

IN THE COURT OF APPEALS 11/12/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00793 COA

BRIAN KNIGHT

APPELLANT

v.

C. F. GRIMES

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WILLIAM MYERS

COURT FROM WHICH APPEALED: CHANCERY COURT OF JACKSON COUNTY

ATTORNEY FOR APPELLANT:

BILLY PARLIN

ATTORNEY FOR APPELLEE:

JOSEPH Q. WHITE, JR.

NATURE OF THE CASE: CIVIL - CLAIM FOR INJUNCTIVE RELIEF AND DAMAGES
BASED ON NUISANCE

TRIAL COURT DISPOSITION: VERDICT FOR PLAINTIFF

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

COLEMAN, J., FOR THE COURT:

The Defendant property owner, Brian Knight, appeals from a chancery court decree enjoining him to restore the drainage conditions that existed on his property before he altered its grade. This decree

also awarded the Plaintiff, C. F. Grimes, a neighboring property owner, \$2,000 in damages. We affirm.

I. FACTS

Milstead Road is a residential street in Gautier that runs in a north-south direction. The street is on a gradual incline, with the southern end of the street higher than the northern end. Thus, during rainstorms, the water in the Milstead Road area drains from south to north. Milstead Road is graded in such a way that it has a slight "hump" or "ridge" that runs down its center for much of its length. Therefore, the surface of the street is not completely flat, but instead consists of a "convex" type of grade that directs water from the center of the street to its outer edges where it subsequently empties into a bayou, which is north of the street. Milstead Road has no paved sidewalks or concrete gutters of the type that are characteristic of most modern subdivisions. Put another way, no "step down" exists from the contiguous residential lots down into the street. Thus, there are no barriers to prevent water, which flows along the edges of the street, from also running onto the adjacent properties.

C. F. Grimes' house is located on the west side of Milstead Road. The lot upon which his house is situated declines from Milstead Street on the east to its western boundary. Thus, during rainstorms water flowing down Milstead Road also flows across Grimes' lot and then down an inlet of the bayou, which is situated north of his property. Grimes has lived on Milstead Road since 1979. Grimes testified that after he moved into his home on Milstead Road and before Knight completed the construction of his home about 1989 he experienced no problem with the drainage of his lot.

In 1989, Brian Knight built his home on a parcel of land which was situated east of Milstead Road and south of Grimes' lot, *i. e.*, on a higher elevation than was Grimes' lot. When Knight built his house, he brought in twenty three cubic yards of fill dirt which he placed in the northeast corner of the foundation of his new home and in his driveway. Knight also deposited and distributed five loads of topsoil around certain areas of his lot. Each load contained either thirteen or fifteen cubic yards of topsoil. Grimes and his son, Jackie Grimes, testified that Knight also used dirt to build up the level of his front yard so that water which once flowed down the east side of Milstead Road and across Knight's property now flowed to the west across and down Milstead Road and onto the Grimes' lot. In other words, the higher level of Knight's front yard, which resulted from Knight's application of the dirt and top-soil, now diverted water back out onto Milstead Road. Grimes claimed that this diversion resulted in an increased volume of water being channeled into Milstead Road. In turn, this increased volume of water spilled over to the west side of Milstead Road in such a way as to increase the amount of water-drainage across Grimes' property.

Grimes contended that this increased amount of water-drainage across his lot caused severe erosion problems. Before it emptied into the bayou behind Grimes' house, the additional water washed away a garden that lay in its direct "flow path" and also washed away a significant amount of soil beneath Grimes' concrete driveway.

II. Litigation

After the drainage problem became apparent to Grimes, he contacted Knight and asked him to correct it. Because Knight did nothing in response to his request, Grimes filed his complaint against Knight in the Chancery Court of Jackson County on September 9, 1991. In his complaint, Grimes

sought "an injunction against [Knight] to enjoin [him] to correct and to restore the drainage conditions that existed prior to the grading and excavation and dirt hauling of [Knight]" and "a monetary judgment in the amount of \$2,007.50, for actual damages sustained by [Grimes]."

Trial ensued on October 25, 1993. The only issue was the causation of the increased water flow across Grimes' property. Grimes asserted that his drainage and erosion problems were the direct result of Knight's having increased the elevation of his land by applying and spreading the fill-dirt and topsoil. Knight countered Grimes' claim for injunctive relief and damages by contending that the City of Gautier had done some sewer and road work on Milstead Road which had diverted an increased stream of water across Milstead Road and onto Grimes' property.

