

IN THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA
CIVIL DIVISION
CASE NO. 22-003056-CI

NATHAN ALAN FOLKERT and
KANDIS FOLKERT; MAJED FACKIH
and SAHAR SALAME,

Plaintiffs,

v.

JORDAN HIDALGO,

Defendant.

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendant, Jordan Hidalgo, pursuant to Florida Rule of Appellate Procedure 9.110, appeals to the Second District Court of Appeal, the Final Judgment (the “Judgment”), rendered on December 19, 2025, a conformed copy of which is attached hereto. The nature of the Judgment is a final judgment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Court and served via the Florida Courts E-Filing Portal to all designated email addresses, or via First Class U.S. Mail, this 20th day of January, 2026, as follows:

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FINAL JUDGMENT

THIS MATTER came before the Court for a non-jury trial on July 28 and 29, 2025.

The Court having heard the trial testimony, received the evidence, heard the arguments of counsel, and being otherwise advised in the matter, hereby makes the following findings of fact and conclusion of law and renders final judgment as follows:

STIPULATED FACTS

The following facts were stipulated to:

- A. Joseph White previously owned three contiguous waterfront lots in Pinellas County, Florida.
- B. Prior to 2018, the northernmost lot was improved with a single-family

residence, and the two lots to the south were vacant, with a dock (the “Dock”) extending from the middle lot. Mr. White constructed and used a shell path, which ran from the southern boundary of the improved lot over the middle vacant lot to access the Dock. Mr. White also installed utilities running from the house to the Dock.

C. On October 1, 2010, Mr. White conveyed the northernmost improved lot to his daughter and son-in-law, Megan Anderson and John Anderson, and Mr. White continued to own the two vacant lots.

D. In 2018, Mr. White granted a conservation easement to Pinellas County over the two vacant lots, which is recorded in Official Records Book 20012, Page 1511, of the Official Records of Pinellas County, Florida (the “White Agreement”).

E. Also in 2018, the Andersons granted a conservation easement to Pinellas County over the improved lot, which is recorded in Official Records Book 20012, Page 1508, of the Official Records of Pinellas County, Florida (the “Anderson Agreement”).

F. There is no separate agreement regarding sharing or accessing the Dock recorded in the Official Records of Pinellas County, Florida.

G. On February 5, 2021, the Folkerts purchased the improved lot from the Andersons (hereinafter referred to as the "Folkert Property"), as evidenced by the warranty deed recorded in Official Records Book 21379, Page 2122, of the Official Records of Pinellas County, Florida.

H. On December 28, 2021, Mr. Hidalgo purchased the middle lot from Mr. White (hereinafter referred to as the "Hidalgo Property"), as evidenced by the warranty deed recorded in Official Records Book 21870, Page 726, of the Official Records of Pinellas County, Florida, upon which he is in the process of constructing a house.

I. On July 10, 2023, the Fackihs purchased the southernmost lot from Mr. White (hereinafter referred to as the "Fackih Property"), as evidenced by the warranty deed recorded in Official Records Book 22502, Page 148, of the Official Records of Pinellas County, Florida.

ISSUES FRAMED BY THE PLEADINGS

The Folkerts and the Fackihs filed a two-count amended complaint, in which they allege that the "purpose" of the White Agreement and the Anderson Agreement was to prevent each of the three owners from constructing their own docks but rather to share the long Dock; and further it was intended that the owners of the Fackih Property and the Folkert Property would have "reasonable access of ingress and egress" to the Dock through the Hidalgo Property. In Count I, the Folkerts and the Fackihs seek a declaration that (1) the Folkerts and Fackihs are entitled to access to the Dock through the Hidalgo Property; (2) such access is specifically through the constructed lighted pathway; and (3) the parties are responsible to share in the expenses. The Folkerts and Fackihs specifically allege that there is "no other reasonable access" to the Dock ("Count I for Dock Access"). In Count II, the Folkerts and the Fackihs seek a declaration that they have "an interest in and right to use" the Dock ("Count II for Dock Use").

Mr. Hidalgo filed an answer and affirmative defenses, in which he contends as follows:

A. The Folkerts and the Fackihs are unable to establish that they have an interest in the Dock or that they have any right to use the Dock.

B. Even assuming the Folkerts and the Fackihs could establish a right to use the Dock, they are not entitled to an easement over the Hidalgo Property because there is no absolute necessity.

FINDINGS OF FACT

The Court received exhibits and the following testimony during the trial: evidence at trial was the following:

- ♦ Kandis Folkert (live testimony)
- ♦ Steve Kepler (live testimony)
- ♦ John Carl Anderson (live testimony)
- ♦ Joseph Charles White (live testimony)
- ♦ Majed Fackih (live testimony)
- ♦ Julee Sims (via deposition)
- ♦ Brian Aungst (live testimony)
- ♦ Jordan Hidalgo (live testimony)
- ♦ Nathan Folkert (live testimony and via deposition)

In addition to the Stipulated Facts, the Court makes the following findings of fact:

- ♦ The dock was created as a shared dock between all three parcels.

