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Nebraska Court of Appeals
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David DeLaet et al., appellants, v. Blue Creek Irrigation District, appellee.

868 N.W.2d 483

Filed August 4, 2015. No. A-14-500.

1. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.
2. ____: ____. In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence.
3. **Appeal and Error.** An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.
4. **Limitations of Actions: Appeal and Error.** The point at which a statute of limitations begins to run must be determined from the facts of each case, and the decision of the district court on the issue of the statute of limitations normally will not be set aside by an appellate court unless clearly wrong.
5. **Limitations of Actions.** Generally, a cause of action accrues and the period of limitations begins to run upon the violation of a legal right, that is, when the aggrieved party has the right to institute and maintain suit.
6. ____. For a limitations period to begin to run, it is not necessary that a plaintiff have knowledge of the exact nature or source of a problem, but only that a problem exists.

Appeal from the District Court for Garden County: Derek C. Weimer, Judge. Affirmed.

Gregory J. Beal for appellants.

Steven C. Smith, of Smith, Snyder, Petitt, Hofmeister & Snyder, G.P., for appellee.

Moore, Chief Judge, and Pirtle and Bishop, Judges.

Pirtle, Judge.

INTRODUCTION

David DeLaet, Gerrod Toepfer, and Allen Peterson (collectively appellants) appeal from an order of the district court for Garden County which granted summary judgment in favor of Blue Creek Irrigation District (Blue Creek) and denied appellants' motion for partial summary judgment. We conclude that summary judgment was properly granted in favor of Blue Creek based on the ground that appellants' causes of action are barred by the statute of limitations. Accordingly, we affirm.

BACKGROUND

Appellants are all longstanding property owners and irrigators in Garden County, Nebraska. They were all part of an entity called the Meeker Ditch Company, which was made up of private landowners who pooled resources to develop and manage an irrigation system for various irrigated areas in Garden County. Ultimately, the Meeker Ditch Company was dissolved and the members of that entity joined Blue Creek in 2002. The Meeker Ditch Company had been "served by the Graf Canal," which it abandoned upon joining Blue Creek.

Blue Creek is a political subdivision and an organized irrigation district pursuant to Neb. Rev. Stat. § 46-101 et seq. (Reissue 2010). Blue Creek has a board of directors and assesses taxes from the landowners. Blue Creek has 30 landowner members and covers approximately 3,500 acres of land. It is a small district by comparison to others in the immediate area and throughout Nebraska. Blue Creek is served by a district canal ditch from which the water is diverted and delivered to the individual landowners.

In preparation for the inclusion of the Meeker Ditch Company members into Blue Creek, additional pipelines had to be constructed to connect the Meeker Ditch Company members to the Blue Creek system. These pipelines were constructed in 2001 and paid for by the Meeker Ditch Company members. Three of the pipelines constructed are known as the East Meeker pipeline, the Middle or Central Meeker pipeline, and the West Meeker pipeline. Appellants DeLaet and Toepfer receive their water from the Middle Meeker pipeline and appellant Peterson is served by a pipeline which comes from the same turnout as the Middle Meeker pipeline. The Middle Meeker pipeline is the only system of water delivery to appellants' land, and there is no alternate system of ditches or canals or any other means of delivery of water to their property.

Since the inclusion of appellants' land into Blue Creek, there have been two occasions when the Middle Meeker pipeline has needed repair. For the first repair, Blue Creek reimbursed the landowners for the repair costs. It is not clear from the record before us when the first repair occurred. Appellants' brief states that it occurred in 2007, but there is nothing in the record to support that date. DeLaet's and Toepher's affidavits indicate only that the first repair was prior to August 2009, when the second repair occurred. When the second repair was made, the landowners paid for the repair and Blue Creek refused to reimburse the landowners.

On January 26, 2012, appellants filed a complaint alleging three causes of action against Blue Creek. The first cause of action was for declaratory relief to establish that Blue Creek is legally obligated to provide reasonable maintenance for the Meeker pipeline, as well as reasonable rules and regulations pertaining to its use and operation, or to provide an alternative means of delivery of water to the lands along the Meeker pipeline. The second cause of action was for a writ of mandamus to require Blue Creek to perform its duties under the law with respect to maintenance and operation of the Meeker pipeline, as well as reasonable rules and regulations pertaining to its use and operation. The third cause of action was for

a mandatory injunction to require Blue Creek to perform its legal obligations with respect to the maintenance, use, and operation of the Meeker pipeline.

