STATE OF MICHIGAN

COURT OF APPEALS

EDITH KYSER, Plaintiff-Appellee, v KASSON TOWNSHIP, Defendant-Appellant.	FOR PUBLICATION May 6, 2008 9:00 a.m. No. 272516 Leelanau Circuit Court LC No. 04-006531-CZ Advance Sheets Version

EDITH KYSER, Plaintiff-Appellant, v KASSON TOWNSHIP, Defendant-Appellee.	 No. 273964 Leelanau Circuit Court LC No. 04-006531-CZ

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

JANSEN, J.

Following a bench trial, the circuit court entered an order permitting plaintiff to mine gravel on her property and enjoining defendant from interfering with plaintiff's gravel-mining operation, notwithstanding a township zoning ordinance that purported to disallow gravel mining on plaintiff's land. The circuit court also denied plaintiff's requests for costs and sanctions against defendant. Both parties now appeal as of right, we consolidate the appeals, and we affirm.

I

The salient facts of this case are not in serious dispute. Significant gravel deposits underlie defendant Kasson Township. Between 1988 and 1994, defendant experienced considerable internal strife brought about by zoning disputes and other legal battles waged over the issue of gravel mining. After a lengthy period of planning and public discussion, defendant

attempted to resolve its gravel-related problems by adopting a zoning ordinance that established a township gravel district. Under the ordinance, gravel mining and extraction operations were to be permitted inside the gravel district, but were not to be permitted outside the gravel district.

Plaintiff owns a parcel of real property in Kasson Township. Although plaintiff's property abuts the gravel district, her land, itself, was originally zoned for agricultural use. Plaintiff sought to have a portion of her property rezoned and included in the gravel district, with the ultimate goal of selling the rezoned portion to a gravel-mining operator. Defendant refused to grant plaintiff's rezoning request, citing the comprehensive nature of its zoning concerning the gravel district. Among other things, defendant asserted that plaintiff's requested rezoning would undermine the zoning scheme and result in a "domino effect" by "spark[ing] cumulative rezonings"—in effect, leading to numerous other requests to allow gravel mining on land located outside the gravel district.

Plaintiff sued in circuit court, arguing that defendant's refusal to rezone her property should be held invalid and unconstitutional. The matter proceeded to a bench trial. Plaintiff moved in limine to prevent the introduction of evidence concerning the suitability of her property for uses other than gravel mining. The circuit court granted the motion. At trial, the court admitted considerable evidence and heard the testimony of several witnesses. The circuit court thereafter made extensive findings of fact, specifically finding that plaintiff's requested rezoning would not result in "very serious consequences" and ruling as a matter of law that plaintiff was entitled to mine gravel on her land. The circuit court enjoined defendant from enforcing its agricultural zoning classification against plaintiff's land and from interfering with plaintiff's right to mine gravel on her property.

II

We review for clear error the circuit court's findings of fact following a bench trial, but review de novo the circuit court's conclusions of law. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Heindlmeyer v Ottawa Co Concealed Weapons Licensing Bd*, 268 Mich App 202, 222; 707 NW2d 353 (2005). We review for an abuse of discretion the circuit court's grant of injunctive relief. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 105; 662 NW2d 387 (2003). We also review for an abuse of discretion the circuit court's decision to admit or exclude evidence. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999). Finally, we review for an abuse of discretion the circuit court's ruling on a motion to tax costs under MCR 2.625, *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 518; 556 NW2d 528 (1996), and the circuit court's decision whether to award sanctions under MCR 2.313(C), *Phinisee v Rogers*, 229 Mich App 547, 561-562; 582 NW2d 852 (1998). An abuse of discretion occurs when the court chooses a decision that falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

III

In Docket No. 272516, defendant argues that the circuit court made several erroneous findings of fact and that it consequently erred by determining that plaintiff's proposed gravel-mining operation would not result in "very serious consequences." We disagree.

