

SUPREME COURT OF SOUTH DAKOTA

Linda S. Sorensen Revocable Trust, Linda S. Sorensen, and Nels J. Sorensen, Trustees, and Nels J. Sorensen, Individually v. Gerald Sommervold, Ralph Westergaard, Les Kephart, Mary Jensen, and Bill Willroth, Sr., as Commissioners for the County of Clay, State of South Dakota; and Clay County, South Dakota, a South Dakota political subdivision

694 N.W.2d 266 (S.D. 2005) · No. No. 23305 · Decided March 9, 2005

SUMMARY

Landowners sought a writ of mandamus requiring Clay County to install a specific culvert and restore natural drainage after roadway construction allegedly caused flooding. The Supreme Court of South Dakota held that the County's general duty to permit surface water to escape in its natural course could be enforced by mandamus, but the specific method of installing a 24-inch culvert could not be compelled. The court affirmed in part, reversed in part, and remanded because factual issues remained regarding drainage and flooding.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	March 9, 2005
DOCKET	No. 23305
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Landowners appealed after the circuit court granted the County's motion for judgment on the pleadings and motion to dismiss for failure to state a claim in an action seeking a writ of mandamus.
STANDARD OF REVIEW	Dismissal for failure to state a claim is reviewed de novo. The court accepts material allegations as true, construes them in the pleader's favor, and determines whether relief is available under any possible

	theory. Judgment on the pleadings is proper only when there are no issues of fact and only issues of law remain.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of South Dakota
PARTIES	Linda S. Sorensen Revocable Trust, Linda S. Sorensen, Nels J. Sorensen, Trustees, Nels J. Sorensen, Individually v. Gerald Sommervold, Ralph Westergaard, Les Kephart, Mary Jensen, Bill Willroth, Sr., as Commissioners for the County of Clay, State of South Dakota, Clay County, South Dakota

TOPICS

municipal law

remedies

motion for judgment on the pleadings

civil procedure

real estate

PRACTICE AREAS

municipal law

civil procedure

remedies

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QUESTIONS PRESENTED

1. Whether the landowners stated a claim for mandamus to compel Clay County to perform its duty to permit surface water to escape in its natural course.
2. Whether mandamus could compel the County to install a particular 24-inch culvert in approximately the same location as the former culvert.
3. Whether judgment on the pleadings was proper when the pleadings raised factual issues concerning the actual drainage and flooding.

HOLDINGS

1. A county's duty to permit surface water to escape in its natural course is ministerial and may be compelled by mandamus when the petition otherwise states the required claim.
2. Mandamus cannot compel the County to perform its drainage duty in a particular manner, such as by installing a 24-inch culvert in approximately the location of the former culvert.
3. Judgment on the pleadings was improper as to the claim seeking performance of the County's general drainage duty because the pleadings raised factual issues concerning the actual drainage and flooding.

KEY QUOTATIONS

“In other words, when public officials have a mandatory duty to perform, but have discretion in how they can perform that duty, mandamus may require performance, “but may not dictate the details.” (269)

“In this case, we conclude that the duty of a county to permit surface water to escape in its natural course is ministerial in nature and may be compelled by mandamus. However, how the County decides to permit the drainage is discretionary in nature and may not be enforced by mandamus.” (269)

FACTUAL BACKGROUND

Clay County modified an existing roadway, replacing a T intersection with a curved road. The Sorensens owned property on both sides of the reconstructed road and alleged that the former road had a 24-inch culvert permitting water to follow its natural drainage course. They alleged that the new road intersected the natural drainage course, caused flooding and irreparable damage to their land, and that the County refused to reinstall the culvert.

PROCEDURAL HISTORY

The landowners alleged that Clay County's roadway reconstruction altered the natural drainage course and flooded their property after the County refused to reinstall a 24-inch culvert. They petitioned for a writ of mandamus requiring installation of the culvert and other modifications to permit natural drainage. The circuit court dismissed the petition and granted judgment on the pleadings; the Supreme Court of South Dakota affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The landowners may proceed on the portion of the application alleging that the new highway prevents natural drainage and causes flooding and damage, seeking an order requiring the County to make necessary modifications to permit water to flow in its general natural drainage course. The dismissal of the claim requiring installation of a 24-inch culvert in a specified location remains affirmed.

CASES CITED

- Fenske Media Corp. v. Banta Corp., 2004 SD 23, ¶ 7, 676 N.W.2d 390, 392
- Hauck v. Bull, 79 S.D. 242, 244, 110 N.W.2d 506, 507 (1961)
- Willoughby v. Grim, 1998 SD 68, ¶¶ 7-11, 581 N.W.2d 165, 168-69
- Knodel v. Kassel Township, 1998 SD 73, ¶ 14, 581 N.W.2d 504, 509
- Matters v. Custer County, 538 N.W.2d 533, 535 (S.D. 1995)
- Musselman v. Governor, 448 Mich. 503, 533 N.W.2d 237, 245 (1995)