IN THE COURT OF APPEALS OF IOWA

MILO J. HANOUSEK and
HATTIE HANOUSEK,

Plaintiffs-Appellees,

vs.

WALTER LORENZEN,

Defendant-Appellant.

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Appeal from Tama District Court - Harold J. Swailes, Judge.

Defendant appeals from judgment and decree granting plaintiffs injunctive relief against the consequences of water flowing onto plaintiffs' crop land from defendant's adjoining land. AFFIRMED.

John B. Grier of Cartwright, Druker & Ryden, Marshalltown, Iowa, for defendant-appellant.

Jared O. Bauch of the Bauch Law Office, Traer, Iowa, for plaintiffs-appellees.

Heard by Donielson, Acting C.J., and Snell, Carter and Johnson, JJ. Considered en banc.

Defendant appeals from judgment and decree granting plaintiffs injunctive relief against the consequences of water flowing onto plaintiffs' crop land from defendant's adjoining land. In accordance with Iowa R. App. P. 4, we review the record de novo and affirm the trial court's judgment and decree.

It is the contention of the plaintiffs that as a result of defendant's actions in constructing a grassed waterway on his own property the natural course of surface water drainage was altered so as to cause water to flow from defendant's lands onto plaintiffs' lands in increased amounts, in an increased velocity, and in a concentrated course of washing. The result of this change, it is urged, is substantial erosion damage to plaintiffs' crop lands. The trial court, in its written decision, exhaustively reviewed the applicable law of surface water drainage in this state and made detailed findings of fact. It determined from the evidence presented at trial that plaintiffs had for the most part established their claims and were entitled to the injunctive relief which had been requested.

Defendant's claims on appeal may be grouped into three general contentions: (1) that there was insufficient evidence that his new waterway materially changed the natural flow of surface water onto plaintiffs' property; (2) that there was insufficient evidence that the injury to plaintiffs' land was sufficient to warrant the granting of injunctive relief; and (3) that in lieu of requiring defendant to restore the natural flow of surface waters, the plaintiffs should be required to alter the drainage system on their own property so as to protect themselves against erosion of their crop land.

I. In reviewing these claims we apply (as did the trial court) the basic principles which have become well established by both legislative enactment and judicial decision. These principles were summarized as follows in Obe v. Pattat, 151 Iowa 723, 727, 130 N.W. 903, 905 (1911):

> [The] rule, so far as it applies to the case before us, is that, while the owner of the dominant estate may insist on the surface waters having free flow from his lands in accordance with natural conditions and may himself interfere with such flow so far as the same is affected by the ordinary operations of good husbandry, he cannot lawfully collect into a mass and discharge upon his neighbor's premises "in greatly increased or unnatural quantities to the substantial injury of the latter."

It has also been determined that in resolving such issues, the courts should apply a "relative hardship" or "balance of convenience" standard. Meyers v. Caple, 258 N.W.2d 301, 305 (Iowa 1977); Kriener v. Turkey Valley Community School District, 212 N.W.2d 526, 536 (Iowa 1973); Johnson v. Pattison, 185 N.W.2d 790, 797 (Iowa 1971).

Our de novo review convinces us that the trial court's exhaustive findings accurately reflect the greater weight of the proof adduced at trial. There is some evidence that except in instances of unusually heavy rainfall, all of the surface water from defendant's lands had, prior to the installation of the grassed waterway, flowed into a creek entirely upon defendant's own lands. While this was disputed (and the trial court made no definitive finding on this issue) it does appear that even if some of defendant's water had previously drained onto plaintiffs' lands, the result of the newly constructed artificial waterway is such that the new waterway concentrated the flow of water from defendant's premises onto plaintiffs' land in a thirty-foot wide channel whereas it had been widely dispersed before; that this flow of water is now causing erosion on plaintiffs' property which will cause severe damage to the property and will eventually sever an eleven-acre tract of plaintiffs' farm. The strongest and most believable evidence that this is so is the evidence showing serious erosion problems on plaintiffs' land immediately following the building of defendant's waterway, which, according to the greater weight of the evidence, had not existed prior to that time.

We also agree with the trial court's finding that plaintiffs' damage was substantial under the "balance of convenience" test. Two seemingly disinterested witnesses from the United States Department of Agriculture Soil Conservation Service testified that defendant's new waterway concentrated water which had been otherwise widely dispersed and, as a result, erosion was occurring which would cause severe damage to the property and would eventually sever an eleven-acre tract. We conclude this evidence is credible and supports the granting of injunctive relief.

II. Next, we consider defendant's claim that to the extent the change in the flow of the surface water now causes damage to plaintiffs, they should act to protect themselves. This argument is cast in two forms. First, it is used to re-urge the "balance of convenience" test which we have previously determined does not preclude the granting of injunctive relief on the totality of the evidence in the present case. Second, it is a claim that plaintiffs have an adequate remedy at law in that they can build their own waterway to handle the concentrated flow from defendant's lands and sue defendants for damages for the cost of this construction. We find these arguments to be unpersuasive. We have been cited no authority indicating plaintiffs are under obligation to affirmatively change their own natural waterway. Moreover, even if this would be proper in some instances, we cannot conclude that it is a proper remedy in the present case. There is some indication in the record that even if plaintiffs continued

defendant's artifically-created waterway across their own property, the concentrated flow would spread so as to cause wet spots. More significantly, although defendant farms north and south (parallel to the waterway), plaintiffs farm east and west, and if the waterway were extended across their lands they would be forced to continually cross it in the course of plowing and harvesting.

Following full consideration of all of the issues argued on appeal, we conclude that the trial court's decision, judgment and decree were correct and should be affirmed.

AFFIRMED.