

2017

Rumpza v. Subke, 900 N.W.2d 601 (S.D. 2017)

Andrea Hagler

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Andrea Hagler, Court Report, Rumpza v. Subke, 900 N.W.2d 601 (S.D. 2017), 21 U. Denv. Water L. Rev. 134 (2017).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

compliance, and thus the Court held that DNR's administration did not result in a permanent physical invasion. The Court also held that there was no deprivation of all economically beneficial use of property, as the farmers did not allege facts showing such deprivation from water shortages. A taking requires either a permanent physical invasion or the deprivation of all economically beneficial use, and the Court found neither to be present. Therefore, the Court concluded that DNR's actions were not a taking that could give rise to an inverse condemnation claim.

Second, the Court turned to whether the district court erred in finding that DNR's failure to act to curtail excessive groundwater pumping did not constitute a taking. The Court first recognized that Nebraska has two separate systems for the distribution of groundwater and surface water. Under the Act, DNR must ensure compliance with the Compact, but the Act specifically limits DNR's jurisdiction to surface water while granting jurisdiction over groundwater to Nebraska's natural resource districts. Because DNR did not have jurisdiction to regulate groundwater, the Court held that DNR had no duty or power to administer the Basin's groundwater for the benefit of surface water appropriators. The Court held that failing to curtail excessive groundwater pumping was a failure to exercise a power that DNR did not actually have, and therefore could not give rise to a regulatory taking.

Accordingly, the Court affirmed the rulings of the district court.

Jeremy Frankel

SOUTH DAKOTA

Rumpza v. Zubke, 900 N.W.2d 601 (S.D. 2017) (holding that: (i) Zubke's installation of drainage systems changed the natural flow characteristics of the water draining from the dominant landowner's property to the subservient landowner's property; and (ii) the relative-hardship test was irrelevant because Zubke willfully installed the drainage systems and Rumpza had no duty to clear naturally occurring obstructions in the watercourse).

On July 24, 2013, Robert and Nancy Rumpza ("Rumpza") and Zubke Brothers LLC ("Brothers") sued David and Marilyn Zubke ("Zubke") seeking an injunction and damages. The Zubke's property is dominant, draining onto the Rumpza's property in two areas and flowing further onto the Brothers' property. In 2012 and 2013, Zubke installed drainage systems that modified the established flow characteristics of the drainage areas. The modifications affected the amount of water discharged onto the Rumpza property and extended the time the properties stayed wet. Consequently, Rumpza and Brothers claimed they were unable to plant and harvest crops in previously usable areas. Zubke argued in response that they were compensating for an obstruction located on the Rumpza property that caused water to collect.

At trial, the court returned judgment in favor of Rumpza and Brothers and entered an injunction against Zubke, requiring them to stop the use of the drainage systems. Zubke appealed, arguing that the court erred in finding Zubke caused the damage and that the injunction created undue hardship for Zubke that outweighed any benefits received by Rumpza and Brothers.

First, Zubke contended that the modifications were necessary to overcome the obstruction on the Rumpza property. The Court rejected the argument

because a dominant landowner cannot drain water onto a servient property in a way that unnaturally changes the watercourse, and a servient landowner has no duty to clear natural obstructions for the benefit of the dominant landowner. The Court held the drainage systems changed the timing and amount of water drained onto the servient properties, making them perpetually wet. Additionally, Zubke did not establish that they had a right to overcome the obstruction on the Rumpza property with modifications or establish that Rumpza had a duty to remove the obstruction. Therefore, the trial court was not clearly erroneous in concluding that Zubke caused the alleged damages.

Second, Zubke argued that the injunction created a disproportionate hardship. Zubke asserted that Rumpza and Brothers would have been unable to farm the land regardless of the drainage modifications. The Court regarded this argument to be lacking. In any event, the Court held the relative-hardship test to be irrelevant in this case because Zubke willfully and knowingly made the modifications and was aware that the modifications would alter the amount of water discharged into the watercourse.

Accordingly, the Court affirmed the injunction and found the trial court was not clearly erroneous in determining that Zubke caused the damages to the Rumpza and Brothers' properties.

Andrea Hagler

Surat Farms, LLC v. Brule Cty. Bd. of Comm'rs, 901 N.W.2d 365 (S.D. 2017) (holding that: (i) the court would hear downstream landowner's appeal in spite of his failure to name upstream landowner as interested party; (ii) the trial court was required to review the county board of commissioner's decision de novo because it was a quasi-judicial matter; (iii) civil law rule applied to the dispute, under which a lower property owner cannot interfere with the natural flow of surface water to the detriment of an upper property owner; (iv) the downstream landowner impermissibly altered the watercourse with a drain system; and (v) upstream flooding harmed upstream landowner's property).

Surat Farms, LLC ("Surat") and Albert Delaney ("Delaney") owned adjacent farmland with a natural stream flowing through both properties. Surat, the lower property owner, installed a drainage system in 2013. Subsequently, Delaney filed a complaint with the Brule County Board of Commissioners (the "Board") alleging that in 2014, underground water began entering his basement as a result of Surat's drainage system. The Board held a hearing and found Surat impermissibly "altered the natural flow of the water." Surat appealed to the Brule County Circuit Court, which conducted a de novo review and affirmed the Board's decision.

After the trial court affirmed the decision, Surat appealed to the South Dakota Supreme Court raising two issues. First, Surat asserted the trial court erred in finding its drainage system impermissibly altered the watercourse. Alternatively, Surat contended that if the watercourse was altered, the trial court erred in finding Delaney suffered causally-related damages.

The Court considered Surat's first argument that the "reasonable use" rule should apply, under which a downstream landowner can legally alter a watercourse and cause some harm as long as the intended use is reasonable. How-