

Bond Case Briefs

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EMINENT DOMAIN - ARKANSAS

Watts v. Entergy Arkansas, Inc.

Court of Appeals of Arkansas, Division IV - November 7, 2018 - S.W.3d - 2018 Ark. App. 539 - 2018 WL 5815533

Property owners filed motion for dismissal of utility company's application for condemnation of lands and for immediate possession thereto.

The Circuit Court denied motion, and, following jury trial, entered \$1,995 judgment for just compensation. Property owners appealed.

The Court of Appeals, Brandon held that:

- Property owners received personal notice of condemnation proceeding, and therefore subsequent taking of land did not violate due process;
- Notice of condemnation proceeding satisfied ten-day notice requirement of eminent domain statute; and
- Substantial evidence supported jury's conclusion that property owners suffered no severance damages.

Property owners received personal notice of condemnation proceeding initiated by utility company, and therefore subsequent taking of land by utility company did not violate property owners' due process rights, although order of possession was obtained ex parte and was entered before property owners received any notice, court heard property owners' arguments during several pretrial hearings, and property owners were permitted jury trial during which they presented evidence on why they were not being justly compensated for taking.

Notice of utility company's condemnation proceeding received by property owners satisfied ten-day notice requirement of eminent domain statute, although utility company could not provide notice of trial date to property owners when it initially served property owners because trial date had not yet been scheduled, property owners knew about utility company's petition more than ten days before jury trial convened, and, trial was held more than two years after utility company had filed its initial petition.

Substantial evidence supported jury's conclusion that property owners suffered no severance damages for land that was severed from property by easement, where utility company's appraiser testified that he considered, but did not apply, severance damages to southern portion of property during his appraisal, that southern portion of property severed by easement was not damaged because property owners used southern portion as timber property, and that it could continue to be used as timber property, and that primary residential potential of acreage was home, which was on north end of property.