COURT OF APPEALS
DECISION
DATED AND RELEASED

JUNE 20, 1995

No. 95-0582

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JOHN A. ROOYAKKERS,
JILL D. ROOYAKKERS,
JOHN S. STRICK and
JULIE M. STRICK,

Plaintiffs-Respondents,

v.

VILLAGE OF LITTLE CHUTE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

MYSE, J. The Village of Little Chute appeals a judgment voiding a special assessment against John and Jill Rooyakkers and John and Julie Strick that was imposed to partially offset the cost of a mini-storm sewer installed to serve the Rooyakkers' property. The Village contends that the trial court erred by voiding the assessment because: (1) the Rooyakkers and Stricks benefited from the installation of the mini-storm sewer; and (2) the assessment

was made upon a reasonable basis. Because we conclude that the trial court's finding that the Rooyakkers and Stricks did not accrue a benefit from the mini-storm sewer was not clearly erroneous, we affirm the judgment.

In 1985, the Rooyakkers connected their sump pump to the storm sewer catch basin via a private underground pipe. The Stricks' sump pump is also connected to the pipe on the Rooyakkers' property. The Rooyakkers were not required to install the pipe, but only did so to prevent water from accumulating on their property, their neighbors' property and the road.

In 1993, the Village installed a mini-storm sewer along the curb in front of the Rooyakkers' and Stricks' property to collect sump pump discharge and carry it to the main storm sewer. The mini-storm sewer was installed as part of a Village policy to eliminate ice buildups on the streets that resulted from sump pump runoff and to increase the longevity of the streets. Upon completion of the mini-storm sewer system, the Village determined that the Rooyakkers and Stricks were uniquely benefited by the installation of the sewer. Accordingly, the Village established a special assessment pursuant to its police powers under § 66.60(1)(b), STATS. The amount each property owner was assessed was based upon the amount of lineal footage that each property owner had abutting the mini-storm sewer. Using this method, the Rooyakkers were assessed a total of $346.50 and the Stricks were assessed $631.40. Both the Rooyakkers and the Stricks, however, refused to pay the assessment and filed suit to have the assessment voided. The trial court found that neither the Rooyakkers nor the Stricks received a benefit from the installation of the mini-storm sewer and voided the assessment.[1] The Village appeals.

Under § 66.60(1)(b), STATS., a Village may exercise its police power to levy a special assessment. However, this power is not unlimited. As we noted in ***Gelhaus & Brost v. Medford***, 144 Wis.2d 48, 51, 423 N.W.2d 180, 181-82 (Ct. App. 1988), the assessed property must be benefited and the assessment must be made upon a reasonable basis. We note that when the Village levies an assessment under its police power, the property need not be benefited to the full

[1] The trial court noted that if the Stricks wished to connect to the mini-storm sewer at some future date, they would be required to pay the special assessment.

extent of the assessment. ***Id.*** at 51, 423 N.W.2d at 182. Rather, it is sufficient that the property has received some benefit, regardless of degree. *See* ***id.***

In this case, the Village contends that the trial court erred by finding that neither the Rooyakkers nor the Stricks were benefited by the installation of the mini-storm system. Whether the Rooyakkers and Stricks benefited from the mini-storm system is a question of fact. *See* ***Egg Harbor v. Sarkis***, 166 Wis.2d 5, 16, 479 N.W.2d 536, 540 (Ct. App. 1991). We will accept the trial court's findings of fact unless they are clearly erroneous. Section 805.17(2), STATS.

At trial, Rooyakkers testified that neither he nor the Stricks used the mini-storm system, but that they continued to use the private underground pipe they installed to carry off their sump pump discharge. Additionally, Rooyakkers testified that since installing his private system, there has been no water accumulation on his property or in the street fronting his home. Finally, he stated that the main line to which the mini-storm sewers are attached is too small, thereby causing flooding on the streets. Dennis Welker, a public works inspector for the City of Appleton, affirmed Rooyakkers' testimony. Welker testified that he had never noticed any standing water problems or wet areas on the Rooyakkers' property, nor had he noticed any ice buildup on the road in front of the Rooyakkers' home prior to the installation of the mini-storm sewer. Welker further stated that the mini-storm sewer did not offer any advantages that were lacking in the Rooyakkers' private system. Finally, Strick testified that he did not have any stagnant water or ice problems from his sump pump discharge.

The Village offered testimony from Gene Hojan, the director of public works and an engineer for the Village of Little Chute. Hojan testified that the mini-storm sewer installed in front of the respondents' homes was part of a plan to supply every lot in the community with a mini-sewer to carry off sump pump discharge. Hojan testified that the plan was instituted in response to complaints that water was running along the curbs and into the streets causing ice to form. However, Hojan stated that he was not aware of any water discharge problems on the respondents' property or of ice buildup on the road in front of the respondents' homes.

This evidence is sufficient to support the trial court's finding that the Rooyakkers and Stricks did not benefit from the installation of the mini-storm sewer system. The evidence supports a finding that the Rooyakkers' and Stricks' existing system adequately discharged their sump pump water and prevented both ground water accumulation and ice buildup. Further, like the Rooyakkers' and Stricks' existing system, the mini-storm system drained the sump pump discharge into the city's storm sewers, and there was no evidence the new system was more efficient or effective. In fact, the evidence showed that flooding occurred after the installation of the mini-storm system. The sum of these facts demonstrates that the trial court properly found that the Rooyakkers and Stricks realized no benefit from the new storm system. Therefore, we conclude that the trial court's finding was not clearly erroneous and affirm the judgment.[2]

[2] Because we conclude that the trial court did not err by finding that the Rooyakkers and Stricks did not benefit from the mini-storm system, we need not address the issue whether the special assessment was made upon a reasonable basis.

By the Court.—Judgment affirmed.

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