IN THE COURT OF APPEALS OF IOWA

No. 1-388 / 10-1014
Filed November 9, 2011

CONNIE NEWLIN,
Plaintiff-Appellant,

vs.

DONALD CALLENDER and
RAMONA CALLENDER,
Defendants-Appellees.

Appeal from the Iowa District Court for Dallas County, Peter A. Keller, Judge.

A servient estate holder appeals the district court's denial of her petition for injunctive relief and damages against the dominant estate holders' actions. **AFFIRMED.**

Lorraine J. May of Hopkins & Huebner, P.C., Des Moines, for appellant.

Michael D. Ensley of Hanson, Bjork & Russell, L.L.P., Des Moines, and Daniel L. Manning of Connolly, O'Malley, Lillis, Hansen & Olson, L.L.P., Des Moines, for appellees.

Heard by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Connie Newlin, a servient estate holder, appeals a district court ruling that dismissed her petition seeking damages and to enjoin Donald and Ramona Callender (the Callenders), the dominant estate holders, from directing water in their pond onto Newlin's property. She further requests that we vacate the district court's injunction granted to the Callenders which prevents Newlin from blocking the natural drainage on her property, and causing the water to backup on the Callenders' property. Upon our review, we conclude the Callenders' pond is functioning in a manner that has neither (1) substantially increased the volume of water flowing from the pond, nor (2) substantially changed the manner or method of drainage and caused actual damage to result. We further find the district court's granting injunctive relief to the Callenders was proper, but that Newlin may continue to pile manure on the east side of her property so long as her acts do not run contrary to the injunction by impeding the water draining from the dominant estate to the servient estate.

I. Background Facts and Proceedings

In 1994, Newlin purchased two lots of land, located at 3240 and 3242 Ashworth Road, Waukee, to live on and to use as horse acreages. Newlin walked the entire property prior to purchasing it and noted there was no sign of water damage—such as ridges or ruts—and no evidence of a water problem on the property. Since 1995, Newlin has kept horses on the property and eventually built a log home on the property. In 2004, the Callenders purchased property

located at 3250 Ashworth Road, and adjacent to the Newlin property.[1] Located on the southwest corner of the Callender property is a farm pond, which has been there since the 1980s. Around the edge of the pond is a berm from which protrudes a four-inch wide PVC pipe, date stamped "1990." When the water level of the pond rises above the level of the pipe, water from the pond flows through the pipe and onto the Callender property. The water then flows westerly across the Callender property for about one-hundred to one-hundred and twenty feet and then onto the southeastern edge of the Newlin property.

In July 2007, the Callenders set up a pump to drain down some of the water in the pond in an effort to prevent damage to nearby trees. The pumping lasted for a couple of days, and Newlin's property became saturated, but eventually dried out and did not sustain damage. In March 2008, however, Newlin noticed the land south of her paddock area—located on the southeast edge of her property and west of the pond—getting wetter. On March 23, 2008—Easter Sunday morning—Newlin heard her horse, Tea, "scream" and found her south of the paddock area, unable to move. Newlin called a veterinarian, who determined the horse had broken her leg; the horse was euthanized.

In the fourteen years Newlin lived on her property, she had never seen the land so wet. Curious about the source of the wetness, Newlin crossed the property line to the Callender property and discovered the white PVC pipe sticking out of the berm, with water coming out of it. Newlin observed her land becoming wetter and contacted the Callenders via e-mail on the morning of April

[1] The parties share an east/west border, with the Newlin property located west of the border and the Callender property located to the east of the border.

6, 2008, to express her concern. Don Callender responded that same day, writing that the pipe had been on his property since he purchased it, that he also had wet spots on his pastures, and that he had to

> disagree about the implied allegations that we have created a hazard on your property by something we have changed since we bought the property. We have not made any changes to the drainage on our property that would affect your problem.

