

SUPREME COURT OF WASHINGTON

Grundy v. Thurston County

117 P.3d 1089 (Wash. 2005) · No. No. 73906-4 · Decided July 28, 2005

SUMMARY

The Washington Supreme Court considered whether a private nuisance claim arising from seawater redirected by a neighbor's raised seawall was barred by the common enemy doctrine. The court held that storm-driven seawater is not surface water for purposes of that doctrine, reversed the Court of Appeals, and remanded for trial on the private nuisance claim. The court did not reach the public nuisance issue because the legality of the county's shoreline exemption was not properly before it.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Ireland, J.; Alexander, C.J.; C. Johnson, J.; Bridge, J.; Chambers, J.; Owens, J.; Madsen, J.; Fairhurst, J.; Sanders, J.
JURISDICTION	Washington
DECIDED	July 28, 2005
DOCKET	No. 73906-4
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of the Court of Appeals' affirmance of summary judgment dismissing Grundy's nuisance claims.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same inquiry used by the trial court; the facts and reasonable inferences are viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published Washington Supreme Court en banc opinion; precedential.
PARTIES	Evelyne Grundy v. Thurston County, The Brack Family Trust, Calvin Brack, Joyce M. Brack

TOPICS

- nuisance
- standard of review
- appellate procedure
- real estate
- environmental law

PRACTICE AREAS

- torts
- real property
- environmental law
- land use
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Court of Appeals properly dismissed or declined to reach Grundy's public nuisance claims based on the alleged illegality of the Bracks' permits.
2. Whether the common enemy doctrine applies to storm-driven seawater and bars Grundy's private nuisance claim.
3. Whether summary judgment was proper when evidence created a genuine issue of material fact regarding whether the raised seawall substantially and unreasonably interfered with Grundy's use and enjoyment of her property.

HOLDINGS

1. The common enemy doctrine does not apply to seawater because storm-driven waves in Puget Sound remain part of a definite and identifiable body of water and therefore do not constitute surface water under Washington law.
2. Summary judgment dismissing Grundy's private nuisance claim was improper because the evidence created a genuine issue of material fact concerning whether the raised seawall substantially and unreasonably interfered with her use and enjoyment of her property.
3. The court did not reach the public nuisance issue because the legality of Thurston County's administrative shoreline exemption had not been decided by the trial court and was not properly before the appellate court.

KEY QUOTATIONS

"We hold that the common enemy doctrine does not apply to seawater, which does not meet our definition of surface water." (117 P.3d at 1094)

"Statements in a case that do not relate to an issue before the court and are unnecessary to decide the case constitute obiter dictum, and need not be followed." (117 P.3d at 1093)

FACTUAL BACKGROUND

Evelyne Grundy owned waterfront property on Johnson Point adjoining property owned by the Brack Family Trust. The Bracks raised their seawall by approximately 16 to 18 inches after their property had experienced winter-storm flooding. Grundy alleged that seawater diverted by the sandbags and raised seawall damaged her property, including destroying approximately 1,200 square feet of vegetation, and threatened more substantial damage. An expert's unrebutted testimony indicated that raising the seawall increased coastal flooding at Grundy's property, creating a material factual dispute regarding private nuisance.

PROCEDURAL HISTORY

Grundy sued Thurston County and the Bracks in November 1999, alleging public nuisance based on the county's permitting decision and private nuisance based on the Bracks' raised seawall. The trial court granted the Bracks' motion for summary judgment and dismissed the seawall-related claims. The Court of Appeals affirmed, holding that the public nuisance claim was time-barred under the Land Use Petition Act and that the common enemy

doctrine barred the private nuisance claim. The Washington Supreme Court granted review, reversed the Court of Appeals, and remanded the private nuisance claim for trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the Court of Appeals decision in its entirety and remand for trial on the merits of Grundy's private nuisance claim.

CASES CITED

- Wilson v. Steinbach, 98 Wash. 2d 434, 437, 656 P.2d 1030 (1982)
- Schaaf v. Highfield, 127 Wash. 2d 17, 21, 896 P.2d 665 (1995)
- Dickgieser v. State, 153 Wash. 2d 530, 535, 105 P.3d 26 (2005)
- Highline School District No. 401 v. Port of Seattle, 87 Wash. 2d 6, 15, 548 P.2d 1085 (1976)
- Bodin v. City of Stanwood, 79 Wash. App. 313, 318 n. 2, 901 P.2d 1065 (1995)
- Kruse v. Hemp, 121 Wash. 2d 715, 721, 853 P.2d 1373 (1993)
- Grundy v. Brack Family Trust, 116 Wash. App. 625, 67 P.3d 500 (2003)
- Grundy v. Brack Family Trust, noted at 150 Wash. 2d 1009, 79 P.3d 445 (2003)
- Currens v. Sleek, 138 Wash. 2d 858, 861-62, 983 P.2d 626 (1999)
- Cass v. Dicks, 14 Wash. 75, 78-79, 44 P. 113 (1896)
- Harvey v. Northern Pacific Railway Co., 63 Wash. 669, 675, 116 P. 464 (1911)
- State v. Potter, 68 Wash. App. 134, 149 n. 7, 842 P.2d 481 (1992)
- Halverson v. Skagit County, 139 Wash. 2d 1, 15, 983 P.2d 643 (1999)
- Miller v. Eastern Railway & Lumber Co., 84 Wash. 31, 34-35, 146 P. 171 (1915)
- Powell v. Superior Portland Cement, 15 Wash. 2d 14, 19, 129 P.2d 536 (1942)
- Tiegs v. Watts, 135 Wash. 2d 1, 15, 954 P.2d 877 (1998)
- Kitsap County v. Kev, Inc., 106 Wash. 2d 135, 720 P.2d 818 (1986)
- State v. Boren, 42 Wash. 2d 155, 253 P.2d 939 (1953)
- Bruskland v. Oak Theater, Inc., 42 Wash. 2d 346, 350-51, 254 P.2d 1035 (1953)
- Harvey v. Board of County Commissioners of San Juan County, 90 Wash. 2d 473, 474, 584 P.2d 391 (1978)