

STATE OF INDIANA )  
 ) SS:  
KOSCIUSKO COUNTY )

IN THE KOSCIUSKO CIRCUIT COURT  
1991 TERM

CAUSE NO. 43CO1-9109-CP-732

DOROTHY V. BARNES, J. ROBERT BAUR, LAWRENCE E. BEAVERS, HELEN E. BEAVERS, JO ANN BENADUM, ROBERT BERG, KATHY BERG, MICHAEL T. BLACK, DAPHNE BLACK, EUGENE BLACKBURN, MRS. HARRY BOGUE, RICHARD L. BOTT, KAY L. BOTT, JO ANN BOYER, ANDY BOYLAN, CAROL CALLAND BOYLAN, LEICESTER H. BROWN, JEAN BROWN, TOM BROWN, CAROL BROWN, ROGER BRUCE, NANCE BRUCE, DAN BRUNETTE, MIKE BRUNETTE, SYLVIA BRUNETTE, LAVON BYER, PHYLLIS E. BYER, JOHN J. CALLAND, JANE R. CHURCH, DALE A. CLAYTON, JO ANNE CLAYTON, PEGGY ANN COLE, GEORGE COLE, STEVEN K. CONNER, JADA CONNER, DAVID J. CORNELIUS, MAUREEN CORNELIUS, MICHAEL COUNT, DENISE COUNT, TED DOLES, MARILYN L. DOLES, MARGARET FATZINGER, ROBERT W. FRIBLEY, JANE S. FRIBLEY, J. THOMAS FROST, MARGARET FROST, THOMAS M. FROST, MARY ELLEN FROST, WILLIAM H. GINTY, ROBERT L. GLASS, MARJORY B. GLASS, THOMAS L. GLOTZBACH, ROBERTA GLOTZBACH, ANTOINETTE GRIFFEN, LANA GROOMBRIDGE, DAROLD W. GROSSMAN, DOROTHA GROSSMAN, ROY T. HANSON, GERALDINE J. HANSON, LARRY HARPER, SUE ANN HARPER, KENNETH HENRY, BETTY L. HENRY, RICHARD D. HINTON, BETTY J. HINTON, JAMES D. HOLDREAD, SUSAN M. HOLDREAD, LAWRENCE L. HOOD, RONALD HORCHER, BARBARA HORCHER, JAMES M. JOHNSON, SUETTA M. JOHNSON, DAVID, ED KANNEY, EDNA KANNEY, ROBERT KHAMIS, PATRICIA CALLAND KHAMIS, DAVID B. KIEPER, GAYLE O. KIEPER, DAN LABUS, JEAN LABUS, ROGER LAUER, LISA LAUER, HENRY LAWER, MARGIE LAWER, ANN LAWER, STEVEN D. LISLE, CASSIE J. LISLE, HOWARD MCCAIN, CAROL M. MCCAIN, FRANK MCCOY, DIANA MCCOY, GEORGE R. NELSON, MARY R. NELSON, JOHN D. OSBORN, JANET S. OSBORN, RICHARD E. PARKS, MARJORE ANN PARKS, DOYLE E. PAVY, SHIRLEY T. PAVEY, JOYCE ANN ABRAMS PHANEUF, FRED PHANEUF, WILLIAM H. PYLE, MARTHA R. PYLE, JOHN W. RIGGINS, JOETTA L. RIGGIN, G. MICHAEL ROBERTS, JANICE R. ROBERTS, ROBERT P. ROBERTS, DEBORAH W. ROBERTS, LLOYD GILBERT SAPP, EMILE ELIZABETH DUKE SAPP, BRUCE SHILLING, NAOMI SHILLING, MARION SHORE, ROSE SHORE, EDNA M. SLEMMER, WILLIAM HAROLD SMITH, PEGGY J. SMITH, DAVID RAYMOND SPEER, JO ANN PHILLIPS SPEER, STEVEN STRACK, MARY ELLEN STRACK, CHARLES E. TAYLOR, ELDON THOMPCKINS, SHARON THOMPCKINS, DAVID M. TURNER, CLAUDIA J. TURNER, ROBERT M. TURNER, LOIS TURNER, KEITH VASEY, JUDY R. VASEY, MARJORIE WALTERS, BOYD A. WEAR, NANNETTE S. WEAR, JOHN E. WEEKS, PAT WEEKS, DOUGLAS WHITHAM, WILLIAM WHITHAM, and ELIZABETH WHITHAM,

Plaintiffs,

v.

NORTH INDIANA ANNUAL  
CONFERENCE OF THE UNITED  
METHODIST CHURCH  
Defendant.

**FILED**  
SEP 27 1991

*Janne Warrick*  
CLERK KOSCIUSKO CIRCUIT COURT

**COMPLAINT TO QUIET TITLE TO REAL ESTATE AND FOR  
DECLARATORY JUDGMENT**

COME NOW Plaintiffs, by counsel, and for cause of action against the Defendant, North Indiana Annual Conference of the United Methodist Church (hereinafter referred to as "The Conference"), allege and state to the Court as follows:

COUNT I

W/o 1. Each plaintiff owns a parcel of real property in the County of Kosciusko, State of Indiana, which abuts a portion of the real estate described in "Exhibit A".

