

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF ALCONA

JOAN M. GLASS,

Plaintiff,

Case No. 01-10713-CH(K)

Hon. John F. Kowalski

v

RICHARD A. GOECKEL and  
KATHLEEN D. GOECKEL,

Defendants.

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Pamela S. Burt (P47857)  
WEINER & BURT, P.C.  
635 N. US-23, P.O. Box 186  
Harrisville, MI 48740  
(989) 724-7400  
Attorney for Plaintiff

Brent R. Babcock (P23533)  
450 West Lake Street, P.O. Box 786  
Tawas City, MI 48764-0786  
(989) 362-6196  
Attorney for Defendants

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**FIRST AMENDED COMPLAINT**

Plaintiff, by and through her attorney, Pamela S. Burt, states in this First Amended Complaint as follows:

1. Plaintiff Joan M. Glass resides at 4116 S. US-23, Greenbush Township, Alcona County, Michigan.
2. Defendants Richard A. Goeckel and Kathleen D. Goeckel reside at 7500 Perry Lake Road, Clarkston, Oakland County, Michigan.
3. Since 1967, plaintiff has been the fee simple owner in possession of her residential property referred to in paragraph 1, which is described as:

The North 105 feet of the South 400 feet of the North 500 feet of Government Lot No. 2, lying West of US-23 Right-of-Way and including an easement for ingress and egress to Lake Huron over the North fifteen (15) feet of the South 400 feet of the North 500 feet of Government Lot No. 2 lying East of the US-23 Right-of-Way, being in Section 26, Town 25 North, Range 9 East, and excepting mineral rights including coal, oil and gas.

("plaintiff's property"). A copy of plaintiff's Warranty Deed, as recorded by the Alcona County Register of Deeds, is attached to the original Complaint as Exhibit 1.

4. Since 1997, defendants Richard A. Goeckel and Kathleen D. Goeckel have, on information and belief, been the fee simple owners in possession of real property in Greenbush Township, Alcona County, Michigan, described as:

A parcel of land in Government Lot 2, Fractional Section 26, Township 25 North, Range 9 East, Greenbush Township, Alcona County, Michigan, Commencing at the point where the North line of Government Lot 2 of said Section 26 intersects the Southeastly R.O.W. line of US 23, thence South 20°18'08" West 106.66; along said R.O.W. line to the Point of Beginning, said point being 100 feet South of the North line of said Government Lot 2, thence continuing South 20°18'08" West 111.56 feet along said R.O.W. line, thence South 74°09'48" East 76.66 feet, thence due East 130.88 feet parallel to the North line of said Government Lot 2 to the meander line of Lake Huron, thence North 21°38'14" East 135.09' along said meander line, thence due West 215.72 feet parallel to the North line of Government Lot 2 to the Point of Beginning.

("defendants' property"). A copy of defendants' Warranty Deed, as recorded by the Alcona County Register of Deeds, is attached to the original Complaint as Exhibit 2.

5. Although defendant's deed erroneously omits any description of plaintiff's express easement, the easement is specifically described in the Warranty Deed of defendants' predecessor in title, Agnes Kushmaul. Copy of deed attached to original Complaint as Exhibit 3.

6. Plaintiff's property is across highway US-23 from defendants' property, with plaintiff's property lying on the west side of US-23 and defendants' property lying on the east side of US-23, between the highway and Lake Huron.

7. The subject of this Complaint is plaintiff's express, deeded easement "for ingress and egress to Lake Huron" over the north 15 feet of defendants' property, as set out in plaintiff's 1967 deed.

8. This Court has jurisdiction over the subject matter of this action pursuant to MCL 600.2932; MSA 27A.2932

### COUNT 1

#### INTERFERENCE WITH AND OBSTRUCTION OF EXPRESS EASEMENT

9. Paragraphs 1 - 8 above are incorporated by reference.

10. Throughout the 33 years that plaintiff has owned her property, she, her family, and her guests and invitees have continuously used plaintiff's easement for ingress and egress to Lake Huron.

11. In August 2000, plaintiff used pruning shears to trim several tree branches which were obstructing plaintiff's passage over her easement. Defendant Mr. Goeckel then contacted defendant and advised her to refrain from touching anything on the easement and that defendant did not want to see plaintiff's family members on the easement again.

12. In April 2001, plaintiff's attorney advised defendant's attorney that plaintiff intended to perform maintenance on the easement in the form of removing juniper bushes and pruning tree branches which were obstructing plaintiff's passage over the easement. On May 4, 2001, defendant's attorney responded that his client had no objection to plaintiff's "maintaining the easement to such extent as the trees and bushes which may interfere with her use of same."

13. On May 8, 2001, plaintiff's son cleared juniper bushes and tree branches from the easement which were obstructing her right of passage. Defendant Mr. Goeckel then repeatedly contacted plaintiff and her attorney in a threatening and harassing manner, insisting that plaintiff should refrain from trespassing and/or vandalism on "his" property.

14. Defendant Mr. Goeckel has permitted a large metal barrel to remain on the easement which obstructs plaintiff's right of passage. Although defendants have been requested to remove the barrel, they refuse to do so.