With no further action taken by the Callenders, Newlin filed a petition for temporary and permanent injunction on April 24, 2008, to enjoin the Callenders from "piping, pumping or otherwise directing water from their property onto the Newlin property"—and for damages. Newlin also set forth nuisance as a theory of recovery. The Callenders answered and counterclaimed, asserting Newlin had "impede[d], restricted and slowed the natural course and flow of water leading from the . . . dominant estate onto [Newlin's] property." The Callenders also sought a temporary and permanent injunction to enjoin Newlin from impeding the natural course and flow of water from the Callenders' property. On August 12, 2009, Newlin filed an amended and substituted petition, alleging two additional legal theories—negligence and trespass to land. Newlin then moved for partial summary judgment. On August 17, 2009, the Callender's also moved for summary judgment, asserting their property, as the dominant estate, was draining appropriately and alleging it was Newlin's own efforts "to dam up the water course which is the cause of [Newlin's] damage, to the extent that there is any damage." Finding material facts in dispute, the district court denied both parties' motions on December 22, 2009. A three-day bench trial was held in March 2010. On May 20, 2010, the district court denied Newlin's claims for

temporary and permanent injunction, nuisance, trespass, and negligence, and granted the Callenders' claim for permanent injunction. Newlin appeals.

II. Standard of Review

Our review of actions tried in equity is de novo. Iowa R. App. P. 6.907; *Green v. Wilderness Ridge, L.L.C.*, 777 N.W.2d 699, 703 (Iowa 2010). We, however, give weight to the factual findings of the district court, particularly when considering the credibility of witnesses. *Id.*

On appeal, Newlin draws our attention to the district court's May 20 decision, emphasizing that our appellate courts' customary deference to the district court cannot be applied because the district court judge adopted the Callenders' proposed findings, conclusion and ruling "***verbatim*** . . . through large sections of the decision." The Callenders assert that although the district court judge did adopt portions of their proposed ruling, the ruling was not verbatim and therefore closer scrutiny is not required. On our review, we find almost nine of the thirteen pages which comprise the district court's ruling were adopted verbatim by the district court from the Callenders' proposed findings. Substantially all of the adopted material falls within the district court's conclusions of law and ruling. The district court, however, did set forth its own factual findings and credibility determinations with respect to witnesses.

Our supreme court has recognized the crucial role district courts play in making credibility determinations. *Rubes v. Mega Life & Health Ins. Co.*, 642 N.W.2d 263, 266 (Iowa 2002). It has also found that "our ability to apply the usual deferential standard is undermined by the court's verbatim adoption of [a party's] proposed factual findings and legal conclusions" and has cautioned

district courts about the "perils of such practice." *Id.* "The customary deference accorded [district] courts cannot fairly be applied when the decision on review reflects the findings of the prevailing litigant rather than the court's own scrutiny of the evidence and articulation of controlling legal principles." *Id.* (citing *Phoenix Eng'g & Supply Inc. v. Universal Elec. Co.*, 104 F.3d 1137, 1140 (9th Cir. 1997), for the proposition that where a district court adopts one party's proposed findings, close scrutiny of the record is required). Although our supreme court has refused to adopt a higher standard of review in such cases, it has instructed that "we must scrutinize the record more carefully when conducting our appellate review." *NevadaCare, Inc. v. Dep't of Human Servs.*, 783 N.W.2d 459, 465 (Iowa 2010); *see also Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 97 (Iowa 2011) ("[B]ecause upon our de novo review we will carefully scrutinize the record in making our own findings of fact, no additional level of scrutiny is required. We reiterate, however, that a court should never abdicate its duty to independently determine facts, synthesize the law, and apply the facts to the law."). Therefore, on our de novo review, we adhere to these principles, with careful scrutiny of the record.

III. Farm Pond Drainage and Functioning

Newlin asserts that the pond's drainage pipe was not properly functioning, causing damage to her property. Our case law is well established that water from a dominant estate must be allowed to flow in its natural course onto a servient estate. *Gannon v. Rumbaugh*, 772 N.W.2d 258, 263 (Iowa Ct. App. 2009). Where damage results, the servient owner is without remedy. *Grace Hodgson Trust v. McClannahan*, 569 N.W.2d 397, 399 (Iowa Ct. App. 1997).

One caveat to the general rule is "if the volume of water is substantially increased or if the manner or method of drainage is substantially changed and actual damage results, the servient owner is entitled to relief." *Id.*; *Oak Leaf Country Club, Inc. v. Wilson*, 257 N.W.2d 739, 745 (Iowa 1977). The relative elevation—and not the flow of waters—is controlling of which tract of land is the dominant estate. *Moody v. Van Wechel*, 402 N.W.2d 752, 757 (Iowa 1987). It is undisputed that the Callender property is the dominant estate and the Newlin property is the servient estate. It is also undisputed that the drainage pipe in the Callenders' pond directs water to the same waterway area that existed before the creation of the pond in the 1980s;[2] only whether the control of the flow was properly functioning is in dispute.

