

RECEIVED
WALTON COUNTY FLORIDA
93 FEB 21 11 3 42

IN THE CIRCUIT COURT OF WALTON COUNTY, FLORIDA

CLERK CHRISTINE KING

FILED AND RECORDED
DATE 05/27/93 TIME 09:28

CATHERINE KING CLERK
CO:WALTON ST:FL

FL 464880 B 983 P 9
CO:WALTON ST:FL

FIRST NATIONAL BANK & TRUST, a
banking corporation organized and
existing under the Laws of the
United States of America,

Plaintiff,

vs

CLASS REPRESENTATION

G. P. MANUS, JOHN R. FITZGERALD
and CHLOTILLE C. FITZGERALD, et al.

CASE NO. 92-0553-CA

Defendants.

FINAL JUDGMENT

This action was tried before the court. On the evidence presented the court finds:

1. The defendants as owners of Lots in Gulf Shore Manor, according to the plat of that subdivision by P. D. Naugle recorded in Deed Book 63 at page 603 of the public records of Walton County, Florida, are each the holders of a perpetual non-exclusive easement, to be enjoyed by and with all others having the like right, in and to the property designated on the aforesaid plat as "Gulf Shore Beach" and "Bathing Beach", which easement over those beaches is for the purpose of walking over and across, sunbathing, picnicing, bathing and swimming, and any other like recreational use.

2. The resolution dated March 28, 1978, by the Board of County Commissioners of Walton County, Florida, renouncing and disclaiming the right of the county and the public in and to those beaches does not affect

the private rights of the defendants of this action acquired as owners of lots in the subdivision.

3. Plaintiff did not successfully extinguish the private rights of the defendants by showing adverse possession under color of title for the full statutory period. There was a significant gap between the first alleged act of possession in 1985 by the predecessor in title to plaintiff in clearing to the coastal construction setback line and the later renewal of development in 1990. There was no continuous, open, hostile, exclusive, and actual possession during the interim. In addition, the statute requires that the property be possessed adversely to the legal title for seven years before the commencement of the action. The testimony presented by plaintiff that the first act of possession commenced in 1985 did not show that it was early enough in 1985 to have occurred seven years before the commencement of the action.

4. The first unquestionable act of adverse possession by plaintiff or its predecessors in title, as against the easement rights of these defendants, did not occur until the fence and gate were erected recently around the northerly 64.69 feet of the strip subject of this action.

5. Upon motion by defendants to amend the pleadings to conform with the evidence, said amendment being to counterclaim requesting an injunction against the plaintiffs from interfering with the rights of defendants to exercise their implied easement to the property designated on the plat as beaches, and the granting by the court of such motion, the court finds that such relief should be granted and that plaintiff shall have the time

specified below to remove any physical impediment to the rights of these defendants to exercise their easement, as more fully specified above and below, to use the property designated as "Gulf Shore Beach" and as "Bathing Beach" on the plat recorded in Deed Book 63 at page 603 of the public records of Walton County, Florida.

THEREFORE, based upon the above findings and otherwise being fully advised,

IT IS ADJUDGED THAT:

1. Plaintiff did not prove adverse possession under color of title for the full statutory period against the rights of the defendants hereto as owners of lots in Gulf Beach Manor. The right of defendant lot owners consists of a perpetual non-exclusive easement and right of use of the property designated as "Gulf Shore Beach" and "Bathing Beach" on the plat of Gulf Shore Manor recorded in Deed Book 63 at page 603 of the public records of Walton County, Florida, to be held and used by and with all others having a similar right, for purposes of walking over and across, sunbathing, picnicing, bathing and swimming, and any other like recreational use of those properties.

2. The motion of defendants to amend the pleadings to conform with the evidence is granted, and defendants are granted an injunction on their counterclaim. Plaintiff is enjoined from interfering with the rights of defendants as described in paragraph 1. Within 10 days from the date that this judgment becomes final plaintiff is ordered to remove any and all physical structures on any property designated as beaches on the plat which

impede the rights of these defendants to exercise their non-exclusive easement described in paragraph 1.

DONE AND ORDERED in DeFuniak Springs, Walton County, Florida, this
21ST day of May, 1993.


Thomas T. Remington, Circuit Judge

Conformed copies to:

Messrs. Kessler and Moore
P. O. Box 746
Niceville, Florida 32588

Rollin D. Davis, Jr.
P. O. Box 1831
Pensacola, FL 32598

Donald B. and Nancy M. Eldred
P. O. Box 718
Freeport, FL 32439