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

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

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

exercise reasonable care to avoid endangering those using the highway as a means of travel, and is liable for any injuries resulting from such negligence. This duty was limited to cases where a landowner negligently released upon the highway an "agency that becomes dangerous by its very nature once upon the highway." The Raburns alleged KJI and the Straders diverted water into the culvert by putting crushed concrete on the property, and thus owed a duty to those traveling on that highway.

The court found this allegation to be conclusory, and not supported by more than a scintilla of probative evidence that raised a genuine issue of material fact. Even if the Raburns could put forth sufficient evidence, the court held their claim would fail on alternate grounds. The Texas Water Code states that one who diverts the natural flow of surface waters may be liable for any property damage suffered as a result of the diversion. The code does not include liability for survival actions, personal injuries, or wrongful death.

Additionally, the state of Texas' responsibility over water covering a stretch of highway pertained only to flood water. The court found the trial court accurately held the water discussed here was floodwater, rather than surface water, as a matter of law. This finding was largely due to the admissions of the Raburns themselves, as well as on the clear and unambiguous definitions of surface and floodwaters found in Texas case law.

Since the state of Texas had an exclusive, non-delegable duty pertaining to flood control, the trial court was correct in holding KJI and the Straders did not have a duty of reasonable care pertaining to the highway adjacent to their land. The Raburns failed to produce more than a scintilla of evidence pursuant to one of the elements of a negligence claim, and, thus, the court affirmed the summary judgment granted to KJI and the Straders.

Michael Sheehan

VERMONT

Town of Groton v. Agency of Natural Res., 772 A.2d 1103 (Vt. 2001)
(affirming the Water Resource Board's denial of the Town of Groton's stream alteration permit application).

In July of 1996, the Town of Groton ("Town") filed an application with the Agency of Natural Resources ("ANR") to alter the Wells River so that the Town could repair a dam. The ANR requested more information, as the Town's application was not complete. Before the Town provided the requested information, ice and high water destroyed the dam. Since the dam's destruction, the Wells River below the dam is considered one of the few high quality habitats for sculpin, trout, and salmon.