

SUPREME COURT OF SOUTH DAKOTA

Rupert v. City of Rapid City

2013 S.D. 13 (2013) · No. #26252, #26265 · Decided January 30, 2013

SUMMARY

The South Dakota Supreme Court reviewed an inverse-condemnation action arising from the City of Rapid City's use of deicer, which allegedly killed trees on the plaintiffs' property. The Court affirmed summary judgment establishing the City's inverse-condemnation liability but reversed the trial court's pretrial determination concerning the proper measure and permanence of damages, remanding for the fact finder to determine whether the damage was temporary or permanent.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	David Gilbertson, Chief Justice; John K. Zinter, Justice; W. K. Severson, Justice; Mark E. Wilbur, Justice; Janine Kern Hoffman, Circuit Court Judge, sitting for Justice Konenkamp
JURISDICTION	South Dakota
DECIDED	January 30, 2013
DOCKET	#26252, #26265
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City appealed several rulings in an inverse condemnation action, and the Ruperts filed a notice of review concerning attorney fees and summary judgment on their negligence and trespass claims.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. Constitutional-right issues and conclusions of law are reviewed de novo. A summary judgment ruling will be affirmed if any legal basis supports it.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	City of Rapid City, South Dakota v. Conrad D. Rupert, Reone A. Rupert

TOPICS

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QUESTIONS PRESENTED

1. Whether the Ruperts presented sufficient evidence that the City's conduct caused a peculiar injury to their property, different in kind from injury suffered by the general public, to support inverse condemnation.
2. Whether the trial court properly determined before trial that restoration and replacement costs, together with loss-of-shade, ornamental, aesthetic, and enjoyment damages, were the proper measure of just compensation.
3. Whether SDCL 21-35-23 authorizes an award of attorney fees in an inverse condemnation action.
4. Whether the Ruperts could recover separately under negligence or trespass theories for the same governmental damaging of their property.

HOLDINGS

1. The Ruperts presented sufficient evidence that the City's deicer caused a peculiar injury to their property that was different in kind, rather than merely degree, from any injury suffered by the general public. Summary judgment establishing the City's inverse condemnation liability was therefore proper.
2. The trial court erred by deciding on summary judgment that the property damage was temporary and that restoration and replacement costs were the proper measure of compensation. Whether the damage was temporary or permanent was a fact question for the jury, and evidence of diminution in fair market value should have been admitted.
3. SDCL 21-35-23 does not expressly authorize attorney fees in inverse condemnation actions. The Ruperts were therefore not entitled to attorney fees under that statute, and the circuit court properly denied their request.
4. When a governmental entity's authorized conduct constitutes a taking or damaging of property compensable under Article VI, section 13 of the South Dakota Constitution, the landowner's exclusive remedy is just compensation through inverse condemnation, not separate negligence or trespass damages.

KEY QUOTATIONS

“Instead, the viability of a takings claim is dependent upon “situation-specific factual inquiries.”” (§ 10)

“The landowner may generally only recover restoration costs if that amount does not exceed the diminution in value of the property.” (§ 27)

“Although we note that condemnation and inverse condemnation share some similarities, we will not apply the terms interchangeably for purposes of awarding attorney fees under SDCL 21-35-23 without express

FACTUAL BACKGROUND

During the winters beginning no later than 2004-2005, Rapid City applied deicer to streets adjacent to the Ruperts' property. Runoff allegedly entered the property and killed 42 mature pine trees and other vegetation. Evidence showed that the damage was confined to the Ruperts' property, that comparable trees across the road were healthy, and that sodium levels in the Ruperts' soil and foliage were significantly elevated. The City intended to continue using the deicer, although a curb and gutter might prevent future runoff.

PROCEDURAL HISTORY

The Ruperts sued Rapid City after deicer runoff allegedly killed trees and vegetation on their property. The circuit court granted the City summary judgment on the negligence and trespass claims, granted the Ruperts summary judgment establishing liability on their inverse condemnation claim, and submitted only the amount of just compensation to a jury. The jury awarded \$126,530. The circuit court denied attorney fees and excluded evidence concerning diminution in the property's fair market value. The Supreme Court affirmed liability on inverse condemnation and the denial of attorney fees, but reversed the damages ruling and remanded for a new trial on compensation.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new trial on the amount of just compensation. The jury must determine whether the damage to the Ruperts' property was temporary or permanent. Evidence concerning the property's diminution in fair market value before and after the damage must be admitted. If the damage is permanent, diminution in fair market value is the measure; if temporary, reasonable restoration costs may be awarded only if they do not exceed diminution in value.

