

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA

In re: Affirming Existence of Recreational
Customary Use on 1,194 Private
Properties Located in Walton County,
Florida


Case No: 1D21-3532
Case No. 2018-CA-000547

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AMENDED NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff WALTON COUNTY, FLORIDA, appeals to the First District Court of Appeal the “Final Judgment as to Certain Parcels” that this Court rendered on November 3, 2021. *See* Fla. R. App. P. 9.030(b)(1)(A), 9.110(k). A copy of the Court’s Order is attached to this Notice.

RESPECTFULLY SUBMITTED on this 23rd day of November 2021.



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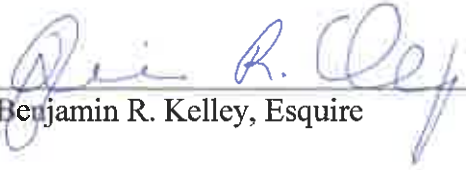
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on this 23rd day of November 2021.


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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA**

**In re: Affirming Existence of Recreational
Customary Use on 1,194 Private
Properties Located in Walton County,
Florida**

Case No.: 2018-CA-000547

FINAL JUDGMENT AS TO CERTAIN PARCELS

THIS cause came before this Court on the following Motions for Summary Judgment filed by N. Henry Davis, Jasmine Dunes Property Owners Association, Inc.; Kenneth J. Shaia; William D. Arthur, III; W. Charles Deloach, Jr.; Kent H. Wallace and Suzan Jill Wallace, Co-Trustees of The Kent H. Wallace Trust U/A; and Carl Grivner, as Trustee of The Carl Grivner Trust Dated May 11, 2016 (collectively "Defendants"):

1. Second Motion for Summary Judgment filed by party Defendant N. Henry Davis (Docket No. 1482; Filing # 110160196; filed on July 13, 2020);
2. Second Motion for Summary Judgment filed by Jasmine Dunes Property Owners Association, Inc.; Kenneth J. Shaia; William D. Arthur, III; W. Charles Deloach, Jr.; Kent H. Wallace and Suzan Jill Wallace, Co-Trustees of The Kent H. Wallace Trust U/A; and Carl Grivner, As Trustee of The Carl Grivner Trust Dated May 11, 2016, (Docket No. 1480; Filing # 110093327; filed on July 10, 2020);
3. N. Henry Davis' "Motion for Summary Judgment as to Count I of the Corrected Amended Complaint and as to Count IV of His Counterclaim" (Docket No. 2469 Filing #126944104 filed on May 17, 2021);
4. Jasmine Dunes Property Owners Association, Inc.; Kenneth J. Shaia; William D. Arthur, III; W. Charles Deloach, Jr.; Kent H. Wallace and Suzan Jill Wallace, Co-Trustees Of The Kent H. Wallace Trust U/A; and Carl Grivner, as Trustee of The Carl Grivner Trust Dated May 11, 2016 joinder in N. Henry Davis' "Motion for Summary Judgment as to Count I of the Corrected Amended Complaint and as to Count IV of His Counterclaim." (Docket No. 2478; Filing #127481801 filed on May 25, 2021).

Hearings were held on the various Motions on June 4, 2020, August 14, 2020, November 20,

2020 and July 23, 2021 and two Orders entered granting the various motions which are incorporated herein by reference:

1. "Order Granting Jasmine Dune and Grivner Trust's Second Motion for Summary Judgment and N. Henry Davis' Second Motion for Summary Judgment." Docket No. 1525, Filing No. 11304243, filed September 21, 2020.
2. "Order Granting in Part and Denying in part N. Henry Davis' Motion for Summary Judgment as to Count I of the Corrected Amended Complaint and as to County IV of His Counterclaim." Docket No. 2613, Filing No. 133099329, filed August 20, 2020.

The Court having heard the evidence and arguments from all parties and being fully advised in the premises, the Court hereby finds as follows:

FINDINGS OF FACT

1. This Court has jurisdiction of the parties in this cause and the subject matter hereof and has jurisdiction to render this judgment; further, that the allegations contained herein have been proven by competent evidence, and there are no material issues of fact or law, and this Final Judgment resolves all Counts in the Complaint with respect to the Defendants named in the Motions and their properties.

2. On October 28, 2020, Walton County filed a Corrected Amended Complaint for Declaration Affirming Recreational Customary Use (the "Complaint"). Count I, which is the only count of the Complaint, seeks a claim for declaratory relief and requests a judgment declaring the recreational customary uses described therein are ancient, reasonable, without interruption, and free from dispute, upon the "dry sand beach area" of 1,194 private gulf front properties in Walton County.

3. Davis' Motions for Summary Judgment collectively ask, in part, that this Court find, as a matter of law, that Defendants' properties differ in circumstances from other properties because on March 28, 1978, the County abandoned, through Walton County Resolution 1978-16

(the "Resolution") all claims (including customary use claims) of the public landward of the mean high-water line lying southerly of Blocks 17, 18, 19 and 20 of the Gulf Shore Manor plat. This Court previously found, upon consideration of Motions for Summary Judgment filed by Defendants (Docket Nos. 1480 and 1482), that customary use rights can be abandoned and were, in fact, abandoned in the property described in the Resolution. See "Order Granting Jasmine Dune and Grivner Trust's Second Motion for Summary Judgment and N. Henry Davis' Second Motion for Summary Judgment." Docket No. 1525, Filing No. 11304243, filed September 21, 2020.

