

COURT OF APPEALS OF GEORGIA

Department of Transportation v. Crapps

193 Ga. App. 846 (Ga. Ct. App. 1989) · Decided October 31, 1989

SUMMARY

The Georgia Court of Appeals affirmed a condemnation award involving the Department of Transportation and Crapps. The court held that the trial court properly refused a requested jury instruction concerning loss of parking space because the evidence did not establish that Crapps used the public right-of-way as a parking lot.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Pope; Banke, P. J.; Sognier, J.
JURISDICTION	Georgia
DECIDED	October 31, 1989
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Department of Transportation appealed from a condemnation award entered in favor of the appellees, arguing that the trial court improperly refused a requested jury instruction concerning compensation for loss of parking space on a public highway.
STANDARD OF REVIEW	Whether refusal to give a requested jury charge was error; the requested charge must be entirely correct and accurate and adjusted to the pleadings, law, and evidence.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Department of Transportation v. Crapps

TOPICS

- eminent domain
- real estate
- appellate procedure
- preservation of error

PRACTICE AREAS

- eminent domain
- real estate
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by refusing DOT's requested jury charge concerning an abutting landowner's lack of entitlement to compensation for loss of parking space on a public highway.

HOLDINGS

1. The trial court properly refused the requested charge because the testimony did not establish that Crapps used the highway right-of-way as a parking lot, and the proposed charge was broader than the evidence warranted.

KEY QUOTATIONS

“In order for a refusal to charge to be error, the written requests therefor must be entirely correct and accurate, and must be adjusted to the pleadings, the law, and the evidence in the case.” (846)

FACTUAL BACKGROUND

The condemnation proceeding involved property abutting a public highway and a condemnation award to Crapps. DOT argued that evidence supported an instruction stating that an owner is not entitled to compensation for loss of highway parking space. DOT's expert speculated that vehicles parked in a certain manner might partially occupy the right-of-way, but Crapps testified that vehicles ordinarily parked parallel and remained on his property, although a vehicle might sometimes overhang the sidewalk.

PROCEDURAL HISTORY

Following a condemnation proceeding and award to the appellees, the trial court refused DOT's requested charge regarding an abutting landowner's alleged use of the highway right-of-way for parking. DOT appealed, and the Court of Appeals of Georgia affirmed the judgment. Rehearing was denied on December 7, 1989.

DISPOSITION

affirmed

CASES CITED

- Wilkes v. Dept. of Transp., 176 Ga. App. 739, 742 (337 S.E.2d 404) (1985)

OPINION

POPE, J.

Pope, Judge. Appellant Department of Transportation (DOT) appeals from a condemnation award made to appellees. The sole enumeration of error is that the trial court erred in failing to give this requested charge: “Owners of land abutting a public highway have the right to use the highway along with other members of the public.

However, they are not entitled to the exclusive use of such property. Where a property owner uses a public highway or a portion thereof as a parking lot for himself or his customers, and as a result

of highway improvements, he is no longer able to use the highway for parking, the owner is not entitled to compensation for the loss of such parking space and you should not consider such fact in arriving at your verdict.” (Indention omitted.)

A review of the record does not support DOT’S argument that the evidence established that Crapps was using the highway or a portion of it as a parking lot. The DOT’s expert testified that, in his opinion, if cars parked a certain way, they would be partially within the right-of-way.

However, Crapps testified that cars did not park perpendicularly and when parked parallel, as was the usual practice, they were on his property. On cross, Crapps conceded that, in some situations, some portion of a parked car might overhang the sidewalk. Held: “ ‘In order for a refusal to charge to be error, the written requests therefor must be entirely correct and accurate, and must be adjusted to the pleadings, the law, and the evidence in the case.

(Cit.)’ [Cit.]” Wilkes v. Dept. of Transp., 176 Ga. App. 739, 742 (337 SE2d 404) (1985). The testimony relied upon by DOT to support the charge did not establish that Crapps used the right-of-way as a parking lot; it merely speculated that if vehicles parked a certain way, a portion of the right-of-way might be used.

The request is broader than the evidence warranted and was refused properly. Judgment affirmed. Banke, P. J., and Sognier, J., concur. *847Decided October 31, 1989 Rehearing denied December 7, 1989. Michael J. Bowers, Attorney General, Roland F. Matson, Assistant Attorney General, Zorn & Caldwell, William A. Zorn, for appellant. Miles, Baker & Morris, Keith M. Morris, for appellees.