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Surat Farms, LLC v. Brule Cty. Bd. of Comm'rs, 901 N.W.2d 365 (S.D. 2017)

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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-

ever, the Court agreed with the Board's argument that the "civil law rule" applied, which states that a lower property owner cannot interfere with a watercourse to the detriment of an upper property owner. The Court explained that South Dakota follows civil law rule for rural surface water drainage. Therefore, Surat's claim of privilege to construct a drain system that dammed surface water and flooded an upstream property was without merit.

The Court applied a "clearly erroneous" standard to review factual findings. The Court considered a site map, commissioned by Delaney, which reflected a fifteen-inch rise in elevation at the drain location disrupting the natural drainage. The Court also considered a contour map, prepared by Surat's drain installer, which could be interpreted to show this elevation difference preexisted the drainage system. However, evidence indicated the watercourse only started damming after the drain's installation. Accordingly, the Court found evidence supported the trial court's ruling that Surat's drainage system impermissibly altered the watercourse.

In considering Surat's second argument that Delaney did not suffer causally-related damages, the Court considered conflicting evidence from both parties regarding whether Delaney's land was in the conservation reserve program and whether Delaney used the land in question for haying and calving. The Court resolved that, in light of the conflicting evidence as to how the water affected Delaney's cropland, the trial court's findings were not clearly erroneous. The Court also pointed out that Surat misconstrued the relief, as Delaney was not awarded damages. The Board and trial court only ordered Surat to take appropriate action to correct the natural watercourse.

Accordingly, the Court affirmed the trial court's award of injunctive relief.

Elaine Nolen