4. Defendants' properties subject to this action are located within Blocks 17, 18, 19 and 20 of the Gulf Shore Manor plat that were abandoned by the County in the Resolution.

5. In its prior Orders on Defendants' Second Motion for Summary Judgment, this Court did not decide whether the customary use had been (or could be) revived on Defendants' properties after the Resolution abandoned such use on their properties.

6. Davis' Motion for Summary Judgment seeks, in part, final summary judgment as to Count I of the Corrected Amended Complaint because the alleged customary use of Defendants' property was interrupted by the Resolution and no use after the adoption of the 1978 Resolution can revive customary use or be defined as ancient, thereby defeating one of the required elements of the judicially adopted doctrine of customary use in Florida.

7. Davis's Motion for Summary Judgment also sought a final judgment on Count IV of his Counterclaim holding that the doctrine of customary use, as adopted by the Florida Supreme Court, is unconstitutional.

CONCLUSIONS OF LAW

8. There are no genuine issues of material fact concerning the plain language of the Resolution. The Resolution shows a clear intent to disclaim and renounce any claim of right in the

County and the public to the property, including customary use, landward of the mean high-water line lying southerly of Blocks 17, 18, 19 and 20 of the Gulf Shore Manor plat. Accordingly, the Court finds that the County abandoned any and all customary use rights with respect to the properties in Blocks 17, 18, 19 and 20 of the Gulf Shore Manor plat which might have existed as of March 28, 1978.

9. To the extent the County could establish at trial that customary use of Defendants' properties existed prior to the County's adoption of the Resolution, it is of no consequence to Davis' Motion for Summary Judgment. It is undisputed that any such customary use of Defendants' properties (and any other properties located in the area described in the Resolution) was interrupted when the County abandoned the public's claim of any rights landward of the mean high-water line, making it impossible for the County to prove the "uninterrupted" element of the judicially adopted customary use test.

10. Further, any new claim by the County that customary use was "revived" upon Defendants' properties and the other property described in the Resolution could commence no earlier than the adoption of the Resolution on March 28, 1978.

11. Even assuming a customary use may be revived—which it cannot legally – and assuming the public customarily used the Defendants' beachfront properties between March 28, 1978, and 2018, when the County filed this action, this amount of time (40 years) is not sufficient in length to be deemed "ancient."

12. Accordingly, the County is unable to establish that customary use on Defendants' properties has been either "uninterrupted" or "ancient," both of which elements must be proven under the judicially adopted customary use test.

13. As to Count IV of Defendant's Counterclaim, Davis (and others that joined in

the Motion) asked this Court to find the customary use doctrine void for vagueness under United States constitutional principles, which they assert is proper because the vagueness issue has never been addressed by the Florida Supreme Court. In support of their argument, the Defendants cite numerous cases in which the federal courts have found state law, both statutory and common, to be void for vagueness and violative of the United States Constitution. The Defendants fail, however, to cite any case in which a decision of a Florida trial court holding a common law standard announced by the Florida Supreme Court unconstitutional was affirmed. This Court is mindful of the admonition contained in *Gillam v Stewart*, 291 So.3d 593-594 (Fla. 1974), that “[t]he constitutional system of courts in this State contemplate that only the Supreme Court may overrule its own decisions.” As such, this court fears that the request made by the Defendants encourages it to violate that prohibition and the Court declines to take such a path. As such, the Court concludes that, as a matter of law, it must assume the judicially created customary use doctrine is constitutional.

THEREFORE, it is hereby ORDERED and ADJUDGED that:

A. Final Judgment is entered in favor of the Defendants, N. Henry Davis; Jasmine Dunes Property Owners Association, Inc.; Kenneth J. Shaia; William D. Arthur, III; W. Charles DeLoach, Jr.; Kent H. Wallace and Suzan Jill Wallace, Co-Trustees of The Kent H. Wallace Trust U/A; and Carl Grivner, As Trustee of The Carl Grivner Trust Dated May 11, 2016, and against Plaintiff, WALTON COUNTY on Count I of the Corrected Amended Complaint.

B. This Court does not have the authority to rule that the customary use doctrine adopted by the Florida Supreme Court is unconstitutional.

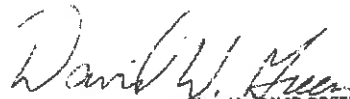
C. That portion of the Defendant’s property, which property is more particularly described in the Defendants’ Motions for Summary Judgment, said descriptions being

incorporated herein by reference, lying landward of the mean high-water line of the Gulf of Mexico, is free from any claims of the County or the public to a right of access for the recreational customary uses described in the Plaintiff's Corrected Amended Complaint.

D. Defendants are entitled to court costs and this Court reserves jurisdiction to determine the amount.

E. This Court retains jurisdiction over the parties to enforce the terms of this Final Judgment.

DONE AND ORDERED, in Chambers at DeFuniak Springs, Walton County, Florida, this 3rd day of November, A.D 2021.



eSigned by DAVID GREEN
on 11/03/2021 16:48:54 -6HUS3Gq

David W. Green, Circuit Judge

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