The chancellor heard the testimony of numerous witnesses, and had the opportunity to view two different videotapes made by the respective parties. These videotapes were both taken during rainstorms and each of them showed, from perspectives advantageous to the respective litigants, the course of the rainwater down Milstead Road. Also, without objection from either party, on three or four different occasions and under different weather conditions, the chancellor visited the area in question and observed it for himself. On June, 23, 1994, the chancellor issued his written opinion. In it, the chancellor concluded:

After the defendant had constructed his home, he changed the elevation of his property, particularly that adjacent to Milstead Road, by hauling in and spreading dirt. The action caused the drainage on the East side of Milstead Road to be substantially diverted to the West side of Milstead Road and thereby increasing the drainage flow, which subsequently increased the drainage across the complainant's property. There is no doubt in the Court's mind that the defendant's action is the cause of the increased water flow and drainage across complainant's property.

The chancellor enjoined Knight to "correct and restore the drainage conditions that existed prior to [Knight's] raising the elevation of his property" and directed "that such curative work should be performed within 45 days from entry final order of this Court." The chancellor also ordered Knight to pay Grimes \$2,000 in damages as compensation for the damage to Grimes' property.

III. ISSUES AND THE LAW

Knight has appealed from the chancellor's order to present two issues for this Court's review, analysis, and resolution. We quote from his brief to state those two issues:

1. Whether or not the judgment the chancellor rendered was based upon substantial evidence and is not manifestly wrong.

2. Whether or not the injunction against Knight was proper and within the authority of the Court, and not manifestly wrong.

We resolve these issues in the order which Knight has presented them in his brief.

1. Whether or not the judgment of the chancellor rendered was based upon substantial evidence and is not manifestly wrong.

On appeal, we may not disturb a chancellor's factual determinations where there may be found substantial supporting evidence in the record. *Rice Researchers, Inc. v. Hiter*, 512 So. 2d 1259, 1264 (Miss. 1987). Put another way, we must affirm a chancellor on questions of fact unless, upon review of the record, we are left with the firm and definite view that a mistake has been made. *Id.* This is so, even though the record may involve conflicting testimony and issues. *Tower Loan, Inc. v. Mills*, 376 So. 2d 1347, 1349 (Miss. 1979).

In the case *sub judice* this Court is aware of the opinion of Knight's expert, Larry Rumsey, a civil engineer, that there was nothing that threw the water from the east side of Milstead Road to the west side and that therefore Knight had done nothing to re-direct the water-drainage onto Grimes' lot. We have also considered the opinion of Bobby L. Hayes, who served as city councilman for the City of Gautier for four years until July of 1993, that he had inspected the water draining down Milstead Road and over the parties' lots and premises but was unable to determine that Knight's actions had diverted the flow of rainwater down and across Milstead Road onto Grimes' lot.

On the other hand, we find that all of the following evidence supports Grimes' claim against Knight. Grimes had called Ralph Edward Hode, who had earned a degree in architectural technology from the University of Southern Mississippi and who worked as both planning director and director of the public works department of the City of Gautier. Hode testified that the City of Gautier had attempted to construct a "swell" along a utility easement on the north side of Knight's lot, but that Knight had forbid the City to proceed with that project. Hode further testified that prior to Knight's construction of his new home south and east of Grimes' property, he had received no complaints from Grimes about excessive water-drainage. The testimony of both Grimes and his son, Jackie Grimes, was to the effect that the drainage and erosion problems on Grimes' property did not exist previous to the time that Knight built up the land on his property. Grimes testified that, based upon his personal knowledge, the heightened elevation on Knight's lot prevented water from flowing across Knight's property and diverted that water back out into the street where, in turn, this additional water increased the amount of drainage flowing across Grimes' property. The chancellor also had the opportunity to view a videotape taken during a rainstorm of the drainage paths on the Grimes and Knight properties and on the street between these two properties. Finally, the chancellor stated in his order that he personally visited the area in question on three or four different occasions, each time under different weather conditions, and made his own examination of the situation involving Knight's and Grimes' properties.

