WISCONSIN SUPREME COURT
February 11, 2019
10:45 a.m.

2017AP1593 Alan W. Pinter v. Village of Stetsonville

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed the Taylor County Circuit Court decision, Judge Ann N. Knox-Bauer, presiding, to grant summary judgment in favor of the Village of Stetsonville.

The Village of Stetsonville operates a wastewater/sewage disposal system that serves about 500 people. The system is generally gravity-fed, except that it contains two lift stations, the north lift station and the main lift station. The system is supposed to be a closed system; it is intended solely to transport wastewater from homes to a treatment facility. However, the Village concedes that in heavy rain events, outside water gets into the system and can overwhelm the concrete holding pits at the two lift stations (the north lift station and the main lift station). Alan Pinter lives in Stetsonville, very close to the main lift station. When the main lift station has been overwhelmed, wastewater and sewage have backed up into his house. In order to address the back-ups, the Village adopted an oral policy to have a portable bypass pump ready to pump the excess wastewater from the main lift station to a ditch when the water reached a certain level (the fourth rung from the top of a series of rungs embedded into the side of the concrete pit in the main lift station). There was no written policy on record for Village employees to follow, but the bypass procedure was "more or less a rule-of-thumb."

In September 2014, a heavy rain event occurred that overwhelmed the system. Village employees were on alert and watching the levels at the lift stations. High level alarms sounded at both lift stations. The individual in charge contacted a trucking firm and directed them to begin pumping wastewater from the north lift station into their truck for transport to the treatment facility. The firm began pumping from the north lift station approximately 35-40 minutes after being notified. At approximately the same time as pumping began at the north lift station, Pinter ran from his house to the main lift station, notified the Village employees that he heard gurgling in his pipes and feared a backup, and offered to help the Village employees set up the bypass pump. A village employee declined Pinter's offer, apparently having decided to wait for the trucking firm to arrive at the main lift station. Pinter left for work, but within minutes, his wife called and notified him that sewage and water had begun backing up in their basement. The bypass pump was eventually set up and used, and the water in Pinter's basement receded, but not before depositing sewage waste and debris in Pinter's home.

In May 2015, Pinter sued the Village, claiming negligence and private nuisance. The Village moved for summary judgment, arguing governmental immunity under Wis. Stat. § 891.80(4), which states that "no suit" may be brought against, governmental subdivisions or their employees "for acts done in the exercise of legislative, judicial or quasi-judicial functions." In response Pinter relied on an exception to governmental immunity when the governmental unit fails to perform a ministerial duty. The circuit court granted summary judgment to the Village, concluding that the Village employees did not have a ministerial duty to use the bypass pump and that Pinter had not provided sufficient evidence of the Village's failure to maintain the sewer system such that he could prevail on private nuisance claims.

Pinter appealed; the Court of Appeals affirmed. The Court of Appeals found that the oral policy of bypassing the system was not sufficiently clear to create a ministerial government duty as described by the statutes, and therefore the Village was not negligent. The Court of Appeals also concluded that Pinter could not raise private nuisance claims because he had not created a genuine issue of material fact as to whether the Village's conduct in maintaining the wastewater system had been the legal cause of the damage to his basement. The Court of Appeals determined that expert testimony was a necessity in all such sewage backup cases. Since Pinter had not offered expert testimony in response to the Village's summary judgment motion, the Court of Appeals agreed that the circuit court had properly dismissed his private nuisance claim.

Pinter sought Supreme Court review of the Court of Appeals' determination that the Village's oral policy was not sufficient to establish a ministerial duty. The Supreme Court also will review whether expert testimony is required to prove a private nuisance in similar factual situations and whether the record in this case created a genuine dispute of material fact as to whether the Village's wastewater system constituted a private nuisance.

The following issues are presented for a determination by the Supreme Court:

1. Whether a Village's oral policy, as testified to unequivocally by the Village president and all of its employees, that raw sewage accumulating in a lift station was to be pumped into a ditch when the raw sewage reached a certain level, creates a ministerial duty that upon its breach results in an exception to the governmental immunity of Wis. Stat. § 893.80(4)?
2. What must a plaintiff alleging that a private nuisance maintained by a municipality caused damage to the plaintiff show regarding causation in order to avoid dismissal on summary judgment, especially in the context of a backup from a municipal sewer system? Is expert testimony always required? Why or why not? If so, what must be included in the expert's testimony?;
3. Were the evidence and the inferences from that evidence in the summary judgment record sufficient to create a genuine issue of material fact regarding causation on plaintiff-appellant-petitioner's claim for private nuisance?