The general rule in Michigan is that "'[a] zoning ordinance will be presumed valid, with the burden on the party attacking it to show it to be an arbitrary and unreasonable restriction upon the owner's use of his property.'" *Kirk v Tyrone Twp*, 398 Mich 429, 440; 247 NW2d 848 (1976), quoting *Nickola v Grand Blanc Twp*, 394 Mich 589, 600; 232 NW2d 604 (1975) (Williams, J.). However, "because of the important public interest involved in extracting and using natural resources, a more rigorous standard of reasonableness applies when reviewing zoning regulations that would prevent the extraction of natural resources." *American Aggregates Corp v Highland Twp*, 151 Mich App 37, 40; 390 NW2d 192 (1986); see also *Silva v Ada Twp*, 416 Mich 153, 158-159; 330 NW2d 663 (1982). "The courts have particularly stressed the importance of not destroying or withholding the right to secure oil, gravel, or mineral from one's property, through zoning ordinances, unless some *very serious consequences* will follow therefrom." *North Muskegon v Miller*, 249 Mich 52, 57; 227 NW 743 (1929) (emphasis added); see also *Bloomfield Twp v Beardslee*, 349 Mich 296, 310-311; 84 NW2d 537 (1957) (Black, J., concurring). Stated another way, "zoning regulations which prevent the extraction of natural resources are invalid unless 'very serious consequences' will result from the proposed extraction." *Silva*, *supra* at 156; see also *Certain-teed Products Corp v Paris Twp*, 351 Mich 434, 467; 88 NW2d 705 (1958) (Black, J., concurring in part and dissenting in part). Accordingly, to successfully challenge a zoning ordinance that prevents the extraction of natural resources, a party must show (1) "that there are valuable natural resources located on the land" and (2) "that no 'very serious consequences' would result from the extraction of the resources." *American Aggregates*, *supra* at 41.

A

Turning to the case at bar, the circuit court first found that the gravel underlying plaintiff's land was a valuable natural resource. The circuit court remarked that "[plaintiff's] property contains a gravel deposit of good space and good quality" and determined that gravel mining on plaintiff's land "would be financially a successful operation." We conclude that the record supported this finding. "The proper focus in determining whether the natural resource is valuable is on whether the landowner, by extracting the resource, can raise revenues and reasonably hope to operate at a personal profit." *Id*. "[G]ravel is used extensively in construction and . . . Michigan courts have often recognized the value of this natural resource." *Id*. at 42. The evidence presented in this case established that plaintiff's land was underlain by high-quality gravel and that this gravel could be extracted and sold at a profit. The circuit court did not clearly err by finding that the gravel located on plaintiff's land was a valuable natural resource. *Id*. at 41-42.

B

The circuit court also determined, after making several individual findings of fact, that plaintiff had sufficiently established that no "very serious consequences" would result from the proposed gravel-mining operation. The record supported this factual determination as well.

1

The circuit court first analyzed the degree of public interest in the gravel underlying plaintiff's property. As this Court observed in *American Aggregates*, *supra* at 44, the degree of public interest in a valuable natural resource should be considered when determining whether extraction of the resource will result in "very serious consequences":

> [W]e believe that the degree of public interest in the landowner's specific natural resource should be considered when analyzing whether "very serious consequences" to the community will result from the extraction of the natural resource. This will result in a sliding scale determination of whether "very serious consequences" exist in the landowner's specific situation. If public interest in the specific landowner's resource is very high, the consequences resulting from the extraction of the resource will not reach the level of "very serious" as readily as in the case where public interest in the specific resource is relatively low.
>
> This type of sliding scale approach based on the public interest in the landowner's specific resource results in an appropriate cost/benefit analysis in applying the *Silva* standard for determining the reasonableness of zoning regulations preventing the extraction of natural resources.

The evidence presented at trial indicated that there was substantial gravel underlying much of Kasson Township and that much of the township's land had not yet been mined. Defendant's expert testified that there were approximately 78 million tons of gravel remaining beneath those parts of the gravel district that were currently being mined, and another 58 million tons of gravel underlying those parts of the gravel district that were not currently being mined. Plaintiff's expert did not fully concur with these data, testifying that there was somewhat less gravel than defendant's expert had indicated. Nonetheless, plaintiff's expert agreed that there was a significant amount of gravel remaining in the township's gravel district.

