

Bond Case Briefs

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EASEMENTS - INDIANA

Town of Ellettsville v. Despirito

Supreme Court of Indiana - December 12, 2017 - N.E.3d - 2017 WL 6333781

Dominant estate owner, whose land benefited from a utility easement, sought judicial review and declaratory relief, associated damages, and preliminary and permanent injunctive relief regarding town's plan commission's approval of servient estate owner's request for an amendment of a subdivision plat in order to move the easement.

After entering an agreed preliminary injunction, the Circuit Court entered summary judgment for dominant estate owner in an order that left the preliminary injunction in place, but was silent on dominant estate owner's request for damages and a permanent injunction. Servient estate owner and commission appealed. The Court of Appeals reversed and remanded with instructions. Dominant estate owner appealed.

On petition to transfer, the Supreme Court held that trial court's order was not a final judgment.

Trial court's order that left preliminary injunction in place, but did not rule on request for damages or a permanent injunction, did not determine that there was no just reason for delay, and did not expressly direct entry of judgment on less than all of the issues, claims, or parties, was not a "final judgment" in proceedings on dominant estate owner's suit for judicial review of town's plan commission's approval of servient estate owner's request for an amendment of a subdivision plat in order to move a utility easement, and thus the Supreme Court would stay the appeal and remand to the trial court.