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BASS LAKE REHABILITATION DISTRICT,

Plaintiff,

vs.

CHRISTOPHER JOHNSON,

Defendant.

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**DECISION  
AND  
ORDER**

Case No.: 16 FO 520

**BACKGROUND**

The Defendant, Christopher Johnson, is cited with a violation on June 24, 2016, at 9:15 p.m., of Bass Lake Rehabilitation District Ordinance 1.01(4), which prohibits the operation of a boat at a speed greater than slow or no wake.

At an initial pre-trial conference on September 7, 2016, Mr. Johnson, relying on the “public trust doctrine,” questioned if the Bass Lake Rehabilitation District ordinance conflicted with that doctrine. This Court, on September 7, 2016, asked Mr. Brose, counsel for the Bass Lake Rehabilitation District (hereafter referred as the “District”), to submit a copy of the District’s ordinance. Also, on September 7, 2016, this Court advised Mr. Johnson of the free legal clinic offered in St. Croix County and advised him he could submit a response to the ordinance once it was submitted by Mr. Brose. The matter was then set for a further telephone conference on September 28, 2016.

By letter dated September 7, 2016, Mr. Brose submitted the District’s ordinance.

During the telephone conference held on September 28, 2016, Mr. Johnson questioned whether the District had the authority to adopt its ordinance. Mr. Brose stated that he believed that State Statute granted the District the authority. This Court, reviewed the statutes and wondered if Sec. 30.77(3)(am) granted the authority.

Mr. Brose was asked to submit the law that he believed authorized the District to adopt its ordinance and Mr. Johnson was allowed to submit a response if he wished.

Mr. Brose, by letter dated October 24, 2016, submitted a brief citing the law he believed gave the District the authority to adopt its ordinance. As of November 23, 2016, this Court has not received any further argument from Mr. Johnson and, therefore, intends to rule on this legal issue.

### LEGAL AUTHORITY

In the case of *Rock-Koshkonong Lake Dist. v. State Dept. of Natural Resources*, 2013 WI 74, 350 Wis.2d 45, the Wisconsin Supreme Court, while deciding a case involving the DNR's authority to regulate water levels on navigable waters, gave an excellent summary of the Public Trust Doctrine.

At 350 Wis.2d page 78, the Wisconsin Supreme Court cited the basis of the public trust doctrine, which is found in Article IX, of the Wisconsin Constitution:

Article IX, Section 1 of the Wisconsin Constitution commands that the state hold navigable waters in trust for the public:

The state shall have concurrent jurisdiction on all rivers and lakes bordering on this state so far as such rivers or lakes shall form a common boundary to the state and any other state or territory now or hereafter to be formed, and bounded by the same; and the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.

The Wisconsin Supreme Court went on to say at pages 78 to 79:

This court has long held that the public trust in navigable waters "should be interpreted in the broad and beneficent spirit that gave rise to it in order that the people may fully enjoy the intended benefits." \*79 *Diana Shooting Club v. Husting*, 156 Wis. 261, 271, 145 N.W. 816 (1914); *Lake Beulah*, 335 Wis.2d 47, ¶ 31, 799 N.W.2d 73.<sup>26</sup> Broadly interpreting the public trust has resulted in recognition of more than just commercial navigability rights. Protection now extends to "purely recreational purposes such as boating, swimming, fishing,

hunting, ... and ... preserv[ing] scenic beauty.” *R. W. Docks & Slips v. State*, 2001 WI 73, ¶ 19, 244 Wis.2d 497, 628 N.W.2d 781 (citing *State v. Bleck*, 114 Wis.2d 454, 457, 338 N.W.2d 492 (1983)).

The Wisconsin Supreme Court, at page 82, further stated:

The public trust doctrine vests the ownership of land *under lakes*—i.e., lake beds—in the state. By contrast, the public trust doctrine in Wisconsin gives riparian owners along navigable streams a qualified title in the stream beds to the center of the stream, while the state holds the navigable waters in trust for the public. In reality, the state effectively controls the land under navigable streams and rivers without actually owning it.

And, finally, at page 86, the Wisconsin Supreme Court stated:

The public trust doctrine entails public rights in navigable waters, including non-commercial “sailing, rowing, canoeing, bathing, fishing, hunting, skating, and other public purposes.” *Nekoosa-Edwards Paper Co.*, 201 Wis. at 47, 228 N.W. 144. The state's public trust duty “requires the state not only to promote navigation but also to protect and preserve *its waters* for fishing, hunting, recreation, *and scenic beauty*.” *Wis. 's Envtl. Decade*, 85 Wis.2d at 526, 271 N.W.2d 69 (emphasis added).

Sec. 33.21 of the Wisconsin Statutes states as follows:

**33.21. Public inland lake protection and rehabilitation districts; purposes**

Districts may be created for the purpose of undertaking a program of lake protection and rehabilitation of a lake or parts thereof within the district.

Sec. 33.22(1) and (2m) of the Wisconsin Statutes state as follows:

**33.22. District; powers**

(1) Any district organized under this chapter may select a name for the district, sue and be sued, make contracts, accept gifts, purchase, lease, devise or otherwise acquire, hold, maintain or dispose of property, disburse money, contract debt and do any other acts necessary to carry out a program of lake protection and rehabilitation. All contracts in excess of \$2,500 for the performance of any work or the purchase of any materials shall be let by the commissioners to the lowest responsible bidder in the manner they prescribe.

(2m) Any district may create, operate and maintain a water safety patrol unit, as defined in s. 30.79(1)(b)2.

