

**IN THE COURT OF APPEALS OF IOWA**

No. 6-539 / 05-1300  
Filed September 21, 2006

**WEBSTER COUNTY BOARD OF SUPERVISORS,**  
**In Their Capacity as Trustees of Drainage District 193,**  
Plaintiff-Appellee,

**vs.**

**ELDON SHOWERS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Webster County, Joel E. Swanson,  
Judge.

Eldon Showers appeals from the injunction issued by the district court.

**AFFIRMED.**

Robert W. Brinton of Brinton, Bordwell & Johnson, Clarion, for appellant.

James L. Kramer and Eric J. Eide of Johnson, Erb, Bice, Kramer, Good &  
Mulholland, P.C., Fort Dodge, for appellee.

Considered by Sackett, C.J., and Hecht and Vaitheswaran, JJ.

**HECHT, J.**

Eldon Showers appeals from the district court's order granting a permanent injunction. We affirm.

**I. Background Facts and Proceedings.**

In 1914, Drainage District 193 (District) was established in Webster County. This District includes 616 acres of ground and two watersheds. Following an engineering study, the Board of Supervisors (Board), serving as the District's trustee, caused the construction of two independent drainage tiles in order to provide drainage to the entire District.<sup>1</sup> The cost for the construction and maintenance of the west and east drainage tiles was charged against the landowners located within the District according to relative benefit accruing to each landowner.

Eldon Showers purchased a 160-acre farm located entirely within the District in 2002. The farm was drained by both the west and east tiles, but after significant rains, a portion of the land drained by the east tile would commonly flood.<sup>2</sup> Showers believed that if he could divert the water draining into this transient pond into the west tile, the farm in question would drain more efficiently. In May of 2004, in defiance of a letter from the Board, Showers constructed a drainage tile on his property to accomplish the diversion.<sup>3</sup>

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<sup>1</sup> The engineering study concluded that because the topography of the District included two distinct watersheds, a two-outlet design was the most feasible and economical design for the drainage system.

<sup>2</sup> Old maps of the area show this area as "Snell's Pond," demonstrating that the area is historically flood-prone.

<sup>3</sup> On April 29, 2004, the Board sent Showers a letter notifying him that he should not install any tile crossing the natural watershed boundary.

The Board filed a petition in equity seeking temporary and permanent injunctive relief against Showers. The petition alleged that the private tile constructed by Showers (1) traversed the natural watershed boundary, (2) diverted surface water from approximately seventy acres of land in the east watershed into the west tile, and (3) overwhelmed the capacity of the west tile to drain the west watershed to the detriment of other District landowners downstream.<sup>4</sup> The petition also noted that Showers's land had not been assessed for the cost of this added benefit.

Following a hearing on June 1, 2004, the district court found no evidence of irreparable harm "at present" and rejected the Board's request for a temporary injunction. However, following a trial to the court in July of 2005, the district court found Showers's continued maintenance of a cross-boundary drainage tile caused irreparable damage for which there was no adequate remedy at law, ordered the removal of the tile constructed by Showers, and enjoined Showers from constructing and maintaining a similar drain in the future.

Showers appeals, contending (1) a landowner within a district may legally construct and maintain a private tile that crosses an internal watershed boundary, and (2) the district court erred in concluding Showers's actions resulted in irreparable injury.

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<sup>4</sup> Experts who testified for the Board reported that following the installation of the private tile, the hydraulic capacity of the west tile diminished by twenty-five to fifty percent, leaving downstream landowners' fields flooded until Showers's land was fully drained. These experts also opined that the consequent increase of the water load borne by the west tile would likely cause expensive "blowouts" of the west tile.

## **II. Scope of Review.**

We review de novo the district court's grant of injunctive relief. *Worthington v. Kenkel*, 684 N.W.2d 228, 230 (Iowa 2004).

## **III. Discussion.**

Injunctive relief is traditionally reserved for those cases where the defendant's actions threaten an irreparable injury for which there is no adequate legal remedy. *Id.* at 232. In assessing whether an injunction has been improvidently granted, we carefully weigh the relative hardship suffered by the enjoined party against the benefit resulting from the injunction's issuance. *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 639 (Iowa 1991).