15. Defendant Mr. Goeckel has interfered with plaintiff's beneficial use and enjoyment of the easement by parking his vehicle on the easement to obstruct plaintiff's right of passage, and by engaging in various acts of threatening and uncivil behavior including approaching, shouting, and making obscene gesture(s) at plaintiff and her family members.

16. Plaintiff has no adequate remedy in money damages that would force defendants to cease their interference with and obstruction of plaintiff's use and reasonable maintenance of the easement, and plaintiff has been and will continue to be irreparably injured unless this Court orders the defendants to cease such unlawful actions.

**COUNT 2**  
**PRESCRIPTIVE EASEMENT**

17. Paragraphs 1 - 16 above are incorporated by reference.

18. Plaintiff's predecessor in title, Henry Prince, intended that the scope of the easement he granted to plaintiff included the rights to use the easement for beach activities such as sunbathing, lounging, and the like.

19. Pursuant to the terms of the servitude intended by Mr. Prince, plaintiff, her family, and guests have used the lakefront portions of the easement for beach activities including sunbathing and lounging, since 1967.

20. Plaintiff's uses of the easement as described in paragraph 18 have been continuous, open, exclusive, notorious, and/or adverse for more than 33 years, so that plaintiff has an easement by prescription for such uses.

**COUNT 3**  
**INTERFERENCE WITH PLAINTIFF'S**  
**RIGHTS TO NAVIGATE AND WALK ALONG LAKE HURON SHORE**

21. Paragraphs 1-20 above are incorporated by reference.

22. The shoreland and waters of Lake Huron lying below and lakeward of the natural ordinary high-water mark are subject, under federal and state statutory law and common law, to a navigational servitude held by the State of Michigan, and a dominant navigational servitude held by the United States, under which such land and water is held in trust for the benefit of the people of this state and country for navigational and recreational activities.

23. Under local custom and practice, members of the public have for many years walked along the shore of Lake Huron lying lakeward of the natural ordinary high-water mark in the area of defendants' property, without interference by lakefront property owners.

24. As a resident and citizen of the State of Michigan and the United States of America, plaintiff has the right to navigate and walk across those portions of the shore and waters of Lake Huron lying below and lakeward of the natural ordinary high-water mark, free from obstruction or interference by defendants.

25. Defendant Mr. Goeckel has interfered with, and/or has threatened to interfere with, plaintiff's right to navigate and walk across those portions of the shore and waters of Lake Huron lying below and lakeward of the natural ordinary high-water mark.

26. Plaintiff has no adequate remedy in money damages that would force defendants to cease their interference with plaintiff's right to navigate and walk across those portions of the shore and waters of Lake Huron lying below and lakeward of the natural ordinary high-water mark, and plaintiff has been and will continue to be irreparably injured unless this Court orders the defendants to cease such interference.

**WHEREFORE**, plaintiff asks this Honorable Court to grant her the following relief:

A. That this Court enter a temporary restraining order and/or a preliminary injunction pending trial, and then a permanent injunction, ordering defendants to cease and desist from obstructing or interfering in any way with plaintiff's express easement and her maintenance thereof to ensure her unobstructed passage over the easement at all times.

B. That this Court order, adjudge, and decree that plaintiff has a prescriptive easement for use of the easement by plaintiff, her family, and guests for beach activities including sunbathing, and lounging; and that plaintiff has leave to cause such judgment to be recorded in the Office of the Register of Deeds of Alcona County, Michigan.

C. That this Court enter a temporary restraining order and/or preliminary injunction pending trial, and then a permanent injunction, ordering defendants to cease and desist from obstructing or interfering in any way with plaintiff's use of the easement for beach activities including sunbathing and lounging.

D. That this Court order, adjudge and decree that plaintiff, as a resident and citizen of the State of Michigan and the United States, has the right to navigate and walk across those portions of the shore and waters of Lake Huron lying below and lakeward of the natural ordinary high-water mark.

E. That this Court enter a temporary restraining order and/or preliminary injunction pending trial, and then a permanent injunction, ordering defendants to cease and desist from interfering in any way with plaintiff's right to navigate and walk across those portions of the shore and waters of Lake Huron lying below and lakeward of the natural ordinary high-water mark.

Plaintiff also asks the Court to award to plaintiff her costs and reasonable attorney fees, and to grant such other and further relief as the Court may deem lawful and just.

Respectfully submitted,



Pamela S. Burt (P47857)

Attorney for Plaintiff

Weiner & Burt, P.C.

635 N. US-23, P.O. Box 186

Harrisville, MI 48740

(989) 724-7400

Dated: September 17, 2001

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing First Amended Complaint was served upon the attorney for defendants by mailing same to: Brent R. Babcock, 450 West Lake Street, P.O. Box 786, Tawas City, MI 48764-0786, with first class postage fully prepaid, on the 17<sup>th</sup> day of July, 2001. I declare under penalty of perjury that this statement is true to the best of my information, knowledge, and belief.



Pamela S. Burt