

Bond Case Briefs

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EMINENT DOMAIN - NEBRASKA

Hike v. State Department of Roads

Supreme Court of Nebraska - July 14, 2017 - N.W.2d - 297 Neb. 212 - 2017 WL 2990561

Property owners brought action against state, alleging that construction related to the expansion of a highway, on property that state had acquired from owners by exercising eminent domain, had caused damage to the brick veneer of property owners' residence.

The District Court sustained state's motion for summary judgment and dismissed property owners' complaint. Property owners appealed.

The Supreme Court of Nebraska held that:

- State was not judicially estopped from asserting statute of limitations defense to owners' inverse condemnation claim;
- Two-year limitations period, rather than ten-year limitations period, applied to property owners' inverse condemnation claim; and
- Owners' assertion of inverse condemnation claim during prior condemnation proceeding regarding state's exercise of eminent domain did not satisfy requirement to bring claim within two-year statutory limitations period.

State was not judicially estopped from asserting statute of limitations defense to property owners' inverse condemnation claim that construction related to expansion of highway, on property that state had acquired from owners by exercising eminent domain, had caused damage to owners' residence, although state asserted in prior condemnation proceeding that owners should have brought claim in separate action. Owners had option to file claim in separate action after court dismissed claim in prior proceeding, owners' filing of appeal in prior proceeding did not preclude them from bringing separate action, and state's assertion on appeal of prior proceeding after statute of limitations had run that claim required separate action was not inconsistent with assertion of limitations defense on claim.

Two-year limitations period in statute governing statute of limitations for claims by and against the state, rather than ten-year limitations period in statute governing statute of limitations on actions for the recovery of title or possession of real estate or foreclosure of mortgages or deeds of trust as mortgages, applied to property owners' inverse condemnation claim against state asserting that construction related to the expansion of a highway, on property that state had acquired from owners by exercising eminent domain, had caused damage to property owners' residence. Statute governing statute of limitations for claims by and against the state was more specific on subject of claim.

Property owners' assertion of inverse condemnation claim against state asserting that construction related to the expansion of a highway, on property that state had acquired from owners by exercising eminent domain, had caused damage to property owners' residence during prior condemnation proceeding regarding state's exercise of eminent domain did not satisfy requirement to bring claim within two-year statutory limitations period. Owners were required to institute legal proceedings to bring action on claim, owners would have had to seek permission from trial court in

prior proceeding to amend their complaint to add claim, and trial court's finding that owners' cause of action on claim accrued more than three years before owners brought claim was not clearly wrong.