

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA
CIVIL

W. LOWELL STARLING and NANCY
STARLING,

10-S-498

Plaintiffs

v.

LAKE MEADE PROPERTY OWNERS
ASSOCIATION, INC.,

Defendant

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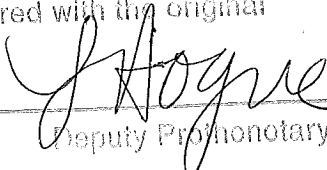
ORDER

AND NOW, this 15th day of January, 2013, upon consideration of Defendant's Motion for Partial Summary Judgment filed June 25, 2012 and Brief in Support filed August 9, 2012, and Plaintiffs' Response filed July 23, 2012 and Brief in Opposition filed August 23, 2012, Defendant's Motion for Partial Summary Judgment is GRANTED. In accordance with the attached Opinion, summary judgment is granted in favor of Defendant and against Plaintiff on Count I – Trespass, Count II – Ejectment, Count IV – Declaratory Judgment and Count V – Declaratory Judgment.

BY THE COURT:


THOMAS R. CAMPBELL
Judge

Ronald L. Finck, Esquire
Kevin M. Skjoldal, Esquire

1-17 2013 This being a true
and attested copy taken from and
compared with the original
Attest: 
Deputy Prothonotary

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA
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Plaintiffs

v.

**LAKE MEADE PROPERTY OWNERS
ASSOCIATION, INC.,**

Defendant

OPINION

Before this Court is Defendant Lake Meade Property Owners Association Inc.'s Motion for Partial Summary Judgment. For the reasons stated herein, Defendant's Motion for Partial Summary Judgment is granted.

This action arises out of Plaintiffs' ownership of Lots 725 and 726 in the Lake Meade Subdivision, in Reading Township, Adams County, Pennsylvania. The Lake Meade Subdivision is a residential community comprised of 1097.24 acres located partially in Reading Township and partially in Latimore Township, Adams County, Pennsylvania. Defendant, Lake Meade Property Owners Association ("LMPOA"), is a non-profit association formed for the management of Lake Meade. Every property owner within the Lake Meade Subdivision is a member of the LMPOA.

Plaintiffs currently own Lots 725 and 726 within the Lake Meade Subdivision. Plaintiffs acquired title to Lots 725 and 726 by deed dated August 12, 2002 from A. Bailey Wood and Doris A. Wood. Plaintiffs' deed contains the following description of the land:

ALL THAT CERTAIN lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot #725 and Lot #726 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Plat Book 1, Page 5, and subject to all legal highways, easements and rights of way and restrictions of record.

Plfs.' Compl., Ex. G; Def.'s Mot. for Part. Summ. J., Ex. A.

The Woods acquired title to Lots 725 and 726 from Louise I. Cookson by deed dated December 21, 1977. Ms. Cookson acquired title to Lots 725 and 726 from W.F.O. Rosenmiller, III and Elinor T. Rosenmiller by deed dated August 12, 1974. The Rosenmillers acquired Lots 725 and 726 from Lake Meade Inc. by two separate deeds, one for each lot, dated May 16, 1967. Each of those deeds used similar language to Plaintiffs' deed by describing the property conveyed solely by reference to lot numbers within the Lake Meade Subdivision Plan.

Lots 725 and 726 are located on the northern tip of a peninsula that extends into Lake Meade. Lots 725 and 726 are accessible via Custer Drive, a road that ends in a cul-de-sac adjacent to Lots 725 and 726 to the east and Lake Meade to the north. At issue presently is a small area of land located to the west of Custer Drive from Lots 725 and 726, described by Plaintiffs in their Second Amended Complaint as "the narrow strip of unimproved real property located to the west of Custer Drive and between Custer Drive and Lake Meade." **Pls.' Sec. Am. Compl. ¶¶ 38, 39; Def.'s Mot. for Part. Summ. J., Ex. F.** Plaintiffs claim ownership of that small area of land located to the west of Custer Drive.

On October 21, 2010, Plaintiffs filed a Second Amended Complaint alleging Count I – Trespass, Count II – Ejectment, Count III – Nuisance, Count IV – Declaratory Judgment (boundary line), and Count V – Declaratory Judgment (use of Custer Drive).

