

CONDEMNATION & EMINENT DOMAIN

Condemnation & Eminent Domain: Due Process

Garvie v. City of Fort Walton Beach, Florida,
366 F.3d 1186 (11th Cir. 2004)

When filing a 42 U.S.C. § 1983 suit against a governmental entity, the plaintiff must establish a connection between the governmental agency and the actions of its agents. To survive summary judgment on a Public Use Clause challenge, the plaintiff must demonstrate that the governmental action bears no rational relationship to a public purpose. The existence of a legitimate public purpose strongly suggests that the action is not arbitrary and, therefore, not violative of the Fourteenth Amendment's Due Process Clause. The Seventh Amendment right to a jury trial does not apply if there is no dispute of material fact that a trial could resolve.

FACTS AND PROCEDURAL HISTORY

In July 2000, City of Fort Walton Beach officials, accompanied by members of the City's police department, paved a piece of property known as "Sound Beach Street." Appellants' Initial Br. at 9, *Garvie*, 366 F.3d 1186. The Plaintiffs, William and Martha Garvie and DB Daughters Corp., claimed ownership of the Sound Beach Street property. They alleged that city officials "illegally seized [and paved] a thirty . . . foot wide access right of way across [their] properties" at another neighbor's behest for the requesting neighbor's sole benefit. *Garvie*, 366 F.3d at 1188. After the paving, the City denied the Plaintiffs' request for a permit to erect a fence within the disputed right-of-way. Ans. Br. of the City of Ft. Walton Beach, Fla. at 11, *Garvie*, 366 F.3d 1186. A year after paving Sound Beach Street, the City adopted a resolution affirming its public ownership of the street. *Id.*

The Plaintiffs filed suit under 42 U.S.C. § 1983. They claimed that the City violated 1) the Fifth Amendment's Public Use and Just Compensation Clauses, because the City took their property for a private, rather than public, purpose and failed to compensate them for the taking; and 2) the Fourteenth Amendment's Due Process Clause, because the taking was arbitrary and capri-

cious. The federal district court granted summary judgment in favor of the City on both claims. On appeal, the Plaintiffs also asserted that the district court's summary judgment order violated their Seventh Amendment right to a jury trial. The Eleventh Circuit Court of Appeals held that summary judgment was not in error and did not violate the Seventh Amendment.

ANALYSIS

A local government is liable for the unconstitutional actions of its agents only if the agent is acting according to official government policy or custom, or under the direction of a final policy maker. *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978). In this case, the Plaintiffs chose to sue the City rather than the individual officers involved in the alleged taking. The Eleventh Circuit Court, however, found that individual city officials took the alleged unconstitutional actions, not the City. A mere claim that the officials were acting under the color of law was not sufficient to establish the City's liability. The Plaintiffs complained that two official City actions—denying the fence permit and adopting a resolution that recognized the newly paved area as a city-owned right-of-way—established the City's liability. The court, however, found that denying the fence permit did not rise to the level of a taking, and that the Plaintiffs had not sufficiently established that the City actually ratified the officials' actions when it adopted the resolution. See *Thomas v. Roberts*, 261 F.3d 1160, 1174 n. 12 (11th Cir. 2001) (establishing the criteria for the "ratification theory"), *vacated on other grounds*, 536 U.S. 953 (2002), *reinstated*, 323 F.3d 950, 952 (11th Cir. 2003); *Bannum, Inc. v. City of Ft. Lauderdale*, 901 F.2d 989, 998 (11th Cir. 1990). The Eleventh Circuit Court noted that a ratification argument might have been made and might have helped to establish a § 1983 claim. The Plaintiffs, however, waived this argument when they failed to raise it either in district court or on appeal. Because the Plaintiffs failed to establish a connection between the individual officers' actions and the City itself, the court found that the Plaintiffs had failed even to state a § 1983 claim against the City.

Despite this pleading error, the Eleventh Circuit Court went on to discuss the substantive merits of the case. With regard to the Public Use Clause claim, the court noted that this was a question of law to be determined by the court, and that the govern-

ment has an extremely light burden when establishing a legitimate public purpose. If the "exercise of the eminent domain power is rationally related to a conceivable public purpose, the [United States Supreme] Court has never held a compensated taking to be proscribed by the Public Use Clause." *Garvie*, 366 F.3d at 1189 (quoting *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984)). The Eleventh Circuit Court agreed with the district court's finding that the creation of a public access-way was a legitimate public purpose, and thus rejected the Plaintiffs' Public Use Clause challenge.

The Plaintiffs also claimed that the City violated their substantive due process rights under the Fourteenth Amendment because the alleged taking was arbitrary and capricious. A government action, however, violates the Fourteenth Amendment's Due Process Clause only when "it lacks a 'substantial relation to the public health, safety, morals, or general welfare.'" *Id.* at 1191 (quoting *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926)). The Eleventh Circuit Court rejected the arbitrary and capricious claim, stating that, when the alleged taking advanced a legitimate public purpose, the court could not conclude that the action was either irrational or arbitrary.

