

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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HIGGINS LAKE PROPERTY OWNERS  
ASSOCIATION,

UNPUBLISHED  
October 20, 2005

Plaintiff-Appellee/Cross-Appellee,

v

No. 262494  
Roscommon Circuit Court  
LC No. 04-724751-CH

GERRISH TOWNSHIP, LYON TOWNSHIP, and  
JEAN E. WITTIG,

Defendants-Appellees,

and

ROSCOMMON COUNTY ROAD  
COMMISSION, DONNA K. ABBRUZZINO,  
GIUSEPPE ABBRUZZINO, ADRIENNE M.  
ALLARD, DONALD G. BARNOWSKI, JR.,  
MARGARET BARNOWSKI, SCOTT D.  
BEAGLE, ROGER R. BLOOMFIELD, SUSAN  
R. BLOOMFIELD, ROGER A. BOWMAN,  
LYNN F. BRAGG, GARY A. BRILL, PATRICK  
J. BUTCHER, DONALD M. CORBIN, DONALD  
C. FINKBEINER, GARY E. GROSS, DANIEL J.  
GUNDRY, HEATHER GUNDRY, GARY G.  
HARDER, JOHN M. HERING, SR., RICHARD  
M. HIRSCH, DAVID D. HOFFMAN, STEVEN  
HUGHES, RAYMOND W. HUMMEL,  
RICHARD E. JORDAN, CARL KALMAR, JR.,  
CHARLES N. KAMINSKI, JAMES I. MARTIN,  
TERESE G. MARTIN, GEORGE S. MEYERS,  
THEODORE J. MILLER, THOMAS J.  
MISURACA, LAURA J. NELSON, ROBERT A.  
PARDUE, SR., TERRY L. PATTON, JOHN E.  
REYNOLDS, THOMAS D. SATTLER,  
WILLIAM F. SCHMIDT, CAROL J. SCHMIDT,  
JOHN S. SCHRECK III, ROBERT L.  
SCHWARTZ, DANIEL A. SINGER, WILLIAM  
E. STEINIGER, JR., NANCY A. STEPHENS,  
LIBUSE M. TEJCEK, JOHN M. VONITTER, and  
DENIS R. WITTIG,

Defendants,

and

GARY O. BREIDINGER, JAMES R. DUNDAS,  
PAMELA A. DUNDAS, DALE E. FISHER,  
MICHAEL T. HARTZLER, ISABEL LEADER,  
JOHN G. RAYMO, and DUANE E. SCHOOLEY,

Defendants-Appellees/Cross-  
Appellants,

and

ROBERT E. GEACH and ANNA M. GEACH,

Defendants-Appellants/Cross-  
Appellees.