Newlin asserts that although the district court considered the amount of water running over her property, "it wholly failed to address or consider the uncontroverted evidence that the spillway is malfunctioning and that the malfunction elongates the time period during which the soil is wet, resulting in damage to the soil, compaction, loss of vegetation." She further contends and centers her argument around the allegation that "there was and is no temporal relationship between the precipitation and drainage from the farm pond" and that "every single witness addressing the issue conceded that the spillway was not functioning as designed and intended in 2008, even after clearing the turtle shell Defendants admit was at least partially and randomly interfering with the flow of water."

[2] From the early 1930 aerial photo to present, it is evident that the flow of the waterway over Newlin's property has remained the same.

To support her claims, Newlin first alleges the Callenders' own expert, professional engineer Charles Bishop, made a "key admission" that the pond was not functioning as designed or intended. The statement made by Bishop followed a line of cross-examination concerning video taken by Newlin on June 6, 2008, showing a "heavier" flow of water onto Newlin's property. Bishop asserted at least twice that the temporal relation between a precipitation event and drainage of the pond depends on the level of the pond prior to the heavy rainfall. On cross-examination, Bishop testified regarding the time it should take the pond to begin draining after a rainfall event.

> Q: Mr. Bishop, it shouldn't take more than a day for drainage from a rainfall event from a pond to be released onto Ms. Newlin's property if that pond is functioning as designed and intended, should it? A: Depending on the level of the pond.
>
> Q: But there's no rain in between. A: But the level of the pond prior to the heavy rainfall, it could have taken—takes time to fill up the pond and then once it gets above that, it's got to discharge.

Then, when asked whether the pond was functioning as it was designed and intended based on the June 6 video of the water flowing, Bishop stated:

> Again, I cannot tell you what the pond—what level the pond was when the rainfall started. No indication of that. So it could have taken a day for the pond to fill up to a point to get to a level to where it starts discharging.

The initial water level of the pond could therefore explain why it took until June 6—despite rainfall on the two days prior—for the pond to begin flowing onto the

Newlin property.[3] The district court, performing its own fact finding, found Bishop's testimony "very compelling."

The district court referenced the testimony of the Callenders' expert David Allen, an environmental specialist with the Iowa Department of Natural Resources. Allen testified as to the essential role the spillway plays in the stability of the berm and the "insignificant" amount of water that flows through the pipe compared to the natural waterway. In its original fact findings the court found the testimony of Bishop and Allen "to be the most credible in the situation at hand."

Newlin further cites that her own expert, agricultural engineer Stewart Melvin, believed the blockage in the drain pipe in 2008 altered the timing rate and manner of water flow across the Newlin property. She then asserts, "[e]ven Don Callender admitted that there was a blockage in the pipe forming the spillway in 2007 and 2008 and that prohibited it from operating as intended." Newlin specifically references Don Callender's recross-examination at trial, which developed as follows:

> Q: On your direct examination I believe you testified that in 2007 you thought the pipe—was submerged under the water, correct? A: It had to be. I believed that the outlet of that PVC pipe was actually a tile line, if you look at my deposition.
>
> Q: Okay. But if the water was over the level of the inlet of the pipe in 2007 and it wasn't draining, it had to be clogged in 2007, didn't it? [Objection made and objection overruled]. A: Yes, [ma'am], the water was coming out of the 4 inch PVC pipe when it was pumping back in 2007.

[3] The record reflects that on June 4, Des Moines had 0.56 inches of rain and West Des Moines had no rain; on June 5, Des Moines had 4.15 inches of rain and West Des Moines had 2.5 inches of rain.

As the excerpt above indicates, Don Callender did state that at some point he believed the pipe "had to [have been]" submerged under water, but he never agreed that it was clogged. In March 2008, Callender observed water flowing from the pipe. Callender did say that a small turtle shell that was removed from the pipe in May 2008, "restricted" the water flow, or perhaps there was a "separated joint" in the pipe, which may have caused a restriction, but the pipe was cleared from time to time to prevent any restriction in the flow of water out of the pond. At no time did Callender say that the pipe was clogged such that no water was draining from the pond.

