

SUPREME COURT OF ARKANSAS

Linder v. Arkansas Midstream Gas Services Corp.

362 S.W.3d 889 (Ark. 2010) · Decided March 11, 2010

SUMMARY

The Arkansas Supreme Court considered whether Arkansas Code Annotated section 23-15-101 unconstitutionally delegated eminent-domain authority to Arkansas Midstream Gas Services Corporation for a private use. The court held that a pipeline operated as a common carrier serves a public use because members of the public have an equal legal right to use it, even if only a limited number of users initially do so. The court affirmed the circuit court’s ruling that the statute was constitutional as applied to the proposed natural-gas pipeline.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Robert L. Brown
JURISDICTION	Arkansas
DECIDED	March 11, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a certified final order granting Arkansas Midstream authority to exercise eminent domain over the appellants' land for construction and maintenance of a natural-gas pipeline. The Arkansas Supreme Court treated the appellants' motion for judgment on the pleadings as a summary-judgment matter because the circuit court considered an affidavit outside the pleadings.
STANDARD OF REVIEW	Because matters outside the pleadings were considered, the court reviewed the ruling as summary judgment. Where the issue concerns application of legal principles rather than disputed factual issues, the court determines whether the appellee was entitled to judgment as a matter of law. Legal conclusions are reviewed de novo and given no deference.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential authority.
PARTIES	Perry L. Linder, Kathy A. Linder v. Arkansas Midstream Gas Services Corporation

TOPICS

takings clause

constitutional law

real estate

PRACTICE AREAS

constitutional law

eminent domain

real estate

QUESTIONS PRESENTED

1. Whether Arkansas Code Annotated section 23-15-101 is unconstitutional as applied because it delegates eminent-domain authority to a private, for-profit pipeline company for a private rather than public use.
2. Whether the circuit court properly entered summary judgment determining that Midstream could exercise eminent-domain authority over the Linders' property.

HOLDINGS

1. Section 23-15-101 is constitutional as applied because a pipeline operated as a common carrier serves a public use when members of the public have the right to use it on equal terms, even if only a limited number of users are expected to do so.
2. The circuit court properly determined that Midstream was entitled to proceed with the eminent-domain action, and the court affirmed the certified final order.

KEY QUOTATIONS

“The distinction between public and private use is qualitative — not quantitative.”

“The character of a taking, whether public or private, is determined by the extent of the right to use it, and not by the extent to which that right is exercised.”

“By exercising the right of eminent domain under section 23-15-101, Midstream has elected to operate its pipeline as a common carrier, giving the public the equal right to use the pipeline to transport natural gas.”

FACTUAL BACKGROUND

Arkansas Midstream sought to construct a natural-gas gathering pipeline across the Linders' Cleburne County property after the parties failed to negotiate a right-of-way agreement. The pipeline would connect natural-gas production wells to a main trunk transportation line and would transport gas owned by multiple working-interest and royalty owners. Midstream represented that it would operate the pipeline as a common carrier, making it available on equal terms to members of the public having occasion to use it.

PROCEDURAL HISTORY

Midstream petitioned the Cleburne County Circuit Court for eminent-domain authority after negotiations for a pipeline right-of-way failed. The circuit court entered an order of possession, denied the Linders' motion for judgment on the pleadings, injunction, and damages, and ruled that Midstream could proceed under Arkansas Code Annotated sections 23-15-101 and 18-15-1303. The court certified the order as final under Arkansas Rule

of Civil Procedure 54(b), with just compensation remaining for later determination. The Arkansas Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Bennett v. Spaight, 372 Ark. 446, 277 S.W.3d 182 (2008)
- Ruth R. Remmel Revocable Trust v. Regions Fin. Corp., 369 Ark. 392, 255 S.W.3d 453 (2007)
- Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239
- Robinson v. Villines, 2009 Ark. 632, 362 S.W.3d 870
- Pfeifer v. City of Little Rock, 346 Ark. 449, 57 S.W.3d 714 (2001)
- Ark. State Highway Comm'n v. Alcott, 260 Ark. 225, 539 S.W.2d 432 (1976)
- Ozark Coal Co. v. Pennsylvania Anthracite R.R. Co., 97 Ark. 495, 134 S.W. 634 (1911)
- City of Little Rock v. Raines, 241 Ark. 1071, 411 S.W.2d 486 (1967)
- Roberts v. Williams, 15 Ark. 43 (1854)
- Mountain Park Terminal R.R. Co. v. Field, 76 Ark. 239, 88 S.W. 897 (1905)
- Hogue v. Housing Auth. of N. Little Rock, 201 Ark. 263, 144 S.W.2d 49 (1940)
- City of El Dorado v. Kidwell, 236 Ark. 905, 370 S.W.2d 602 (1963)
- Woollard v. State Highway Comm'n, 220 Ark. 731, 249 S.W.2d 564 (1952)
- Landmark Novelties, Inc. v. Ark. State Bd. of Pharmacy, 2010 Ark. 40, 358 S.W.3d 890
- St. Louis, Iron Mountain & S. Ry. Co. v. Petty, 57 Ark. 359, 21 S.W. 884 (1893)
- Hale v. Sw. Ark. Water Dist., 244 Ark. 647, 427 S.W.2d 14 (1968)
- Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan, 293 Ark. 576, 740 S.W.2d 127 (1987)
- Arkadelphia Milling Co. v. Smoker Merch. Co., 100 Ark. 37, 139 S.W. 680 (1911)
- Phillips v. Watson, 63 Iowa 28, 18 N.W. 659 (1884)
- Dowling v. Erickson, 278 Ark. 142, 644 S.W.2d 264 (1983)
- Pippin v. May, 78 Ark. 18, 93 S.W. 64 (1906)
- Clear Creek Oil & Gas Co. v. Fort Smith Spelter Co., 148 Ark. 260, 230 S.W. 897 (1921)
- Rindge Co. v. County of Los Angeles, 262 U.S. 700, 43 S. Ct. 689, 67 L. Ed. 1186 (1923)