

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIRST DISTRICT

In re: Affirming Existence of Recreational Case No. 1D21-3532
 Customary Use on 1,194 Private L.T. No. 2018-CA-547
 Properties Located in Walton County,
 Florida

MOTION TO DISMISS CROSS-APPEALS

Appellant WALTON COUNTY, FLORIDA (“County”), by and through its undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.300, hereby moves to dismiss the cross-appeals identified in the attached Exhibit “A,” and, as grounds therefor, states as follows:

I.

INTRODUCTION

1. The instant case concerns the County’s appeal of the Circuit Court’s “Final Judgment as to Certain Parcels,” dated November 3, 2021 (“Partial Final Judgment”). (A copy of the Partial Final Judgment is attached hereto as Exhibit “B”).

2. The County filed the underlying action pursuant to Section 163.035, *Florida Statutes*, seeking a declaratory judgment affirming the public’s existing recreational customary use to utilize the dry sand areas of certain beaches along the Gulf of Mexico in Walton County, Florida. The

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owners of each parcel listed therein had a right to intervene pursuant to Section 163.035(3)(b)2., *Florida Statutes*. At this juncture, more than 500 property owners have intervened as party defendants.

3. The Partial Final Judgment pertains to only seven (7) of the 500-plus intervening defendants in the underlying case. (See Exhibit B at p. 5). The Circuit Court has entered judgment in favor of: 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, “Appellees”). (See *id.*). On the basis of a 1978 Resolution of the Walton County Board of County Commissioners, the Circuit Court determined that the County is precluded from asserting the existence of customary use on the portion of the Appellees’ properties lying landward of the mean high-water line of the Gulf Mexico. (See *id.* at pp. 3-6).

4. The County filed its Notice of Appeal on November 18, 2021, pursuant to Florida Rules of Appellate Procedure 9.030(b)(1)(A) and 9.100(k), and its Amended Notice of Appeal on November 23, 2021.

5. The seven (7) Appellees – *i.e.*, the property owners encompassed by the Partial Final Judgment – have filed Notices of Cross-Appeal in this case.

6. Additionally, however, 109 defendants in the underlying case who are ***not*** encompassed by the Partial Final Judgment – as identified in Exhibit “A” and referred to herein as the “Additional Cross-Appellants” – have also filed Notices of Cross-Appeal.

7. As explained below, this Court should dismiss the cross-appeals of the 109 Additional Cross-Appellants who are not encompassed by the Partial Final Judgment.

II.

ARGUMENT

8. It is well established that appellate review is limited to persons “aggrieved by the judgment” on review. *See Credit Indus. Co., Ltd. v. Remark Chem. Co., Inc.*, 67 So. 2d 540, 541 (Fla. 1953) (dismissing appeal and citing “the fundamental rule that to be entitled to appeal a person must be aggrieved by the judgment, [and] an appeal from a declaratory judgment will be dismissed where there is nothing in it prejudicial to the claimed rights of the appellant”); *see also* Phillip J. Padovano, *Florida Appellate Practice* § 10:4

(2021 ed.) (“There must be a showing that the decision sought to be reviewed adversely affects some legitimate interest of the party seeking relief or the proceeding will subject to dismissal.”).

9. Moreover, if a judgment ends litigation as to some defendants, but not others, the defendants not encompassed by the judgment are not “appellees,” and may not cross-appeal. See *Dauer v. Freed*, 444 So. 2d 1012, 1016 (Fla. 3d DCA 1984), *disapproved of on other grounds*, *Metro. Dade Cty. v. Green*, 596 So. 2d 458, 458-59 (Fla. 1992); see also Fla. R. App. P. 9.110(g) (providing that “[a]n appellee may cross-appeal”) (emphasis supplied). In such a situation, the improper cross-appeals should be dismissed. See *Dauer*, 444 So. 2d at 1016 (dismissing cross-appeals of defendants not encompassed by the final judgment on review).

