala, Detective Andrew Rekuski, and Officer Nicholas Taraboi.

Florsheim presented two witnesses at trial: his father, Thomas Florsheim, and himself.

The evidence in this case is not contested in any material way.

Domagala testified that he is the owner of property abutting Lake Michigan not far north from Atwater Beach in Shorewood.[1] Exhibit 1 was a survey plat of Domagala's property, showing the property having a driveway on Lake Drive and extending to and abutting Lake Michigan to the east. Domagala's property is about half an acre in size, and he has an auxiliary structure on the beach, about 30 feet from the water, where he stores kayaks, surfboards, and other water-related equipment.

Domagala testified that at all relevant times there have been "no trespassing" signs near Atwater Beach and his house. Exhibit 3 showed four signs on two posts. One sign said "PRIVATE PROPERTY BEYOND THIS SIGN" and that trespassers may be subject to citation. Below that sign on the same pole a second, smaller, sign read "NO PETS ALLOWED." The top sign, yellow, on the second pole read "ATWATER BEACH ENDS HERE" and "ONLY WATER ACCESS ALLOWED BEYOND THIS POINT." Per Domagala, sometime during the last year the yellow sign changed slightly to add "respect your neighbors." The signs on the first pole were unchanged.

On Tuesday, July 22, 2025, Domagala and his children were getting into kayaks on their property around 8:30 a.m. Domagala saw a man being pulled by two dogs over a "groin" barrier, coming from the direction of Atwater Beach. Domagala said the groin separates the public area and the private property area.

Domagala testified that he pointed out the sign about "no dogs" to the man and asked if he saw it. The man was identified in court without objection as Florsheim. The two then had a conversation about the no trespassing sign. Florsheim responded, "What are you going to do about it?" Domagala replied something like, "You're in my backyard, so why don't you just turn around and go back." Florsheim kept walking.

Domagala testified that he made it clear to Florsheim on July 22 that he did not want Florsheim walking in Domagala's backyard area. Domagala said he has never given Florsheim permission to walk on Domagala's beach.

Domagala contacted the police department. Police arrived at Domagala's property but said they had not seen someone matching Florsheim's description.

Domagala testified that the next day he saw Florsheim walking down Lake Drive as Domagala was getting into his car. Florsheim had two dogs and was walking toward Atwater Park. Domagala said he told Florsheim "I hope you're not going to the beach," and Florsheim said he was.

[1] Domagala testified as to his exact address number, but his address is not necessary for this opinion.

Domagala again called the police, who later told him they gave Florsheim a warning.

After July 23, Domagala did not have any personal encounters with Florsheim. However, Domagala has surveillance cameras on his beach property, which are activated by motion and capture images automatically. Domagala testified that he saw the "same thing" on the surveillance cameras on Thursday and Friday.

Exhibit 5, a video from Domagala's surveillance camera dated July 24 (Thursday), showed a man with two dogs walking up toward Domagala's auxiliary building on the beach. Domagala identified the man as Florsheim.

Exhibit 6, a video from July 25 (Friday), showed a man with two dogs walking on the beach near the water, from right (south) to left (north). Domagala identified the man as Florsheim.

Exhibit 4 comprised photos from Domagala's surveillance cameras on or about Saturday, July 26.

The videos and photographs of Exhibits 4, 5, and 6 show a man with dogs walking on the sand, not in the water.

Domagala testified that on that Saturday he sent police a video of the man on the beach. Detective Rekuski responded.

Domagala testified that he also sent Rekuski a video on August 22 or 23, when Florsheim was again walking with his dogs on Domagala's beach. Florsheim was walking on the dry sand, Domagala said.

Domagala has complained to the police about others walking on his property and sitting on part of his auxiliary structure.

On cross-examination, Domagala indicated that his surveillance camera records voice, but he did not have a voice recording of the conversation between Florsheim and him. Domagala had no video of the day he and Florsheim spoke on the beach.

Domagala also testified on cross that he knows where the high-water mark is on his property, and he marked the line on the Exhibit 1 survey. He testified that he was familiar with the concept of the "public trust doctrine."

Florsheim attempted to draw Domagala's credibility into question by exploring Domagala's compliance with building and code requirements regarding Domagala's auxiliary structure. I allowed Florsheim to cross-examine Domagala on the matter but find that the

questions and answers do not lessen Domagala's credibility. I find that Domagala was a credible witness.