Blue Creek filed an answer and alleged several affirmative defenses: separation of powers; waiver, laches, and estoppel; consent to inclusion into Blue Creek and its terms and conditions; and statute of limitations. Blue Creek also made a counterclaim seeking declaratory relief confirming its long-held policies and practices regarding water deliveries.

Appellants filed a reply and answer relating to Blue Creek's affirmative defenses and counterclaim. The pleading also asserted affirmative defenses to Blue Creek's counterclaim: failure to state a claim upon which relief can be granted; failure to join all necessary parties; consent; statute of limitations; and waiver, estoppel, and laches.

Appellants subsequently filed a "Motion for Partial Summary Judgment," asking the court to "enter a Summary Judgment or Partial Summary Judgment on [appellants'] First Cause of Action; [appellants'] Second Cause of Action; and [appellants'] Third Cause of Action." The trial court treated the motion as a motion for summary judgment or, alternatively, a motion for partial summary judgment on the first cause of action. Blue Creek also filed a motion for summary judgment.

A hearing was held on both summary judgment motions. Appellants offered affidavits and supplemental affidavits of DeLaet and Toepfer into evidence. DeLaet's and Toepfer's affidavits both state that each of them is familiar with the operation of Blue Creek and that Blue Creek has historically assumed responsibility for repairs, upkeep, and maintenance of all means of delivery of water to lands served by it and taxed by it.

DeLaet's and Toepfer's supplemental affidavits both state that there was never an understanding or agreement, either verbal or written, that the landowners would maintain the pipeline that delivered water to their property. The supplemental affidavits also state that the landowners have never

been polled in regard to who should have the responsibility of maintaining the pipelines. DeLaet's supplemental affidavit also states that there are no facts to support an allegation that maintenance of the pipeline by Blue Creek would be a burden to it, nor significantly increase its operating costs.

Blue Creek presented an affidavit of Dennis Miller, who owns land that was formerly under the Meeker Ditch Company and other land that has always been part of Blue Creek. He was also the president of Meeker Ditch Company at the time it was dissolved and has also been the president of Blue Creek for almost 10 years. Miller's affidavit states that the longstanding practice for Blue Creek has been to deliver water "to a turnout or gate" commonly referred to as the "paddle," which Blue Creek provides at its expense. The landowners are then responsible for all operation, maintenance, cleaning, and repair of pipelines and laterals running directly from the Blue Creek main canal to their lands.

Miller's affidavit further states that on several occasions since the inclusion of the Meeker Ditch Company lands into Blue Creek, all Blue Creek landowners have been polled on whether or not to continue the past practice of requiring landowner operation, maintenance, cleaning, and repair of pipelines and laterals running from the Blue Creek main canal, and the landowners have, by a large majority (basically all except appellants), elected to continue the practice.

Miller's affidavit also states that Blue Creek landowners have historically, by policy and agreement, maintained their own pipelines and all other laterals from the Blue Creek main canal. He states this was unanimously accepted by Blue Creek landowners, because it allowed Blue Creek landowners to keep the laterals or pipelines serving their lands cleaned according to their own scheduling and preferences, as well as reducing operating expenses of Blue Creek. The affidavit states that if Blue Creek operated, cleaned, maintained, and repaired irrigation water conveyances running from the main Blue Creek canal, it would more than double the current assessment of

$19 per acre paid annually by the landowners, due to additional labor requirements and cleaning devices.

Miller's affidavit specifically denies that Blue Creek has historically "'assumed responsibility for repairs, upkeep and maintenance of all laterals and pipelines running from the main canal,'" as stated in Toepfer's affidavit and similarly stated in DeLaet's affidavit.

Miller's affidavit states that when the Meeker Ditch Company landowners, including appellants, constructed the pipelines to deliver water to lands formerly included in the Meeker Ditch Company, they "were instructed as to maintenance, upkeep and operation of the pipelines by engineers from the Soil Conservation Service/Natural Resources Conservation Service." He contends appellants have failed and refused to follow the instructions for operation and maintenance of the Middle Meeker pipeline, which has impeded efficient delivery through the pipeline and resulted in damage to the pipeline.

A second affidavit of Miller states that at two Blue Creek member meetings, one held in July 2010 and the other in February 2011, the landowners were polled concerning their position on Blue Creek's practice of requiring landowners to maintain their pipelines. The minutes from the two meetings are attached to Miller's second affidavit. Included with the minutes from the February 2011 meeting is a document stating Blue Creek's current practice for pipeline operation, as well as other pipeline operation options. In regard to the current practice, it states: "[Blue Creek] delivers water to the inlet to any lateral, tube or pipeline at the point of removal from the main canal. Land owners and operators are responsible for the shut off valves and any structures necessary for diverting water from the main canal to their fields." Miller's second affidavit states that the optional approaches, which included Blue Creek's assuming responsibility for the maintenance of all laterals, tubes, and pipelines, were rejected by the board and landowners. The second affidavit also states that Miller had discussed maintenance and repair of pipelines

on other occasions with the landowners and that appellants were the only landowners preferring Blue Creek to repair and maintain the pipelines.

