

IN THE COURT OF APPEALS OF IOWA

No. 2-372 / 11-1554
Filed July 11, 2012

**VORHES LTD., WILLIAM A. VORHES,
and ETHAN VORHES,**
Plaintiffs-Appellants,

vs.

**LEO B. STAUDT, WARREN DUNKEL
and ARLIN ENABIT, Acting As The
Board of Supervisors of Floyd
County in the Matter of Drainage
District No. 2, Floyd County, Iowa,
and FLOYD COUNTY,**
Defendants-Appellees.

Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley,
Judge.

Landowners and farmers appeal from the district court's denial of their
petition requesting a writ of mandamus and an injunction against Floyd County
and its board of supervisors. **AFFIRMED.**

Lawrence H. Crosby of Crosby & Associates, Saint Paul, Minnesota, and
Mark B. Anderson, Cresco, for appellants.

Samuel C. Anderson of Swisher & Cohrt, P.L.C., Waterloo, for appellees.

Heard by Vogel, P.J., and Vaitheswaran and Doyle, JJ.

VAITHESWARAN, J.

Landowners and farmers unsuccessfully sued a county and its board of supervisors for a claimed failure to adequately maintain a drainage district. On appeal, they contend the district court acted inequitably in (1) declining to find that changes to the drainage system increased the water crossing their land and (2) refusing to implement one of several proposed solutions.

I. Background Facts and Proceedings

Eighty-seven years ago, several Floyd County landowners agreed to establish Drainage District No. 2. They further agreed to bear the cost of building and maintaining the district. The Floyd County Board of Supervisors approved the agreement, subject to compliance with state laws governing drainage districts. See Iowa Code § 468.1 (2009) (“The board of supervisors of any county shall have jurisdiction, power, and authority at any regular, special, or adjourned session, to establish a drainage district or districts . . . whenever the same will be of public utility or conducive to the public health, convenience or welfare.”).¹

William Vorhes and his farming corporation, Vorhes Ltd., owned land outside the drainage district. William and his son Ethan farmed the land, and Ethan ran a cattle operation on it.² William also rented and farmed some land within the district.

¹ This is the current version of the substantially similar code section in effect at the time the drainage district was formed—Iowa Code § 1989-a1 (Supp. 1913).

² We will collectively refer to the plaintiffs as “the Vorheses.”

The drainage district initially constructed a main tile line to alleviate subsurface moisture. Over the years, the district added lateral tile lines that fed into the main line.

The main line generally followed the natural contour of the land from uphill to downhill, as well as the natural flow of water. Precipitation entered the line and was either absorbed into the lower levels of soil or proceeded into a sinkhole outside district boundaries on land owned by Gary Gerhard. With rains of more than an inch, excess sub-surface water overflowed from the sinkhole and continued downhill along with the surface water.

The Vorheses' land lay in a "huge funnel." Surface water coming downhill passed across the Vorheses' land at the bottom of the funnel and ended up in a creek, consistent with the natural course of water flow in the area. The Vorheses chose to plant crops in the watery portion of the bottom of the funnel. Other farmers elected to seed similar areas with grass. While the Vorheses' land was always wet, they believed it became wetter with the addition of lateral lines within the drainage district.

The Vorheses retained an engineer, who presented the board of supervisors with five proposals for alleviating the moisture on the Vorheses' land. His first proposal was to replace the sinkhole on Gerhard's land with a reinforced concrete structure. The board approved this proposal, and the district implemented it at a cost of \$18,316, a charge that was assessed to the drainage district's landowners. The reconstructed structure came to be known as the "improved sinkhole."

Following construction of the improved sinkhole, the Vorheses perceived no reduction in the flow of water over their land. They filed suit against the county and its board of supervisors seeking an injunction prohibiting the use of the improved sinkhole as an outlet and requesting a writ of mandamus requiring that the district “drain the waters from Drainage District No. 2 to an alternate outlet in accordance with [the Vorheses’] engineer’s report.”

