

IN THE COURT OF APPEALS OF IOWA

FILED

NOV 20 1984

CLERK SUPREME COURT

SHERRILL DASHNER,

Plaintiff-Appellant,

vs.

LORIMORE DRAINAGE DISTRICT,
NEWELL LORIMORE, LEIGHTON
McCREARY and G. G. RICHARDSON,
Directors of the Drainage District,

Defendants-Appellees.

Filed November 20, 1984

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4-382
83-306

Appeal from the Iowa District Court for Mills County - Keith E. Burgett,
Judge.

Plaintiff appeals from judgment for defendants in a negligence action arising out of flood damage to his corn crop, asserting that the evidence was insufficient to support the trial court's finding that the amount of rain that fell was an act of God and that defendants' failure to repair a break in a levee was not the proximate cause of plaintiff's flood damage. AFFIRMED.

John D. Sens of Stuart, Tinley, Peters, Thorn, Smits & Sens, Council Bluffs,
for plaintiff-appellant.

Philip Willson of Smith, Peterson, Beckman & Willson, Council Bluffs, for
defendants-appellees.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

SNELL, J.

Plaintiff farmer sustained damages to a corn crop from water flowing onto his property through a break at the location of a pre-existing hole in a levee that was a part of defendant drainage district. His petition seeking damages alleged that defendants' negligence in failing to repair the hole, after having been aware of its existence for a period of several months, was the proximate cause of flood damage resulting from the levee break on June 14, 1982.

The plaintiff testified that in the fall of 1981 he discovered a beaver dam causing water to be channelled through the hole and flooding his land. He informed the defendants of the problem. The defendants discussed the problem and had at least one man examine the hole to determine whether it could be repaired. However, nothing was done. During the course of trial to the court, plaintiff testified that the levee break occurred on June 14, 1982, after a "good sized rain." The individual defendants, directors of the drainage district and long-time residents of the area, testified that the spring of 1982 was unusually wet and that levee breaks had occurred in other places which caused flooding throughout the area. Defendant Richardson estimated the rain of June 14 as amounting to more than six inches. Exhibits depicting the area were admitted into evidence showing other breaks in the levee and standing water in other fields.

The trial court entered judgment for defendants based upon factual findings that the amount of rain was such an unusual and extraordinary manifestation of nature that it could not reasonably have been anticipated or foreseen and that the flooding of plaintiff's property would have occurred even in the absence of the levee break.

The findings of fact of the trial court are binding on us if supported by substantial evidence in the record. Iowa R. App. P. 14(f)(1).

"An act of God need not be unprecedented in the sense that nothing like it ever occurred before." Oakes v. Peter Pan Bakers, Inc., 258 Iowa 447, 454, 138

N.W.2d 93, 98 (1965). The court in Oakes went on to state that:

The rule of exemption from liability for loss, where the loss is the result of an "act of God," is founded upon reason and justice that one should not be held responsible for that which he could not have reasonably anticipated, and could not have taken reasonable precautions to guard against. Accordingly, it is said that an act of God, as the term is known to the law, is such an unusual and extraordinary manifestation of the forces of nature that it could not under normal conditions have been anticipated or expected. However, the occurrence need not be unprecedented. * * * If it could not have been anticipated or expected under normal conditions, that is sufficient.

Id., 138 N.W.2d at 98 (citing 1 Am. Jur. 2d Acts of God § 3). "Whether an act of God will ever occur again is unknown and speculative; unpredictability is its essential nature" Shrader v. State, 213 N.W.2d 539, 544 (Iowa 1973).

We find substantial evidence in the record to support the trial court holding that the damage caused by the flooding was the result of an act of God and not by the hole in the levee.

The plaintiff admits that there was "excessive moisture" during the spring of 1982. Defendant Lorimore testified that he had "never seen a spring like this one" in terms of the amount of rainfall. Both parties agree that approximately six inches of rain fell on June 14, the day of the flooding. This was the same rainstorm that washed out the tracks by Emerson, Iowa, in Mills County, and derailed an Amtrak train. The plaintiff's corn crop which was flooded is also located in Mills County. Both parties testified that, from the trash on a bridge and road near the land, it appeared that the rain washed over the bridge and road.

The testimony of both parties indicates that the flooding was the result of some unusual and extraordinary manifestation of the forces of nature. There is substantial evidence showing that it could not have been foreseen or anticipated. Likewise, there is substantial evidence to support the trial court's finding that the defendant's failure to repair the break in the levee was not the proximate cause of the plaintiff's flood damage.

The findings of the trial court are affirmed.

AFFIRMED.