Shorewood Detective Andrew Rekuski testified as to receiving Domagala's complaints in late July 2025 regarding a person on the beach. On July 22, Rekuski responded to a report of trespassing and dogs on the beach, but he could not locate the person. Rekuski followed up with Domagala by telephone and Domagala described the middle-aged man.

Rekuski learned about a similar complaint made by Domagala on July 23, to which Officer Nicholas Taraboi responded. Rekuski viewed bodycam footage of a July 23 encounter between Taraboi and Florsheim in which Florsheim admitted to walking his dogs on the beach on a regular basis and that he would continue to do so.

Rekuski thereafter asked Domagala for photos and video surveillance, which he apparently received.

On Monday, July 28, Rekuski went to the 4000 block area of Lake Drive and made contact with Florsheim as Florsheim walked toward the beach. Rekuski showed Florsheim pictures of Florsheim and his dogs on the beach at Domagala's residence. Florsheim admitted that he was the person in the photos and told Rekuski he was going to continue to walk on the beach. Rekuski said Florsheim became angry when Rekuski said he would issue a ticket. Florsheim then turned around and walked back toward the north on the sidewalk, away from Atwater Park.

Rekuski then issued a citation to Florsheim for walking dogs on the beach, based on the videos, Taraboi's bodycam footage, and Florsheim's admissions.[2]

Shorewood Officer Taraboi testified that he responded to Atwater Park in the 4000 block of Lake Drive on July 23 after receiving a dispatch regarding a man on the beach with dogs. Taraboi met Florsheim on the stairs between the park and the beach. Florsheim was walking up the stairs with two dogs.

Taraboi advised Florsheim of a complaint about him and asked Florsheim if he had seen the signs prohibiting dogs on the beach as well as access to the north. Florsheim said he would continue to walk his dogs on the beach and violate the signs. Taraboi then gave Florsheim a warning and told him to not repeat his actions.

Taraboi testified that on August 31 he received another call from the same property owner, who had video of Florsheim again walking on the property. Taraboi then wrote the citation at issue in this trial and mailed it to Florsheim.

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[2] Florsheim has paid that citation. It is no longer at issue.

On redirect, Taraboi confirmed that when he met Florsheim he told him he could not be on the beach north of the signs.

Thomas Florsheim testified that he and his family, including the defendant, used to live at 4090 North Lake Drive from 1975 to about 2003. He has thought that anyone can walk on the beach. He never called the police about people disrespecting his beach because there was "nothing to call about."

Defendant Florsheim testified that he did not deny that he walked on the beach between the ordinary high-water line on Domagala's property and the water. He said he did not see that as a violation.

Regarding his encounter with Domagala on the beach, Florsheim said Domagala motioned to Florsheim that he should not be walking there. Domagala then told Florsheim that he did not have a right to be there. Florsheim said he responded that he had been regularly walking the beach for more than 50 years and had a right to do so because it was public. Florsheim testified that his understanding of the law was based on his experience as a teenager and reading about the public trust doctrine.

Florsheim admitted to walking up toward Domagala's auxiliary structure once, to gauge its distance and because he was annoyed he had been told he did not have a right to do that.

Florsheim explained his understanding that if one is navigating on the waterway or walking then one is not trespassing. He said that having a fire on the beach would be a trespassing violation. He described the "no trespassing" sign as being not entirely wrong, because there is some private property behind the sign, but, rather, incomplete.

Florsheim presented Exhibit B, a photograph of a sign on a Lake Michigan beach in Michigan taken last summer by Florsheim, stating that public shoreline walking is permitted.

Florsheim testified that after he was approached by Rekuski, Florsheim sent the Shorewood village manager a letter asking her to resolve the issue by posting a sign like the one in Michigan. Florsheim offered to pay for the sign.

Florsheim said he did not believe he discussed the beach to the north with the officer on the stairs, "but I don't deny being there."

On cross-examination, Florsheim admitted twice that he walked on the beach north of Atwater Beach. He admitted that he was aware of the "no trespassing" sign between Domagala's property and Atwater Beach and had seen the sign prior to July 23. He said he does not dispute that the signs are there, though on July 23 he did not walk past the signs but rather

walked down closer to the water and across a pier onto the land between the ordinary high-water mark and the water.