On April 11, 2011, the Association filed its Answer to Plaintiffs' Second Amended Complaint. Plaintiffs' claims are based on alleged activities by LMPOA and other individuals at the alleged direction of LMPOA that occurred on the narrow strip of property to the west of Custer Drive. Specifically, Plaintiffs allege that LMPOA is permitting individuals, both members and non-members, to engage in recreational activities such as fishing, partying, sporting events, parking and loitering on Custer Drive and the narrow strip of land to the west of Custer Drive that Plaintiffs allege they own. Plaintiffs allege that these activities are not permitted by LMPOA's restrictive covenants, and that use of Custer Drive is limited only to vehicular travel.

LMPOA filed its Motion for Partial Summary Judgment on July 30, 2012 and Brief in Support on August 9, 2012. Plaintiffs filed their Response on July 23, 2012 and Brief in Opposition on August 23, 2012. Oral argument occurred on September 19, 2012.

Under the Pennsylvania Rules of Civil Procedure a court may enter summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. **Pa. R. Civ. P. 1035.2; *Strine v. Commonwealth***, 894 A.2d 733, 737 (Pa. 2006). Summary judgment is only appropriate where the pleadings, depositions, answers to interrogatories, omissions and affidavits, and other materials demonstrate that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. ***Roche v. Ugly Duckling Car Sales, Inc.***, 879 A.2d 785, 789 (Pa. Super. 2005) (quotations and citations omitted). The burden of demonstrating the lack of any genuine issue of material fact falls upon the moving party, and, in ruling on the motion, the court must consider the record in the light most favorable to the non-moving party. ***Id.*** However,

where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the non-moving party may not rest on the mere allegations or denials in its pleadings. ***Accu-Weather, Inc. v. Prospect Commc'ns Inc.***, 644 A.2d 1251, 1254 (Pa. Super. 1994). Rather, the non-moving party must by affidavit or in some other way provided for within the Rules of Civil Procedure, set forth specific facts showing that a genuine issue of material fact exists. ***Id.*** Summary judgment is only appropriate in those cases which are free and clear from doubt. ***McConnaughey v. Bldg. Components, Inc.***, 637 A.2d 1331, 1333 (Pa. 1994).

Many of Plaintiffs' claims ultimately rest on a determination of ownership of the small strip of land to the west of Custer Drive. LMPOA argues that Plaintiffs' deed did not convey to them the real property located to the west of the eastern boundary of Custer Drive and described by Plaintiffs as the "narrow strip of unimproved real property located to the west of Custer Drive and between Custer Drive and Lake Meade." In response, Plaintiffs assert that they own the disputed tract of land on the western side of Custer Drive. Plaintiffs further allege that LMPOA's interest in the roads is only a right-of-way rather than fee simple ownership.

To determine the boundaries of Plaintiffs' lots within the Lake Meade Subdivision, an examination of the relevant deeds is necessary. The standards for interpreting deeds are well-established. A court determines whether a deed is ambiguous. ***Pennsylvania Elec. Co. v. Waltman***, 670 A.2d 1165, 1169 (Pa. Super. 1995). In the absence of fraud, accident or mistake, the nature and quality of the real estate interest conveyed must be ascertained from the deed itself and cannot be shown by parol. ***Id.*** (citation and quotation omitted). When the language of the deed is clear and free from

ambiguity, the intent of the parties must be determined from the language of the deed. *Id.* (citation and quotation omitted).

However, the boundaries to property are not always clear from the plain reading of the written deed. *Id.* If a deed is uncertain because of vague or ambiguous language, extrinsic evidence may be used to explain, but not vary, the writing in the deed. *Id.* The primary function of the court faced with a boundary dispute is to ascertain and effectuate the intentions of the parties at the time of the original subdivision. *Id.*

Here, by deed dated August 12, 2002, A. Bailey Wood and Doris A. Wood conveyed Lots 725 and 726 to Plaintiffs, and said property was described as follows:

ALL THAT CERTAIN lot situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot #725 and Lot #726 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Plat Book 1, page 5, and subject to all legal highways, easements, rights of way and restrictions of record.

Plfs.' Compl., Ex. G; Def.'s Mot. for Part. Summ. J., Ex. A.

