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Mendez v. San Benito/Cameron County Drainage Dist. No. 3, 45 S.W.3d 746 (Tex. App. 2001)

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the state registry was not complete, therefore the court lacked jurisdiction pursuant to the exhaustion rule. The exhaustion rule deprives a court of jurisdiction if a plaintiff has not pursued all available remedies in the administrative process. The court dismissed the doctrine and stated Koch's only remedy for TNRCC's violation of Texas statute existed in not in administrative but in judicial proceedings. The court held the exhaustion rule did not preclude jurisdiction.

TNRCC's final attempt to support lack of subject matter jurisdiction rested upon the mootness doctrine. It alleged Koch's petition, asking the court to order TNRCC to consider listing the contaminated area on the state registry, was moot because TNRCC was considering Koch's request. The court explained the mootness doctrine prohibits a court from exercising jurisdiction over a controversy no longer in existence, and stated Koch's petition alleged an ongoing controversy in that TNRCC had not made a decision on the issue in a timely manner. The court held mootness did not deprive the trial court of jurisdiction.

Furthermore, the court held the trial court erred in dismissing Koch's action for lack of subject matter jurisdiction. Thus, it reversed the decision of the trial court and remanded the action.

Rachel Sobrero

Mendez v. San Benito/Cameron County Drainage Dist. No. 3, 45 S.W.3d 746 (Tex. App. 2001) (holding that sovereign immunity denies citizens standing in a case of flood damage caused by a defective drainage ditch).

Mendez and several other residents (collectively, "Residents") of the La Palma subdivision brought this action against Cameron County Drainage District and San Benito (collectively, "Drainage District") seeking damages resulting from an ineffective drainage ditch.

On April 5, 1991, an extremely heavy rain fell in San Benito and flooded the La Palma subdivision. The flooding affected approximately 700 individuals. The Residents claimed that the occurrence of rising water was due to the negligent conduct of the City of San Benito and Cameron County Drainage District by the design, placement and maintenance of a drainage ditch. Pursuant to the Texas Water Code, the Residents claimed that the City of San Benito and Cameron County Drainage District altered the natural water flow and diverted impounded surface waters near their homes and properties. The Residents further asserted that the Drainage District was negligent in the maintenance and cleaning of its drainage ditches and other permanent structures. The Drainage District denied the Residents' allegations and asserted several affirmative defenses including sovereign immunity.

Texas law provides that a person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow. Texas law also provides that government units are generally immune from tort liability except where the legislature has specifically waived that immunity. In order to prevail against a government entity, an action must fit into one of the exceptions provided or it fails as a matter of law.

The Texas Court of Appeals held that because the Residents did not meet an exception to the defense of sovereign immunity, the Drainage District was immune from liability as a matter of law.

Michael Barry

Raburn v. KJI Bluechip Inv., 50 S.W.3d 699 (Tex. App. 2001)

(affirming summary judgment due to inability to establish a duty of reasonable care in the event of a flash flood that renders a highway impassible).

While traveling Texas Highway 114, a flash flood swept John and Janet Raburn's ("Raburns") vehicle off of the highway. At the moment the vehicle was washed off of the road, it was on a stretch of highway running through land owned by KJI and leased to Ed and Tom Strader ("Straders"). The Raburns' vehicle quickly became submerged. Rescuers successfully freed Janet and one of her sons. Janet's other son, Justin, was swept away in the current, and was later found dead. In an action for personal injuries and wrongful death, the Raburns alleged that as owners of the abutting property, KJI and the Straders had a duty to put into place a system that would safely facilitate the flow and drainage of water. KJI and the Straders moved for summary judgment. They alleged the state of Texas had an exclusive, non-delegable duty to control storm and flood waters, and therefore they were immune from the Raburn's negligence claim. The trial court granted these motions and the Raburns appealed.

The applicable legal standard is such that if at least one element of the plaintiff's cause of action cannot be established, the defendant is entitled to summary judgment. Evidence in summary judgment motions must be reflected in the light most favorable to the non-moving party. If the non-moving party can establish more than a scintilla of probative evidence that there is a genuine issue of material fact, then a no evidence summary judgment is improper. To establish more than a scintilla of evidence, the nonmovant's evidence must enable reasonable and fair-minded people to reach different conclusions. A scintilla is not established when evidence only creates a mere surmise or suspicion of a fact.

On appeal, the Raburns alleged there was a general rule in Texas that the owner and occupier of land abutting a highway has a duty to