MISSOURI COURT OF APPEALS
WESTERN DISTRICT

KIPPING FARMS, LLC, ET AL.,	)	
	)	
Appellants,	)	
	)	
v.	)	**WD88277**
	)	
WAKENDA LEVEE DISTRICT OF CARROLL COUNTY, MISSOURI,	)	**Filed: June 16, 2026**
	)	
Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF CARROLL COUNTY
THE HONORABLE JAMES B. FUNK, JUDGE

BEFORE DIVISION TWO: **W. DOUGLAS THOMSON, PRESIDING JUDGE, LISA WHITE HARDWICK, JUDGE, AND MARK D. PFEIFFER, JUDGE**

Landowners in the Carr-Sal Levee District appeal the circuit court's entry of summary judgment in favor of the Wakenda Levee District of Carroll County, Missouri ("Wakenda District") on Landowners' inverse condemnation claims and request for injunctive relief. Landowners contend genuine issues of material fact remain on their inverse condemnation claims and assert their request for injunctive relief is not precluded by an adequate legal remedy. Because genuine issues of material fact remain on Landowners' inverse condemnation claims, summary judgment on those claims is

reversed. Summary judgment in favor of the Wakenda District on Landowners' request for injunctive relief is affirmed.

FACTUAL AND PROCEDURAL HISTORY

The Wakenda District is a judicially-created levee district formed and operating under Chapter 245, RSMo.[1] The current levee district known as the Wakenda District was formed in 2008, when other levee districts were consolidated with the Wakenda District. The Wakenda District's boundaries were extended in 2011 and again in 2022. The Wakenda District's purpose is to protect landowners and taxpayers from floodwater from the Missouri River by using a levee system comprised of earthen structures constructed of certain heights. The Wakenda District operates pursuant to a plan of reclamation, approved by its chief engineer and board of supervisors. The plan of reclamation concerns leveeing, protecting, and reclaiming property from overflow or water damage. § 245.105. The Wakenda District reduces the flood risk to approximately 22,369 acres of land within its leveed area.

The Carr-Sal Levee District ("Carr-Sal District") is a separate, smaller levee district. The Carr-Sal District is located directly east of the Wakenda District and consists of approximately 1,602 acres of farmland. Wakenda Creek runs through the Wakenda District and along the entire northern border of the Carr-Sal District. Both the Wakenda District and the Carr-Sal District are located north of the Missouri River, near Carrollton.

[1] All statutory references are to the Revised Statutes of Missouri 2016.

The Cross Levee is the eastern border of the Wakenda District and is located between the Wakenda District and the Carr-Sal District. The natural low point within the Wakenda District is along the northern segment of the levee, currently near where a spillway, which was created by the United States Army Corps of Engineers ("Corps"), and various drainage pipes into Wakenda Creek are located. In past floods, runoff from the Wakenda District was discharged to the north into Wakenda Creek through these pipes or over the spillway or notch in the segment of the levee just north of the Cross Levee.

In 2019, a Missouri River flooding event breached the Cross Levee, which at that time was built to a height of eight feet. The 2019 flood caused a hole in the Cross Levee that needed repair. Thereafter, David Kipping,[2] who became a member of the Wakenda District's board of supervisors between 2008 and 2011 and its president in 2017, had discussions with the Corps regarding repairing the Cross Levee. Kipping's discussions with the Corps included rebuilding the Cross Levee back to a height of eight feet so the Wakenda District's landowners could secure reasonably priced crop insurance. In February 2020, the Wakenda District rebuilt the breached portion of the Cross Levee back to its pre-2019 flood height of approximately eight feet using borrowed dirt from two neighboring property owners.

In 2021, the Wakenda District revisited the matter of the Cross Levee. In March 2021, the Wakenda District's board of supervisors voted to cut the Cross Levee down to a

[2] Kipping is the personal and corporate representative of Landowner Kipping Farms, LLC.

height of four feet and return the borrowed dirt to the neighboring property owners. The Cross Levee's height of four feet was lower than the height of the spillway into Wakenda Creek. The Wakenda District's board of supervisors did not conduct a study or analysis or obtain an engineering consultation regarding the potential impacts on the landowners in the Carr-Sal District before voting to lower the height of the Cross Levee.

