

SUPREME COURT OF VIRGINIA

Palmer v. Atlantic Coast Pipeline, LLC

801 S.E.2d 414 (Va. 2017) · No. Record No. 160630 · Decided July 13, 2017

SUMMARY

The Supreme Court of Virginia held that Code § 56-49.01 authorizes foreign natural gas companies doing business in Virginia to enter private property for surveys and related examinations. The court rejected the landowner's constitutional challenge to the entry-for-survey privilege and affirmed the circuit court's judgment. The court also held that an argument under Article IX, § 5 of the Virginia Constitution was waived because it was not properly presented below or in the opening appellate brief.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	William C. Mims; Goodwyn; Mims; McClanahan; Powell; Kelsey; McCullough; Millette, Senior Justice
JURISDICTION	Virginia
DECIDED	July 13, 2017
DOCKET	Record No. 160630
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the circuit court's order overruling Palmer's plea in bar and demurrer in ACP's declaratory-judgment action concerning its statutory authority to enter Palmer's property for pipeline surveys.
STANDARD OF REVIEW	De novo review applies to the purely legal questions of statutory and constitutional interpretation.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Hazel F. Palmer v. Atlantic Coast Pipeline, LLC

TOPICS

eminent domain statutory interpretation preservation of error appellate procedure constitutional law

PRACTICE AREAS

eminent domain real estate constitutional law appellate procedure statutory interpretation

QUESTIONS PRESENTED

1. Whether Code § 56-49.01 authorizes a foreign natural-gas company doing business in Virginia to enter private property without the owner's written permission to conduct preliminary surveys and related examinations.
2. Whether Palmer's argument under Article IX, § 5 of the Constitution of Virginia was preserved for appellate review.
3. Whether Code § 56-49.01 violates Article I, § 11 of the Constitution of Virginia by infringing a fundamental right to exclude others from private property.

HOLDINGS

1. Code § 56-49.01 applies to foreign natural-gas companies that do business in Virginia and meet the federal definition of a natural-gas company, including ACP.
2. Palmer waived her Article IX, § 5 argument because she did not present it to the circuit court and did not adequately argue it in her opening appellate brief; merely citing the constitutional provision and developing the argument for the first time in a reply brief was insufficient.
3. Code § 56-49.01 does not violate Article I, § 11 because Palmer's fundamental property rights do not include an absolute right to exclude ACP from conducting authorized preliminary surveys.

KEY QUOTATIONS

“Accordingly, by its plain language, Code § 56-49.01 applies to foreign natural gas companies as defined by 15 U.S.C. § 717a(6) that do business in Virginia, including ACP.” (at 4)

“In sum, Palmer’s right to exclude others is not absolute.” (at 8)

“In other words, the amendment did not add any sticks to Palmer’s bundle of property rights that did not already exist.” (at 10)

FACTUAL BACKGROUND

Atlantic Coast Pipeline, LLC, a Delaware public service company engaged in interstate natural-gas transportation, was pursuing FERC approval to construct a pipeline through Virginia. Hazel Palmer owned property along a proposed route. After Palmer refused ACP permission to conduct preliminary surveys, ACP gave notice of intent to enter under Code § 56-49.01 and filed a declaratory-judgment petition when Palmer continued to deny access.

PROCEDURAL HISTORY

ACP sought permission to enter Palmer's property for preliminary surveys connected with its FERC approval process. After Palmer refused, ACP provided statutory notice and filed a petition for declaratory judgment. The Augusta County Circuit Court overruled Palmer's plea in bar and demurrer, concluding that Code § 56-49.01 applied to ACP and that Palmer had no constitutionally protected right to exclude an authorized utility from entering for survey purposes. The Supreme Court of Virginia granted Palmer's appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- L.F. v. Breit, 285 Va. 163, 736 S.E.2d 711 (2013)
- Conger v. Barrett, 280 Va. 627, 702 S.E.2d 117 (2010)
- Turner v. Commonwealth, 226 Va. 456, 309 S.E.2d 337 (1983)
- Crown Cent. Petroleum Corp. v. Hill, 254 Va. 88, 488 S.E.2d 345 (1997)
- Reid v. Boyle, 259 Va. 356, 527 S.E.2d 137 (2000)
- Fisher v. Commonwealth, 236 Va. 403, 374 S.E.2d 46 (1988)
- McDonald v. Commonwealth, 274 Va. 249, 645 S.E.2d 918 (2007)
- Jones v. Commonwealth, 293 Va. 29, 795 S.E.2d 705 (2017)
- Floyd v. Commonwealth, 219 Va. 575, 249 S.E.2d 171 (1978)
- John Crane, Inc. v. Hardick, 283 Va. 358, 722 S.E.2d 610 (2012)
- Whitley v. Commonwealth, 223 Va. 66, 286 S.E.2d 162 (1982)
- Whitlock v. Hawkins, 105 Va. 242, 53 S.E. 401 (1906)
- In re Phillips, 265 Va. 81, 574 S.E.2d 270 (2003)
- Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984)
- Kaiser Aetna v. United States, 444 U.S. 164 (1979)
- Kovacs v. Cooper, 336 U.S. 77 (1949)
- Kelo v. City of New London, 545 U.S. 469 (2005)
- Etheridge v. Medical Center Hospitals, 237 Va. 87, 376 S.E.2d 525 (1989)
- Walton v. Commonwealth, 255 Va. 422, 497 S.E.2d 869 (1998)
- Duke v. County of Pulaski, 219 Va. 428, 247 S.E.2d 824 (1978)
- Board of Supervisors v. State Milk Commission, 191 Va. 1, 60 S.E.2d 35 (1950)
- Finney v. Hawkins, 189 Va. 878, 54 S.E.2d 872 (1949)
- Stickley v. Givens, 176 Va. 548, 11 S.E.2d 631 (1940)
- Dred Scott v. Sandford, 60 U.S. 393 (1857)
- Lochner v. New York, 198 U.S. 45 (1905)
- United States v. Carolene Products Co., 304 U.S. 144 (1938)
- Washington v. Glucksberg, 521 U.S. 702 (1997)
- Lawrence v. Texas, 539 U.S. 558 (2003)
- Obergefell v. Hodges, 576 U.S. 644, 135 S. Ct. 2584 (2015)