After a bench trial, the district court made the following pertinent findings:

One of the substantial reasons why the Vorheses’ property is wet after a rain event is not only because he is downstream from a substantial portion of the watershed, but also because a portion of the Vorheses’ property located in the northeast corner of section 11 in Union Township has the lowest elevation in the area.

. . . [T]hese topographical realities cause the Vorheses’ property to become a collection bowl of water coming down the natural waterway.

. . . [T]his is not a new occurrence.

The court further found the proposal for an alternate, significantly more expensive outlet was a discretionary “improvement” rather than a mandatory “repair” that the board was not statutorily obligated to make. The court concluded the claimed damage to the Vorheses’ land was not “caused by Drainage District No. 2 and, as a result, based upon the evidence submitted, the facts of this case do not justify the Court ordering a writ of mandamus.” This appeal followed.

II. Analysis

Iowa Code chapter 468 governs drainage districts. The statute provides that the “drainage of surface waters from agricultural lands and all other lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare.” Iowa

Code § 468.2(1).³ Any levees, ditches, or drains constructed pursuant to this chapter “shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district.” *Id.* § 468.4.

There appears to be no disagreement that the main tile line of the drainage district was constructed along a natural watercourse. The point of disagreement relates to whether this tile line, and the subsequently added lateral lines, altered the natural watercourse and increased the volume of water flowing over the Vorheses’ land. The Vorheses specifically assert:

Collecting substantial ground water into a tile main does in fact alter the natural system of drainage in that without the laterals and the main, the water would not have been collected at one spot to flow down to the Vorheses’ lands. If the precipitation simply infiltrated into the ground, then the ground water would travel at a slow rate through the aquifer. Where subsurface water is allowed to become surface water again in circumstances where the collected water cannot drain into an adequate drain, then the natural course of drainage is changed.

This argument is appealing at first blush. See, e.g., *id.* § 468.621 (“Owners of land may drain the land in the general course of natural drainage by constructing or reconstructing open or covered drains, discharging the drains in any natural watercourse or depression so the water will be carried into some other natural watercourse, and if the drainage is wholly upon the owner’s land the owner is not liable in damages for the drainage *unless it increases the quantity of water or changes the manner of discharge on the land of another.*” (emphasis

³ This provision was amended in 2011 to specifically include within its purview state-owned lakes and wetlands. See 2011 Iowa Acts ch. 59, § 1. The amended language is not relevant to our discussion in this case.

added)). But, on our de novo review of this equity case, see Iowa R. App. P. 6.907, we agree with the district court that the argument is untenable.

The county's expert, Lyle TeKippe, succinctly explained the problem with the Vorheses' claim. He noted that in the normal course of events the vast majority of rain water would proceed across the land surface rather than through the tile. For example, he testified that with a 2.36-inch rainfall in a twenty-four-hour period (a one-year rainfall event), only 1.2 percent of the water would flow into the subsurface drain tile and "the bulk of the remainder of the 98.8 percent of the rainfall [would be]. . . surface water," which would follow the natural watercourse over the Vorheses' low-lying land. With larger rainfall events, the percentage flowing into the tile would decrease even further. In his view, therefore, the tiling did not increase the volume of surface water proceeding downhill to the Vorheses' land:

[I]n fact, the surplus water going down the natural watercourse has not increased as tile have been added. Any additional surplus groundwater, as a result of additional tile being installed over the years, still flows through the original 16" tile and discharges to the concrete replacement structure built in 2009 as the headworks of the "improved sinkhole." What does not go down the sinkhole overflows out of the top of the structure and then flows downstream in the natural watercourse. By lengthening the tile lines that drain into the "improved sinkhole," the surplus water that goes down the natural watercourse does not increase. Surplus surface water is reduced . . . when rain waters soak into well drained soils rather than run off of saturated soils (if they were not tiled).

