

Bond Case Briefs

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Klingensmith v. Long County

Court of Appeals of Georgia - September 23, 2019 - S.E.2d - 2019 WL 4593429

Residents who lived in or near subdivision brought a negligence and nuisance action against county due to repeated flooding of the subdivision.

The trial court granted county's motion for summary judgment on various grounds, including sovereign immunity. Residents appealed.

The Court of Appeals held that:

- Sovereign immunity barred negligence claims asserted against county;
- Claim that drainage pipes beneath subdivision were inadequate was permanent nuisance claim for statute of limitations purposes;
- County was not subject to liability for continuing nuisance created by failure to maintain drainage system;
- Claim that roads within subdivision were deficiently installed was permanent nuisance claim for statute of limitations purposes; and
- County was not subject to liability for continuing nuisance created by improper maintenance of subdivision roads.

Sovereign immunity did not bar nuisance claims asserted against county by residents who lived in or near subdivision that repeatedly flooded, to the extent that their nuisance, trespass, and negligence claims together amounted to an inverse condemnation claim.

Complaint served on county by residents who lived in or near subdivision that repeatedly flooded was sufficient to meet statutory presentment requirements, and thus any of residents' claims that accrued within one year of the service of the complaint on the county were not barred and permitted to proceed; complaint clearly identified each of the residents as claimants and set out the particulars of each of the claims against county.

A county is not liable for a nuisance merely because it approved a construction project which creates the nuisance; to the contrary, in order to become responsible, a county must actively take control over the property in question or accept a dedication of that property.

A nuisance, permanent and continuing in its character, the destruction or damage being at once complete upon the completion of the act by which the nuisance is created, gives but one right of action, which accrues immediately upon the creation of the nuisance, and against which the statute of limitations begins, from that time, to run.

Claim asserted against county by residents, who lived in or near subdivision that repeatedly flooded, that drainage pipes installed prior to subdivision development were inadequate, was a claim of permanent nuisance, rather than continuing nuisance, such that one-year limitations period began to run at the time residents began observing standing water problem on their properties.

County did not exercise control or accept duty to maintain drainage system within subdivision that repeatedly flooded, as would subject it to liability for continuing nuisance, even though county approved subdivision, and continued to issue construction permits in the subdivision, and even if county started to use its authority to address flooding issues by conducting an investigation into the flooding, and allegedly agreeing to build a retention pond on property outside of subdivision, where county used its regulatory authority to order developers to take action to address inadequate drainage and did not conduct work to address the issue itself.

Claims asserted against county by residents, who lived in or near subdivision that repeatedly flooded, that roads within subdivision were deficiently installed, and that wrong material was used to pave the roads, were claims that a permanent nuisance was imposed, rather than a continuing nuisance, such that one-year limitations period applied, and claim accrued at the time when residents began observing standing water problem on their properties.

County did not exercise control over roads in subdivision that repeatedly flooded, as would establish a claim for deficient maintenance, and subject it to liability for continuing nuisance, even if county attempted to get developer to repair roads in the subdivision, where county itself did not accept any of the roads, and had not performed any maintenance on the roads.

There was no evidence that county exercised control over or accepted duty to maintain roads in subdivision that repeatedly flooded, and thus residents, who lived in or near subdivision, could not prevail on their continuing nuisance claim based on conditions of the subdivision's roads.