

Bond Case Briefs

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EMINENT DOMAIN - OKLAHOMA

Childers v. Arrowood

Supreme Court of Oklahoma - June 20, 2023 - P.3d - 2023 WL 4069005 - 2023 OK 74

Property owners filed condemnation action against neighbors, in order to obtain utility easement, under statute granting private party right of exercise of eminent domain for private ways of necessity.

The District Court granted easement, and neighbors appealed. The Court of Civil Appeals affirmed. Petition for certiorari was granted.

The Supreme Court held that:

- Property owners were not required to prove elements of common law easement by necessity in order to obtain utility easement under statute;
- Statute granting private person right to exercise of eminent domain for private ways of necessity did not require proof of public purpose for taking; and
- As matter of first impression, “private ways of necessity,” within meaning of statute that granted private landowner right of exercise of eminent domain for private ways of necessity, included access to utilities.

Property owners were not required to prove elements of common law easement by necessity in order to obtain utility easement over neighbors’ land, in condemnation action against neighbors under statute granting private party right of exercise of eminent domain for private ways of necessity.

“Private ways of necessity,” within meaning of statute that granted private landowner right of exercise of eminent domain for private ways of necessity, was not limited in scope to roadway necessary for ingress and egress to and from landlocked property, but encompassed access to utilities for effective and beneficial use of owners’ land in order to build residence on property.

Under the statute granting a private landowner the power of eminent domain for “private ways of necessity,” the issue of what is necessary to the effective and beneficial use of the property depends on the nature of the property.

“Necessary” rights, for purposes of statute granting private landowner right of exercise of eminent domain for “private ways of necessity” are not limited to those essential to enjoyment of owner’s property, but include those which are reasonably required to make effective use of property; what is necessary depends on nature and location of property, and may change over time.