- ♦ The utilities to the dock originate from the Folkerts' Property and have been paid and maintained by the Folkerts since they purchased their property.
- ♦ All of the Parties were told that the dock was shared at their respective times of purchase.
- ♦ The dock crosses over from the Hidalgo Property over an extended property line to the Fackih property.
- ♦ The Folkerts nor the Fackihs could traverse the mangroves to get to the dock.
- ♦ Neither the Folkerts nor the Fackihs sought a variance to attempt to build from their Property to the dock.

CONCLUSIONS OF LAW

As to Count I for Dock Use, the Folkerts and the Fackihs argued that they had a right to and/or right to use the Dock. Specifically, they argued that when the Dock was created, it was created as a shared Dock between the three parcels, so the most that could have been transferred to Mr. Hidalgo would have been an interest in the shared Dock. Mr. Hidalgo argued that the Dock is a riparian right incident to the Hidalgo Property because it borders on the navigable intracoastal waterway and the Dock extends from his upland property. § 253.141, Fla. Stat. In addition, Mr. Hidalgo contended that the riparian right to use the Dock can only be separated from the Hidalgo Property by an "express bilateral agreement" to do so. *Id.*; see also *Goldman v. Lustig*, 237 So. 3d 381, 384 (Fla. 4th DCA 2018) (quoting *Haynes v. Carbonell*, 532 So. 2d 746, 748 (Fla. 3d DCA 1988)). Therefore, Mr. Hidalgo contended that the Folkerts and the Fackihs cannot establish any right to use the Dock because no express bilateral agreement exists granting anyone the right to use the Dock.

The Folkerts and the Fackihs contended that there was an express bilateral agreement, and, to the extent a written express bilateral agreement is required, such requirement was satisfied.

This Court is not convinced that Mr. Hidalgo exclusively owns the Dock just because it extends from his property, or that Mr. Hidalgo's riparian rights give him exclusive ownership of the Dock. This Court "do[es] not believe Mr. Hidalgo owns the Dock, and for that matter that he has exclusive access to it. He has not proven that and [the Court doesn't] think anything he's shown to [this Court] says it." In addition, this Court finds that

[T]he riparian rights that were granted at the time it was granted and at the time this property was conveyed was the use and ownership of the dock by all three parcels. It was one parcel that became three parcels, and that was the intent at the time. That was the right that was given, and I don't think the right manages somehow to be taken away because the property was subdivided or because Mr. Hidalgo was the one who purchased it.

This Court finds "that there's no specific document that takes the right away." Therefore, this Court finds that Mr. Hidalgo, the Folkerts, and the Fackihs all have a right to the Dock.

As to Count II for Dock Access, the parties agree that the Florida Supreme Court has held that there are only two possible exceptions to the general rule that easements cannot arise by implication—only one of which is relevant to this case—and that is as a result of absolute necessity. *Tortoise Island Cmtys., Inc. v. Mooring Ass'n, Inc.*, 489 So. 2d 22 (Fla. 1986), adopting Judge Cowart's dissent in *Moorings Assoc., Inc. v. Tortoise*

Island Cmtys., Inc., 460 So. 2d 961 (Fla. 5th DCA 1984). The Folkerts and the Fackihs argued that there is no other reasonable access to the Dock other than across the Hidalgo Property and that they did not seek a variance to build an access pier from their property to the Dock before filing this action because the Anderson Agreement and the White Agreement prohibited it. Mr. Hidalgo argued that an implied easement over the Hidalgo Property is not absolutely necessary because the Folkert Property and the Fackih Property both front on the intracoastal waterway which would provide practicable access to the Dock if a variance was granted, and they may be able to build their own access pier to connect with the walkway to the Dock.

This Court finds that the Folkerts' and the Fackihs' failure to seek a variance to build an access pier prior to filing suit is fatal to their claim that an easement across the Hidalgo Property is an absolute necessity, as is required.

Accordingly, it is hereby ORDERED and ADJUDGED as follows:

A. This Court finds that the Folkerts and the Fackihs do not have the right to cross the Hidalgo Property to access the Dock and, therefore, final judgment is entered against Plaintiffs, Nathan Alan Folkert, Kandis Folkert, Majed Fackih, and Sahar Fackih, and in favor of Defendant, Jordan Hidalgo, as to Count I for Dock Access.

B. This Court finds that the Folkerts and the Fackihs have a right to use the Dock and, therefore, final judgment is entered in favor of Plaintiffs, Nathan Alan Folkert, Kandis Folkert, Majed Fackih, and Sahar Fackih, and against Defendant, Jordan Hidalgo, as to Count II for Dock Use.

C. This final judgment shall be recorded in the Official Records of Pinellas County, Florida.

DONE and ORDERED in Pinellas County, Florida this 19 day of December 2025.

Judge Michael F. Andrews
Electronically Conformed 12/19/2025
Michael Andrews

Copies furnished to:

Jacqueline F. Perez, Esquire
Caitlein J. Jammo, Esquire
Shadi N. Fackih, Esquire
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