Iowa Code chapter 468 establishes a regime for the drainage of surface water from "agricultural lands and all other lands" in furtherance of the "public health, convenience and welfare." See Iowa Code § 468.2(1) (2005). As is evident from the chapter's jurisdictional statement, the Board is empowered to establish a drainage district for the public benefit of all who own land within the district, not for the personal benefit of a single landowner. See *id.* § 468.1 (authorizing the establishment of a drainage district "whenever the same will be of public utility or conducive to the public health, convenience or welfare"). Because the benefits resulting from drainage improvements are not evenly distributed among the landowners in a district, the construction and maintenance costs for such improvements are assessed in accordance with the relative benefit each landowner receives. *Id.* § 468.44.

Here, Showers has constructed what would be considered a lateral drain or ditch in violation of at least two statutory sections. First, section 468.621

authorizes a landowner to construct open or covered drains to drain surface water “in the general course of natural drainage” wholly upon the owner’s land without liability for damages “unless [the construction] increases the quantity of water or changes the manner of discharge on the land of another.” Here, it is undisputed that, although the tile constructed by Showers is located entirely on his land, the water it diverts crosses a natural watershed boundary and is discharged onto the land of another.

Second, although section 468.140 authorizes each assessed landowner in a district to connect lateral drains to drains maintained by the district, the statute is abundantly clear that (1) “[t]he [Board] shall make specifications covering the manner in which such lateral drains shall be connected . . . and be maintained,” and (2) “the owner shall follow such specifications in making and maintaining any such connection.” Iowa Code § 468.140. While Showers did inform the Board (1) of his belief that the drainage tiles operated by the Board were inadequately designed and inefficient in draining his fields, and (2) of his intent to construct the tile in question, Showers’s plan to construct the new tile across the natural watershed boundary was soundly rejected and never approved by the Board. Accordingly, the lateral tile in question was not constructed in accordance with the Board’s specifications, and it was clearly constructed by Showers in violation of the statute.

Having concluded Showers had no authority to construct the tile, we must now decide whether injunctive relief is an appropriate remedy. We find Showers’s construction of the tile resulted in the overloading of the west tile and significantly diminished the benefits derived from the District’s drainage system

by other landowners whose property is “downstream” from Showers. We find the detriment to be suffered by those other landowners is likely to recur each year in which Showers’s lateral tile is permitted to exist.

Second, the construction of Showers’s tile is in direct violation of the authority ceded to the Board as the District’s trustee. As was mentioned above, the Board is charged with (1) developing the most efficient, cost-effective drainage possible for all landowners within the District, and (2) where practicable, locating any improvements along natural streams and watercourses. See Iowa Code §§ 468.1, 468.4. Showers’s unilateral action in constructing the private tile not only diverts surface water away from its natural watercourse, it is a clear affront to both the statutory scheme and the Board’s authority. In our view, the only way in which the Board’s authority over the drainage District can be restored is through the injunctive relief authorized by the district court.

Lastly, we find further support for the injunction issued by the district court in the form of Iowa Code section 468.149, which reads in relevant part as follows:

*Any person . . . willfully diverting . . . without legal authority, any ditch, drain, or watercourse . . . established, constructed, and maintained under any provision of law, or obstructing, or engaging in travel or agricultural practices upon the improvement . . . of a . . . drainage district which the governing body thereof has, by resolution, determined to be injurious to such improvement or to interfere with its proper preservation, operation or maintenance, and has prohibited, shall be deemed guilty of a serious misdemeanor and any such unlawful act as above described is hereby declared to be a nuisance and may be abated as such.*

(emphasis added). The statute goes on to give the Board authority, after three days’ notice, to repair the drainage system at that person’s expense. Iowa Code § 468.149. We note that the Board rejected Showers’s proposed course of action, served such notice upon Showers personally, and contacted the tile

installer in an effort to halt the construction of the lateral drainage tile. Despite all of this, Showers proceeded to install the tile that continues to frustrate the drainage system constructed and maintained by the District. We find Showers has created the type of untenable circumstance the district court properly may abate by granting injunctive relief. See *Iowa Natural Res. Council v. Van Zee*, 261 Iowa 1287, 1292-93, 158 N.W.2d 111, 115 (1968) (concluding abatement through injunctive relief is appropriate where such authority is clearly provided by statute even if the conduct enjoined does not constitute a nuisance or rise to the level of great necessity). Having found ample support for the district court's order directing Showers to remove the tile and enjoining Showers from constructing and maintaining such an unauthorized drain in the future, we affirm the district court's decision in its entirety.

**AFFIRMED.**