

Flooding/Continuous Tort: Louisiana Court of Appeals Addresses Prescription Issue



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The Court of Appeals of Louisiana (4th Circuit) ("Court") addressed in a December 17th Opinion an issue arising out of a property owner's alleged damage claim for flooding of her property. See *Winesberry v. St. Bernard Parish Government*, 2024 WL 5134474.

The issue addressed is whether the alleged damages incurred constitute a continuous tort, therefore negating three-year prescription for appropriation under La. R.S. 13:5111.

Debra Winesberry ("Plaintiff") sought compensation from St. Bernard Parish ("Parish") for flooding of her property. She alleged that the frequent flooding of the land surrounding her home was caused by lack of maintenance of works on adjacent property.

The Parish was alleged to have installed in 2006 underground drainage pipes on the property adjacent to Plaintiff's home. Such pipes were alleged to have caused flooding whenever there was a substantial rain.

The Parish filed an exception of prescription arguing that the three-year prescription for appropriation under La. R.S. 13-5111 applied. The lower court granted the exception and dismissed Plaintiff's case.

Plaintiff argued on appeal that she had alleged a continuous tort for which she was entitled to damages from 2006 forward citing by *S. Central Bell Telephone Co. v. Texaco, Inc.*, 418 So. 2d 531(La. 1982). That case was cited for the position that:

...When the tortious conduct and resulting damages continue, prescription does not begin until the conduct causing the damage is abated. ... Where the cause of the injury is a continuous one giving rise to successive damages, prescription dates from cessation of the wrongful conduct causing the damage.

The Court on appeal held that the Civilian doctrine of continuous tort results in a holding that prescription had not yet begin to run against Plaintiff's claim at the time she filed suit. It distinguished prior caselaw which held it was not intended to apply to every incident of flooding caused by public project.

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