

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. 01-14563-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. 01-14563-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.

WHITE, J. (*concurring in part*).

I join in Judge Smolenski's lead opinion with respect to the groundwater and public trust claims, as well as the ancillary issues. I join in Judge Murphy's opinion regarding standing under the Michigan environmental protection act (MEPA), MCL 324.1701 *et seq.*, and agree that the Legislature's grant of standing under the facts of the instant case does not unconstitutionally expand the judicial power of the courts.

I write separately with regard to the lead opinion's discussion of the trial court's MEPA analysis. While I agree that a mere failure to obtain a permit under the inland lakes and streams act (ILSA), MCL 324.30101 *et seq.*, and the wetlands protection act (WPA), MCL 324.30301 *et seq.*, does not establish a prima facie violation of MEPA, I do not read the trial court's opinion as erroneously adopting ILSA's and the WPA's permitting provisions as applicable pollution control standards, the violation of which automatically establishes a violation of MEPA. Rather, the court expressly stated its understanding that this case involves impairment and not pollution.¹

The trial court's opinion also demonstrates that it recognized its duty to develop a judicial common law of environmental quality and make detailed findings of fact under *Ray v Mason Co Drain Comm'r*, 393 Mich 294; 224 NW2d 883 (1975), and that it referred to the ILSA and the WPA statutes for guidance in developing an impairment standard. What is lacking in the trial court's opinion, however, is a qualitative discussion of the impairments found by the court. While the court's MEPA analysis referred to, and adopted, its findings of fact, and further

¹ The court stated:

The task then becomes one of finding or establishing a standard or standards to measure Defendants' water-extraction activities against to determine if such actions result in the impairment of the natural resources involved in this case (destruction or pollution are not argued as being involved in Plaintiffs' MEPA claim, only impairment).

discussed the Department of Environmental Quality's incorrect interpretation of the acts as not applying to the instant situation, the court did not explain how its earlier findings revealed a level of impairment that required judicial intervention under MEPA. I believe such a discussion is required under the case law. Therefore, I concur in the remand.

/s/ Helene N. White