Sec. 30.77 (1) and (3), state, in part, as follows:

30.77. Local regulation of boating

**(1) Local regulation prohibited; exceptions.** Sections 30.50 to 30.71 shall be uniform in operation throughout the state. No municipality, public inland lake protection and rehabilitation district or town sanitary district may:

(a) Enact any ordinance or local regulation requiring local numbering, registration or licensing of boats or any ordinance or local regulation charging fees for inspection, except as provided in sub. (3)(e); or

(b) Except as provided in subs. (2) and (3), enact any ordinance or local regulation that in any manner excludes any boat from the free use of the waters of this state or that pertains to the use, operation or equipment of boats or which governs any activity regulated by ss. 30.50 to 30.71.

**(3) Ordinances.**

(am)1. A public inland lake protection and rehabilitation district may, in the interest of public health, safety or welfare, including the public's interest in preserving the state's natural resources, enact and enforce ordinances applicable to a lake entirely within its boundaries if one of the following occurs:

a. Each town, village and city having jurisdiction over the lake adopts a resolution authorizing the lake district to do so.

b. At least 50% of the towns, villages and cities having jurisdiction over the lake adopt resolutions authorizing the lake district to enact and enforce ordinances, and at least 60% of the footage of shoreline of the lake is within the boundaries of these towns, villages and cities.

2. An ordinance enacted under subd. 1. or 1m. may not be contrary to or inconsistent with this chapter and shall relate to the equipment, use or operation of boats or to an activity regulated by ss. 30.60 to 30.71.

(cr) The types of ordinances that may be enacted under par. (a), (am), or (b) include the following:

1. Restrictions on speed.

2. Restrictions on certain types of boating activities on all, or in specified parts, of the lake, river or stream.

Sec. 1.01(4)(b)(1) of the Bass Lake Rehabilitation District Ordinances provides as follows:

4.) Slow-No-Wake Restrictions

b.) No boat shall be operated at a speed greater than “slow-no-wake” on Bass Lake:

1.) During any time between 8 p.m. to 8 a.m.;

Sec. 1.01(3) of the Bass Lake Rehabilitation District Ordinances contains, in part, the following definitions:

3.) Definitions

a.) “Slow-No-Wake” means that speed at which a boat moves as slowly as possible while still maintaining steering control.

c.) “Boat” means all watercraft including but not limited to personal watercraft and skis, as well as any persons or objects towed by such watercraft.

**ANALYSIS**

As an aside, this Court wants to repeat that every litigant, no matter how minor someone else may think their case to be, is entitled to their day in court. Secondly, in every case, again no matter how minor the case may appear to be, the judge assigned to that case must be prepared to justify the decisions that he or she may make.

**I. PUBLIC TRUST DOCTRINE**

The first argument raised by Mr. Johnson was the Public Trust Doctrine. On September 7, 2016, this Court, based on its recollection, stated that while the Public Trust Doctrine allowed the public access to navigable waters, the access and use by the public was not unfettered.

Based on a reading of the comments by the Wisconsin Supreme Court in the *Rock-Koshkonong* case, it is clear that the law is what this Court recalled it to be. Thus,

while there is public access to navigable waters, the “state's public trust duty “requires the state not only to promote navigation but also to protect and preserve *its waters*.”

Thus, the State can take action to protect inland waters, but Mr. Johnson questions the authority of the District to enact an ordinance and argues the ordinance violates the Public Trust Doctrine.

## **II. AUTHORITY TO ENACT ORDINANCES**

Sec. 33.21 states that a district may be created for the purpose of, among other things, lake protection. Thus, general authority of the District to act is established.

The specific authority of the District to enact ordinances such as the one in this case is set forth in Sec. 30.77(3) which allows a district to enact ordinances to preserve a state natural resource. Undoubtedly Bass Lake is a natural resource.

However, before a district may enact ordinances, the town within which the lake is located must adopt a resolution authorizing the district to do so.

Mr. Brose, on behalf of the District, has submitted all of the documentation necessary for this Court to conclude that the District has been properly authorized to enact ordinances under Sec. 30.77(3)(am).

## **III. DOES THE DISTRICT ORDINANCE EXCEED ITS AUTHORITY OR VIOLATE THE PUBLIC TRUST DOCTRINE?**

As noted, Sec. 30.77(3)(cr) allows the District, under Sec. 30.77(3)(am) to enact ordinances regarding the speed of boats and boating activities. The ordinance in this case, Sec. 1.01(4)(b)(1), prohibits speeds on Bass Lake between the hours of 8 p.m. and 8 a.m. that exceed a “slow-no-wake,” which is defined in the ordinance. This is clearly a speed restriction that is authorized by State Statute.

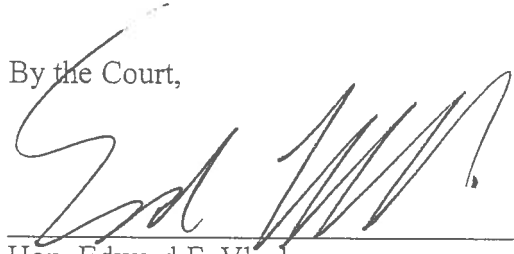
Secondly, as noted and concluded earlier, while the Public Trust Doctrine grants to the public use of navigable waters, that same Public Trust Doctrine allows and requires protection of those same navigable waters.

### DECISION

For the reasons set forth herein, this Court concludes that the Bass Lake Rehabilitation District was authorized to enact the ordinance under which Mr. Johnson is cited. Therefore, his motion to dismiss is DENIED, and the matter shall be set for trial.

Dated this 28<sup>th</sup> day of November.

By the Court,



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Hon. Edward F. Vlcek  
St. Croix County Circuit Court Judge  
Branch 2