

Bond Case Briefs

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EMINENT DOMAIN - WEST VIRGINIA

Gomez v. Kanawha County Commission

Supreme Court of Appeals of West Virginia - June 3, 2016 - S.E.2d - 2016 WL 3207683

County commission brought condemnation action to take ten-acre tract of land on farm to deposit material removed from high hill.

The Circuit Court granted summary judgment for commission after it paid \$33,335 into court and took immediate possession of farm. Owner with one-third interest in farm appealed.

The Supreme Court of Appeals held that:

- Question of whether property has been taken for public use is question of law for court;
- Project influence rule prohibited inclusion of commission's use of farm in valuing owner's interest in farm;
- Trial court did not abuse its discretion by striking owner's appraisal expert;
- Trial court abused its discretion in striking owner's "claims" as sanction for failure to appear for her deposition;
- Trial court did not have authority to take judicial notice of condemnation commissioners' reported value of owner's interest; and
- Issue of just compensation due to owner precluded summary judgment.

The question of whether property has been taken for a public use in a condemnation proceeding is a question of law for the court, and not a question of fact for a jury.

Project influence rule, under which any enhancement or depreciation in value caused by public project for which land was condemned and taken had to be disregarded in determining the market value of the land, prohibited inclusion of county commission's use of farm as dump site in valuing owner's one-third interest in farm in county commission's condemnation action. While owner claimed that highest and best use of farm was same use for which commission was acquiring property, to use as dump site, commission could not be required to pay enhanced price for property which its demand alone had created, and owner's proposed method for valuing property did not reflect what willing buyer would have paid in cash to willing seller in fair market, but reflected value created solely by commission's need for property.

Trial court did not abuse its discretion by striking appraisal expert of owner of one-third interest in farm and refusing to give expert additional time to inspect farm and formulate opinion about value in county commission's condemnation action. After eight months of discovery, expert failed to offer any opinion as to fair market value of farm at time of commission's taking, owner had asked expert to develop opinion that violated project influence rule, under which any enhancement or depreciation in value caused by public project for which land was condemned and taken had to be disregarded in determining the market value of the land, as she asserted that expert needed additional time to assess enhanced value of property, after date of taking, caused by commission's project, and commission would have been surprised and prejudiced by expert's testimony in trial.

Trial court abused its discretion in striking “claims” of one-third owner of farm as sanction for failure to appear for her deposition in county commission’s condemnation action. Court made no finding that owner’s failure to attend her deposition was willful or in bad faith, court never weighed actual prejudice to commission, effective of less drastic sanctions, or made any analysis of parties’ situation, and court’s order, in which it agreed to “strike the claims” of owner, was meaningless, as it was unclear what word “claim” meant in context of condemnation case.

Trial court did not have authority to take judicial notice of condemnation commissioners’ reported value of owner’s one-third interest in farm in county commission’s condemnation action, Owner filed objection to commissioners’ report within ten days, and, once objection was filed, parties were entitled to have just compensation ascertained by jury.

Genuine issue of material fact as to just compensation due to owner for her one-third interest in farm precluded summary judgment for county commission in its condemnation action.