

SUPREME COURT OF SOUTH DAKOTA

Lewis & Clark Rural Water System, Inc. v. Seeba

709 N.W.2d 824 (S.D. 2006) · No. Nos. 23737, 23738 · Decided January 20, 2006

SUMMARY

The Supreme Court of South Dakota addressed whether statutory setback restrictions for routes acquired under South Dakota's waterworks eminent-domain provisions applied to a proposed underground water pipeline. The court interpreted the restrictions concerning pipeline setbacks from dwellings and buildings, crossings of noncommercial orchards and gardens, landowner standing, later-constructed structures, and judicial modification of statutory conditions. The court affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Justice Steven L. Zinter on Issues 1, 2(a), 2(b), 2(c), 2(d)(i), 2(e), and 2(f); Justice Richard W. Sabers on Issue 2(d)(ii); Chief Justice Gilbertson; Justice Sabers; Justice Konenkamp; Justice Zinter; Justice Richard W. Sabers; Justice Von Wald, Circuit Judge, sitting for Justice Meierhenry
JURISDICTION	South Dakota
DECIDED	January 20, 2006
DOCKET	Nos. 23737, 23738
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lewis & Clark appealed consolidated circuit-court summary-judgment rulings concerning condemnation proceedings and statutory restrictions on pipeline routes acquired through eminent domain.
STANDARD OF REVIEW	Questions of statutory interpretation and standing are reviewed de novo, without deference to the circuit court.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Lewis & Clark Rural Water System, Inc. v. Loren Seeba, Kenneth F. Seeba, Loretta M. Seeba, Irving Gedstad, Henrietta Gedstad, United States of America, Gary D. Buse, Dee Anna Buse, Home Federal Bank, Lincoln County, South Dakota, South Lincoln County Rural Water System, Inc., Evelyn Buse, Wilmer Buse

TOPICS

statutory interpretation

eminent domain

appellate procedure

ripeness

standard of review

PRACTICE AREAS

eminent domain

real estate

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether SDCL 46-8-1.2 applies to routes acquired for underground water pipelines under SDCL chapter 46-8.
2. Whether the width of the statutory route is measured from the outside dimension of the pipeline or from the exterior boundary of the permanent easement.
3. Whether grain bins and a machine shed constitute other buildings on the premises under SDCL 46-8-1.2.
4. Whether the statute prohibits a pipeline from physically crossing an existing noncommercial orchard or garden.
5. Whether a landowner has standing when the pipeline crosses the landowner's property but no protected dwelling, building, orchard, or garden is within the statutory proximity.
6. Whether a landowner may object when the pipeline is within 250 feet of the landowner's dwelling but located on a neighbor's property.
7. Whether a landowner with actual knowledge of the intended route may later construct a dwelling, building, orchard, or garden to invoke the statutory restrictions.
8. Whether SDCL 46-8-1.1 authorizes a circuit court to modify the specific setback restrictions in SDCL 46-8-1.2.

HOLDINGS

1. The 250-foot setback and related restrictions in SDCL 46-8-1.2 apply to all routes acquired under SDCL chapter 46-8, including routes for water pipelines.
2. The 250-foot setback is measured from the outside dimension of the pipeline, not from the exterior boundary of the permanent easement.
3. Other buildings on the premises may include occupied or unoccupied structures having a geographical nexus and legitimate use connected with the dwelling house; the grain bins and machine shed on the Buse farmstead qualified.
4. The proposed route may not physically cross an existing noncommercial orchard or garden, including by crossing below, on, or through it.
5. A landowner whose property is crossed by the pipeline but who has no dwelling, building, orchard, or garden within the statutory proximity lacks standing to assert the restrictions based on protected structures or property on an adjacent parcel.

6. A landowner whose dwelling or other building is within 250 feet of a pipeline located on a neighbor's property has no right under SDCL 46-8-1.2 to object to the route; the statutory right ends at the landowner's property line.
7. A landowner with actual knowledge that property is within the scope of a noticed taking may not intentionally construct a dwelling, building, orchard, or garden to block or alter the announced pipeline route and then invoke the collateral setback restrictions.
8. A circuit court may not judicially modify the specific setback restrictions in SDCL 46-8-1.2 through the general least-injury provision of SDCL 46-8-1.1.

