

SUPREME COURT OF OHIO

State ex rel. Sekermestrovich v. City of Akron

90 Ohio St. 3d 536 (Ohio 2001) · Decided January 17, 2001

SUMMARY

The Ohio Supreme Court denied a writ of mandamus seeking to compel the City of Akron to commence appropriation proceedings for an alleged taking or damaging of the relators' property. The court held that the relators' affidavits were insufficient because they were based on belief rather than personal knowledge and that the properly submitted evidence did not establish a physical invasion, substantial interference with access, or abandonment of city property.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Douglas, J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Cook, J.; Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	January 17, 2001
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Relators filed an original action seeking a writ of mandamus compelling the City of Akron to commence appropriation proceedings and compensate them for an alleged taking of their real property. The Supreme Court granted an alternative writ as to Akron, dismissed the claim against H.M. Miller Construction/BG Trucking Joint Venture, and proceeded to decide the merits of the claim against Akron.
STANDARD OF REVIEW	Relators bear the burden in an original mandamus action to establish a clear legal right to the requested relief, a clear legal duty on the respondent's part, and the absence of a plain and adequate remedy in the ordinary course of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John Sekermestrovich, Darlene Sekermestrovich v. City of Akron

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QUESTIONS PRESENTED

1. Whether relators established a clear legal right and Akron had a clear legal duty to commence appropriation proceedings based on an alleged physical taking or interference with access.
2. Whether relators' affidavits and complaint complied with the requirement that an original mandamus complaint be supported by an affidavit based on personal knowledge.
3. Whether the evidence established a physical invasion of relators' property, a substantial or unreasonable interference with access to public streets, or abandonment of the property by Akron.

HOLDINGS

1. An original mandamus complaint must be supported by an affidavit from the relator or counsel that is based on personal knowledge and specifies the details of the claim; affidavits based merely on belief or speculation do not satisfy the requirement.
2. Relators were not entitled to a writ of mandamus because they failed to prove a clear legal right to appropriation proceedings, a corresponding clear legal duty by Akron, and the facts necessary to establish a compensable taking.

KEY QUOTATIONS

“Affidavits filed in original actions in this court should be based on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated therein.” (at 538)

“The manifest intention of the rule is to require an affidavit, by either relator or relator’s counsel, that is based on personal knowledge.” (at 538)

FACTUAL BACKGROUND

Akron approved and completed a roadway improvement project involving Linwood Avenue and Hackberry Street, including construction of a culvert in the Hackberry Street right of way and a guardrail. The relators owned lots adjacent to the right of way and alleged that the culvert was constructed on their property, that the guardrail blocked access, and that the culvert caused flooding and vermin infestation. The city presented evidence that the culvert was not located on relators' property and that the area had previously been used as a drainage ditch.

PROCEDURAL HISTORY

The relators alleged that Akron's construction of a culvert and guardrail caused a taking, denied access to their lots, and damaged their property. After settlement proceedings, the court granted an alternative writ as to Akron and ordered the parties to submit evidence and briefs. The court denied the writ because the relators failed to

comply with the affidavit requirement for original actions and failed to present sufficient competent evidence establishing a taking or substantial interference with access.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Dehler v. Sutula, 74 Ohio St. 3d 33, 34, 656 N.E.2d 332, 333 (Ohio 1995)
- State ex rel. BSW Dev. Group v. Dayton, 83 Ohio St. 3d 338, 342, 344, 699 N.E.2d 1271, 1275-1276 (Ohio 1998)
- Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1015, 112 S. Ct. 2886, 2893, 120 L. Ed. 2d 798, 812-813 (1992)
- State ex rel. OTR v. Columbus, 76 Ohio St. 3d 203, 667 N.E.2d 8 (Ohio 1996)
- State ex rel. Nix v. Cleveland, 83 Ohio St. 3d 379, 384, 700 N.E.2d 12, 17 (Ohio 1998)
- State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn., 69 Ohio St. 3d 217, 223, 631 N.E.2d 150, 155 (Ohio 1994)
- Beauchamp v. CompuServe, Inc., 126 Ohio App. 3d 17, 29, 709 N.E.2d 863, 871 (Ohio Ct. App. 1998)
- Logan v. Ohio Adult Parole Auth., 84 Ohio St. 3d 1423, 702 N.E.2d 433 (Ohio 1998)
- Goist v. Seventh Dist. Court, 79 Ohio St. 3d 1452, 680 N.E.2d 1024 (Ohio 1997)
- State ex rel. White v. Goldsberry, 85 Ohio St. 3d 153, 155, 707 N.E.2d 496, 498 n.1 (Ohio 1999)

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