

IOWA CASE LAW

Interpretation of Iowa's law in the court system provides valuable guidance for practice and decisions in drainage related matters. Following are brief summaries of pertinent drainage issues that have been addressed at the appellate and supreme court levels. This information is presented for general reference only; for definitive guidance in the interpretation of Iowa's drainage laws, always consult an experienced attorney.

Eminent Domain

Phelps v. Board of Supervisors, 211 N.W.2d 274 (Iowa 1973)

The Iowa Supreme Court compelled the county to compensate property owners for damages to their lands caused by an increase in flooding due to construction of a bridge and causeway. The court determined that the landowners had a right to compensation because there was substantial interference with the landowners' use and enjoyment of their property due to intermittent flooding and that permanent damage had been caused by the flooding.

The court noted that it is the character of the invasion rather than the amount of damage that determines a taking. Only a difference in degree exists between a permanent overflow by backwater and damages from intermittent but inevitably recurring flooding.

Hammer v. Ida County, 231 N.W.2d 896 (Iowa 1975)

In an eminent domain case, compensation can only be awarded to a landowner for losses directly resulting from the use made of the condemned land. Compensation cannot also be awarded for damages from improvements made nearby merely in conjunction with the original condemned land use that may also affect other remaining property.

Where one portion of a tract of land was condemned for relocation of a road upon it, compensation could not also be awarded for damages to the remaining land due to flooding allegedly caused by raising the elevation of another intersecting road bordering the property, even if part of the same project.

The work done on an intersecting road and the alleged damages caused were readily separable from the construction on the road for which the parcel was taken by condemnation proceeding. Compensation could only be made for damages caused by the use for which the condemned land was taken, namely relocation of the main road.

Peterson v. Board of Trustees of Drainage District No. 5, 625 N.W.2d 707 (Iowa 2001)

After a board of trustees for a drainage district makes an assessment of damages due to improvements made under Iowa Code section 468.25, the amount of damages is final. The board may not later award additional damages even if subsequent harm suffered by the landowner was unanticipated when the original assessment was made.

The board of trustees assessed damages to landowners resulting from the construction of a drainage ditch. Several years later, one landowner lost federal wetlands designation for a portion of his land due to that ditch improvement. As a result of the loss of wetlands designation, the USDA imposed a sanction on the owner, denying use of 28 acres of cropland. To avoid the sanction, the owner acquired other land to be converted to wetlands. It was ruled that the board could not award the owner supplemental damages to reimburse for the cost of the additional land.

Concurrent Powers: Iowa Natural Resources Council and Drainage Districts

Polk County Drainage District No. 4 v. Iowa Natural Resources Council, 377 N.W.2d 236 (Iowa 1985)

The Iowa Supreme Court held that the Iowa Natural Resources Council (INRC) and drainage district trustees had concurrent powers under Iowa Code sections 445.135 and 445A.33 (1981). The trustees had authority to decide whether to initiate proceedings to restore the efficiency of a floodway in a remnant of the Skunk River, but the INRC had the authority to grant or refuse a permit for the work. The INRC had the power under Iowa Code section 445.33(1) to deny the trustee's application for a permit because it was determined that the project would adversely affect the efficiency of the floodway, utilization of the state's water resources, or adversely affect or interfere with the state comprehensive plan for water resources or an approved local water resources plan.

Improvements or Repairs by Drainage Districts

Johnson v. Monona-Harrison Drainage District, 68 N.W.2d 517 (Iowa 1955)

An engineer's report and recommendations were sufficient under Iowa Code section 455.135 as the basis for a drainage district's approval of a plan to repair a drainage system. Even though the report relied on outdated information and the survey was general and incomplete, it met the statutory requirement since it was adequate to apprise anyone interested in the general nature and extent of the project proposal and included a cost estimate.

The board did not abuse its discretion in accepting and approving the general, and perhaps incomplete, plan and survey as appropriate, especially after

extended hearings took place concerning the adequacy of the plan, survey, and estimate.

Hicks v. Franklin County Auditor, 514 N.W.2d 431 (Iowa 1994)

The court noted that a drainage repair involves actions to maintain or restore the efficiency or capacity of a drainage system, while an improvement involves expanding or enlarging the capacity of an existing system. The court found that the proposed construction in this case was a repair because the project's scope was to restore a drainage ditch to original specifications. It concluded that the landowners were entitled to compensation for that portion of the project exceeding the boundaries of the drainage easement, but not for land within the easement that they had been farming.

Consequently, the drainage district could reclaim waterway easement it had obtained when the drainage district had originally been established. The court awarded compensation only for the portion of the project exceeding the boundaries of the drainage easement.

