

SUPREME COURT OF NEBRASKA

Burlington Northern & Santa Fe Railway Co. v. Chaulk

262 Neb. 235 (2001) (Neb. 2001) · No. No. S-00-212 · Decided July 20, 2001

SUMMARY

The Nebraska Supreme Court affirmed the dismissal of Burlington Northern and Santa Fe Railway Company's action seeking injunctive relief to enter private land for surveys and geotechnical testing in connection with a proposed rail bypass. The court held that Nebraska Revised Statutes § 76-702 authorizes precondemnation entry for examining and surveying but does not authorize intrusive testing such as drilling and extracting core samples. The proposed testing constituted a temporary taking that had to be conducted through the procedures governing eminent domain.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; McCormack, J.
JURISDICTION	Nebraska
DECIDED	July 20, 2001
DOCKET	No. S-00-212
DISPOSITION	affirmed
PROCEDURAL POSTURE	BNSF sought preliminary and permanent injunctive relief under Neb. Rev. Stat. § 76-702 to enter private land and conduct surveys, environmental investigations, and geotechnical core drilling in contemplation of a possible railroad bypass. After a bench trial, the district court denied the injunctions and dismissed the petition. BNSF appealed.
STANDARD OF REVIEW	Because the action for injunction sounded in equity, the Supreme Court reviewed factual questions de novo on the record and independently reviewed questions of law. Statutory interpretation was reviewed as a question of law. Eminent-domain statutes were strictly construed.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Burlington Northern and Santa Fe Railway Company v. Sue H. Chaulk, Kevin L. Blehm, Daniel N. Dailey, Janet K. Dailey, Other

TOPICS

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PRACTICE AREAS

eminent domain real estate statutory interpretation constitutional law equitable relief
appellate procedure

QUESTIONS PRESENTED

1. Whether Neb. Rev. Stat. § 76-702 authorizes a railroad condemnor to enter private land to conduct geotechnical tests, including drilling and extracting deep core samples, in contemplation of condemnation proceedings.
2. Whether the district court's denial of injunctive relief and dismissal of BNSF's petition should be affirmed on a ground different from the district court's public-use analysis.

HOLDINGS

1. Neb. Rev. Stat. § 76-702 authorizes a condemnor to enter land for examining and surveying, but it does not authorize the intrusive geotechnical testing and core drilling proposed by BNSF.
2. The proposed geotechnical tests and investigations constituted a temporary taking that had to be accomplished through the manner prescribed by Nebraska's eminent-domain laws.

KEY QUOTATIONS

“Considering the plain language of § 76-702, the authority to enter land granted under § 76-702 for “examining and surveying” prescribes activities far less intrusive than the drilling and sample gathering for geotechnical studies proposed by BNSF.” (631 N.W.2d at 138)

“The authority granted a condemnor such as BNSF under § 76-702, however, does not include entry upon property for testing or investigating, and, instead, is limited to entry upon land for the purpose of “examining and surveying.”” (631 N.W.2d at 139)

“The geotechnical tests and investigations that BNSF seeks to conduct upon the defendant property owners’ land exceed the statutory authority given to BNSF under § 76-702 for which injunctive relief of entry for the purpose of conducting such tests and investigations was sought in the petition.” (631 N.W.2d at 140)

FACTUAL BACKGROUND

BNSF considered constructing a roughly 25.5-mile bypass route in Morrill County to avoid a congested railroad intersection and the steep Angora Hill grade. To assess feasibility, BNSF sought access to privately owned land for alignment, cultural, biological, environmental, hydraulic, and geotechnical investigations, including drilling two-inch-diameter core samples approximately 50 feet deep at intervals along the proposed route. The property

owners refused access, and BNSF sought injunctions authorizing entry under Nebraska's precondemnation-entry statute.

PROCEDURAL HISTORY

BNSF filed its action in the Morrill County District Court after property owners refused to grant right-of-entry permits. The district court concluded that BNSF had not proved that the proposed bypass was for a public use and denied relief. The Nebraska Supreme Court affirmed, but on the different ground that the proposed testing constituted a temporary taking and exceeded the activities authorized by § 76-702.

DISPOSITION

affirmed

CASES CITED

- White v. Board of Regents, 260 Neb. 26, 614 N.W.2d 330 (2000)
- Affiliated Foods Co-op. v. State, 259 Neb. 549, 611 N.W.2d 105 (2000)
- SID No. 1 v. Nebraska Public Power District, 253 Neb. 917, 573 N.W.2d 460 (1998)
- Burger v. City of Beatrice, 181 Neb. 213, 147 N.W.2d 784 (1967)
- Van Patten v. City of Omaha, 167 Neb. 741, 94 N.W.2d 664 (1959)
- Gustin v. Scheele, 250 Neb. 269, 549 N.W.2d 135 (1996)
- Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951)
- Engelhaupt v. Village of Butte, 248 Neb. 827, 539 N.W.2d 430 (1995)
- Chimney Rock Irrigation District v. Fawcus Springs Irrigation District, 218 Neb. 777, 359 N.W.2d 100 (1984)
- In re Referral of Lower Platte South NRD, 261 Neb. 90, 621 N.W.2d 299 (2001)
- Muir v. Nebraska Department of Motor Vehicles, 260 Neb. 450, 618 N.W.2d 444 (2000)
- Whitehead Oil Co. v. City of Lincoln, 245 Neb. 680, 515 N.W.2d 401 (1994)
- Maloley v. City of Lexington, 3 Neb. App. 976, 536 N.W.2d 916 (1995)
- Missouri Highway & Transportation Commission v. Eilers, 729 S.W.2d 471 (Mo. Ct. App. 1987)
- County of Kane v. Elmhurst National Bank, 111 Ill. App. 3d 292, 443 N.E.2d 1149, 67 Ill. Dec. 25 (1982)
- Hicks v. Texas Municipal Power Agency, 548 S.W.2d 949 (Tex. Civ. App. 1977)