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HIGGINS LAKE PROPERTY OWNERS  
ASSOCIATION,

Plaintiff-Appellee/Cross-Appellee,

v

GERRISH TOWNSHIP, LYON TOWNSHIP,  
ROBERT E. GEACH, ANNA M. GEACH, and  
JEAN E. WITTIG,

Defendants-Appellees,

and

ROSCOMMON COUNTY ROAD  
COMMISSION,

Defendant-Appellant/Cross-  
Appellee,

and

DONNA K. ABBRUZZINO, GIUSEPPE  
ABBRUZZINO, ADRIENNE M. ALLARD,  
DONALD G. BARNOWSKI, JR., MARGARET

No. 262533  
Roscommon Circuit Court  
LC No. 04-724751-CH

BARNOWSKI, SCOTT D. BEAGLE, ROGER R. BLOOMFIELD, SUSAN R. BLOOMFIELD, ROGER A. BOWMAN, LYNN F. BRAGG, GARY A. BRILL, PATRICK J. BUTCHER, DONALD M. CORBIN, DONALD C. FINKBEINER, GARY E. GROSS, DANIEL J. GUNDRY, HEATHER GUNDRY, GARY G. HARDER, JOHN M. HERING, SR., RICHARD M. HIRSCH, DAVID D. HOFFMAN, STEVEN HUGHES, RAYMOND W. HUMMEL, RICHARD E. JORDAN, CARL KALMAR, JR., CHARLES N. KAMINSKI, JAMES I. MARTIN, TERESE G. MARTIN, GEORGE S. MEYERS, THEODORE J. MILLER, THOMAS J. MISURACA, LAURA J. NELSON, ROBERT A. PARDUE, SR., TERRY L. PATTON, JOHN E. REYNOLDS, THOMAS D. SATTLER, WILLIAM F. SCHMIDT, CAROL J. SCHMIDT, JOHN S. SCHRECK III, ROBERT L. SCHWARTZ, DANIEL A. SINGER, WILLIAM E. STEINIGER, JR., NANCY A. STEPHENS, LIBUSE M. TEJCEK, JOHN M. VONITTER, and DENIS R. WITTIG,

Defendants,

and

GARY O. BREIDINGER, JAMES R. DUNDAS, PAMELA A. DUNDAS, DALE E. FISHER, MICHAEL T. HARTZLER, ISABEL LEADER, JOHN G. RAYMO, and DUANE E. SCHOOLEY,

Defendants-Appellees/Cross-Appellants.

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HIGGINS LAKE PROPERTY OWNERS ASSOCIATION,

Plaintiff-Appellee/Cross-Appellee,

v

GERRISH TOWNSHIP, LYON TOWNSHIP, ROSCOMMON COUNTY ROAD COMMISSION, ROBERT E. GEACH, and

No. 262717  
Roscommon Circuit Court  
LC No. 04-724751-CH

ANNA M. GEACH,

Defendants-Appellees,

and

DONNA K. ABBRUZZINO, GIUSEPPE  
ABBRUZZINO, ADRIENNE M. ALLARD,  
DONALD G. BARNOWSKI, JR., MARGARET  
BARNOWSKI, SCOTT D. BEAGLE, ROGER R.  
BLOOMFIELD, SUSAN R. BLOOMFIELD,  
ROGER A. BOWMAN, LYNN F. BRAGG,  
GARY A. BRILL, PATRICK J. BUTCHER,  
DONALD M. CORBIN, DONALD C.  
FINKBEINER, GARY E. GROSS, DANIEL J.  
GUNDRY, HEATHER GUNDRY, GARY G.  
HARDER, JOHN M. HERING, SR., RICHARD  
M. HIRSCH, DAVID D. HOFFMAN, STEVEN  
HUGHES, RAYMOND W. HUMMEL, RICHARD  
E. JORDAN, CARL KALMAR, JR., CHARLES N.  
KAMINSKI, JAMES I. MARTIN, TERESE G.  
MARTIN, GEORGE S. MEYERS, THEODORE J.  
MILLER, THOMAS J. MISURACA, LAURA J.  
NELSON, ROBERT A. PARDUE, SR., TERRY L.  
PATTON, JOHN E. REYNOLDS, THOMAS D.  
SATTLER, WILLIAM F. SCHMIDT, CAROL J.  
SCHMIDT, JOHN S. SCHRECK III, ROBERT L.  
SCHWARTZ, DANIEL A. SINGER, WILLIAM E.  
STEINIGER, JR., NANCY A. STEPHENS,  
LIBUSE M. TEJCEK, JOHN M. VONITTER, and  
DENIS R. WITTIG,

Defendants,

and

GARY O. BREIDINGER, JAMES R. DUNDAS,  
PAMELA A. DUNDAS, DALE E. FISHER,  
MICHAEL T. HARTZLER, ISABEL LEADER,  
JOHN G. RAYMO, and DUANE E. SCHOOLEY,

Defendants-Appellees/Cross-  
Appellants,

and

JEAN E. WITTIG,

Defendant-Appellant/Cross-  
Appellee.

