

IN THE COURT OF APPEALS OF IOWA

No. 7-757 / 07-0002
Filed December 28, 2007

RICK BRADLEY and JULIE BRADLEY,
Plaintiffs-Appellees,

vs.

CITY OF TRIPOLI, IOWA,
Defendant-Appellant.

Appeal from the Iowa District Court for Bremer County, Jon Stuart Scoles,
Judge.

The City of Tripoli appeals from the judgment in favor of the Bradleys on
their claims of inverse condemnation and negligence. **AFFIRMED.**

Timothy Luce of Anfinson & Luce, Waterloo, for appellant.

Carolyn Rafferty and David J. Dutton of Dutton, Braun, Staack & Hellman,
P.L.C., Waterloo, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

Rick Bradley owned a home in the City of Tripoli (City). In 2003, the City began a street improvement project in front of the Bradleys' home. The following year, the City experienced heavy rains. The Bradleys' home flooded, filling the basement and the first floor of the house with water. The Bradleys were evacuated.

Before the flooding, the house had a fair market value of \$36,000. After the flooding, the fair market value of the home was \$0.

The Bradleys sued the City, alleging it was negligent in its design of the 2003 street improvement project and its actions amounted to a taking of property without compensation in violation of the United States and Iowa Constitutions. The City answered with an affirmative defense that it was immune from liability. Following trial, the district court entered judgment in favor of Rick Bradley for \$36,000. The court also awarded the Bradleys \$9711 in compensatory damages for the loss of their furniture and vehicles, and to cover moving costs and the cost of transporting items to the dump. The district court subsequently denied the City's motion for enlarged findings and conclusions and this appeal followed.

I. Negligence Claim.

The City contends it was immune from liability on the negligence claim pursuant to Iowa Code sections 670.4(7) and (8) (2005). These provisions afford cities immunity from claims of negligent design of streets or public improvements constructed or reconstructed "in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction."

The experts for both parties agreed as a general matter that the pertinent engineering standards are based on “events,” which in turn are based on inches of rainfall. For example, a “five-year event” was defined by one of the experts as 3.9 inches of rainfall, a “ten-year event” was defined as 4.5 inches, and a “one-hundred-year event” was defined as 6.4 inches.

The experts disagreed on which event applied to the 2003 street improvement project. The Bradleys’ expert testified the project should have been designed for a one-hundred-year event. He further testified the City’s design violated that criterion. Most pertinently, he stated that, while there was no code requirement imposing a one-hundred-year design standard “the experts in flood plain management are what most engineers follow.”

The City’s expert testified that the applicable design criterion for a street improvement project varied between a five- and fifty-year event. He stated the 2003 project was originally designed for a five-year event but, as actually constructed, the project met a ten-year standard. He opined that the City was not obligated to design this project for a one-hundred-year event and its design was within industry standards.

The district court adopted the testimony of the Bradleys’ expert, finding his testimony “that such a design was not in accordance with generally recognized engineering principles to be more credible.” The district court was in the best position to make this credibility assessment. Iowa R. App. P. 6.14(6)(g). Based on this finding, the court did not err in rejecting the immunity defense.

II. Inverse Condemnation Claim.

“Inverse condemnation is an action pursued by a property owner who claims a governmental entity has appropriated all or part of the owner’s property interest without a formal condemnation proceeding.” *K&W Electric, Inc. v. State*, 712 N.W.2d 107, 115-16 (Iowa 2006) (citations omitted). “A claimant must establish that the damage to property for which recovery is sought would not have occurred but for the public improvement.” *Connolly v. Dallas County*, 465 N.W.2d 875, 878 (Iowa 1991).

The City essentially argues there has not been a taking because flooding was characteristic of the property. While there is evidence the property flooded before 2004, there is also evidence that the flooding was more severe after the 2003 street improvement project. For example, a former resident of the property testified that the home flooded a handful of times during the twenty years that he lived there, but he presented no evidence that the repair costs exceeded the value of the home following those floods. In 1999, flooding occurred following eight inches of rainfall, but the flooding only brought a layer of mud and no substantial problems. In contrast, the 2004 flooding rendered the Bradleys’ home uninhabitable. The Bradleys’ expert attributed the severity of the damage directly to the City’s design of the 2003 street improvement project. The reconstruction lowered the grade of the street. In his opinion, this and other changes caused an earlier and greater concentration of water on the Bradleys’ property. He opined that any rains over a five-year event would flood the Bradleys’ home.

The City's expert admitted that the 3.65 inches of rainfall during the 2004 flood was less than the 3.9 inches for which the 2003 project was originally designed and he admitted the property would flood every time there was a five-year event. The following testimony is instructive:

Q. This property is going to flood every time there is a five-year event; correct? A. Well, every time that it tops the structure and overflows the road, there will be water that goes on to the Bradley Property.

Q. All right. And every time there is a five-year event or more – A. Um-hmm.

Q. – and the water overtops the street, it's going to flood this property? A. The property itself, yes.

Q. Well, the house is on the property, is it not? A. Yes, it is.

Based on this evidence, we affirm the district court's resolution of the inverse condemnation claim.

AFFIRMED.