While the record contained conflicting testimony about the cause of the increased drainage of water from Milstead Road across Grimes' lot, it was the chancellor's function to resolve the conflicts in the testimony. The factors which we found to be favorable to Grimes' claim against Knight comprise an evidentiary basis sufficient to support the chancellor's finding that Knight's elevation of portions of his lot was the cause of Grimes' drainage and erosion problems. We therefore affirm the chancellor's

finding that Knight's dirt-work on his lot had diverted the drainage of rainwater from the east of Milstead Road, down Milstead Road, and onto Grimes' lot. Our affirming the chancellor's finding on this issue resolves this issue adversely to Knight.

2. Whether or not the injunction against Knight was proper and within the authority of the Court, and not manifestly wrong.

In *Newton Coca Cola Bottling Co. v. Murphrey*, 212 Miss. 823, 55 So. 2d 485, 489 (1951), the Mississippi Supreme Court affirmed the chancellor's restraining and enjoining the Newton Coca Cola Bottling Company from discharging upon Murphrey's adjoining parcel of land excess surface waters from its lot. The discharge of excess surface waters resulted from extensive grading and terracing of the lot which the bottling company had done in preparation for the construction of a combination warehouse and garage and a bottling plant. *Murphrey*, 55 So. 2d at 487. In affirming the chancellor's mandatory injunction, the supreme court wrote:

In the case of *Filtrol Corporation et al. v. Hughes*, 199 Miss. 10, 23 So. 2d 891, 892, the Court said: "The appellants, of course, have the right to make any reasonable use of their land--to remove the bentonite therefrom--without liability to the appellee for any unavoidable injury caused him as an incident thereto, but they are without the right in so doing to cause surface water to be collected and discharged in a body on appellee's land so as to affect it differently from what it had theretofore to the appellee's injury."

And in the case of *Steed v. Kimbrough et al.*, 197 Miss. 430, 19 So. 2d 925, 926, the Court said:

"The owner of the upper land does not have the right to collect his surface waters into an artificial channel or channels and then discharge it or allow it to be discharged upon the lower land at a greater volume or in a more concentrated flow than would have resulted had the natural conditions been left undisturbed, from which it follows that when by alterations made by the upper owner in natural conditions the result would be to cast upon the lower owner the water in a greater volume or in a more concentrated flow, the upper owner by means of his own . . . land must take care of the excess, or must do so in cooperation with the lower owner."

Murphrey, 55 So. 2d at 489.

Later in *Hall v. Wood*, 443 So. 2d 834, 837 (Miss. 1983), a case in which twenty seven land owners whose lots abutted Lake Catherine in southwest Jackson, sued C. Leo Hall, his wife, and their son for both prohibitory and mandatory injunctive relief because of the damage which Hall had done to Lake Catherine by completely stripping a twenty-acre parcel of land which was located northwest of Lake Catherine. The supreme court affirmed, but modified, the chancellor's ordering mandatory relief. *Id.* at 840. The court opined:

Applying these principles [which we discussed earlier in this opinion], we hold that upper landowners such as Hall are entitled to make reasonable use of their land. Where there is a reasonable likelihood of damage to the property of lower landowners, however, upper landowners are required to do whatever is reasonable to minimize the damage. The fact that some damage nevertheless occurs to the lower landowners does not render the upper landowner liable. On the other hand, where the upper landowner has done nothing in an effort to ameliorate the adverse effect on lower landowners and where the damage is in fact substantial, and further *where the development activities of the upper landowner are a major proximate cause of that damage, the lower landowners are entitled to damages and/or injunctive relief as may be appropriate.*

Id. (emphasis added). Especially relevant to the facts in the case *sub judice* is the following quotation from *Warrior, Inc. v. Easterly*, 360 So. 2d 700, 702 (Miss. 1978) (emphasis added):

Moreover, an upper riparian owner has no right to collect surface water in an artificial channel and discharge it or allow it to be discharged upon the lower land at a greater volume or in a more concentrated flow *than would have resulted if the natural condition had remained undisturbed.*