Florsheim admitted that he is pictured in the Exhibit 5 video from July 24 and that the video was from Domagala's property. Florsheim admitted he was walking on the beach with his dogs but "was staying deliberately below the ordinary watermark."

Florsheim admitted that the man in the Exhibit 6 video from July 25 was him, walking his dogs.

Florsheim testified on cross that he thinks part of Domagala's auxiliary structure is below the high-water mark.

On redirect, Florsheim discussed and I admitted Exhibit C, which discusses the Wisconsin Department of Natural Resources' understanding of ordinary high-water mark.

**Findings of Fact**

I find that the Village has proved to a reasonable certainty by evidence that is clear and satisfactory that Domagala owns the property at issue in this case on which Florsheim allegedly trespassed, and that the property, as shown on Exhibit 1, extends from Lake Drive to Lake Michigan. Domagala's ownership of the property is undisputed.

I find that the Village has proved to a reasonable certainty by evidence that is clear and satisfactory that Florsheim entered and walked on the dry sand beach on the portion of Domagala's property abutting Lake Michigan several times this past summer, including on July 22, July 23, July 24, July 25, and, most importantly, on or about the date charged in the citation, August 31.

The evidence regarding Florsheim's presence on Domagala's beach on the dates in July is overwhelming: Domagala's testimony, the photographic and video evidence in Exhibits 4, 5, and 6, Florsheim's admissions to the officers and Domagala, and Florsheim's admissions in court that he walked between the ordinary high-water mark and the water. Domagala testified as to Florsheim's presence on the beach between his auxiliary structure and the water line on those dates, and the photographic and video evidence confirm Florsheim's presence there. Florsheim admits he is pictured in the photos and videos. Those show him wearing shoes on the sand beach, not in the water.

The evidence regarding August 31 is thinner, but I find it clear, satisfactory and sufficient to convince me to a reasonable certainty that Florsheim walked on the dry beach below Domagala's structure, between the ordinary high-water mark and the water line, on or about that date as well. Florsheim told Domagala on July 22 that he had been regularly walking the

beach for more than 50 years and had a right to do so because it was public. As supported by Taraboi's testimony about his July 23 encounter with Florsheim and Rekuski's testimony about Taraboi's bodycam footage, Florsheim told Taraboi that he walked his dogs on the beach regularly and would continue to do so. Rekuski said Florsheim told him on July 28 that he was going to continue to walk on the beach. Domagala testified that he sent Rekuski a video on August 22 or 23 when Florsheim was again walking with his dogs on Domagala's beach, indicating that the same conduct from late July was continuing. Then Taraboi received another complaint from Domagala on August 31. Florsheim maintained his belief about his right to walk the beach in his own testimony in court. He admitted in general that he walked on Domagala's beach regularly.

And, importantly, Florsheim has not directly disputed that he walked on Domagala's beach on or about August 31. Florsheim during closing arguments mentioned that he did not think he was there that particular day, but said it did not really matter. He conceded during closing arguments that his defense relies completely on whether he had a legal right to walk the beach pursuant to the public trust doctrine under Wisconsin law. He said he did not dispute that if he had no legal right to be there, he would be guilty of the citation.

I am *not* convinced to the required degree that Florsheim ever walked on Domagala's property above the ordinary high-water mark. Florsheim said he stayed below the ordinary high-water mark. Although Domagala marked on Exhibit 1 where he thinks the ordinary high-water mark is on Exhibit 1, I would need more evidence regarding exactly where that line is compared to where Florsheim walked in the Exhibit 5 video from July 24. In that video, Florsheim did not pass the white posts. I have no basis to know where the ordinary high-water mark is in relation to those posts. Moreover, no evidence suggests Florsheim was in or past that area on or about August 31.

