

IN THE COURT OF APPEALS OF IOWA

No. 22-1797
Filed March 27, 2024

BLUE VERBRUGGE FAMILY FARMS, LLC, et al.,
Plaintiffs-Appellees,

vs.

**HAMILTON COUNTY BOARD OF SUPERVISORS AS TRUSTEES OF
DRAINAGE DISTRICT NO. 71,**
Defendant-Appellant.

Appeal from the Iowa District Court for Hamilton County, Amy M. Moore,
Judge.

Defendant appeals the district court decision that reversed the decision of
a board of supervisors acting as trustee of a drainage district that annexed certain
property into a drainage district. **AFFIRMED.**

David R. Johnson of The Johnson Law Firm, PLC, Eagle Grove, for
appellant.

Eric J. Eide and Logan J. Eliassen of Nyemaster Goode, P.C., Ames, for
appellees.

Heard by Schumacher, P.J., Langholz, J., and Gamble, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206
(2024).

SCHUMACHER, Presiding Judge.

The Hamilton County Board of Supervisors (Board) as trustee of Drainage District No. 71 (DD71) appeals the district court decision that reversed the Board's decision to annex certain property into DD71. There is not sufficient information in the engineer's report or the annexation report to show the land the Board sought to annex into the drainage district would be materially benefited by the annexation. Thus, the land should not be annexed, and we affirm the decision of the district court.

I. Background Facts & Proceedings

DD71 was established in 1908 and contains 10,375 acres of land. It was originally formed to drain Mud Lake, which no longer exists. DD71 contains a main open ditch and seven lateral branches. The drainage ditches are used for watershed by landowners within the drainage district.

In 2019, a landowner within DD71 petitioned the Board to investigate the need to clean out the main open ditch. The Board appointed an engineering firm, Bolton & Menk, to investigate. Bolton & Menk prepared an engineer's report, signed by Jacob Hagen, which stated suggested repairs to the drainage system in DD71 would cost \$2,457,800. The report recommended the annexation of additional land into DD71. The Board then appointed Hagen to conduct an annexation study. Hagen certified an annexation report, which recommended the annexation of another 30,538 acres into DD71.

Prior to a public hearing scheduled for May 25, 2021, several landowners filed written objections to the proposed annexation. Additional objections were filed at the hearing, and the hearing was continued. In the meantime, the

landowners retained an engineer, Lee Gallentine, to evaluate the proposed annexation. Gallentine presented his findings to the Board at the next hearing on July 26. Gallentine recommended that the proposed annexation be rejected because the land would not receive a material benefit from inclusion in DD71.

The Board approved the proposed annexation. One hundred and twenty-five plus landowners appealed. Following a three-day trial, which included testimony from several experts and hundreds of exhibits, the district court found, “Plaintiffs’ objections were properly raised and . . . they have not waived any of the complaints raised by their Petition in Equity in this matter.” The district court also determined Hagen’s annexation report did not meet the requirements of Iowa Code section 468.119 (2021) because it did not specify the material benefits received by the land sought to be annexed. The court found Gallentine’s opinions were more reliable than Hagen’s opinions. The court concluded, “[N]one of Plaintiffs’ lands are materially benefited by DD71’s facilities, and therefore may not be annexed into DD71 under the applicable statutory framework.” The district court reversed the Board’s decision and vacated the annexation of the property. The Board now appeals the district court’s decision.

II. Standard of Review

This case was tried in equity. See Iowa Code § 468.91. Our review in equity cases is de novo. Iowa R. App. P. 6.907; *Cook v. McNeal*, 602 N.W.2d 353, 356 (Iowa 1999). “In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them.” Iowa R. App. P. 6.904(3)(g); *Askew v. Trs. of Mule Slough Drainage Dist.*, No. 19-0525, 2020 WL 569337, at *3 (Iowa Ct. App. Feb. 5, 2020).

III. Analysis

The Board first contends that because the plaintiffs did not file written objections at the time of the hearing before the Board that the annexation report failed to comply with section 468.119, specifically that the plat and survey was not attached, the issue is waived. Secondly, the Board argues that the evidence in the record shows that the land proposed to be annexed materially benefits from DD71. Because the Board would need to be successful on both claims, we assume without deciding that the Board passed statutory muster concerning the plat and survey. We proceed to the merits of the claim related to material benefits to the proposed annexed landowners.

The Board argues the evidence in the record shows that the land proposed to be annexed materially benefits from DD71. Section 468.119(1) provides that a Board seeking to annex land should appoint an engineer

to make a survey and plat thereof showing their relation, elevation, and condition of drainage with reference to such established district, and to make and file with the auditor a report as in this subchapter, parts 1 through 5, provided for the original establishment of such district,^[1] said report to specify the character of the benefits received.

The district court found Hagen's "mere reference to prior reports and profiles does not incorporate the information contained in them into his Annexation Report." The court stated the maps "attached to the Annexation Report also do not satisfy the requirement that each of the annexed parcels of land be surveyed with specificity." The district court also determined, relevant to the deciding issue in this appeal, Hagen's "conclusory and brief statement that the lands are

¹ The requirements for an engineer's report for the establishment of a drainage district are found in section 468.12.

materially benefited by DD71 also does not meet the statute's requirement that the benefits received must be stated with specificity."