On the basis of this evidence, the circuit court found that there was no immediately pressing need for the gravel underlying plaintiff's land and that "the public interest in [plaintiff's] gravel is not high." The court determined that, pursuant to *American Aggregates*, plaintiff was consequently required to "make a stronger showing . . . that there are no very serious consequences from her [proposed] gravel operation." The circuit court did not clearly err in this regard. The record fully supported the circuit court's determination that the public interest in plaintiff's gravel was not high, and the circuit court therefore properly concluded that it was incumbent on plaintiff to "make a stronger showing" that no very serious consequences would result from her proposed gravel operation. *Id.* at 44.

2

The circuit court also examined the meaning of the phrase "very serious consequences." As the circuit court correctly observed, it was plaintiff's burden to establish that no "very serious consequences" would result from her proposed gravel operation; however, plaintiff was *not* required to prove that no consequences whatsoever would result from her proposed gravel operation. The circuit court correctly explained that the mere presence of *some* consequences would not be sufficient to deny plaintiff's request to mine gravel, as long as those consequences were not "very serious" in nature.

3

The circuit court then went on to discuss the five potential "very serious consequences" that were identified in this case, which included (1) truck safety and traffic, (2) traffic noise, (3) loss of property values, (4) effect on residential development, and (5) the "domino effect."

a

The circuit court first found that the identified truck-safety and increased-traffic concerns did not rise to the level of "very serious consequences" in this case. The court noted that plaintiff's property had approximately a quarter-mile of frontage on M-72 and that "at that location there are excellent sight distances." Defendant's own traffic expert believed that a driveway at that location would be safe and that the Michigan Department of Transportation would likely approve a direct driveway onto M-72 from plaintiff's land. The court observed that "M-72 is a main road . . . . And indeed gravel traffic already uses M-72." Given the potential of a direct entrance onto plaintiff's land from M-72, the court found that there was not "a traffic safety issue" in this case. Further, on the basis of the evidence that numerous other gravel carriers already used the M-72 corridor, the court found that there would be only "a modest net increase in truck traffic on M-72." The circuit court did not err by finding that the generalized concerns regarding truck safety and increased truck traffic in this case did not constitute "very serious consequences."

b

The circuit court next found that the concerns regarding increased traffic noise did not rise to the level of "very serious consequences." The court observed that "M-72 . . . already has a lot of traffic noise." The court found that, for the most part, individuals living at some distance from plaintiff's property would hear little or no more noise than they already experienced. In contrast, the court did find that there would be increased traffic noise for the few residents living near plaintiff's proposed entrance onto M-72. Indeed, one witness testified that when he is in his orchard south of M-72, he can hear truck noise from an already-existing gravel operation approximately a half-mile away. However, the court considered it significant that all but one of the nearby residents did not oppose plaintiff's proposed gravel operation and that there was no evidence concerning the wishes of the remaining resident. In sum, although the circuit court found that there would be some increase in truck noise, especially for plaintiff's closest neighbors, the court determined that this increase in noise for the few nearby residents would not

rise to the level of a "very serious consequence." We cannot conclude that this determination was clearly erroneous.

c

Third, the circuit court found that the possible decrease in property values in the area of plaintiff's land did not constitute a "very serious consequence." Defendant's expert opined that residential parcels surrounding plaintiff's land would suffer losses in value of between 17 and 76 percent as compared to similar residential parcels not located in the gravel district. The expert further opined that vacant parcels surrounding plaintiff's property would suffer losses in value of about 30 percent as compared to similar vacant parcels not located in the gravel district. The circuit court acknowledged the expert's testimony in this regard, but concluded that it was not reliable or worthy of belief. Specifically, the court stated:

> I do not believe this was a reliable study. The cross-examination poked a lot of holes in [the expert's study of the value of comparable properties]. The comparables were generally poorly selected and not very comparable, and then badly adjusted on the residential study. And the adjustments always seemed to be . . . intended to make it look like the comparable sales outside the district were for more than they probably were worth.

The circuit court specifically cited instances in which the expert appeared to have undervalued or overvalued certain comparable parcels, depending on whether those parcels were inside or outside the gravel district. The court pointed to the testimony of another witness, who opined that any decrease in property values would be limited to the immediate area within a half-mile radius of plaintiff's proposed gravel mine. The court also pointed to the fact that many of plaintiff's neighbors did not oppose the proposed gravel operation. As the court observed:

> By and large people have a pretty good idea what their property is worth and what's going to happen if something occurs nearby. And the fact that the people that own the property, most of whom appear to be sophisticated owners, . . . don't perceive this as a problem is pretty good evidence that it's not going to have an effect on the value of their property.

