

SEWER IMPROVEMENT DIST. No. 4 OF MORRILTON *v.* DAVIS.

5-1246

301 S. W. 2d 15

Opinion delivered April 22, 1957.

1. DRAINS—SEWER DISTRICTS—RIGHTS OF PROPERTY OWNERS OUTSIDE OF.— The owners of lands outside a sewer improvement district can use the sewer system only with the permission of the commissioners of the district.
2. DRAINS—SEWER DISTRICTS, LANDS OUTSIDE OF—RIGHTS OF PERSONS ALREADY CONNECTED.— The fact that a property owner outside a sewer district has had a sewer line from his property to the sewer system for more than three years, which bars the district's claim for a connection charge, does not give him a vested right to the use of such sewer system.

Appeal from Conway Chancery Court; *George O. Patterson*, Chancellor; reversed.

*Townsend & Townsend*, for appellant.

*Phillip H. Loh, Felver A. Rowell, Jr., Clay Brazil, Charles Eddy* and *Clyde Brewer*, for appellee.

SAM ROBINSON, Associate Justice. Sewer Improvement District No. 4 of Morrilton, Arkansas was created in 1924. Subsequently, owners of property not located in the district connected sewer lines from such property to the system owned by District No. 4 without paying anything for the privilege and without obtaining permission for such connections from the Commissioners of the District. Later, the district filed suit against such property owners to recover connection charges. This court held that the statute of limitations had run on the debt owed by some of the defendants, but the court specifically pointed out that the property owners had acquired no vested right in the use of the sewer system. The court said: "In holding that the recovery of these connection charges is barred by limitations we do not imply that the unauthorized use of the district's lines has given rise to a vested right that would prevent the district from refusing to continue the service in the future." *Morrilton Homes Inc. v. Sewer Improvement District No. 4*, 226 Ark. 22, 287 S. W. 2d 581.

The case at bar was filed by the district asking that the owners of property outside the boundaries of the district be required to pay a reasonable sum for the use they are making of the sewer system, or that they be enjoined from using it. The chancellor sustained demurrers to the complaint filed by some of the defendants and refused to enter default judgments against other defendants who failed to answer the complaint, and the district has appealed. The demurrers were sustained on the theory that the district was attempting to collect a service charge and that such a charge is not authorized by law.

Ark. Stats. § 20-332 provides: "All sewer districts shall have authority to permit lands outside the boundaries of the district to connect sewer lines serving such lands with the sewer lines and mains of the district and to make a charge for such privilege." Ark. Stats. § 20-333 provides: "The Commissioners of the district shall have the right to consent to or refuse to allow such connections within their discretion, and such connections shall be made on such terms as the Commissioners may dictate, provided, however, that no lands outside of the district shall be permitted to connect with the sewer line of the district except upon payment to the district of a sum equal to the charge made against similarly benefitted lands within the district, and in case such connections have heretofore been made without the payment of a charge for such connection, the district may refuse to allow sewer service to such lands until permission for such connection is granted and the charge for such service is paid to the district."

The Commissioners have authority to permit land outside the boundaries of the district to connect with the sewer system belonging to the district. But, the Commissioners have the right to exercise their discretion as to whether such connections will be allowed, and under the provisions of the statutes, the district has the right to refuse to allow service to lands outside the district; the owner of such lands can use the sewer system only

with permission of the Commissioners of the district. The mere fact that the property owners have sewer lines from their property connected with the District No. 4 system for more than three years gives them no vested right to the use of such sewer system, as pointed out in *Morrilton Homes Inc. v. Sewer Improvement District No. 4, supra.*

Reversed, with directions to proceed in a manner not inconsistent herewith.

---