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Enos v. Secretary of the Executive Office of Env'tl. Affairs, 719 N.E.2d 874 (Mass. App. Ct. 1999)

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Homeowners filed suit against the watershed district claiming negligence for failing to warn of the danger and extent of flooding. Homeowners also sought injunctive relief based on the violation of a natural servitude of drain whenever the Lake rises above the normal pool stage. Homeowners finally requested damages in place of injunctive relief. The trial court rejected both of Homeowners claims. The trial court determined that damages were prescribed as the flooding was common occurrence prior to the 1991 flood, Homeowners had consented to the alteration of the natural drain, and flooding was an act of God and did not subject defendant to liability. Homeowners appealed this decision to the Louisiana Court of Appeal.

Homeowners first alleged that the trial court had erred in prescribing their request for damages. In affirming the trial court's prescription of damages, the appellate court first articulated the two-year statute of limitations for private property damaged for public purposes. The court then determined that this statute does not apply when the damage did not result from the public construction work. The court concluded that Homeowners' damages resulted from flooding, but because the Lake was not designed as a flood control device, the dangers of flooding should have been apparent. Therefore, the Homeowners' claim of failure to warn fails and damages were correctly prescribed.

Homeowners next alleged that the trial court had erred in not awarding injunctive relief, or damages in lieu of injunctive relief, for violation of the natural servitude of drain. The appellate court recognized that damages may be appropriate in lieu of injunctive relief as an alternate remedy. The court determined that such a servitude may be altered by agreement if it does not adversely affect the public interest. The court analyzed the servitude agreement and concluded that the Homeowners' ancestors in title agreed to the alteration of the natural servitude of drain.

The court supported its conclusions by commenting on the evidence presented which suggested that the flooding would have occurred even had flood control measures been taken and that the flooding was clearly an act of God. The court affirmed the trial court's denial of damages and injunctive relief and assessed the costs of appeal to Homeowners.

Sarah E. M^cCutcheon

MASSACHUSETTS

Enos v. Secretary of the Executive Office of Env'tl. Affairs, 719 N.E.2d 874 (Mass. App. Ct. 1999) (holding that plaintiffs had standing to maintain an action for alleged injuries which fell within the protection of the Massachusetts Environmental Policy Act).

The plaintiffs ("Landowners") were fourteen taxpayers who lived in the town of Plymouth and owned property near the Eel River. Landowners used the Eel River for recreational activities such as fishing, boating, and

swimming. The Town of Plymouth ("Plymouth") committed violations of water quality standards caused by its method of sewage disposal. As a part of a settlement agreement, Plymouth agreed to construct a wastewater treatment plant and other facilities needed to comply with the Massachusetts Clean Waters Act. The Secretary of the Executive Office of Environmental Affairs ("Secretary") required Plymouth to submit a Final Supplemental Environmental Impact Report ("FEIR") for review under the Massachusetts Environmental Policy Act ("MEPA"). Plymouth submitted a FEIR with regard to a proposed sewage treatment plant which disposed of permitted amounts of treated sewage through an existing outfall pipe, with the remainder channeled into the groundwater of the Eel River watershed. The proposed plant was also located in the immediate vicinity of Landowners' properties.

After the Secretary's approval of Plymouth's FEIR and the issuance of a compliance certificate, Landowners brought suit to declare the Secretary's certificate invalid because the town's FEIR did not comply with MEPA and furthermore, that another FEIR was required for review. Landowners alleged that reasonable foreseeable injuries to the use, enjoyment, and value of their real property would occur if Plymouth's sewage treatment plant went forward due to the pollution of the Eel River and offensive odors the plant would produce. The lower court granted the Secretary's motion to dismiss on the ground that Landowners lacked standing to maintain their action. The lower court accepted the Secretary's argument that Landowners' injuries, if any, would stem from the town and not the Secretary.

The Massachusetts Appeals Court concluded that Plymouth's FEIR failed to satisfy the requirements of MEPA and determined the Secretary's certificate of compliance presumptively invalid. The court then turned to the issue of whether Landowners had standing to bring the action. The Secretary argued that Landowners failed to show a causal connection between their alleged injuries and the Secretary's decision that the FEIR complied with MEPA. The court determined the critical question was when does an alleged injury become legally cognizable. After analysis of prior case law, the court concluded that a party that alleges an injury within the area of concern of the statute or regulatory scheme under which the injurious action had occurred has standing. Thus, the central issue became whether Landowners' alleged injuries fell within the area of concern of MEPA.

The court found the primary concern of MEPA was to protect and minimize damage to the environment caused by agency actions. The court concluded that MEPA uses the administrative process and the environmental impact report to accomplish this goal. The court held Landowners' alleged complaints and injuries fell into the area of concern which MEPA and its administrative process were designed to protect. In reaching the decision, the court looked to Landowners' allegations of environmental damage if the project went forward without adhering to the review process and improving the defective FEIR. The court reversed the judgment and remanded the case for further proceedings.

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