The circuit court was entitled to weigh the experts' differing opinions concerning property values. *American Aggregates*, *supra* at 50. We defer to the circuit court's superior opportunity to observe and evaluate the credibility of the witnesses who testified before it. *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002). Moreover, as the circuit court acknowledged, the valuation testimony of defendant's expert was not uncontested. Indeed, competing evidence suggested that the value of surrounding properties would *not* be adversely affected by plaintiff's proposed gravel-mining operation. The circuit court did not clearly err by determining that the possibility of decreased property values in the area of plaintiff's land did not constitute a "very serious consequence" in this case.

d

The circuit court next considered certain concerns regarding the effect of plaintiff's proposed gravel mine on residential development in the area. One witness testified that his

family members, who own significant agricultural property in the vicinity of plaintiff's land, believed that it would be better to have gravel mining adjacent to their orchards than to have residential use adjacent to their orchards. The witness explained that although his family members owned considerable property in the area, they did not oppose plaintiff's proposed gravel-mining operation. In contrast, another individual who owned undeveloped land on the south side of M-72 opined that gravel mining would be destructive of her ultimate plan to subdivide her property and sell the resulting lots for residential use. The circuit court recognized that plaintiff's proposed gravel-mining operation "might have some" adverse effect on that individual's planned land use. However, as the circuit court noted, the landowner had taken no present or concrete steps toward subdividing her land, merely wishing to do so at some point in the future. She had made no request to split her property and she had made no attempts to commence the land-division process. In fact, as the court observed, the landowner's ultimate goal of building a residential subdivision would require the construction of access roads over property that she did not even own. The circuit court determined that the landowner's plan was tentative at best, "strictly abstract," and "very long term." The court also noted that any residential development that might take place on the landowner's property in the future would require substantial setbacks, and that houses on the property would therefore be screened from the traffic and noise of M-72.

The circuit court also examined the potential effect on the property of other nearby residents. Most of plaintiff's closest neighbors did not oppose the proposed gravel-mining operation, and some had even signed statements supporting plaintiff's requested rezoning. The court did find that one family's property would "undeniably . . . be seriously affected if [plaintiff's] property is developed as a gravel mine." Because this family's property was so near to plaintiff's land, the court concluded that it was "almost inevitable [that] the effect on their property will be large, even with the 300 foot setback from their house that the county ordinance would provide." The court also determined that the value of the family's home would almost certainly be adversely affected.

Finally, the court observed that there were residential subdivisions in the general area, but noted that all of them were approximately a half-mile or more from plaintiff's property. The court again pointed to the testimony of one of the real estate experts, who opined that any decrease in property values would likely be limited to the immediate area within a half-mile radius of plaintiff's proposed gravel mine.

On the basis of all the evidence before it, the circuit court determined that there would be some effect on residential development in the area of plaintiff's land but remarked that this effect could be significantly lessened through compliance with the relevant zoning ordinance. The court noted that the relevant zoning ordinance required setbacks that would "reduce significantly . . . the effects of the mining operation." The court also noted that the effects of the mining operation could be lessened through the planting of trees and the use of "[b]erms [and] vegetation to protect [against] sound and absorb sound and dust . . . ."[1] In short, although the

[1] The circuit court also imposed reasonable time restrictions on plaintiff's proposed gravel-
(continued…)

circuit court found that there would be some negative effects on nearby residential developments, it determined that "these are not very serious consequences for the individuals or for the future of the Township's development." The circuit court did not clearly err by holding that the limited adverse effects on nearby residential development would not rise to the level of "very serious consequences."

