

SUPREME COURT OF VIRGINIA

Byler v. Virginia Electric and Power Company; Wolfe v. Virginia Electric and Power Company, 284 Va. 679

733 S.E.2d 877 (2012) · No. Record Nos. 112112 and 112113 · Decided September 14, 2012

SUMMARY

The Supreme Court of Virginia considered whether diminution in the value of land caused by the construction and operation of nearby electric transmission lines constitutes compensable damage under Article I, Section 11 of the Virginia Constitution. The Court held that an inverse-condemnation claim requires an actual taking, physical damage to the property, or interference with a specific appurtenant property right; diminution in value alone is insufficient. The Court affirmed the dismissal of the plaintiffs' complaints.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Lawrence L. Koontz, Jr.; Chief Justice Kinser; Justice Lemons; Justice Millette; Justice Mims; Justice McClanahan; Senior Justice Lacy; Senior Justice Koontz
JURISDICTION	Virginia
DECIDED	September 14, 2012
DOCKET	Record Nos. 112112 and 112113
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from orders sustaining VEPCO's demurrers and dismissing with prejudice complaints seeking declaratory relief and compensation for inverse condemnation.
STANDARD OF REVIEW	Demurrer and sufficiency of the pleadings reviewed de novo; the judgment may be affirmed on any basis apparent in the record.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Virginia.
PARTIES	Timothy Byler, Roger D. Wolfe, Kathleen E. Wolfe v. Virginia Electric and Power Company

TOPICS

eminent domain

constitutional law

real estate

appellate procedure

standard of review

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Article I, Section 11 of the Virginia Constitution permits an inverse-condemnation claim based solely on diminution in property value caused by a public utility's construction and operation of transmission lines on nearby property.
2. Whether the circuit court properly sustained the demurrers despite applying an all-economic-use standard associated with categorical regulatory takings.
3. Whether the complaints alleged an actual taking, physical damage, or interference with a specific property right sufficient to state an inverse-condemnation claim.

HOLDINGS

1. The standard requiring deprivation of all economic use applies to categorical takings resulting from regulatory restrictions on the owner's property, not to claims alleging damage from a public use of nearby property.
2. A complaint does not state a cause of action for inverse condemnation when the sole alleged damage is diminution in value resulting from the public use of proximately located property; the complaint must allege an actual taking, physical damage to the property, or interference with a specific property right.
3. The circuit court's judgments could be affirmed because the complaints failed to allege a legally cognizable taking or damage, even though the circuit court relied on the wrong all-economic-use standard.

KEY QUOTATIONS

“Accordingly, we hold that the complaints in these cases did not, and could not, state a cause of action for declaratory relief for inverse condemnation when the sole damage alleged was a diminution in value arising from the public use of proximately located property.” (11-12)

FACTUAL BACKGROUND

VEPCO constructed and operated electric transmission lines on land adjoining or near the plaintiffs' residential properties pursuant to State Corporation Commission approvals. Byler alleged that the lines made his one-acre property less valuable, marketable, and desirable and unsuitable for its former highest and best use as a residence. The Wolfes made substantially similar allegations concerning their 2.35-acre property, asserting that the lines had blighting effects and created negative resistance to residential use. Neither complaint alleged physical damage to the property or interference with a specific appurtenant property right.

PROCEDURAL HISTORY

Byler and the Wolfes separately filed complaints in the Circuit Court of Fauquier County alleging that nearby electric transmission lines diminished the value and residential marketability of their properties. The circuit court sustained VEPCO's demurrers with prejudice, ruling that the complaints alleged neither a taking nor damage because the properties remained usable and had not lost all economic value. The Supreme Court of Virginia awarded appeals, consolidated the cases, and affirmed on the ground that the complaints alleged only diminution in value and no interference with a specific property right.

DISPOSITION

affirmed

CASES CITED

- City of Virginia Beach v. Virginia Land Investment Ass'n., 239 Va. 412, 416-17, 389 S.E.2d 312, 314 (1990)
- Commonwealth v. County Utilities Corp., 223 Va. 534, 542, 290 S.E.2d 867, 872 (1982)
- Lambert v. City of Norfolk, 108 Va. 259, 266-68, 61 S.E. 776, 778-79 (1908)
- State Highway & Transportation Commissioner v. Lanier Farm, Inc., 233 Va. 506, 510-11, 357 S.E.2d 531, 533-34 (1987)
- Shipman v. Kruck, 267 Va. 495, 509, 593 S.E.2d 319, 327 (2004)
- Deerfield v. City of Hampton, 283 Va. 759, 767, 724 S.E.2d 724, 728 (2012)
- Miller v. Highland County, 274 Va. 355, 372, 650 S.E.2d 532, 540 (2007)
- Board of Supervisors of Culpeper County v. Greengael, L.L.C., 271 Va. 266, 287, 626 S.E.2d 357, 369 (2006)
- City of Virginia Beach v. Bell, 255 Va. 395, 400, 498 S.E.2d 414, 417 (1998)
- Lee v. City of Norfolk, 281 Va. 423, 432, 706 S.E.2d 330, 334 (2011)
- Perry v. Commonwealth, 280 Va. 572, 581-82, 701 S.E.2d 431, 436-37 (2010)
- Tidewater Railway Co. v. Shartzler, 107 Va. 562, 569-72, 59 S.E. 407, 410 (1907)
- City of Lynchburg v. Peters, 156 Va. 40, 49, 157 S.E. 769, 772 (1931)
- Richmeade, L.P. v. City of Richmond, 267 Va. 598, 602-03, 594 S.E.2d 606, 609 (2004)
- Board of Supervisors v. Omni Homes, Inc., 253 Va. 59, 72, 481 S.E.2d 460, 467 (1997)
- Livingston v. Virginia Department of Transportation, 284 Va. 140, 155-57, 726 S.E.2d 264, 273-74 (2012)
- Foley v. Harris, 223 Va. 20, 286 S.E.2d 186 (1982)
- Eachus v. Los Angeles Consolidated Electric Railway Co., 37 P. 750, 751 (Cal.)