

CIVIL NOTICE  
KOSCIUSKO CIRCUIT COURT  
121 N LAKE STREET  
2ND FLOOR  
WARSAW IN 46580

POWELL VS EPWORTH FOREST  
43C01-1602-MI-000047

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TO: MATTHEW R SHIPMAN  
BLOOM GATES SIGLER WHITELEATHE  
119 S MAIN ST/P.O. BOX 807  
COLUMBIA CITY IN 46725

ATTORNEYS		PARTIES	
		PETITIONER	
413-43	STEPHEN SNYDER	GERRY LEE POWELL	
413-43	STEPHEN SNYDER	PATRICIA ANN POWELL	
		RESPONDENT	
20664-49	MATTHEW SHIPMAN	EPWORTH FOREST ADMINISTRATION	
		INTERVENING PARTY	
6402-02	JOHN POWELL	ROBERT J MILLER	
6402-02	JOHN POWELL	DEBORAH S MILLER	

05/24/2016

The Court, having taken the matter under advisement, does now enter its Findings of Fact, Conclusions of Law and Order. (Memo w/order: Snyder, Shipman, Powell) kr

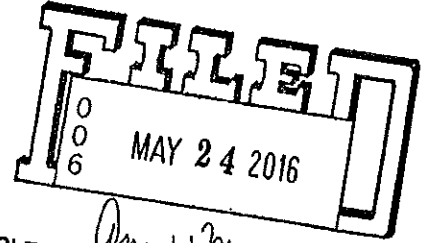
IN THE KOSCIUSKO CIRCUIT COURT  
121 NORTH LAKE STREET  
WARSAW, INDIANA 46580

GERRY LEE POWELL and  
PATRICIA ANN POWELL,  
Plaintiffs,

VS.

EPWORTH FOREST ADMINISTRATION  
COMMITTEE, INC.,  
Defendant.

CASE NO. 43C01-1602-MI-47



CLERK KOSCIUSKO CIRCUIT COURT

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER**

Hearing was held May 4, 2016, on the Plaintiffs' Motion for Stay which the parties agreed to treat as a request for preliminary injunction. Plaintiffs appeared in person and by counsel, Stephen R. Snyder. Defendant, Epworth Forest Administration Committee, Inc., appeared by counsel, Matthew R. Chipman, and its Designated Agent, Richard Presser. Intervening Party, Robert J. Miller, appeared in person and by counsel, John B. Powell. Evidence was submitted and argument heard and the Court took the issues under advisement. The Court having reviewed the evidence, the argument of counsel, the Court's file herein, and being duly advised in the premises, now enters its Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

1. Plaintiffs are the owners of the following described real estate located in Kosciusko County, Indiana:

Lot 12 in Block C in the Plat of Epworth Forest;  
which property does not front on Webster Lake. ("Powell Lot").

2. Defendant is an Indiana corporation established pursuant to Order of the Court dated April 15, 2014 in Cause No. 43Co01-9109-CP-732.

3. Since 1941 and during the ownership of the Powell Lot by Plaintiffs and Plaintiffs' predecessors, there has been a pier maintained at a location on the waterfront of Lot 48 Block C in the Plat of Epworth Forest, which lot is now owned by Robert J. Miller and Debra S. Miller ("Lakefront Lot").

4. The location of the Powell pier on the Lakefront Lot was approved by this Court in its Order entered January 21, 2014 in Cause No. 43C01-9109-CP-732.

5. Defendant Epworth Forest Administration Committee, Inc. ("EFAC") has demanded relocation of Plaintiffs' pier to a location different than that previously approved by this Court in Cause No. 43C01-9109-CP-732.

6. Plaintiffs appealed the determination of EFAC and all appeals have been denied and this litigation followed.

7. The rights and obligations of non-lakefront owners of lots in the plats of Epworth Forest have been determined by judgment and various orders of this Court in Cause No. 43C01-9109-CP-732, in particular, the Judgment entered August 2, 1994 (Exhibit 2), the Order dated November 7, 1997 (Exhibit 3), the Order dated January 21, 2014 (Exhibit 5) and the Order dated April 15, 2014 (Exhibit 6).

