

Bond Case Briefs

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EMINENT DOMAIN - NORTH DAKOTA

Montana-Dakota Utilities Co. v. Behm

Supreme Court of North Dakota - November 19, 2020 - N.W.2d - 2020 WL 6791506 - 2020 ND 234

Condemnor, a utility company, brought an eminent domain action against landowner to acquire an easement across landowner's property for a 3,000-foot natural gas pipeline to service a railroad switch which was required to be heated to keep it operable during winter months.

District Court dismissed action. Parties cross-appealed, and the Supreme Court reversed and remanded for a trial on eminent domain damages. Landowner petitioned the United States Supreme Court for writ of certiorari, which was denied. On remand, the parties stipulated to the valuation of the easement, and the district court adopted the stipulation and awarded landowner attorney's fees and costs. Landowner appealed.

The Supreme Court held that:

- Law of the case doctrine and the mandate rule precluded consideration of landowner's various arguments about the constitutionality of eminent domain proceedings;
- Attorney's fees which landowner incurred in unsuccessful petition for writ of certiorari to the United States Supreme Court were unreasonable; and
- Appeal was frivolous and warranted award of attorney's fees to condemnor.

Law of the case doctrine and the mandate rule precluded consideration of landowner's various arguments about the constitutionality of eminent domain proceedings, where the issue of the necessity of the taking and whether the taking was for a public use were previously tried and appealed, case was remanded by Supreme Court for a trial on damages, and arguments about the constitutionality of the eminent domain proceedings and whether a jury should have determined certain issues could have been raised in the district court before the prior appeal and to the Supreme Court in the first appeal.