The deed by which Plaintiffs acquired Lots 725 and 726 only describes the land by lot number within the Lake Meade Subdivision and does not provide any other description of the conveyed property beyond the lot numbers. Moreover, each deed conveying Lots 725 and 726 prior to Plaintiffs' acquisition of Lots 725 and 726 describe the property by lot numbers according to the Lake Meade Subdivision Plan.¹ Importantly, designation in a deed of property conveyed by lot numbers and an express reference to a plan showing the lots and their numbers make the plan an essential part of the deed, giving the plan the same force and effect as if the plan had been copied into the conveyance.

¹ See pp. 1-2, *supra*, for the chain of title for Lots 725 and 726.

Richardson v. City of McKeesport, 18 Pa. Super. 199, 204 (1901). Therefore, the Lake Meade Subdivision Plan is an essential part of Plaintiffs' deed, and it may be considered as if it was included in Plaintiffs' deed.

Lots 725 and 726 are depicted on the Lake Meade Subdivision Plan, which shows the courses and distances for the boundaries of lots within the subdivision. The southernmost boundary of Lot 725 shows a distance of 227 feet. The Lake Meade Subdivision Plan also depicts the boundaries of the other lots on the eastern side of Custer Drive that are south of Lot 725. The boundary for Lot 725 is consistent with the other lots on the eastern side of Custer Drive. For instance, Lot 724 has a southern boundary of 237 feet, Lot 723 has a southern boundary of 240 feet, Lot 722 has a southern boundary of 238 feet, and Lot 721 has a southern boundary of 235 feet. The boundary lines as depicted on the Lake Meade Subdivision Plan do not extend over Custer Drive or to the western side of Custer Drive for any of the lots referenced above. In fact, the boundary lines for Lots 725 through 714 are Lake Meade on the east and Custer Drive on the west, supporting LMPOA's theory that the boundaries of Lots 725 and 726 do not extend over Custer Drive and into or across the narrow strip of land to the west of Custer Drive.

Furthermore, Lot 726, the northernmost lot on the peninsula, has a boundary distance description for its southern border of 167 feet. However, the northern boundary of Lot 726 does not have such a description. According to the Subdivision Plan, note two: "Water-line (500 ft. elev.) is waterfront property line on all waterfront lots." Based on note two of the Subdivision Plan, and the Subdivision Plan itself, the northwest boundary of Lot 726 becomes tangent with the Custer Drive at the 500 foot

elevation water line. The Subdivision Plan itself shows that the boundary for Lot 726 running along the water line becomes tangent with Custer Drive at the cul-de-sac. The disputed land is southwest of the point of tangency. Again, note two of the Subdivision Plan supports LMPOA's theory that Plaintiffs' lots do not extend over Custer Drive and into the narrow strip of land to the west of Custer Drive.

To find otherwise would produce an absurd result in terms of property ownership for all owners within the Lake Meade Subdivision. For example, if Plaintiffs' theory of ownership was adopted by this Court, owners of Lot 1020 would also have a claim of ownership to the disputed land. Lot 1020 is located within the Lake Meade Subdivision and is located on the western side of Custer Drive and south of Lots 725 and 726. The boundary for Lot 1020, similar to Lot 726, becomes tangent with Lake Meade and Custer Drive, and there is undesignated land, including the land presently in dispute, lying to the northeast of Lot 1020. Thus, under Plaintiffs' theory of ownership, the owners of Lot 1020 could have a similar claim of ownership to the disputed area of land. Certainly this is not the result intended at the time of the original subdivision. Accordingly, Plaintiffs' theory of ownership of the disputed strip of land to the west of Custer Drive is not supported by the record, nor can it logically be intended at the time of the subdivision. In conclusion, the boundary for Plaintiffs' property, Lot 726 in particular, does not extend beyond the point of tangency between the cul-de-sac of Custer Drive and Lot 726, and therefore, does not include the disputed portion of land.

Despite the unambiguous Subdivision Plan which does not show boundary lines that extend over Custer Drive and through the land west of Custer Drive, Plaintiffs contend that the boundary lines for both Lots 725 and 726 extend over Custer Drive and

through the land on the western side of Custer Drive. According to Plaintiffs, the Subdivision Plan is ambiguous, and this Court should determine where the boundary lines for Lots 725 and 726 lie based on extrinsic evidence.

