

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP2365-FT

Cir. Ct. No. 2006CV357

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**BARRY SERIER, HEATHER SERIER, RANDY EVERSON, ELMER SERIER,
HARVEY SERIER, MARVELL SERIER AND CITIZENS FOR A SAFE AND
PEACEFUL EAU GALLE AND RUSH RIVER TOWNSHIP, INC.,**

PLAINTIFFS-APPELLANTS,

v.

**CENTRAL ST. CROIX ROD AND GUN CLUB, INC., ST. CROIX COUNTY
ALLIANCE OF SPORTSMEN CLUBS, INC. (A/K/A ST. CROIX COUNTY
ALLIANCE OF CONSERVATION CLUBS, INC.), JOHN DOES 1-10,
JANE DOES 11-20, JOHN SMITHS 1-10 AND JANE SMITHS 11-20,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for St. Croix County:
ERIC J. LUNDELL, Judge. *Reversed and cause remanded with directions.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. In Appeal No. 2008AP2550, this court reversed a circuit court order permitting the operation of a firing range on property owned by Central St. Croix Rod and Gun Club, Inc., (the club). We remanded the case to the circuit court with specific directions “to enter a permanent injunction against firearm use at the club property.” *Serier v. Central St. Croix Rod & Gun Club, Inc.*, Appeal No. 2008AP2550, unpublished slip op. ¶1 (WI App July 21, 2009). Barry Serier and others (the neighbors), the successful appellants in that case, now appeal the order entered by the circuit court on remand, arguing that it is not consistent with this court’s mandate. We agree and, therefore, reverse and again remand for the circuit court to enter a permanent injunction against firearm use at the club property.

¶2 The following facts, taken from our earlier opinion, provide background for this appeal. The neighbors brought a trespass and nuisance action against the club seeking permanent injunctive relief prohibiting the use of firearms on club property. *See id.*, ¶2. In the midst of a bench trial, the parties reached a settlement agreement that included a prohibition against “[a]ll use of firearms at the Gun Club property.” *See id.*, ¶5. The parties agreed that the club could move to lift the injunction by presenting a plan of proposed modifications to both the property and the club’s operations to ensure that shot, bullets, and other projectiles would not escape the property. *See id.* The club subsequently presented a proposal that the court determined was not adequate because of several unresolved safety deficiencies. *See id.*, ¶7. The court then permitted the club to submit a revised plan, and upon review of the club’s second plan, the court approved it and authorized the reopening of the shooting range once the proposed changes were made. *See id.*, ¶9.

¶3 The neighbors appealed and we reversed. After noting that the parties' agreement, which had been adopted as the court's order, unambiguously stated if the club "does not prevail at the evidentiary hearing, this injunction shall become permanent," *id.*, ¶13, we held the agreement allowed the club "one opportunity to present an acceptable, comprehensive safety plan" and "based on the conclusion the initial safety plan was inadequate, the law required the circuit court to enforce the parties' agreement by entering a permanent injunction after the hearing." *Id.*, ¶14.

¶4 On remand, the neighbors moved for entry of a permanent injunction, consistent with this court's directions. The neighbors offered a proposed order stating: "[a]ll use of firearms at the Gun Club Property is hereby permanently enjoined." The club opposed the neighbors' proposed order, arguing that the permanent injunction should apply only to the club and its members, and not apply to the property itself. The circuit court agreed with the club and entered the following order: "The Defendant, Central St. Croix Rod and Gun Club, Inc., its members and guests, are hereby permanently enjoined from discharging firearms at the Gun Club property." The neighbors appeal.

¶5 Our holding in the first appeal was clear—because the club did not present an adequate safety plan, the parties' stipulation, "[a]ll use of firearms at the Gun Club Property is prohibited," must be enforced as a binding, permanent injunction. We plainly directed the circuit court "to enter a permanent injunction against firearm use at the club property" upon remand. *Id.*, ¶1. The circuit court was required to comply with this court's direction. See *Fullerton Lumber Co. v. Torborg*, 274 Wis. 478, 483, 80 N.W.2d 461 (1957). The circuit court's limitation of the injunction to the club, its members, and guests is not consistent with our prior opinion and mandate. Therefore, the order is reversed and the matter again

remanded for the entry of a permanent injunction against firearm use at the club property.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

