

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF L A K E)

3 IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
4 LAKE COUNTY ILLINOIS

5 HIGHLAND LAKE PROPERTY OWNERS)
ASSOCIATION,)
6 Plaintiff,)

7 -vs-

) NO. 07 CH 2178
)

8 THOMAS VAID, KAREN VAID, JACK)
JOHNSON and BARB "DEE DEE" GIELER,)
9 Defendants.)

10

11 EXCERPT OF REPORT OF PROCEEDINGS had in the
12 above-entitled cause before the MITCHELL L. HOFFMAN, Judge
of said Court, on the 29th day of May, A.D., 2009.

13

14 APPEARANCES:

15 MR. JOHN W. QUINN,
16 Attorney at Law,
on behalf of the Plaintiff;

17 MR. THOMAS RESNICK,
18 Attorney at Law,
19 on behalf of the Defendants.

20

21

22

23 Paula H. Tack, CSR
Official Court Reporter
Courthouse; Waukegan, Illinois
24 License No. 84-2685

COPY

1 * * * * *

2 THE COURT: We are back on the record for the
3 Court's ruling in this matter.

4 First of all, I want to thank the attorneys for
5 both parties here who have in the view of the Court done an
6 excellent job of framing the issues and presenting the
7 evidence to the Court in this matter.

8 The law to be applied in this case is clear the
9 Supreme Court of Illinois adopted the so-called Civil Law
10 Rule in the 1988 case of Beacham v. Lake Zurich Property
11 Owner's Association, B-E-A-C-H-A-M. That rule states that,
12 "The owner of a part of a lake bed has a right to the
13 reasonable use and enjoyment of the entire lake surface."

14 The Beacham Court did not have occasion in that
15 case to express a view on what constitutes reasonable use.
16 It made clear that this is a determination properly left in
17 the first instance to the trial Court, and that the
18 determination should be based on the specific facts and
19 circumstances of each case.

20 It is also clear that in making its determination
21 of what constitutes reasonable use, the trial Court should
22 consider among other factors the rights of all owners to a
23 measure of solitude and tranquility, the rights of all
24 owners to recreational use, the size of the lake, the

1 availability of other lakes in the region, the customs of
2 the locale, whether the use would result in financial reward
3 to one group at the expense of the annoyance of another
4 group. These factors must be balanced by the Court, and if
5 the benefits obtained do not sufficiently outweigh the
6 detriment sustained, then the use should be deemed
7 unreasonable.

8 Although the Civil Law Rule may result in a
9 certain amount of unpredictability, since the test of
10 reasonableness is made on a case by case basis, to quote the
11 Iowa Law Review article that was also cited by the Supreme
12 Court in Beacham, this lack of predictability "is greatly
13 outweighed by the benefits which result from the essential
14 flexibility of the doctrine."

15 The Court finds in this case based on the evidence
16 adduced at trial that Highland Lake is a small,
17 privately-owned lake approximately 100 acres in size with a
18 shallow shore. It appears to be approximately one-quarter
19 to one-half mile across at its widest point. It has
20 traditionally been a no-motorboat lake as long as any
21 witness could recall. The lake has traditionally been used
22 for non-powered boating craft such as paddle and sailboats
23 and for swimming. In particular, children of the lake
24 owners swim out to the anchored swimming raft in the lake.

1 The Court also finds that for at least some period
2 of time in the past the homeowner's association has allowed
3 lake owners to use snowmobiles on the frozen lake surface.

4 The Court finds that there are other lakes in the
5 area that allow motorboats. Upon the Court's inspection of
6 the lake, it appeared quiet and tranquil, the sound of birds
7 could be heard over the surface of the lake.

8 The Court also finds that certain named defendants
9 have physical conditions which prevent them from accessing
10 the lake by unpowered watercraft. Excuse me. Prevent them
11 from accessing the lake other than by unpowered watercraft.

12 The Court finds that these individuals have
13 accessed the lake by means of watercraft powered by 36-volt
14 electric trolling motors. The Court cannot find based on
15 the evidence before it that the use of 36-volt electric
16 trolling motors would cause any environmental or safety
17 hazards on Highland Lake.

18 At a site inspection of the lake, the Court was
19 able to observe a demonstration of a 36-volt electric
20 trolling motor. The Court's observation was that even at
21 its maximum power range the 36-volt electric motor was
22 barely audible even at a distance of only five feet. The
23 wake, if any, created by the 36-volt electric motor was
24 negligible and would have been no more than that made by a

1 fast-moving canoe or sailboat.

2 The Court's ruling in this case must be based on a
3 balancing of all these factors. As a Judge I am not allowed
4 nor would it be appropriate for me to decide a case based on
5 my own personal preferences or predilections on this matter,
6 but rather what is appropriate is to view this case through
7 the larger societal prism of what is reasonable.

8 The Court understands the concerns of the
9 plaintiffs that allowing electric motors will slowly and
10 inevitably lead to the use of gasoline-powered motorboats on
11 the lake. While the Court understands this concern, neither
12 the law nor the evidence support the notion that this
13 progression is inevitable.

14 The law is a complex endeavor. There are times
15 when justice calls for a hard and fast rule to be enforced
16 without exception. There are other instances where the rule
17 of law in order to remain fair must also remain flexible.
18 What people don't always understand and appreciate is that
19 there can be great strength in flexibility. A fair and
20 flexible rule may have much more longevity as it is more
21 likely to be respected and obeyed.

22 The Court rules as follows: Taking all the
23 aforementioned factors into consideration, the plaintiffs
24 have proved that motorboats are an unreasonable use of

1 Highland Lake. The size, tranquility, and customs of the
2 lake all dictate against the use of motorboats, the noise
3 and speed of which would create an unreasonable interference
4 with the peace and tranquility of the lake.

5 However, the Court also finds the defendants have
6 proved that the use of 36-volt electric trolling motors are
7 not an unreasonable use of the lake and will not create the
8 problems associated with motorboats generally.

9 Therefore, the relief requested by plaintiffs is
10 granted in part and denied in part, and the Court orders the
11 defendants, these defendants may use 36-volt electric
12 trolling motors on Highland Lake.

13 The Court's comments on the transcript today are
14 to be included, written, and included as part of the order
15 in this case. Thank you very much to the parties.

16 (Which was all the evidence
17 offered and received on said
18 date in said cause.)

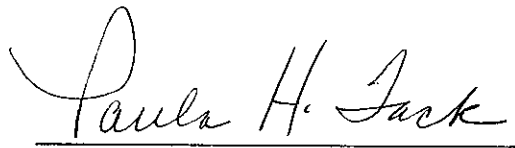
19
20
21
22
23
24 STATE OF ILLINOIS)

) SS.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

COUNTY OF L A K E)

I, PAULA H. TACK, Official Court Reporter
for the 19th Judicial Circuit, Lake County, Illinois, do
hereby certify that I reported in shorthand as such official
court reporter the foregoing proceedings had before the
HONORABLE MITCHELL L. HOFFMAN, Judge of said Court in the
above-entitled cause on the 29th day of May, 2009, and
thereafter caused to be transcribed into typewriting the
foregoing transcript which I hereby certify is a true and
correct transcription of my shorthand notes so taken of the
evidence offered and received on said date before said
judge.



Paula H. Tack
Official Court Reporter