

Dismissal of Preliminary Objections in taking of private land under eminent domain

The next case to be argued is GM Hock Penn LLC vs. Columbia County.

At issue here is a question of the scope of eminent domain. As general background, proceedings under the eminent domain code involve a filing of a declaration of taking by a body clothed with the power of eminent domain and procedurally the response to that is to file preliminary objections to the taking. If the preliminary objections are overruled, there is a right of appeal. It is clearly an interlocutory order, because there has been no award of damages, there's been no judgment in favor of the land owner whose property is being taken, but procedurally there is an appeal as of right from an order that overrules preliminary objections, even though that order is interlocutory. Conversely, if the preliminary objections were sustained, it is a final order, but at that point it is the party with the power of eminent domain that would be taking the appeal from a final order.

So you have here a situation, but it's almost the equivalent of a determination of liability without a determination of the amount of damages. The basic issue here is whether or not the Columbia County can condemn the 25-foot easement along one side of a piece of property when it is already known that the easement will be used for the installation of a water pipe and the water is to be supplied to a piece of property adjacent to the property from which the easement is to be taken, and that that property is going to be an industrial park that is owned by a development authority and a corporation associated with it. The difficulty here arises from the fact that while Columbia County has condemned the property, the water will ultimately be sent to private users that will use it for profit, and it is the landowner whose land is being taken who is being required to give up, being told he should give up, must give up a 25-foot wide easement for the installation of a 12-inch water pipe, who is the appellant here. The trial court analogized this objection as akin to objecting to eminent domain for the taking of property for the construction of an interstate highway simply because there would be thereafter private trucking companies and private individuals who would use that highway for a profitable use, and he completely and totally overruled the preliminary objections, hence this appeal.

The landowner is arguing that this is a project that from the start has been intended as a public taking for a private use, and it's his property, it's a development company's property that is being taken. There is at least some indication that it was intended to be used as a residential area. It is adjacent to an area which is currently intended to be, if in fact water is put in, an industrial park.

The first argument made by the landowner is that Columbia County lacks the authority to condemn this property at all, and in fact, what it is looking at is there is a provision in the County Code that permits the county to take property for water purposes but the landowner is arguing that taking it for this particular water purpose does not fit within a reasonable interpretation of the statutes. Thereafter, it argues that if one assumes that the county does have the power to condemn for water purposes that include furnishing water to another piece of property to be used by private entities, then the taking here is inappropriate because it is for a private taking. There are two questions here: whether or not the county is clothed with the power of eminent domain under these circumstances, and two, if it is clothed with the power of eminent domain, does it have the right to take this area for water when it is clear from the development plans that have already been approved that the taking is to serve private industry on a piece of property owned by the redevelopment authority.

The issue is one, as I say, the trial court gave short shrift to comparing the taking to private benefit from a public road. One argument that the appellee is making is that the taking is for general public use because the water will be furnished clearly to the industrial park when it is built, but it will also make water available to the private landowner if and when it chooses to develop the residential, the homes and houses it proposes to develop or has suggested it will be developing on its property. Its response to that was that it intended to construct its own water and sewage facilities and therefore it does not need public facilities.

With that as background, let's go listen to the arguments.