

Recent Flood of Court Decisions Could Wash Away 70 Years of Case Law on Riparian Rights

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Like the tides forever sculpting our coastline wave by wave, so goes Florida's legal landscape on water rights. Court precedents seemingly cast in stone for decades are being ceaselessly battered by appeals and opinions that can transform established case law into something altogether new.

For nearly 70 years, the Florida Supreme Court's decision in *Hayes v Bowman* has been the seminal case for determining riparian rights – the right to access and use natural waterways based on ownership of land on the adjacent shoreline.

Hayes v. Bowman resolved a dispute between private landowners on Boca Ciega Bay in Pinellas County, and in doing so, established criteria for determining riparian rights by focusing on an equitable distribution.

In the decades since, the decision was interpreted and applied in such a way that riparian rights are now equitably distributed through the drawing of riparian lines. For example, if someone wanted to build a dock, which is their riparian right, what geographic parameters are they to work within? In the 1980s, the state's Department of Environmental Protection developed a series of non-binding guidelines to assist surveyors and others in identifying riparian lines based on *Hayes* and the decisions that followed it.

Today, the equitable distribution criteria in *Hayes* together with FDEP's Guidelines largely drive the issuance of permits by FDEP and resolve disputes in the courts. But that may change.

On April 2, 2026, the Sixth District Court of Appeal in Lakeland issued its decision in *Geise v. Fleck*, and in doing so, drastically departs from the decades of reliance on the equitable distribution criteria in *Hayes*.

The appellees, Fleck, owned property on Lake Down in Orange County since 1999, that property came with a dock/boathouse that has been removed and rebuilt twice. The appellants, Geise, purchased property adjacent to the Fleck's and sued, alleging the Fleck's existing boathouse infringed on Geise's riparian rights.

Instead of relying on the equitable distribution criteria provided in *Hayes*, the Sixth District Court used an "unreasonable interference" test, saying that Fleck's dock/boathouse "did not

unreasonably interfere with any of Geise’s lake-related riparian rights.” The District Court provided no criteria explaining what type of degree of interference would be considered “unreasonable.” However, the Geise Court also refused to direct the trial court to draw a riparian line demarcating the extent of each Parties’ riparian rights. Both of these are stark departures from the existing approach under *Hayes*.

The Sixth District Court went so far as to certify their decision as directly conflicting with a 2025 decision by the Second District Court of Appeal in *Brown v. Thomas* in which LLW represented the prevailing party in the appellate court. In *Brown*, the Second District had reversed a trial court judgment for its failure to follow and apply the equitable distribution criteria in *Hayes*.

The certified conflict between *Geise* and the Second District Court’s *Brown* decision is enough for the Florida Supreme Court to step in. But that is not all. Recent cases in the Fourth and Fifth Districts cite *Brown* and *Geise* respectively. This means that four of the six Districts are potentially taking sides in the debate – are trial courts obligated to draw riparian lines?

Taken as a whole, these cases seemingly set the stage for the most substantive challenge to the framework for riparian rights established 70 years ago by the Supreme Court in *Hayes*.

The result could be seismic. If the Supreme Court were to adopt the Sixth District’s “unreasonable interference” test in *Geise*, the current practice of equitably distributing the available riparian area along a shoreline by using riparian lines would likely be discarded. An upland owner would now have to argue that their neighbor’s use of the waterbody is an unreasonable infringement on everyone else’s riparian rights, not just their own.

The result would mean after decades of reliance on the surveying profession to develop and present a myriad of ideas for equitably distributing the riparian area amongst neighboring landowners, some other form of expert would need to be identified, not to draw equitable lines, but identify how one’s use of the water is not only an interference, but an unreasonable interference.

Currently, the FDEP rule criteria depends upon the location and depiction of riparian lines on a site plan to be submitted with an application for a permit to build a dock. FDEP requires minimum setbacks from the nearest riparian line. If the judicial establishment of riparian lines is abolished, FDEP’s rule criteria for permitting docks and structures on sovereignty submerged land would need an overhaul.

Perhaps in another example of “bad facts make bad law, the *Geise* case highlights an increasingly common tactic in riparian rights litigation that the Sixth District Court may be trying



to abolish. In *Geise* the Fleck's boathouse was not preventing the Geises from accessing, using and viewing the lake.

Rather, Geise's true goal was to judicially establish a riparian line for the sole purpose of separately challenging the Fleck's dock permit before the FDEP, claiming the dock was not appropriately set back from the true riparian line under FDEP's rule criteria.

In essence, the trial court was not employed to resolve an interference with a riparian right infringed upon by Fleck's boathouse. Rather the Court was only asked to pick between riparian lines asserted by the parties. In choosing Geise's line, Geise could then compel FDEP to force the dock/boathouse's removal under FDEP's rule criteria. The trial court in *Geise* simply did not believe it could be compelled to draw a line where the court saw no unreasonable interference. The Sixth District did not just affirm the trial court's refusal but rejected the practice entirely. Under *Geise*, if you have no "unreasonable interference," then good luck running to the FDEP to claim a setback violation.

Ultimately, it could become nearly impossible to successfully object to a neighbor's construction of a dock. Not only are there no defined criteria to establish "unreasonable interference", but recent changes in Florida Statutes also burden an upland owner's ability to challenge a neighbor's existing dock. How will the other District Court's handle riparian disputes? Will the Supreme Court weigh in? Only time will tell.

LLW has a deep bench of attorneys who are the best in the state on this topic, representing clients in disputes big and small related to riparian rights along Florida's more than 8,400 miles of shorelines with lakes, rivers, the Gulf and the Atlantic. We will continue to monitor these cases closely and provide updates and counsel. For more information, contact [Richard Green](mailto:rgreen@llw-law.com) at rgreen@llw-law.com and [Andrew Baumann](mailto:abaumann@llw-law.com) at abaumann@llw-law.com.