

Plaintiff: Kenneth R. Hostler,

vs.

Defendants: Davison County Drainage
Commission, John Millan

Case No. 17CIV20-000087

**FINDINGS OF FACT,
CERTIFICATION FOR
FINAL JUDGMENT,
CONCLUSIONS OF LAW
AND ORDER**

These matters having come before the Court, the Honorable Patrick Smith, Circuit Judge, presiding, on Plaintiff's Motion for Declaratory Judgment pursuant to SDCL § 21-24-1, Motion for Partial Summary Judgment pursuant to SDCL § 15-6-56(a) and Motion for Final Judgment pursuant to SDCL § 15-6-54(b) and a hearing having been held and a decision made by the Court's written Memorandum Decision, the Court now makes the following Findings of Fact, Certification for Final Judgment, Conclusions of Law and Order:

FINDINGS OF FACT AND CERTIFICATION FOR FINAL JUDGMENT

1. Plaintiff Kenneth R. Hostler of Davison County South Dakota is an aggrieved real property owner.

2. Defendant John Millan (Millan) filed a drainage project permit application with the Davison County Drainage Commission (hereafter also Commission) on February 27, 2020 for the following parcels and permits:

- a. 03000-10361-301-00
- b. 03000-10361-292-00
- c. 03000-10361-303-00

d. 03000-10361-304-00

3. On March 17, 2020 the Commission held a hearing on the above application and voted to approve John Millan's drainage project permit application (hereinafter also "permit") for the following parcels:

- a. NE ¼ of Sec 30 Twp 103 Rge 61 County Davison.
- b. N ½ of the NW ¼ of Sec 29 Twp 103 Rge 61 County Davison.
- c. SW¼ of Sec 30 Twp 103 Rge 61 County Davison.
- d. SE ¼ of Sec 30 Twp 103 Rge 61 County Davison.

4. The Millan project was planned to divert surface water onto Plaintiff's property.

5. The described Millan project was planned to cover 350 acres and would have included 315,000 feet of drain tile, 15,000 feet being solid drain tile and 300,000 feet as perforated drain tile.

6. Section 2.05 of the Drainage Ordinance of Davison County states: "At a minimum, the following factors shall be considered in evaluating the impact of a proposed drainage project:

- 1) Flood hazard zones.
- 2) Erosion potential.
- 3) Water quality and supply.
- 4) Agricultural production.
- 5) Environmental quality.
- 6) Aesthetics.
- 7) Fish and wildlife values.

8) Considerations of downstream landowners and the potential adverse effect thereon including consideration of the following criteria:

a. Uncontrolled drainage into receiving watercourses which do not have sufficient capacity to handle the adverse effect.

b. Whether drainage is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or in the absence of a practical natural drain, a reasonable artificial drain system is adopted.

c. The amount of water proposed to be drained.

d. The design and other physical aspects of the drain.

e. The impact of sustained flows.”

7. Millan presented an application that lacked called-for information regarding the standards and conditions required by Section 2.05 to be considered by the Commission in evaluating a drain tile project. And, because the Commission did not consider evidence on all the factors which the Davison County Drainage Ordinance requires be considered prior to granting a drainage permit, the Commission abused its discretion in granting the permit.

8. A final judgment in this matter will not result in remaining multiple remedies.

9. Plaintiff in the case at bar does not seek a double recovery. Plaintiff in the Summary Judgment Motion is not asking for a double recovery. Plaintiff’s Motion seeks a final judgment declaring the permit void. Plaintiff does not by his Summary Judgment Motion seek other potential remedies.

10. The Plaintiff's current litigation will be resolved by the Court's cancellation of the permit if the relief requested in the Summary Judgment Motion is granted.

11. If Plaintiff's requested judgment is entered there will be no legal questions concerning multiple conflicting issues because the pending dispositive legal issue, that is the legality of the drain tile permit, will be decided and ripe for appeal if any party so chooses to file an appeal.