We added emphasis to the two foregoing quotations because Knight argues that he has the right to develop reasonably his property by building a new home on it. He further cites *Board of Drainage Commissioners v. Board of Drainage Commissioners*, 130 Miss. 764, 95 So. 75 (1923) to support his assertion. However, this Court readily distinguishes this case because in it, a group of landowners organized as several drainage districts asserted their respective rights to continue to drain their water into Bogue Phalia. *Board of Drainage Comm'rs.* at 130 Miss. at 790. Bogue Phalia was adequate to handle each landowner's drainage, but it was inadequate to handle all the landowners' drainage. *Id.* The consequence of Bogue Phalia's inadequacy was that the lower land owners were flooded by the accumulated discharge of drainage water from all the landowners. *Id.* The Mississippi Supreme Court resolved the dilemma by adopting what that court called the majority line of decisions which held:

[T]he upper owner may reasonably drain his surface waters into the natural watercourse, in good husbandry, and this right may be exercised by him without any qualification or limit; and if he thereby increase the flow of the stream beyond its capacity, which results in flooding and damaging the lower owner, such damage will be *damnum absque injuria*; damage without legal injury, for which no right of action will lie.

Id. at 796-97. In the case *sub judice*, there is but one upper owner, Knight, and one lower owner, Grimes; and here we deal with surface water -- not rivers and streams. Moreover, the cases we discussed earlier in this opinion followed *Board of Drainage Commissioners*; and they clearly support the proposition that "[w]here the development activities of the upper landowner are a major proximate cause of that damage, the lower landowners are entitled to damages and/or injunctive relief

as may be appropriate." *See Hall*, 443 So. 2d at 840. This Court rejects Knight's contention that we may apply the maxim, "an upper landowner may increase the flow of water via drainage incident to the reasonable development of his property even though it does some damage to the lower landowner," to this case. We do so because the chancellor did not find that Knight's dirt-work was reasonably related to the construction of his home. Even had the chancellor so found, the cases which we previously discussed involved adjoining land-owners who had developed their land but were nevertheless held liable for the damage to land caused by water that drained from their improved land. We hold that the law in Mississippi supported the chancellor's adjudication that Knight was liable to Grimes for diverting surface water, which, but for the change in elevation of Knight's lot wrought by the Knight's dirt-work, would have drained easterly from Milstead Road, rather than Westerly across Milstead Road and onto Grimes' lot.

The point of Knight's second issue is that the chancellor's mandatorily enjoining him to reinstate the water-drainage as it had occurred before he changed the elevation of his lot after he had completed his new home was error. He correctly asserts that the legal standard for obtaining the remedy of injunction is "beyond a reasonable doubt" instead of "preponderance of the evidence." *See Warrior, Inc.*, 360 So. 2d at 703 (a mandatory injunction should not issue unless the right thereto is shown beyond reasonable doubt, and irreparable injury would result unless issued).

In *Mississippi State Highway Commission v. Spencer*, 233 Miss. 155, 101 So. 2d 499, 506 (1958) the Mississippi Supreme Court summarized Mississippi's law on mandatory injunctions as follows:

A mandatory injunction is an extraordinary remedial process. Courts are more reluctant to grant a mandatory injunction than a prohibitory one. Although equity has jurisdiction to issue them, they should be confined to cases where it is the only remedy which will be effectual. 43 C.J.S. *Injunctions* Sec. 5, states: "Even if the right is clear, it does not follow that a mandatory injunction must be granted, and such injunctions will be issued only in cases of extreme necessity, where the right invaded is material and substantial, and where adequate redress at law is not afforded. Mandatory injunctions will never be granted unless extreme or very serious damage at least will ensue from withholding that relief; nor will they be issued in doubtful cases" 28 Am.Jur., Secs. 17-22, states that a mandatory injunction is a rather harsh remedial process and is not favored by the courts. It is not regarded with judicial favor and is used only with caution and in cases of great necessity. The case must be one clearly disclosing irreparable injury to the complainant.

This Court first deals with the Mississippi Supreme Court's pronouncement that "a mandatory injunction should not issue unless the right thereto is shown beyond reasonable doubt." Knight treats this statement as though the term "beyond reasonable doubt" applies solely to the burden of proof, which the proponent of the injunctive relief bears, in the same sense that the state bears in a criminal prosecution. Knight then reviews the evidence as he did in his argument on the first issue and argues that the evidence was insufficient to support "beyond reasonable doubt" the chancellor's granting mandatory injunctive relief to Grimes. For example, Knight argues from the perspective of the testimony of his witnesses that the evidence does not support the chancellor's finding that his increase in the elevation of his lot caused the diversion of rainwater onto Grimes' lot. We have

already resolved this issue adversely to Knight.

