

Bond Case Briefs

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EMINENT DOMAIN - COLORADO

Rodgers v. Board of County Commissioners of Summit County

Colorado Court of Appeals, Div. IV - April 25, 2013 - P.3d - 2013 COA 61

County's enforcement of septic system regulations did not amount to a regulatory taking; before acquiring the property, owners had an approved septic system plan that conformed to county regulations, but did not follow it.

Homeowners brought action against county alleging inverse condemnation based on septic tank regulations and a § 1983 claim alleging discrimination based on their sexual orientation.

The court of appeals held that:

- Dismissal of homeowners' claim under Colorado Civil Rights Act was warranted due to homeowners' failure to exhaust their administrative remedies;
- Homeowners were precluded from bringing direct action against county for damages under the Colorado and United States Constitutions while other adequate statutory remedies existed;
- County's enforcement of septic system regulations did not amount to a regulatory taking; and
- In a matter of first impression, trial court misapplied directed verdict rule in granting a partial directed verdict in favor of county on three challenged actions within homeowners' equal protection claim.

A "per se taking" occurs when a regulation affecting private property does not substantially advance legitimate state interests, or when a regulation denies an owner economically viable use of his land. Because reasonable zoning and land use limitations are a proper exercise of police power, such restrictions will constitute a taking only if they do not substantially advance legitimate state interests or if they prevent economically viable use of the property.

Absent a per se taking, a property owner may still prove a regulatory taking under a fact-specific inquiry. Such a taking occurs if the property retains more than a de minimis value but, when its diminished economic value is considered in connection with other factors, the property effectively has been taken from its owner.

In this case, county's enforcement of septic system regulations did not amount to a regulatory taking of homeowners' property. The regulations served a legitimate purpose and the regulations did not deprive plaintiffs of all economically viable use of their property. The economic impact of the regulations was minor compared to the value of the property, and there was no adverse impact on homeowners' investment-backed expectations because, before acquiring the property, they had an approved septic system plan that conformed to county regulations, but did not follow it.