



IN THE COURT OF APPEALS OF IOWA

JACK WORMLEY,)

Plaintiff-Appellant,)

vs.)

IOWA DEPARTMENT OF TRANSPOR-)
TATION, STATE OF IOWA,)

Defendant-Appellee.

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8-578
88-361

Appeal from the Iowa District Court for Jasper County
(99-58), Jerrold W. Jordan, Judge.

Plaintiff appeals from the dismissal of his petition.
AFFIRMED.

Richard O. Parker, Nevada, for plaintiff-appellant.

John W. Baty, Ames, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

PER CURIAM

The plaintiff owns farmland beside a highway right-of-way. He brought suit against the State alleging honeysuckle planted on the right-of-way had spread to his field and damaged his crops. The district court granted the State judgment on the pleadings and dismissed the lawsuit. We affirm.

The plaintiff, Jack Wormley, owns farmland adjacent to the Interstate 80 right-of-way in Jasper County. Some time prior to 1975, the Iowa Department of Transportation (DOT) planted honeysuckle plants as a "living snow fence" at the edge of the highway property and adjacent to the Wormley farmland. Wormley alleges the honeysuckle has spread onto his farmland and has damaged his crops by competing for light, water, and nutrients.

Wormley complained to the DOT about the honeysuckle plants in 1976 and again in 1983. Dissatisfied with the DOT's response to his 1983 complaint, Wormley filed a tort claim with the State Appeal Board in August 1985. The Appeal Board denied the claim, and Wormley then filed the present tort claim lawsuit against the State in August 1986.

The State filed a "motion for judgment on the pleadings and adjudication of law points." The district court sustained this motion and dismissed Wormley's lawsuit on two grounds. The district court held Wormley had not

complied with the two-year statute of limitation period stated in Iowa Code section 25A.13 for tort claims against the State. The district court also held planting of honeysuckle on one's own property is not actionable negligence and gives rise to no cause of action.

Wormley has appealed from the dismissal of his petition. He challenges both of the district court's holdings sketched above.

Wormley contends the two-year statute of limitation found in Iowa Code section 25A.13 does not apply to this case because this case is not governed by chapter 25A, the State Tort Claims Act. Wormley contends this is an action concerning real estate, that in real estate cases the State's sovereign immunity is waived by Iowa Code section 613.8 rather than by chapter 25A, and because this case is independent of chapter 25A the applicable statute of limitation is the fifteen-year limit provided in Iowa Code section 614.1(11) for actions "arising out of the . . . defective condition of an improvement to real property."

Wormley also contends his petition stated a cause of action under theories of negligence and nuisance. He contends the district court erred by holding as a matter of law the planting of the honeysuckle was not actionable negligence.

We initially review Wormley's contention the trial court misapplied the statute of limitations found in

25A.13, the State Tort Claims Act. He urges this matter does not fall within the purview of the act. He instead insists statutory language and the weight of precedent leads to a conclusion the State has waived its immunity in real estate claims. Specifically, Wormley points to Iowa Code section 613.8 which states:

613.8 Actions against state.

Upon the conditions herein provided for the protection of the state, the consent of the state be and it is hereby given, to be made a party in any suit or action which is now pending or which may hereafter be brought in any of the district courts of Iowa, any of the United States district courts within the state or in any other court of or in Iowa having jurisdiction of the subject matter, involving the title to real estate, the partition of real estate, the foreclosure of liens or mortgages against real estate or the determination of the priorities of liens or claims against real estate, for the purpose of obtaining an adjudication touching or pertaining to any mortgage or other lien or claim which the state may have or claim to the real estate involved. The petition in such action shall specifically allege the interest or apparent interest of the state and the specific facts upon which the claim against the state is based and it shall be legally insufficient to allege said claim in general terms.

If we agree with Wormley's contention that section 613.8 is applicable here, he contends the appropriate statute of limitations is fifteen years pursuant to section 614.1(11) which provides for limitation of actions "arising out of . . . the defective condition of an improvement to real property based on tort." Thus, Wormley contends the planting of honeysuckle was an improvement to real property and it has become a nuisance, therefore the fifteen-year statute of limitations should apply. We disagree.

Wormley's argument fails on his belief section 613.8 applies here rather than the two-year statute of limitation found in the tort claims act. Iowa Code § 25A.13 (1987). First we determine section 613.8 was not designed to address the problem complained of here. The explicit terms of this section do not lend themselves to a construction that could include tortious conduct complained of here. We will strictly construe statutes which diminish the State's sovereignty. State v. Dvorak, 261 N.W.2d 586, 588 (Iowa 1978). The courts of this state have not construed the language of this statute in a manner which the plaintiff requests and we refuse to broaden the construction in this case. See Motandon v. Hargrave Construction Co., 256 Iowa 1297, 130 N.W.2d 659 (1964).

It is clear from the record the trial court did not err in applying the limitation of actions provisions of section 25A.13 in this matter. In addition, we hold the trial court properly determined the plaintiffs had become aware of their dilemma shortly after the honeysuckle was planted in 1975 and therefore, because this action was not filed until 1985 with the State Appeal Board, it is clearly outside the two-year statute of limitations provided in the State Tort Claims Act.

In view of our holding which effectively bars this action, it is not necessary to address plaintiff's remaining assignment of error.

AFFIRMED.