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EMINENT DOMAIN - FLORIDA

Joseph B. Doerr Trust v. Central Florida Expressway Authority

Supreme Court of Florida - November 5, 2015 - So.3d - 2015 WL 6748858

The Orlando–Orange County Expressway Authority, now the Central Florida Expressway Authority (the Authority), began a condemnation proceeding to acquire 9.81 acres of land identified as Parcel 406. Parcel 406 was owned by Joseph B. Doerr. On June 5, 2006, the Authority submitted to Doerr a presuit written offer to purchase Parcel 406 for \$4,914,221. Doerr rejected the offer, and in August 2006, the Authority filed an action to condemn the property. In February 2008, a jury trial was held to determine the value of Parcel 406. The jury found that the land had a fair market value of \$5,744,830.

Thereafter, Doerr filed a motion for attorney’s fees. The Authority sought to limit the fees to the benefits achieved formula under section 73.092(1), which generated an award of \$227,652.25. On the other hand, the Landowners asserted that they were entitled to attorney’s fees under section 73.092(2), which requires a trial court to consider qualitative and quantitative factors in determining the amount of a fee award.

The trial court awarded fees under subsection (2) because it concluded that the Authority’s presuit written offer was insufficient to calculate the benefits achieved by each Landowner in the final judgment so as to permit a fee award under subsection (1). Applying the factors listed in section 73.092(2), the trial court awarded the Landowners \$816,000 in attorney’s fees for the proceedings that involved the valuation of Parcel 406.

The District Court of Appeal reversed and remanded, concluding that the attorney’s fees for the valuation proceedings were limited to those allowed by section 73.092(1), it remanded to the trial court for consideration of the Landowners’ claim that the application of the benefits achieved formula violated their constitutional right to full compensation because the Authority caused excessive litigation.

The Supreme Court of Florida held that when condemning authority causes excessive litigation, to calculate attorney fees, trial court shall utilize section 73.092(2), which requires a trial court to consider qualitative and quantitative factors in determining the amount of a fee award.

Although the Legislature may establish reasonable parameters for the award of attorney fees in eminent domain proceedings, a statute cannot operate in a manner to so reduce a fee award that it runs afoul of the constitutional guarantee that private property owners receive full compensation for a taking of their property.

Where private property owners are forced to defend against excessive litigation caused by a condemning authority, a mandatory statutory formula that generates a fee award below that which is considered reasonable denies those property owners their right to the full compensation that is guaranteed by the state constitution.

When a condemning authority engages in tactics that cause excessive litigation, to calculate a reasonable attorney fee, a trial court shall utilize provision setting forth considerations in assessing attorney fees incurred of statute governing attorney fees for eminent domain matters, but only for those hours incurred in defending against the excessive litigation or that portion that is considered to be in response to or caused by the excessive tactics. Remainder of the fee shall be calculated pursuant to benefits achieved formula in statute and the two amounts added together shall be the total fee.

Landowners were not required to pursue sanctions in lieu of challenging constitutionality of benefits achieved formula in statute governing attorney fees for eminent domain matters as applied to excessive litigation by county expressway authority. Sanctions were not sufficient to protect landowner's constitutional right to full compensation for taking of private property, which included reasonable attorney fee.