

SHAMBAUGH, KAST, BECK & WILLIAMS, LLP

Lawyers

EDWARD E. BECK
STEPHEN J. WILLIAMS *
JOHN B. POWELL
RONALD D. FELGER
PAUL R. STURM ‡

JOHN S. BLOOM
ROBERT A. WAGNER
NATHAN S.J. WILLIAMS *#
BENJAMIN S.J. WILLIAMS *
NICHOLAS J. HURSH

DAVID L. PETERS, OF COUNSEL
DAVID A. STEWART, OF COUNSEL
BRIAN M. SIMPSON, OF COUNSEL

WILLARD SHAMBAUGH
(1897-1976)
MICHAEL H. KAST
(1928-2013)

229 West Berry Street, Suite 400
P.O. Box 11648
Fort Wayne, Indiana 46859-1648

Telephone: 260-423-1430
Facsimile: 260-422-9038

www.skbw.com

* Estate Planning & Administration Specialist - Certified by
Indiana Trust & Estate Specialty Certification Board
‡ Family Law Specialist - Certified by the *Family Law Certification Board*
Also Licensed in Ohio

May 18, 2016

Stephen Snyder
200 West Main Street
Syracuse, Indiana 46567

Matthew R. Shipman
119 S. Main Street
P.O. Box 807
Columbia City, Indiana 46725

**RE: *Gerry and Patricia Powell v. Epworth Forest Administration Committee, Inc.
Kosciusko Circuit Court, Cause No. 43C01-1602-MI-47***

Dear Gentleman:

Please be advised that this firm represents Robert J. Miller and Deborah S. Miller. Enclosed please find a copy of the Intervenor Robert J. Miller and Deborah S. Miller's Proposed Finding of Fact, Conclusions of Law and Judgment with Respect to Plaintiffs' Request for Preliminary Injunction that was sent to the Clerk of Kosciusko Circuit Court for filing.

Should you have any questions or concerns, please do not hesitate to contact me.

Yours truly,



John B. Powell
E-mail: JPowell@skbw.com

JBP/tlw
enclosures

cc: Robert J. and Deborah S. Miller
P:\WORK\BP\Miller, Robert&Deborah\Opposing Counsel-1tr04=05-18-16.frm

SHAMBAUGH, KAST, BECK & WILLIAMS, LLP

Lawyers

EDWARD E. BECK
STEPHEN J. WILLIAMS *
JOHN B. POWELL
RONALD D. FELGER
PAUL R. STURM ‡

JOHN S. BLOOM
ROBERT A. WAGNER
NATHAN S.J. WILLIAMS *#
BENJAMIN S.J. WILLIAMS *
NICHOLAS J. HURSH

DAVID L. PETERS, OF COUNSEL
DAVID A. STEWART, OF COUNSEL
BRIAN M. SIMPSON, OF COUNSEL

229 West Berry Street, Suite 400
P.O. Box 11648
Fort Wayne, Indiana 46859-1648

WILLARD SHAMBAUGH
(1897-1976)
MICHAEL H. KAST
(1928-2013)

Telephone: 260-423-1430
Facsimile: 260-422-9038

www.skbw.com

* Estate Planning & Administration Specialist - Certified by
Indiana Trust & Estate Specialty Certification Board
‡ Family Law Specialist - Certified by the Family Law Certification Board
Also Licensed in Ohio

May 18, 2016

Clerk of Kosciusko County
121 N Lake St
Warsaw, IN 46580

Via Facsimile and Certified Mail
#7005 2570 0000 2729 2558

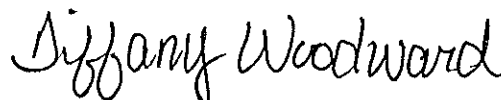
**RE: *Gerry and Patricia Powell v. Epworth Forest Administration Committee, Inc.
Kosciusko Circuit Court, Cause No. 43C01-1602-MI-47***

Dear Sir or Madam:

Please find enclosed for filing with the Court in the above matter, the original and three (2) copies of Intervenor Robert J. Miller and Deborah S. Miller's Proposed Finding of Fact, Conclusions of Law and Judgment with Respect to Plaintiffs' Request for Preliminary Injunction.

