

SUPREME COURT OF SOUTH DAKOTA

First Lady, LLC v. JMF Properties, LLC

681 N.W.2d 94 (S.D. 2004) · No. No. 22921 · Decided May 19, 2004

SUMMARY

The Supreme Court of South Dakota reversed and remanded a nuisance judgment involving alleged diversion of surface water from an upper property onto an adjacent motel property. The court held that the trial court failed to determine whether the civil-law drainage rule or reasonable-use rule applied and whether the defendant's conduct or resulting harm was unreasonable. The court also upheld the denial of attorney fees because the motel's claims were not frivolous.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Meierhenry, Justice; Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Zinter, Justice
JURISDICTION	South Dakota
DECIDED	May 19, 2004
DOCKET	No. 22921
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	JMF Properties appealed after a bench trial in which the circuit court found that its drainage activities constituted a nuisance and ordered abatement and reconstruction of a berm.
STANDARD OF REVIEW	Conclusions of law and statutory interpretations are reviewed de novo; rulings on attorney fees are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	JMF Properties, LLC v. First Lady, LLC

TOPICS

- nuisance
- real estate
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

- real estate
- torts
- remedies
- appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in concluding that JMF Properties' use and husbandry of its land created a nuisance by diverting surface water onto First Lady's property.
2. Whether JMF Properties was entitled to attorney fees and costs under SDCL 15-17-51.

HOLDINGS

1. The circuit court erred by imposing nuisance liability without determining whether the civil-law drainage rule or the reasonable-use rule applied, whether the drainage involved a natural or established watercourse, and whether JMF's conduct or resulting harm was unreasonable.
2. JMF was not entitled to attorney fees and costs because First Lady's nuisance claim was not frivolous, and the circuit court did not abuse its discretion in denying the request.

KEY QUOTATIONS

“For urban drainage of surface water, this Court has adopted the “reasonable use” rule.” (¶ 8)

“Hence, under either the civil rule or under the reasonable use rule, Tramway is legally privileged to drain its property subject to a test of reasonableness.” (¶ 11)

“As such, Motel's claims are not wholly without merit.” (¶ 16)

FACTUAL BACKGROUND

First Lady's motel was located at the base of a mountain in Keystone, South Dakota, adjacent to and below JMF Properties' property. JMF's improvement and reclamation work caused erosion and allegedly redirected surface water and silt toward the motel, including an incident in which heavy rains carried water and silt over the motel's retaining wall and onto its parking lot. First Lady sued for nuisance, and the circuit court found JMF responsible for the drainage and ordered abatement.

PROCEDURAL HISTORY

First Lady filed suit alleging nuisance under SDCL 21-10-1 and seeking abatement of drainage onto its property. After a trial to the court, the circuit court found JMF's conduct constituted a nuisance and ordered JMF to abate it and reconstruct the berm. The Supreme Court of South Dakota reversed and remanded for reconsideration under the applicable drainage rules, while affirming the denial of attorney fees and costs.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must reconsider the evidence and applicable law, determine whether the civil-law rule or reasonable-use rule applies, and make findings concerning natural or established drainage, diversion, and the reasonableness of JMF's conduct and any resulting harm.

CASES CITED

- Burkhardt v. Lillehaug, 2003 SD 62, 664 N.W.2d 41 (S.D. 2003)
- Esling v. Krambeck, 2003 SD 59, 663 N.W.2d 671 (S.D. 2003)
- Gronau v. Wuebker, 2003 SD 116, 670 N.W.2d 380 (S.D. 2003)
- Thompson v. Andrews, 39 S.D. 477, 165 N.W. 9 (1917)
- Mulder v. Tague, 85 S.D. 544, 186 N.W.2d 884 (1971)
- Young v. Huffman, 77 S.D. 254, 90 N.W.2d 401 (1958)
- Knodel v. Kassel Township, 1998 SD 73, 581 N.W.2d 504 (S.D. 1998)
- Gross v. Connecticut Mutual Life Ins. Co., 361 N.W.2d 259 (S.D. 1985)
- Feistner v. Swenson, 368 N.W.2d 621 (S.D. 1985)
- Klutey v. Commonwealth, Department of Highways, 428 S.W.2d 766 (Ky. 1967)
- Sheehan v. Flynn, 59 Minn. 436, 61 N.W. 462 (1894)
- Keys v. Romley, 64 Cal. 2d 396, 50 Cal. Rptr. 273, 412 P.2d 529 (1966)
- Evers v. Willaby, 444 N.W.2d 856 (Minn. Ct. App. 1989)
- Hannaher v. St. Paul, M. & M. Ry. Co., 37 N.W. 717 (Dak. Terr. 1888)
- Anderson v. Drake, 24 S.D. 216, 123 N.W. 673 (1909)
- Boll v. Ostroot, 25 S.D. 513, 127 N.W. 577 (1910)
- Mishler v. Peterson, 40 S.D. 183, 166 N.W. 640 (1918)
- Venner v. Olson, 40 S.D. 585, 168 N.W. 740 (1918)
- Lee v. Gulbraa, 43 S.D. 493, 180 N.W. 946 (1921)
- Rae v. Kuhns, 44 S.D. 494, 184 N.W. 280 (1921)
- La Fleur v. Kolda, 71 S.D. 162, 22 N.W.2d 741 (1946)
- Faris v. Moore, 71 S.D. 482, 26 N.W.2d 130 (1947)
- Johnson v. Metropolitan Life Ins. Co., 71 S.D. 155, 22 N.W.2d 737 (1946)
- Kougl v. Curry, 73 S.D. 427, 44 N.W.2d 114 (1950)
- Bruha v. Bocek, 76 S.D. 131, 74 N.W.2d 313 (1955)
- Lee v. Schultz, 374 N.W.2d 87 (S.D. 1985)
- Winterton v. Elverson, 389 N.W.2d 633 (S.D. 1986)