Alteration of Natural Flow by Private Landowners

Sheker v. Machovec, 116 N.W. 1042 (Iowa 1908)

For a lower land owner to recover damages for water flow diverted from a natural drainage course, the Iowa Supreme Court held that it is not necessary for the lower land owner to show that the flow of water substantially increased or that the method of discharge was significantly altered. It is enough to show that the fair market value of the lower land decreased as a result of the altered flow patterns.

Kaufman v. Lenker, 146 N.W. 823 (Iowa 1914)

As long as drainage is wholly upon a landowner's own property, the landowner may drain water along the natural course of drainage and discharge it into a natural depression or water course without liability for

damages to others. However, the landowner may not cut through natural barriers and divert water from its natural flow, discharging it on or close to a neighbor's land, if it would increase the discharge substantially, put the discharge in a different place from its natural flow, or unnecessarily cause damage.

Anton v. Stanke, 251 N.W.2d 153, 156 (Iowa 1933)

The owner of a dominant estate may not divert surface water from one natural watercourse to another natural watercourse on his or her land if the flow of water is greatly increased or is of an unnatural volume and the waters ultimately flow upon a public highway at a point where they would not naturally flow.

Furthermore, a county board of supervisors may not construct or maintain a culvert to dispose of unlawfully diverted waters, causing these waters to pass through the highway at a place where they would not naturally flow and causing substantial damages to servient lands.

Droegmiller v. Olson, 40 N.W.2d 292 (Iowa 1949)

Landowners who, in the first instance, had no right to divert water from their land could not then compel the county to furnish them permanent protection from the water they diverted. Servient landowners are not entitled to have ditches along a highway constructed and maintained so as to fully protect their lands from water naturally flowing over them or to change the natural course of drainage.

The rights to the use of a roadway within the right-of-way belong to the public. These rights are not to be impaired in favor of an individual even though the person's actions, such as diverting the flow of drainage, does no damage to the highway.

The diversion out of its natural course of a large quantity of surface water to a public highway, with its resulting deposit of much silt, constitutes an obstruction and a nuisance which a county may have abated

without showing of injury or pecuniary damage.

However, removal of accumulated silt in ditches to maintain drainage patterns is a responsibility of a public agency.

Moody v. Van Wechel, 402 N.W.2d 752 (Iowa 1987)

In determining which adjacent tract is dominant, relative elevation and not general movement of floodwaters is controlling. Water from a dominant estate must be allowed to flow in its natural course onto a servient estate. The flow may not be diverted by obstructions erected or caused by either estate holder.

The owner of the dominant estate may divert water by surface drainage constructed upon his or her own land even though some different or additional water may thereby enter the servient estate. However, the owner of the dominant estate may not go so far as to collect and discharge water on the servient estate in such a manner as to cut a stream bed. The servient estate is obliged to receive water from higher lands, but not in such a way as to cut channels that did not previously exist.

A fence row should be maintained so as to allow the free passage of surface water. When fences become filled with debris or soil, they should be cleared. When the parties cannot agree on a plan to clear obstructions, a court should devise one.

Easement by Prescription

Nixon v. Welch, 24 N.W.2d 476 (Iowa 1946)

Landowners within an established drainage district may assert their surface water drainage rights in accord with natural drainage patterns.

Two landowners were separated by a county road. Historically, drainage moved from the dominant property, through a road culvert, across the servient land to a lake. Improvements as part of a drainage district relocated drainage from the dominant property.

Iowa Case Law

The county then regraded the road and removed the culvert. The dominant owner sued to reestablish the historic drainage flow.

The Iowa Supreme Court found that a natural easement existed in favor of the dominant estate for the flow of surface water through the road and across the servient land. This easement was established either by concerted action by historic owners or by prescription since this was the watercourse openly used for conveying surface water to the lake. If the drainage established by the drainage district is not satisfactory, the dominant owner has the right to demand the reestablishment of historic patterns.

The court ruled that the county must bear the cost of replacing the culvert to permit free flow of surface water. The plaintiff (dominant landowner) was responsible for cleaning a ditch across the servient estate to reestablish historic drainage because the dominant estate was the only beneficiary of that action.

McKeon v. Brammer, 29 N.W.2d 518 (Iowa 1947)

When an easement for an underground drain on the servient estate in favor of the dominant estate is created by prescription or agreement by the parties, it is not extinguished when the servient estate is sold without notice of the easement.

Maisal v. Gelhaus, 416 N.W.2d 81 (Iowa App. 1987)

The owner of a servient estate was required to lower the elevation of land near a fence line caused by his method of plowing, which resulted in a diking effect that altered the natural flow of water and caused flooding on the dominant estate.

A prescriptive easement was created by agreement between the previous owner of the dominant estate and owner of the servient estate. The easement

created a permanent right of drainage from the dominant estate to the servient estate.

