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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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McLACHLAN, J., dissenting in part. I join fully in parts I and III of the majority's opinion. My judgment diverges from that of the majority in part II A at the point when it concludes that the right of the plaintiffs, Christopher Stefanoni and Margaret Stefanoni, to access the waters of Holly Pond permits their construction of a dock connected to the land of the defendant, Ian M. Duncan. The record reveals that the trial court never found that a dock was reasonable or necessary to the plaintiffs' enjoyment of access to the water,[1] and I believe that the addition of a dock at the end of the contemplated walkway would unnecessarily burden the servient estate.

The right to access a navigable waterway, which evolved in a maritime society, is significantly different from the right to access waters that are not navigable. The cases cited by the majority that discuss the right to wharf out apply to navigable waters. See *Water Street Associates Ltd. Partnership* v. *Innopak Plastics Corp.*, 230 Conn. 764, 769, 646 A.2d 790 (1994); *Rochester* v. *Barney*, 117 Conn. 462, 468, 169 A. 45 (1933). "The right to wharf out derives from the right of access to 'navigable' or 'deep' water." *Port Clinton Associates* v. *Board of Selectmen*, 217 Conn. 588, 598 n.13, 587 A.2d 126, cert. denied, 502 U.S. 814, 112 S. Ct. 64, 116 L. Ed. 2d 39 (1991). Because Holly Pond does not appear to be navigable, these cases are inapplicable.

The question then becomes what are the plaintiffs' rights as granted by the deed to their property. It is clear that the "owner[s] of [an] easement [have] all rights incident or necessary to [their] proper enjoyment but nothing more." *Great Hill Lake, Inc.* v. *Caswell*, 126 Conn. 364, 367, 11 A.2d 396 (1940). I am not persuaded that the majority has abided by that principle in concluding that a dock is necessary to the plaintiffs' proper enjoyment of their easement. As the majority reports, the plaintiffs' predecessors used their access easement to go swimming in and canoeing on Holly Pond. The record does not suggest that they were unable to do so without the benefit of a dock for mooring and launching their boats. Thus, although I agree that the trial court's six findings of fact enumerated in the majority opinion support the need for a walkway over the mud and marsh grasses to the edge of the water, I disagree that the plaintiffs need a dock in the water to effectuate the intention expressed in the deed.

Nor do I consider this a compromise decision. The facts found by the trial court support the need for a walkway, but do not support the need for a dock. The majority correctly notes that improvements necessary to effectuate the enjoyment of an easement should not be permitted if they unreasonably increase the burden

on the servient estate. *Somers* v. *LeVasseur*, 230 Conn. 560, 564, 645 A.2d 993 (1994). Facts in the record make the imposition of a dock on the defendant's property unnecessarily burdensome. First, the seasonal nature of the plaintiffs' use will require that the dock be stored, presumably on the defendant's land, during the winter months. Second, the majority concedes that there is a possibility that the defendant will be unable to obtain permission to build a second dock along the edge of the pond. Given the acrimonious history between the parties, the majority's solution to this potential problem—that the parties share the dock—is an additional burden on the defendant's use and enjoyment of his land. Third and finally, the foreshore is, according to the trial court, somewhat uneven but firm. That would allow the plaintiffs to step into or to lower a boat safely and reasonably from the walkway into the foreshore of Holly Pond.

I find persuasive this court's reasoning in *McCullough* v. *Waterfront Park Assn., Inc.*, 32 Conn. App. 746, 755–58, 630 A.2d 1372, cert. denied, 227 Conn. 933, 632 A.2d 707 (1993), holding that the defendants' prescriptive easement did not entitle them to place docks on the plaintiff's land. The court concluded that "the placement of the docks significantly burdens the plaintiff's use of the water bordering her property, thereby interfering with her littoral rights." Id., 758. Although the plaintiffs' easement in this case was acquired by deed rather than by prescription, that distinction is not material here. The prior owners' use, combined with the absence of language in the deed permitting the construction of a dock or more expansively describing the plaintiffs' right of access, compels me to take a narrower view of the plaintiffs' rights.

Accordingly, I respectfully dissent in part.

[1] The court did conclude, however, that "paving or otherwise improving the surface of the path *within the access easement* would not be an unreasonable exercise of the plaintiffs' rights." (Emphasis added.)