10. In *Dauer*, the trial court entered final judgment in favor of two (2) of the seven (7) total defendants. See *id.* at 1014. After all seven (7) defendants cross-appealed the final judgment, the Third District Court of Appeal dismissed the cross-appeals of the five (5) defendants who were not encompassed by the final judgment on review. See *id.* at 1016. In so doing, the Third District explained that these defendants were not privileged to file cross-appeals because they were not “appellees” to the appeal. See *id.* The

final judgment did not end the case as to these five (5) defendants, and only those defendants who were “parties to that portion of the lawsuit which [had] been brought to an end by the final judgment being appealed” were appellees authorized to cross-appeal. *See id.*

11. Turning to the instant matter, it is indisputable that the 109 Additional Cross-Appellants are not “parties to that portion of the lawsuit which has been brought to an end by the final judgment being appealed.” *See id.* Rather, the Partial Final Judgment brings the lawsuit to an end only as to the seven (7) Appellees. (See Exhibit B at p. 5). The Additional Cross-Appellants are among the hundreds of remaining defendants in the underlying case. Thus, they are not “appellees” to this appeal, are not “aggrieved by” the Partial Final Judgment, and are not privileged to file cross-appeals. *See Dauer*, 444 So. 2d at 1016. Accordingly, the Court should dismiss the cross-appeals of the 109 Additional Cross-Appellants. *See id.*

III.

CONCLUSION

12. In sum, this Court should dismiss the cross-appeals of the 109 Additional Cross-Appellants identified in Exhibit "A," who are not encompassed by the Partial Final Judgment on review.

RESPECTFULLY SUBMITTED on this 25th day of January 2022.

/s/ David A. Theriaque

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court by using the *ePortal* system and served a copy thereof via Electronic Mail to:

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on this 25th day of January 2022.

/s/ David A. Theriaque

David A. Theriaque, Esquire

Exhibit “A”

| Additional Cross Appellants | Notice of Appeal Filing Nos. (DCA Clerk) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Edgewater Beach Owners Association, Inc. | 139604864 |
| Mitchell Brothers, Inc. | 139931457 |
| Edward M. Mitchell | 139931457 |
| Addison Drummond Paul and Melissa Parker Paul | 139601325 139689888 ¹ |
| Addison Drummond Paul and Melissa Parker Paul, as owners of Lot 2 in Heritage Dunes who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel | 139601325 139689888 |
| Andrew Christopher Deaton and Kandi Kailynn Deaton | 139601325 139689888 |
| Andrew Colden Florance | 139601325 139689888 |
| Ashley M. Crosier | 139601325 139689888 |
| Beachcrest Condominium Owners’ Association, Inc. | 139601325 139689888 |
| Beachside Condominium Owners’ Association, Inc. | 139601325 139689888 |

¹ The 106 Additional Cross-Appellants represented by David M. Smolker, Esquire, filed the same document – “Party Defendants’ Notice of Cross-Appeal” – twice. Thus, the same Notice of Cross-Appeal appears twice on the Docket. Both filing numbers have been provided.

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Bobby L. Burgner and Carrey L. Burgner | 139601325 139689888 |
| Branch Ranch Minerals, LLC, as owner of Unit 810 in Grand Dunes with an undivided ownership interest in the Grand Dunes Common area beachfront parcel | 139601325 139689888 |
| Burton Towry and Suzanne Towry and John O. Phillips and Claire Phillips, as owners of Apartment No. B-6 in the Palms at Seagrove Condominium with an undivided ownership interest in the Palms at Seagrove common area beachfront parcels | 139601325 139689888 |
| Capistrano Condominium Owners' Association, Inc. | 139601325 139689888 |
| Carlin Homes, LLC, as owner of Lot 23 at Shipwatch with an easement right to use and enjoy the Shipwatch common area beachfront parcel | 139601325 139689888 |
| Charlie N. Finney | 139601325 139689888 |
| Charlton P. Hunt and Dora L. Hunt as owners of Unit 12 in Beachside Condominium with an undivided ownership interest in the Beachside common area beachfront parcel | 139601325 139689888 |
| Coastal Beach Holdings, LLC | 139601325 139689888 |
| Craig Fleming, as owner of Units A and B in the Crosswinds Condominium with an undivided ownership interest in the Crosswinds common area beachfront parcel | 139601325 139689888 |
| Crosswinds Condominium Association of Panama City Beach, Inc. | 139601325 139689888 |