KEY QUOTATIONS

"Consequently, we hold that the restrictions in SDCL 46-8-1.2 apply to all "routes acquired under the provisions of this chapter," which includes water pipelines." (§ 20)

"Therefore, we conclude that the setback restriction was intended to be measured from the waterwork rather than the easement: in this case, the outside dimension of the pipeline." (§ 24)

"We agree with the circuit court and hold that the route proposed by Lewis & Clark may not physically cross any existing noncommercial orchard or garden." (§ 36)

"We further conclude that section 1.1 was only intended to govern general pipeline parameters not addressed in section 1.2, such as the general route, size of the pipe, or width of the easements." (§ 65)

FACTUAL BACKGROUND

Lewis & Clark Rural Water System planned approximately 337 miles of underground water pipeline, including approximately 189 miles in South Dakota, crossing hundreds of parcels. It sought permanent and temporary easements and initiated condemnation proceedings under SDCL 46-8-1 when negotiations with some landowners failed. The disputes involved the 250-foot statutory setback from dwellings and other buildings, the prohibition on crossing noncommercial orchards or gardens, standing to challenge a route near property owned by someone else, and whether landowners could construct obstructions after learning of the proposed route.

PROCEDURAL HISTORY

Lewis & Clark filed condemnation actions after it could not negotiate all easements needed for a water pipeline project. The parties cross-moved for summary judgment, and the circuit court generally ruled for the landowners, including by applying SDCL 46-8-1.2 and concluding that certain landowners had standing and that the setback restrictions could potentially be modified under SDCL 46-8-1.1. The Supreme Court of South Dakota affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the holdings, including application of the statutory restrictions and correction of the circuit court's rulings on route measurement, standing, post-notice obstruction, and judicial modification of the setback restrictions.

CASES CITED

- Block v. Drake, 2004 SD 72, 681 N.W.2d 460, 463
- Steinberg v. State Department of Military Affairs, 2000 SD 36, 607 N.W.2d 596, 599
- City of Deadwood v. Summit, Inc., 2000 SD 29, 607 N.W.2d 22, 25
- Sanford v. Sanford, 2005 SD 34, 694 N.W.2d 283, 287
- State v. Myrl & Roy's Paving, Inc., 2004 SD 98, 686 N.W.2d 651, 653
- Martinmaas v. Engelmann, 2000 SD 85, 612 N.W.2d 600, 611
- MB v. Konenkamp, 523 N.W.2d 94, 97-98 (S.D. 1994)
- State v. Chaney, 261 N.W.2d 674, 676 (S.D. 1978)
- Goetz v. State, 2001 SD 138, 636 N.W.2d 675, 681, 683
- South Dakota Subsequent Injury Fund v. Federated Mutual Insurance, 2000 SD 11, 605 N.W.2d 166, 170
- Delano v. Petteys, 520 N.W.2d 606, 609 (S.D. 1994)
- John Morrell & Co. v. Department of Labor, 460 N.W.2d 141 (S.D. 1990)
- Meinders v. Weber, 2000 SD 2, 604 N.W.2d 248, 263
- Kneip v. Herseth, 87 S.D. 642, 214 N.W.2d 93, 96, 99 (1974)
- Boever v. South Dakota Board of Accountancy, 526 N.W.2d 747, 750 (S.D. 1995)
- H & W Contracting, L.L.C. v. City of Watertown, 2001 SD 107, 633 N.W.2d 167, 171
- Agar School District No. 58-1 v. McGee, 527 N.W.2d 282, 284 (S.D. 1995)
- Parsons v. South Dakota Lottery Commission, 504 N.W.2d 593, 595 (S.D. 1993)
- Illinois Central Railroad Co. v. East Sioux Falls Quarry Co., 33 S.D. 63, 144 N.W. 724, 726 (1913)
- Ehlers v. Jones, 81 S.D. 351, 135 N.W.2d 22, 22-23 (1965)
- City of Sioux Falls v. Missouri Basin Municipal Power Agency, 2004 SD 14, 675 N.W.2d 739, 740
- United States v. Reynolds, 397 U.S. 14, 21 (1970)
- City of Sioux Falls v. Johnson, 1999 SD 16, 588 N.W.2d 904, 912-13
- Moss v. Guttormson, 1996 SD 76, 551 N.W.2d 14, 17
- City of Sioux Falls v. Ewoldt, 1997 SD 106, 568 N.W.2d 764, 767
- Wiersma v. Maple Leaf Farms, 1996 SD 16, 543 N.W.2d 787, 789