Evidence submitted by both parties also illustrates that in 2008, the annual precipitation for Des Moines was the third highest since 1881.[4] The total snowfall for Des Moines from October 2007 to May 2008 was also twenty-seven inches above average.[5] Bishop testified that periods of record setting snow and rainfall amounts could certainly impact the amount of water flowing through the pond, as well as the duration of the flow, and we recognize such factors must be considered. *See Witthauer v. City of Council Bluffs*, 257 Iowa 493, 500–01, 133 N.W.2d 71, 76 (1965) (considering that an excess of rain and snow in 1959 and 1960 could impact the increased flow of surface water to plaintiff's property and holding, "We are satisfied the problem created by these rains and snows, and the impounded water, cannot be solved in this equitable action. Since defendant was the dominant proprietor and no breach in its obligation was shown, it is not

[4] In 2008, the total annual precipitation was 49.45 inches. Only two years on record had greater rainfall amounts—1881 (56.81 inches) and 1993 (55.88 inches).

[5] From October 2007 to May 2008, the total snowfall was 58.5 inches. The average since 1884 has been 31.5 inches. Since 1990, only 2003 had as much snow—a total of 58.4 inches.

responsible for the increased or unnatural quantities of surface water that came upon plaintiff's land in 1959 and 1960"). However, the burden is still on Newlin to show that water flowing from the Callender property to her property was "increased . . . by reason of the claimed drainage of the area in controversy." *Cundiff v. Kopseiker*, 245 Iowa 179, 185, 61 N.W.2d 443, 446 (1953).

A. Increased Volume of Water Flow

While the testimony of the various experts employed by the parties confirmed that in May 2008, a small turtle shell was at least partially restricting the water flow, there is no evidence to support the contention that any such restriction, either before or after it was removed, "substantially increased" the volume of the water flowing through the pipe as required under Iowa law. *McClannahan*, 569 N.W.2d at 399. In fact, the turtle shell, had it actually been clogging the pipe so as to limit the flow of water, was removed *after* Newlin first complained of the wetness on her property in March 2008 and after Newlin filed this action. Newlin had the burden of proving the Callenders "caused an additional flow of water and the resulting damage." *Cundiff*, 245 Iowa at 185, 61 N.W.2d at 446. In *Cundiff*, our supreme court held that where plaintiffs failed to present "definite evidence of the amount of additional water which flowed onto plaintiffs' land," the plaintiffs failed to sustain their burden. *Id.* The court in that case also held "[t]here was evidence of increased water on plaintiffs' land after a heavy rain or from melting snow but there was insufficient evidence of increased water flow *by reason of the claimed drainage of the area in controversy*." *Id.* Because Newlin failed to present "definite evidence," that is any measure of additional water flowing onto her property "by reason" of the Callenders' action,

the district court properly found she had not proved her claim that the Callenders substantially increased the volume of the water flow.

B. Manner or Method of Drainage Changed

Nor did Newlin prove that the "manner or method of drainage . . . substantially changed." *McClannahan*, 569 N.W.2d at 399. As the Callenders point out in their appellate brief:

> 1) they did not design the pond or dam or spillway; 2) did not build the pond or dam or spillway; 3) that both parties bought the properties after the pond, dam and spillway were built; 4) that no changes were made to the pond, dam or spillway by the Callenders; 5) that the natural surface drainage historically had cut a channel through the Newlin property as far back as the 1930's; and, 6) that Iowa was experiencing a very wet period of weather throughout the time period that Newlin is complaining about.

We find compelling the fact that the pond and drainage system pre-date the parties' purchases of their respective properties, aerial photographs of the properties taken in the 1930s, 1950s, 1960s, and 1990s show a cut channel through Newlin's property consistent with the current water flow,[6] and the Callenders did not make any changes to the pond, dam or spillway since their purchase of the property. In addition, Newlin's own expert, Melvin, testified that the paddock area and barn Newlin constructed were positioned near the lowest points of her property. Asked, over Newlin's objection, what he would have done in hindsight, he replied, "Probably would have suggested you stay away as far as you can from the drainageway. . . . [W]ith wet conditions and with the horses in

[6] The most recent aerial photograph was taken in 2008. It is only this most recent photograph that shows the development of the property—in each of the previous photographs the land was undeveloped. In addition, the cut channel on the Newlin property is much less defined in this most recent photograph than in the prior photographs.

there, it's created a problem." Because the pond has historically been located on the Callender property, functions in a manner that would allow it to drain onto the lower-lying Newlin property, and has not been altered by the Callenders, we agree with the district court that the manner or method by which the pond operates has not been substantially changed.

