

SUPREME COURT OF SOUTH CAROLINA

Byrd v. City of Hartsville, 365 S.C. 650

620 S.E.2d 76 (2005) · No. No. 26040 · Decided September 19, 2005

SUMMARY

The South Carolina Supreme Court affirmed summary judgment for the City of Hartsville in an inverse-condemnation action arising from delays in rezoning property. The court held that regulatory takings claims involving temporary denial of less than all economically viable use are governed by the Penn Central framework, under which regulatory delay becomes compensable only if it is unreasonable considering the relevant circumstances. The court concluded that neither the eleven-month delay concerning a small parcel nor the two-month delay concerning the remainder of the city tract constituted a taking.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Pleicones; Chief Justice Toal; Justice Burnett; Justice Moore; Justice Waller
JURISDICTION	South Carolina
DECIDED	September 19, 2005
DOCKET	No. 26040
DISPOSITION	affirmed
PROCEDURAL POSTURE	Byrd appealed the circuit court's grant of summary judgment to the City on his regulatory inverse-condemnation claim. The South Carolina Supreme Court accepted the case pursuant to Rule 204(b), SCACR.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the circuit court. Summary judgment is proper when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law; the evidence and reasonable inferences are viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Phelix Byrd v. City of Hartsville

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QUESTIONS PRESENTED

1. Whether the circuit court erred in granting summary judgment to the City on Byrd's regulatory inverse-condemnation claim.
2. Whether temporary regulatory delays in processing zoning petitions constituted a compensable taking under the Penn Central framework.
3. Whether South Carolina's inverse-condemnation test should omit permanence and public-use requirements in regulatory-takings cases.

HOLDINGS

1. A regulatory inverse-condemnation claim requires affirmative conduct by a government entity and a taking; the prior requirements of some degree of permanence and public use do not apply to regulatory takings.
2. Penn Central governs a regulatory inverse-condemnation claim involving a temporary denial of less than all economically viable use of property.
3. In a regulatory-delay case, the Penn Central inquiry is whether the delay became unreasonable, considering all relevant circumstances rather than the delay's length alone.
4. Neither the eleven-month delay concerning the small parcel nor the two-month delay concerning the remainder of the City tract effected a taking.
5. Summary judgment for the City was proper because no genuine issue of material fact existed and Byrd could not establish a regulatory taking.

KEY QUOTATIONS

“Consequently, there are only two elements to a regulatory inverse condemnation: affirmative conduct and a taking.” (657)

“In the context of regulatory delay, the Penn Central inquiry is whether the delay ever became unreasonable.” (660)

“The length of the delay alone is not determinative.” (660-661)

“Byrd cannot demonstrate that the City inversely condemned his property through regulatory delay.” (663)

FACTUAL BACKGROUND

Byrd owned property partly within Hartsville and partly in Darlington County, formerly part of Coker Farms, a National Historic Landmark. He sought to rezone a small parcel and later the remainder of the City tract from

agricultural to commercial use so he could sell the property for development. Hartsville delayed the first rezoning petition for eleven months while investigating whether development would jeopardize the landmark designation, then delayed the second petition for two months; Byrd continued to farm the property during the delays. The City ultimately approved both rezoning requests, but the initial purchaser lost financing before closing.

PROCEDURAL HISTORY

Byrd sued the City for regulatory inverse condemnation based on delays in acting on zoning petitions and also asserted a civil-conspiracy claim concerning tax-record flags placed on Coker Farms property. The circuit court granted the City summary judgment on both claims. Byrd did not appeal the conspiracy ruling, and the Supreme Court considered only the inverse-condemnation claim, affirming summary judgment for the City.

DISPOSITION

affirmed

CASES CITED

- S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group, 353 S.C. 249, 251, 578 S.E.2d 8, 9 n.1 (2003)
- Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001)
- First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304 (1987)
- Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 281 S.E.2d 796 (1981)
- Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002)
- Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978)
- Agins v. City of Tiburon, 447 U.S. 255 (1980)
- Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005)
- Denene, Inc. v. City of Charleston, 359 S.C. 85, 596 S.E.2d 917 (2004)
- Sea Cabins on the Ocean IV Homeowners Ass'n v. City of North Myrtle Beach, 345 S.C. 418, 548 S.E.2d 595 (2001)
- Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992)
- Beard v. S.C. Coastal Council, 304 S.C. 205, 403 S.E.2d 620 (1991)
- Glover v. County of Charleston, 361 S.C. 634, 606 S.E.2d 773 (2004)
- Greenville County v. Kenwood Enterprises, Inc., 353 S.C. 157, 577 S.E.2d 428 (2003)
- Main v. Thomason, 342 S.C. 79, 535 S.E.2d 918 (2000)
- Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 534 S.E.2d 270 (2000)
- Santini v. Conn. Hazardous Waste Mgmt. Serv., 342 F.3d 118 (2d Cir. 2003), cert. denied, 543 U.S. 1047 (2004)
- Bass Enters. Prod. Co. v. United States, 381 F.3d 1360 (Fed. Cir. 2004)
- Chicago, B. & Q.R. Co. v. City of Chicago, 166 U.S. 226 (1897)

- Lucas v. S.C. Coastal Council, 309 S.C. 424, 424 S.E.2d 484 (1992)
- Dolan v. City of Tigard, 512 U.S. 374 (1994)

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