Next, I find that as to all such entries and walking by Florsheim on Domagala's beach after July 22, the Village has sufficiently established by clear and convincing evidence that Florsheim did so after having been notified by the owner, Domagala, on July 22 and 23 not to enter or walk there. Domagala's testimony is sufficient to establish that on July 22 he personally told Florsheim not to walk on the beach between his auxiliary structure and the water. Domagala told Florsheim something like, "You're in my backyard, so why don't you just turn around and go back." Domagala said he made it clear to Florsheim that day that he did not want Florsheim walking there and that Florsheim needed to leave. Domagala's statement on July 23, before Florsheim descended to the beach, that he hoped Florsheim was not headed back to Domagala's beach is also reasonably understood in context to be another prohibition. Florsheim admitted during his testimony that on July 22 Domagala motioned to Florsheim that Florsheim should not be walking there and told Florsheim that Florsheim did not have a right to be there.[3]

[3] I make no finding as to whether the officers' warnings or the posted signs at the edge of Atwater Beach alone would be sufficient to relate a property owner's or occupant's notification under the trespass statute. For purposes of subsection

No one argued at trial or in briefs that Lake Michigan is anything other than a navigable water.

Exactly where the ordinary high-water mark is on Domagala's property is not at issue. Florsheim admitted that he was between that mark (wherever it may be) and the water.

I find the DNR provisions submitted by Florsheim to be immaterial. The DNR's interpretation of the public trust doctrine does not override Supreme Court of Wisconsin case law, which I must interpret.

I likewise find immaterial Thomas Florsheim's testimony about his past practices as a lakefront homeowner. The law, not his or defendant Florsheim's beliefs about the public trust doctrine, controls.

**Legal Analysis**

The Northwest Ordinance of 1787, which governed the territory that later became the State of Wisconsin, provided that

> 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 said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

The Wisconsin Constitution incorporated essentially the same language in the second portion of the following section:

> 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.

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(1m)(b), a person has received notice from the owner or occupant "if he or she has been notified personally, either orally or in writing." There is no dispute that Domagala, owner of the property abutting Lake Michigan, orally told Florsheim not to enter or remain on the beach between his structure and the lake, so the officers' warnings and the posted signs do not need to be considered.

This provision and principle have become known as the "public trust doctrine." As noted by the Supreme Court of Wisconsin in *Doemel v. Jantz*, 180 Wis. 225, 193 N.W. 393, 395 (1923), the beds of lakes in the Northwest Territory were held by the United States and subsequently by the State of Wisconsin "only in trust for public purposes."[4] Riparian rights[5] exist only insofar as they do not conflict with the public's interest in preserving navigable waters. *Kreuziger v. Milwaukee Cnty.*, 60 F.4th 391, 395 (7th Cir. 2023). Riparian rights "are encumbered by and subordinate to the state's interest under the public-trust doctrine." *Id.*

The public trust doctrine requires the Wisconsin government to protect the state's navigable waters for public benefit. *Clean Wis., Inc. v. Wis. Dep't of Nat. Res.*, 2021 WI 72, ¶ 3 n.6, 398 Wis. 2d 433, 961 N.W.2d 611. The doctrine is to be construed broadly. *Movrich v. Lobermeier*, 2018 WI 9, ¶ 27, 379 Wis. 2d 269, 905 N.W.2d 807; *R.W. Docks & Slips v. State,* 2001 WI 73, ¶ 23, 244 Wis. 2d 497, 628 N.W.2d 781; *Diana Shooting Club v. Husting*, 156 Wis. 261, 271, 145 N.W. 816, 820 (1914). It protects the Great Lakes' beds and also lesser inland waters. *Clean Wis., Inc.*, 2021 WI 72, ¶ 12.

*Doemel* is the key legal authority for my consideration.

The Supreme Court in *Doemel* explained that although in early common law the public's rights in navigable waters were initially confined to water navigation, in the United States the doctrine was extended "to meet the different and varying conditions as they arose." 193 N.W. at 395. As of the date of the *Doemel* decision in 1923, the Supreme Court recognized that "navigation" for purposes of the public trust doctrine "was so enlarged as to include the use of the waters for purposes of travel, for fishing, bathing, recreation, and hunting." *Id.* (citing *Diana Shooting Club*, 145 N.W. 816).

Charles Doemel sued Frank Jantz for trespass on land Doemel owned abutting Lake Winnebago. Jantz responded that he entered and traveled upon the portion of the shore lying between the ordinary high- and low-water marks and that he had a right to be there. As the Supreme Court described the case, "[t]he only question [was] whether a member of the public can legally enter upon and use for the purposes of public travel that strip of land adjacent to plaintiff's upland, and lying between the ordinary high and low water marks, and constituting what is ordinarily known as the shore, without committing trespass." 193 N.W. at 394.