Recovery under this theory also requires proof of actual damages. *See O'Tool v. Hathaway*, 461 N.W.2d 161, 163 (Iowa 1990) ("Liability also exists if (1) the manner or method of drainage is substantially changed and (2) actual damage results."). At trial, Newlin entered numerous pictures and video footage into evidence to confirm the condition of her property. In describing the property as it appeared in 2009, she testified:

> The area that's depicted by numerous photos is rutted. There are holes from where horses have been through it. But there's a primary ridge line that goes through it that is at least a foot deep in places. It's badly damaged.

Newlin also testified that when the paddock area was saturated, it would "sit and get stagnate and smell" and that the flies and mosquitoes were noticeably worse in the summer of 2008 than any of her previous years on the property. While Newlin did enter evidence pertaining to the costs associated with putting down her horse, having her John Deere pulled out of the mud by a towing service, purchasing five loads of dirt in the fall of 2008 in an attempt to fill the ruts and holes before winter, and the expenses associated with boarding her horses, she did not prove that any of these damages resulted from a substantial change in the manner or method of drainage caused by the Callenders. Moreover, she requests we reverse and remand for the district court so she has an opportunity

to prove the damages she sustained. This further bolsters the district court's conclusion that Newlin failed to prove damages as required for recovery under the change in manner or method theory.

IV. Maintenance of Pond—Trespass, Negligence, Nuisance

Newlin also generally asserts that under the "trespass, negligence and nuisance" theories of recovery, no intentional diversion of water was required, but the Callenders were under a duty to maintain the pond such that it would operate as designed. The Callenders respond Newlin failed to preserve error relating to these claims because she failed "to cite to and argue the specific legal elements related to" those theories of recovery. In her reply brief, Newlin responds by stating that error was properly preserved because there was a "detailed discussion" related to these theories of recovery; she then proceeds to discuss negligence and trespass in her reply brief.

We agree with the Callenders that Newlin did not set out and identify the elements of each theory of recovery with facts and supporting law as they relate to each theory. Instead, she presents a blanket discussion that does not consider the individual elements of each theory of recovery. Failing to set out the error, if any, committed by the district court as it pertains to each theory of recovery, there is nothing for us to consider. *See Reidy v. Chicago, Burlington & Quincy R.R. Co.*, 220 Iowa 1386, 1386, 258 N.W. 675, 677 (1935) (stating that where the appellant failed to set out error by assigning as error the rulings on the motions, the court was not presented with "any matter for our determination"); *Prudential Ins. Co. of Am. v. Burns*, 223 Iowa 714, 717, 273 N.W. 845, 846 (1937) ("'Our rules require that, when errors are assigned or points are to be

made in this court, they must specifically point out the matter complained of and objections thereto. Omnibus errors will not be considered, but will be disregarded.'"). Moreover, where an issue is raised for the first time on appeal in a reply brief, we refuse to address the issue. *Hills Bank & Trust Co. v. Converse*, 772 N.W.2d 764, 770–71 (Iowa 2009).

Even if error was preserved, Newlin has not established that the Callenders failed to properly maintain the pond. While Newlin points to incidents such as the turtle shell in the pipe, the possibility that the pipe was submerged under water at some point in April 2008, and water flowing from the pond was at times inconsistent with precipitation, these circumstances are merely speculative as to any failure on behalf of the Callenders to maintain the pond.

Further, Newlin cites *O'Tool* for the proposition that the Callenders can be liable for damages despite any affirmative act on their part. *O'Tool*, however, is distinguishable from the case at hand because the neighboring, dominant landowners affirmatively acted in a manner that changed the flow of water onto the O'Tool's property. *See O'Tool*, 461 N.W.2d at 164 (imposing liability on dominant landowners who constructed conservation terraces when it was foreseeable that a rainfall in excess of 4.7 inches could occur in a twenty-four hour period, cause the terraces to break, and thereby damage the servient estate). Newlin also cites *Oak Leaf Country Club, Inc. v. Wilson*, 257 N.W.2d 739 (Iowa 1977), to support her contention that the Callenders must use ordinary care so as to not injure her property. In *Oak Leaf*, the dominant landowners engaged in an affirmative act—straightening a creek channel—that later caused

problems to servient estate owners. *Oak Leaf Country Club, Inc.*, 257 N.W.2d at 742.