First, Plaintiffs rely on an Adams County tax map to support their theory that they own the disputed area of land located west of Custer Drive. Although payment of taxes could support a claim for possession, it does not prove title to a parcel of land. **James v. Bream**, 106 A. 722, 723 (Pa. 1919). Thus, the tax maps that Plaintiffs rely upon to prove ownership of the disputed land to the west of Custer Drive cannot be properly considered by this Court as evidence of ownership. Interestingly, the most recent tax map as of August 1, 2012, although not evidence of ownership, appears to support LMPOA's theory of ownership of the property. **Def.'s Brief in Sup. of Part. Summ. J, Ex. S**. The tax map indicates that Plaintiffs own 1.04 acres of land. **Id.** Furthermore, the most recent tax map shows that the northern boundary of Lot 726 does not extend into the disputed area of land to the west of Custer Drive. **Id.** Even if this Court was permitted to consider the tax map as evidence of ownership, it would directly contradict Plaintiffs' theory of ownership. Therefore, Plaintiffs' argument in that regard is without merit.

Plaintiffs also rely on a 1974 survey that was attached to the 1974 deed between Rosenmiller and Cookson, Plaintiffs' predecessors in interest, to support their theory of ownership. Plaintiffs allege that the 1974 survey conveyed to them the disputed portion of land to the west of Custer Drive. However, the 1974 deed between Rosenmiller and Cookson simply conveys Lots 725 and 726 in accordance with the Lake Meade Subdivision Plan and makes no reference to the 1974 survey. Stated differently, the

1974 survey was attached to the deed between Rosenmiller and Cookson, but no reference is made within the deed to the survey or its potential impact on the conveyance.

Additionally, the 1974 survey and Lake Meade Subdivision Plan show inconsistent boundaries for Lots 725 and 726. As LMPOA correctly notes, while the deed conveying Lots 725 and 726 to the Cooksons is dated August 12, 1974, the 1974 survey titled "Plan Showing Property Belonging to Louis Cookson and Louise Cookson" is dated April 3, 1974. Thus, it is unclear when exactly the survey was performed incidental to the Cooksons' acquisition of the property and what, if any, impact it had on the boundaries to Lots 725 and 726. Therefore, the 1974 survey offers little support to Plaintiffs' theory of ownership of the disputed area of land.

Plaintiffs also rely on the decision in *Cookson v. Lake Meade Property Owners Assoc.*, No. 5 February Term 1976 (Adams County, 1977), to support their theory that they own the strip of land to the west of Custer Drive. In *Cookson*, Louise Cookson, one of Plaintiffs' predecessors in interest, instituted a cause of action against LMPOA to prevent expansion of the Custer Drive cul-de-sac. Cookson alleged that the Custer Drive cul-de-sac could not be expanded because of language within the agreement of sale from Lake Meade, Inc. to Rosenmiller. The *Cookson* court was faced with three specific issues: 1) whether an agreement between Cookson's predecessor in title and the original development company modifying a cul-de-sac as shown on a recorded plot plan was legally binding upon LMPOA; 2) whether LMPOA was estopped from asserting any right to expand the cul-de-sac; and 3) if LMPOA was permitted to install the cul-de-sac according to the dimensions as shown on the recorded plot plan, whether LMPOA

could also use the cul-de-sac for any purpose other than for vehicular traffic. The **Cookson** court ultimately held that LMPOA was not bound by the agreement between Rosenmiller and Lake Meade, Inc., that LMPOA was not barred by estoppel from using the cul-de-sac according to its description as shown on the map, and that Cookson failed to prove that LMPOA was using or intended to use the cul-de-sac for recreational purposes.

Plaintiffs rely on the **Cookson** decision for the proposition that Lots 725 and 726 are surrounded on **three** sides by Lake Meade. (emphasis added). The specific language that Plaintiffs rely upon is located in the background section of the **Cookson** decision and is as follows:

[w]hen plaintiff's predecessor in title, Mr. Rosenmiller, negotiated for the purchase of Lots 725 and 726 in the Lake Meade Development, there was a recorded plot plan showing Custer Drive entering Lot No. 725 and terminating on Lot 726. Both lots are located on a part of the development which extends out into the lake with **Lot No. 726 being surrounded on three sides by the lake** and Lot No. 725 being bounded on the east and west by the lake.

Cookson v. Lake Meade Property Owners Assoc., No. 5 February Term 1976, pg. 1 (Adams County, 1977) (emphasis added).