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[4] The Indiana Supreme Court and Supreme Court of Michigan have pointed out that the public trust doctrine actually comes from English common law, when the monarch held title to the beds of navigable waters. The rights passed to the original 13 colonies at the conclusion of the American Revolution, then to the Northwest Territory, and then to the states created from that territory, and extended to inland navigable waters as acquired. *Gunderson v. State*, 90 N.E.3d 1171, 1176 (Ind. 2018); *Glass v. Goeckel*, 473 Mich. 667, 703 N.W.2d 58, 64 (2005).

[5] Riparian owners are those who have title to land on the bank of a body of water. *ABKA Ltd. P'ship v. Wis. Dep't of Nat. Res.*, 2002 WI 106, ¶ 57, 255 Wis. 2d 486, 648 N.W.2d 854. According to some authorities, owners of land abutting a river or stream are "riparian" owners, while owners of land abutting a lake or pond are "littoral" owners. *Gunderson*, 90 N.E.3d at 1174 n.2; *Glass*, 703 N.W.2d at 61 n.1. But the parties in this case, and Wisconsin case law, use the term "riparian" rather than "littoral," so I do the same.

The ordinary high-water mark is "'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.'" *State v. McDonald Lumber Co.*, 18 Wis. 173, 176, 118 N.W.2d 152, 153 (1962) (quoting *Diana Shooting Club*, 145 N.W. at 820); *accord R.W. Docks & Slips,* 2001 WI 73, ¶ 19; *State v. McFarren*, 62 Wis. 492, 498, 215 N.W.2d 459, 463 (1974). The low-water mark is where "the waters of the lake usually stand when free from disturbing causes." *McFarren*, 215 N.W.2d at 462-63.

Doemel argued that as a riparian owner of lands abutting a navigable lake, his title extended to the ordinary low-water mark or, if it stopped at the ordinary high-water mark, he held an exclusive right to use the shore between those marks, and any entry by a stranger was a trespass.

Jantz—and the Wisconsin Attorney General, who intervened in the case—argued that either Doemel's title stopped at the ordinary high-water mark and the shore land between that mark and the low-water mark was public trust land, or that Doemel had only a qualified title to the strip subject to "a public easement in the interests of the public, not only for the purposes of navigation and the incidents thereto, but for the purposes of public travel and public purposes generally." 193 N.W. at 394.

The Supreme Court found in Doemel's favor, holding that the public trust doctrine rights of Jantz did *not* include walking or standing on the beach between the ordinary high-water mark and the water.

The Court wrote that in enlarging the public uses of navigable waters, "the original purpose of the use of such waters for navigation purposes has never been lost sight of, and, in fact, such use is at the very foundation of the public right . . . the various purposes for which the public waters may be used, besides navigation for commercial purposes, are declared to be incidents to navigation." *Id.* at 395. "[F]ishing, recreation, boating, bathing, hunting, etc. . . . are denominated incidents to the rights of navigation." *Id.* at 397.

The Court set forth in list form several principles regarding the rights of riparian owners, including that

- Riparian ownership gives the owner "*exclusive* privileges of the shore for the purposes of access to his land and the water"
- The owner cannot be deprived of these rights for any private use
- The "soil *under water* in inland navigable meandered lakes is held by the state in trust for the benefit of the public for navigation purposes and its various incidents," and

- "When the waters in the lake recede to low-water mark, *the public has the privilege to use the water* up to the water line, and, when they extend to the ordinary high-water mark, such rights in the public are extended accordingly."

*Id.* at 397 (emphasis added). Any invasion of these rights by a stranger is an injury to the riparian owner. *Id.* "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," the Court said. *Id.* at 398.

The Court concluded by emphasizing the difference the water line makes. During times when the water is high, up to the high-water mark, the strip of beach below the high-water mark and under water is subject to the rights of the public. But "when the waters recede, these rights are succeeded by the exclusive rights of the riparian owner." "[D]uring periods of low water [riparian ownership] ripens into an absolute ownership as against all the world, with the exception of the public rights of navigation." *Id.*

The court said that these principles appeared to be "firmly established by the jurisprudence of this state and of other states." *Id.* at 397. It wrote that early in the state's history, the Court, "in harmony with other courts . . . firmly declared that the title of a riparian owner on a navigable inland meandered lake extends to low-water mark." *Id.* at 398.

