
EMINENT DOMAIN - OHIO

State ex rel. Balunek v. Marchbanks

Supreme Court of Ohio - July 25, 2023 - N.E.3d - 2023 WL 4711688 - 2023-Ohio-2517

Land owner sought a writ of mandamus ordering the Department of Transportation (DOT) to begin appropriation proceedings for the taking of real property owned by land owner.

The Supreme Court held that:

- DOT committed a taking of land owner's property;
- Land owner was entitled to a writ of mandamus compelling the DOT to institute appropriation proceedings; and
- Attorney fees were not available in mandamus actions to compel appropriation proceedings.

The Department of Transportation (DOT) committed a taking of land owner's property, for the purpose of land owner's mandamus action seeking to compel the DOT to begin appropriation proceedings; prior to DOT's construction project, the property had access to abutting roads through driveways and an easement, during the project the DOT destroyed the property's driveways that connected it to East 93rd Street and did not replace those driveways or provide alternative curb-cut access, and the project also eliminated the property's easement access to Woodland Avenue, rendering the property currently inaccessible to lawful vehicular traffic.

The fact that land owner would "likely" be granted street-opening permit to rebuild driveways to access property and that such a permit "would effectively negate the underlying loss-of-access basis" of his eminent domain claim did not negate owner's entitlement to writ of mandamus ordering Department of Transportation (DOT) to begin appropriation proceedings, after DOT project destroyed property's two driveways and eliminated property's easement across neighboring property to access road; street-opening permit would be granted only if property met city's ordinances and standards, no evidence indicated if property met those standards, to obtain permit owner would have to pay fee and submit performance bond of up to $250,000, and permit process could not compel DOT to begin appropriation proceedings, and thus was not adequate remedy.

Land owner was entitled to a writ of mandamus compelling the Department of Transportation (DOT) to institute appropriation proceedings for the taking of owner's property, where DOT project eliminated access to the property by lawful vehicular traffic, and DOT's action constituted a taking for which it owed compensation.

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