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Before: O'Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

In these consolidated appeals, defendants-appellants challenge the trial court's order granting summary disposition for plaintiff Higgins Lake Property Owners Association ("HLPOA"). Several defendants (referred to as the "Sovereign Park" defendants) also challenge the trial court's order by means of cross appeal. We affirm.

This action involves HLPOA's most recent attempt to restrict public use of areas where publicly dedicated roads terminate at the shore of Higgins Lake. In *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83; 662 NW2d 387 (2003), this Court held that various subdivision plat dedications were intended to provide the public with access to the lake, and that the public could not use the road ends for purposes that were not incident to the right of navigation. Impermissible uses included the non-temporary mooring of boats, and recreational activities such as picnicking, lounging, and sunbathing. In the present action, HLPOA sought declaratory and injunctive relief to enforce this Court's decision relative to several governmental and individual defendants. It sought to enjoin the individual defendants from exceeding the permissible scope of the use of the road ends, and it sought permission to post signs at the road ends informing the public of the restrictions. The trial court granted declaratory relief, but declined to issue injunctive relief. The trial court's order declares that various subdivision roads and streets ending at the edge of Higgins Lake may not be used for the non-temporary mooring of water craft, including overnight mooring, or for recreational purposes not incidental to the use of the water's surface of Higgins Lake. The court also permitted HLPOA to post signs at each of the road ends informing the public of the prohibited uses.

I. Docket No. 262494

Defendants Robert and Anna Geach argue that *Higgins Lake, supra*, was wrongly decided and violates Michigan's Constitution. They argue that Const 1963, art 7, § 29, reserves control of the roads to local governments, and that this Court's decision in *Higgins Lake, supra*, ignores this principle by imposing the burden of proof on those claiming that the plat dedications provide more than mere access to Higgins Lake. But adopting this argument would require us to ignore or overrule our own precedent, which would violate the law of the case doctrine. *Grievance Admin v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). Furthermore, MCR 7.215(J) requires us to follow our original decision. We will not declare a conflict, because defendants fail to persuade us that *Higgins Lake* was wrongly decided.

II. Docket No. 262533

Defendant Roscommon County Road Commission argues that the trial court lacked the authority to permit HLPOA to post signs at the road ends in order to inform the public of the use restrictions. We acknowledge that MCL 224.19b(1) states that a party "shall not construct,

operate, maintain or remove a facility or perform any other work within the right of way of a county road except sidewalk installation and repair without first obtaining a permit from the county road commission.” However, MCL 600.611 provides that circuit courts “have jurisdiction and power to make any order proper to fully effectuate the circuit court’s jurisdiction and judgments.” Allowing HLPOA to post signs at the road ends to inform the public of prohibited uses was an order proper to effectuate the trial court’s judgment. The road commission was a party to this litigation and it had a full opportunity to present its arguments against posting the signs. Posting signs at the road ends was an effective and necessary means of informing the public of the legal restrictions on the public’s use of the road ends. The trial court’s order does not impose any burden on the road commission, nor does it palpably impair the road commission’s ability to exercise its jurisdiction over the road. Under these circumstances, MCL 224.19b does not restrict the trial court’s jurisdiction to effectuate its judgment.<sup>1</sup>

### III. Docket No. 262717

Defendant Jean Wittig argues that the trial court erroneously prohibited the overnight mooring of boats. In *Higgins Lake, supra* at 104, this Court stated:

[O]ne, nonexclusive dock may be erected at each road end to facilitate public access to the water. Members of the public are entitled to moor boats temporarily as an incident of the public’s right of navigation. Because the plat language and the applicable law dictate that the road ends are intended to afford access to the public, private docks are not permitted at the road ends. [Citations omitted.]

