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EMINENT DOMAIN - WISCONSIN

DSG Evergreen Family Limited Partnership v. Town of Perry

Supreme Court of Wisconsin - February 27, 2020 - N.W.2d - 2020 WL 939260 - 2020 WI 23

Condemnee, following the right-to-take and just-compensation actions, brought action against condemnor, which was a town, in which it sought a judgment declaring that condemnor was obligated to improve and maintain a new road to certain standards, which were standards that the road allegedly failed to meet. Alternatively, condemnnee sought \$280,000 to improve the road to the alleged requisite standards.

After entering partial summary judgment for condemnor, the Circuit Court determined that claim preclusion barred condemnnee's claim. Condemnee appealed. The Court of Appeals affirmed. Condemnee petitioned for review.

The Supreme Court held that:

- Condemnee did not concede that it should have litigated condemnor's road-building obligations in right-to-take case;
- Trial court hearing just-compensation case could not have entertained issue of whether condemnor could have built road as promised in condemnation petition;
- Condemnee did not yet have cognizable claim of right for declaration that condemnor had duty to improve road to town-road standards; and
- Statute on town-road standards does not create private cause of action.

Condemnee did not concede that it should have litigated condemnor's road-building obligations in right-to-take case, and thus such concession was not basis to find that claim preclusion barred condemnnee's later action for declaration that condemnor, which was town, was required to improve and maintain road to certain standards imposed by condemnation petition or state statutes; condemnnee only conceded that, if it were to have challenged validity of condemnor's promise to build road, which was promise made in jurisdictional offer, it could have done so in right-to-take case, which was not issue raised in later action.

Trial court hearing just-compensation case could not have entertained issue of whether condemnor could have built road as promised in condemnation petition, and thus just-compensation case was not basis for finding that claim preclusion barred condemnnee's later action for declaration that condemnor, which was town, was required to improve and maintain road to certain standards imposed by condemnation petition or state statutes; essential issue tried in just-compensation case assumed completion of project for which taking occurred, including construction of new road under terms of petition, and even if condemnnee were convinced that condemnor would renege or inadequately perform road-building obligation, condemnnee could not have litigated that issue in just-compensation case.

Condemnee did not yet have cognizable claim of right for declaration that condemnor, which was town, had duty to improve new road, whose construction was addressed in condemnation petition, to town-road standards; statute on town-road standards did not impose mandatory and non-

discretionary obligation on condemnor to improve road to town-road standards, and condemnee could not have cognizable claim of right until, at earliest, condemnor's discretionary authority resolved to particular course of action.

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