

SUPREME COURT OF OREGON

Coast Range Conifers, LLC v. State ex rel. Oregon State Board of Forestry, 339 Or. 136

117 P.3d 990 (2005) · No. SC S51342 · Decided August 11, 2005

SUMMARY

The Oregon Supreme Court held that state wildlife regulations restricting logging around a bald eagle nest did not constitute a taking under either Article I, section 18, of the Oregon Constitution or the Fifth Amendment. For the state constitutional regulatory-takings analysis, the court adopted the whole-parcel rule and evaluated the owner's economically viable use of the entire contiguous 40-acre parcel rather than only the affected nine acres. Because the owner could still log more than three-fourths of the property, the court reversed the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Kistler, J.
JURISDICTION	Oregon
DECIDED	August 11, 2005
DOCKET	SC S51342
DISPOSITION	reversed
PROCEDURAL POSTURE	The Oregon Supreme Court granted the state's petition for review of a Court of Appeals decision reversing summary judgment for the state in a regulatory-takings action.
STANDARD OF REVIEW	Summary judgment is reviewed for legal error. Whether undisputed historical facts establish a regulatory taking is a question of law for the court, not a jury.
PRECEDENTIAL VALUE	Published, precedential Oregon Supreme Court opinion; en banc.
PARTIES	State of Oregon, by and through the Oregon State Board of Forestry v. Coast Range Conifers, LLC

TOPICS

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QUESTIONS PRESENTED

1. Whether Article I, section 18, of the Oregon Constitution applies to regulations that restrict the use of private property, or only to physical appropriations.
2. Whether the Oregon Constitution's regulatory-takings analysis requires the court to consider the entire 40-acre parcel or only the nine acres affected by the wildlife regulation.
3. Whether the timber interest could be treated separately from the underlying real property for purposes of the takings analysis.
4. Whether the wildlife regulation effected a federal taking under the substantially-advances theory, Lucas, Loretto, or Penn Central.
5. Whether the Penn Central issue had to be submitted to a jury.

HOLDINGS

1. Article I, section 18, of the Oregon Constitution is not limited to physical appropriations; regulations that deny an owner any economically viable use of property can constitute a taking requiring compensation.
2. Under Article I, section 18, the court must consider the owner's ability to use the whole parcel owned in determining whether the property retains any economically viable use.
3. The timber was part of the underlying real property because no contract to sever it existed; therefore, the court could not treat the nine acres of timber as a separate property interest for the takings analysis.
4. The wildlife regulation did not effect a taking under Article I, section 18, because plaintiff retained an economically viable use of the 40-acre parcel and could log more than three-fourths of it.
5. The regulation did not effect a taking under the Fifth Amendment because the substantially-advances theory was no longer valid after Lingle, the whole parcel retained economically beneficial use under Lucas, the regulation did not authorize a physical occupation under Loretto, and the undisputed historical facts permitted the court to resolve the Penn Central claim as a matter of law.

KEY QUOTATIONS

“Under Article I, section 18, of the Oregon Constitution, a court should consider a property owner's ability to use the whole parcel that he or she owns in determining whether the property retains any economically viable use.” (339 Or. at 997)

“Because plaintiff's property has an economically viable use, the challenged regulation does not effect a taking under Article I, section 18, of the Oregon Constitution.” (339 Or. at 998)

“Penn Central makes clear that the question whether the undisputed historical facts establish that a challenged regulation effects a taking presents a question of law for the court.” (339 Or. at 1000)

FACTUAL BACKGROUND

Coast Range Conifers acquired a contiguous 40-acre timber parcel in 1996. A bald eagle nest was discovered on the property, and state wildlife regulations required State Forester approval for logging activities near a protected nesting site. The State Forester approved logging on approximately 31 acres but denied a later plan to log the remaining nine acres because the area was an active bald eagle resource site and the plan did not adequately protect it. Plaintiff asserted that the prohibition deprived the nine acres of all economic value and constituted a taking under the Oregon and federal constitutions.

PROCEDURAL HISTORY

The State Forester denied plaintiff's plan to log the nine acres surrounding a bald eagle nest, and the Oregon Board of Forestry affirmed after a contested case hearing. The circuit court granted the state's motion for summary judgment and denied plaintiff's partial-summary-judgment motion. The Court of Appeals reversed, holding under the Oregon Constitution that the regulation took the affected nine acres. The Supreme Court reversed the Court of Appeals and affirmed the circuit court.

DISPOSITION

reversed

CASES CITED

- Coast Range Conifers v. Board of Forestry, 189 Or. App. 531, 76 P.3d 1148 (2003), adhered to on reconsideration, 192 Or. App. 126, 83 P.3d 966 (2004)
- State v. Kennedy, 295 Or. 260, 262, 666 P.2d 1316 (1983)
- Priest v. Pearce, 314 Or. 411, 415-16, 840 P.2d 65 (1992)
- State v. Rogers, 330 Or. 282, 297, 4 P.3d 1261 (2000)
- McQuaid v. Portland & V. Ry. Co., 18 Or. 237, 22 P. 899 (1889)
- Iron Works v. O.R. & N. Co., 26 Or. 224, 228-29, 37 P. 1016 (1894)
- Morrison v. Clackamas County, 141 Or. 564, 18 P.2d 814 (1933)
- Thornburg v. Port of Portland, 233 Or. 178, 192, 376 P.2d 100 (1962)
- Boise Cascade Corp. v. Board of Forestry, 325 Or. 185, 198, 935 P.2d 411 (1997)
- Dodd v. Hood River County, 317 Or. 172, 181-82, 855 P.2d 608 (1993)
- Vokoun v. City of Lake Oswego, 335 Or. 19, 26, 56 P.3d 396 (2002)
- Suess Builders v. City of Beaverton, 294 Or. 254, 259, 656 P.2d 306 (1982)
- Fifth Avenue Corp. v. Washington County, 282 Or. 591, 581 P.2d 50 (1978)
- City of Salem v. H.S.B., 302 Or. 648, 653, 733 P.2d 890 (1987)
- Oregon R. & Nav. Co. v. Taffe, 67 Or. 102, 134 P. 1024, reh'g denied, 67 Or. 102, 135 P. 332 (1913)
- Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124, 130-31, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978)
- Agins v. Tiburon, 447 U.S. 255, 260, 100 S. Ct. 2138, 65 L. Ed. 2d 106 (1980)

- *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005)
- *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1016-19, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992)
- *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 331, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002)
- *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 644-45, 113 S. Ct. 2264, 124 L. Ed. 2d 539 (1993)
- *Palazzolo v. Rhode Island*, 533 U.S. 606, 630-32, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001)
- *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 427 n.5, 436-37, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982)
- *Seiber v. United States*, 364 F.3d 1356, 1366-67 (Fed. Cir. 2004), cert. denied, 544 U.S. 1033 (2005)
- *Boise Cascade Corp. v. United States*, 296 F.3d 1339, 1352-57 (Fed. Cir. 2002), cert. denied, 538 U.S. 906 (2003)
- *Boise Cascade Corp. v. Board of Forestry*, 164 Or. App. 114, 125-26, 991 P.2d 563 (1999), rev. denied, 331 Or. 244, 18 P.3d 1099 (2000)
- *Florida Rock Industries, Inc. v. United States*, 18 F.3d 1560, 1571-73 (Fed. Cir. 1994), cert. denied, 513 U.S. 1109 (1995)
- *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 498-502, 107 S. Ct. 1232, 94 L. Ed. 2d 472 (1987)