In June 2021, a significant rainfall and flooding event occurred. Surface water in the Wakenda District flowed over the Cross Levee and onto the property of Carr-Sal District landowners. The water resulted in a breach or blow-out of the Cross Levee. Carr-Sal District landowners experienced crop loss due to the water that sat for days on their land after this flood.

In March 2023, Landowners[3] filed a petition against the Wakenda District. In their petition, Landowners asserted the Wakenda District illegally and unreasonably lowered the Cross Levee in March 2021. Landowners alleged the act of lowering the Cross Levee while maintaining the height of the north and south segments of the Wakenda District's levee intentionally diverted collected surface water from the Wakenda District during the June 2021 flood to discharge east into the Carr-Sal District and onto Landowners' property. Landowners contended this resulted in extensive long-

[3] Landowners are: Kipping Farms, LLC; Kipping Brothers, Inc; Howard Audsley, Jeanne Lou Audsley Liebhart, and Sharon Kay Audsley Peterson, Co-Trustees of the Walter Eugene Audsley Revocable Trust Dated April 30, 2008, and the Lillie Lucille Audsley Revocable Trust Dated April 30, 2008; JSH Family Farms, LLC; Lawrence Russell Wright; Ina F. Dysart, Trustee of the Ina F. Dysart Family Trust Dated August 28, 2009; Megan Dysart Peecher; and Sandra Sue Williams.

term flooding on approximately eighty percent of their property, causing significant crop loss and other damages. Landowners asserted several claims, including seven counts of inverse condemnation, and sought injunctive relief ordering the Wakenda District to restore the height of the Cross Levee.[4]

The Wakenda District filed a motion for summary judgment. In its motion, the Wakenda District argued it was entitled to judgment as a matter of law because Missouri law does not allow plaintiffs to assert inverse condemnation claims when the damages were caused by flood surface water events, and the June 2021 flood was a natural, "historic" event that had never happened before. The Wakenda District further argued Landowners could not establish a right to injunctive relief because Landowners have no cognizable legal theory against the Wakenda District and, even if they did have one, adequate statutory remedies exist.

In response, Landowners disputed the Wakenda District's contention that it was not responsible for the damage caused by the June 2021 flood. They asserted they had evidence, including expert testimony, that the Wakenda District's act of affirmatively lowering the Cross Levee unreasonably diverted surface water by design or mistake onto their property, and the lowered elevation of the Cross Levee caused their land to be inundated for an additional week. Landowners further argued they are entitled to elect between either damages for the permanent appropriation of their property or a mandatory

[4] Landowners' additional claims were for nuisance, trespass, and regulatory taking. Landowners withdrew their nuisance claim and did not appeal the court's grant of summary judgment on their trespass and regulatory taking claims. Those claims will not be discussed in this appeal.

injunction requiring the Wakenda District to restore the Cross Levee to its previous height.

Following a hearing, the circuit court granted summary judgment in favor of the Wakenda District on all claims. The court found it was uncontroverted that this was a surface water case, and the damages claimed by Landowners were the result of flooding from a weather event in June 2021. The court took judicial notice that the weather event caused a record crest of Wakenda Creek of nearly twenty-two feet. The court concluded Landowners could not assert an inverse condemnation claim for a natural weather event, and they could not obtain injunctive relief but, instead, were limited to the statutory remedies provided in Chapter 245. Landowners appeal.

STANDARD OF REVIEW

Appellate review of summary judgment is essentially *de novo. Green v. Fotoohighiam*, 606 S.W.3d 113, 115 (Mo. banc 2020). Summary judgment is appropriate when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Rule 74.04(c)(6). We review the summary judgment record in the light most favorable to the party against whom judgment was entered and accord that party the benefit of all reasonable inferences. *Green*, 606 S.W.3d at 116. We "do not weigh conflicting evidence or make credibility determinations." *Brentwood Glass Co. v. Pal's Glass Serv., Inc.*, 499 S.W.3d 296, 302 (Mo. banc 2016). "Instead, summary judgment tests 'simply for the existence, not the extent' of genuine issues of material fact." *Id.* (citation omitted). "A factual question exists if evidentiary issues are actually

contested, are subject to conflicting interpretations, or if reasonable persons might differ as to their significance." *Id.* (citation omitted).