Knight also argues that Grimes admitted that he already had difficulty with drainage across his lot before Knight built his home. He adds that Grimes failed to establish what, if anything, Knight could have done to restore the initial water-drainage situation. Therefore, the chancellor mandatorily enjoined him to accomplish an impossible undertaking. Lastly, Knight argues that Grimes failed to prove that he had sustained "immeasurable" damage as the result of his raising the elevation of his lot.

Before we address Knight's arguments to support his position on this issue, we must adopt an appropriate standard of review by which to determine if the chancellor erred as Knight claims. Before we quote the standards of review which we adopt, we further acknowledge that Grimes presented evidence to establish that he was entitled to mandatory injunctive relief from the chancery court and that Knight presented evidence to contradict and to rebut Grimes' evidence on that issue. Thus, we must first consider whether Grimes' evidence was sufficient to entitle him to the mandatory injunctive relief which the chancellor granted. If it were not sufficient, then we need go no further. If we find Grimes' evidence to be sufficient, then we must proceed further to determine whether Knight's evidence opposing Grimes' mandatory injunctive relief so outweighed Grimes' evidence that the chancellor erred when he granted the relief.

Because "beyond a reasonable doubt" is the burden of proof which the state bears in a criminal prosecution, we refer to an appeal from a criminal conviction, *McClain v. State*, 625 So. 2d 774, 780 (Miss. 1993), to obtain our standards. In *McClain* the Mississippi Supreme Court has established a standard for reviewing a "sufficiency of the evidence question." That standard is:

[T]he sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. The credible evidence consistent with [the defendant's] guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. [The Supreme Court of Mississippi is] authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

McClain v. State, 625 So. 2d 774, 778 (Miss. 1993) (citations omitted). We have effectively applied this standard of review to the question of whether Grimes' evidence was sufficient to warrant the chancellor's mandatorily enjoining Knight to "correct and restore the drainage conditions that existed prior to [Knight's] raising the elevation of his property," when we resolved Knight's first issue against him. Relevant to this issue is the chancellor's statement in his Opinion of the Court dated June 23, 1994, which he incorporated into his order dated the same date that "[t]here is no doubt in the Court's mind that [Knight's] action is the cause of the increased water flow and drainage across [Grimes'] property." This statement is relevant to this second issue which Knight presents to us because we interpret it to mean that if there was "no doubt in the Court's mind," then the chancellor was satisfied "beyond reasonable doubt" that "[Knight's] action is the cause of the increased water flow and drainage across [Grimes'] property." In other words, the chancellor found "beyond

reasonable doubt" that Grimes was entitled to the mandatory injunctive relief which he granted. Thus, in so far as whether the evidence was sufficient to support that relief, the chancellor thought that it was sufficient "beyond reasonable doubt" and thus employed the appropriate standard by which to adjudge Grimes' burden of proof.

Next we consider whether Knight's evidence was so overwhelming that the chancellor's grant of the mandatory relief was against the overwhelming weight of the evidence. Again, we quote from *McClain* to establish the standard of review by which to decide this aspect of Knight's second issue:

Moreover, the challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. Procedurally such challenge necessarily invokes Miss. Unif. Crim. R. of Cir. Ct. Prac. 516. New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State.

McClain, 625 So. 2d at 781. Pursuant to that standard of review, we must accept as true all evidence favorable to Grimes.

In response to Knight's argument that "the testimony could not reach a consensus of the problem, let alone the solution," this Court must note that it would be entirely consistent with the evidence in the case *sub judice* to find that if Knight restored the original elevation of his lot, the rainwater would return to draining on the east side of Milstead Road as it did before Knight elevated portions of his lot with his dirt-work. Second, we previously noted that Ralph Hode opined that the creation of a shallow swell along the northern boundary of Knight's property but inside an existing easement for utilities would correct the diversion of the rainwater from the east to the west side of Milstead Road. When the City of Gautier began to construct such a swell, Knight objected; and in response to Knight's objection, the city stopped work on the swell. This court finds that the evidence established potential solutions to this problem. We further note that in none of the opinions of the Mississippi Supreme Court in which it affirmed the granting of mandatory injunctive relief to correct a water-drainage problem was there mention of precisely what the adjoining land owner must do to correct the problem.