Franklin v. Sedore, 450 N.W.2d 849 (Iowa 1990)

Owners may drain their land in the general course of natural drainage by constructing or reconstructing open or covered drains and discharging the drains in any natural watercourse or depression so the water will be carried into some other watercourse. If the drainage is wholly upon the owner's land, that owner is not liable for damages from the drainage unless it results in a substantial increase in the quantity of water or changes in the manner of discharge on the land of another.

The owner of a dominant estate may waive his or her rights to an original watercourse by prescription. A ditch altering a natural waterway will not be enjoined after it is maintained for 10 years with expressed or implied consent.

The exception to the prescription rule is limited to rights of the public. An artificial ditch may, under some circumstances, become a natural watercourse when the rights of the public are involved, since neither the statute of limitations nor prescriptive rights can be urged or claimed against the public. However, such easements still run against rights of private individuals.

Negligence Actions—Private Landowners

O'Toole v. Hathaway, 461 N.W.2d 161 (Iowa 1990)

The Iowa Supreme Court found owners of a dominant estate to be liable for negligence when a terrace break on their land, due to torrential rains, flooded a neighbor's home. The court determined that the manner used by the owners of the dominant estate to alter the natural drainage was not reasonable, given the location of the terrace, and that a break in that terrace was foreseeable. In doing this, a breach in the duty of care to neighboring landowners occurred.

Under “natural flow” doctrine, the dominant owner is entitled to drain surface water in a natural watercourse from his land over servient owner’s land and, if damages occur, the servient owner is without remedy. However, if the volume of water is substantially increased or if the manner or method of drainage is significantly changed and actual damage results, the servient owner is entitled to relief. This rule applies even in connection with governmentally approved soil conservation practices that substantially alter the natural flow of water.

In addition, there is an overriding requirement that one must exercise ordinary care in the use of his or her property so as not to injure the rights of neighboring landowners.

Terracing may substantially change the manner and method of surface water drainage, even though terraces are not generally designed to divert or decrease the flow of water.

While the court did not hold that the conservation terraces at issue were an inherently dangerous activity, they did point out that landowners employing such terraces (even when mandated by federal farm program conservation requirements) must construct and place the terraces in such a location that terrace breakage would not damage an adjoining landowner.

Counties—Inverse Condemnation

Connolly v. Dallas County, 465 N.W.2d (Iowa 1991)

A county is exempt from liability for certain actions under Iowa Code section 613.4(7) and (8*). However, if a public road flood control project, when functioning as it was designed, causes flooding to a particular area that would not have been flooded in the absence of

that improvement, an inverse condemnation claim may arise.

(*Per Iowa Code at the time of this decision.)

Counties—Duty to Repair and Maintain

Perkins v. Palo Alto County Board of Supervisors, 60 N.W.2d 562 (Iowa 1953)

When a county, with the acquiescence of the former landowner, constructs a ditch that changes the direction of a natural watercourse and the ditch continues to be used as the watercourse for a number of years with the knowledge of the successor to the land, it becomes the natural watercourse. The new owner of the land cannot require the county to add improvements that will direct the water back in the direction of the original natural watercourse. However, the county does have a duty to maintain the ditch and keep it open.

Koenigs v. Mitchell County Board of Supervisors, 659 N.W.2d 589 (Iowa 2003)

An easement created by contract between a private landowner and a public agency was limited in duration to the time required by the agency to dredge a ditch and build a road. The agency did not have a duty to maintain an obstructed ditch after the road was completed, according to the terms of the original contract.

Counties—Authority to Regulate Application of Livestock Waste to Protect Groundwater

Goddell v. Humboldt County, 575 N.W.2d 486 (Iowa 1998)

The Iowa Department of Natural Resources (DNR) is the only entity authorized under Iowa Code section

Iowa Case Law

455B.172(5) (1975) to regulate the disposal of animal waste from confinement facilities. Local agencies cannot regulate such waste disposal.

Injunctive Relief

Schmitz v. Iowa Department of Natural Resources, No. 2-070/01-0436 (Iowa App. 2002)

The Iowa Supreme Court denied plaintiff landowners injunctive relief that would have forced the DNR to remove a water control structure it had erected on a public wetland, the Shimon Marsh, that adjoined their farm.

The landowners failed to prove the elements for injunctive relief. They did not establish there was an invasion or threatened invasion of a right and/or that substantial injury or damages would result unless an injunction was granted. Neither did the plaintiffs prove that removal of the water control structures in the Shimon Marsh would improve drainage on their land. Finally, they were unable to show that no adequate legal remedy was available to them, since they could have filed a suit to recover damages for any alleged negligent actions by the state.

Injunctive Relief—Administrative Powers

Myers v. Caple, 258 N.W.2d 301 (Iowa 1977)

A landowner is not required to exhaust administrative remedies before filing for an injunction when an action of the Iowa Natural Resources Council under Iowa Code chapter 455A affects his or her property.

