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Moon v. City of Lawrence, 982 P.2d 388 (Kan. 1999)

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imposed by the lower court violated his equal protection rights because his fines were greater than those imposed on previous violators. The court rejected that claim because the evidence failed to show DeCoster received unequal treatment. The court found that DeCoster violated the Iowa statutes and regulations. The trial court correctly found him strictly liable and imposed an appropriate fine.

Sheela S. Parameswar

KANSAS

Moon v. City of Lawrence, 982 P.2d 388 (Kan. 1999) (holding that the homeowners' claims for personal and real property damage recovery against the City, resulting from the storm water drainage system flood, were barred by the statute of limitations).

Homeowners resided in a part of Lawrence, Kansas, which had a history of water drainage problems. In 1958, the City of Lawrence ("City") constructed a complex drainage system. However, within a few years, the City became aware of the inadequacy of the drainage system. Heavy rains rendered a portion of the drainage system inadequate because the inlet pipe could not accommodate the large amounts of water runoff. In the late 1960's, the City hired Black & Veatch Consulting Engineers ("B & V") to examine different drainage systems and identify solutions to those systems' problems. B & V recognized the systems, including the Second and Michigan Street Drainage System at issue here, as inadequate and suggested three modes of action. The City executed only two of B & V's recommendations. The recommendation that the City did not perform constituted most of the financial burden. Since the implementation of B & V's two recommendations, the City had on occasion inspected, maintained, and repaired the Second and Michigan Street Drainage System.

Since 1969, an abundance of development occurred upstream from the homeowners' properties. Development included the erection of the Holidome, the Sallie Mae Office Building with two accompanying parking lots, and the Highpointe Apartments. The City allowed each of these three sites to be completed with the knowledge that each project did not require a storm water detention system because of their nearness to the Second and Michigan Street Drainage System.

The homeowners suffered substantial damage due to the flooding. The homeowners alleged damages included: (1) severe yard flooding, sometimes resulting in damage to outdoor property; (2) numerous incidences of basement flooding, sometimes including property damage; and (3) garage flooding. Each of the homeowners had knowledge of the propensity of flooding between 1978 and 1993.

The statute of limitations for an action alleging injury to another's rights, not arising from a contractual agreement, is two years. Additionally, a Kansas statute delineates that accrual of the cause of action does not begin until the act giving rise to the cause of action first causes substantial injury. The court had previously held that "substantial injury" meant the victim must suffer a sufficient ascertainable injury, regardless of the extent of that injury.

The court compared this situation with the 1996 decision in *Johnson v. Board of Pratt County Commissioners*, which differed factually. The *Johnson* court held that the statute of limitations did not commence until after the 1991 flood; therefore, the cause of action was not barred. In that case, a flood occurred in 1988, and the plaintiffs promptly complained to the County. The County then took action to prevent any future problems. Flooding again occurred in 1991, at which point the plaintiffs realized that the County had not rectified the problem. Consequently, they filed suit.

The court also compared this situation with the decision of *Isnard v. City of Coffeyville*. There the court held that the plaintiffs' injuries due to flooding were reasonably ascertainable before the suit was filed in October of 1991. Therefore, the two-year statute of limitations barred their cause of action. The court reasoned that past experiences gave the plaintiffs satisfactory knowledge before October 1991 to estimate the amount of rain needed to cause an overflow in the storm sewer. Furthermore, the court held that the underground storm sewer was a permanent structure, and the entire system needed replacement in order to fix the flooding problem.

The court held that *Isnard* was the applicable and controlling case. The court stated that even if portions of the drainage system were classified temporary, the classification did not preclude the entire Second and Michigan Street Drainage System from being characterized as a permanent structure. The homeowners had prior knowledge of the flooding, and the City had not promised or tried to abate the flooding. Consequently, the statute of limitations began to run in 1993, thus barring the homeowners' cause of action.

Sara Franklin

LOUISIANA

Crump v. Sabine River Auth., 737 So.2d 720 (La. 1999) (holding that the continued presence of a canal and the consequent diversion of water from a bayou did not constitute a continuing tort since those were continuous ill effects, not unlawful acts).

Sarah Crump sold eighteen of her sixty acres to Sabine River Authority ("Authority") in 1965. The Authority used this land to construct the Toledo Bend Reservoir. The McDonald Bayou traversed