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EMINENT DOMAIN - SOUTH DAKOTA

Long v. State

Supreme Court of South Dakota - November 21, 2017 - N.W.2d - 2017 WL 5623123 - 2017 S.D. 79

Landowners brought inverse condemnation action against state and city, alleging that construction of state highway caused flooding on their properties.

Following bifurcation of liability and damages issues, settlement of liability issue between landowners and city, and bench trial, the Circuit Court found state solely liable for damage to properties, and dismissed state's cross-claim seeking contribution and indemnification from city. Following jury trial on issue of damages, the Circuit Court awarded monetary damages to each individual landowner. State appealed.

The Supreme Court of South Dakota held that:

- Doctrine of sovereign immunity did not bar landowners' inverse condemnation claims;
- State's construction of highway was actual and proximate cause of flooding on landowners' properties;
- Injury to landowners' properties was peculiar and not of kind suffered by public as whole;
- The Joint Tortfeasor's Act does not apply to inverse condemnation proceedings, and thus does not create a statutory right of contribution between two or more persons jointly or severally liable on a theory of inverse condemnation for the taking of private property without just compensation; and
- State did not acquire drainage easement over landowners' properties.

Doctrine of sovereign immunity did not bar landowners' inverse condemnation claims against state and city, arising from construction of state highway which led to flooding of real properties, since claims were not in nature of tort, but were instead constitutional.

State's construction of public highway was actual and proximate cause of flooding on landowners' properties, and thus amounted to taking of private property requiring just compensation, even if landowners could not prove foreseeability of flooding at time of highway's construction over 60 years ago, where 2010 analysis of culverts during resurfacing project found that culverts were insufficient in size to prevent flooding.

Injury to landowners' properties was peculiar and not of kind suffered by public as whole, and thus supported inverse condemnation claims against state and city, where construction of public highway resulted in flooding of landowners' properties but not properties of other area residents.

The Joint Tortfeasor's Act does not apply to inverse condemnation proceedings, and thus does not create a statutory right of contribution between two or more persons jointly or severally liable on a theory of inverse condemnation for the taking of private property without just compensation.

State did not acquire drainage easement over landowners' properties, despite award of permanent damages to landowners on inverse condemnation claims, justly compensating landowners for

flooding on their properties caused by construction of public highway, where state failed to define scope and boundaries of any purported easement or present evidence on valuation, and instead simply submitted language in its proposed judgment requesting drainage easement over subject properties in perpetuity.

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