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October 24, 2016

*Via First Class Mail and
E-Mail to carltondjones@cableone.net*

Hon. Carlton D. Jones
Lafayette County Circuit Court
400 Laurel Street, Suite 207
Texarkana, AR 71854-5249

RE: Friends of Lake Erling Association
v.
The AGRED Foundation
Lafayette County Circuit No. 2016-16-1

Dear Judge Jones:

This letter is in response to Mr. Ledbetter's letter to you of October 18, 2016, outlining Plaintiff's concern that this Court's ruling on Plaintiff's Motion for Summary Judgment was not a final order because it did not include Plaintiff's requested language enjoining Defendant from charging adjacent property owners for private easements over Defendant's property or boat docks, piers, boathouses, or similar structures on Defendant's property.

Defendant has argued from the beginning of this case that Plaintiff lacks standing to seek the declaratory judgment and injunction requested because it does not own a boat subject to Defendant's now-enjoined boat and trailer decal program or any real property adjacent to Defendant's property. This argument was set forth in Defendant's response to Plaintiff's Motion for Preliminary Injunction, in Defendant's Motion to Dismiss, in Defendant's Answer, in Defendant's Response to Plaintiff's Motion for Summary Judgment, and in Defendant's own Motion for Summary Judgment.

Defendant feels that this lack of standing is particularly significant in regard to the issue of private easements over Defendant's property by adjoining landowners as Arkansas case law provides that Plaintiff does not have standing to raise any issue concerning real property in

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which it does not possess an interest and the Act of Exchange provides for access to Lake Erling over “routes to be agreed upon and designated” by Defendant. Defendant has argued from the beginning of this case that these matters must be determined between Defendant and any neighbor asserting a private easement on a case-by-case basis, taking into consideration the facts and circumstances of each individual situation in light of Arkansas property law concerning easements or other rights over the property of another.

Defendant’s position regarding Plaintiff’s lack of standing to assert the rights of adjoining property owners was set forth in both Defendant’s Response to Plaintiff’s Motion for Summary Judgment and in Defendant’s own Motion for Summary Judgment. The Court’s ruling, announced in its e-mail of September 14, 2016, was that the Court had reached a conclusion as to the competing Motions for Summary Judgment and concluded that Plaintiff’s motion should be granted. The Court accepted Plaintiff’s proposed findings of fact and conclusions of law with only seven specific changes.

While Defendant was initially encouraged by the deletion of the language enjoining Defendant from charging fees for private easements to adjoining landowners or permits for boat docks or similar structures on Defendant’s property, the remainder of the Order makes it clear that Plaintiff’s Motion for Summary Judgment is granted.

The Order specifically provides “that Plaintiff is entitled to a declaratory judgment as a matter of law that its members are entitled to unrestricted access to Lake Erling.” Plaintiff’s Complaint includes a request for a declaration that Defendant’s programs to grant adjoining landowners easements and permits for private docks violate the Act of Exchange, and Plaintiff’s Motion for Summary Judgment gives no indication that anything less than judgment on all claims of the Complaint is sought. Read in its entirety, the Order Granting Plaintiff’s Motion for Summary Judgment gives no indication that Defendant’s right to control and management of its property, both through its boat and trailer decal program and program for granting easements to adjoining landowners and permits for structures such as boat docks on Defendant’s property, is anything but completely barred by the Court’s Order, only that the specific relief granted in the form of the injunction is slightly less encompassing than Plaintiff had requested.

Nothing in the Order Granting Plaintiff’s Motion for Summary Judgment indicates that Plaintiff’s motion is not granted in full or that the parties’ rights as to the subject matter in controversy are not concluded. Accordingly, Defendant filed its Notice of Appeal on October 13, 2016. In order to ensure the record of these proceedings is complete, Defendant also filed a copy of the Court’s e-mail, attached ruling, and Plaintiff’s proposed order granting its motion with findings of fact and conclusions of law.

While we believe that the Court’s Order Granting Plaintiff’s Motion for Summary Judgment is a final order and concludes the parties’ rights at the trial court level, if such was not the Court’s intent, Rule 60 permits the Court to modify or vacate a judgment, order, or decree on motion of the Court or any party within ninety days of its having been filed with the clerk. Defendant’s position is that the Order Granting Plaintiff’s Motion for Summary Judgment should

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be vacated and Plaintiff's Complaint dismissed for the reasons set forth in Defendant's motions and briefs previously filed.

I note Mr. Ledbetter's request for a telephone conference. While I understand the urgency of the matter, I must respectfully request that any discussion be on the record.

Sincerely,



Michael W. Boyd

MWB/ktg

cc: Alma Weed, Trial Court Assistant (*via e-mail to tcaweed@cableone.net*)
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