Finally, the Plaintiffs claimed that the district court's summary judgment order violated their Seventh Amendment right to have a jury determine whether the alleged taking furthered a public use. The Eleventh Circuit stated that the Plaintiffs should not have focused on whether their Seventh Amendment right to a jury trial had been violated, but rather on whether the district court erred in granting summary judgment because the public purpose issue was still in dispute. Citing Federal Rule of Civil Procedure 56(c), the court stated that it was unquestionable that a district court has the authority to grant summary judgment when there is no dispute regarding material facts, and that there is no right to a jury trial in such circumstances. In this case, the Eleventh Circuit agreed with the district court that paving the right of way undoubtedly served the legitimate purpose of providing improved access, both for the public and for emergency service providers. The Eleventh Circuit Court, therefore, found that summary judgment on the public use issue was proper and not a violation of the Seventh Amendment.

SIGNIFICANCE

Practitioners can take a number of lessons from *Garvie*. First, when filing a § 1983 claim against a governmental entity, it is crucial for the plaintiff to establish a connection between the governmental agency and the actions of its agents. Second, when advancing a Public Use Clause challenge, to survive summary judgment the plaintiff must demonstrate that the governmental action bears no rational relationship to a public purpose. Third, a challenge to summary judgment should focus on whether there is a material fact in dispute and not on whether the summary judgment infringes upon the plaintiff's Seventh Amendment right to a jury trial.

Practitioners facing similar facts must evaluate whether it would be better to make a state-based eminent domain claim instead of making a § 1983 claim. In this case, the Plaintiffs would have also been better served if they could have established who was, in fact, the true property owner.

RESEARCH REFERENCES

- 30 Am. Jur. 3d *Proof of Fact* § 503 (Westlaw database updated Aug. 2004).
- 32 Am. Jur. 3d *Proof of Fact* § 405 (Westlaw database updated Aug. 2004).

Nicole Guillet

Condemnation & Eminent Domain: Valuation

325 West Adams Street, Ltd. v. City of Jacksonville,
863 So. 2d 380 (Fla. 1st Dist. App. 2003)

A jury instruction that allows for an increase in land value in anticipation of a public works project constitutes reversible error when it contradicts a statute that prohibits consideration of the increase or decrease in the property value once the specific project location is known.

FACTS AND PROCEDURAL HISTORY

The City of Jacksonville condemned the appellants' downtown property to build a new county courthouse. After a jury ren-

dered its valuation verdict, the trial court ordered a new trial on grounds of juror misconduct. The First District Court of Appeal did not address the issue of juror misconduct because it found that the jury instruction was in error. The trial court had read the instruction as follows: "Fair market value, which you may use to determine the award to the owners, may reflect an increase in value due to the anticipation of the new downtown county courthouse project" 325 West Adams St., 863 So. 2d at 381. The appellate court found that this instruction contradicted Florida Statutes § 73.071(5) (2002): "Any increase or decrease in the value of any property to be acquired which occurs after the scope of the project . . . is known in the market . . . shall not be considered in arriving at the value of the property acquired." *Id.* at 381-382. The scope of the project is known in the market "on or after the condemnor executes a resolution which depicts the location of the project." *Id.* at 382 (quoting Fla. Stat. § 73.071(5)). The First District Court affirmed the trial court's order for a new trial and denied a rehearing.

ANALYSIS

In an important footnote to this case, the First District Court wrote, "[t]here is no conflict between section 73.071(5) and *Department of Transportation v. Nalven*, 455 So. 2d 301 (Fla. 1984)." *Id.* at 382 n. 1. The court distinguished *Nalven* from the statute on the grounds that *Nalven* allows only for an increase in property values prior to the time of taking due to the "generally known area" of a future project, while the statute prohibits consideration of an increase in property values once the project's exact location is known to the public. *Id.* The general rule that increases in property value in anticipation of a public works project should not be considered is known as the scope-of-the-project rule. Interestingly, in *Nalven*, the Florida Supreme Court explicitly stated, "We decline to adopt the scope-of-the-project rule." 455 So. 2d at 306. *Nalven* preceded Florida Statutes § 73.071(5), which was added a year later. 1985 Fla. Laws ch. 85-180 § 36. Although legislative intent is hard to determine, it is possible that the legislature was specifically trying to overrule *Nalven*, in an attempt to rein in state condemnation expenditures. The court in *325 West Adams Street*, however, declined to consider this possibility, preferring instead to assert that "section 73.071(5) is con-

sistent with, not contrary to, judicial determinations of full and just compensation." 863 So. 2d at 382 n. 1.

SIGNIFICANCE

According to Florida Statutes § 73.071(2) (2004), "[t]he amount of . . . compensation shall be determined as of the date of trial, or the date upon which title passes, whichever shall occur first." Florida Statutes § 73.071(5) dictates that the jury should not consider any increase in value that occurs after the announcement of the specific plans for the public works project. The court in this case resolved a seeming contradiction between § 73.071(5) and the previous rule of *Nalven*. It allowed for an increase in value after the general area becomes known, but before the specific location is announced.

RESEARCH REFERENCES

- 27 Am. Jur. 2d *Eminent Domain* § 553 (Westlaw database updated Nov. 2004).
- 21 Fla. Jur. 2d *Eminent Domain* § 148 (Westlaw database updated Feb. 2004).

Joshua P. Welsh