

Bond Case Briefs

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ENVIRONMENTAL LAW - ALABAMA

Breland v. City of Fairhope

Supreme Court of Alabama - December 31, 2020 - So.3d - 2020 WL 7778223

Property owner and property owner's corporation brought action against city, seeking a declaration that they were entitled to fill wetlands on the property, which lay outside city's corporate limits but within its police jurisdiction, without further approval from city, asserting a claim that city had acted negligently regarding property owner's application for a land-disturbance permit, and seeking expungement of property owner's criminal citation for beginning work without a permit.

The Circuit Court entered summary judgment in favor of city. Property owner and his corporation appealed. The Supreme Court reversed and remanded. On remand, the Circuit Court entered judgment holding that property owner and his corporation had not obtained a vested right to fill the wetlands, that state law did not preempt city's ordinances at issue, that city's ordinances at issue were not improper zoning ordinances, and that the negligence and expungement claims of property owner and his corporation were moot. Property owner and his corporation appealed.

The Supreme Court held that:

- Property owner and his corporation lacked a vested right to fill wetlands on property when they first obtained a land-disturbance permit from county;
- Alabama Environmental Management Act (AEMA) did not preempt the field of wetlands regulation;
- Alabama Water Pollution Control Act (AWPCA) did not preempt the field of wetlands regulation;
- Water-quality certification that the Alabama Department of Environmental Management (ADEM), in accordance with the
- Alabama Water Pollution Control Act (AWPCA), issued to the Army Corps of Engineers as part of process of determining whether property owner was to be issued federal permit to fill wetlands on property was not a basis to find that State law preempted, on conflict-preemption grounds, city ordinances at issue; and
- City ordinances at issue were not de facto zoning regulations.