

The Supreme Court of the State of Louisiana

DEBRA WINESBERRY

No. 2025-C-00065

VS.

ST. BERNARD PARISH GOVERNMENT

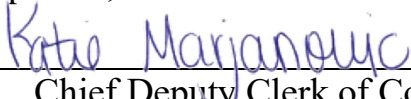
IN RE: St. Bernard Parish Government - Applicant Defendant; Applying For Writ
Of Certiorari, Parish of St. Bernard, 34th Judicial District Court Number(s) 23-1578,
Court of Appeal, Fourth Circuit, Number(s) 2024-CA-0166;

April 15, 2025

Writ application granted. See per curiam.

JLW
WJC
JBM
JMG
CRC

Hughes, J., dissents and would deny.
Griffin, J., dissents and would deny.

Supreme Court of Louisiana
April 15, 2025


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2025-C-00065

DEBRA WINESBERRY

VS.

ST. BERNARD PARISH GOVERNMENT

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of St. Bernard

PER CURIAM

Writ granted. The court of appeal erred in finding plaintiff’s petition alleges a continuing tort. A continuing tort “requires the operating cause of the injury be a continuous one which results in continuous damages.” *Crump v. Sabine River Auth.*, 98-2326 (La. 6/29/99), 737 So. 2d 720, 726. The alleged injury-producing conduct must be overt, persistent, and ongoing. *See Hogg v. Chevron USA, Inc.*, 09-2632 (La. 7/6/10), 45 So. 3d 991, 1005. “A continuing tort is occasioned by unlawful acts, not the continuation of the ill effects of an original, wrongful act.” *Crump v. Sabine River Auth.*, 98-2326 (La. 6/29/99), 737 So. 2d 720, 728.

Here, the alleged injury-producing conduct occurred in 2006, specifically defendant’s alleged failure to properly grade the surface area over the drainage pipes, which resulted in “hills” that cause periodic flooding of plaintiff’s property. This operative conduct, which occurred seventeen years before suit was filed, is not persistent, ongoing, or continuous. *See Hogg*, 45 So. 3d 991, 1005; *Crump*, 737 So. at 726. It occurred and ended in 2006. The periodic flooding of plaintiff’s property is not the operative conduct; it is the continuing effect of that conduct. Plaintiff has not alleged a continuing tort.¹

¹ See *Crump*, 737 So. 2d at 728 (Although canal continuously diverted water from plaintiff’s ox-bow, defendant’s failure to prevent construction of canal or remove it was not a continuing tort because “the actual digging of the canal was the operating cause of the injury.”); *Griffin v. Drainage Comm’n of New Orleans*, 110 La. 840, 845; 34 So. 799, 801 (1903) (Excavation of drainage conduit near a building, which was eventually condemned due to shifting foundation

We pretermitted consideration of whether the petition asserts an appropriation action or a delictual claim, because plaintiff's suit is prescribed under either theory of recovery.² The court of appeal's judgment is reversed, and the trial court judgment sustaining defendant's peremptory exception of prescription and dismissing her claims is reinstated.

COURT OF APPEAL JUDGMENT REVERSED; TRIAL COURT JUDGMENT REINSTATED.

caused by drainage conduit, was not a continuing tort "where the operating cause of the injury is not . . . a continuing one . . ., but [was] an original wrongful injury.").

² See La. Civ. Code art. 3493.2 (two-year prescriptive period for delictual action based on damage to immovable property commences when owner knew or should have known of damage); La. R.S. 9:5624 (two-year prescriptive period for actions seeking recovery for private property "damaged for public purposes" commences upon completion and acceptance of public works); La. R.S. 13:5111 (three-year prescriptive period for claim against state or political subdivision seeking compensation for taking of property begins at taking); *Avenal v. State*, 03-3521 (La. 10/19/04), 886 So. 2d 1085, 1105-09 (discussing when property is "damaged" or "taken" for "public purpose" under La. R.S. 9:5624 and La. R.S. 13:5111).