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Pruitt v. Douglas County, 66 P.3d 1111 (Wash. Ct. App. 2003)

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mandating that the original petition state why Crutchfield believed the Board's activities were unlawful. The Board argued Crutchfield failed to allege harm to her recreational enjoyment as a result of the permitted discharge. The Virginia Supreme Court found the argument unpersuasive. A letter attached to the original petition satisfied the local rule's pleading requirement by detailing the ways in which recreational enjoyment would suffer as a result of the discharge.

The court noted that the local rule the Board cited vested the authority to grant or deny a request to amend in the court of appeals, but that a refusal to allow such an amendment—when timely filed and in no way prejudicial to the Board—must find support in the record. The court found no such support existed.

The Board next argued that the court of appeals erred in determining Crutchfield had standing. The court observed that the location and nature of Crutchfield's property easily allowed her to allege two elements necessary for standing: actual or imminent injury fairly traceable to a Board decision.

Finally, the court observed that the court of appeals could have redressed Crutchfield's harm with a favorable decision, thereby satisfying the third requirement for standing. The court remanded the case to the court of appeals for a trial on the merits.

Curtis Graves

WASHINGTON

Pruitt v. Douglas County, 66 P.3d 1111 (Wash. Ct. App. 2003) (holding that where a county's improvements made properties valuable, homeowners had a cause of action against the county for subsequently making improvements which flooded and destroyed homeowners' properties).

In the 1930s, Douglas County made certain road improvements, which reduced the natural flow of water across properties owned by the Fletchers and the Pruitts (collectively, "Homeowners") from fifteen cubic feet per second ("c.f.s.") to one to two c.f.s. A developer built Homeowners' homes in 1967. In 1986 and 1993, Homeowners purchased their properties. Between 1995 and 1997, the county made certain road improvements, which resulted in flooding of Homeowners' properties in 1997. Homeowners sued the county on the basis of negligence, strict liability, trespass, and inverse condemnation. The county motioned for summary judgment, and the Superior Court for Chelan County granted this motion. Homeowners appealed to the Washington Court of Appeals, Division Three ("court"). The court reviewed de novo the trial court's grant of the county's motion for summary judgment and noted that the moving party's burden in summary judgment is to show, in the light most

favorable to the non-moving party, no material issue of fact existed for trial.

The court held that when a road collects and discharges water onto adjoining lands in quantities greater than the lands' natural flows, liability on the part of the municipality that built the road can arise under three possible exceptions to the common enemy doctrine. The exceptions are "(1) blockage of a natural drain or waterway; (2) collection and discharge of a water onto adjoining lands in quantities greater than, or in a manner different from, its natural flow; and (3) failure to exercise due care in preventing unnecessary damage."

The court held that the lower court's grant of summary judgment was improper because if Homeowners had proven that water flow across their properties was one to two c.f.s. before the county's 1995-1997 improvements, the county would have been liable for damages. The court reasoned that regardless of the county's negligence or lack thereof, this liability resulted from the "collection and discharge" exception to the common enemy doctrine. Its basis for this reasoning was that the floodwater which damaged Homeowners' properties in 1997 was quantitatively and qualitatively different than that which flowed over the properties prior to the 1930s improvements. The court also held summary judgment was also improper under the "due care" exception, which requires that property owners exercise due care by "acting in good faith and by avoiding unnecessary damage to the property of others." The court found the homeowners failed to present any evidence of bad faith, but presented evidence on the basis of which a jury could find the county failed to limit harm to necessary harm. The court also held summary judgment was improper because where the county negligently failed to maintain storm drains, the causal relationship behind the county's negligence and damage to the homeowners' properties was an issue for trial.

The court also held summary judgment was improper on the homeowners' claim of inverse condemnation. The court reasoned the homeowners stood to recover the full value of their property if they could prove that the government (1) diverted "waters from the direction in which they would naturally flow" onto the claimant's land, or (2) the government increased the amount of water flowing onto the claimant's land. Thus a material issue of fact existed.

The court denied the homeowners' request for fees and costs because they provided inadequate argument and legal grounds on which to base such a request.

James Parrot