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# Lake Michigan Road End Beach Closed by Court

BY: ERIC J. GUERIN

121st Avenue in Ganges Township, in Allegan County, Michigan, terminates near Lake Michigan and has been used by members of the public as a "road end" beach for years. Activities at that road end have been the source of litigation, with the most recent case filed in 2006, *Benninghoff, et al v. Tilton, et al*, Allegan County Circuit Court Case No. 06-39595. In connection with an earlier appeal in that case, the Michigan Court of Appeals remanded the case to the Circuit Court to determine: 1) whether there was sufficient evidence to establish a prescriptive right for the public to use the road end as a beach; and 2) if not, whether the defendants, who own property adjacent to the road end, were entitled to compensation as a result of their claim for inverse condemnation. On remand, the Circuit Court bifurcated those issues and a trial was held addressing only the issue of whether there was a prescriptive easement to use the road end as a beach.

On August 2, 2012, Circuit Court Judge John E. Dewane issued a judgment prohibiting use of the road end as a beach. The Court acknowledged that members of the public had used the road end for beach purposes, but held that there was no right to continue those uses because the activities by Ganges Township and the Road Commission had been taken to "facilitate and control the use of the Road End as a road rather than as a beach." The Court held that the road end could therefore be used only for ingress and egress to Lake Michigan and entered an injunction prohibiting any other uses. In short, the road end beach has been closed.

The judgment issued by the Court is not "final" because the Court has not yet conducted a trial on the issue of whether the defendants are entitled to compensation as a result of their claim for inverse condemnation. Because the August 2 judgment is not a "final" judgment under Michigan law, there is no appeal as of right at this time. This case has made a previous trip to the Michigan Court of Appeals, and it is virtually certain that another appeal will follow. The plaintiffs may file an application for leave to appeal, essentially asking the Court of Appeals to accept their appeal before the inverse condemnation claim is resolved by the Circuit Court. If they do not do so, or if the Court of Appeals refuses to grant leave, an appeal "as of right" is almost certain to follow after the inverse condemnation claim is resolved by the Circuit Court.

At the moment, the immediate impact of this decision is limited to the 121st Avenue road end, which may no longer be used as a beach. If and when the Michigan Court of Appeals has the final word, the resolution of this case could impact how other Great Lakes road ends are used throughout the State.