According to TeKippe, the tiling actually benefited the Vorheses. At trial, he explained:

The fact that drain tile are added to it and things, in the course of time it would feed water into that drain tile perhaps sooner. . . . As a result, it pulls some of the moisture out of the subsoil . . . and actually allows the surface to dry quicker and may actually help with

the excess surface water. Some will be absorbed that much sooner than otherwise would have been the case.

....
 Q. . . . And when that water gets into the line, is it adding more water than would otherwise not get down to the Vorhes property? A. No, it may change the timing on it, but the concept in general should be the same.

....
 Q. . . . And so is the existence of the tile line to the extent that it takes water underground into the sinkhole, is it . . . decreasing the amount of water that actually ends up down at the Vorhes property? A. That certainly is my take on it because it's allowing a longer period of time for water to continuously flow down the improved sinkhole . . . and as a result, less water leaves the area once you're past the improved sinkhole location.

....
 . . . I think the excess surplus water, whether it's on the surface or whether it's underground water, works its way . . . down towards the natural watercourse towards the Vorhes property, whether it was tile or there was not tile.

TeKippe's theory that the tiling and improved sinkhole benefited the Vorheses is supported by the testimony of a farmer who owned land at the lower level of the drainage district. He noticed considerably less surface water flowing across his land in 2009 and 2010, after the sinkhole was replaced. Gerhard, the farmer on whose property the improved sinkhole was situated, similarly stated the sinkhole "stopped a lot of this flow of water." The Floyd County engineer essentially seconded this opinion, testifying that the changes to the sinkhole benefited Gerhard as well as the people downstream.

Precipitation tables introduced by the county suggest the culprit was not the drainage district but the volume of precipitation. These tables show that from 1999, when the Vorheses claim their water problems became more severe, to December 2010, a city in Floyd County experienced some of the wettest years on record. For example, in 1999, 18.48 inches of rain fell in the month of July

alone. That year also showed the highest recorded annual rainfall, at 51.35 inches. And in 2000, 2004, and 2008, the city experienced more than ten inches of rain during one month of the growing season. Finally, in 1993, the year Ethan Vorhes testified he first saw water damage, the rainfall in August was 10.82 inches.

These tables together with the remaining evidence summarized above establish that rainfall and gravity were largely responsible for any increase in the volume of water flowing across the Vorheses' land. As one neighboring landowner bluntly observed: "Water flows downhill. . . ."

We acknowledge contrary evidence in the record. For example, the Vorheses' expert testified, "I believe what's happening is . . . [the Vorheses are] receiving a prolonged sustained flow of water that would not naturally get to them. Because of that, it keeps their land saturated for extended periods of time." But on cross-examination, the expert agreed the Vorheses' land served as a collection area for water because it was situated downhill from the drainage district. He also admitted the planting of grassland through the area "would be of benefit because of the surface water coming from the upper watershed." As noted, the Vorheses did not take this step.

All in all, the record supports the district court's thorough fact findings and its determination that the volume of water on the Vorheses' land did not increase as a result of the drainage district's installation of lateral tile lines.

The Vorheses next argue "the complete replacement of the sinkhole box has not alleviated or corrected the excessive water flowing from the District to the Vorheses' lands." For that reason, the Vorheses assert the court should have

ordered the construction of an alternate outlet, as proposed by their expert engineer. They characterize the alternate outlet as a “repair” and assert that, unlike “improvements,” the board has no discretion to defer repairs.

In light of our determination that the district’s addition of lateral lines did not increase the flow of water over the Vorheses’ land, we conclude there was no need for additional work on the drainage district, whether that work was characterized as a repair or an improvement.⁴

We affirm the district court’s denial of the Vorheses’ request for injunctive relief and a writ of mandamus.

AFFIRMED.

⁴ While we find it unnecessary to reach the issue of “repairs” versus “improvements,” we note the Vorheses’ own expert characterized his proposal for an alternate outlet as an improvement.