

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT DOMAIN - GEORGIA

Morgan County v. Gay

Court of Appeals of Georgia - September 23, 2019 - S.E.2d - 2019 WL 4584686

County brought petition to condemn portion of landowner's property as buffer between remainder of landowner's property and county-owned landfill.

Special master denied landowner's motion to dismiss and awarded landowner compensation and consequential damages. On parties' exceptions and appeals of special master's award, the Superior Court affirmed denial of motion to dismiss and found evidentiary issues were moot.

Landowner brought separate action for inverse condemnation, seeking preliminary injunctions to compel abatement of nuisance from landfill and enjoin condemnation of buffer property. The Superior Court denied landowner's motions for preliminary injunctions, denied county's motion to dismiss inverse condemnation proceedings, and found county's motion for a stay was moot. County and landowner filed interlocutory appeals in both actions. Appeals were consolidated.

The Court of Appeals held that:

- County acted within its discretion in seeking to condemn buffer zone to prevent methane migration;
- County's alleged failure to disclose extent of methane migration to landowner during negotiations did not constitute bad faith;
- County's violation of statutory pre-negotiations appraisal requirement did not warrant dismissal of condemnation petition;
- Landowner waived his statutory right to accompany appraiser;
- Res judicata and collateral estoppel did not preclude inverse condemnation case;
- Landowner was not entitled to interlocutory injunction staying condemnation proceedings; and
- Landowner's motion for preliminary injunction requiring abatement of methane contamination was not moot.

County acted within its discretion in seeking to condemn buffer zone between county-owned, methane-producing landfill and remainder of landowner's property in order to prevent methane migration onto private land, where hydro-geologist opined acquiring additional buffer zone would eliminate any reasonable probability of such migration.

County's alleged failure to disclose to landowner, during negotiations for purchase of portion of landowner's property, the full extent of methane migration from adjacent, county-owned landfill onto portion of his property did not constitute bad faith permitting a court to interfere with county's discretionary decision to condemn portion of landowner's property as methane buffer zone, where landowner was aware county was monitoring for methane on his property and sought his land as "buffer expansion," county did not lower its offer price for buffer property due to methane or otherwise financially benefit from any failure to disclose methane on landowner's property.

County's violation of statutory requirement that it provide landowner with an appraisal report prior

to initiating negotiations in contemplation of formal condemnation proceedings did not warrant dismissal of condemnation petition, where, after negotiations between county and landowner ceased, county obtained appraisal, then re-initiated negotiations with landowner by offering to purchase property at appraised amount.

Landowner waived, by implied conduct, his statutory right to accompany appraiser in inspecting his property prior to condemnation proceeding initiated by county, where landowner accompanied appraiser to first attempt at inspection, found property was too overgrown for inspection on that day, cleared property for appraiser, and left gate unlocked for appraiser to enter on the day appraiser said he would return, and landowner's conduct would have prejudiced county if it had resulted in dismissal of condemnation petition.

Landowner who brought inverse condemnation case against county after county brought condemnation case concerning same property against landowner was not entitled to interlocutory injunction staying condemnation proceedings; county's acquisition of property in condemnation proceedings would not preclude landowner from pursuing relief on his nuisance-based inverse condemnation claim that county-owned, adjoining landfill caused pre-condemnation damage to property, and inverse condemnation was distinct cause of action from condemnation.