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## **EMINENT DOMAIN - ALABAMA**

### [City of Daphne v. Fannon](#)

**Supreme Court of Alabama - December 6, 2019 - So.3d - 2019 WL 6649355**

Owners of property damaged from trees that fell due to erosion during a rainfall, which was erosion allegedly linked to city's installation, approximately nine years prior, of a 48-inch-diameter pipe on city-owned right-of-way adjacent to their property, brought action against city based on claim of inverse condemnation.

City filed counterclaims based on allegations of negligence and trespass, which were claims related to landowners' installation, following the storm, of a 30-inch-diameter pipe on the right-of-way. The Circuit Court entered judgment as a matter of law for landowners on city's counterclaims and later entered a jury verdict for landowners on their inverse-condemnation claim. City appealed.

The Supreme Court held that:

- Damage from the fallen trees was not ascertainable at the time the 48-inch-diameter pipe was installed;
- City could not maintain trespass claim; and
- City could not maintain negligence claim.

Property damage from trees that fell due to erosion during a rainfall, which was erosion allegedly linked to city's installation, approximately nine years prior, of a 48-inch-diameter pipe on city-owned right-of-way adjacent to the property, was not ascertainable at the time the pipe was installed, and thus property owners could not maintain an inverse-condemnation claim against city; rainfall was an unprecedented rain event, property owners installed a swale on the right-of-way shortly after the pipe installation, and property owners presented no evidence to establish that it was ascertainable, or foreseeable, during the pipe installation that erosion would occur and cause trees to fall on their house.

City could not maintain claim against property owners for trespass based on owners' installation of a 30-inch-diameter pipe on city-owned right-of-way adjacent to the property, absent evidence to dispute that city's environmental-programs manager, during a conversation with property owners following a rainfall that resulted in erosion that caused trees to fall on property owners' house, told property owners to do what they had to do to protect their property, or evidence that the city otherwise limited that permission to cutting trees or restricted property owners from doing work in the right-of-way to protect their property.

City could not maintain claim against property owners for negligence based on owners' installation of a 30-inch-diameter pipe on city-owned right-of-way adjacent to the property, which property owners installed after a rainfall that resulted in erosion that caused trees to fall on their house; at the time of the installation, property owners believed that another big rain event was coming, city was in the process of determining where the boundary lines were and was not doing anything to alleviate the drainage and erosion problems, and owners installed the pipe as an emergency measure to alleviate the drainage and erosion problems in the short term pursuant to the permission

from city's environmental-programs manager to do what they had to do to protect their property.

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