

**FILED**  
COURT OF COMMON PLEAS  
AUG 25 2023  
JILL FANKHAUSER, Clerk  
PORTAGE COUNTY, OH

IN THE COURT OF COMMON PLEAS  
PORTAGE COUNTY, OHIO

**2023CV00700**

CASE NO.

DOROTHY MAUR  
6980 State Route 303  
Windham, Ohio 44288

JUDGE

**JUDGE LAURIE J. PITTMAN**

Plaintiff,

v.

COMPLAINT – TYPE:  
NUISANCE

MICHELLE FILLER  
8987 Birchwood Dr.  
Twinsburg, Ohio 44087

Defendant.

Now comes the Plaintiff, Dorothy Maur, by and through undersigned counsel, and for her Complaint against the Defendant, Michelle Filler, the Plaintiff states as follows:

PARTIES

1. That Plaintiff, Dorothy Maur, resides at 6980 State Route 303, Windham, Ohio, 44288. Ms. Maur has lived on the property for more than 50 years. The property is located within Freedom Township in Portage County, Ohio.

2. That Defendant, Michelle Filler (hereinafter “Filler”), owns a parcel of land directly adjacent to Ms. Maur, 6948 State Route 303, Windham, Ohio, 44288. Filler’s parcel of land is 24.7 acres on which she operates her business, Duke’s K9 Dash N’ Splash (hereinafter “Duke’s”). The property is located within Freedom Township in Portage County, Ohio.

3. That Filler resides at 8987 Birchwood Dr., Twinsburg, Ohio, 44087 which is located within the city of Twinsburg, Summit County, Ohio.

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

4. That Filler operates Duke's, an entertainment business hosting dog diving shows and dog training programs for sports including "barn hunt," on her Portage County property.

5. That Filler neither boards, breeds, or rears dogs, nor conducts any additional activities on her property consistent with Ohio agricultural purposes including, but not limited to, cultivation of crops or aquaculture on her Portage County property.

6. That Filler applied for and was granted an agricultural variance to construct an agricultural building on her Portage County property by the Freedom Township Zoning Inspector in April 2022.

7. That, on appeal, the Freedom Township Board of Zoning Appeals (hereinafter "the BZA") denied Filler's application for an agricultural variance for her Portage County property, finding that she did not conduct agricultural work on that property.

8. That all other dog diving sporting facilities in Ohio are zoned "commercial," and none are considered agricultural operations.

9. That Filler appealed the BZA's decision to the Portage County Court of Common Pleas for review on administrative appeal pursuant to Ohio Revised Code Chapter 2506.

10. That the Portage County Court of Common Pleas affirmed the decision of the BZA in its December 2022 Order.

11. That on or about January 9, 2023, Filler once again applied for an agricultural variance to construct an agricultural building of the same dimensions on her Portage County property with the Freedom Township Zoning Inspector. The 2023 application contained

language stating Filler also intended to use the agricultural variance “for the boarding, care, and training of dogs. Storage of agricultural equipment.”

12. That the Freedom Township Zoning Inspector Lou Mincek issued permit number AG-2023-001, an agricultural exempt certificate, to Filler for her Portage County property on or about January 10, 2023.

13. That the stated purpose of the 2023 Agricultural Exempt Certificate was to “Construct 60x100 Ag Building.”

14. That Filler continues to operate Duke’s despite consistent and prolonged complaints from Ms. Maur and neighbors.

15. That Filler frequently and continuously disturbs and frightens Maur with loud noises and acts of intimidation associated with operating Duke’s.

16. That Duke’s causes significant and disturbing traffic congestion on and around State Route 303 and near Ms. Maur’s property.

17. That Filler frequently plays loud music associated with operating Duke’s using large sound speakers pointed directly at the south facade of Ms. Filler’s home, denying Ms. Maur the quiet enjoyment of her private residence.