12. And, further, because the resolution of the controlling question will result in the termination of the permit there is no just reason for delay by this Court in granting Plaintiff's requested final judgment certification.

13. This litigation contains no setoff issues or counterclaims which might negate the requested final judgment.

14. Further, this litigation does not include a claim for damages, specific performance, or other conflicting issues. No claims, or remaining unadjudicated claims, by the parties would be unresolved which might otherwise setoff, reduce or eliminate the requested judgment if a final judgment is entered.

15. Both Defendants have responded to and answered the Plaintiff's discovery. Both Defendants have provided answers and documents. From this information no new issues have been presented in this litigation.

16. The economic costs to all the parties of not granting the a final judgment now rather than continue the litigation would be inequitable. It would be a disservice to the parties to continue the litigation under the facts and the established law presented by the Plaintiff.

17. The benefits of immediate possible appeal rights for all parties from a certified final judgment would advance and facilitate the rights of all the parties to this drainage litigation.

18. This Court's ruling that the granted permit is void is dispositive of the Plaintiff's legal challenges in this cause of action and a final Judgment may be entered without further delay.

19. The Court's written Memorandum Decision filed, and dated July 28th, 2020 is incorporated herein by reference. To the extent any of the Court's Findings of Fact are considered Conclusions of Law, they are adopted as such. To the extent any of the Court's Conclusions of Law are considered Findings of Fact, they are adopted as such.

CONCLUSIONS OF LAW

20. The Commission erroneously interpreted and applied the law.

21. This Court has jurisdiction pursuant to SDCL §§ 46A-10A-35, as well as DAVISON COUNTY, S.D., REVISED DRAINAGE ORDINANCE § 5:01 (2013).

22. This is a justiciable controversy.

23. The interests of the parties are adverse.

24. Plaintiff has a legal interest in the controversy.

25. The issues involved are ripe for judicial determination.

26. Venue is proper in Davison County as the relevant events occurred there.

27. In South Dakota, a declaratory judgment is meant to afford security against unknown consequences with a view towards avoiding litigation and settling rights before there has been irrevocable change of position. *Kneip v. Herseth*, 214 N.W.2d 93 (S.D. 1974).

28. An actual, present and justiciable, controversy has arisen between the Plaintiff and Defendants concerning the drain tile permit and a Declaratory Judgment is appropriate in this matter.

29. Plaintiff has provided facts, evidence and law which establish that Plaintiff should be granted the relief described in the Order and Judgment in this matter.

30. The Commission received inadequate evidence and abused its discretion in granting Defendant Millan's permit application.

31. The Plaintiff is awarded Partial Final Summary judgment.

32. The Court's written Memorandum Decision filed, and dated July 28th, 2020 is incorporated herein by reference. To the extent any of the Court's Findings of Fact are considered Conclusions of Law, they are adopted as such. To the extent any of the Court's Conclusions of Law are considered Findings of Fact, they are adopted as such.

ORDER

33. Having considered the pending Motions, including all supporting and opposing evidence as well as the arguments of counsel, and having considered the applicable law, and having filed the Court's Memorandum Decision dated July 28, 2020 and adopting the above Findings of Fact. Certification of Final Judgment and Conclusions of Law, it is therefore ORDERED, DECLARED AND ADJUDGED THAT

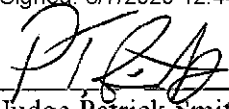
a. Defendant applicant failed to meet his burden of proof in the drainage permit application,

b. Defendant Commission abused its discretion in granting the drainage permit,

- c. Defendant applicant's drainage permit is void, and therefore
- d. Plaintiff's Motion for Partial Final Summary Judgment is GRANTED.

Dated at Mitchell, South Dakota, this ____ day of ____, 20__.

BY THE COURT:
Signed: 8/7/2020 12:44:21 PM



Judge Patrick Smith

ATTEST:

Attest:
Lorang, Trista
Clerk/Deputy



Clerk of Court