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Delaunay v. Collins, No. 02-8097, 2004 U.S. App. LEXIS 4032 (10th Cir. Mar. 2, 2004)

Alexandra Farkouh

TENTH CIRCUIT

Delaunay v. Collins, No. 02-8097, 2004 U.S. App. LEXIS 4032 (10th Cir. Mar. 2, 2004) (holding the district court did not abuse its discretion in granting injunctive relief for use of a ditch water right even though a member of the Northern Arapaho Indian Tribe lacked an easement for the ditch).

Charlene Delaunay, Floyd Collins, and his sons, Gary and Rusty, ("Collins") were enrolled members of the Northern Arapaho Indian Tribe of the Wind River Reservation in Wyoming. Manuel Delaunay, Charlene's husband, was not a member of the tribe. Gary Collins was the tribal water engineer on the reservation and was responsible for administering water and enforcing the tribal water code. Forty acres of the Delaunays' land included a state water right through Little Wind River Ditch Number 5 ("Ditch"), and fifty-seven acres of their lease property had a reserved water right through the Ditch. Collins owned land adjacent to the Delaunays' lease-held land and similarly held a reserved water right through the Ditch.

A feud between the Delaunays and Collins began when Collins intentionally blocked the Delaunay water supply because Manuel was not a member of the tribe and, therefore, according to Collins, had no right to be on the land. In addition to the water obstruction, the Delaunays alleged they received discriminatory treatment when they enlisted the help of the tribal water board.

The Delaunays filed suit in the United States District Court for the District of Wyoming seeking damages and injunctive relief claiming race-based discrimination. Specifically, the Delaunays claimed Collins deprived them of equal benefits of the law through Gary's abuse of his position as tribal water engineer and deprived their real property rights by blocking their water. A jury returned a unanimous verdict in favor of the Delaunays and awarded \$350,000 in damages. The district court enjoined Collins from interfering with the Delaunays' water rights and restrained Gary, as water engineer, from administering the water in the Ditch.

The district court ruled on several pre-trial motions. The court first denied the Collins' renewed motion for judgment as a matter of law because the Delaunays presented sufficient evidence of racial discrimination to allow a reasonable jury to find in their favor. Second, the court granted the Delaunays' motion for attorney's fees. Third, in response to the Collins' motion for remittitur, the court upheld the jury's finding of liability.

The Delaunays argued they suffered from discrimination because Collins, who never had had a water dispute with any other tribal member, interfered with the Delaunay's water use by blocking access. Fur-

ther, Gary, as tribal water engineer, failed to enforce evenhandedly the water code and water board directives. Collins argued the Delaunays lacked a ditch easement and therefore had no rights concerning the Ditch. However, enrolled tribal members and non-enrolled close family members were entitled to go onto reservation lands without specific permission. Regardless of whether an easement existed, the jury could have found the Collins violated Delaunays' rights if it concluded Collins denied access to the Ditch solely because of Manuel's race.

On appeal, Collins argued the district court erroneously: (1) denied their motion for a judgment as a matter of law; (2) refused their proffered jury instruction; (3) granted injunctive relief; (4) calculated the amount of remittitur; and (5) awarded attorney fees.

However, the United States Court of Appeals for the Tenth Circuit concluded the district court did not err on any of these claims. First, the court noted it could only reverse the lower court's determinations as a matter of law if the evidence pointed one way and was susceptible to no reasonable inferences supporting the Delaunays. The court felt the Delaunays presented a legally sufficient basis for the jury to find in their favor. Second, the refusal of the Collins' proffered jury instruction was not properly objected to in a timely manner and, even so, the court concluded the district court's instructions were not prejudicial or in plain error. Third, the Collins continued to argue the Delaunays lacked an easement for the portion of the irrigation ditch that crossed the Collins' land and, therefore, they could not have violated the Delaunays' rights. Thus, the Collins argued, injunctive relief was improper. However, since the Delaunays permissively used the Ditch, and given the finding, that Collins' actions violated the Delaunays' civil rights, the district court did not abuse its discretion in granting injunctive relief. Fourth, since the Delaunays put forth substantial testimony of emotional, financial, and physical hardship in support of a compensatory damage award, the district court did not err in calculating remittitur. Last, since the court gave the district court substantial deference in reviewing computation of attorney fees, the district court did not abuse its discretion.

Therefore, because the district court did not abuse its discretion in granting injunctive relief to the Delaunays for use of the Ditch, the United States Court of Appeals affirmed the judgment of the district court and dismissed the case.

Kevin Lazar

Three Forks Ranch Corp. v. City of Cheyenne, 2004 U.S. App. LEXIS 7994 (10th Cir. Apr. 22, 2004) (holding no private cause of action for interference with water rights existed under the Colorado River Compact).