Miller's second affidavit further states that from the completion of the pipeline project in 2002 through 2009, all landowners, including appellants, maintained and repaired their own pipelines without complaint or disagreement. It further states that appellants have maintained and cleaned their own turnouts.

Also attached to Miller's second affidavit is a copy of an "Agreement Concerning Meeker Pipeline Project," which states: "Landowners may connect their own pipelines to carry water to their lands . . . . This will be done at their own cost and those pipelines will be solely their responsibility." Miller states that he circulated this agreement and obtained signatures of all the Meeker Ditch Company landowners, including appellants. At the time of the agreement, it was contemplated that "the water for the Middle Meeker lands would flow from the Blue Creek . . . canal down into the Graf canal and from there, as the Agreement reflects," the Meeker Ditch Company landowners would construct their own pipelines at their own cost to transport the water to their own lands, which is what was done. An attachment to DeLaet's supplemental affidavit also references the agreement. The attachment is a letter dated August 5, 2004, from Blue Creek's attorney, addressed to DeLaet and Miller, regarding "Winding Up of Meeker Ditch Company." The letter states, "I also understand that all of the landowners under the Meeker Ditch Company have executed the 'Agreement Concerning Meeker Pipeline Project.'"

The trial court found that Blue Creek was entitled to summary judgment on its counterclaim for declaratory judgment and that appellants' motion for partial summary judgment as it relates to the issue of declaratory judgment should be overruled. The court also found that Blue Creek was entitled to summary judgment in regard to the mandamus cause of action and the injunction cause of action. The trial court further

found that appellants' causes of action, even if meritorious, were time barred by the statute of limitations.

ASSIGNMENTS OF ERROR

Appellants assign that the trial court erred in (1) granting Blue Creek's motion for summary judgment, (2) finding they were not entitled to mandamus relief, (3) finding injunctive relief was not warranted, and (4) finding that their causes of action were barred by the applicable statute of limitations.

STANDARD OF REVIEW

[1,2] An appellate court will affirm a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law. *Daniels v. Maldonado-Morin*, 288 Neb. 240, 847 N.W.2d 79 (2014). In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence. *Id.*

ANALYSIS

[3] We choose to first address appellants' assignment of error in regard to the statute of limitations, because if appellants' causes of action are barred by the applicable statute of limitations, we need not address the remaining assignments of error. See *Tierney v. Four H Land Co.*, 288 Neb. 586, 852 N.W.2d 292 (2014) (appellate court is not obligated to engage in analysis that is not necessary to adjudicate case and controversy before it).

The trial court determined that appellants' theories of recovery would all be subject to a 4-year statute of limitations. Specifically, it found that Neb. Rev. Stat. § 25-206 (Reissue 2008) would be the applicable statute of limitations to the theories of recovery allegedly created by Blue Creek's statutory duties to act; Neb. Rev. Stat. § 25-207 (Reissue 2008)

would be the applicable statute of limitations to the theories of recovery which allege that appellants' rights have been injured by Blue Creek's actions or inactions; and Neb. Rev. Stat. § 25-212 (Cum. Supp. 2014) would be the catchall statute of limitations for those causes of action not otherwise specified in other statutes of limitations. Under each of these statutes, the applicable statute of limitations is 4 years. We agree with the trial court's determination on the applicable statutes of limitations, and appellants do not contest the determination that a 4-year statute of limitations applies. Rather, appellants contest the trial court's finding that the causes of action accrued in 2002, when appellants became members of Blue Creek, and that therefore, the statute of limitations had expired at the time appellants filed the present action in 2012.

[4] The point at which a statute of limitations begins to run must be determined from the facts of each case, and the decision of the district court on the issue of the statute of limitations normally will not be set aside by an appellate court unless clearly wrong. *Guinn v. Murray*, 286 Neb. 584, 837 N.W.2d 805 (2013).