Jantz lost the case. His defense to a trespass claim based on the public trust doctrine failed. His presence on the strip of beach between the actual water line and the ordinary high-water mark of Doemel's property violated Doemel's riparian rights.

Florsheim argues that under a close, and in his view correct, reading of the exceptions quoted above, the riparian owner's rights to the exposed shore actually are subordinate to the public's rights. ("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*," and "during periods of low water [riparian ownership] ripens into an absolute ownership as against all the world, *with the exception of the public rights of navigation*.") But the argument does not hold up. The first quotation can as easily be interpreted to mean that the riparian owner has superior rights except when water covers the shore land. The second quotation can be interpreted to apply to the riparian owner's use of the exposed land that might somehow interfere with navigation in the water or some in-water public use. More importantly, Florsheim's argument is contrary to the actual holding in *Doemel*. Jantz was found to be a trespasser on the exposed land between the high-water mark and the water line.

Under *Doemel* by itself, Florsheim loses this case. The holding of the case is right on point. At trial, Florsheim called *Doemel* a "fluke of legal history," but he agreed that the case has not been overturned.[6]

The question then becomes whether case law since Doemel has modified its holding. Florsheim argues that the meaning of navigation and understanding of the public rights that are protected as incidents of navigation under the doctrine have evolved since *Doemel* such that walking on the beach is now protected.

"'Navigation' is a term of art" in the public trust doctrine context, and is broader than the commonly understood sense." *Kreuziger*, 60 F.4th at 395. In the generally understood sense, "navigation" is defined as "the science of getting vehicles from place to place," "ship traffic or commerce," and "the act or practice of navigating." *Navigation*, Merriam Webster Online, https://www.merriam-webster.com/dictionary/navigation. To "navigate" means "to travel by water:sail" or "to steer a course through a medium." *Navigating*, Merriam Webster Online, https://www.merriam-webster.com/dictionary/navigate. As Florsheim suggested at trial, in a very broad sense, people navigate websites and cars have navigation systems or a passenger navigator.

But regarding the public trust doctrine, the commonly understood meaning involves water navigation, though water navigation has expanded to include other activities that are incidents of, or connected to, navigation. As noted above, *Doemel* listed fishing, bathing, recreation, and hunting in addition to water travel as protected navigation-related activities.

To the extent discernible, the various activities considered to be navigation or otherwise protected by the Supreme Court for purposes of the public trust doctrine have been solely water-based.

In *Diana Shooting Club*, the defendant was found not to be trespassing when he was hunting in his boat, floating on the water in a bay of the Rock River. The Court said the case concerned the question of "the right to hunt *on* navigable waters," 145 N.W. at 818 (emphasis added), and discussed how the right to hunt *on* navigable waters, like fishing, is "an incident to the right of navigation." *Id.* at 819. The Court stated that hunting on navigable waters is lawful when it is "confined strictly to such waters while they are in a navigable stage, and between the boundaries of ordinary high-water marks." The Court expressly noted that whether the public had the right to hunt between the ordinary high-water marks on land that had become

[6] In his post-trial brief, Florsheim wrote that he has done some historical research about the Jantz case, reading newspaper articles and the attorney general's letter to the court in support of Jantz. Florsheim states that his research shows Jantz broke a fence belonging to Doemel and thus was doing more than merely walking. In Florsheim's words, "Jantz was not navigating." (Def.'s Post-trial Br. 2.) Florsheim's research is not in the record of this case. Moreover, any such facts appear immaterial to *Doemel*'s outcome. Jantz lost even without the broken fence. If breaking a fence had any bearing on the case, the Court would have mentioned it.

dry or exposed above the water line was not an issue in the case and was not being decided. *Id.* at 820.

In 1930, the Supreme Court, in discussing public rights to navigable lakes and streams, noted that "these waters are used by the people for sailing, rowing, canoeing, bathing, fishing, hunting, skating, and other public purposes." *Nekoosa Edwards Paper Co. v. R.R. Comm'n*, 201 Wis. 40, 47, 228 N.W. 144, 147 (1929), *aff'd*, 283 U.S. 787, 51 S. Ct. 352 (1931). The statement addressed the use of *waters*.