18. That, incidental to operating Duke’s, Filler permits the lighting of fireworks on her Portage County close to Ms. Maur’s home.

19. That, incidental to operating Duke’s, Filler permits patrons to shoot firearms close to Ms. Maur’s home. Most recently, Duke’s patrons stood on Filler’s Portage County property’s northeast corner with firearms and shot into earthen mounds located in the property’s northwestern corner. The properties of Ms. Maur and her neighbors are mere feet away from the

line of fire and the sound from the frequent and persistent gunshots was disturbing, distressing, and unsettling to Ms. Maur and those living nearby.

20. That Filler continuously intimidates Ms. Maur through her actions and verbal assertions and those of her associates.

21. That Ms. Maur owned a shed which she erected on her property in 1966 and which she tore down in 2019. The shed was primarily situated on Ms. Maur's property, but seven (7) feet of the shed crossed the border of the property onto the parcel that Filler aims to own.

**COUNT I  
(Private Nuisance)**

22. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 21, above, as if recited verbatim and further states as follows:

23. That in consideration of Filler's operation of Duke's, Ms. Maur suffers the denial of her right to quiet enjoyment of her property through Filler's intentional and unreasonable actions.

24. That in consideration of Filler's operation of Duke's, Ms. Maur suffers the denial of her right to quiet enjoyment of her property through Filler's unintentional actions caused by negligent, or abnormally dangerous conduct, including:

25. Playing loud and disturbing music with sound speakers directed at the southern facade of Ms. Maur's home;

26. Hosting noisy and disruptive patrons on her Portage County property, mere feet away from Ms. Maur's home;

27. Causing unpleasant and frustrating traffic to accumulate outside of Filler's property in such numbers as to obstruct access to Ms. Maur's premises;

28. Authorizing the use of deadly firearms for commercial purposes mere feet away from Ms. Filler's property;

29. Yelling, cursing, and verbally threatening Ms. Maur while she stood outside of her home and within her property boundary.

30. That Ms. Filler's and Duke's disturbing sounds Ms. Maur continues to experience are not caused by typical agricultural land use.

31. That the litter from Duke's patrons, the emissions from cars, vehicles, and trucks, driving to and from Duke's, is sufficient to cause significant air and water pollution negatively impacting Ms. Maur's health.

32. That Ms. Maur is a person of ordinary sensibilities.

33. That, on account of Filler's actions, Ms. Maur suffered severe annoyance, frustration, and fear caused by a significant degree of discomfort arising from Filler's actions.

## **COUNT II**

### **(Trespass to Lands Acquired through Adverse Possession)**

34. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 33, above, as if recited verbatim and further states as follows:

35. That under a manifest weight of the evidence, Ms. Maur:

36. Openly possessed and utilized a storage shed, partially located at least seven (7) feet beyond her property line and onto the property that Filler aims to own;

37. Notoriously used the storage shed in question;

38. Exclusively utilized the storage shed and did not extend its use to the former owner of the parcel which Ms. Filler currently owns or to anyone else;

39. Used a portion of the property that Filler aims to own;

40. Was using the portion of the property Filler aims to own with the former owner's knowledge, and the former owner never gave her permission to use it;

41. Used the portion of the property continuously from 1966 through 2019 when she removed the shed.

42. That on multiple occasions Filler intentionally intruded upon Ms. Maur's property without prior authorization from Ms. Maur when Filler and/ or her agents:

43. Conducted various unofficial and intimidating "land surveying" expeditions along the tree covered area separating Filler's and Ms. Maur's properties;

44. Walked up to Ms. Maur's back yard to yell, curse, and verbally threaten her;

45. Shoots firearms, light fireworks, and conduct business in close proximity to Ms. Maur's property line pursuant to the operation of Duke's.

