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State ex rei. Sprynczynatyk v. Mills, 592 N.W.2d 591 (N.D. 1999)

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State ex rei. Sprynczynatyk v. Mills, 592 N.W.2d 591 (N.D. 1999)

and killing grass. Based on this evidence, the court concluded that the Board did not act arbitrarily, capriciously or unreasonably in finding that the drainage damaged Burkle's property, thereby giving him standing.

The court also addressed Graber's claim that Burkle lacked standing to file a complaint with the Board because Graber acquired a prescriptive drainage easement over Burkle's property. The court stated that a prescriptive easement on flooded land required continuous and uninterrupted adverse use for the twenty-year prescriptive period under state law. According to the court, the Board's findings revealed that Graber failed to establish that drainage over Burkle's property was continuous and uninterrupted for the twenty years. Testimony from several individuals established that no drainage occurred shortly after 1967 when Graber's father filled in the ditch, and that no drainage onto Burkle's property occurred at all from the 1970s until 1994, when Graber reopened the ditch. Accordingly, the court held, Graber did not acquire a prescriptive drainage easement over Burkle's property.

Steven Marlin

State ex rel. Sprynczynatyk v. Mills, 592 N.W.2d 591 (N.D. 1999)
(holding that the ordinary high watermark of a river is determined according to its current condition).

The State of North Dakota and Mills had competing interests in sixty-two acres of shore zone along the Missouri River. Shore zone is the area between the ordinary low watermark and the ordinary high watermark of a river. North Dakota law gives the state property rights up to the ordinary high watermark, and Mills owned the land above that boundary. Mills asserted that he held exclusive rights to the disputed shore zone because it was above the ordinary high watermark of the river prior to the operation of the Missouri River dam system.

The State instituted a declaratory judgment action to determine the parties' interests in the disputed land. In an earlier proceeding, the Supreme Court of North Dakota concluded that the State and Mills shared correlative, overlapping rights in the shore zone. Upon remand, the trial court determined the Missouri River's ordinary high watermark based on the river's current, post-dam condition. Mills appealed this judgment contending that the trial court erred in not assessing the River's ordinary high watermark according to its natural, pre-dam state.

The specific issue on appeal was whether the ordinary high watermark of a river should be determined by its current, artificial condition or by its natural, pre-dam position. The supreme court affirmed the trial court's ruling by holding that the current water line is the boundary line regardless of whether it has been affected by natural or artificial changes. Thus, the court held that the ordinary

high watermark of a river is determined based upon the current condition of the river.

The supreme court concluded that its opinion coincided with case law from other jurisdictions and public policy concerns. In particular, the supreme court noted that the purpose underlying state ownership of the beds of all its navigable waters is to protect the public's right of navigation. Thus, the court found that any policy other than setting the boundary at the current, post-dam waterline would yield absurd results.

Vanessa L. Condra

OHIO

City of Northwood v. Wood County Reg'l Water & Sewer Dist., 711 N.E. 2d 1003 (Ohio 1999) (holding that a municipality may exercise the power of eminent domain over public utility facilities of a regional water and sewer district as long as such taking does not destroy the existing public utility).

In 1992, by petition to the Common Pleas Court, several Ohio municipalities formed the Wood County Regional Water and Sewer District ("District"). The City of Northwood ("City"), however, elected not to join the District as a result of an earlier study concluding the City's best interests to own and operate its own water and sewer system was more beneficial. In the meantime, the City's residents received services from the District and many of the facilities owned and utilized by the District in providing such services were located within the City. In 1995, the City made an offer to purchase the District's facilities located in the City. The District rejected the offer and, as a result, the City announced its intent to appropriate the District's facilities within the City.

The District responded by filing a complaint for declaratory and injunctive relief preventing the City from accessing the District's utility lines without authorization. Soon thereafter, the District filed a second complaint seeking a declaratory judgment rendering the City's proposed appropriation unlawful. In late 1995, the City filed a petition for appropriation. The trial court ruled that the City could appropriate the District's utility lines that served only City residents and that the City had no authority to appropriate the District's main lines passing through the City. Both the City and the District appealed. The appellate court held that the City had neither the constitutional nor statutory authority to appropriate the District's property and that the City did not have the power to appropriate the public utility facilities of another political subdivision.

The court allowed a discretionary appeal to decide the issue of whether a municipality may exercise eminent domain over public