

Surveyor/Stormwater Drainage/Adjacent Landowner: Indiana Appellate Court Addresses Trespass Claims



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An Indiana appellate court addressed in a January 31st decision issues arising in a landowner's civil and criminal trespass actions against a neighboring landowner. See *Clark v. Thessalonica, Inc.*, 2023 WL 1156978.

The activities allegedly constituting trespass involved:

1. Surveyors entering a neighboring property without permission
2. Casting of water in a concentrated flow onto a neighboring property

Landowner Clark ("Clark") owns a parcel of property in Indianapolis, Indiana.

Neighboring landowner, Thessalonica, Inc. ("TI"), modified a drainage system on its property. TI diverted the water flow to a retention pond which then discharged onto Clark's property. The City of Indianapolis Department of Code Enforcement approved TI's installation of the stormwater drainage system.

Because of interest in purchasing Clark's property, TI sent a survey crew (Northpointe Surveyors) onto Clark's property to collect topographical data. Clark's son asked the surveyors to leave their property, which they eventually did.

An environmental consultant hired by Clark concluded that the design or construction of TI's stormwater drainage system was faulty and caused damage to her property. The consultant's report stated that the documents that had been submitted to the city were missing details and contained incorrect analyses.

The Appellate Court addressed Clark's trespass and stormwater drainage claims.

(I.)

Civil Trespass/Surveyors

The Appellate Court noted that common law civil trespass requires that the plaintiff show it was in possession of the land and defendant entered it "without right." Nominal damages can be obtained without proof of injury. If additional proof of injury to products of soil is proven, compensatory damages may be obtained.

TI successfully argued that the surveyors were permitted by Indiana statute to enter the property for the purpose of surveying. See I.C. § 25-21 5-9-7(b). Therefore, it argued the Clark property was not entered

“without right.” The Appellate court rejected Clark’s argument that the surveyor’s failure to show identification negated protection of the statute.

(II.)

Criminal Trespass

Clark argued a violation of Indiana Code § 34-24-3-1 (Crime Victims Relief Act) which the Appellate Court describes as:

. . . person who “suffers a pecuniary loss” as a result of a violation of various listed criminal offenses, including criminal trespass, “may bring a civil action against the person who caused the loss” for treble damages, costs, and attorney’s fees . . . a plaintiff need prove only by a preponderance of the evidence that the defendant committed the criminal act.

The criminal trespass allegedly occurred in two ways:

1. Surveyors entering Clark’s property
2. TI casting water onto Clark’s property

As to 1), the Appellate Court rejected this claim finding:

- No evidence surveyor entered having been denied entry
- Evidence that surveyors did not immediately leave when asked
- Nevertheless Clark not entitled to recovery because no demonstration of damages

The other criminal trespass addressed, 2), involved an allegation that TI:

. . . knowingly and intentionally interfering with Clark’s possession or use of her Property without her consent . . . by collecting surface water and casting it on her Property in a concentrated flow.

TI responded that the plain language of the criminal trespass statute:

- Makes it clear that it is only intended to apply to a person who enters the real property of another; and
- There is nothing in the language of the criminal trespass statute that encompasses a claim for water entering the property of another

The Appellate Court disagrees. It holds that the defendant need not have entered upon plaintiff’s land. In other words, trespass is deemed to potentially include “causing a thing to enter the land.”

Genuine issues of material fact are therefore deemed to exist as to whether and how the casting of the concentrated flow of water damaged Clark/caused pecuniary loss.

A question of fact is also deemed to exist as to whether TI’s actions were done knowingly or intentionally.

The criminal trespass claim for casting of water is remanded.

A copy of the Opinion can be downloaded [here](#).