

NOTICE
Decision filed 10/31/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130440-U

NO. 5-13-0440

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

UNION DRAINAGE DISTRICT NO. 1)	Appeal from the
OF THE TOWNS OF PANA AND)	Circuit Court of
ASSUMPTION, CHRISTIAN COUNTY,)	Christian County.
ILLINOIS,)	
)	
Petitioner-Appellant,)	
)	
v.)	No. 6721
)	
DONALD M. WILHOUR, SHIRLEY L.)	
WILHOUR, REX L. WILHOUR, TONYA)	
WILHOUR, BRENT WILHOUR, REO)	
WILHOUR, MAI U. WILHOUR (aka)	
MAITSETSEG JLZIIBAYAR), RUSSELL)	
L. SPILLMAN and MARILYN Y.)	
SPILLMAN,)	Honorable
)	Allen F. Bennett,
Respondents-Appellees.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Welch and Justice Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court properly denied petition for assessment and annexation of certain tracts of land into nearby drainage district.
- ¶ 2 Petitioner, the Union Drainage District No. 1 of the Towns of Pana and Assumption, Christian County, Illinois, filed a petition to annex certain tracts of land and,

thereafter, to assess the parcels pursuant to an annual drainage district assessment of \$9 per acre. Petitioner also sought to assess certain lands currently located in the drainage district at \$9 per acre. The circuit court of Christian County denied Petitioner's request to annex the tracts of land and further ruled that those lands already located within the district could not be assessed at \$9 per acre. Petitioner appeals from the judgment of the circuit court, claiming that the court's decision is against the manifest weight of the evidence. We affirm.

¶ 3 This controversy involves 11 parcels of land located in Christian County, Illinois. Respondents-Appellees, Donald M. Wilhour, Shirley L. Wilhour, Rex L. Wilhour, Tonya Wilhour, Brent Wilhour, Reo Wilhour, Mai U. Wilhour (aka Maitsetseg JIziibayar), Russell L. Spillman and Marilyn Y. Spillman (hereinafter Objectors), own these 11 tracts of lands. Because three of the parcels were already located within the drainage district, Petitioner sought to annex the remaining eight parcels. Petitioner also sought to assess all 11 parcels at \$9 per acre for proposed repairs and annual maintenance. The Objectors raised objections to the annual assessment fees and to the annexation of their lands, arguing that the annexation was improper because the Objectors' lands had natural drainage and would receive no benefit from being annexed. With respect to the proposed assessment, they further argued that none of the lands would receive a benefit of \$9 per acre. In the alternative, the Objectors argued that the requested assessment should be deemed an additional or special assessment, as opposed to an annual assessment, and that subdistricts should be established, given the size of the drainage district and the different kinds of land within the district. After a hearing on the merits, the trial court agreed that

the Objectors' lands should not be annexed and those parcels currently located within the district should not be assessed at \$9 per acre. The court therefore denied all of Petitioner's requests as to the Objectors' lands.

¶ 4 The evidence reveals that the drainage district is located generally North and West of the Village of Pana, Illinois. The watershed of the district has a total area of approximately 24 square miles. Natural drainage within the watershed consists of a series of sloped waterways which drain towards several open ditches. The natural drainage system, however, was generally inadequate for full utilization of the lands in the area. Consequently, through the years, natural drainage conditions were augmented by the widening, straightening and deepening of ditches, in addition to the installation of a system of subsurface tile drainage facilities and surface grass waterways. Most of these improvements were made by Petitioner. Unfortunately, through the years, the district, which was originally created in 1887, had deferred maintenance of the various drainage systems, and the district is now faced with a backlog of maintenance which needs to be accomplished to benefit the entire system. The Objectors, on the other hand, claimed that they undertook their own work to control drainage and reduce erosion of their lands by creating terraces, dry dams and swales to slow drainage, and have also established "filter strips" and "rip rap" along the sides of ditches, where needed, to reduce erosion. They believe they have intensively managed their property so that they have most of the tile and drainage systems they need in place to control water drainage from their land. They also claim that the work they have completed actually benefits the drainage district itself by slowing down drainage of water off their lands. The Objectors therefore argue that it

is inappropriate and unfair to charge them for work that they have voluntarily and properly completed to remediate a system that should have been undertaken by the district itself, or, at a minimum, by other land owners who have failed to manage the drainage from their properties. Petitioner argues the issue is not one of seeking payment from the Objectors for the cost of creating ditches or adding new facilities to improve the district. Rather, the issue is about the need of Petitioner to provide maintenance for the ditches and facilities that already exist, plus the right of Petitioner to assess the lands that benefit from such maintenance. In other words, Petitioner contends, the annual assessments are about maintaining the system, as well as the benefits received, as a result of the upkeep of the district's system.