We would appreciate your showing the filing of the enclosed pleading as of the date of this letter, pursuant to Trial Rule 5(F)(3), and returning a file-marked copy of each to our office in the envelope enclosed for that purpose. Thank you for your assistance, and should you have any questions, please do not hesitate to contact our office.

Yours truly,



Tiffany L. Woodward
Legal Assistant to John B. Powell
E-mail: twoodward@skbw.com

JBP/tlw
enclosures

cc: Robert J. and Deborah S. Miller
P:\WORK\JBP\Miller, Robert&Deborah\Clerks-ltr05-05-18-16.fm

STATE OF INDIANA)
) SS:
COUNTY OF KOSCIUSKO)

IN THE KOSCIUSKO CIRCUIT COURT
CAUSE NO. 43C01-1602-MI-47

GERRY LEE POWELL, and)
PATRICIA ANN POWELL)
Plaintiffs,)
v.)
EPWORTH FOREST ADMINISTRATION)
COMMITTEE, INC.,)
ROBERT J. MILLER and)
DEBORAH S. MILLER)
Defendants.)

INTERVENORS ROBERT J. MILLER AND DEBORAH S. MILLER'S PROPOSED FINDING OF FACT, CONCLUSIONS OF LAW AND JUDGMENT WITH RESPECT TO PLAINTIFFS' REQUEST FOR PRELIMINARY INJUNCTION

COME NOW, the Intervenor/Defendants Robert J. Miller and Deborah S. Miller, by counsel, and pursuant to the Court's Order dated May 4, 2016, submit their proposed Findings of Fact, Conclusions of Law and Judgment with Respect to Plaintiffs' Request for Preliminary Injunction, as follows:

Findings of Fact

1. In 2015, Robert J. Miller and Deborah S. Miller (herein after "Millers:") purchased a lake cottage in Epworth Forest Plat located on Lake Webster at 8223 E. Wade Lane, North Webster, Indiana, from Suetta M. Johnson.
2. By the time the Millers took possession of the lake cottage at 8223 E. Wade Lane in May of 2015, the piers had already been installed for the 2015 summer boating season.
3. Millers are "on shore" owners.
4. Jerry Lee Powell and Patricia Ann Powell (hereinafter "Powells") own a cottage in Epworth Forest Plat located on Lake Webster located at 8227 E. Wesley Lane, North Webster, Indiana and are "off shore" owners.

5. Suetta M. Johnson had installed a pier in the early 1990s which had permanent sockets for the pier posts and had a permanent place for attachment of the pier to the seawall on her lot.

6. Suetta M. Johnson docked a pontoon boat on the west side of her pier. She did not utilize the east side of her pier for unknown reasons.

7. After the Millers purchased the cottage at 8223E. Wade Lane, they wanted to utilize both sides of their pier but could not do so due to the placement of the Powell pier. The "on-shore" owners immediately to the east and west of the Millers, as do the majority of "on-shore" owners at Epworth Forest utilize both sides of their piers.

8. Millers sought clarification of the 24 feet of lake front footage assigned to on shore owners by submitting an online pier inquire form to the Epworth Forest Administration Committee (hereinafter known as "EFAC"). A EFAC was provided photographs of the Miller and Powell pier placement which showed the Millers could not place a boat lift or utilize the east side of their pier due to the placement of the Powell pier and the positioning of the Powell boat lift on the west side of the Powell pier. EFAC also considered appropriate spacing requirements for pier placement and potential liability concerns.

9. On January 6, 2016 EFAC, by a three (3) to two (2) vote, determined that the Millers' recent purchase of their lake cottage, their desire to utilize both sides of their pier and the related concerns about spacing and safety constituted a substantial change in circumstances making the Powell pier assignment unreasonable under current facts and circumstances and further that the Powell pier would have to be removed and the Powells put on the displaced pier list.

10. The Powells appealed EFCA's initial decision and EFAC thereafter voted on February 15-16, 2016, again by a three (3) to two (2) vote, to deny their appeal. This lawsuit then ensued.

