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Price v. Seattle, 24 P.3d 1038 (Wash. Ct. App. 2001)

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WASHINGTON

Price v. Seattle, 24 P.3d 1098 (Wash. Ct. App. 2001) (finding city of Seattle not liable for failing to prevent landslide that destroyed several homes, because landslide was caused by natural conditions).

Landslides damaged the Burg and Heil-Hartnegel's ("Burg") homes on Magnolia Bluff in Seattle, from an upper slope owned by the city of Seattle ("City"), in February 1996. The bluff was made of dense glacial till, which has been naturally eroding for thousands of years. Studies performed by a consulting firm concluded unprecedented rainfall built up the water pressure in the till cliff to a critical level, triggering the slides. The report recommended that the City upgrade the falling bluff and install groundwater pumps. The City installed some pumps in November 1996, but more were needed to prevent danger. The City posted orders on several houses on Perkins Lane warning of imminent danger and requiring the residents to vacate. After a season of heavy rain and snow, all of the residents' homes were eventually destroyed in 1997 and rendered uninhabitable. The Burgs brought suit against the City, alleging negligence, inverse condemnation and trespass. The trial court held the action failed for lack of a duty owed to the Burgs.

The Burg's negligence theory was based on the idea that the City owed a duty to take reasonable measures to stabilize the slope and that an alteration on the City's property caused the bluff to become unnaturally vulnerable to the natural forces at work. This court held that the City, as possessor of land, owed no duty to the Burgs to take measures to stabilize the slope above Perkins Lane. They also held that this conclusion was consistent with the surface water doctrine, invoked by the Burgs as an alternate theory of liability, where a landowner is liable for damage caused by errant surface water flows only where the landowner has engaged in activities that alter the flow.

The court's holding stems from a previous case, *Albin v. National Bank of Commerce* where a tree killed a motorist during a windstorm and the bank was not held liable because the injury stemmed from a natural condition. This court reasoned that under *Albin,* to establish a duty owed by a landowner to prevent harm to others outside the land, it was not enough to establish that the landowner had actual or constructive notice of a dangerous natural condition, but must also have notice of an alteration to the land that makes it more dangerous than if it had remained in its natural condition. The bank in *Albin* was not aware of the heightened risk of the logging operations on its land. In the present case, the Burgs needed to show that an alteration on the City's property caused the bluff to become unnaturally vulnerable to the natural forces. The City's landscaping was not a sufficient alteration, because the land remained in a natural state.

The inverse condemnation claim was based on the theory that the

City took the Burg's property by artificially channeling water from its own property onto the bluff and thereby undermining its stability. This court held that this claim failed for the same reasons the negligence claim failed, lack of evidence that the City artificially channeled water onto the bluff.

Finally, the Burgs argued the City had trespassed on their property because the City knew that a landslide was a substantially certain consequence of its failure to take preventive measures. The court did not accept the Burg's argument because they failed to show authority, which stated that an "act," as used in defining the elements of trespass, means a failure to act, and the Burg's negligence and trespass claims were therefore the same.

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WISCONSIN

Maple Leaf Farms, Inc. v. Wisconsin Dep't of Natural Res., 633 N.W.2d 720 (Wis. Ct. App. 2001) (holding that the Department of Natural Resources has the authority to regulate off-site manure spreading).

Maple Leaf Farms, Inc, ("Maple Leaf") appealed an order upholding the Department of Natural Resources' ("DNR") authority to regulate Maple Leaf's spreading of manure. Maple Leaf is the largest producer and processor of ducks in the state of Wisconsin. The Maple Leaf duck facilities created a significant amount of manure through production. Maple Leaf routinely applied a portion of this manure to the fields located on company property and sold the remaining manure to area farmers for fertilizer. Maple Leaf transported and applied the manure to the farmers' fields. According to expert testimony at the administrative hearing, the spreading of manure on fields resulted in the release of pollutants into both surface and groundwater. The DNR issued wastewater permits to Maple Leaf requiring them to maintain runoff control structures and to implement procedures for the storage and disposal of animal wastes.

Under the Wisconsin Pollution Discharge Elimination System permit program, the DNR asserted that they had the authority to regulate spreading of manure that took place on property that was not owned by Maple Leaf ("off-site"). DNR also asserted that they could condition the issuance of permits on compliance with groundwater protection standards. Maple Leaf claimed that the DNR had no authority to regulate manure spreading off-site because the Clean Water Act ("CWA") does not regulate off-site manure spreading. The CWA prohibits the "discharge" of any pollutant by any person into navigable waters from any point source, but it does not regulate manure spreading once the manure leaves the property where it was