[5,6] Generally, a cause of action accrues and the period of limitations begins to run upon the violation of a legal right, that is, when the aggrieved party has the right to institute and maintain suit. *Kalkowski v. Nebraska Nat. Trails Museum Found.*, 20 Neb. App. 541, 826 N.W.2d 589 (2013). For a limitations period to begin to run, it is not necessary that a plaintiff have knowledge of the exact nature or source of a problem, but only that a problem exists. *Id.*

The trial court found that appellants' causes of action accrued in 2002, because that is when they became members of Blue Creek and the policies and practices related to the delivery of water and the maintenance of the pipelines have not changed since then. The court further stated,

> Taking [appellants'] claims at face value, [Blue Creek] has had an obligation to maintain the individual water delivery systems since the inclusion of their lands into [Blue Creek]. That occurred in 2002. The duty, if it

> existed, existed beginning then and [Blue Creek] has failed to so act in accordance with that duty.

The court concluded, therefore, that the statute of limitations started to run in 2002 and expired in 2006.

Appellants argue that their causes of action are not barred by the statute of limitations, because Blue Creek has a continuing statutory duty pursuant to §§ 46-120 and 46-122 to maintain the means of delivery of water to the individual landowners' tracts of land. Section 46-120 provides:

> The [irrigation district] board shall have the power and it shall be its duty to manage and conduct the business affairs of the district, make and execute all necessary contracts, employ such agents, officers, and employees as may be required and prescribe their duties, establish equitable bylaws, rules and regulations for the distribution and use of water among the owners of such lands, and generally to perform all such acts as shall be necessary to fully carry out the purposes of sections 46-101 to 46-1,111. The bylaws, rules and regulations shall be printed in convenient form for distribution in the district.

Section 46-122(2) provides in part:

> It shall be the duty of the directors to make all necessary arrangements for right-of-way for laterals from the main canal to each tract of land subject to assessment, and when necessary the board shall exercise its right of eminent domain to procure right-of-way for the laterals and shall make such rules in regard to the payment for such right-of-way as may be just and equitable.

Appellants allege that the continuing statutory duty "rises anew with each and every irrigation season" and which statutory duty existed during the 4-year period of time prior to the filing of this action. Brief for appellants at 31. They further contend that Blue Creek's obligation to maintain the Middle Meeker pipeline did not become an issue until 2009, when Blue Creek refused to pay for the repair of a ruptured pipeline. They suggest that it was at that point that Blue Creek

refused to take responsibility for the maintenance of the arterial pipeline delivering water to appellants' land.

We find no merit to appellants' arguments and conclude that the trial court did not err in finding that appellants' claims are barred by the statute of limitations. Appellants became members of Blue Creek in 2002, and the pipeline project was completed at that time. Appellants' causes of action are all based on the contention that Blue Creek has an obligation to maintain the pipelines and has had that obligation since the inclusion of appellants' lands in Blue Creek in 2002. They do not allege that any policies or obligations of Blue Creek have changed since 2002.

Blue Creek presented evidence, by way of Miller's affidavit and his second affidavit, that appellants were made aware in 2002 that they and all former Meeker Ditch Company landowners were solely responsible for the pipelines carrying water to their lands. Miller's second affidavit states that he circulated the "Agreement Concerning Meeker Pipeline Project" and obtained signatures from all the Meeker landowners, including appellants. The agreement provides: "Landowners may connect their own pipelines to carry water to their lands . . . . This will be done at their own cost and those pipelines will be solely their responsibility." Appellants did not present any evidence to contradict Blue Creek's evidence that all Meeker Ditch Company landowners, including appellants, executed the agreement. In fact, appellants' evidence (the letter attached to DeLaet's supplemental affidavit) supports the statement in Miller's second affidavit that all Meeker Ditch Company landowners signed the "Agreement Concerning Meeker Pipeline Project." As previously set forth, the letter was addressed to DeLaet and Miller and stated that all Meeker Ditch Company landowners had executed the agreement. Although DeLaet's and Toepfer's supplemental affidavits state that there was never an agreement, either verbal or written, that the landowners would maintain the pipeline that delivered water to their property, such a statement is not sufficient to create a genuine issue of material fact when other

evidence from both parties shows the existence of a written agreement and such agreement is in the record.

Accordingly, we conclude that appellants' causes of action accrued in 2002 and are now time barred, as the statute of limitations has expired. The trial court did not err in granting summary judgment in favor of Blue Creek based on the statute of limitations.

Because we conclude that appellants' causes of action are barred by the statute of limitations, we need not address the remaining assignments of error. See *Tierney v. Four H Land Co.*, 288 Neb. 586, 852 N.W.2d 292 (2014).

CONCLUSION

We conclude that summary judgment was properly granted in favor of Blue Creek based on the ground that appellants' causes of action are barred by the statute of limitations. Accordingly, the judgment of the trial court is affirmed.

Affirmed.