

COA Opinion: City-installed drainage pipe held a trespass

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On February 8, 2011, the Michigan Court of Appeals published its opinion in *Wiggins v. City of Burton*, No. 293023. The court held that a drainage pipe installed within a private, storm-detention easement constituted a trespass but not a nuisance, and that both the city, which built the drain, and the landowners, which requested the drain to be built and were granted ownership of the drain after its completion, were liable for the trespass, although the court directed the trial court to consider the city's governmental-immunity defense on remand.

The plaintiffs purchased a subdivision lot subject to a storm-detention easement, which received the natural water run-off from the adjacent properties. After the plaintiffs developed the lot, however, the water-flow patterns reversed, causing the adjacent properties to flood. To address this problem, the owners of the adjacent properties lodged numerous complaints with the city, and the city ultimately constructed a drainage pipe running from the adjacent properties to the easement on the plaintiffs' property in an attempt to restore the natural water-flow patterns. After completing construction, the drainage system would belong solely to adjacent properties' owners. After the city completed the new drainage system, the plaintiffs sued both the city and the adjacent property owners. The plaintiffs alleged that the drainage pipe and resulting water flow constituted a trespass and nuisance, sought to quiet title in the property regarding the easement, and also claimed that the city's construction of the pipe was an unconstitutional taking.

The trial court granted summary disposition in favor of the defendant-landowners, holding that because it was the city and not the defendant-landowners that constructed the drain, the defendant-landowners could not be liable for the drain's construction. The trial court also dismissed the plaintiffs' claims against the city, holding that the plaintiffs and the city were required to submit to the dispute procedures in the Drain Code, MCL 280.75, prior to pursuing any court action.

The Court of Appeals affirmed in part, reversed in part, and remanded for further proceedings. With respect to the defendant-landowners, the court held that because the defendant-landowners actively petitioned the city for the new drainage system and owned the system after its construction, they were liable to the plaintiffs for trespass. The court held that the drainage system exceeded the scope of the existing storm-retention easement, and the drainage system therefore violated the plaintiffs' right to exclude. The court granted the defendant-landowners summary disposition regarding plaintiffs' nuisance claim, however, because the drainage system was a "tangible object" which was properly remedied under a trespass theory, not as a nuisance. The court remanded the case to the trial court to determine whether the drainage system indeed increased water flow over historic levels, noting that because the defendant-landowners owned the drainage system, any increased flow caused by the system was a physical trespass onto the plaintiffs' property.

With respect to the plaintiffs' claims against the city, the court held that the Drain Code procedure relied on by the trial court was inapplicable. The court reasoned that the procedures only applied to proposed drains, not to drains already constructed. The Court remanded the case to the trial court, requiring the trial court to address whether the city's installation of the drain constituted a taking of private property, as well as whether governmental immunity relieved the city of its potential trespass liability.