

SUPREME COURT OF NORTH DAKOTA

Lenertz v. City of Minot N.D.

2019 ND 53 (N.D. 2019) · No. 20180153 · Decided February 21, 2019

SUMMARY

The North Dakota Supreme Court reviewed Allan Lenertz's inverse-condemnation claim against the City of Minot arising from flooding allegedly caused by a street and storm-water project. The court affirmed the rulings that the evidence showed, at most, a partial taking, that the proposed expert testimony was properly excluded, and that judgment as a matter of law was appropriate. The court reversed the award of costs and disbursements to the City.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers, Justice; Daniel J. Crothers; Jon J. Jensen; Gerald W. VandeWalle, Chief Justice; Lisa Fair McEvers Tufte
JURISDICTION	North Dakota
DECIDED	February 21, 2019
DOCKET	20180153
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an amended judgment dismissing an inverse condemnation action with prejudice, granting the City judgment as a matter of law, excluding the plaintiff's proposed expert testimony, and awarding the City costs and disbursements.
STANDARD OF REVIEW	The grant of judgment as a matter of law is fully reviewable, with the evidence viewed in the light most favorable to the nonmoving party and judgment proper only when the evidence permits but one conclusion about the verdict. Whether the evidence creates a jury question is a question of law. The determination whether to admit expert testimony under N.D.R.Ev. 702 is reviewed for abuse of discretion. Whether private property was taken for public use is a question of law fully reviewable on appeal. The award of costs and disbursements is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Allan Lenertz v. City of Minot N.D.

TOPICS

eminent domain municipal

takings clause

municipal liability

expert testimony

appellate procedure

PRACTICE AREAS

eminent domain

inverse condemnation

municipal law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence established a total taking or only a partial taking of Lenertz's property for inverse-condemnation purposes.
2. Whether the district court abused its discretion by excluding Lenertz's proposed damages expert under N.D.R.Ev. 702.
3. Whether the district court properly granted the City judgment as a matter of law because Lenertz failed to present evidence of the diminution in value or other specific damages from a partial taking.
4. Whether N.D.C.C. § 32-15-32 precluded an award of costs and disbursements against a plaintiff landowner in an inverse-condemnation action brought under N.D.C.C. chapter 32-15.

HOLDINGS

1. The trial evidence established, at most, a partial taking or damaging of Lenertz's property, not a total taking or total loss of the property's value.
2. The district court did not abuse its discretion by excluding the proposed testimony of Lenertz's damages expert.
3. The district court properly granted the City judgment as a matter of law because Lenertz failed to present evidence establishing the specific damages or diminution in value resulting from the partial taking.
4. N.D.C.C. § 32-15-32 precludes an award of costs against a plaintiff landowner in an inverse condemnation action brought under N.D.C.C. chapter 32-15.

KEY QUOTATIONS

“To establish an inverse condemnation claim, a property owner must prove a public entity took or damaged the owner’s property for a public use and the public use was the proximate cause of the taking or damages.”
(¶ 10)

“N.D.C.C. § 32-15-32 precludes an award of costs against a plaintiff landowner in an inverse condemnation action brought under N.D.C.C. ch 32-15.” (¶ 34)

FACTUAL BACKGROUND

Between 2013 and 2014, the City installed a paved street and upgraded a storm-water system adjacent to Lenertz's commercial property in southwest Minot. The property flooded three times afterward. The buildings remained occupied, rental income continued, and the evidence did not establish loss of tenants, reduced rents, personal-property damage, or a loss of the property's entire economic value.

PROCEDURAL HISTORY

Lenertz sued the City of Minot for inverse condemnation after flooding followed the City's street and storm-water improvements. The district court determined that the evidence showed at most a partial taking, excluded Lenertz's damages expert under N.D.R.Ev. 702, granted the City judgment as a matter of law under N.D.R.Civ.P. 50, dismissed the action, and awarded the City \$3,070 in costs and disbursements. The North Dakota Supreme Court affirmed the judgment in part but reversed the cost award.

DISPOSITION

other

CASES CITED

- Bjorneby v. Nodak Mut. Ins. Co., 2016 ND 142, ¶ 7, 882 N.W.2d 232
- Okken v. Okken, 325 N.W.2d 264, 267 (N.D. 1982)
- Minto Grain v. Tibert, 2009 ND 213, ¶¶ 7-8, 776 N.W.2d 549
- Bala v. State, 2010 ND 164, ¶ 8, 787 N.W.2d 761
- Aasmundstad v. State, 2008 ND 206, ¶ 15, 763 N.W.2d 748
- Knutson v. City of Fargo, 2006 ND 97, ¶ 9, 714 N.W.2d 44
- Irwin v. City of Minot, 2015 ND 60, ¶¶ 6-7, 860 N.W.2d 849
- City of Minot v. Boger, 2008 ND 7, ¶ 16, 744 N.W.2d 277
- Wilkinson v. Bd. of Univ. & Sch. Lands, 2017 ND 231, ¶ 22, 903 N.W.2d 51
- Hager v. City of Devils Lake, 2009 ND 180, ¶¶ 19, 23-24, 773 N.W.2d 420
- Peacock v. Sundre Twp., 372 N.W.2d 877, 879 (N.D. 1985)
- Cass Cty. Joint Water Res. Dist. v. Erickson, 2018 ND 228, ¶¶ 8, 12, 19, 918 N.W.2d 371
- State v. Hunter, 2018 ND 173, ¶¶ 44-45, 914 N.W.2d 527
- Wild Rice River Estates, Inc. v. City of Fargo, 2005 ND 193, ¶ 16, 705 N.W.2d 850
- Grand Forks-Traill Water Users, Inc. v. Hjelle, 413 N.W.2d 344, 346 (N.D. 1987)
- Dutchuk v. Bd. of Cty. Comm'rs, Billings Cty., 429 N.W.2d 21, 23 (N.D. Ct. App. 1988)
- City of Bristol v. Tilcon Minerals, Inc., 931 A.2d 237, 249 (Conn. 2007)
- Schultz v. Schultz, 2018 ND 259, ¶ 19, 920 N.W.2d 483
- Gissel v. Kenmare Twp., 512 N.W.2d 470, 475-77 (N.D. 1994)
- Arneson v. City of Fargo, 331 N.W.2d 30, 38-39 (N.D. 1983)
- City of Jamestown v. Leever's Supermarkets, Inc., 552 N.W.2d 365, 375 (N.D. 1996)