¶ 5 With respect to deciding whether annexation of lands into drainage districts is appropriate, the court is required to determine "whether the lands sought to be annexed are connected with a district drain or have been or will be benefited or protected by any work of the district done or ordered to be done." 70 ILCS 605/8-6 (West 2012). Our court has interpreted this to mean that in order to show that lands lying outside a drainage district are sufficiently benefited by drainage work of the district to justify annexation to the district, something more than mere acceleration of the natural flow of water from the lands to that drainage district's drains is needed. *In re Lawrence County Consolidated Drainage District*, 155 Ill. App. 3d 1047, 1054, 509 N.E.2d 680, 685 (1987). Consequently, in order for higher-lying lands to be annexed to a drainage district so as to be assessed for work done in the district, given that acceleration of natural drainage is not a sufficient benefit to justify annexation, the lands must be rendered more productive, or

more accessible, or their market value must be substantially increased and their actual or intrinsic value enhanced. *In re Lawrence County*, 155 Ill. App. 3d at 1055, 509 N.E.2d at 686.

¶ 6 Petitioner's expert, one of the leading authorities on drainage in Illinois, explained that the annual maintenance assessment was to fund the ongoing operations of the drainage district. After relating that the district consists of nearly 33 miles of open channel plus several miles of tiles which need maintenance, he opined that the \$9 per acre figure requested here was reasonable, particularly in light of the size and facilities of the district. According to his research, there were several other districts in the state with a higher per acre charge. He also noted that the trend is to combine districts because the larger size saves on administrative efforts, and with more acreage included in the district, each landowner bears a smaller share of the operating and maintenance costs. He further noted that the owners of the lands to be annexed in this instance did not pay anything for the creation of the district or the installation of any the district's systems, have not paid anything for years of maintenance, and have not paid for any of the benefits they have been receiving for decades. He also believed that even the lands of the Objectors needed maintenance, or will need upkeep very soon, and that they are definitely utilizing, and in many instances directly connected to, district facilities which they did not pay for and are not paying to use now. Even after a rain storm, the Objectors' lands are getting a benefit from outletting surface water into the drain tiles, and those who are paying into the district are not receiving that benefit because the tiles and ditches are already filled with water from the Objectors' lands. He opined that because of the drainage district, the

Objector's lands are benefitting in both production and accessibility aspects, as well as receiving an increased land value. Without the drainage district's facilities, for many of the tracts, there would be several acres that probably would never produce crops. He further commented that maintaining the systems of the drainage district by way of an annual maintenance assessment is important to protect those benefits. The expert did admit, however, that he completed no direct calculations concerning what benefit the Objectors' lands received from annexation and to what extent their lands would receive a \$9 per acre benefit.

¶ 7 The Objectors' experts testified that the Objectors' lands would receive no benefits from any drainage district improvements. Anything that would happen downstream would have no benefit to them because their ground is so much higher than everything on the lower end of the district. They further pointed out that, more importantly, the Objectors have already done what was needed to maintain and/or prevent erosion on their properties, including the adding of grass swales and terraces. There is no vegetation that needs to be removed from ditches that run along their properties, and additional tile would have little beneficial value to their lands. Additionally, many of the ditches that directly drain the Objectors' lands are not part of the existing drainage district. They further testified that the proposed annual maintenance assessment is many times greater than the assessments of all other districts in the county which average \$1.51 per acre, with the highest being \$4 an acre. It was further noted, that as far as annexing and assessing the Objectors' lands, some of the tracts will have assessments higher than the property taxes.

¶ 8 We agree with the trial court that Petitioner failed to establish what benefit the Objectors' lands would receive from being annexed by Petitioner and assessed at \$9 per acre. Again, lands that naturally drain into a ditch do not receive any benefit from annexation into a drainage district. *In re Lawrence County*, 155 Ill. App. 3d at 1054, 509 N.E.2d at 685. Petitioner needed to show that the Objectors' lands would be rendered more productive or more accessible, or that their market value would be substantially increased and their actual or intrinsic value enhanced as a result of the annexation. *In re Lawrence County*, 155 Ill. App. 3d at 1055, 509 N.E.2d at 686. Given that the Objectors have already installed their own drainage and erosion control systems, and have undertaken all their own maintenance work for their lands, we agree that Petitioner failed to show any direct evidence as to the amount of benefit the Objectors' tracts would receive from the inclusion of their properties in the district and/or an assessment of \$9 per acre. We therefore conclude that the Objectors rebutted the *prima facie* case of benefit presented by Petitioner, and the trial court properly denied the petition for annexation and assessment of the Objectors' lands.

¶ 9 Given our decision, we need not reach the Objectors' alternative arguments concerning special assessments and subdistricts at this time.

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of Christian County.

¶ 11 Affirmed.