

## COA Opinion: A drain district cannot be sued for trespass caused by overflowing water until landowners have petitioned the drain commission to improve the drain

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A landowner in Grand Rapids sued the Kent County Drain Commissioner and a special-assessment drain district alleging that the design of the drain district caused flooding on his property. In *Arath II, Inc. v. Heukels County Drain District*, No. 288725 (published Apr. 29, 2010), the Court of Appeals, in an opinion authored by Judge O'Connell, concluded that the landowner had failed to state a claim because he failed to petition the drain commission first.

Under the Drain Code, in particular MCL § 280.191, the drain commissioner has authority to improve or repair a drain only *after* a landowner files a petition and the commission determines the improvement is needed.

Furthermore, the petition must be joined by a certain number of other landowners in the district, as the landowners in the drain district will have to pay a special assessment to fund the work. Because the landowner had not filed a petition, the drain district had never received the authority to make any improvements or repairs to the drains on the landowner's property, and therefore the district could not be held liable for failing to take action.