The parameters of the record we review on summary judgment are:

> [1] Facts come into a summary judgment record *only* via Rule 74.04(c)'s numbered-paragraphs-and-responses framework. [2] Courts determine and review summary judgment *based on that Rule 74.04(c) record*, <u>not</u> the whole trial court record. [3] Affidavits, exhibits, discovery, etc. generally play only a secondary role, and then only as cited to support Rule 74.04(c) numbered paragraphs or responses, *since parties cannot cite or rely on facts outside the Rule 74.04(c) record.* [4] Summary judgment rarely if ever lies, or can withstand appeal, unless it flows as a matter of law from appropriate Rule 74.04(c) numbered paragraphs and responses *alone.*

Green, 606 S.W.3d at 117-18 (quoting *Jones v. Union Pac. R.R. Co.*, 508 S.W.3d 159, 161 (Mo. App. 2016)).

ANALYSIS

In Point I, Landowners contend the circuit court erred in granting summary judgment on their seven counts of inverse condemnation. They argue a genuine issue of material fact exists as to whether the Wakenda District's decision to lower the height of the Cross Levee, not the magnitude of the June 2021 rainfall, caused or contributed to cause the extent and duration of the flooding on the property and their claimed damages.

Pursuant to Article 1, Section 26 of the Missouri Constitution, "private property shall not be taken or damaged for public use without just compensation." *Rader Family Ltd. P'ship, L.L.L.P. v. City of Columbia*, 307 S.W.3d 243, 247 (Mo. App. 2010). "This concept encompasses inverse takings, where the government takes or damages land, sometimes unintentionally, without going through an official process." *Id.* (citation omitted). "Although a property owner formerly might have maintained an action for

nuisance, inverse condemnation is now the exclusive remedy when private property is damaged by a nuisance operated by an entity having the power of eminent domain." *Id*. (internal quotation marks and citation omitted). The Wakenda District has the power of eminent domain. § 245.095.

"[W]hen, as a result of a public works project, private property is damaged by an unreasonable diversion of surface waters,[5] whether by design or by mistake, the owner may bring an action for inverse condemnation." *Heins Implement Co. v. Mo. Highway & Transp. Comm'n*, 859 S.W.2d 681, 691 (Mo. banc 1993), *abrogated on other grounds by Southers v. City of Farmington*, 263 S.W.3d 603 (Mo. banc 2008). "Liability arises when the defendant's conduct is either (1) intentional and unreasonable; or (2) negligent, reckless, or in the course of an abnormally dangerous activity." *Id*. at 689.

The elements of a claim for inverse condemnation based on a nuisance are: (1) notice by the complaining landowner; (2) the public entity's unreasonable operation in spite of notice; (3) injury; (4) damage; and (5) causation. *Scott Family Properties, LP v. Mo. Highway & Transp. Comm'n*, 546 S.W.3d 605, 608 (Mo. App. 2018). Here, the Wakenda District argued, and the court found, that Landowners would be unable to establish the element of causation. A plaintiff satisfies the causation element by showing the public entity's unreasonable operation "directly caused or directly contributed to cause" plaintiff's damages. *See Rader*, 307 S.W.3d at 252.

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[5] "Surface water takes many forms. For instance, overflow during flooding from a river, stream, or creek is surface water. Generally stated, surface water is water running across land that emanates from natural sources such as rain or melting snow." *Bettinger v. City of Springfield*, 158 S.W.3d 814, 818 n.2 (Mo. App. 2005) (internal citations omitted).