CASES CITED

- Hall v. S.D. Department of Transportation, 2011 S.D. 70, 806 N.W.2d 217
- Krier v. Dell Rapids Township, 2006 S.D. 10, 709 N.W.2d 841
- State Highway Commission v. Bloom, 77 S.D. 452, 93 N.W.2d 572 (1958)
- DeLisio v. Alaska Superior Court, 740 P.2d 437 (Alaska 1987)
- Bakke v. State, 744 P.2d 655 (Alaska 1987)
- Searle v. City of Lead, 10 S.D. 312, 73 N.W. 101 (1897)
- City of Brookings v. Mills, 412 N.W.2d 497 (S.D. 1987)
- Arkansas Game & Fish Commission v. United States, 133 S. Ct. 511 (2012)
- Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821)
- State Highway Commission v. Bredvik, 268 N.W.2d 144 (S.D. 1978)

- Parsons v. City of Sioux Falls, 65 S.D. 145, 272 N.W. 288 (1937)
- Lamar Advertising of S.D., Inc. v. Heavy Constructors, Inc., 2008 S.D. 10, 745 N.W.2d 371
- Melstad v. Kovac, 2006 S.D. 92, 723 N.W.2d 699
- Corson Village Sanitary District v. Strozdas, 539 N.W.2d 876 (S.D. 1995)
- City of Sioux Falls v. Kelley, 513 N.W.2d 97 (S.D. 1994)
- State Highway Commission v. American Memorial Parks, Inc., 82 S.D. 231, 144 N.W.2d 25 (1966)
- Hurley v. State, 81 S.D. 318, 134 N.W.2d 782 (1965)
- Heezen v. Aurora County, 83 S.D. 198, 157 N.W.2d 26 (1968)
- Walkenhorst v. State Department of Roads, 573 N.W.2d 474 (Neb. 1998)
- Sanitary & Improvement District No. 384 v. Bruhns Packing Co., 609 N.W.2d 679 (Neb. 2000)
- Schuler v. Board of Supervisors, 12 S.D. 460, 81 N.W. 890 (1900)
- Ward v. LaCreek Electric Association, 83 S.D. 584, 163 N.W.2d 344 (1968)
- Reed v. Consolidated Feldspar Corp., 71 S.D. 189, 23 N.W.2d 154 (1946)
- Lawrence County v. Miller, 2010 S.D. 60, 786 N.W.2d 360
- Basin Electric Power Cooperative, Inc. v. Cutler, 88 S.D. 214, 217 N.W.2d 798 (1974)
- Wallahan v. Black Hills Electric Cooperative, 523 N.W.2d 417 (S.D. 1994)
- Bailey v. Chicago, Milwaukee & St. Paul Railway Co., 3 S.D. 531, 54 N.W. 596 (1893)
- Akers v. City of Oak Grove, 246 S.W.3d 916 (Mo. 2008)
- Bosse v. Quam, 537 N.W.2d 8 (S.D. 1995)
- Schoenrock v. Tappe, 419 N.W.2d 197 (S.D. 1988)
- Boland v. City of Rapid City, 315 N.W.2d 496 (S.D. 1982)
- Toft v. Toft, 2006 S.D. 91, 723 N.W.2d 546
- In re South Dakota Microsoft Antitrust Litigation, 2005 S.D. 113, 707 N.W.2d 85
- In re Request for Opinion of Supreme Court Relative to Constitutionality of SDCL 21-32-17, 379 N.W.2d 822 (S.D. 1985)
- State ex rel. Department of Transportation v. Clark, 2011 S.D. 20, 798 N.W.2d 160
- Hurley v. State, 82 S.D. 156, 143 N.W.2d 722 (1966)
- Benson v. State, 2006 S.D. 8, 710 N.W.2d 131
- Kaukauna Water-Power Co. v. Green Bay & Mississippi Canal Co., 142 U.S. 254 (1891)
- Ashley Park Charlotte Associates v. City of Charlotte, 827 F. Supp. 1223 (W.D.N.C. 1993)