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| Daniel W. Basse and Jean Basse | 139601325 139689888 |
| Danielle Litaker-Nall, as Trustee of the KOLP Irrevocable Trust u/t/d August 10, 2011, as owner of Lot 4 who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel | 139601325 139689888 |
| Danielle Litaker-Nall, as Trustee of the KOLP Irrevocable Trust u/t/d August 10, 2011 | 139601325 139689888 |
| David F. Radlmann as Trustee of the 457 W. Park Place Revocable Trust Agreement dated May 25, 2019 | 139601325 139689888 |
| Debbie A. Koerner as Trustee of the Debbie A. Koerner Living Trust dated January 4, 1993 | 139601325 139689888 |
| DRA Investments, LLC as owner of Apartment No. 203 in the Capistrano Condominium with an undivided ownership interest in the Capistrano common area beachfront parcel | 139601325 139689888 |
| Edwin Johnston, Jr. and Nan V. Johnston, as owners of Unit 801 in Beachcrest Condominium with an undivided ownership interest in the Beachcrest common area beachfront parcel | 139601325 139689888 |
| Elizabeth M. Schwarting and Larry D. Schwarting, as owners of Lot 3 in Block B at the Village of White Cliffs who possess an easement right to use and enjoy the Village of White Cliffs common area beachfront parcel | 139601325 139689888 |
| Emerald Surf Villas Condominium Owners' Association, Inc. | 139601325 139689888 |
| Eugene J. Sullivan and Judith A. Sullivan, Co-Trustees of the Eugene and Judith Sullivan Living Trust | 139601325 139689888 |