On this issue, Landowners contended in their response to the summary judgment motion that the District's affirmative act in March 2021 of lowering the Cross-Levee from eight feet to four feet in height, which made the Cross Levee's height lower than the height of the spillway into Wakenda Creek and the rest of the Wakenda District's levee system, directly caused or directly contributed to cause their damages after the June 2021 rainfall. To support this contention, Landowners presented the following factual allegations, which they supported with an engineering firm's study, expert deposition testimony, and Landowners' affidavits: (1) the Carr-Sal District does not have the drainage capacity to timely drain water that is collected within the Wakenda District; (2) the Wakenda District's decision to lower its Cross Levee resulted in collected surface water from the Wakenda District discharging east into the Carr-Sal District; (3) absent a lowered Cross Levee, collected surface water within the Wakenda District would have gone over the spillway into Wakenda Creek; (4) the lowered elevation of the Cross Levee caused Landowners' property to be inundated with water for an additional week when compared to the previous height of the Cross Levee; (5) Landowners experienced crop loss due to the water that sat for days on their land after the June 2021 rainfall; and (6) engineers concluded the Wakenda District acted unreasonably in its modification of the Cross Levee's height.

The Wakenda District disputed these facts and argues none of them are material because the June 2021 rainfall was "historic," and Landowners cannot assert an inverse condemnation claim for a natural weather event, citing *Bettinger v. City of Springfield*, 158 S.W.3d 814, 820 (Mo. App. 2005). In *Bettinger*, the plaintiffs contended the

defendant city was liable for damages to their property after water from a storm water drainage system overflowed. *Id*. at 817. The overflow happened after a "record" rainfall that occurred during a storm with a magnitude of between a 100 and 500-year event. *Id*. The circuit court granted summary judgment in favor of the city. *Id*.

On appeal, the Southern District of this court affirmed. *Id*. at 820. In so holding, the court rejected the plaintiffs' implicit strict liability argument that the city's "acceptance, control, and maintenance of the subject storm water drainage systems rendered it liable for damages to [the plaintiffs'] property that were caused when water in the drainage system left the easement and overflowed onto their property without regard to the cause of the overflow." *Id*. at 818 (footnote omitted). Instead, the court reaffirmed that *Heins* required the plaintiffs to present evidence that, as a result of the city's public works project, their property was damaged by an unreasonable diversion of surface waters, whether by design or mistake. *Id*. at 820. The court in *Bettinger* noted the plaintiffs did not plead, either in their petition or in their response to the city's summary judgment motion, any facts supporting the design or mistake elements, and they offered no disputed facts showing the city intentionally, negligently, or recklessly flooded the plaintiffs' land. *Id*. Therefore, the court concluded, "*On this record,* this case is governed by the well established general rule that governmental entities are not liable in inverse condemnation when the damage is the result of natural forces." *Id*. (emphasis added).

Unlike the plaintiffs in *Bettinger*, Landowners did plead and present disputed facts indicating the Wakenda District's decision to lower the height of the Cross Levee from

eight feet to four feet constituted an unreasonable diversion of surface waters, either by design or mistake, which directly caused or directly contributed to cause the damage to their property. Thus, unlike in *Bettinger*, the record before us does not compel a finding, as a matter of law, that the case is governed by the general rule precluding a governmental entity's liability when the damage is the result of natural forces.

Another case the Wakenda District cites, *Ressel v. Scott County*, 927 S.W.2d 518 (Mo. App. 1996), is also distinguishable from this case. After a flood washed out a bridge that left their property landlocked and the county refused to repair the bridge, the plaintiffs in *Ressel* asserted a claim against the county for inverse condemnation. *Id.* at 519-20. The court entered summary judgment in favor of the county, and on appeal, the Eastern District of this court affirmed. *Id*. at 520. Noting it was an issue of first impression in Missouri, the court cited cases from other jurisdictions in which recovery on claims of inverse condemnation were denied because the damage was the result of natural forces. *Id*. at 521. In the cases cited, the plaintiffs failed to allege that an affirmative government act had caused the asserted damage. *Id*. Because the asserted damage in *Ressel* was "the result of a force of nature," *i.e.*, the destruction of the bridge by a flood, the court found it was "that natural force and not a government act" that destroyed the plaintiffs' property interest. *Id*. Following the rationale of the cases from other jurisdictions, the court held "that a plaintiff does not state a claim for inverse condemnation under Art.1, § 26 when the asserted damage is the result of some natural force." *Id*.

