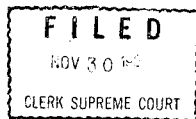


IN THE COURT OF APPEALS OF IOWA



ANDREW HOSTERT, IRENE HOSTERT,)
A M HESS, a/k/a AMBROSE HESS,)
KATHLEEN HESS,)

Plaintiffs-Appellants,)

vs)

GILBERT F. WIEFERICH,)

Defendant-Appellee.)

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Filed November 30, 1987

7-361
87-203

Appeal from the Iowa District Court for Dubuque County (84838), R.J.
Curnan, Judge.

Plaintiffs appeal the judgment of the trial court denying their request
for injunctive relief and damages from the defendant. **AFFIRMED IN PART;
REVERSED IN PART; AND REMANDED.**

Tom Jenk and Thomas J. Goodman of Jenk, Jenk, Goen, McClean &
Goodman, Dyersville, for plaintiffs-appellants.

Marc W. Casey of Moss & Heim, Dyersville, for defendant-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

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Plaintiffs, Andrew and Irene Hostert and A.M. and Kathleen Hess, appeal the judgment of the trial court denying their request for injunctive relief and damages from the defendant, Gilbert Wieferich. Plaintiffs requested removal of an earthen dike from Wieferich's property and damages from backup of water on their land caused by the dike. On appeal, plaintiffs assert the trial court erred in denying their request for injunctive relief and damages. The trial court concluded plaintiff's farming practices substantially changed the drainage of water across their land, and Wieferich was justified in constructing the dike.

The parties do not dispute the legal principles applicable to this case. Generally, the owner of a dominant estate has a legal and natural easement in the servient estate for the drainage of surface waters and the natural flow of the waters cannot be interrupted or prevented by the servient owner to the detriment of the dominant owner. See Ditch v. Hess, 212 N.W.2d 442, 448 (Iowa 1973). The dominant owner may divert water by surface drainage constructed upon his land even though some additional water may thereby enter the servient estate. Moody v. Van Wechel, 402 N.W.2d 752, 757 (Iowa 1987). But the dominant owner may not collect the water in a body or precipitate it in greatly increased or unnatural quantities upon the servient estate to the substantial injury of the servient owner. See Geneser v. Healy, 124 Iowa 310, 313-14, 100 N.W. 66, 67-68 (1904); Livingston v. McDonald, 21 Iowa 160, 172 (1866). If the volume of water is substantially increased or if the manner or method of drainage is substantially changed and actual damage results, the servient owner is entitled to relief. Oak Leaf Country Club, Inc. v. Wilson, 257 N.W.2d 739, 745 (Iowa 1977).

The parties vigorously dispute the facts in this case. Plaintiffs assert the water from their land always drained through Wieferich's servient estate. They also contend, even if a different natural waterway was farmed shut by them, increasing the flow of water on Wieferich's land, the increased flow was the result of a gradual change in the lay of the land due to farming. They further contend Wieferich has not been substantially damaged, since his farm has historically experienced flooding. Wieferich, by contrast, asserts historically the water flowed across the plaintiffs' land and drained into a nearby creek. He contends farming practices implemented recently by the Hosterts to improve their property altered this natural flow and caused substantially additional amounts of surface water to flow onto his property. He further contends this additional water damaged approximately twenty acres of corn in the spring of 1982. Therefore, he built the earthen dike in question.

This case was tried in equity, so our review is de novo. Iowa R. App. P. 4. Although we are not bound by the fact findings of the trial court, we give weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

The trial court found some water from the Hostert farm, in the past, drained through Wieferich's land. The court therefore found the Hostert land was the dominant estate and Wieferich's land was the servient estate. The trial court also found, however, some water from the Hostert farm had run toward the nearby creek, bypassing Wieferich's land. The court further found this flow had all but dried up due to farming and built-up silt over the course of years. As a result, the entire drainage from the Hostert farm now flowed through Wieferich's land. The trial court concluded this additional amount of water caused by the gradual change in the contour of the Hostert land was a substantial amount and would do substantial additional damage to Wieferich's

land. The court therefore denied plaintiffs' request for injunctive relief and damages.

Our review of the record persuades us the trial court was correct in concluding the volume of water flowing through Wieferich's land was substantially increased by the Hosterts' act of farming shut the natural waterway to the nearby creek. We cannot agree, however, Wieferich's construction of the dike was entirely appropriate under these facts and circumstances. Clearly he had the right to prevent the substantial increase in water flowing across his land. But in so doing, he also prevented the hitherto natural flow of water across his land. Thus, part of the flooding occurring on plaintiffs' land is water which formerly flowed naturally through Wieferich's land.

We note that injunctive relief is an extraordinary remedy, to be granted with caution and only when clearly required. Incorporated City of Denison, 306 N.W.2d 748, 755 (Iowa 1981). The decision of whether to grant injunctive relief lies in the discretion of the trial court, but such relief should issue only when the party seeking relief has no adequate remedy at law. Green v. Advance Homes, Inc., 293 N.W.2d 204, 208 (Iowa 1980). We conclude the trial court did not abuse its discretion in denying plaintiffs' request for injunctive relief, since they can recover those damages caused by the flooding of water which formerly flowed naturally through Wieferich's land. The trial court erred, however, in not determining those damages. We remand for that purpose.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.