

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

ABCD PROPERTY OWNERS ASSOCIATION,
a Michigan non-profit corporation,
RICHARD E. JOHNSON and
SUSAN E. JOHNSON, husband and wife,
BRIAN CAPPELLI and KATHLEEN CAPPELLI,
husband and wife, DAVID J. MILLER and
LORI A. MILLER, husband and wife, and
WILLIAM J. BODRIE, a married man,

Case No.: 15-1493-CH

Plaintiffs,

v.

Honorable Richard N. LaFlamme

ROBERT HUDSPETH & LINDA HUDSPETH,

Defendants.

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**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Plaintiffs seek to exclude Defendants from the use of a gravel road in Norvell Township known as Lakeview Drive. They claim that Lakeview Drive is a private drive over which only Plaintiffs have legal access. Defendants contend that Lakeview Drive is a public road.

A bench trial was held in this matter on September 21, 2016. Following completion of proofs the parties submitted proposed findings of fact and conclusions of law, and the Court now issues its findings and conclusions.

Findings of Fact

Lakeview Drive is gravel road in Norvell Township, Jackson County, Michigan, near Wamplers Lake. The portion of Lakeview Drive which is the subject of this lawsuit is unplatted and runs east from Shoreline Drive.

Plaintiff ABCD Property Owners Association is the title holder of the land traversed by Lakeview Drive. Plaintiffs Richard E. Johnson and Susan E. Johnson, Brian Cappelli and Kathleen M. Cappelli, David J. Miller and Lori Miller, and William J. Bodrie are the owners of real property abutting the north side of Lakeview Drive, and are members of ABCD Property Owners Association.

Defendants own property on the south side of Lakeview Drive across from the individual Plaintiffs' properties. Defendants' property bears two addresses: 1190 Lakeview Drive and 1190 Shoreline Drive.

Defendants' house was previously a small grocery store when the property was owned by Paul Kaseman. At one time, Lakeview Drive extended across Kaseman's property immediately in front of the store to Cherry Street to the south. However, in 1984 the Jackson County Road Commission ("JCRC"), pursuant to a petition filed by Kaseman, vacated the portion of Lakeview Drive that crossed his property.

In 1994, a Petition was filed to vacate the remaining portion of Lakeview Drive running east from Shoreline Drive because the public was still using the road which the Johnsons believed they had recently purchased. This 1994 Petition was initiated by owners of property abutting the north side of Lakeview Drive, including Plaintiffs David Miller and Richard Johnson. The portion of Lakeview Drive sought to be abandoned by

the 1994 Petition ran east 268 feet from Shoreline Drive onto the property of David Miller. This 1994 Petition was rejected by the JCRC.

When Defendants purchased their property in 2007, there was a gravel driveway running from Lakeview Drive to their garage, which is located north of Defendants' house. Part of the driveway ran across the corner of property to the west of Defendants' property. Defendants used this driveway until 2012, when Plaintiff David Miller blocked access with boat trailers.

After Miller blocked the access, Defendants went to the JCRC to obtain a driveway permit directly from their property to Lakeview Drive. John Sanders, JCRC Director of Project Management and Design, came to the property and, after examining the JCRC file, consulting with a colleague, and examining the property, granted Defendants a driveway permit at the location of Defendants' current driveway. Sanders granted the permit based on several factors, including the map of the road in the Jackson County Road Commission file, which showed the un-abandoned portion of Lakeview Drive and discovery of physical evidence of the asphalt road at the location where Defendants' current driveway is located. Defendants then constructed the driveway at issue in this case, which prompted this litigation.

Jackson County has plowed and maintained Lakeview Drive from Shoreline Drive east along Defendants' north property line on several occasions. The last verified snowplowing by the County up to the time of trial was in March of 2016.

There are no road signs indicating that any portion of Lakeview Drive is a private roadway.

Celeste McBride, who owns the property immediately east of Plaintiff David Miller's property, testified that at the time she purchased her property in 1989, Lakeview Drive ran to her property, but access was blocked by Plaintiff Miller. There is no other driveway to her property. Even though her property address is 1199 Lakeview Drive, her only current access is from the shoulder of Route 124, from which there is no discernable driveway to her property.

Conclusions of Law

Public highways can be created after a period of steady adverse use by the public. MCL 221.20, referred to as the highway-by-user statute, provides:

All highways regularly established in pursuance of existing laws, all roads that shall have been used as such for 10 years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used 8 years or more, shall be deemed public highways, subject to be altered or discontinued according to the provisions of this act.

The evidence undisputedly shows that Lakeview Drive, running from Shoreline Drive to Cherry Street, was used by the public for decades to access Lentz's store – the Defendants' current residence. This public use of the roadway began in approximately 1936 and continued through at least the 1970s. This evidence of continued use by the public satisfies Michigan's highway-by-user statute, MCL 221.20.

The property owners abutting Lakeview Drive when they petitioned the JCRC to vacate portions of Lakeview Drive in both 1984 and 1994, acknowledged Lakeview Drive as a public highway. If they believed Lakeview Drive was a private drive, there would be no reason to petition for vacation of any portion of the roadway.

Moreover, this Court also finds significant the fact that Ms. McBride's property has a Lakeview Drive mailing address. It follows logically that access to her property was originally from Lakeview Drive, not Wampler's Lake Road, also known as Route 124, otherwise she would have a Wampler's Lake Road address. It defies logic to assign her property a Lakeview Drive address if she has no right to use Lakeview Drive.

Based on the above analysis, this Court finds that the portion of Lakeview Drive running from Shoreline Drive to Defendants' driveway is a public highway.

It further appears to the Court that the portion of Lakeview Drive that continues east of Defendants' driveway is also a public highway.

WHEREFORE, based on the above Findings of Fact and Conclusions of Law, this Court finds that Defendants' driveway does not trespass on Plaintiffs' property nor does it constitute a nuisance, because the driveway accesses a public highway.

Accordingly, the Court finds for Defendants, and hereby issues a judgment of no cause for action against all Plaintiffs.

IT IS SO ORDERED.

This is a final order that disposes of all claims and closes the file.

Date: January 10, 2017

/s/ Richard N. LaFlamme
Honorable Richard N. LaFlamme
Fourth Circuit Court Judge

I certify that copies of this Proposed Findings of Fact and Conclusions of Law were sent via ordinary mail to counsel of record and unrepresented parties.

Date: January 10, 2017

/s/ Jenna Furman
Jenna Furman, Judicial Attorney