W/o 2. Each plaintiff claims ownership to that portion of "Exhibit A" which lies between the lot owned by him or her and the lake, more particularly described as follows:

See "Exhibit A", attached hereto and incorporated herein by reference.

∅ 3. The Plaintiffs are the owners of the property described in "Exhibit A" by virtue of the presumption under the law that the owners of land closest to a lake also own the land between the shoreline and their land; further, the owners of land closest to a lake acquire the title to the land to the center of the water.

∅ 4. The Plaintiffs are the owners of the riparian rights attached to the real estate described in "Exhibit A" by

virtue of their fee simple ownership of the property.

A 5. The Board of Directors of The Epworth League Institute of The North Indiana Annual Conference of the Methodist Episcopal Church originally platted the Epworth Forest Subdivision on September 6, 1923, recorded on December 4, 1923, in Plat Book 4 at page 65. A copy of said plat is filed herewith, attached hereto and marked "Exhibit B".

A 6. The original plat provides, in part, that "...an easement along all lake frontage is held by the Board of Directors of The Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church...".

D 7. The original plat of the subdivision provides at most an easement in favor of The Conference and the language in the plat does not rebut the common law presumption that adjoining property owners hold title to the parcel of ground.

D 8. Subsequent plats of parcels of the subdivision do not mention the alleged easement of The Conference set forth in the original plat.

D 9. By virtue of the plat of September 6, 1923, and subsequent plats, the interest of The Conference, if any, is limited to that of an easement.

D 10. By virtue of the plat of September 6, 1923, and subsequent plats, the Conference has no interest in the property at issue.

D 11. The scope of the purported easement is limited to use of the land as a walkway, and does not include use of

Plaintiffs' riparian rights.

v/012. The Defendant named herein claims interest in the property described above adverse to Plaintiffs' legal ownership thereof.

13. Any claim of the Defendant to the real estate described in this Complaint is unfounded, and without right, and is a cloud upon the Plaintiffs' title to such real estate.

WHEREFORE, Plaintiffs pray that:

1. The Defendant named herein be required to set forth the nature of its claims to the described real property;
  2. All adverse claims to such property be determined by a decree of this Court;
  3. A declaratory judgment be entered defining the scope of the easement, if any, upon the aforescribed real estate and preventing the Defendant's use of the Plaintiffs' riparian rights;
  4. That the decree declare and adjudge that Plaintiffs own in fee simple, and are entitled to the quiet and peaceful possession of, such real property, and that the Defendant has no right to or interest in the property or any part thereof, other than those rights allowed by the easement;
  5. The decree permanently enjoin Defendant from asserting any riparian rights to the property at issue;
  6. The decree permanently enjoin Defendant from asserting any adverse claim to Plaintiffs' title to the property;
- and,

7. For costs of this action, and for such other and further relief as the Court deems just and proper.

COUNT II

w/o 1. Each plaintiff owns a parcel of real property in the County of Kosciusko, State of Indiana, which abuts a portion of the real estate described in "Exhibit A".

D 2. The Plaintiffs, if not the record owners of the entire parcel of real estate described in "Exhibit A", have acquired title to the aforementioned real estate, by adverse possession.

D 3. Plaintiffs have acquired title to the real estate described in "Exhibit A" by taking possession of said real estate for a period in excess of ten (10) years, and which possession has been actual, visible, notorious, exclusive, under claim of ownership, hostile to any purported owner of record title and continuous during that period.

A 4. That Defendant is claiming an interest in and to said land and is asserting and is attempting to assert and claim title to the same, and which interest so claimed by the Defendant is adverse to the Plaintiffs' claim and title to said real estate described above.

D 5. That the claims of the Defendant are unfounded and without right, and are a cloud upon Plaintiffs' title to the real estate described herein.

WHEREFORE, Plaintiffs request that their title in and to the real estate described herein be quieted and forever set at rest against any and all claims of the Defendant, for the costs of this action and for all further and proper relief which the premises may require.

COUNT III

w/o 1. Each plaintiff owns a parcel of real property in the County of Kosciusko, State of Indiana, which abuts a portion of the real estate described in "Exhibit A".

▷ 2. The Plaintiffs, if not the record owners of the entire parcel of real estate described in Count I, have acquired an easement by prescription across the strip of land at issue to the lake.

▷ 3. Plaintiffs have acquired an exclusive prescriptive riparian easement across the strip of land which includes the right to construct a seawall on the easement; construct a pier and connect it to the easement; dock a boat; and, swim, wade and fish in the lake immediately out from the easement.

▷ 4. Plaintiffs have acquired their exclusive prescriptive riparian easement by their actual, open, notorious, continuous, uninterrupted, adverse use for twenty (20) years of the property under a claim of right, which continuous adverse use was exercised with the knowledge of The Conference.

▷ 5. Any claim of the Defendant to use of the

aforementioned real estate is adverse, and without right, and is a cloud upon Plaintiffs' exclusive prescriptive easement rights.