An injunction is an extraordinary remedy that is only invoked when necessary to prevent irreparable harm or afford relief where there is no adequate remedy at law. In the instant case, an injunction should not have been issued where the building of a levee would only ordinarily cause a slight additional increase in the volume of water on plaintiff's land.

Injunctive Relief—Repair of Drain Outlet by Servient Owner

Sloan v. Wallbaum, 447 N.W.2d 148 (Iowa 1989)

Injunctive relief is appropriate when the owner of a servient estate blocks the outlet of a drainage ditch, resulting in substantial potential damages to the dominant estate.

Drainage Agreements—Private Landowners

Vannest v. Flemming, 44 N.W. 906 (Iowa 1890)

The owner of a dominant estate has the right to drain surplus surface or ground water through tiles from his or her land onto a servient estate. There is no difference between surface water and underground water that is collected by tiling.

When a drain has been established by the acquiescence of two adjoining landowners as required by the best interests of both, if the manner of drain construction is in accord with the natural flow of water and the quantity of water has not increased nor its flow diverted by the owner of the dominant estate, the servient owner cannot obstruct or abolish the ditch without the consent of the owner of the dominant estate.

Where a ditch for the drainage of surface water has been constructed jointly by adjoining landowners under an oral agreement to its course, each party having contributed money and/or labor to the construction, and the owners having recognized the ditch by plowing and farming in accord with it, neither can set aside nor disregard it without the consent of the other.

Challenge to Assessments

Voogd v. Joint Drainage District No. 3-11, 188 N.W.2d 387 (Iowa 1971)

A county may approve a drainage repair without providing notice and a hearing, based on an estimated cost of repair that is less than 50 percent of the original

total cost of the district and subsequent improvements if the approval is made in good faith (Iowa Code Sections 455.135(1), 455.20–24)*. If the estimate proves to be in error, this in itself does not detract from the governing body's power to act.

However, if the board becomes aware that the actual costs of a project are greatly exceeding the original estimate so as to render it meaningless, it has no authority to approve continuation of the repair work without first providing a notice and hearing under Iowa Code section 455.135. Costs in excess of the 50 percent allowed under the statute are void and cannot be assessed against private property if proper notice was not given.* The failure to provide notice and give hearing voids the entire assessment.

(*Per Iowa Code at the time of this decision.)

Immunity of Drainage Districts and Counties from Negligence Suits

Fisher v. Dallas County, 369 N.W.2d 426 (Iowa 1985)

A drainage district cannot be sued in tort for monetary damages. Neither can a county nor board of supervisors be held vicariously liable for a monetary judgment against a drainage district.

Liability of Upstream Landowner for Erosion Damages

Oakleaf County Club, Inc. v. Wilson, 257 N.W.2d 739 (Iowa 1977)

An upstream riparian owner may be liable for damages to downstream properties caused by acceleration or hastening of the flow of a watercourse due to his or her actions.

The downstream landowners may bring an action for damages if a project was approved after the fact by the Iowa Natural Resources Council without providing notice and a hearing as required by Iowa Code sections 455A.19 and .20.

Easement of Highway Commission—Apportionment of Maintenance Costs

Bellville v. Porter, 130 N.W.2d 426 (Iowa 1964)

Plaintiffs, who were servient owners, were within their rights in cutting a dike on a slough that had been built by the former owner of property and extended by others, in accordance with the well established principle that when water, no matter what its character, flows in a well-defined course, be it only a swale, and seeks discharge in a neighboring stream, its flow cannot be arrested or interfered with by one landowner to the injury of another.

The cost of repairing and maintaining a drainage ditch needed to be apportioned between all who benefited, in this case the highway commission, plaintiffs, and intervening landowners.

Liability of Municipalities for Drainage Maintenance

Elledge v. City of Des Moines, 144 N.W.2d 283 (Iowa 1966)

The City of Des Moines was held liable for the negligent maintenance of a storm sewer and the resultant diversion of water from its natural course onto a homeowner's property.

Governmental immunity was not a defense available to the city in the negligence suit because the municipality's duty to keep its storm sewers clear and free from obstructions was a ministerial or proprietary function.

Fischer v. City of Sioux City, 654 N.W. 2d. 544 (Iowa 2002)

The City of Sioux City was found immune from liability for its allegedly negligent design and construction of a storm sewer and for not rebuilding or replacing the system due to changed conditions in the area served by the sewer. So long as the sewer was constructed in accordance with generally accepted

Iowa Case Law

engineering or safety standards or design theory in effect at the time of construction, the city did not behave negligently. Iowa Code 670.4(8)

In addition, the city was found immune from liability when exercising discretionary functions. The exercise of a discretionary function occurs when a city (1) applies an element of judgment or discretion in making a decision and (2) that decision is the type of judgment that the discretionary function immunity was intended to shield from liability, such as when a city legitimately considers social, economic, or political policies in making that judgment. Iowa Code 670.4(3)