*State v. Trudeau*, 139 Wis. 2d 91, 408 N.W.2d 337 (1987), took a turn toward Florsheim's position. *Trudeau* said that public trust rights include the enjoyment of scenic beauty, which arguably could include walking a beach. 408 N.W.2d at 343 ("The rights Wisconsin citizens enjoy with respect to bodies of water held in trust by the state include the enjoyment of natural scenic beauty as well as the purposes of navigation, swimming and hunting.").

However, the *Trudeau* court cited to *Just v. Marinette County*, 56 Wis. 2d 7, 201 N.W.2d 761 (1972), for the point, and *Just* did not go so far. The Supreme Court in *Just* addressed whether a zoning ordinance that prohibited filling wetlands amounted to a taking of private property or instead was part of the state's valid police power. In finding that the ordinance was permissible police power, the Court pointed to the state's responsibility under the trust doctrine to protect against pollution in its navigable waters. 201 N.W.2d at 768. "The active public trust duty of the state of Wisconsin in respect to navigable waters requires the state not only to promote navigation but also to protect and preserve those waters for fishing, recreation, and scenic beauty." *Id.*

The state's responsibility for preserving its navigable waters for use by the public does not necessarily equate with the public's right to use the waters. Therefore, I do not read the expansion of language about enjoyment or preservation of scenic beauty, as mentioned in *Trudeau*, then *Gillen v. City of Neenah*, 219 Wis. 2d 806, 821, 580 N.W.2d 628, 633 (1998) (stating that although the public trust doctrine originally applied to protect commercial navigation, it "has been expanded to safeguard the public's use of navigable waters for enjoyment of natural scenic beauty, as well as for recreational and nonpecuniary purposes"), then *R.W. Docks & Slips*, 2001 WI 73, ¶ 19 (noting that the doctrine "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"), then *Movrich*, 2018 WI 9, ¶ 25 (noting that public rights protected under the public trust doctrine include boating, swimming, fishing, hunting and preserving scenic beauty), as altering *Doemel*'s holding. Moreover, *Gillen* and *R.W. Docks & Slips* still reference use of "waters," not land around waters.

About 50 years after *Doemel*, the Supreme Court in *McFarren* reiterated *Doemel*'s conclusion that as to land between the ordinary high-water mark and the water, a riparian

owner "may exclude the public therefrom but he may not interfere with the rights of the public for navigation purposes." 215 N.W.2d at 463 (citing *Doemel*). Thus, the Court again indicated that the owner could exclude the public and that presence on the land between the ordinary high-water mark and the water is distinct from navigation and not permitted under the public trust doctrine.

Florsheim points to no Wisconsin case holding that an activity occurring *out* of the water constitutes navigation or other protected activity under the public trust doctrine.

Cases from Indiana and Michigan so provide. In each state, the high court has held that the public is legally entitled under the public trust doctrine to walk Great Lakes beaches between the water line and the ordinary high-water mark. *Gunderson v. State*, 90 N.E.3d 1171 (Ind. 2018); *Glass v. Goeckel*, 473 Mich. 667, 703 N.W.2d 58 (2005).

In *Gunderson*, the Indiana Supreme Court held that walking below the natural ordinary high-water mark along the shores of Lake Michigan is a protected public use under the public trust doctrine. 90 N.E.3d at 1187-88. Walking below the ordinary high-water mark was "inherent in the exercise of the traditional protected uses" of navigable waterways, the court said. *Id.* at 1188. The court indicated that walking was a minimum permitted use, leaving other possible beach uses to the state's legislature. *Id.*

The court noted that it retained a common law power to expand the scope of protected uses under the doctrine, stating that the doctrine "should not be considered fixed or static, but should be molded and extended to meet changing conditions and needs of the public it was created to benefit." *Id.* (internal quotation marks omitted).

