

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT DOMAIN - MICHIGAN

Miner v. Ogemaw County Road Commission

United States District Court, E.D. Michigan, Northern Division - September 2, 2022 - F.Supp.3d - 2022 WL 4017281

Landowner brought state court action against county road commission and commission's managing director, alleging violation of the federal Takings Clause, violation of the Michigan takings clause, violation of due process, conspiracy to interfere with civil rights under § 1983, and state law claims of trespass, malicious prosecution, abuse of process, and unlawful arrest.

Commission and director removed. Owner moved for summary judgment and commission and director cross-moved for summary judgment.

The District Court held that:

- Commission failed to establish prescriptive easement for culvert that could defeat landowner's takings claims;
- Natural-flow doctrine under Michigan law did not impair landowner's takings claims;
- Landowner established commission's inverse condemnation of his land under Michigan law;
- Genuine issue of material fact existed as to whether purpose of drainage culvert was for private use or public use, precluding summary judgment on claim for substantive due process violation;
- Genuine issue of material fact as to whether county had policy or custom that would render it liable under *Monell* for conduct of commission employees, precluding summary judgment on claim for substantive due process violation;
- Neither commission nor director was entitled to immunity, under Michigan Governmental Tort Liability Act, from landowner's trespass claim under Michigan law; and
- Director was subject to money damages on landowner's trespass claim under Michigan law.

County road commission failed to establish prescriptive easement for water culvert under Michigan law, which diverted water from neighboring property onto landowner's property, that could defeat landowner's takings claims under federal and Michigan constitutions, where neighboring property owner had only owned his parcel for four years, such that he could not have prescriptive drainage easement unless by succession from parcel's former owner, county failed to establish that there was previous owner of parcel that owned it for 15 continuous years, and nothing indicated that county had prescriptive easement.

Natural-flow doctrine under Michigan law did not impair landowner's takings claims under federal and Michigan constitutions, arising from culvert that diverted water from neighboring property onto landowner's property, which caused flooding, and thus landowner was entitled to compensation from county road commission and its managing director for culvert's diversion of water onto his land, where landowner's takings claims involved flow of water caused by county highway and man-made culvert, and nothing indicated that water from neighboring property naturally "washed" over county highway onto landowner's property while culvert was blocked by concrete, but instead that water traveled down side of ditch further west while culvert was blocked.

Landowner's takings claims under federal and Michigan constitutions did not begin to run, and six-year limitations period did not accrue, until eight months after landowner filed action in state court under "continuing violation" doctrine, where county road commission's wrongful conduct was physical trespass of culvert onto land after they unblocked it—not its initial installation or intermittent flooding that culvert allegedly caused, such trespass newly accrued each day that culvert trespassed onto landowner's land, and culvert continued to trespass onto land following initiation of suit even though culvert was trimmed so that it only trespassed onto land by .33 feet rather than six feet.

Landowner's entitlement to damages for any harm to property that trespassing culvert proximately caused would not be limited by six-year statute of limitations for inverse-condemnation cases under Michigan law and would date back to landowner's purchase of property through date that takings claims, under federal and Michigan constitutions, in state court; damages seemingly began to run when county road commission admittedly removed blockage from culvert for first time, which was approximately five months prior to landowner's purchase of property, and then persisted under "continuing violation" doctrine.

Landowner established county road commission's inverse condemnation of his land without actual physical occupation, acquisition, or appropriation, through presence of culvert on his land, which diverted water onto his land from neighboring property, and thus landowner was entitled to just compensation for commission's unconstitutional taking of land under Michigan law, where commission abused its legitimate power by entering land without warrant under guise of easement, commission affirmatively acted and caused damage to property by cutting and unblocking culvert, which flooded property, and trespassing culvert caused diminution in value of property since flood waters froze nearly all land surrounding landowner's house, rendering use and enjoyment of property practically scant.

County road commission committed unconstitutional taking of landowner's real property under Fifth Amendment through physically trespassing drain culvert on his land, which diverted water onto his land from neighboring property and cause flood damage, and thus landowner was entitled to just compensation for such taking, where physical trespass and flooding of property occurred from time that landowner purchased parcel until he filed action in state court.

Genuine issue of material fact existed as to whether purpose of drainage culvert, which diverted water onto landowner's property from neighboring property causing flooding, was for private use or public use, precluding summary judgment on landowner's claim for violation of his substantive due process rights to his property.

Genuine issue of material fact as to whether county had policy or custom with regard to upkeep and maintenance of drainage culvert, which diverted water onto landowner's property from neighboring property and caused flooding, that would render it liable under *Monell* for conduct of county road commission employees who entered onto landowner's land without permission to cut and unblocked culvert, precluding summary judgment on landowner's claim for violation of his substantive due process rights to his property.

County road commission's managing director was not entitled to qualified immunity from landowner's claim for violation of his substantive due process rights to his property, where commission and director violated landowner's constitutional right to be free from unconstitutional governmental takings by its physically trespassing culvert that diverted water onto landowner's property from neighboring property and caused flooding, it was clearly established that permanent occupations of land by installations constituted takings even if such installation occupied only relatively insubstantial amounts of space and did not seriously interfere with landowner's use of rest

of his land, and drain culvert constituted such installation.

County road commission's managing director was subject to money damages on landowner's trespass claim under Michigan law for damages caused by drain culvert, which divert water onto landowner's property from neighboring property and caused flooding, even though commission could not be held liable for money damages under Act, where Act removed qualified immunity for agency employees for intentional torts, which included trespass.