

STATE OF MICHIGAN
COURT OF APPEALS

HIGGINS LAKE PROPERTY OWNERS

UNPUBLISHED

April 8, 1997

ASSOCIATION, JOHN DOERING, JOHN SMITH, MARY SMITH, WILLIAM SHARP, ARLEAN SHARP, GARY W. WILSON, JEAN WILSON, TIMOTHY J. PIPKINS and DORIS PIPKINS,

Plaintiff-Appellants/Cross-
Appellees,

v

No. 190782

Roscommon Circuit Court

LC No. 95-006944-CE

GERRISH TOWNSHIP, ROSCOMMON COUNTY ROAD COMMISSION, DEPARTMENT OF NATURAL RESOURCES, ROBERT C. SUGDEN, PHILIP J. CADIEUX, CATHERINE CADIEUX, ROBERT W. WOLFE, STELLA A. WOLFE, JAMES HENKEL, KENNETH V. PLUMMER, KATHLEEN PLUMMER, BETTY L. WOODHAMS, RONALD A. PLUMMER, MARY E. PLUMMER, CLIFFORD W. MACK, GENEVIEVE M. MACK, ELEANOR LEFEVRE, SHARON GOSSELIN HENKEL, ANTHONY J. GENNARO, DOROTHY J. GENNARO, HARVEY J. WILKINS, VIRGINIA M. WILKINS, NICHOLAS CANDELA, BUD L. BONK, BETTY L. BONK, KENNY A. MICHAELS, MAY KAY MICHAELS, CARL E. McKONE, ARDETH D. McKONE, RICHARD M. COOLIDGE, DORIS J. COOLIDGE, DONALD E. KISS, CAROLYN J. KISS, RJM MANAGEMENT COMPANY and JOHN PURTELL,

Defendants-Appellees/Cross-Appellants.

HIGGINS LAKE PROPERTY OWNERS ASSOCIATION, JOHN DOERING, JOHN SMITH, MARY SMITH, JOHN WADE, ELIZABETH WADE, WILLIAM SHARP, ARLEAN SHARP, GARY W. WILSON, JEAN WILSON, TIMOTHY J. PIPKINS and DORIS PIPKINS,

Plaintiffs-Appellees,

v

No. 192019
Roscommon Circuit Court
LC No. 95-006934-CE

GERRISH TOWNSHIP, ROSCOMMON COUNTY ROAD COMMISSION, PHILLIP DAMINCO, STANLEY T. BROCKWAY, JEANNE M. BUBOI, KENNETH T. HACK, MARGARET J. HACK, EDWARD JOHNSON, RICHARD SANTAROSSA, CONSTANCE SANTAROSSA, DOUGLAS R. DUTRIZAK, ALEXIS A. DUTRIZAK, DONALD R. PERRY, DANIEL NELLIS, MARY NELLIS, NORVAL PARK, EDRA PARK, LAVERN F. VOS, FRED A. SKIBOWSKI, ELEANOR G. SKIBOWSKI, DONALD B. GRAHAM, CATHERINE I. GRAHAM, DONALD WALLACE, WANDA J. WALLACE, GARY T. OLEJARCZYK, PATRICIA A. OLEJARCZYK, STEVEN L. RICKETTS, MARY L. RICKETTS, DAVE KATT, CONNIE KATT, ROBERT M. KOCH, DIANE B. KOCH, PATRICK BUTCHER, LEANNE R. BUTCHER and DEPARTMENT OF NATURAL RESOURCES,

Defendants.

HIGGINS LAKE PROPERTY OWNERS ASSOCIATION, JOHN DOERING, JOHN SMITH, MARY SMITH, JOHN WADE,

ELIZABETH WADE, WILLIAM SHARP,
ARLEAN SHARP, GARY W. WILSON, JEAN

WILSON, TIMOTHY J. PIPKINS and DORIS
PIPKINS,

Plaintiffs-Appellees,

v

GERRISH TOWNSHIP, ROSCOMMON
COUNTY ROAD COMMISSION, PETER
CERVONE, JR., KENNETH S. RUSSELL,
VIRGINIA L. RUSSELL, ROBERT J. REED,
MARSHA M. REED and DEPARTMENT OF
NATURAL RESOURCES,

Defendants-Appellees.

No. 192020
Roscommon Circuit Court
LC No. 05-006957-CE

HIGGINS LAKE PROPERTY OWNERS
ASSOCIATION, JOHN DOERING, JOHN
SMITH, MARY SMITH, JOHN WADE,
ELIZABETH WADE, WILLIAM SHARP,
ARLEAN SHARP, GARY W. WILSON, JEAN
WILSON, TIMOTHY J. PIPKINS and DORIS
PIPKINS,

Plaintiffs-Appellees

v

GERRISH TOWNSHIP, ROSCOMMON
COUNTY ROAD COMMISSION, THOMAS
B. MELDRUM, DIANE M. MELDRUM and
DEPARTMENT OF NATURAL RESOURCES,

Defendants-Appellees.

No. 192021
Roscommon Circuit Court
LC No. 95-006958-CK

HIGGINS LAKE PROPERTY OWNERS
ASSOCIATION, JOHN DOERING, JOHN
SMITH, MARY SMITH, JOHN WADE,
ELIZABETH WADE, WILLIAM SHARP,
ARLEAN SHARP, GARY W. WILSON, JEAN

WILSON, TIMOTHY J. PIPKINS and DORIS
PIPKINS,

Plaintiffs-Appellees,

v

GERRISH TOWNSHIP, ROSCOMMON
COUNTY ROAD COMMISSION, GORDON
W. HERMANCE, DONNA L. HERMANCE,

Defendants-Appellants,

and

DEPARTMENT OF NATURAL RESOURCES,

Defendant-Appellee.

