

Bond Case Briefs

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EMINENT DOMAIN - MONTANA

Letica Land Company, LLC v. Anaconda-Deer Lodge County

Supreme Court of Montana - February 5, 2019 - P.3d - 2019 WL 441532 - 2019 MT 30

Property owners brought action against county seeking declaratory and injunctive relief concerning status of road that crossed their properties.

The District Court determined that lower branch of road was statutorily created road and that public prescriptive easement established upper branch of road as a public road. Owners appealed, and the Supreme Court affirmed as to the lower branch, reversed as to the upper branch, and remanded. On remand, the District Court awarded summary judgment to county on the takings claims asserted by one owner. Such owner appealed.

The Supreme Court of Montana held that:

- County acted under a claim of right when it removed dirt berm from upper branch of road, and thus its action did not constitute a taking;
- Owner failed to establish that its property was damaged by county's actions;
- Owner was not entitled to an award of costs and attorney fees under state constitution's eminent domain provision; and
- Neither owner nor county were the prevailing party for purposes of costs.

County acted under a claim of right when it removed dirt berm from road that was actually on private property, and thus county's action did not constitute a taking under the federal or state constitutions; county relied on county records, maps, surveys, and other evidence related to historical use of the road before reaffirming the road as a public road, and, though county was mistaken, its actions were reasonable.

Property owner failed to establish that its property was damaged by county's actions in removing a dirt berm from road that county mistakenly believed was a public road and encouraging an unknown number of persons to drive on the road, and thus owner was not entitled to compensation for such damage under state constitution's eminent domain provision; county's evidence showed that public use of the road was minimal, and owner did not present evidence that the temporary invasion of its property resulted in any significant burden or substantially interfered with its use of the property.

Property owner that sought declaratory and injunctive relief concerning the status of a road that crossed its property was not entitled to an award of costs and attorney fees under state constitution's eminent domain provision, even though owner prevailed on its claim that a public prescriptive easement on the upper branch of the road had been extinguished by reverse adverse possession, where owner did not prevail on its claim that county's actions with respect to the road, including removing a dirt berm and encouraging an unknown number of persons to drive on the road, constituted a taking under either the federal or state constitutions.

Neither property owner nor county were the prevailing party in owner's action seeking declaratory and injunctive relief concerning status of a road that crossed its property, and thus owner could not

be ordered to pay county's costs, where owner prevailed as to the status of the upper branch of the road, and county prevailed as to owner's remaining claims.