

Bond Case Briefs

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EMINENT DOMAIN - OHIO

State ex rel. New Wen, Inc. v. Marchbanks

Supreme Court of Ohio - October 14, 2020 - N.E.3d - 2020 WL 6050679 - 2020 -Ohio- 4865

Following grant of writ of mandamus to compel Department of Transportation and its director to commence appropriation proceedings for taking of real property, property owner filed application for award of reasonable attorney fees and costs.

The Supreme Court held that:

- Attorney-fee provisions of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 did not create statutory basis for award of attorney fees;
- Provisions of the Act governing approval of contracts did not provide statutory basis for award of attorney fees;
- State regulation did not support award of attorney fees; and
- Owner was not entitled to attorney fees under § 1988.

Provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, authorizing a court to award attorney fees to the real property owner when a federal agency institutes a condemnation proceeding in federal court or to the prevailing or settling plaintiff in an inverse-condemnation proceeding against the United States for the taking of property by a federal agency, apply only to exercises of eminent domain by federal agencies and do not create a statutory basis for an award of attorney fees in a state mandamus action seeking to compel an appropriation proceeding for the taking of real property.

Provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, providing that before a federal agency may approve a project or contract with an acquiring agency, such as the Ohio Department of Transportation, the acquiring agency must give satisfactory assurances that property owners would be paid or reimbursed for necessary expenses, including reasonable attorney fees, imposes an obligation upon federal agencies to ensure certain conditions are met before approving contracts and is not statutory authorization for an award of attorney fees in a state mandamus action seeking to compel an appropriation proceeding for the taking of real property.

State regulation adopting language of federal regulation authorizing recovery of attorney fees by a prevailing or settling plaintiff in an inverse-condemnation proceeding was not predicated on statutory grant of authority and, thus, did not support award of attorney fees in property owner's mandamus action seeking to compel the Department of Transportation to initiate appropriation proceeding for the taking of real property; statute pursuant to which regulation was promulgated did not allow property owner who initiated inverse-condemnation proceeding to recover attorney fees or authorize agency to promulgate rule that provided for those fees, and other statute referred to in that statute provided for award of attorney fees in condemnation proceeding instituted by state agency, which was different context.

Because the Supreme Court has no original jurisdiction to hear a § 1983 claim, a party to a

mandamus proceeding is not entitled to attorney fees under § 1988 as a “prevailing party” on such a claim.