Newlin concludes that application of a standard imposing a duty on the Callenders to maintain the pond, "mandates recovery for [her] in the face of the conduct of the Callenders." We note, however, that unlike the defendants in *O'Tool* and *Oak Leaf*, the Callenders took no affirmative action to change the flow of water from their property onto Newlin's property. Neither case has application to the Newlin–Callender situation. Moreover, no evidence was presented to prove that the Callenders had failed to maintain the pond, which prevented it from operating as intended. We therefore affirm the district court on this issue.

V. Newlin Injunction

Newlin finally contends the district court erred in ruling she blocked the natural drainage and should be enjoined from placing manure along the east side of her property. The district court enjoined Newlin from "constructing any dam, berm, dike or in any other manner rais[ing] the elevation of the property in a manner which impedes, restricts or slows the natural course and flow of water from the Callender property."

> A court in equity will not resort to the granting of injunctive relief unless it appears there is an invasion or threatened invasion of a right, and that substantial injury will result to the party whose rights are so invaded, or such injury is reasonably to be apprehended.

Sloan v. Wallbaum, 447 N.W.2d 148, 149 (Iowa Ct. App. 1989). In *Sloan*, this court affirmed the issuance of an injunction where the servient estate holder used a piece of tin and later fill dirt to block the exit of a drainage ditch. *Id.* Although

the blockage in *Sloan* was only twelve inches high, the blockage could flood over five acres of land. *Id.* While no damage had occurred in the three years prior to Sloan's action due to drought-like conditions, once it rained—which was inevitable—the dominant estate would be damaged. *Id.* at 149–50.

For many years preceding this litigation, Newlin piled the manure from her horse barn right outside the paddock area on her property, near the eastern border of her property and west of the Callender property. On appeal, the Callenders state, "[b]y [Newlin's] own admission, the manure did act to temporarily dam the waterflow." The referenced statement was made by Newlin on cross-examination, which proceeded as follows:

> Q: Do you also recall making the statement in that video that your manure pile is acting as a dam in that circumstance, correct? A: I said that. I know that directly on the side of the Callenders' property there's an area that's lower than mine. It's kind of concave there. And I think Don and Mona probably know that too. So the water that I'd never seen pool there before pooled there. And it rose from that area and came up a manure pile that I had there for years[, which] was in its way. But it wasn't there serving as a dam. I had no intention of doing that. But it was probably holding back water for a short period of time as it made its way through the manure. Of course, it broke through the manure.
>
> Q: And if I remember correctly, you were actually expressing somewhat surprise that the water was already flowing through—there was water on the other side of the manure that was flowing through the manure, correct? A: I just was surprised there was so much water, never seen any water there before and obviously wouldn't have piled manure there had there been water there before.

While Newlin requests that we vacate the injunction because "the record before this court is wholly devoid of any interference (intentional or otherwise) with the natural waterway by Newlin and the injunction is therefore unwarranted," we find that Newlin can still pile manure without running afoul with the injunction. The

language adopted by the district court prohibits the construction of a dam, berm, or dike, as well as raising the elevation of the property so to impede, restrict or slow the natural course and flow of water from the Callender property.

Our court has held that "[w]ater from a dominant estate must be allowed to flow its natural course onto a servient estate. The flow may not be diverted by obstructions erected or caused by either estate holder." *Gannon*, 772 N.W.2d at 263–64 (internal citations omitted). The injunction issued by the district court does not wholly prohibit Newlin from piling manure on the east side of her property. It simply means she cannot do what she has been enjoined to *not* do—construct a dam, berm, or dike, or raise the elevation of the property so as to restrict or slow the natural flow of the water from the Callender property. Because this injunction is consistent with Iowa law, which seeks to prevent the diversion of the natural flow of water, we affirm the district court's injunction.

AFFIRMED.

Vaitheswaran, J., concurs; Sackett, C.J., specially concurs.

SACKETT, C.J. (concurring specially)

I concur specially without opinion.