HIGGINS LAKE PROPERTY OWNERS
ASSOCIATION, JOHN DOERING, JOHN
SMITH, MARY SMITH, JOHN WADE,
ELIZABETH WADE, WILLIAM SHARP,
ARLEAN SHARP, GARY W. WILSON, JEAN
WILSON, TIMOTHY J. PIPKINS and DORIS
PIPKINS,

Plaintiffs-Appellees,

v

GERRISH TOWNSHIP, ROSCOMMON
COUNTY ROAD COMMISSION, THOMAS
B. MELDRUM, DIANE M. MELDRUM,

Defendants-Appellants,

and

DEPARTMENT OF NATURAL RESOURCES,

No. 192022
Roscommon Circuit Court
LC No. 95-006959-CK

No. 193704
Roscommon Circuit Court
LC No. 95-006958-CE

Defendant-Appellee,

and

STATE OF MICHIGAN, HARRY FALKAM
and ROBERT M. HARDWICK,

Defendants.

Before: Griffin, P.J., and McDonald and C. W. Johnson*, JJ.

PER CURIAM.

Plaintiffs in these consolidated cases appeal by leave granted from orders granted by separate circuit court judges conditionally granting summary disposition to defendants pursuant to MCR 2.116(C)(5) in the respective cases and holding defendants are entitled to a jury trial regarding the construction of pertinent language in a plat dedication. Defendants cross-appeal, challenging the finding they are not entitled to a jury trial on their affirmative defense of adverse possession. We affirm in part and reverse in part. Plaintiffs, contending the landowner defendants were making improperly excessive use of road ends at various subdivisions bordering Higgins Lake and that the governmental defendants failed to discharge their duty to restrain these improper uses, filed the instant actions seeking injunctive relief. .

First, we agree with plaintiffs, in docket no. 190782, and find Judge Michael Matuzak improperly granted summary disposition to defendants based on a lack of standing. We review a grant of summary disposition pursuant to MCR 2.116(C)(5) de novo. *Dep't of Social Services v Baayoun*, 204 Mich App 170; 514 NW2d 522 (1994). In doing so, we accept as true all material allegations of the plaintiffs' complaint and construe the complaint in their favor. *House Speaker v Governor*, 443 Mich 560; 506 NW2d 190 (1993). The individual plaintiffs had standing to sue because they asserted a substantial interest in the case. Plaintiffs claimed defendants' alleged misconduct detrimentally affected them in a manner different than the citizenry at large by negatively affecting the value of their riparian holdings along Higgins Lake and by reducing their enjoyment of the lake as riparian owners. *House Speaker v State Administrative Bd*, 441 Mich 547, 554; 495 NW2d 539 (1993). Plaintiff Higgins Lake Property Owners Association also had standing to sue as a nonprofit membership organization litigating to vindicate the interests of its members. *White Lake Improvement Ass'n v City of Whitehall*, 22 Mich App 262; 177 NW2d 473 (1970).

Next, we find the trial courts erred in holding defendant property owners were entitled to a jury trial on the question whether their actions exceeded the scope of the subdivision lakefront road ends. Plaintiffs filed the instant actions seeking injunctive relief to prevent the alleged improper use of public road ends. The actions are equitable in nature and thus not triable before a jury. See *Lynch v Lynch*,

* Circuit judge, sitting on the Court of Appeals by assignment.

172 Mich App 34; 338 NW2d 413 (1983); *Robair v Pahl*, 80 Mich App 458; 264 NW2d 27 (1978). Both parties err in focusing on whether the issue involves a

question of law or fact. Such a focus absurdly insinuates a trial court lacks either the ability or authority to decide factual questions. Before addressing in a jury trial which issues are submissible to the jury and which must be decided by the court, it is first necessary to determine whether a jury trial is appropriate. As noted, application of such an analysis here reveals a jury trial was not appropriate in this equitable action.

We likewise reject defendants' contention they were entitled to a jury trial on their affirmative defense of adverse possession. An assertion of adverse possession is equitable in nature and is generally not properly submitted to a jury. *Wolfenden v Burke*, 69 Mich App 394, 398-399; 245 NW2d 61 (1976). Although an exception exists in the case of an action for ejectment because "because ejectment was a civil action at law triable by jury at the time the constitutional guarantee of the right to jury trial was adopted," *Wolfenden, supra*, 399. Const 1963, art 1 § 14, the instant plaintiffs have not brought ejectment actions. Plaintiffs do not seek to try title to or to determine who has the right to possess the road ends. *Sanborn v Loud*, 150 Mich 154; 113 NW 309 (1907); *The Michigan Central R Co v McNaughton*, 45 Mich 87, 90; 7 NW 712 (1881).

We reverse the trial court's orders granting summary disposition to defendants on the ground plaintiffs did not have standing to bring this action, and holding defendants were entitled to a jury trial on the question of the interpretation of the plat dedication. However, we affirm the trial court's order denying defendants a jury trial on their affirmative defense of adverse possession. Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs, neither party have prevailed in full.

/s/ Richard Allen Griffin

/s/ Gary R. McDonald

/s/ Charles W. Johnson