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Columbia Gas Transmission LLC v. Ott

United States District Court, E.D. Virginia, Norfolk Division - September 27, 2013 - Slip Copy - 2013 WL 5426073

Landowner purchased property, via a warranty deed, in Chesapeake, Virginia. Pursuant to the deed, the property was purchased subject to the easements, conditions, and restrictions of record insofar as they may lawfully affect it, including two right-of-way ("ROW") agreements in favor of Columbia Gas Transmission.

Since purchasing the property, Landowner has maintained a fence, an above-ground swimming pool and shed, which are situated on the ROWs. Running across the property and below grade of the ROWs are two high-pressure natural gas transmission pipelines that are maintained and operated by Columbia.

Columbia filed suit against Landowner, claiming the above-ground swimming pool, shed, and fence are encroachments. It contended that these improvements impair its ability to maintain and operate its pipelines in a safe and effective manner, thereby posing a risk to person, property, and the uninterrupted delivery of natural gas to the Tidewater area of Virginia.

Landowner contended that the fence is not a "building" or "structure" as contemplated and expressly prohibited by the ROW.

After a lengthy analysis, the court concluded that the term "structure" as contemplated and expressly prohibited by the ROW encompasses fences.

The court was good enough to inform us that, "Columbia presents no evidence to support a contention that all objects, for example something as trifling as a garden gnome, placed on the ROWs impair its ability to maintain and operate its pipelines in a safe and effective manner, thereby necessitating that object's permanent prohibition." Good to know.