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| Frazer Holdings, L.P. | 139601325 139689888 |
| George Sertl, Jr. and Alayne Sertl | 139601325 139689888 |
| Grand Dunes Condominium Owners' Association, Inc. | 139601325 139689888 |
| Grand Dunes II Condominium Owners' Association, Inc. | 139601325 139689888 |
| Gregory D. Crosslin and Patricia S. Crosslin, as owners of Lot 17 at Shipwatch who possess an easement right to use and enjoy the Shipwatch common area beachfront parcel | 139601325 139689888 |
| Heritage Dunes Owners' Association, Inc. | 139601325 139689888 |
| J. Stuart Collier, Jr. | 139601325 139689888 |
| James A. Slatton, Jr. | 139601325 139689888 |
| James Allred Slatton, Jr. | 139601325 139689888 |
| James Creek LTD, LLC | 139601325 139689888 |
| James Franklin and Funmilayo Franklin | 139601325 139689888 |
| James Franklin and Funmilayo Franklin as successors in interest to administratively dissolved Bonne Terre Condominium common element property | 139601325 139689888 |
| Janet D. Hickson Revocable Trust | 139601325 139689888 |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Janet D. Hickson Revocable Trust, as owner of Lot 3 which possesses an easement right to use and enjoy the Heritage Dunes common area beachfront parcel | 139601325 139689888 |
| Jimmy K. Hall and Rhonda S. Hall | 139601325 139689888 |
| JMS Seacrest Partners, LLC | 139601325 139689888 |
| Joan-Alan Holdings, LLC, as owner of Apartment No. 201 in the Capistrano Condominium with an undivided ownership interest in the Capistrano common area beachfront parcel | 139601325 139689888 |
| John H. Powers and Toni B. Powers | 139601325 139689888 |
| John N. Carroll and Patti G. Carroll, as owners of Apartment No. C-12 in the Palms at Seagrove Condominium with an undivided ownership interest in the Palms at Seagrove common area beachfront parcels | 139601325 139689888 |
| John R. Burns, Trustee of the John R. Burns Revocable Trust Dated October 19, 2016, as owner of Unit 1520 at Grand Dunes II who possesses an easement right to use and enjoy the Grand Dunes Condominium common area beachfront parcel | 139601325 139689888 |
| John W. Lamb and Shirley A. Lamb, as 50% owner of Unit B-101 in the Monterey Condominium with an undivided ownership interest in the Monterey common area beachfront parcel | 139601325 139689888 |
| Julie Ann Belcher | 139601325 139689888 |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Kenneth Colbert and Gina Colbert, as owners of Lot 3 in Block C at the Village of White Cliffs who possess an easement right to use and enjoy the Village of White Cliffs common area beachfront parcel | 139601325 139689888 |
| Kenneth S. Camey, St. and Ellen A. Camey, as Co-Trustees of the Kenneth S. and Ellen A. Camey revocable Trust, as owners of Unit 7 in Beachside Condominium with an undivided ownership interest in the Beachside common area beachfront parcel | 139601325 139689888 |
| Matthew W. Francher and Julie W. Francher, as owners of Lot 6, Oak Grove at Watercolor who possess the easement right to use and enjoy the Watercolor common area beachfront parcels | 139601325 139689888 |
| Maxwell H. Corbin, Jr. and Martha M. Corbin | 139601325 139689888 |
| Michael Klukaszewski and Laura Lee Klukaszewski, as owners of Unit B-1 in Emerald Surf Villas Condominium with an undivided ownership interest in the Emerald Surf Villas common area beachfront parcel | 139601325 139689888 |
| Michael W. Kometer and Cheryl A. Kometer | 139601325 139689888 |
| NanKris Santa Rosa LLC | 139601325 139689888 |
| Natchez Street Neighborhood Association, Inc. | 139601325 139689888 |
| Nicholas J. Lembo and Susan Z. Lembo | 139601325 139689888 |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Odessa Street Neighborhood Association, Inc. | 139601325 139689888 |
| Palmer's Southern Comfort, LLC | 139601325 139689888 |
| Paul Donahue and Karyn Donahue | 139601325 139689888 |
| Paul Donahue and Karyn Donahue, as owners of Lot 5 who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel | 139601325 139689888 |
| Paul Hughes and Tiffany Casper | 139601325 139689888 |
| Pensacola Street Neighborhood Association, Inc. | 139601325 139689888 |
| Peter J. Howard and Seleta Hayes Howard, as owners of Lot 16, Cinnamon Fern at Watercolor who possess the easement right to use and enjoy the Watercolor common area beachfront parcels | 139601325 139689888 |
| Peter Lloyd Paul, III and Joanna Patterson Paul, as Co-Trustees, under the Revocable Living Trust Agreement of Peter Lloyd Paul III, dated May 22, 1996, as owner of Lot 1 in Heritage Dunes who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel | 139601325 139689888 |
| Peter Lloyd Paul, III and Joanna Patterson Paul, as Co-Trustees, under the Revocable Living Trust Agreement of Peter Lloyd Paul III, dated May 22, 1996 | 139601325 139689888 |
| R. Courtney Robinson, Deborah S. Robinson and Paul L. Zimmering | 139601325 139689888 |

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| Randall B. James and Edith A. James, as owners of Unit 205 in Beachcrest Condominium with an undivided ownership interest in the Beachcrest common area beachfront parcel | 139601325 139689888 |
| Randall L. Churchey and Deborah D. Churchey, Co-Trustees of the Randall and Deborah Churchey Living Trust dated July 19, 2017 | 139601325 139689888 |
| Rees 558, LLC | 139601325 139689888 |
| Rees 558, LLC as owner of Lot 6 which possesses an easement right to use and enjoy the Heritage Dunes common area beachfront parcel | 139601325 139689888 |
| Robert F. O'Connell, as Trustee of the Robert F. O'Connell Trust dated February 20, 2007, and Juliann O'Connell, as Trustee of the Juliann O'Connell Trust dated February 20, 2007, as owners of Unit 2050 at Grand Dunes I who possess an easement right to use and enjoy the Grand Dunes Condominium common area beachfront parcel | 139601325 139689888 |
| Robert K. Brooke, Jr. and Barbara H. Brooke | 139601325 139689888 |
| Robert Lee Herring, Trustee of the Robert Lee Herring Living Trust dated September 2, 2015, as owner of unit 1-A in Emerald Surf Villas Condominium with an undivided ownership interest in the Emerald Surf Villas common area beachfront parcel | 139601325 139689888 |
| Robert S. Stovall and Lisa K. Stovall | 139601325 139689888 |
| Sam Berry Blair, Jr. | 139601325 139689888 |

