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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ALLEN H. MINER and DENNIS D. THOEN,

Appellants,

vs.

RALPH HARRIS, HUBERT BANG and ROBERT SMITH, Constituting the Board of Supervisors of Worth County, Iowa,

Appellees.

Filed April 28, 1978

461
2-60268

Appeal from Worth District Court - J. W. Frye, Judge.

Plaintiff-landowners appeal a pre-trial dismissal of their petition seeking a declaratory judgment as to the invalidity of a drainage district and an injunction preventing defendants from proceeding with said district. AFFIRMED.

M. Wayne Oltrogge, of Clear Lake, counsel for appellants.

Floyd E. Ensign, of Northwood, counsel for appellees.

Submitted to Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

514

DONIELSON, J.

Plaintiff-landowners, Allen H. Miner and Dennis D. Thoen appeal from a pre-trial dismissal of their petition which sought a declaratory judgment as to the invalidity of a drainage district and an injunction preventing defendants, members of the Board of Supervisors of Worth County, from proceeding with the drainage district. On appeal, plaintiffs assert (1) that defendants' failure to strictly comply with the provisions of chapter 455, The Code, pertaining to notice of hearing on the classification report, rendered the establishment of the drainage district invalid and void and (2) since the proceedings were invalid and void, plaintiffs were not required to seek relief by way of direct appeal, as specified in §§ 455.92 and 455.106, The Code.

The facts in this case as found by the trial court are not in dispute. On December 9, 1974, a petition was filed with the Worth County Auditor for the establishment of a drainage district. The engineer's report was filed on August 18, 1975 and on September 3, 1975, the county board of supervisors accepted the plan and set November 5 as the date for hearing on establishment of the district. All proper parties, including the plaintiffs, were duly notified in accordance with the statutory requirements. Sections 455.19 and 455.20, The Code. On November 3, plaintiffs filed written objections to the establishment of the district. On November 5, the hearing was held as scheduled and plaintiffs appeared and were represented by counsel.

On December 1, 1975, pursuant to § 455.19, The Code, plaintiffs petitioned the board to classify the lands within the district prior to its establishment. The board met the next day and appointed commissioners to classify the land and file a report. At that December 2 proceeding, the board publicly announced that the meeting was adjourned until January 20, 1976. At the close of the January 20 meeting, the board publicly announced that it was adjourning until March 11.

The commissioners filed a classification and assessment schedule on February 13, 1976. On March 11, the board met and plaintiffs appeared and were represented by counsel. At this meeting drainage district No. 78 was established. After giving proper notice, the board met again on April 20 for the purpose of opening bids and letting the contract.

On April 29, 1976, a notice of hearing on the report of the commissioners was published, in which June 14 was fixed as the date for the hearing, and a copy of this

notice was sent to plaintiffs. Plaintiffs filed their petition in the instant matter on June 11.

The June 14, 1976 meeting was held as scheduled, at which time plaintiffs' counsel made no objection to the classification and assessment, although he did object to all proceedings held after March 11, 1976, as being invalid due to the board's failure to comply with the notice requirements of § 455.19. At a subsequent scheduled meeting held June 28, plaintiffs appeared and objected on the ground that the assessments were excessive. On September 22, 1976, plaintiffs filed a claim for damages to crops, tile and fence line. The board allowed damages in the amount of $5. Plaintiffs took no direct appeal from any of the proceedings of the board regarding the classification and assessment schedule or the ultimate establishment of the district.

Plaintiffs contend that the establishment of the drainage district was invalid because of the failure of defendants to give proper notice of hearing on the classification report prior to the establishment of the district. Defendants respond that the trial court correctly concluded that plaintiffs had ample notice of all stages of the proceedings and at every stage, either appeared personally or through counsel, or had filed written appearances, objections, or a claim for damages.

In dismissing plaintiffs' petition, the trial court concluded that notice of the classification proceedings as required by §§ 455.19, 455.20, 455.52 and 455.53, The Code, were not given prior to the establishment of the district, but proper notice of hearing on the original petition of December 9, 1974 was given by publication and in writing to all interested parties. Plaintiffs appeared in person and through counsel at every stage of the proceedings and, with the exception of an oral objection of counsel made at the June 14, 1976 meeting, they did not at any time object to the board's jurisdiction because of defective notice. The trial court held that since plaintiffs entered their appearances and filed objections and later a claim for damages, they had waived any defect as to improper notice, and are therefore estopped from claiming that any defect in notice served to deprive the board of jurisdiction to establish the district.

Our review in this matter is **de novo.** Section 455.101, The Code; rule 4, Rules of Appellate Procedure; see Shay v. Board of Supervisors of Ringgold County, 185 Iowa 282, 283-284, 170 N.W. 393 (1919); Bradford v. Board of Supervisors of Emmet County, 160

Iowa 206, 210, 140 N.W. 804 (1913); Lightner v. Board of Supervisors of Greene County, 145 Iowa 95, 99-101, 123 N.W. 749 (1909). Section 455.24, The Code, provides in pertinent part:

> "No service of a notice shall be required upon any person . . . who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance."

In Ross v. Board of Supervisors of Wright County, 128 Iowa 427, 434-435, 104 N.W. 506 (1905), the court held that where a landowner who was not notified of a drainage proceeding affecting her land, voluntarily appeared and procured the allowance of a claim for damages, she had waived any objections she may have had to the improper notice. See Witham v. Union County, 198 Iowa 359, 371, 196 N.W. 605 (1924); Harker v. Board of Supervisors of Greene County, 182 Iowa 121, 125-130, 163 N.W. 233, cert. denied, 246 U.S. 673, 38 S.Ct. 424, 62 L.Ed. 932 (1917); Goeppinger v. Boards of Supervisors, 172 Iowa 30, 42, 152 N.W. 58 (1915); Gray v. Anderson, 140 Iowa 359, 361-362, 118 N.W. 526 (1908).

Based upon the facts of this case, we hold that the trial court correctly concluded that plaintiffs had waived any objections they may have had to defects or omissions in notice. Plaintiffs not only appeared personally or through counsel at every stage of the proceedings, they filed objections and a claim for damages as well.

With regard to plaintiffs' second issue, the law is settled that irregularities or illegalities in drainage proceedings may only be challenged by direct appeal. Collateral attack is only permitted when the proceedings are void. Whisenand v. Nutt, 235 Iowa 301, 304-305, 15 N.W.2d 533 (1944); Bradley v. Appanoose County, 199 Iowa 317, 319-320, 200 N.W. 216 (1924); Petersen v. Sorensen, 192 Iowa 471, 479, 185 N.W. 42 (1921); Chicago & N.W. R. Co. v. Board of Supervisors of Hamilton County, 182 Iowa 60, 69-76, 162 N.W. 868 (1917); §§ 455.92 and 455.106, The Code. However, since plaintiffs waived any objections based upon improper or inadequate notice, they may not complain now that the establishment of the district was invalid and void in an attempt to circumvent the requirement of proceeding by way of direct appeal and thereby obtain relief in this collateral attack on the board's actions. We find no error and affirm the district court.

AFFIRMED.