e

Lastly, the circuit court considered defendant's contention that allowing plaintiff's proposed gravel-mining operation to proceed would result in a "domino effect," leading to numerous other requests to allow gravel mining on land located outside the gravel district. Defendant argued that the gravel district had been formed only after extensive planning and citizen input and that allowing new additions to the district would undermine the township's zoning scheme and compromise the purpose of the gravel district itself. However, the circuit court observed that the gravel district "isn't necessarily set in stone," and noted that the township board had voted on at least one previous occasion to allow the addition of new land to the gravel district.[2] The circuit court also pointed to the testimony of defendant's own planning expert, who testified that the gravel district did not necessarily include the lands with the highest-quality gravel. The expert explained that whereas some areas with high-quality gravel were not included in the district, other areas with low-quality gravel were included in the district. On the basis of this testimony, the court found that "it is not at all clear that [the gravel d]istrict is necessarily the ideal district. And—and maybe additions to it from time to time [are] not necessarily a bad idea."

The court also addressed defendant's concern that "the whole of Kasson Township" would "becom[e] a gravel pit." The circuit court noted that the gravel district already had defensible and well-defined boundaries on the north, east, and west. The court noted that these boundaries were not generally susceptible to alteration or expansion because of the presence of National Park Service land near the western boundary and because of the low-quality nature of the gravel deposits beyond the northern and eastern boundaries. The court determined that the only likely area of expansion was along the gravel district's southern boundary, near M-72 and plaintiff's property, where the quality of the gravel was relatively high but the lands had not been included in the gravel district as initially established. Consequently, although the circuit court recognized the possibility of future justifiable expansion of the gravel district on its southern edge, it found that the gravel district would not likely expand to the north, east, or west. The

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(…continued)

mining operation in order to ensure that property values and nearby residential developments would not be adversely affected by truck noise. The court limited gravel mining on plaintiff's land to normal business hours "so that work does not occur after most people get home from work and kids get home from school." The court ordered that "[t]here will be no mining on the site after 5:30 [p.m.]." We do not disturb these reasonable time restrictions on appeal.

[2] Although this addition of new land to the gravel district was apparently approved by a plurality of the township board, the addition was never carried out because a quorum of the board was not present when the vote was taken.

court determined that there was a low probability that the whole of Kasson Township would be transformed into a gravel mine.

The circuit court determined that allowing plaintiff's proposed gravel-mining operation would not undermine the intent and purpose of the township's gravel district or create a "domino effect" rising to the level of a "very serious consequence." We cannot conclude that the court's findings in this respect were clearly erroneous.

4

In sum, the circuit court determined that "Plaintiff has made a strong showing that there are not very [serious] consequences . . . ." After reviewing the entirety of the evidence presented at trial, we conclude that this determination was not clearly erroneous. See *Heindlmeyer*, *supra* at 222. Although certain evidence established that *some* adverse effects might result from plaintiff's proposed gravel-mining operation, these limited adverse effects simply did not rise to the level of "very serious consequences" in this case. The circuit court did not clearly err by holding that plaintiff had established that no "very serious consequences" would result from her proposed gravel-mining operation.

C

The circuit court correctly found that the gravel underlying plaintiff's land was a valuable natural resource and that plaintiff had sufficiently shown that her proposed gravel-mining operation would not cause "very serious consequences." In light of these factual findings, the circuit court correctly ruled as a matter of law that plaintiff was entitled to engage in gravel mining and extraction on her property. *Silva*, *supra* at 156; *American Aggregates*, *supra* at 41. We affirm the circuit court's order enjoining defendant from interfering with plaintiff's right to mine gravel on her property, subject to the reasonable time limitations imposed by the court. See *Higgins Lake Prop Owners*, *supra* at 105. The specific form of injunctive relief granted by the circuit court in this case fell soundly within the range of reasonable and principled outcomes. *Maldonado*, *supra* at 388.

IV

Also in Docket No. 272516, defendant argues that the circuit court abused its discretion by granting the motion in limine to exclude evidence concerning the suitability of plaintiff's property for uses other than gravel mining. We cannot agree. As defendant points out, this Court did remark in *American Aggregates* that the plaintiff's land was valuable for uses other than sand and gravel extraction. *American Aggregates*, *supra* at 46. However, the fact that the plaintiff's land in that case was suitable for uses other than sand and gravel mining was relevant only to the determination of the degree of public interest in the plaintiff's natural resources. *Id.* at 46-47.