**COUNT III**  
**(Intentional Infliction of Emotional Distress)**

46. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 45, above, as if recited verbatim and further states as follows:

47. That Filler intended to cause Ms. Maur serious emotional distress when she and/ or her agents repeatedly yelled, cursed, and verbally threatened Ms. Maur while she stood outside of her home and within her property boundary;

48. Shot firearms close to Ms. Maur's home;

49. Played loud and disturbing music on sound speakers directed toward Ms. Maur's home.

50. That Filler's intimidating behavior toward Ms. Maur was extreme and outrageous.

51. That an act is extreme when it passes all bounds of decency and is excessive, wanton, or gross.

52. That Ms. Maur suffers continued and serious emotional distress proximately caused by Filler's threatening and intimidating behavior.

#### **COUNT IV**

##### **(Intentional Violation of Zoning Resolution)**

53. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 52, above, as if recited verbatim and further states as follows:

54. That Filler erected, constructed, altered, repaired, or maintained a building or structure and used her Portage County property in violation, and imminent threat thereof, of the Freedom Township zoning resolution and the zoning inspector's agricultural variance.

55. That Ms. Maur is a contiguous and neighboring property owner directly adjacent to Filler's Portage County property.

56. That Ms. Maur is especially damaged by Filler's violation of the Freedom Township zoning resolution and the zoning inspector's agricultural variance.

57. That Filler intentionally and continuously failed to comply with the agricultural variance the zoning inspector had granted her to construct an agricultural building by:

58. Constructing a building with the primary purpose and function of operating her commercial business, Duke's, and;

59. Continuing to operate a commercial business open to patrons out of the building.

60. That operating a commercial business is not a qualified agricultural activity.

61. That operating a commercial business falls outside those agricultural activities that the Freedom Township agricultural zoning variance permits.

62. That Filler's commercial building should be rebuilt to satisfy the safety standards required of commercial buildings open and accessible to public patrons to protect the public and those patrons gathering within Filler's commercial building.

**PRAYER**

**WHEREFORE**, Plaintiff Dorothy Maur prays for relief from Defendant, Michelle Filler, as follows:

(1) Compensatory damages in the amount of Twenty Thousand and 00/100 Dollars (\$20,000.00).

(2) Costs of suit and Court costs.

(3) Attorney fees, if allowed, for private nuisance and for intentional infliction of emotional distress.

(4) Such other relief as the Court deems just and proper.

(5) Punitive damages, if allowed, for private nuisance and for intentional infliction of emotional distress.

(6) A mandatory injunction prohibiting Filler from operating her commercial business, Duke's, and causing significant and disturbing traffic, permitting overnight campers, lighting fireworks, operating deadly firearms, and playing loud and disturbing music near Ms. Maur's home, and yelling, cursing, and violently threatening Ms. Maur, on her Portage County property, in violation of the Freedom Township zoning resolution and agricultural variance.

(7) A declaratory judgment that Filler does not use her Portage County property for any approved agricultural purposes, revoking the agricultural variance the zoning inspector erroneously granted Filler for her commercial building.



Respectfully submitted,

**RODERICK LINTON BELFANCE LLP**

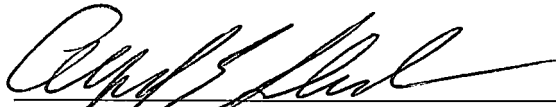


---

Alfred E. Schrader (0001837)  
David A. Randolph (0099632)  
50 S. Main Street, 10<sup>th</sup> Floor  
Akron, Ohio 44308  
Phone: (330) 434-3000  
Fax: (330) 434-9220  
Email: [aschrader@rlblp.com](mailto:aschrader@rlblp.com)  
[drandolph@rlblp.com](mailto:drandolph@rlblp.com)  
*Attorneys for Plaintiff*

**INSTRUCTIONS TO THE CLERK - CERTIFIED MAIL SERVICE**

Please serve a copy of the Summons and Complaint upon the Defendant at the address set forth in the caption by certified mail, return receipt requested.



---

Alfred E. Schrader (0001837)