According to Plaintiffs, this language confirms Plaintiffs' ownership of the disputed portion of land to the west of Custer Drive. However, this Court disagrees. The language of the **Cookson** decision did not specifically hold that the land presently in dispute was owned by Plaintiffs' predecessor in interest, nor was ownership of the land presently in dispute an issue for the **Cookson** court. In fact, the **Cookson** decision indicated that the boundaries of the cul-de-sac were as depicted on the Subdivision Plan . That plan shows that the northern boundary of the cul-de-sac is tangent to Lake Meade. In summary, the language of the **Cookson** opinion that Plaintiffs rely upon is

merely dicta and was not essential to the **Cookson** court's decision. Therefore, Plaintiffs' reliance on such as proof of ownership is misplaced.

Plaintiffs further allege that they own the narrow strip of land to the west of Custer Drive because LMPOA only has a right-of-way, rather than a fee simple ownership in Custer Drive. Ownership of Custer Drive is crucial to Plaintiffs' claim that Lots 725 and 726 extend beyond the eastern boundary of Custer Drive, as Plaintiffs would also need to prove ownership of Custer Drive and the land beneath Custer Drive, to maintain their current theory of ownership of the disputed area of land. This argument, however, simply is not supported by the record.

Custer Drive was conveyed to LMPOA by deed dated September 25, 1968 between Lake Meade Inc. and LMPOA. LMPOA's deed specifically provided that:

Lake Meade, Inc. ... does grant bargain, sell, alien, enfeoff, release, and confirm unto said Lake Meade Property Owners Association, its successors and assigns, **ALL those roads**, the dam, lake and basin, and lots numbered 30, 74, 138, 171-A, 281, 288, 397, 410, 515, 549, 625, 634, 647, 672, 673, 713, 780, 825, 887, 946, 1036, 1050, 1072, 1111, 1135, 1175, 1222, 1271, 1309, 1324, 1391, 1454, 1455, 1456, 1463, and 1472 **all more particularly shown on the plans of lots titled Lake Meade Subdivision**, duly recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 pages 1, 4, 5, 6, 7, 19, 20, 21 and 23, in Reading and Latimore Township, Adams County Pennsylvania.

Def.'s Mot. for Part. Summ. J., Ex. G (emphasis added).

LMPOA's deed further provides:

TOGETHER with all and singular the ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and all reversions, remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of [Lake Meade, Inc.] in law, equity, or otherwise howsoever, of, in and to the same and every part thereof[.]

TO HAVE AND TO HOLD the hereditaments and premises hereby granted or mentioned and intended so to be appurtenances unto said Lake Meade Property Owners Association, its successors and assigns, to and for only proper use and behoof of the said Lake Meade Property Owners Association, its successors and assigns forever.

Id.

The deed from Lake Meade, Inc. granted and conveyed all roads to LMPOA. Under Pennsylvania law, the term “grant” conveys fee simple title of the real property. **21 P.S. § 2.** By using the word “grant,” LMPOA received title to all roads in fee simple ownership. In no way was LMPOA’s interest in the roads within the Lake Meade Subdivision limited to an easement or right-of-way. Moreover, Plaintiffs were not conveyed Custer Drive by virtue of their deed from the Woods. As noted, by deed dated August 12, 2002, the Woods conveyed Lots 725 and 726 to Plaintiffs. Custer Drive was not conveyed to Plaintiffs by the August 12, 2002 deed. The Woods merely conveyed Lots 725 and 726 according to the Lake Meade Subdivision Plan. Accordingly, LMPOA is the owner of Custer Drive.

Contrary to Plaintiffs’ argument that they own Custer Drive, Plaintiffs have previously acknowledged LMPOA’s ownership of the road in the Lake Meade Subdivision. For example, in their Second Amended Complaint, Plaintiffs alleged that LMPOA’s deed granted LMPOA ownership of the roads in the Lake Meade Subdivision. **Pls.’ Sec. Am. Compl. ¶ 13.** Plaintiffs did not allege ownership of Custer Drive in their Second Amended Complaint as evidenced by their description of the land as the “narrow strip of unimproved real property located immediately to the west of Custer Drive and between Custer Drive and Lake Meade.” *Id.* ¶ 37. Plaintiffs have no ownership interest in Custer Drive, and as such, Plaintiffs’ theory of the boundaries of

Lots 725 and 726 must fail. In summary, the land currently at issue, *i.e.* the narrow strip of land to the west of Custer Drive, is not included in Lot 726, and, therefore, not owned by Plaintiffs.

