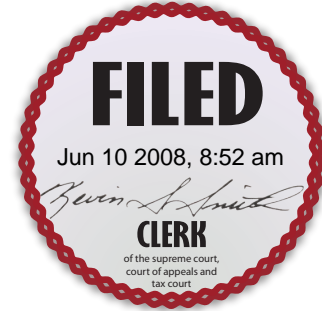


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

KEVIN C. TANKERSLEY
Winamac, Indiana

JAMES S. BUTTS
Law Office of James S. Butts, P.C.
Warsaw, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

NORTH INDIANA ANNUAL CONFERENCE)
OF THE UNITED METHODIST CHURCH, INC.,)

Appellant-Plaintiff,)

vs.)

No. 43A05-0711-CV-616)

REX D. SCHRADER,)

Appellee-Defendant.)

APPEAL FROM THE KOSCIUSKO CIRCUIT COURT
The Honorable Rex L. Reed, Judge
Cause No. 43C01-0704-PL-494

June 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Plaintiff the North Indiana Annual Conference of the United Methodist Church, Inc. (“the Conference”), appeals the trial court’s denial of its request for an injunction against Appellee-Defendant Rex D. Schrader. We affirm.

Issue¹

Whether the trial court erred in taking judicial notice of the conclusions, including the scope of the Conference’s easement, from a 1994 judgment.

Facts and Procedural History

The Conference owns real estate in the platted subdivision known as Epworth Forest in Kosciusko County, Indiana. Lake Webster is the southern boundary of the subdivision.

The plat of Epworth Forest was recorded in 1923. The plat included the provision:

None of the lots extend to the low water mark, but an easement along all lake frontage is held by the Board of Directors of THE EPWORTH LEAGUE INSTITUTE OF THE NORTH INDIANA ANNUAL CONFERENCE of THE METHODIST EPISCOPAL CHURCH, and is subject to all the rules and regulations that are contained in their by-laws.

Defendant’s Exhibit A. As depicted in the plat, the southern lots (referred to by the parties as “on-shore lots”) did not extend to the shoreline of Lake Webster, creating a sort of buffer

¹ Schrader requests an award of appellate attorney fees pursuant to Indiana Appellate Rule 66(E), presumably based on a claim of procedural bad faith on the part of the Conference. “Procedural bad faith occurs when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing counsel and by the reviewing court.” Kelley v. Vigo County Sch. Corp., 806 N.E.2d 824, 832 (Ind. Ct. App. 2004), trans. denied. While some of the alleged shortcomings noted by Schrader were substantiated, they are not flagrant violations of form or omissions of facts relevant to the issue raised. Furthermore, the Conference’s brief does not appear to be written in a manner calculated to require the maximum expenditure of time by Schrader or this Court. Therefore, we conclude that an award of appellate attorney fees is not appropriate in these circumstances.

zone between the lots and the lake. Within this area or littoral was a walkway or promenade used by the lot owners.

In the early 1990s, owners of the on-shore lots filed a lawsuit (“the Lawsuit”) in the Kosciusko Circuit Court against the Conference. At issue were the respective rights of the parties to the littoral, the area between the platted lots and the lakeshore. The Lawsuit proceeded to trial, and Judge Richard W. Sand issued the Record of Submission, Findings of Fact with Opinion and Judgment on August 2, 1994 (“1994 Judgment”). In the order to address the “central thrust” of the case, Judge Sand construed the plat in order to determine the relative rights and privileges of the respective parties. Judge Sand concluded in relevant part that the on-shore lot owners held title to the portion of the littoral in front of their lot subject to an easement reserved in the Conference. In further addressing the nature of the easement, the 1994 Judgment provides as follows:

The scope of the easement retained by the Conference must be defined in terms no broader than the purposes for which it was reserved, but at the same time to give it full force and effect while minimizing the burden upon the subservient owners.

The easement was reserved for the purpose of maintaining a promenade for the enjoyment of all residents of the plat, their guests, the Conference and its guests and attendees. The persons to enjoy the easement have rights to access to the shore for the purpose of fishing The on-shore owners have a duty to permit the maintenance of the walkway, to allow fishing from the lakeshore and to permit the Conference and the off-shore owners to establish piers at reasonable intervals.

Appellant’s App. at 181.

Schrader owns Lot 46 of Block C of Epworth Forest, which is an on-shore lot. Schrader was not a party to the Lawsuit. In 2004, Schrader obtained an Improvement Location Permit in order to construct a deck on his lot that extended into the littoral.

On April 27, 2007, the Conference filed a complaint requesting an injunction requiring Schrader to remove his deck alleging that the deck interfered with the ability of residents of Epworth Forest, the Conference and their guests to use the walkway or promenade south of Lot 46. Essentially, the Conference alleged that Schrader's deck interfered with its easement rights on the walkway. The Conference included the 1994 Judgment as an exhibit to its complaint.

In its opening statement at trial, the Conference asked the trial court to take judicial notice of the 1994 Judgment. Throughout the rest of its opening statement, counsel for the Conference extensively referenced the contents of the 1994 Judgment. The trial court noted that it would take judicial notice of the 1994 Judgment and admit it into evidence. The trial court heard the evidence presented and issued its order on September 18, 2007. The order read in relevant part:

1. That the [Conference] is the owner of an easement reserved for its own use and for the use of off-shore owners (Paragraph 2, Judgment of August 2, 1994.)
2. That the scope of the easement includes only a right of . . . the [Conference] . . . for the maintenance of a walkway for the landowners in the Plat of Epworth Forest, their guests and the guests and attendees of the [Conference] to promenade and to permit access for fishing for the shore and to maintain lakefront piers. (Paragraph 3, Judgment of August 2, 1994.)

Appellant's App. at 4-5. The trial court found that Schrader's deck did not block or interfere with the traditional walkway and denied the Conference's injunction request.

The Conference now appeals.

Discussion and Decision

On appeal, the Conference raises the sole issue of whether the trial court erred in

taking judicial notice of the 1994 Judgment pursuant to Indiana Evidence Rule 201. However, it was the Conference that requested the trial court to do just that. The Conference contends that the trial court should have performed its own analysis to determine the scope of its easement on the littoral rather than relying on the 1994 Judgment. We find this argument to be contrary to its request for judicial notice and the contents of its complaint. The Conference used the very same language in its complaint regarding the scope of its easement from the 1994 Judgment that it now contends the trial court was prohibited from using. Based on its pleadings and request that judicial notice be taken, the Conference cannot now be heard to complain of the trial court's reliance on the 1994 Judgment. We conclude that the actions of the Conference invited error, if any error occurred. "A party may not take advantage of an error that he commits, invites, or which is the natural consequence of his own neglect or misconduct." Berman v. Cannon, 878 N.E.2d 836, 839 (Ind. Ct. App. 2007), trans. denied. Invited error is not subject to review by this court. Id.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.