Knight also correctly asserted that an injunction ought not to be issued unless irreparable injury would result without it. However, Joseph Talley, a contractor who did "[d]irt work, concrete work, drainage, all types of excavation," testified that the water was eroding the soil beneath the foundations of Grimes' home and an outbuilding and beneath Grimes' concrete driveway. Talley opined that the only way to correct the damage to the foundations and driveway was to cut away the portions of concrete above the eroded soil, re-compact the soil, and re-pour the concrete. He estimated that it would cost \$5,050.90 to repair the damage caused by the erosion of the soil which resulted from Knight's diversion of the rainwater to the west side of Milstead Road. Moreover, the currents of rainwater were damaging a garden next to the driveway and were eroding portions of Grimes' lot.

The chancellor concluded that Knight's alteration of his land caused the increased flow of water which was eroding the ground from under Grimes' driveway. The record clearly supports the

conclusion that should the diversion of this water not stop, the erosion would continue to erode the soil from beneath the concrete foundations and driveway on Grimes' property. We find that such continued erosion caused by Knight's diversion of the flow of water from the east side to the west side of Milstead Road constitutes irreparable injury.

We have already dealt with Knight's argument that an upper landowner may increase the flow of water via drainage incident to the reasonable development of his property, even though this increase in flow does some damage to the lower landowner. In addition to our prior discussion of this facet of this issue, we note that there was no suggestion that only the elevation necessary for the construction of Knight's home diverted the water-drainage from the east side to the west side of Milstead Road and thence across Grimes' lot and driveway and against the foundations of his home and outbuilding. Rather, Grimes' asserted that Knight's elevation of *the remainder of his lot* caused this diversion of water-drainage. Furthermore, Knight offered no justification for his increasing the elevation of his land on that part of his lot that had nothing to do with the support of his house. In view of these factors, we are hard pressed to find that Knight's alteration of his property was reasonable and/or necessary.

The Mississippi Supreme Court will reverse on the issue of whether a judgment is against the overwhelming weight of the evidence only for abuse of discretion. Only to prevent an unconscionable injustice should an appellate court reverse the trial court's judgment on the ground that it was against the overwhelming weight of the evidence as that concept relates to "beyond reasonable doubt." We conclude that the chancellor applied the standard of "beyond reasonable doubt" for Grimes to prevail on his request that the chancery court mandatorily enjoin Knight from continuing to divert the drainage of water onto Grimes' lot and that the chancellor did not abuse his discretion in mandatorily enjoining Knight to do so. Neither was the chancellor's mandatorily enjoining Knight a "manifest injustice." Therefore, we affirm the chancellor's mandatory injunction that Knight "correct and restore the drainage conditions that existed prior to [Knight's] raising the elevation of his property."

IV. CONCLUSION

There was substantial evidence to support the chancellor's finding that Knight had diverted the water-drainage from his lot to the west side of Milstead Road and then onto Grimes' lot. Knight's argument notwithstanding, it remains the law that an upper riparian owner has no right to allow surface water to be discharged upon the lower land at a greater volume or in a more concentrated flow than would have resulted if the natural condition had remained undisturbed. It is correct that mandatory injunctions ought not to be granted unless extreme or very serious damage at least will ensue from withholding that relief. Neither should they be issued in doubtful cases. Indeed, a mandatory injunction is a rather harsh remedial process not favored by the courts. It must be used only with caution and in cases of great necessity.

Our application of all of the foregoing law to the facts supported by the evidence in this case compels our conclusion that the chancellor applied the correct principles of law to enjoin Knight from continuing to divert the water-drainage onto Grimes' lot. Without the mandatory injunction, Grimes would continue to suffer irreparable injury, *i. e.*, erosion of the soil from beneath the concrete foundations of his home and outbuilding and from beneath his concrete driveway and other erosion of his lot which had not occurred before Knight increased the elevation of portions of his lot with his

dirt-work. Knight makes no issue of the chancellor's award of damages to Grimes in the amount of two thousand dollars. We affirm in toto the order of the chancery court.

**THE JUDGMENT OF THE CHANCERY COURT OF JACKSON COUNTY IS AFFIRMED.
COSTS ARE ASSESSED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, DIAZ, KING, McMILLIN,
PAYNE, AND SOUTHWICK, JJ., CONCUR.**