11. Prior to the decision involving the Powells' pier placement, EFAC and it's predecessor, The North Indiana Conference of the United Methodist Church (hereinafter

alleging same... The action or decision of the conference *will further not be reversed unless such action or decision is arbitrary, unreasonable or capricious.*" (Emphasis supplied).

18. On April 15, 2014 the Kosciusko Circuit Court in Cause No. 43C01-9109-CP-732 issued an Agreed Order Granting Relief Pursuant to T.R. 60 Through Modified Judgment. That Agreed Order stated in part as follows:

14. The conference shall set up the EFAC with By-Laws, rules and regulations which state or establish the following principals and rules which can only be altered with Court approval:

j. On -shore owners' pier assignments will continue from year to year and be presumed permanent. An off-shore pier assignment/location, in accordance with the 1994 judgment, may be changed only for substantial change of circumstances making the prior assignment unreasonable under current facts and circumstances.

19. The By-Laws of the Epworth Forest Administration Committee, Inc., state in part as follows at Article IV, Section 6(c): "To ensure that off-shore pier assignment/location, in accordance with the 1994 judgment, may only be changed, *in the sole discretion of the board of directors*, for a substantial change in circumstances making the prior assignment unreasonable under the facts and circumstances;" (emphasis supplied).

Conclusions of Law

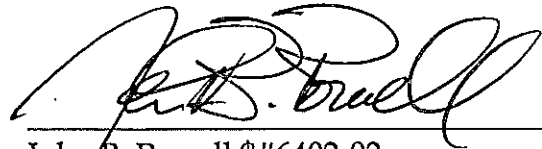
1. Pursuant to Trial Rule 65, in order to be entitled to a preliminary injunction, Plaintiffs as the moving party, must establish the following by a preponderance of the evidence: (1) the movant's remedies at law are inadequate which would cause irreparable harm pending resolution of the substantive action; (2) the movant has at least a reasonable likelihood of success at trial by establishing a prima facie case; (3) the threatened injury to the movant outweighs the potential harm to the non-moving party that would result in the granting of an injunction, and (4) the public interest would not be disserved by the granting of a preliminary injunction. *Pinnacle Healthcare, LLC v. Sheets*(2014), Ind. App., 17 N.E. 2nd 947.

2. Powells' Motion For Stay fails on several of the requirements set forth above.
3. Powells have not established that they have a reasonably likelihood of success at trial given the decision of EFAC may not be reversed unless it is arbitrary, capricious or unreasonable and further EFAC is granted the sole discretion to make these decisions.
4. Further, Powells have not established that the threatened injury to them outweighs the potential harm to the Millers and EFAC that would result from the granting of a preliminary injunction, in that there is a pier space available to them at the community pier and they have access to Lake Webster through use of the public launch.
5. Finally, the public interest will be disserved by issuing the preliminary injunction requested by the Powells as every party dissatisfied by a decision of EFAC will be encouraged to file suit to challenge EFAC's decision in Court.

Judgment

The Powells' Motion for Stay/Request for Preliminary Injunction is denied.

Respectfully submitted,



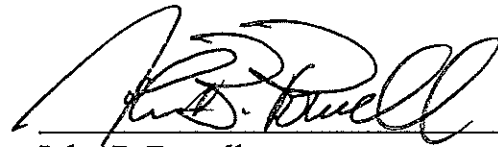
John B. Powell #6402-02
Shambaugh, Kast, Beck & Williams, LLP
229 West Berry Street, Suite 400
P.O. Box 11648
Fort Wayne, Indiana 46859
ATTORNEY FOR ROBERT MILLER AND
DEBORAH MILLER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent, by United States Mail, postage prepaid, hand delivery or other means accepted by this Court, to the individuals listed below on the ¹⁸~~19~~ day of May, 2016.

Stephen Snyder
200 West Main Street
Syracuse, IN 46567

Matthew R. Shipman
119 S. Main Street
P.O. Box 807
Columbia City, Indiana 46725



John B. Powell

P:\WORK\JBP\Miller, Robert&Deborah\Finding of Fact-motion.wpd