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EMINENT DOMAIN - TEXAS

Hlavinka v. HSC Pipeline Partnership, LLC

Supreme Court of Texas - May 27, 2022 - S.W.3d - 2022 WL 1696443

Pipeline company initiated condemnation proceedings after landowners rejected its offer to purchase a pipeline easement.

The County Court granted company's motions for summary judgment and to exclude landowner's testimony, and denied landowners' plea to the jurisdiction. Landowners appealed. The Houston Court of Appeals affirmed in part, reversed in part, and remanded. Both parties petitioned for review, and both petitions were granted.

The Supreme Court held that:

- Polymer-grade propylene product that company's pipeline carried qualified as an "oil product";
- Pipeline company met public use standard for common-carrier status that was required for condemnation authority; and
- Trial court's exclusion of landowner's testimony about sales of easements to other pipelines constituted harmful error that warranted new trial as to market value.

Pipeline company established that polymer-grade propylene that it carried qualified as an "oil product," as required for company to have statutory condemnation authority to build and construct a common-carrier pipeline to transport it, because the Natural Resources Code defined oil as "crude petroleum oil," and polymer-grade propylene was a product derived from crude oil's refinement and distillation, and further, the Railroad Commission, which authorized company to operate a pipeline, defined "product" to include all liquid products or by-products derived from crude petroleum oil or gas.

Pipeline company served at least one unaffiliated customer, and accordingly, it met the public use standard for common-carrier status under statute granting condemnation authority to common-carrier pipelines that transported oil products, where company had a transportation contract with an unaffiliated customer, its pipeline connected to existing pipeline networks making the transportation network feasible, pipeline had additional capacity and terminated near other potential customers, and company publicly filed a tariff with the Railroad Commission, demonstrating that it offered and marketed the pipeline for public hire.

Trial court's exclusion of one landowner's testimony about sales of easements to other pipelines, in pipeline company's condemnation proceedings, denied landowners the opportunity to rebut presumption that land's highest and best use was purely agricultural and that there was reasonable probability the easement that was condemned would likely have been sold, and thus, the exclusion constituted harmful error that warranted a new trial as to market value; recent sales of comparable easement rights on the same property to other pipeline companies, combined with existence of pipelines running parallel and adjacent to condemning pipeline company's pipeline, provided some evidence from which a factfinder reasonably could conclude that landowners could have sold to another the easement that they were instead compelled to sell to pipeline company.

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