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Eubanks v. Bayou D'Arbonne Lake Watershed Dist., 742 So. 2d 113 (La. Ct. App. 1999)

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caused flooding on the land, in an area contiguous to International Paper's land. Bransford brought suit to recover damages claiming that International Paper's failure to remove the beaver dams located on its property caused flooding and loss of timber on her land.

The district court granted summary judgment for International Paper based on its finding that International Paper did not have an affirmative duty to remedy naturally occurring conditions on its own property. To require such action would place an unreasonable burden on rural landowners. On appeal, this court agreed that International Paper did not have a duty to remedy conditions that occur naturally, affirming the district court's decision.

The court of appeals recognized that the basis of Bransford's claim for damages was International Paper's ownership of a servient estate, thus International Paper was subject to a servitude of drainage for the benefit of Bransford's dominant land. However, the court determined that, pursuant to the Louisiana Code, the owner of a servient estate generally did not have an affirmative duty to do anything. A servient landowner only had a duty to abstain from taking any action that would prevent the natural drainage flow of water from the dominant estate owner's land. Although the court acknowledged that it previously allowed damages for interference with a servitude, it stated that this was only where the owner of a servient estate acted directly to obstruct drainage. The court found International Paper not liable for damage caused to Bransford's property because it did not take any action to obstruct the natural drainage flow from her land.

In response to Bransford's argument that International Paper had an affirmative duty to remove the naturally occurring condition, the court recognized that the Louisiana Code might require a servient estate owner to keep his estate in a suitable condition in order to exercise the servitude. The court noted, however, that Bransford did not bring suit seeking injunctive relief and, therefore, refused to address the issue of compelling International Paper to remove the obstructions.

Megan Becher-Harris

Eubanks v. Bayou D'Arbonne Lake Watershed Dist., 742 So. 2d 113 (La. Ct. App. 1999) (affirming lower court's denial of a damages and injunctive relief).

The plaintiffs in this case consisted of a class of 157 homeowners ("Homeowners") residing close to the manmade Bayou D'Arbonne Lake ("Lake"). The construction of a spillway and a dam completed in 1963 created the Lake. The Lake reached its normal pool stage in 1964, however calculations predicted that a 100-year storm would cause the Lake to rise ten feet above the normal pool stage. All of the Homeowners residences were below the 100-year flood level. The Lake rose above the normal pool stage each year after its completion. In 1991, a rare meteorological event flooded the Lake.

Homeowners filed suit against the watershed district claiming negligence for failing to warn of the danger and extent of flooding. Homeowners also sought injunctive relief based on the violation of a natural servitude of drain whenever the Lake rises above the normal pool stage. Homeowners finally requested damages in place of injunctive relief. The trial court rejected both of Homeowners claims. The trial court determined that damages were prescribed as the flooding was common occurrence prior to the 1991 flood, Homeowners had consented to the alteration of the natural drain, and flooding was an act of God and did not subject defendant to liability. Homeowners appealed this decision to the Louisiana Court of Appeal.

Homeowners first alleged that the trial court had erred in prescribing their request for damages. In affirming the trial court's prescription of damages, the appellate court first articulated the two-year statute of limitations for private property damaged for public purposes. The court then determined that this statute does not apply when the damage did not result from the public construction work. The court concluded that Homeowners' damages resulted from flooding, but because the Lake was not designed as a flood control device, the dangers of flooding should have been apparent. Therefore, the Homeowners' claim of failure to warn fails and damages were correctly prescribed.

Homeowners next alleged that the trial court had erred in not awarding injunctive relief, or damages in lieu of injunctive relief, for violation of the natural servitude of drain. The appellate court recognized that damages may be appropriate in lieu of injunctive relief as an alternate remedy. The court determined that such a servitude may be altered by agreement if it does not adversely affect the public interest. The court analyzed the servitude agreement and concluded that the Homeowners' ancestors in title agreed to the alteration of the natural servitude of drain.

The court supported its conclusions by commenting on the evidence presented which suggested that the flooding would have occurred even had flood control measures been taken and that the flooding was clearly an act of God. The court affirmed the trial court's denial of damages and injunctive relief and assessed the costs of appeal to Homeowners.

Sarah E. M^cCutcheon

MASSACHUSETTS

Enos v. Secretary of the Executive Office of Env'tl. Affairs, 719 N.E.2d 874 (Mass. App. Ct. 1999) (holding that plaintiffs had standing to maintain an action for alleged injuries which fell within the protection of the Massachusetts Environmental Policy Act).

The plaintiffs ("Landowners") were fourteen taxpayers who lived in the town of Plymouth and owned property near the Eel River. Landowners used the Eel River for recreational activities such as fishing, boating, and