

North Carolina Court of Appeals Dismisses Municipal Takings Claim For Failing "Public Benefit" Standard

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Today, the N.C. Court of Appeals affirmed the dismissal of a takings case filed by a local government. The case is ***Town of Matthews v. Wright***, No. COA14-943 (April 21, 2015).

Facts

The facts are important but protracted. Essentially, plaintiff homeowners live at the end of a street, which is a dead end: Home Place. Over time, the Town has made various efforts to claim the street as a "public street", all of which failed judicial scrutiny. Home Place remains a private road today.

Eventually, the plaintiff homeowners at the end of the dead-ended private road Home Place constructed a fence on their property bordering, but not obstructing, the Home Place. Other neighbors on Home Place expressed concern that the plaintiff homeowners "might eventually block access to Home Place".

The Town filed a suit pursuant to N.C.G.S. Chapter 40A to condemn ***only*** the portion of Home Place directly in front of the plaintiff homeowners' property for the stated purpose of "opening, widening, extending, or improving roads, streets, alleys, and sidewalks and more particularly described as Home Place." Plaintiff homeowners asserted "numerous affirmative defenses" including that the condemnation "serves no public use or benefit", inadequate compensation (the Town deposited \$1,500 with the filing) and unclean hands.

The Trial Court

The trial court dismissed the takings claim. The court reasoned that "a takings case involving taking of private property cannot be considered in a vacuum and without regard to its factual history", and stated:

the Plaintiff's Board of Commissioners on April 8, 2013 is simply an attempt to accomplish, through other means, what was originally intended by its actions on March 25, 1985, February 5, 2004, and October 9, 2006, rather than constituting a taking of property for some recently realized new need for a public purpose or benefit.

In other words, the trial court did not agree with the Town's attempt to do by condemnation -- render Home Place a public street -- what it could not accomplish by other means. Such an attempt to take is "an arbitrary and capricious exercise by [the Town] of its powers of eminent domain."

The Court of Appeals

The appellate court affirmed the trial court's dismissal though with a twist.

First, because a street was involved, the Court of Appeals noted that the burden is on the homeowner to refute the taking: "If a municipality's condemnation action purports to serve one of the statutorily enumerated purposes for public condemnation, then the burden shifts to the property owner to refute the municipality's showing of a "public use or benefit." See *City of Burlington v. Isley Place Condominium Ass'n*, 105 N.C. App. 713, 714–15, 414 S.E.2d 385, 386 (1992); see also N.C. Gen. Stat. § 40A-3(b) (2014)."

Second, the appellate court noted that a taking must satisfy the two prongs of the "public" test--the taking must be for both a public use and for a public benefit:

Our Supreme Court uses two tests to determine whether a condemnation is for the public use or benefit: "The first approach—the public use test—asks whether the public has a right to a definite use of the condemned property. The second approach—the public benefit test—asks whether some benefit accrues to the public as a result of the desired condemnation." North Carolina courts have held that a condemnation must satisfy both the "public use" and the "public benefit" test.

Again, the appellate court cites *City of Burlington v. Isley Place Condominium Ass'n*, 105 N.C. App. 713, 714–15, 414 S.E.2d 385, 386 (1992) as well as N.C.G.S. § 40A-3(b).

The appellate court applies the public benefit analysis to conclude that the condemnation fails the standard, which means a "public use" analysis is not necessary. again, from the court:

[C]ondemnation of the Wrights' portion of Home Place would only allow for those public benefits on the Wrights' portion of Home Place, which is at a dead end and landlocked by other individuals' portions of Home Place. Most of the other portions of Home Place have neither been dedicated to the Town as public land nor condemned by the Town. Thus, opening the Wrights' thirty-foot portion of Home Place to the public through condemnation will have no effect on the present ability of fire fighters or utility providers to access Home Place as a whole.

Third, is the twist. The appellate court determines that it "need not" reach the issue of the "arbitrary and capricious" nature of the condemnation, which the trial court concluded. The appellate court

thinks that the failure to meet the "public benefit" test is enough for one day, and enough for dismissal. Perhaps this neutralizes any attorney fee claim along the lines of NCGS 6-21.7.

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