

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2007 CA 2474**

**WAYNE JOHN STABLER, JR. & LUCY ANNE WIGGINS  
STABLER**

**VERSUS**

**MALLARD LAKES, LLC & MALLARD LAKES PROPERTY  
OWNERS ASSOCIATION, INC.**

**Judgment Rendered: May 2, 2008**

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On Appeal from the Nineteenth Judicial District Court  
In and For the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 541,697

Honorable William A. Morvant, Judge Presiding

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**BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.**

**McCLENDON, J.**

Plaintiffs, Wayne John Stabiler, Jr. and Lucy Anne Wiggins Stabiler, appeal the grant of a motion for summary judgment filed by the original defendants, Mallard Lakes LLC and Mallard Lakes Property Owners Association, Inc., and motions for summary judgment filed by subsequently joined defendants, William Bryan Potter, Karissa Lin Fields Potter, Bobby Dee McDonald, and Lula M. McDonald. The summary judgment, dismissing plaintiffs' suit, was based on the trial court's finding that the owners of all the lots partially underlying a private lake, located in The Wilderness of Mallard Lakes development, had been granted a non-exclusive "right of use" of said lake. We affirm.

**FACTS AND PROCEDURAL BACKGROUND**

Plaintiffs own Lot 10; Mr. and Mrs. Potter own Lot 9; and Mr. and Mrs. McDonald own Lot 11. The three lots are adjacent to each other in numerical order. Included as part of Lot 10 is a large center portion of the private lake bottom. Lot 9 contains a smaller portion of the lake bottom, running parallel to one side of Lot 10, with Lot 11's even smaller portion of the lake bottom running along the opposite side of Lot 10.

The development's covenants and restrictions were recorded in the parish records and referred to in the act of sale for Lot 10.<sup>1</sup> The applicable restrictive covenants are sections 6.1 and 6.2. The pertinent portion of 6.1 states that: "The land covered by private lakes is private property for the private use of the Owners of Lots covered by the private lake area, and their families and guests." Section 6.2 provides, in part, as follows: "Every Owner of a Lot that includes land covered by a private lake shall have a non-exclusive right and servitude of enjoyment in and to the land covered by that

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<sup>1</sup> Restrictive covenants or building restrictions are governed by LSA-C.C. art. 775, et seq.

private lake and such servitude shall be appurtenant to and shall pass with the title to every such Lot . . . .”

Plaintiffs filed a suit for declaratory judgment, call in warranty, and damages. Defendants’ answered, and subsequently filed motions for summary judgment.

In opposition to the motions for summary judgment, the plaintiffs argued that the applicable restrictive covenants are ambiguous and that parol evidence should have been admitted to show that Lot 10 had the exclusive use of the lake. After a hearing on the motions, the trial court agreed with the defendants’ assertions that the language of the applicable covenants was unambiguous and that parol evidence was not admissible. Based on the trial court’s reading of the language, the court found that the restrictive covenants granted the right to use the lake to the owners of all three lots. The trial court also stated that a finding that any one of the lots had exclusive use would lead to an absurd result. Thus, summary judgment was granted in favor of the defendants.

On appeal, plaintiffs primarily argue that section 6.1 grants an exclusive use of the private lake to Lot 10; a reading of section 6.1 with 6.2 leads to ambiguity; and any ambiguity should have been resolved by the introduction of parol evidence. Therefore, the trial court erred in granting the defendants’ motions for summary judgment.

### **INTERPRETATION OF COVENANT PROVISIONS**

“When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties’ intent.” LSA-C.C. art. 2046. “The words of a contract must be given their generally prevailing meaning.” LSA-C.C. art. 2047. “Each provision in a contract must be interpreted in light of the other provisions so

that each is given the meaning suggested by the contract as a whole.” LSA-C.C. art. 2050. Whether contractual or covenant language is ambiguous is a question of law. **Nickels v. Guarantee Trust Life Insurance Company**, 563 So.2d 924, 926 (La.App. 1 Cir. 1990).

#### **ANALYSIS**

From our review of the pertinent language, we find no ambiguity or conflict in sections 6.1 or 6.2, whether read separately or together, and no basis for the consideration of parol evidence. Although the trial court’s reasons for judgment employed the word “servitude” in describing the right granted by the applicable covenants, the result is the same. Applying the applicable language to the facts here, we agree with the trial court’s finding that the owners of all three lots, identified as Lots 9, 10, and 11, have a non-exclusive right to use the lake.

#### **CONCLUSION**

For these reasons, we affirm the judgment of the trial court in this memorandum opinion issued in compliance with URCA Rule 2-16.1.B. The costs of the appeal are assessed to the plaintiffs, Wayne John Stabiler, Jr. and Lucy Anne Wiggins Stabiler.

**AFFIRMED.**