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Snyder v. Howard Plumbing & Heating Co., No. 2991066, 2000 Ala. Civ. App. LEXIS 578 (Ala. Civ. App. Sept. 15, 2000)

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Snyder v. Howard Plumbing & Heating Co., No. 2991066, 2000 Ala. Civ. App.
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court erred in denying Russell, Avondale's, and APCo's motion for judgment as a matter of law. The judgments for the homeowners on both the trespass and nuisance claims were reversed and rendered in favor of Russell, Avondale, and APCo.

Jon Hyman

Snyder v. Howard Plumbing & Heating Co., No. 2991066, 2000 Ala. Civ. App. LEXIS 578 (Ala. Civ. App. Sept. 15, 2000) (holding sewage that intrudes onto property supports an action for indirect trespass).

Lee and Patricia Snyder ("Snyders") brought suit against both Howard Plumbing and Heating Company ("Howard") and Pate Construction Company ("Pate") for improperly connecting a sewer-service line to the Snyders' home resulting in sewage flooding the Snyders' basement. The trial court granted summary judgment to Howard and Pate on all of the Snyders' claims. The Snyders appealed only the trespass claim.

The Snyders' built their home in 1978. In 1986, Pate constructed a house ("Pate house") on the lot adjacent to the Snyders' home. Howard, the plumbing contractor, connected the Pate house sewer line. In both 1995 and 1998, sewage flooded the Snyders' basement. Upon investigation, the Snyders discovered that the Pate house sewer-service line had been connected erroneously to the Snyders' sewer-service line, instead of to the main sewer line. At trial, all parties agreed the clogged line caused the flooding. However, the Snyders argued Pate's improper sewer line connection to the Snyders' line increased the sewage flooding into the Snyders' basement.

The court of appeals first considered whether the Snyders' claim was for trespass on the case, whereby such claim was barred by a two-year statute of limitations, or for indirect trespass, which would still be actionable under a six-year statute of limitations. The court of appeals relied on several earlier Alabama cases and determined that surface water channeling onto another's property supported a claim for indirect trespass. Although the prior cases dealt primarily with intrusion by surface water, the court found no distinction between those cases and the intrusion of sewage here.

The court of appeals next considered whether the record evidenced a genuine issue of material fact with regard to an indirect trespass claim to warrant reversal of summary judgment. The court of appeals concluded that substantial evidence existed to support the inference that Howard negligently connected the Pate's sewer-service line to the Snyders' sewer-service line, and that a trier-of-fact could reasonably infer that the negligent connection caused foreseeable flooding. Additionally, the court of appeals determined that a reasonable inference could be made that the sewage, which flooded the Snyders' basement, flowed downhill from the Pate house. Thus,

the court of appeals reasoned that because genuine factual issues existed, summary judgment was improper. The court of appeals reversed the trial court's grant of summary judgment and remanded.

Makayla Shannon

ARIZONA

In re the Gen. Adjudication of All Rights to Use Water in the Gila River Sys. & Source, 9 P.3d 1069 (Ariz. 2000) (holding (1) the subflow zone in the Gila River system is defined as saturated floodplain Holocene alluvium, and waters from wells with cones of depression extending into this subflow zone are appropriable; (2) a well is presumed to be pumping percolating groundwater, until the Department of Water Resources establishes by a preponderance of evidence the well is pumping subflow via its cone of depression; and (3) judicially redefining subflow to include percolating, non-appropriable waters is not an unconstitutional taking of private property or an usurpation of the legislative function by the courts).

In an action to determine the extent and priority of water use rights in the Gila River system and source, the trial court adopted a test that presumed a well pumped appropriable subflow if the volume of a given stream was shown to be depleted by 50% or more of the total volume pumped by a well during a ninety-day period. The court of appeals rejected the "50%/90-day test" as inconclusive to determine the nature of the water being pumped. On remand, the trial court held a ten-day evidentiary hearing, using testimony and reports from hydrologists and hydrological engineers, to develop a test to determine which waters were part of the subflow, and thus appropriable for public use. The trial court found the Holocene alluvium was the only stable geological unit associated with most rivers and streams. When saturated, this sedimentary layer becomes subflow. Wells connected to the subflow were subject to public-use doctrines. Identical gradient and flow direction, chemical composition, groundwater elevation of the saturated floodplain Holocene alluvium, and water from the well indicated connection to the subflow.

Groundwater users from several cities asked the trial court to exclude certain wells from the adjudication. The trial court applied the new test to determine subflow and found that wells within the saturated floodplain Holocene alluvium were subject to rules regarding public appropriation. Further, wells outside the alluvium found to be pumping water from a stream or its subflow were also subject to adjudication, unless such use was determined to have a de minimus effect on the river system. The trial court ordered the