

SUPREME COURT OF COLORADO

Department of Transportation, State of Colorado v. Amerco Real Estate Company

2016 CO 62 (Colo. 2016) · No. 16SA75 · Decided September 26, 2016

SUMMARY

The Colorado Supreme Court considered whether the Colorado Transportation Commission unlawfully delegated its statutory authority to select particular properties for condemnation to the Colorado Department of Transportation. The court held that the Commission was required to determine whether acquiring the particular properties served the public interest or convenience and could not delegate that judgment absent express legislative authorization. The court made its rule to show cause absolute and remanded with orders to dismiss the condemnation petition.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Coats; Justice Gabriel; Chief Justice Rice; Justice Hood
JURISDICTION	Colorado
DECIDED	September 26, 2016
DOCKET	16SA75
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Amerco and U-Haul sought relief under C.A.R. 21 from a Jefferson County District Court order denying dismissal of the Department's condemnation petition and granting the Department immediate possession of the property.
STANDARD OF REVIEW	Original relief under C.A.R. 21 is discretionary and may be appropriate to correct an abuse of discretion or excess of jurisdiction when no other adequate remedy exists. The statutory-interpretation issues were reviewed as questions of law; the court also noted the absence of factual disputes.
PRECEDENTIAL VALUE	published and precedential; en banc Colorado Supreme Court decision
PARTIES	Department of Transportation, State of Colorado v. Amerco Real Estate Company, U-Haul Co. of Colorado, Wells Fargo Foothill, Inc., Wells Fargo Bank, National Association, Merrill Lynch Commercial

Finance Corporation, Public Service Company of Colorado, Margaret Chapman, Public Trustee of Jefferson County, Tim Kaufman, Treasurer of Jefferson County

TOPICS

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PRACTICE AREAS

administrative law eminent domain statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether the Colorado Transportation Commission's statutory duty to determine which particular properties should be acquired for a proposed state-highway alteration and the applicable acquisition method or compensation limits could be delegated to the Department of Transportation.
2. Whether the Commission's general authorization and resolutions supplied the statutory authority necessary for the Department to condemn U-Haul's particular property.
3. Whether relief under C.A.R. 21 was appropriate to review the district court's order granting immediate possession.

HOLDINGS

1. The Commission could not delegate to the Department the discretionary choice of particular properties to be taken for a highway alteration project, the amount or method of compensation to be offered for those properties, or whether to acquire them through condemnation.
2. The Department lacked authority to pursue condemnation of U-Haul's property because the Commission had not itself approved the taking of that particular property by the written resolution required by section 43-1-208.
3. Relief under C.A.R. 21 was appropriate because the district court's immediate-possession order threatened the taking and destruction of property, the dispute involved a recurring legal question concerning the Department's condemnation practice, and no factual development was necessary.

KEY QUOTATIONS

“the commission’s general authorization, to the extent it purports to delegate to the department the choice of particular properties to be taken for such a highway project and the manner of their taking, constitutes an unlawful delegation of the commission’s statutorily imposed obligation.” (¶ 2)

“the decision whether, and if so precisely how and for how much, to take particular property, for a particular proposed highway alteration project, clearly involves the kind of judgment and discretion that is non-delegable in the absence of express statutory authorization.” (¶ 15)

“Because the commission could not delegate its statutory obligation to determine the specific properties it would serve the public interest or convenience to take for the US6 and Wadsworth Boulevard Interchange

expansion project and did not itself approve the taking of U-Haul's particular property by written resolution, in the manner required by statute, the rule is made absolute, and the matter is remanded to the district court with orders to dismiss the department's Petition in Condemnation." (§ 18)

FACTUAL BACKGROUND

The Department sought to condemn land owned by Amerco and occupied by U-Haul for a highway expansion project at the US 6 and Wadsworth Boulevard interchange. The Department relied on a 1994 Transportation Commission resolution delegating approval of land acquisitions for previously approved highway projects to the Department's executive director or delegatee, a 2009 resolution approving the project, and a chief engineer's land-acquisition approval covering the property and approximately twenty other parcels. The Transportation Commission did not itself adopt a written resolution approving the taking of U-Haul's particular property or making a parcel-specific determination regarding public interest, damages, or benefits.

PROCEDURAL HISTORY

The Colorado Department of Transportation filed a petition in condemnation to acquire Amerco's property, occupied by U-Haul, for expansion of the US 6 and Wadsworth Boulevard interchange. The district court denied the respondents' motion to dismiss for lack of condemnation authority and granted the Department immediate possession. The Colorado Supreme Court issued a rule to show cause and made the rule absolute, directing dismissal of the condemnation petition.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The rule to show cause was made absolute. The district court was ordered to dismiss the Department's Petition in Condemnation.

CASES CITED

- Dep't of Transp. v. Gypsum Ranch Co., 244 P.3d 127 (Colo. 2010)
- People v. Jones, 2015 CO 20, 346 P.3d 44
- Pham v. State Farm, 2013 CO 17, 296 P.3d 1038
- Frank M. Hall & Co. v. Newsom, 125 P.3d 444 (Colo. 2005)
- People v. Owens, 228 P.3d 969 (Colo. 2010)
- Holcomb v. Jan-Pro Cleaning Sys., 172 P.3d 888 (Colo. 2007)
- Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997)
- Piz v. Hous. Auth. of the City & Cty. of Denver, 289 P.2d 905, 913 (Colo. 1955)
- Wheat Ridge Urban Renewal Auth. v. Cornerstone Grp. XXII, L.L.C., 176 P.3d 737, 742 (Colo. 2007)
- Big Sandy Sch. Dist. No. 100-J, Elbert Cty. v. Carroll, 433 P.2d 325, 328 (Colo. 1967)
- Normandy Estates Metro. Recreation Dist. v. Normandy Estates, Ltd., 553 P.2d 386 (Colo. 1976)

- Dep't of Transp. v. Stapleton, 97 P.3d 938 (Colo. 2004)
- Coquina Oil Corp. v. Harry Kourlis Ranch, 643 P.2d 519, 522 (Colo. 1982)
- Platte River Power Auth. v. Nelson, 775 P.2d 82, 83 (Colo. App. 1989)
- People v. Holmes, 959 P.2d 406, 409 (Colo. 1998)
- Swisher v. Brown, 402 P.2d 621, 626 (Colo. 1965)
- Hickerson v. Vessels, 2014 CO 2, 316 P.3d 620
- Aetna Cas. & Sur. Co. v. McMichael, 906 P.2d 92, 97 (Colo. 1995)
- Reno v. Marks, 2015 CO 33, 349 P.3d 248
- Denver Post Corp. v. Ritter, 255 P.3d 1083, 1089 (Colo. 2011)
- Turbyne v. People, 151 P.3d 563, 567 (Colo. 2007)
- People v. N. Ave. Furniture & Appliance, Inc., 645 P.2d 1291, 1298 (Colo. 1982)

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