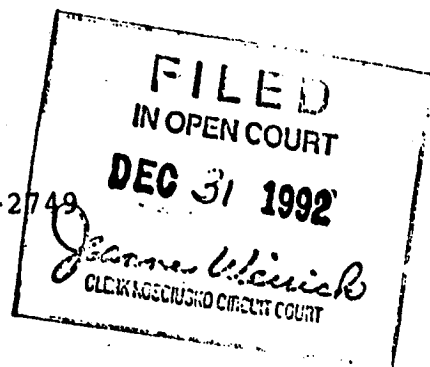


IN THE KOSCIUSKO CIRCUIT COURT
121 North Lake Street
Warsaw, Kosciusko County, Indiana 46580-2749



DOROTHY V. BARNES
VS.
NORTH INDIANA ANNUAL CONFERENCE
OF THE UNITED METHODIST CHURCH

CASE NUMBER 43C01-9109-CP-732

INTERLOCUTORY JUDGMENT UPON MOTION FOR SUMMARY JUDGMENT

This action is now submitted upon plaintiff's Motion for Summary Judgment, there being in attendance the plaintiffs, by counsel, the defendant and intervening defendants, each by counsel. The Court, having heard the argument and considered the motion with all designated materials in support thereof, now enters findings and judgment thereon.

FINDINGS

The Court finds that there is no genuine issue of fact and that the plaintiffs are entitled to summary judgment upon Count I of the plaintiff's complaint, interlocutory at this time abiding the resolution of additional issues arising in this action, which to the extent of the judgment shall govern further proceedings in this action.

That while the plat provides that "none of the lots extend to the low water mark, but an easement along all lake frontage as held by the Directors..." preferred construction of that clause is that the statement that none of the lots extend to the low water

mark is declaratory of a fact and not a statement of reserved property rights and that the reserved property rights, such as they may be, are contained in the clause with respect to the easement along with lake frontage as held by the Directors, the scope and nature of which easement is, at this time, not determined.

The presumption with respect to strips and gores to the effect that the strip of land between the lakefront lots and the lake itself and into the lake is owned by the lakefront owners in fee simple and is particularly applicable. While the Conference retains title in several plats to numerous lots and sits in the plat which are devoted to religious purposes, and in fact, apparently own some of the lots affected by this decree on the lakeshore, they have, over many years, failed to exercise such dominion over the lands in front of the lakeshore lots and into the lake by allowing the lakeshore owners and, in fact, requiring them to maintain the area, to plant shrubery, build retaining walls and fill eroded portions and that the only evidence before the Court in the designated material suggests the fact that that has been the common understanding of the effected people for many years. The exercise by the Conference of the power to designate pier spaces on the lakeshore, not only for lakefront lots, but off-lake lots is indicative of the exercise of an easement power, perhaps in trust, for the benefit of all lot owners in the plats and does not, itself, suggest retention of the fee simple. It does suggest that the fee simple titles may be burdened by a use for the benefit of all lot owners of a right to place a pier, which is the principal object of this entire litigation, but the Court, in its findings

today does not find one way or the other with respect to those rights which are left open for determination upon further proceedings.

To find to the contrary and to construe the plat as reserving the fee simple to the lands between the lakeshore lots and into the lake would leave the Conference vested with fee to those strips along with other lands upon the lake owned by the Conference. The result of such construction would be that when the Church abandons the area as it will some day whether it be next year or 150 years from now, the Conference would then be in a position to sell, for instance, the tabernacle site in the plat to a developer, who building a condominium thereon, would then own in fee simple those small strips of land, useless to such a developer and which would impinge upon the exercise of rights as have existed for many years by the lakefront owners and the backlot owners themselves.

This judgment to be entered upon the findings shall remain interlocutory governing further proceedings in this action and for the ultimate preparation of a final judgment which would explicitly define, by designated party and designated lands, the boundaries of the respective tracts as so projected into the lake.

JUDGMENT

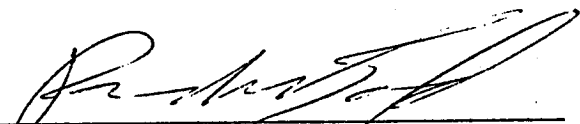
IT IS, THEREFORE, CONSIDERED AND ORDERED:

1. That the plaintiffs are vested in fee simple in the lands lying between the front or lakeside boundaries of their lots as so platted in the plat of Epworth Forest and extending out into the lake upon a line which would either converge or diverge at the lake edge, as the case may be, dependent upon the availability of lands and subject to survey and to that point which would fill out either the tract originally entered by the first proprietor of the lands or until such appropriate point as may be determined upon contact with the extended fee simple of Kline's Island or other islands adjoining the mainland and in the respective estate and interests now possessed by the lakefront owners and subject to such liens and any leasehold interest as may exist, and such servitudes including easements in trust or otherwise, profits, licenses, covenants and restriction of whatever kind, whether possessory or non-possessory.
2. That the existence, nature and scope of any easements or servitudes of whatever character which remain an issue in this action are reserved for consideration

upon further proceedings in this action.

3. That while this judgment is interlocutory at this time, the Court certifies this judgment if the parties desire to appeal for interlocutory appeal because the issue is, in part, dispositive of all of the issues in this case, and involves a substantial question of law and fact which would effect the future litigation of this action should this judgment be in error and that resolution of this issue, upon interlocutory appeal, would affect, in substantial measure, further proceedings because this action, in its immensity with over 300 parties, would take approximately six to eight weeks to try, if it must be tried, and that by avoiding trial upon the issue in this interlocutory judgment, two to three weeks of that trial time could be avoided.

Dated: December 31, 1992.


Richard W. Sand, Judge
Kosciusko Circuit Court

Distribution:
Snyder ✓
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