The Indiana Supreme Court did not say that walking *was* public trust navigation. Instead, it said that walking was a necessary incident of other recognized public uses: "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." *Id.*

In *Glass*, the Supreme Court of Michigan held that the public trust doctrine protected the right of the plaintiff, as a member of the public, to walk the shores of Lake Huron on the lakeside of the ordinary high-water mark, regardless of the water level. 703 N.W.2d at 62, 78. The court wrote that the right applied to the Michigan shores of any of the Great Lakes. *Id.* at 62. "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." *Id.* The court looked specifically at whether the public trust doctrine rights of a pedestrian extended up to the ordinary high-water mark or applied only to land covered by water at any particular moment, *id.* at 66, and found in favor of the pedestrian even on dry land. "[W]alking

along the shore, subject to regulation (as is any exercise of public rights in the public trust) falls within the scope of the public trust." *Id.* at 73. The court stated that the land between the ordinary high-water mark and water line "although not immediately and presently submerged, falls within the ambit of the public trust because the lake has not permanently receded from that point and may yet again exert its influence up to that point." *Id.* at 71.

The court indicated that its holding did not create new rights. The public always had the right of passage along the shore because gaining access to the Great Lakes to hunt, fish, or boat required walking on the shore to reach the water. *Id.* Moreover, the public trust doctrine applied regardless of the title of the private landowner's land. Any portion of the private title extending into the public trust land is subject to the public's rights; the private landowner's rights are not absolute below the ordinary high-water mark. *See id.* at 70-71.

*Gunderson* and *Glass* cannot alter Wisconsin public trust law set forth in precedential Supreme Court of Wisconsin case law. They do not alter the applicability of *Doemel*, which is directly on point. They do not alter my conclusion that, to date, Wisconsin cases have recognized as protected public trust activities only those that have a direct tie to the water: swimming, boating, hunting on the water, and therefore, as to walking, only walking *in* the water.

Perhaps the *Doemel* court was wrong. Perhaps it incorrectly favored the rights of the riparian landowner over the rights of the public regarding exposed land between the ordinary high-water mark and the water. The right of the public to free use of navigable waters of the state "has been jealously reserved," *Diana Hunting Club*, 145 N.W. at 818, and should be interpreted broadly, *id.* at 820.

But as a municipal court judge, I cannot disregard *Doemel*, whether rightly or wrongly decided. I must follow it.

Perhaps *Doemel* should be overruled. Since *Doemel*, the Supreme Court of Wisconsin has found that state ownership of bodies of water extends to the ordinary high-water mark and said that the public trust doctrine traditionally extends there as well. *Movrich*, 2018 WI 9, ¶ 27; *R.W. Docks & Slips*, 2001 WI 73, ¶ 19 (stating that the state's title to the lake bed runs to the ordinary high-water mark); *McDonald*, 118 N.W.2d. at 153 (same). That, in connection with the state's need to protect the public's rights, may change the weighing of private and public rights to the exposed shores.

In addition, the *Doemel* court relied in part on its understanding of the law in other states. *Doemel*, 193 N.W. at 396 ("These are but few of the many rights of a riparian owner which are necessary incidents to his title to the upland, and such rights are not only generally conceded by the decisions in this state, but by the decisions in practically all the other states

where the question has come up for adjudication."). But *Gunderson* and *Glass* show that the law in at least two other states now allows the public to walk the shores of the Great Lakes.

Meanwhile, as noted in *Gunderson*, the public trust doctrine might expand as times change. Wisconsin opinions that added protection of scenic beauty to the list of public uses suggest that could be the case. The question here, as in *Glass*, is where walking can occur. If walking in the water (even in an inch or two) is part of protected public activity, then perhaps the same activity along the water's edge now is, too.

However, as a municipal court judge, I cannot modify or overrule *Doemel*. Only the Supreme Court of Wisconsin can do that. *Doemel* remains precedential, and it ordains the outcome in this case. Under *Doemel*, regardless of what Florsheim could do in the water, he could not walk on the beach without trespassing. Florsheim, like Jantz, has no valid defense under the public trust doctrine.

**Conclusion**

For the above reasons, I grant judgment for the Village of Shorewood and find Florsheim guilty on the citation for trespassing. I impose the forfeiture in the deposit amount printed on his citation: $313.

The parties are hereby notified of their right to appeal this decision within 20 days. The clerk is directed to send both parties a copy of the appeal form with this decision, along with information on how to file an appeal and the appeal fee that would need to be paid. Filling out the appeal paperwork is the responsibilities of the parties, not the court clerk. The parties should pay close attention to the deadline for appeal; I cannot extend it.

So ordered this 28th day of January, 2026.

Margo S. Kirchner
Municipal Judge