The engineer's report submitted by Hagen states:

The watershed draining to the DD71 open ditch includes approximately 43,000 acres. The existing assessment area covers 10,395 acres of the watershed. The existing assessment schedule includes only approximately 24% of the watershed that drains to the district's facilities. It would be beneficial to complete annexation to allow for all the acres of the watershed to help pay for any costs of this project and future projects.

. . . The majority of the lands being recommended to be annexed are upland of the old lakebed and existing open ditch. These lands may not as easily see the benefit of the open ditches as the old lakebed, however prior to the construction of the DD71 ditches, the uplands' drainage had been limited to the capacity of the old lake outlet and the depths of their tiles and open ditches would be controlled by the lake water surface. Since the DD71 open ditch was constructed to its size and depth, it has allowed for all upland tiles and open ditches to drain to a more reliable outlet and to be constructed deeper and with more grade than what would be possible if the old Mud Lake still existed. In the 60 years since the last annexation attempt, the use of technology has aided us in our ability to more accurately reflect this benefit received.

Hagen's annexation report stated:

It is this engineer's opinion that these parcels with benefited areas totaling approximately 30,538 acres, are materially benefited by the facilities of [DD71].

The benefits derived are material in that the surface and/or subsurface drainage in excess waters from each parcel is discharged through and removed by existing DD71 facilities, which were designed in part to receive and pass said excess waters to the district's outlet.

"It is clear from the applicable statutes and our case law, that in order to annex land, the Board must show a benefit, if not a 'material' benefit to those landowners whose land is being annexed." *Ray W. Ohrtman Revocable Tr. v. Palo Alto Cnty. Bd. of Sup'rs*, No. 07-1921, 2008 WL 5234359, at *2 (Iowa Ct. App. Dec. 17, 2008) (citing Iowa Code §§ 468.119, 468.120). For annexation of land

into a drainage district there must be evidence that the land “will in all reasonable probability derive some special benefit from the improvement.” *Zinser v. Bd. of Sup’rs of Buena Vista Cnty.*, 114 N.W. 51, 56 (Iowa 1907). “[S]trict compliance, rather than substantial compliance, with the statutory procedures is required for annexation of land by a drainage district.” *Askew*, 2020 WL 569337, at *5.

In an early case related to the establishment of a drainage district, the Iowa Supreme Court stated, “Ascertaining the limits of the watershed was of no importance save in indicating the trend of drainage and what the dimensions of the ditch should be.” *Zinser*, 114 N.W. at 53. Instead, “[t]he test to be applied is whether the tract of a particular owner will be affected by the improvement.” *Id.* The court determined it was not sufficient for an engineer to state that all lands within a watershed would benefit from the construction of a ditch. *Id.* at 54. The court stated:

But if so located that drainage will not benefit it, or so that it will drain quite as well in the lowlands or slough as it will through the ditch excavated, and it is not made more accessible or the like, then it is not benefited within the meaning of the statute. In other words, there can be no assessment on lands merely because of the improvement of others near by. The land itself or its immediate surroundings must be affected by the improvement in order to justify its inclusion in the drainage district.

Id. at 55. Also,

By the language of the statute the land to be included in the district must in some way be affected by the improvement, and, to benefit it, necessarily this must increase its value, either by relieving it of some burden, or by making it adapted for a different purpose, or better adapted for the purpose for which it is used. It is manifest, then, that a prerequisite to the inclusion of any tract of land in the district proposed by the engineer is that it will in all reasonable probability derive some special benefit from the improvement. If, owing to its location, the construction of a ditch will not drain the land any more or differently than is done by the existing swale or swamp, or render

it more accessible, or affect its immediate surroundings, then it is not benefited, even though the ditch may carry off the water.

Id. at 56.

In general, “when the topography of land would ensure surface waters drained off the landowner’s property naturally, a landowner must receive some benefit other than an outlet for surface waters to have a material benefit.” *Lindflott v. Drainage Dist. No. 23*, No. 16-1579, 2017 WL 5185430, at *3 (Iowa Ct. App. Nov. 8, 2017). A landowner “may freely avail himself of the topography of his land, and may discharge his surface waters wherever gravitation naturally carries them, without further concern on his part as to where they go, for they are no longer his.” *Thompson v. Bd. of Sup’rs of Buena Vista Cnty.*, 206 N.W. 624, 626–27 (Iowa 1925).

The benefits listed in the engineer’s report and annexation report do not constitute a material benefit under caselaw. Land is not considered to be materially benefited merely because it is within the watershed area for the ditches in the drainage district. There must be evidence of a greater benefit than the natural drainage of water. As the district court noted, “the mere acceleration of the natural flow of water is insufficient to establish a material benefit.” We agree with the court’s conclusion that “none of Plaintiffs’ lands are materially benefited by DD71’s facilities, and therefore may not be annexed into DD71 under the applicable statutory framework.” Although the Board has shown some benefit to the landowners,² it has not met its burden to show a material benefit—that is, it

² The county’s engineer has shown that the drainage district provides some benefit beyond just being in the watershed. His calculations and reasoning show that the water is draining better by changing the grade because of the district being in

has not shown an improvement to the quality of the soil of the landowners based on better drainage.

We affirm the decision of the district court.

AFFIRMED.

existence compared to if it had never been built. In his report, however, he did not make any determination of whether the landowners were materially benefitted. By including the entire watershed, his report included landowners that received little to no benefit. Also, while the upland owners might see some benefit from the increased grade, the benefit is not material because the water would drain naturally without the improvement. See *Lindflott*, 2017 WL 5185430, at *3.