

SUPREME COURT OF NORTH CAROLINA

Wilkie v. City of Boiling Spring Lakes, 370 N.C. 540

809 S.E.2d 853 (2018) · No. No. 44PA17 · Decided March 2, 2018

SUMMARY

The Supreme Court of North Carolina considered whether property owners could pursue statutory inverse condemnation under N.C.G.S. § 40A-51 for temporary flooding allegedly caused by a municipality acting for a private purpose. The court held that references to N.C.G.S. § 40A-3(b) and (c) identify the entities subject to statutory inverse condemnation claims and do not require that the challenged act or omission have been undertaken for a public purpose. The court reversed the Court of Appeals and remanded for consideration of the municipality's remaining challenges.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Ervin, Justice
JURISDICTION	North Carolina
DECIDED	March 2, 2018
DOCKET	No. 44PA17
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On discretionary review of a unanimous Court of Appeals decision reversing a superior court order that found a temporary taking of plaintiffs' property and ordered further proceedings to determine compensation.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. The Court also reviewed the trial court's interlocutory condemnation order for the issues properly before the Court of Appeals.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Edward F. Wilkie, Debra T. Wilkie v. City of Boiling Spring Lakes

TOPICS

eminent domain municipal

statutory interpretation

municipal law

remedies

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether N.C.G.S. § 40A-51 requires a plaintiff asserting statutory inverse condemnation to prove that the condemnor acted for a public use or benefit.
2. Whether the reference in N.C.G.S. § 40A-51(a) to condemnors listed in N.C.G.S. § 40A-3(b) or (c) limits the purposes for which the condemnor may have acted or merely identifies the entities subject to a statutory inverse-condemnation action.
3. Whether the defendant's appeal from the trial court's condemnation order was properly before the Court of Appeals.

HOLDINGS

1. A plaintiff asserting a statutory inverse-condemnation claim under N.C.G.S. § 40A-51 need not prove that the condemnor acted for a public use or benefit. The statute permits an action when property has been taken by an act or omission of a condemnor listed in N.C.G.S. § 40A-3(b) or (c), without a filed complaint containing a declaration of taking.
2. The trial court did not err by denying plaintiffs' motion to dismiss defendant's appeal, and the Court of Appeals properly addressed defendant's challenges to the trial court's order on the merits.

KEY QUOTATIONS

“we conclude that the references to N.C.G.S. § 40A-3(b) and (c) contained in N.C.G.S. § 40A-51 serve to simply delineate the universe of entities against whom a statutory inverse condemnation action can be brought pursuant to N.C.G.S. § 40A-51 rather than limiting the acts or omissions that must be shown in order to permit the maintenance of the statutory inverse condemnation action authorized by N.C.G.S. § 40A-51.” (opinion at 11)

“As a result, we hold that the plain meaning of the reference to N.C.G.S. § 40A-3(b) and (c) contained in N.C.G.S. § 40A-51(a) is to specify the entities against whom a statutory inverse condemnation claim can be asserted and nothing more.” (opinion at 15)

FACTUAL BACKGROUND

Plaintiffs owned a house and lot bordering Spring Lake, a City-owned lake. In response to residents' concerns that the lake level had fallen, the City's Board of Commissioners authorized installation of elbows on outlet pipes to raise the lake level by approximately eight or nine inches. The elevated water allegedly submerged approximately 1,192 square feet of plaintiffs' property for about one year and twenty days before the elbows were removed. Plaintiffs sought compensation under North Carolina's statutory inverse-condemnation procedure, asserting that the flooding constituted a temporary taking.

PROCEDURAL HISTORY

Plaintiffs filed an inverse-condemnation action under N.C.G.S. § 40A-51 after the City's installation of raised pipe elbows caused Spring Lake to flood part of their property. Following a condemnation hearing, the superior

court found a temporary taking and ordered proceedings to determine compensation. The Court of Appeals reversed, holding that inverse condemnation was unavailable because the property was not taken for a public use or benefit, and remanded for consideration of plaintiffs' constitutional claims. The Supreme Court granted discretionary review on the statutory-interpretation issue, reversed the Court of Appeals, and remanded for consideration of the City's remaining challenges to the trial court's order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the North Carolina Court of Appeals for consideration of the City's remaining challenges to the trial court's order, including issues concerning foreseeability, the application of Arkansas Game & Fish Commission, estoppel, and the sufficiency of findings concerning the property allegedly taken.

CASES CITED

- Arkansas Game & Fish Commission v. United States, 568 U.S. 23, 133 S. Ct. 511, 184 L. Ed. 2d 417 (2012)
- Kirby v. North Carolina Department of Transportation, 368 N.C. 847, 786 S.E.2d 919 (2016)
- Long v. City of Charlotte, 306 N.C. 187, 293 S.E.2d 101 (1982)
- Penn v. Carolina Virginia Coastal Corp., 231 N.C. 481, 57 S.E.2d 817 (1950)
- HCA Crossroads Residential Ctrs., Inc. v. N.C. Dep't of Human Res., 327 N.C. 573, 398 S.E.2d 466 (1990)
- Lockhart v. United States, 136 S. Ct. 958, 194 L. Ed. 2d 48 (2016)
- Barnhart v. Thomas, 540 U.S. 20, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003)
- O & M Industries v. Smith Engineering Co., 360 N.C. 263, 624 S.E.2d 345 (2006)
- Puckett v. Sellars, 235 N.C. 264, 69 S.E.2d 497 (1952)
- Hoyle v. City of Charlotte, 276 N.C. 292, 172 S.E.2d 1 (1970)
- State Highway Commission v. L.A. Reynolds Co., 272 N.C. 618, 159 S.E.2d 198 (1968)
- In re Ernst & Young, LLP, 363 N.C. 612, 684 S.E.2d 151 (2009)
- Lenox, Inc. v. Tolson, 353 N.C. 659, 548 S.E.2d 513 (2001)
- Coastal Ready-Mix Concrete Co. v. Bd. of Comm'rs, 299 N.C. 620, 265 S.E.2d 379 (1980)
- Correll v. Div. of Soc. Servs., 332 N.C. 141, 418 S.E.2d 232 (1992)
- State v. Ward, 364 N.C. 157, 694 S.E.2d 729 (2010)
- In re Estate of Lunsford, 359 N.C. 382, 610 S.E.2d 366 (2005)
- State v. Beck, 359 N.C. 611, 614 S.E.2d 274 (2005)
- Black v. Littlejohn, 312 N.C. 626, 325 S.E.2d 469 (1985)
- Sheffield v. Consol. Foods Corp., 302 N.C. 403, 276 S.E.2d 422 (1981)
- City of Charlotte v. Spratt, 263 N.C. 656, 140 S.E.2d 341 (1965)
- City of Jacksonville v. Schumann, 167 So. 2d 95 (Fla. Dist. Ct. App. 1964), cert. denied, 172 So. 2d 597 (1965)

- Beroth Oil Co. v. N.C. Dep't of Transp., 367 N.C. 333, 757 S.E.2d 466 (2014)
- Lloyd v. Town of Venable, 168 N.C. 531, 84 S.E. 855 (1915)
- Kirkpatrick v. City of Jacksonville, 312 So. 2d 487 (Fla. Dist. Ct. App. 1975)
- Harris Cty. Flood Control Dist. v. Kerr, 499 S.W.3d 793 (Tex. 2016)

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