

SUPREME COURT OF NORTH DAKOTA

Montana-Dakota Utilities Co. v. Behm

2019 ND 139 (2019) · No. 20180321 · Decided May 16, 2019

SUMMARY

The North Dakota Supreme Court held that Montana-Dakota Utilities' proposed pipeline easement across Behm's property was for an authorized public use and that the district court applied the wrong standard in determining necessity. The court reversed the judgment dismissing the eminent domain action and remanded for trial on damages.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jerod E. Tufte, Justice; Jerod E. Tufte; Jon J. Jensen; Carol Ronning Kapsner, Surrogate Judge; Daniel J. Crothers, Acting Chief Justice
JURISDICTION	North Dakota
DECIDED	May 16, 2019
DOCKET	20180321
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	MDU appealed, and Behm cross-appealed, from a district court judgment dismissing MDU's eminent domain action after a bench trial on necessity.
STANDARD OF REVIEW	The court reviews the legal question of public necessity under N.D.C.C. § 32-15-05(2), but judicial review is limited to whether the particular property sought is reasonably suitable and usable for the authorized public use. The condemning authority's determination is not disturbed absent bad faith, gross abuse of discretion, or fraud.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., n/k/a Montana-Dakota Utilities Co., a Subsidiary of MDU Resources Group, Inc. v. Lavern Behm

TOPICS

eminent domain

real estate

standard of review

appellate procedure

statutory interpretation

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether condemnation of an easement by a public utility for a pipeline serving a single industrial customer may qualify as a taking for a public use.
2. Whether the proposed taking was necessary under North Dakota law when alternative routes existed and the customer could continue using propane.
3. Whether the district court improperly substituted its judgment for MDU's determination that the particular property was reasonably suitable for the authorized public use.
4. Whether the Supreme Court should address Behm's inadequately briefed cross-appeal issues.

HOLDINGS

1. When eminent domain is exercised by a public utility, condemnation for a pipeline serving a single industrial customer does not preclude a finding that the taking is for a public use.
2. Judicial review of necessity is limited to whether the particular property sought is reasonably suitable and usable for the authorized public use; a court may not substitute its judgment for that of the condemning authority absent bad faith, gross abuse of discretion, or fraud.
3. The necessity inquiry concerns whether the particular property proposed to be taken is necessary for the authorized public use, not whether the public use itself is indispensable or whether the utility's customer has no alternative method of obtaining service.
4. The court would not address the ten issues listed in Behm's cross-appeal because he did not specifically address them in his brief.

KEY QUOTATIONS

“The court’s review of public necessity is limited to the question of whether the taking of the particular property sought to be condemned is reasonably suitable and usable for the authorized public use.” (¶ 5)

“The necessity inquiry under N.D.C.C. § 32-15-05(2) turns on whether the particular property proposed to be taken is necessary for the public use, not whether the authorized public use is itself necessary.” (¶ 16)

FACTUAL BACKGROUND

MDU sought an easement across Behm's property for a 3,000-foot natural gas pipeline to heat a BNSF railroad switch. The switch was then heated with propane tanks serviced by trucks, but winter weather sometimes prevented refilling, and BNSF believed a natural gas pipeline would improve reliability and reduce costs. MDU selected Behm's property because alternative routes would have increased costs or created potential future conflicts or relocation requirements. The district court found the taking unnecessary because propane remained available and the pipeline would serve only one customer.

PROCEDURAL HISTORY

MDU sought to condemn an easement across Behm's property for a natural gas pipeline serving a BNSF railroad switch. The district court bifurcated necessity and damages, ruled that the taking was not necessary for a public use, and dismissed the action. The North Dakota Supreme Court reversed and remanded for trial on eminent domain damages.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for trial on eminent domain damages to be awarded to Behm.

CASES CITED

- Brandt v. City of Fargo, 2018 ND 26, ¶¶ 11-12, 905 N.W.2d 764
- Oakes Mun. Airport Auth. v. Wiese, 265 N.W.2d 697, 699-700 (N.D. 1978)
- KEM Elec. Coop., Inc. v. Materi, 247 N.W.2d 668, 670-672 (N.D. 1976)
- Otter Tail Power Co. v. Malme, 92 N.W.2d 514, 521-522 (N.D. 1958)
- Cty. of Pembina v. Nord, 78 N.D. 473, 477, 49 N.W.2d 665, 667 (1951)
- Cent. Power Elec. Coop., Inc. v. C-K, Inc., 512 N.W.2d 711, 714 n.2 (N.D. 1994)
- Bd. of Educ. of City of Minot v. Park Dist., 70 N.W.2d 899, 906 (N.D. 1955)
- N. Pac. Ry. Co. v. Boynton, 17 N.D. 203, 115 N.W. 679 (1908)
- City of Medora v. Golberg, 1997 ND 190, ¶ 8, 569 N.W.2d 257
- Spring Valley Water-Works v. San Mateo Water-Works, 28 P. 447, 449-450 (Cal. 1883)
- United States ex rel. Tenn. Valley Auth. v. An Easement and Right-of-Way Over 1.8 Acres of Land, More or Less, in Maury Cty., Tenn., 682 F. Supp. 353, 358 (M.D. Tenn. 1988)
- Carolina Tel. & Tel. Co. v. McLeod, 364 S.E.2d 399, 401 (N.C. Ct. App. 1988)
- Dyer v. Tex. Elec. Serv. Co., 680 S.W.2d 883, 885 (Tex. Ct. App. 1984)
- State v. Nice, 2019 ND 73, ¶ 11, 924 N.W.2d 102