WHEREFORE, Plaintiffs pray for a declaratory judgment against the Defendant defining the scope of the easement and preventing the Defendant's use of the Plaintiffs' exclusive riparian rights, for the cost of this action and for all other proper relief.

COUNT IV

w/o 1. Each plaintiff owns a parcel of real property in the County of Kosciusko, State of Indiana, which abuts a portion of the real estate described in "Exhibit A".

w/o 2. Each plaintiff claims ownership to that portion of "Exhibit A" which lies between the lot owned by him or her and the lake.

▷ 3. Plaintiffs, if not the record owners of the entire parcel of real estate described in Count I, have acquired the strip of land in question by equitable estoppel.

w/o 4. Plaintiffs have historically made significant and substantial improvements to the strip of land at issue, including, but not limited to, the construction of seawalls.

w/o 5. The Conference has been fully aware of the significant improvements by the Plaintiffs to the strip of land at issue, but The Conference has never taken exception to the improvements.

6. The Conference has expressly affirmed Plaintiffs' ownership of the property at issue by not objecting to Plaintiffs' improvements of the property when there was opportunity and a duty to do so.

WHEREFORE, Plaintiffs request that their title in and to the real estate described herein be quieted and forever set at rest against any and all claims of the Defendant, for the costs of this action and for all further and proper relief which the premises may require.

RASOR, HARRIS, LEMON & REED

By: 

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"EXHIBIT A"

Five parcels of land located in Section Eleven (11) Township Thirty three (33) North, Range Seven (7) East, Kosciusko County, State of Indiana, more particularly described as follows, to-wit:

A. Commencing at the northwest corner of Lot Numbered Fourteen (14), Block E in the recorded plat of Epworth Forest; running thence in a westly direction along the extended northerly line of said Lot 14 to its intersection with the low water mark of Webster Lake; thence following the meanderings of Webster Lake at the low water mark to its point of intersection with the extended southeasterly lot line of Lot 25, Block E in the recorded plat of Epworth Forest; thence running north-northeasterly along said extended line to the southeast corner of the aforesaid Lot 25; running thence southerly, westerly and northerly along the lakefront lot lines of Lots Numbered 25, 24, 23, 22, 21, 20, 19, 18, 17, 16, 15 and 14, Block E in the recorded plat of Epworth Forest to the place of beginning.

B. Commencing at the southwest corner of Lot Numbered Two (2), Block D in the recorded plat of Epworth Forest; running thence southerly along the extended westerly lot line of said Lot 2 to its intersection with the low water mark of Webster Lake; thence following the meanderings of Webster Lake at the low water mark to its point of intersection with the extended northeasterly lot line of Lot 18, Block D in the recorded plat of Epworth Forest; thence running northwesterly along said extended lot line to the Northeast corner of the aforesaid Lot 18; running thence southwestery, southerly and westerly along the lakefront lot lines of Lots 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 1 and 2, Block D in the recorded plat of Epworth Forest to the place of beginning.

C. Commencing at the southwest corner of Lot Numbered 57, Block C in the recorded plat of Epworth Forest; running thence southerly along the extended westerly lot line of said Lot 57 to its intersection with the low water mark of Webster Lake; thence following the meanderings of Webster Lake at the low water mark to its point of intersection with the extended southeasterly lot line of Lot 19, Block C in the recorded plat of Epworth Forest; running thence in a north-northeasterly direction along said extended lot line to the Southeast corner of the aforesaid Lot 19; thence running in a west-northwesterly direction along the lakefront lot lines of Lots 19, 20, 21, 22, 23, 24, 25, 26, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57, Block C in the recorded plat of Epworth Forest to the place of beginning.

D. Commencing at the southwest corner of Lot Numbered 18, Block B in the recorded plat of Epworth Forest; running thence southerly along the extended westerly lot line of said Lot 18 to its intersection with the low water mark of Webster Lake; thence following the meanderings of Webster Lake at the low water mark to its intersection with the extended southeastern lot line of Lot 14, Block B in the recorded plat of Epworth Forest; running thence in a northeasterly direction along said extended lot line to the Southeast corner of the aforesaid Lot 14; thence running in a west-northwesterly direction along the lakefront lot lines of Lots 14, 15, 16, 17 and 18, Block B in the recorded plat of Epworth Forest to the place of beginning.

E. Commencing at the southwest corner of Lot Numbered 36, Block A, in the recorded plat of Epworth Forest; running thence south-southwesterly along the extended westerly lot line of said Lot 36 to its intersection with the low water mark of Webster Lake; thence following the meanderings of Webster Lake at the low water mark to its intersection with the extended westerly lot line of Lot 11, Block A in the recorded plat of Epworth Forest; running thence in a southwestly direction along said extended lot line to the Northwest corner of the aforesaid Lot 11; thence running in a easterly, southerly, westerly and northerly direction along the lakefront lot lines of Lots 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 52, 51, 50, 49, 48, 47, 46, 45, 44, 43, 42, 41, 40, 39, 38, 37 and 36, Block A in the recorded plat of Epworth Forest to the place of beginning.