8. Pursuant to Exhibit 6, EFAC was established by the filing of its Articles of Incorporation with the Secretary of State of Indiana (Exhibit 7) and the adoption of its Bylaws (Exhibit 8).

9. EFAC now administers the lakefront in the various plats of Epworth Forest including, but not limited to, assignment of pier locations for both onshore and offshore lot owners.

10. The various Orders of this Court and, in particular, Exhibit 6 states:

Onshore owners' pier assignments will continue from year to year and be presumed permanent. An offshore 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.

11. Exhibit E to Exhibit 5 is a listing of assigned pier spaces approved by the Court as part of its Order dated January 21, 2014, and specifically assigned Pier Space

35A to Plaintiffs and Pier Space 34 to the predecessor of Defendants Robert J. Miller and Debra S. Miller, Suetta Johnson. The same exhibit indicates that the lake frontage of the Miller property is 50 feet and at the time of the January 21, 2014 Order, consisted of 16 feet assigned to Plaintiffs for Pier 35A, 24 feet assigned to Suetta Johnson for Pier 34 and 10 feet of open shoreline, a total of 50 feet.

12. Defendants Miller desire to place a boat lift on each side of their pier without relocating their pier within the 24-foot space assigned to them by Exhibit 5. Doing so without relocation of the Miller pier, would leave insufficient space for the Powell boat and pier as assigned by Exhibit 5.

13. Exhibits 11 and 12 clearly indicate there is ample space lakeward from the Miller lot to allow Miller to place a 4-foot-wide pier with a 10-foot-wide boat lift on each side of the pier and still maintain in excess of 4 feet of open space if the Miller pier were moved slightly west within the 24 feet of lake frontage assigned to Miller.

14. As indicated by Richard Presser, Vice President of EFAC, if the Powell pier is eliminated, they would be placed on a "waiting list" for a new pier assignment. Presser was unaware of when a new pier assignment space would be available.

15. If the Powell pier is left within the 16 feet assigned to Powell, Defendants Miller will retain the same 24 feet assigned to their predecessor, Suetta Johnson, and Millers would be able to locate whatever structures they desired within the same 24 feet.

### **CONCLUSIONS OF LAW**

16. 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.

17. The judgment and various Orders in Case No. 43C01-9109-CP-732 of this Court clearly indicate that it was the intention of this Court that assignments of pier spaces for onshore owners were intended to be permanent, and offshore pier assignments were not to be changed without a significant change in circumstances.

18. The desire of Defendants Miller to place two boat lifts, one on each side of their current pier location, is not a significant change in circumstances.

19. The harm to Plaintiffs if they were to be forced to remove their pier and boat lift from the 16 feet currently assigned to them would be much greater than the harm to Defendants Miller which they might suffer by being required to relocate their pier within their 24-foot pier allocation to allow placement of a boat lift on each side of the Miller pier.

20. The determination made by EFAC requiring Powells to remove their pier and boat lift was arbitrary and capricious and not in conformity with the prior judgment and Orders of this Court, the Articles of Incorporation of EFAC and the Bylaws of EFAC.

21. Plaintiffs have established that they have a reasonable likelihood of success at trial, they are without an adequate remedy at law, and the public interest will not be disserved by the issuance of this preliminary injunction.

#### ORDER

**IT IS, THEREFORE, ORDERED** that Epworth Forest Administration Committee, Inc., is preliminarily enjoined from enforcement of its Order issued January 26, 2016, requiring Plaintiffs to remove their pier and boat lift from Pier Space 34A, or in any way interfering with Plaintiffs' use of Pier Space 34A as previously assigned. The Court determines that no bond is required of Plaintiffs.

**SO ORDERED this 24th day of May, 2016.**



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Michael W. Reed, Judge  
Kosciusko Circuit Court

Distribution:  
Stephen R. Snyder  
Matthew R. Shipman  
John B. Powell

MWR/st