As Plaintiffs do not have ownership of the disputed area of land to the west of Custer Drive, their causes of action against LMPOA which require proof of ownership or possession of the disputed land as a necessary element must fail. Accordingly, summary judgment in favor of Defendant is appropriate on Count I – Trespass,² Count II – Ejectment,³ and Count IV – Declaratory Judgment (as it relates to ownership of Custer Drive).⁴

LMPOA next argues that it is entitled to summary judgment on Count V – Declaratory Judgment. The relief that Plaintiffs seek in Count V is twofold. In Count V of Plaintiffs' Second Amended Complaint, Plaintiffs seek a declaration enjoining the use of the narrow strip of land to the west of Custer Drive for non-residential purposes as well as a declaration that Custer Drive may only be used for "vehicular travel."

First, LMPOA argues that its restrictions and covenants do not preclude unit owners within Lake Meade from using the narrow strip of land to the west of Custer Drive for non-residential uses, including those uses that are incidental to residential use.

Paragraph one of LMPOA's restrictive covenants provides, in relevant part, that:

² To recover on an action for trespass, the plaintiff must prove ownership of or title to the land and possession or the right to immediate possession at the time of the alleged trespass. *Hartley v. Spencer*, 75 Pa. Super. 449 (1920).

³ Ejectment is an action filed by a plaintiff, who does not possess the land but has the right to possess it, against a defendant who has actual possession. *Wells Fargo Bank, N.A. v. Long*, 934 A.2d 76, 78 (Pa. Super. 2007) (citation omitted). The purpose of an ejectment action, as opposed to an action to quiet title, is not to determine the relative and respective rights of all potential title holders, but rather the immediate rights between plaintiff and defendant involved in that particular litigation. *Id.* (citation and quotations omitted).

⁴ Pennsylvania's Declaratory Judgment Act gives courts the "power to declare rights, status, and other legal relations." 42 Pa. C.S.A. § 7532. On Count IV, summary judgment is appropriate in that Plaintiffs have failed to prove that they own Custer Drive.

Said lots shall be used exclusively for residential purposes except those lots that may be designated as business or commercial areas on the plats by Lake Meade, Inc., subject to the right of Lake Meade Property Owners Association, Inc. to re-designate certain areas to assure adequate facilities for its members.

Def.'s Mot. for Part. Summ. J., Ex. E, pg. 2.

Plaintiffs interpret the above-quoted language, regardless of ownership of the narrow strip of land to the west of Custer Drive, to preclude any recreational activities allegedly occurring on the disputed area.

Instantly, the disputed area of land to the west of Custer Drive does not have a designation according to the Subdivision Plan. However, this inquiry does not end there as the Subdivision Plan provides further insight as to the intent of the original subdivision. First, the "General Notes" to the Subdivision Plan provide that:

The [p]rimary purpose of this plan is for the enjoyment of out of door recreation and will so provide for the owners of lots purchased a healthful atmosphere for themselves, their children and friends.

Def.'s Mot. for Part. Summ. J., Ex. E.

From the "General Notes" it is clear that the parties to the subdivision sought to promote the enjoyment of outdoor activities by providing an environment for lot owners and other individuals to do so.

The Subdivision Plan's "Dedication" section further provides that:

Certain lots will be designated as Water Supply Lots, and other commercial areas necessary for the maintenance and enjoyment of the development, and will be distinguished from all other lots which are either recreational areas, lake access areas, or residential lots.

Id.

From the "Dedication" section, unless designated as a water supply lot or commercial area, all other lots are recreational areas, lake access areas or residential lots.

The disputed area of land to the west of Custer Drive is not distinguished as a water supply lot or commercial area, despite those designations appearing elsewhere on the Subdivision Plan. Furthermore, the disputed area of land is not designated as lake access or a recreational area, nor does it have markings, similar to the other residential lots within the Subdivision Plan, indicating that it is a separate residential lot. Essentially the disputed area of land is a small strip of undesignated shoreline property. Without a specific designation within the subdivision, any lawful use is permitted on the disputed area of land.⁵ As such, the activities that Plaintiffs claim are occurring, *i.e.* fishing, picnicking, walking, biking, would be permitted in such an area and generally comport with the “General Notes” and “Dedication” sections of the Subdivision Plan.⁶ Accordingly, Plaintiffs’ claim seeking declaratory judgment, specifically a decree that the disputed area of land may be used for residential purposes only, must fail.⁷ Therefore, summary judgment in favor of Defendant on Count V – Declaratory Judgment, as to permitted uses on the disputed tract of land, is appropriate.

