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EMINENT DOMAIN - MONTANA

City of Missoula v. Mountain Water Co.

Supreme Court of Montana - August 2, 2016 - P.3d - 2016 WL 4124135 - 2016 MT 183

City filed eminent domain action against record owner of water system and global investment partnership, which was controlling member of holding company that owned record owner, seeking condemnation of water system. Water system employees intervened.

Following a bench trial, the District Court entered preliminary order of condemnation. Defendants appealed.

The Supreme Court of Montana held that:

- Trial court acted within its discretion in denying defendants motion for continuance;
- Defendants failed to demonstrate that denial of motion for continuance violated procedural due process;
- Trial court acted within its discretion in limiting valuation evidence;
- Global investment partnership was proper party in condemnation proceedings;
- Unsuccessful prior condemnation proceedings did not collaterally estop city from bringing current proceedings;
- Lack of franchising agreement or contract between parties did not bar condemnation action;
- Effect of condemnation on system employees was non-dispositive factor to be considered in determining whether condemnation was appropriate; and
- Evidence supported finding that public use was more necessary than private use, so as to support condemnation.

Trial court acted within its discretion in denying motion for continuance by owners of water system, which city sought to condemn, though city disclosed thousands of pages of documents in discovery only three weeks before scheduled bench trial and timelines in case were difficult, since trial court entered thorough orders denying motion for continuance and did not blindly adhere to arbitrary deadlines but rather considered the matter carefully.

Owners of water system, which city sought to condemn, failed to demonstrate that trial court's denial of their motion for continuance prejudiced them to extent that bench trial was rendered fundamentally unfair, in violation of procedural due process, and thus reversal was not warranted on that ground, though owners were inconvenienced and frustrated by city's disclosure of thousands of pages of documents only three weeks before scheduled bench trial. Owners did not point to single piece of evidence that they were unable to discover or present, or to which they were unable to respond at trial, fact that city's production was delayed and occurred shortly before trial was insufficient, by itself, to demonstrate prejudice, and owners presented full and well-prepared defense at trial.

Trial court, in necessity phase of city's condemnation proceedings against owners of water system, acted within its discretion in limiting valuation evidence to evidence that, as the city's cost of acquiring water system increased, so would the cost to rate payers, though owners asserted

additional valuation evidence was required for determination of whether public ownership was more necessary than private ownership. Statutes required that condemnation proceeding occur in two phases, a necessity phase and a valuation phase, bifurcation dictated which evidence was of consequence to which proceeding, and owners sought to import valuation questions into necessity phase to much greater extent than necessary for determination of public necessity.

Global investment partnership, which was controlling member of holding company that owned record owner of water system, was proper party in eminent domain action brought by city seeking to condemn water system, though partnership did not hold title to assets being condemned. Partnership was ultimate owner of system, as it controlled record owner and potential sale of system to city, and the partnership took credit for the role it played in providing water to city.

Prior proceeding in which city unsuccessfully attempted to condemn water system did not collaterally estop city from bringing subsequent condemnation action approximately 30 years later, though question of whether public or private use was more necessary was same in both litigations. Change of circumstances was sufficient to warrant new analysis of whether public ownership of water system was more necessary than private ownership, including that while city's motivations of public health, safety, and welfare remained the same, corporate owner's profit motive had changed significantly, as in prior action system was owned by family-held business and profits were largely reinvested into system improvement, whereas new corporate owner's primary goal was to maximize profits for investors.

Lack of franchising agreement or contract requiring owners of water system to provide city with water did not bar city from initiating eminent domain action seeking to condemn system under statutes governing acquisition of private water supply system and use of eminent domain powers to acquire water supply system. Statute governing acquisition of private water supply system did not make franchise or contract prerequisite to condemnation, and statute governing use of eminent domain powers to acquire water supply system only provided that if parties had an agreement, such an agreement would control, but if there were no such agreement, the city could proceed with condemnation.

Effect of condemnation of water system on system employees was factor to be considered in determination of whether city ownership was more necessary than private ownership, so as to support city's condemnation of system, but effect on employees was not dispositive factor.

Evidence in proceedings regarding condemnation of water system was sufficient to support finding that system employees would receive comparable salaries if employed by city, so as to support determination that public use of system was more necessary than private use. City mayor testified that city did not want to terminate employees or reduce their salaries or benefits, that he took salaries of city employees into consideration when determining what to offer to system employees, and that same income was guaranteed for one year for top executives who made significantly more than equivalent city employees and for five years for other system employees.

Evidence in proceedings regarding condemnation of water system was sufficient to support finding that system employees would receive greater job security if employed by city, so as to support determination that public use of system was more necessary than private use. Evidence was presented that system employees had five-year minimum guarantee of employment by city, that employees had no employment guarantee with current owners, which were part of large, for-profit enterprise, and that current owners were in business of buying water utilities to improve return and then sell.

Evidence supported finding that municipal ownership of water system was more necessary than

current use as privately-owned for-profit enterprise, so as to support condemnation of system by city in eminent domain action against system’s owners. Evidence was presented that public opinion supported city ownership of water system, that municipal ownership would provide stable, long-term management of maintenance planning and capital expenditures, that city could effectively manage system, that administrative costs would be significantly reduced under city ownership, that, contrary to owner, city would not operate system on for-profit basis, and that municipal rate-setting would be subject to transparency and public participation.

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