The circuit court in the present case properly concluded that there was low public interest in plaintiff's gravel, but nonetheless determined that no "very serious consequences" would result from plaintiff's proposed gravel-mining operation. Any evidence concerning the suitability of plaintiff's property for uses other than gravel mining would have been merely cumulative to the other evidence that already tended to establish a low public interest in

plaintiff's resources. In other words, introduction of additional evidence concerning the low public interest in plaintiff's gravel would have been futile. Therefore, even assuming arguendo that the circuit court erred by excluding evidence concerning the suitability of plaintiff's property for other uses, any error in this regard was harmless and did not affect the outcome of the proceedings. It is well settled that we do not reverse on the basis of harmless error. *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 529; 730 NW2d 481 (2007).

V

In Docket No. 273964, plaintiff argues that the circuit court erred by denying her request to tax costs as the prevailing party. We disagree.

After trial, plaintiff filed a bill of costs with the circuit court. Defendant responded by filing objections to the bill of costs. The circuit court acknowledged that plaintiff had prevailed at trial, but nonetheless denied plaintiff's request for costs on the ground that a "public question" had been involved in this matter.

In general, "[c]osts will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise . . . ." MCR 2.625(A)(1); see also *Ullery v Sobie*, 196 Mich App 76, 82; 492 NW2d 739 (1992). "Michigan courts frequently refuse to award costs in cases involving public questions," and "this Court has specifically refused to award costs in landowners' suits challenging the constitutionality of zoning ordinances as applied to their property, since such cases involve public questions." *American Aggregates*, *supra* at 54. Because this case directly involved a "public question," *id*., the circuit court did not abuse its discretion by denying plaintiff's request to tax costs, *Klinke*, *supra* at 518.

VI

Also in Docket No. 273964, plaintiff argues that the circuit court abused its discretion by declining to sanction defendant under MCR 2.313(C) for failing to admit before trial that the proposed gravel-mining operation would present no serious safety issues. Again, we disagree.

One party may request admissions from the other party before trial. MCR 2.312(A). The purpose of MCR 2.312 is to limit areas of controversy and to save time, energy, and expense that would otherwise be required to prove the matters that are subject to the request for admission. See *Janczyk v Davis*, 125 Mich App 683, 692; 337 NW2d 272 (1983). If a party fails to admit a fact as requested, and if the party requesting the admission later proves that fact at trial, the requesting party may move for sanctions against the other party. MCR 2.313(C). The court must grant the motion for sanctions unless it determines that one of the exceptions stated in MCR 2.313(C) applies.

The mere fact that an issue is proven at trial does not necessarily mean that the refusal to admit it before trial was unwarranted at the time. *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 457; 540 NW2d 696 (1995). Indeed, the court may not sanction a party for failing to admit a fact if it finds that "the party failing to admit had reasonable ground to believe that he or she might prevail on the matter[.]" MCR 2.313(C)(3). As this Court has recognized, "unless a matter is completely free of controversy, it is not likely that a formal request for

admissions will prove successful." *Greenspan v Rehberg*, 56 Mich App 310, 328; 224 NW2d 67 (1974).

We conclude that defendant's failure to admit that plaintiff's proposed gravel-mining operation would cause no serious traffic-safety issues was not unwarranted at the time the request for admission was made. The matter regarding which plaintiff sought defendant's admission was not completely free of controversy, and defendant had a reasonable basis for believing at the time that it might prevail on the issue of traffic safety at trial. MCR 2.313(C)(3). Accordingly, even though the circuit court ultimately found as a fact that there would be no serious traffic-related consequences caused by plaintiff's proposed mining operation, the circuit court did not abuse its discretion by denying plaintiff's motion to sanction defendant for its failure to admit this fact. *Id.*; see also *Richardson, supra* at 457-458.

VII

Lastly, we wish to mention that the thorough and comprehensive nature of the circuit court's decision in this case has not escaped our attention. As this Court stated in *American Aggregates*, "the able and experienced trial judge has carefully weighed the evidence and furnished us findings which could be a model for trial judges to follow." *American Aggregates, supra* at 40.

Affirmed.

Whitbeck, P.J., concurred.

/s/ Kathleen Jansen
/s/ William C. Whitbeck