Finally, on Count – V, LMPOA argues that Custer Drive is not limited to “vehicular travel.” In their Second Amended Complaint, Plaintiffs allege that LMPOA has authorized and permitted its members to use Custer Drive for purposes other than vehicular travel in derogation of the restrictions and covenants. However, there are no restrictive covenants limiting the use of Custer Drive to vehicular travel. **Def.’s Mot. for**

⁵ From the record, it appears that for an extended period of time dating back prior to Plaintiffs’ acquisition of Lots 725 and 726, the disputed area of land primarily has been used for recreational purposes including fishing, picnicking, biking, and gatherings among members and guests.

⁶ However, to the extent those activities are permitted and are occurring on the disputed area of land to the west of Custer Drive, they may not disturb the use and enjoyment of the surrounding properties, including Plaintiffs’ property, so as to constitute a nuisance.

⁷ Incidentally, this Court also believes that the activities that Plaintiffs complain about are incidental to residential purposes and are the very activities being carried out on just about every waterfront residential lot in Lake Meade. Those activities also comport with the purposes of the Lake Meade community, which is enjoyment of outdoor activities.

Part. Summ. J., Ex. E. Instead, Plaintiffs rely on the **Cookson** decision for the proposition that Custer Drive may only be used for vehicular travel.


In **Cookson**, the final issue before the court was if LMPOA could install the cul-de-sac according to the recorded plot plan, could LMPOA use the Custer Drive cul-de-sac for any purpose or whether its use was restricted to vehicular traffic. On this issue, the **Cookson** court ultimately held that the plaintiff therein failed to prove that LMPOA was using or intended to use the cul-de-sac for recreational purposes. In so holding, the **Cookson** court noted that the plaintiff therein was entitled to the peaceful enjoyment of her property except for the legal rights of others. The court then noted that others had the legal right to use Custer Drive for vehicular purposes only. The **Cookson** court ultimately did not enjoin LMPOA from using the road for recreational purposes, as plaintiff therein failed to meet her burden.

Plaintiffs' argument rests on the definition of vehicular purposes, which is not defined by the restrictive covenants or the **Cookson** decision. However, the phrase "vehicular purposes" does not mean that only "vehicular travel" is permitted on Custer Drive. Presumably, Plaintiffs interpret "vehicular purposes" to mean only driving is permitted on Custer Drive. If this Court was to adopt Plaintiffs' interpretation of "vehicular purposes" to mean only "vehicular travel" activities such as walking, running and biking would not be permitted on Custer Drive. Further, if Plaintiffs were to host a social gathering at their home, Plaintiffs' own guests could not park along Custer Drive under Plaintiffs' interpretation of "vehicular purposes," as parking is not "vehicular travel." Adopting Plaintiffs' interpretation would lead to an absurd result, and such an interpretation would contradict one of the main purposes of the Lake Meade

Subdivision, which is the enjoyment of outdoor activities.⁸ This Court is not willing to adopt such an interpretation of the phrase “vehicular purposes.” In summary, Custer Drive is not limited to solely vehicular travel. Therefore, there is no actual, justiciable controversy and summary judgment in favor of Defendant on Count V – Declaratory Judgment (use of Custer Drive) is appropriate.

For the reasons set forth herein, Defendant’s Motion for Partial Summary Judgment is granted. Accordingly, the attached Order is entered.

BY THE COURT:


THOMAS R. CAMPBELL
Judge

Date Filed: January 15, 2013

Ronald L. Finck, Esquire
Kevin M. Skjoldal, Esquire

⁸ However, those activities incidental to the use of Custer Drive may not rise to the level of a nuisance by interfering with the use and enjoyment of the surrounding properties within the Lake Meade Subdivision, including Plaintiffs’ property. Furthermore, it does not relieve LMPOA of its duty to enforce its rules and regulations pertaining to guests, permitted vehicles, and nuisance activities within Lake Meade.