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## Nottolini v. LaSalle Nat'l Bank, 782 N.E.2d 980 (Il. App. Ct. 2003)

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found Urbano used the surface water unreasonably, because the water could have been diverted without adversely impacting Agnello.

Second, the court discussed the quiet title claim. The court found Agnello's expert witness offered more credible evidence than Urbano's expert witness. Therefore, the court held in favor of Agnello on the quiet title claim. Additionally, Agnello claimed Urbano trespassed on her land. The court concluded Urbano had trespassed, finding Agnello owned the property, Urbano intruded on the land by intentionally placing materials on the property, and the intrusion caused direct injury to Agnello. The court refused to award damages on the trespass claim.

Finally, Agnello claimed easement title based on an easement conveyed by deed, easement by implication, and easement by prescription. Agnello produced her property deed, which specifically mentioned an easement right. The court found Agnello presented adequate evidence to prove an express easement for "ingress and egress" purposes. Next, the court stated the factors for easement by implication—"the intention of the parties and whether the easement is reasonably necessary for the use and normal enjoyment of the dominant estate." Moreover, Agnello established easement by prescription by proving adverse possession. Agnello proved the open visibility of the easement, the uninterrupted use of the easement for fifteen years, and thus possessed a claim of right.

In conclusion, the court ruled in favor of Agnello and ordered Urbano to install a drainage system to divert surface water into the public storm drain system and to cease interference with the easement.

*Susan Curtis*

## ILLINOIS

**Nottolini v. LaSalle Nat'l Bank, 782 N.E.2d 980 (Ill. App. Ct. 2003)**  
(holding that a water-filled quarry is not of natural origin, and therefore is not a lake).

In 1999, Alecia, Cheryl, and Rick Nottolini ("Nottolins") filed a complaint in the Circuit Court of Kane County for a declaration of their rights to make reasonable use and enjoyment of the surface waters of an abandoned, water-filled quarry ("Quarry"). The Nottolins also requested a permanent injunction to bar the Quarry owner, William Dwyer ("Dwyer"), from maintaining any fences and barriers around the Quarry that would restrict their access to it. Dwyer counterclaimed for a declaration of his exclusive rights to the Quarry. The court held for the Nottolins, and denied Dwyer's counterclaim. Dwyer appealed to the Appellate Court of Illinois, Second District, claiming that the circuit court was mistaken in defining the Quarry as a lake. The appellate court reversed and remanded the case back to the

circuit court, with instructions to enter a judgment in favor of Dwyer's counterclaim, awarding Dwyer exclusive rights to the Quarry.

In 1925, LaSalle National Bank acquired title to the abandoned, water-filled limestone Quarry in South Elgin, Illinois. Dwyer is the sole beneficiary of the trust that includes title to the Quarry. Until a 1997 drowning, Dwyer permitted adjacent landowners to use the Quarry for swimming. Following the drowning, Dwyer prohibited further recreational use of the Quarry, and requested that adjacent landowners erect fences around the Quarry to prevent unauthorized access. Dwyer also erected his own fences where adjacent landowners had not.

In Illinois, if a body of water rises onto a landowner's property enough to denude it of vegetation, that portion of land is considered part of the lakebed. If a landowner owns a portion of a lakebed, the landowner is given the right to make reasonable use and enjoyment of the surface waters of the entire lake. The circuit court held that the Quarry constituted a lake, and because a portion of it rested on the Nottolinis' property, denuding it of vegetation, the Nottolinis were entitled to a right of reasonable use and enjoyment of the entire surface of the Quarry.

Prior to this case, no court in Illinois had addressed the question of whether a water-filled Quarry could be defined as a lake, nor had any Illinois court ever defined the term "lake." The appellate court examined the definitions of "lake" utilized by other jurisdictions, and adopted the definition of a lake as a reasonably permanent body of water at rest in a depression of the earth, if both depression and body of water are of natural origin.

The appellate court then applied this definition to the facts of the case. The Quarry was a man-made body of water, and was therefore not of natural origin. The court could not define the Quarry as a lake, and as a result, the Nottolinis' ownership of a portion of its bed did not provide them with any right to use the entirety of the Quarry's surface water.

*Steven J. Rypma*

## MASSACHUSETTS

**Greater Lawrence Sanitary Dist. v. Town of N. Andover, 785 N.E.2d 337 (Mass. 2003)** (holding the doctrines of preemption and essential government function do not prohibit a municipality from regulating an inter-municipal sanitation district to the extent the regulations do not interfere with the sanitation district's essential functions or the state regulatory regime).

The Greater Lawrence Sanitation District ("GLSD") sued the Town of North Andover, its Board of health and its Board of selectmen