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Drain Tile System/Adjacent Landowner: Vermont Supreme Court Addresses Issues Arising in Nuisance/Trespass Action

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The Supreme Court of Vermont (“Supreme Court”) in a May 24th opinion addressed issues stemming from a dairy farm’s installation of a drain tile system that discharged water into a streambed and lake allegedly affecting a downstream landowner. *See Aerie Point Holdings, LLC v. Vorsteveld Farm, LLC*, 2024 VT 29.

A question considered was whether the denial of a motion for relief from judgment was appropriate following an injunction that had prohibited the flow of excess water.

Aerie Point Holdings, LLC (“Aerie Point”) owns 138 acres. Vorsteveld Farm, LLC (“Vorsteveld”), is an operator of a large dairy farm.

Aerie Point filed a common law trespass and nuisance action against Vorsteveld. It alleged excess water from Vorsteveld’s drain tile system flowed into Aerie Point’s land causing shoreline erosion and algae blooms.

The lower court issued an injunction in August 2022 to prevent Vorsteveld from sending water through its drain tile system.

Vorsteveld subsequently moved for relief from judgment.

The lower court denied the motion. Vorsteveld appealed.

In its appeal to the Supreme Court, Vorsteveld raised four main arguments:

- The lower court abused its discretion when it held that Vorsteveld failed to show an inability to prevent “all” water and sediment from naturally flowing downstream to Aerie Point. Such a measure, Vorsteveld argued, was too costly and onerous.
- A pending United States Environmental Protection Agency (“EPA”) enforcement action rendered it unable to comply with the injunction and the enforcement action simultaneously. Therefore, the EPA enforcement action preempts the injunction.
- The Vermont Right-to-Farm law is an alternative ground for relief following 2022 legislative amendments to the law.
- The lower court abused its discretion when it denied an evidentiary hearing based on the above arguments since it needed more information before it could reach a decision on the motion for relief.

The Supreme Court held that Vorsteveld failed to timely appeal the lower court's injunction and thus could not relitigate the issues that had already been resolved. Vorsteveld further failed to raise any objections to the injunction before or after the lower court's final judgment. The injunction narrowly targeted the tile-drain water while allowing water to drain naturally into alternative streambeds. Thus, the injunction was held to stand without revision.

The Supreme Court addressed Vorsteveld's argument that the injunction would be too costly to impose. Vorsteveld was again held to be relitigating an issue because it knew or should have known that compliance with the injunction would be costly at the time final judgment was entered. The facts remain unchanged. Therefore, the Supreme Court held that the lower court did not abuse its discretion.

The preemption argument was rejected because Vorsteveld did not raise the issue of preemption at trial as an affirmative defense nor provide any support for the fact that an EPA enforcement action alone preempts a state injunction.

The Vermont Right-to-Farm law argument was deemed without merit. The lower court had held that the law did not apply. This was based on it not meeting three out of the four required elements. This included the conclusion that the drainage was not an agricultural activity conducted in a legal manner nor established before the nonagricultural activities.

After the lower court's final order the Vermont legislature amended the definitions of "agricultural activity" to the Right-to-Farm law to include "subsurface drainage of farm fields" and "operation of farm machinery and equipment, including irrigation and drainage systems." See 6 V.S.A. § 4802(10)(D), (F). Vorsteveld argued the amendment allowed it to benefit from the Right-to-Farm law. The Supreme Court disagreed finding that Vorsteveld still failed to meet two of the four elements even after applying the 2022 amendments.

The Supreme Court also concluded that denying Vorsteveld's request to hold an evidentiary hearing was not an abuse of discretion. Sufficient post-judgment changes were not asserted to justify a hearing. Further, it did not show that the lack of a hearing resulted in prejudice.

The Supreme Court affirmed the lower court's decision denying Vorsteveld's motion for relief from judgment.

A copy of the decision can be downloaded [here](#).