However, the Court held that the trial court did not abuse its discretion in denying injunctive relief, and stated:

[W]e will not engage in a futile attempt to anticipate every situation that may arise in the future. The propriety of injunctive relief must be fact-driven. For example, two persons standing at a road end for a short period might not pose a problem, but a group of fifty persons that regularly congregates for hours may be a proper basis for an injunction. Similarly, the mooring of a boat at a road end for a few hours may be considered temporary and have no affect on lake access by others, while mooring a boat for several days at a time may be deemed beyond temporary and inconsistent with the public’s right of access. We are not inclined to set an arbitrary length of time beyond which mooring would not be considered temporary. It is clear from the plat language and the applicable case law that the public has a right to have access to the lake at the road ends. This right of access is paramount and should be the guiding principle in resolving future disputes concerning the use of the road ends. [*Id.* at 111-112.]

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<sup>1</sup> However, since the Road Commission has jurisdiction over these roads, the HLPOA shall place signs only at locations designated by the Road Commission.

The trial court's order prohibiting overnight mooring falls within the parameters of this language. Although this Court declined to set specific limits on mooring for purposes of ordering injunctive relief, it did not specifically authorize overnight mooring or preclude the trial court from prohibiting overnight mooring in subsequent orders implementing its decision. The trial court's declaratory, but non-injunctive order was a fair and reasonable delineation between permissible and impermissible use of the road ends. Further, a factual record was not necessary to enable the trial court to determine that overnight mooring exceeds the permissible scope of non-temporary mooring.

Defendant Wittig and the Sovereign Park defendants also argue that the trial court erroneously permitted signage to contain language that "[u]se of the road in violation of the Courts' ruling may subject the violator to contempt of court sanctions, including fines and/or up to thirty (30) days in jail." Defendant Wittig specifically asserts that persons who are not parties to this case cannot be held in contempt for violation of the order. However, individuals who knowingly violate a court injunctive order may be found in contempt notwithstanding their lack of "party" status. See *Great Lakes Greyhound Lines v Int'l Union, UAW-CIO*, 341 Mich 290, 308-310; 67 NW2d 105 (1954). Nevertheless, no injunction has yet to issue in this case, so defendant Wittig is technically correct. However, the language does not state that persons who violate the court's ruling *will* be subject to contempt of court sanctions; rather, it only states that violation of the court's ruling *may* subject the violator to such sanctions. Given the history of this litigation, we find these words accurate. Defendant Wittig's remaining issue on appeal is substantially the same as that raised by the road commission in Docket No. 262533, which we have already rejected.

#### IV. Cross-Appeal in Docket Nos. 262494, 262533, and 262717

The Sovereign Park defendants argue that the trial court's order improperly restricts their use of Lake Drive. We disagree.

The trial court's order states that "the roads, streets, alleys and boulevards *which extend to the water's edge contained within the subdivisions of . . . Sovereign Park . . .* shall not be used for the following activities . . ." Consequently, the Sovereign Park defendants' rights to use Lake Drive, which runs parallel to the shores of Higgins Lake and does not extend to the water's edge, remain unaffected by the trial court's order.

The Sovereign Park defendants also seem to argue that the road ends that intersect with Lake Drive should not be subject to the restrictions set forth in *Higgins Lake, supra*, because a 1937 court order to vacate Lake Drive preserved the rights of Sovereign Park residents to use these areas. However, the 1937 order preserves the property owners' rights to use Lake Drive, "without changing the status quo of all intersecting streets in said plat of Sovereign Park running to the shore of Higgins Lake." Accordingly, this prior order does not confer any special status on the Sovereign Park road ends.<sup>2</sup>

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<sup>2</sup> This opinion only applies to roads that run perpendicular to Higgins Lake. This opinion does  
(continued...)

Affirmed.

/s/ Peter D. O'Connell  
/s/ David H. Sawyer  
/s/ William B. Murphy

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(...continued)

not concern any issues regarding any earlier orders vacating Lake Drive. It appears that issues relating to same are the subject of a separate declaratory judgment action.