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nuisance claim, the court of appeals went on to apply intentional trespass tort factors from Washington state common law, agreeing with the trial court that Brack did not intentionally or wrongfully cause damage to Grundy's property, but reversing the trial court's trespass conclusion. The court of appeals ruled that Brack's bulkhead diversion was not intentional trespass because the intrusion did not cause significant injury or harm to a neighbor's property. The decision required remand to reflect that Brack did not commit an intentional trespass, but left open the future question of how to analyze duty of care for the newly created tort of negligent seawater trespass.

John McKee

WYOMING

William F. West Ranch, LLC v. Tyrrell, 706 P.3d 722, (Wyo. 2009) (refusing to grant a declaratory judgment to property owners who attacked state administration of coal bed methane water because plaintiffs failed to connect specific damage to state practice and could have pursued administrative remedies).

The plaintiffs, William F. West Ranch, LLC ("West") and the Turner family ("Turner"), are property owners in the Powder River Basin. They sought a declaratory judgment against the State Engineer and the Board of Control ("State") challenging the administration of underground water produced and stored to extract coal bed methane ("CBM"). West and Turner claimed the State was not regulating CBM water production in conjunction with state law and that their land had been damaged by CBM water. The District Court of Laramie County dismissed the action holding it was not justiciable. West and Turner appealed, and the Wyoming Supreme Court affirmed. The dispositive issue was whether the plaintiffs sufficiently articulated a justiciable claim.

The court characterized the claims of the property owners as four distinct categories. First, West and Turner contend the State violated Wyoming's Constitution by (1) not considering the public's interest in its management of CBM water, and (2) not providing notice to neighboring landowners when issuing permits. Second, West and Turner contend the State management of CBM water violated state statutes. Specifically, by not employing the concepts of beneficial use and prevention of waste, the State did not act in the public's interest when granting permits to CBM lease holders. Third, in what the court terms a 'restatement' of the first claim, West and Turner claimed that the State violated their due process rights. The court inferred that this referred to the fact that neighboring landowners did not receive notice and were not given an opportunity to be heard when the State considered the permits. Fourth, West and Turner claimed that the State violated the Wyoming Administrative Procedures Act by not promulgating rules specific to CBM wells and reservoirs.

The court looked to the Uniform Declaratory Judgments Act to determine whether it had jurisdiction. Subsequently, it used its own

interpretation of this act from *Brimmer v. Thomson*. *Brimmer* provides a rule to justiciability consisting of four elements. First, the rights and interests of the parties involved must be existing and genuine rather than theoretical. Second, the controversy must be sufficiently defined and not yield a purely political, administrative, academic, or philosophical conclusion. Third, the final judgment must affect the rights, status, or legal relationship of one or more parties. Finally, the proceedings must be genuinely adversarial in nature.

The court initially focused on the first two elements of *Brimmer* and held that West and Turner must allege that (1) the State has a constitutional or statutory duty to undertake some function in administering CBM water; (2) they failed to fulfill that duty on CBM facilities that did actual harm to West and Turner's property; and (3) that the court, in declaring the State's duty, will remedy the damage.

Both West and Turner met the first element of *Brimmer* because both owned property, an existing and tangible interest, that CBM water wells and reservoirs affect. Both, however, failed to meet the second element.

The court held that West and Turner failed to show how relief would redress any harm they suffered. It concluded that their critique of the State's permitting process was too broad by claiming that it should consider the public interest. The court required the property owners to point to specific permits and show how those instances had harmed the public. Additionally, the court held that the property owners did not clearly show how a declaratory judgment would benefit them. Basically, the court found that the property owners had not properly demonstrated how a favorable judgment would have benefitted them in an actual situation. Consequently, it refused to overstep its judicial role of resolving controversies between adverse parties.

The court used the same vehicle to discredit the property owners' other claims. Instead of alleging a specific due process violation, West and Turner "apparently [sought] a declaration that the State's procedures [violated] the due process of 'neighboring landowners' in general." The court found that this presented an abstract legal question rather than a substantial controversy between adversaries. Similarly, West and Turner alleged that the State had failed to adjudicate – and thereby set the priorities of use – for a majority of the CBM wells and reservoirs. A problem with this theory, in the court's eye, was that it claimed injuries that may have occurred to third parties. To meet the *Brimmer* test, West and Turner would have had to claim that the wells and reservoirs affecting their own interests were not adjudicated. Further, West and Turner claimed that their land was damaged by uninspected wells and reservoirs, but they did not specifically state which well or reservoir caused the damage.

The court next considered the role of the administrative state. It was unwilling to make a judgment when, as here, there were administrative remedies available. It cited as example the fact that the Board of Control can consider a petition from a surface water user to adjudicate another's right. In this case, it could have looked into the

claim that CBM producers were using more water than necessary. Additionally, the property owners could have challenged a specific permit through the appropriate administrative channels.

Finally, the court acknowledged that where, as here, the subject matter is of great public interest, the court may relax its justiciability standards. However, the court in this case refused to relax them to the point that public interest suffices as the lone warranting factor. There must be a tangible interest that would receive some practical benefit.

The court concluded that there was no justiciability to make a declaratory judgment on three grounds. First, the property owners failed to connect any particular state action to their own harm. Second, they failed to show how a declaratory judgment would remedy their situation. Finally, they could have pursued administrative remedies that were available. Consequently, the court affirmed the trial court's dismissal.

Robert Westfall