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| Sanctuary 3124, LLC, as owner of Unit 3124 in Sanctuary by the Sea Condominium with an undivided ownership interest the Sanctuary common area beachfront parcel | 139601325 139689888 |
| Sanctuary by the Sea Condominium Association, Inc. | 139601325 139689888 |
| Seaside I Homeowner Association, Inc. | 139601325 139689888 |
| Seaside II Homeowner Association, Inc. | 139601325 139689888 |
| Seaside III Homeowner Association, Inc. | 139601325 139689888 |
| Sharon M. Logue Higgins | 139601325 139689888 |
| Sherrell John Courville and Patricia Parker Courville | 139601325 139689888 |
| Shipwatch Phase I Homeowners Association, Inc. | 139601325 139689888 |
| Stephen Cheney, as owner of Unit C-101 in the Monterey Condominium with an undivided ownership interest in the Monterey common area beachfront parcel | 139601325 139689888 |
| Sue E. Grove, as owner of Unit B in the Tagganale Condominium with an undivided ownership interest in the Tagganale common area beachfront parcel | 139601325 139689888 |
| Suzanne C. Hallberg | 139601325 139689888 |
| Tagganale Owners' Association, Inc. | 139601325 139689888 |

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| The Generations Partnership, LTD | 139601325 139689888 |
| The Monterey Owners' Association, Inc. | 139601325 139689888 |
| The Palms at Seagrove Condominium Owners' Association, Inc. | 139601325 139689888 |
| The Village of White Cliffs' Owners' Association, Inc. | 139601325 139689888 |
| Thomas G. Boren, as Trustee of the Thomas B. Boren Revocable Trust Dated February 18, 2009, as owner of nit 1810 in Grand Dunes with an undivided ownership interest in the Grand Dunes common area beachfront parcel | 139601325 139689888 |
| Tracy L. Halapy, as owner of Unit 11 in Beachside Condominium with an undivided ownership interest in the Beachside common area beachfront parcel | 139601325 139689888 |
| Walton Dunes Townhouse Association, Inc. | 139601325 139689888 |
| Watercolor Community Association, Inc. | 139601325 139689888 |
| West Ruskin Street Neighborhood Association, Inc. | 139601325 139689888 |
| William P. Litton and Ann W. Litton | 139601325 139689888 |
| William T. Tagg, as owner of Units A and C in the Tagganale Condominium with an undivided ownership interest in the Tagganale common area beachfront parcel | 139601325 139689888 |
| Leeward Condominium Owners Association, Inc. | 139601325 139689888 |

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| Mark G. Ervin and Melissa A. Turner, as owners of Unit 3 at Leeward Condominium, who possess the right to use and enjoy the Leeward Condominium common area beachfront parcel | 139601325 139689888 |
| Brenda Wingate Notermann, as Trustee of the Revocable Living Trust of Brenda Wingate Notermann dated October 12, 2017 | 139601325 139689888 |
| Paul R. Gianneschi and Lisa V. Gianneschi, as owners of Unit 1118 in Sanctuary by the Sea Condominium with an undivided ownership interest in the Sanctuary common area beachfront parcel | 139601325 139689888 |
| Joseph B. Delozier and Jan S. Delozier | 139601325 139689888 |
| Patricia M. Anderson | 139601325 139689888 |

**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 -6hUi3Gq

David W. Green, Circuit Judge

Copies to:

All parties included in E-filing portal.