

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN CITIZENS FOR WATER
CONSERVATION, a Michigan nonprofit
corporation, R. J. DOYLE and BARBARA
DOYLE, husband and wife; and JEFFREY R.
SAPP and SHELLY M. SAPP, husband and wife,

Plaintiffs-Appellees/Cross-
Appellants,

v

NESTLÉ WATERS NORTH AMERICA INC., a
Delaware corporation,

Defendant-Appellant/Cross-
Appellee,

and

DONALD PATRICK BOLLMAN and NANCY
GALE BOLLMAN, d/b/a PAT BOLLMAN
ENTERPRISES,

Defendants.

FOR PUBLICATION
November 29, 2005
9:00 a.m.

No. 254202
Mecosta Circuit Court
LC No. 01-014563-CE

MICHIGAN CITIZENS FOR WATER
CONSERVATION, a Michigan nonprofit
corporation; R. J. DOYLE and BARBARA
DOYLE, husband and wife; and JEFFREY R.
SAPP and SHELLY M. SAPP, husband and wife,

Plaintiffs-Appellees,

v

NESTLÉ WATERS NORTH AMERICA INC., a
Delaware corporation,

Defendant-Appellant,

No. 256153
Mecosta Circuit Court
LC No. 01-014563-CE

Official Reported Version

and

DONALD PATRICK BOLLMAN and NANCY
GALE BOLLMAN, d/b/a PAT BOLLMAN
ENTERPRISES,

Defendants.

Before: Murphy, P.J., and White and Smolenski, JJ.

MURPHY, P.J. (*concurring in part*).

It is my position that plaintiffs have standing with respect to all the natural resources at issue, which include wetlands 112, 115, and 301, the Osprey Lake impoundment, Thompson Lake, the Dead Stream, and the Dead Stream's wetlands. Accordingly, on remand, the trial court should be permitted to entertain arguments and render a decision concerning these natural resources relative to the claim under the Michigan environmental protection act (MEPA), MCL 324.1701 *et seq.* I am otherwise in agreement with Judge Smolenski's lead opinion and the analysis and reasoning contained in it with regard to the conclusion that remand is necessary on the MEPA claim in order for the trial court to properly determine whether plaintiffs established a *prima facie* violation of MEPA. I would simply not limit the remand order to consideration of solely the Dead Stream, the Dead Stream's wetlands, and Thompson Lake in light of my position on standing. In all other respects, I concur with the lead opinion.

I conclude that plaintiffs have standing because of the complex, reciprocal nature of the ecosystem that encompasses the pertinent natural resources noted above and because of the hydrologic interaction, connection, or interrelationship between these natural resources, the springs, the aquifer, and defendant Nestle's pumping activities, whereby impact on one particular resource caused by Nestle's pumping necessarily affects other resources in the surrounding area. Therefore, although there was no evidence that plaintiffs actually used or physically participated in activities on the Osprey Lake impoundment and wetlands 112, 115, and 301, environmental injuries to those natural resources play a role in any harm caused to the Dead Stream, the Dead Stream's wetlands, and Thompson Lake, which are used by and adjacent to property owned by plaintiffs and not the subject of a standing challenge. As such, plaintiffs suffered an injury in fact or an invasion of a legally protected interest where concrete harm was caused not only to the natural resources bounding their property, but also the other outlying resources.¹ See *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 628-629; 684 NW2d 800 (2004) (setting forth judicial standing elements), quoting *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 739; 629 NW2d 900 (2001), quoting *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992). In other words, plaintiffs were legally entitled to

¹ Whether the injury, invasion, or harm is sufficiently significant to constitute a MEPA violation and require a level of enjoinder is to be determined on remand.

complain and file suit regarding alleged injuries to wetlands 112, 115, and 301, as well as the Osprey Lake impoundment, if those injuries were also caused by Nestle's pumping activities and affected the injuries and harm done to the natural resources for which standing is not at issue.

Because plaintiffs have standing with respect to all the natural resources under the general standing principles cited in *Cleveland Cliffs*, without the need to rely on MEPA's less demanding standing provision, MCL 324.1701(1), there is no need to determine the constitutionality of MCL 324.1701(1).

I respectfully concur.

/s/ William B. Murphy