While it is undisputed the June 2021 rainfall was a natural force, Landowners dispute it was "historic" and have presented evidence indicating that it was not simply the rainfall, but the Wakenda District's *affirmative act* of lowering the height of the Cross Levee prior to the rainfall, that directly caused or directly contributed to cause the damage to their property. Specifically, Landowners offered evidence that lowering the height of the Cross Levee diverted the flood water, which would have otherwise gone to the spillway into Wakenda Creek, onto their property and, additionally, caused their property to be inundated with water for an additional week. Therefore, Landowners have raised a genuine issue of material fact precluding summary judgment on the element of causation in their inverse condemnation claims. Point I is reversed.

In Point II, Landowners contend the circuit court erred in entering summary judgment against them on their request for an injunction requiring the Wakenda District to restore the Cross Levee to its previous height of eight feet. The court found the process by which Landowners could seek such relief is contained in Chapter 245 and concluded that, because a statutory remedy exists for Landowners, injunctive relief would be inappropriate. The court cited *State ex rel. Leonardi v. Sherry*, 137 S.W.3d 462, 466 (Mo. banc 2004), which restated the general rule that a plaintiff is not entitled to equitable relief if an adequate remedy at law exists. Landowners argue Chapter 245 does not provide an adequate legal remedy. We disagree.

As Landowners acknowledged in their petition, Chapter 245 "presents a complete process for the organization, financing, and operation of a levee district." Among the many powers the legislature designated to a levee district's board of supervisors is the

authority "to construct and maintain" levees "and any other works and improvements deemed necessary to preserve and maintain the works in or out of the district[.]" § 245.095.1. The legislature conferred upon landowners adjacent to the levee district the right to seek changes to the levee district's plan of reclamation. § 245.140. Adjacent landowners may file a petition in the clerk of the court that organized the district to request, among other things, "permission of the court for [the board of supervisors] to amend or change the plan for reclamation, or to correct any errors, omissions, or other mistakes that have been discovered in the plan for reclamation[.]" § 245.140.1. If the petition asks the court for permission to change the plan of reclamation, the petition must also ask the court "to appoint three commissioners as provided for under the provisions of section 245.110 to . . . assess the benefits and damages to any or all lands . . . and changes to the plan for reclamation" *Id*. The remainder of Section 245.140 provides timelines and guidance for the filing of objections to the petition, notice, a hearing, the entry of a decree, the appointment of commissioners, and the duty of the commissioners to write and file a written report.

Landowners contend this process would be too time-consuming and is "meaningless where, as here, it is apparent that Wakenda's board does not support, and would not approve, an amendment to restore the height of the Cross-Levee." Landowners' speculative contentions are insufficient to demonstrate the inadequacy of the legal remedy the legislature expressly provided in Chapter 245. Moroever,

Landowners cite no relevant case law allowing injunctive relief in lieu of Chapter 245's legal remedy.[6] Point II is denied.

CONCLUSION

Summary judgment in favor of the Wakenda District on Landowners' inverse condemnation claims is reversed. Summary judgment in favor of the Wakenda District on Landowners' request for injunctive relief is affirmed.



LISA WHITE HARDWICK, JUDGE

All Concur.

[6] To support their argument that Chapter 245's legal remedy is inadequate, Landowners cite *Halls Levee District of Buchanan County v. Hauber*, 461 S.W.2d 16 (Mo. App. 1970). *Halls Levee District* is readily distinguishable from this case. After landowners constructed a rock dam without the levee district's permission, the circuit court granted an injunction in favor of the levee district ordering the removal of the rock dam. *Id*. at 18. We affirmed the injunction on appeal, rejecting the landowners' contention that the levee district should have followed Chapter 245's process for amending the plan for reclamation. *Id*. at 22. In so holding, we noted the levee district was not attempting to amend its existing reclamation plan "in any sense" but was asking "only that [landowners] be required to remove the rock dam they have illegally placed across the district's drainage ditch easement and refrain from replacing it." *Id*.