

Bond Case Briefs

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EMINENT DOMAIN - SOUTH DAKOTA

Betty Jean Strom Trust v. SCS Carbon Transport, LLC

Supreme Court of South Dakota - August 21, 2024 - N.W.3d - 2024 WL 3895866 - 2024 S.D. 48

Landowners who refused to allow pipeline company, which was developing an underground pipeline network to transport carbon dioxide, pre-condemnation survey access brought separate actions against company for declaratory and injunctive relief that would prevent the surveys.

Company brought one action in which it sought declaratory and injunctive relief permitting survey access.

The Circuit Court, Third Judicial Circuit and the Circuit Court, Fifth Judicial Circuit granted summary judgment to company on all issues in all the cases. Landowners appealed, and the appeals were consolidated on landowners' motion.

The Supreme Court held that:

- Recent amendments to the statute under which company wanted to conduct the pre-condemnation surveys did not render the appeals moot;
- Genuine issue of material fact as to whether pipeline would transport carbon dioxide for customers who would either retain ownership or sell it to other parties precluded finding on summary judgment that pipeline would serve the public as required for company to be a common carrier;
- Genuine issue of material fact as to whether the carbon dioxide that would be transported through pipeline would be put to any productive use precluded finding on summary judgment that the carbon dioxide was a commodity, as required for company to be a common carrier;
- Landowners demonstrated their entitlement to a continuance to conduct further discovery;
- Examinations and surveys done under applicable former version of statute under which company wanted to conduct the pre-condemnation surveys were not "takings" under the Fifth Amendment's Taking Clause or the South Dakota Constitution's corresponding provision;
- The pre-condemnation surveys would be unconstitutional "takings" under the Fifth Amendment insofar as the surveys involved invasive geotech and deep-dig surveys; and
- Applicable former version of statute under which company wanted to conduct the pre-condemnation surveys did not violate procedural due process.