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Town of Nags Head v. Toloczko

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Town of Nags Head v. Toloczko, ___ F.3d ___, 2013 WL 4517074, 2013 U.S. App. LEXIS 17860 (4th Cir. Aug. 27, 2013).

Kevin Michael Emmerich

I. ABSTRACT

Homeowners sought relief and damages in federal court for the condemnation of their ocean front cottage amid the vacillating doctrines of state and municipal law. The Court of Appeals for the Fourth Circuit overturned the district court's decision, citing an incorrect application of abstention and allowed the issues of state and municipal law to be heard in federal court.

II. INTRODUCTION

After a tropical storm caused considerable damage to their property, the Toloczkos attempted to repair their beach front cottage. During the course of attempted remediation, a variety of state and municipal land laws fell into controversy preventing the Toloczkos from completing repairs. Litigation ensued between the homeowners and the town based on both local ordinances and state law requirements.¹ The Toloczkos removed the case to federal court on the basis of diversity jurisdiction. However, the federal district court invoked the *Burford* abstention doctrine and refused to hear the case.²

III. FACTUAL AND PROCEDURAL BACKGROUND

Nags Head is a beach town on the North Carolina coast, abutting the shores of the Atlantic.³ The beaches that make the town a tourist and recreation mecca are held by the state for public enjoyment and recreation through the public trust doctrine.⁴ North Carolina law

¹ *Town of Nags Head v Toloczko*, ___ F.3d ___, 2013 WL 4517074 (4th Cir. 2013).

² *Id.* at *1 (citing *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943)).

³ *Id.*

⁴ *Id.*

defines public lands as all lands running seaward of the high water mark.⁵ Erosion from storms shapes the beaches and can blur the lines between public and private land, as the high water mark can shift with each storm and season.⁶ Nags Head considers properties subject to condemnation as their status changes and they exist entirely upon public lands, below the high water mark.⁷ In these instances, Nags Head invokes its nuisance ordinance which allows the city to regulate “any structure *regardless* of condition, if located wholly on public lands.”⁸ To combat this fate, private land owners have restored displaced sands, and have even raised homes as high as sixteen feet to avoid the property damages due to tidal surges and condemnation by city ordinance.⁹

A tropical storm delivered serious damage to a cottage owned by Mathew and Lynn Toloczko, which Nags Head summarily condemned.¹⁰ Nags Head refused to allow the Toloczkos to make repairs, and issued fines to compel the Toloczko’s to comply with condemnation.¹¹ The Toloczkos refused and Nags Head sued in North Carolina state court seeking demolition and the accrued civil fines.¹² On the basis of diversity, the Toloczkos removed to federal court and filed 21 counter claims seeking declaratory judgment, injunctive relief and monetary damages, averring Nags Head wrongfully enforced the public trust doctrine through its nuisance ordinance.¹³

During the course of litigation Nags Head altered its own zoning ordinance to ban structures on public trust beaches, even if only partially located on those beaches.¹⁴ The state

⁵ *Id.*

⁶ *Toloczko* at *1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at * 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Toloczko* at *2.

¹³ *Id.*

¹⁴ *Id.*

then passed the North Carolina Beach Initiative, which added substantial sands seaward of the Toloczko's cottage.¹⁵ Nags Head then informed the Toloczko's that their cottage was no longer in violation of the city's nuisance ordinance.¹⁶ Nags Head offered the Toloczko's a chance to repair their damaged cottage.¹⁷ To repair their cottage, however, the Toloczko's required approval from the North Carolina Department of Environmental and Natural Resources to replace their septic tanks.¹⁸ The Toloczko's permit was denied because the state found the cottage to exist within "an area of environmental concern."¹⁹ Nags Head indicated the Toloczko's septic proposal was inconsistent with its own ordinances.²⁰

Upon removal, the district court declined the case, invoking the *Burford* doctrine stating, "land use is an important public policy that lies within the prerogative of a sovereign state." The Toloczko's timely appealed.²¹

IV. ANALYSIS

Circuit courts take a deferential approach when reviewing decisions on appeal.²² However, as a matter of policy, federal courts have an "unflagging obligation to exercise jurisdiction."²³ The *Burford* doctrine relaxes this obligation when adjudication would undermine a state's authority over an important local issue.²⁴ In *Burford*, the Supreme Court found that federal interference would "wreak delay, a misunderstanding of local law and create a needless

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Toloczko* at *2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at *3.

²³ *Id.*

²⁴ *Toloczko* at *3.

federal conflict.”²⁵ The Supreme Court has defined two categories where a *Burford* abstention is appropriate: (1) “if a question of state law policy is of substantial public import; or (2) if federal review would disrupt state efforts to establish a coherent policy on a matter of substantial public concern.”²⁶ It is with this posture that the court viewed the earlier abnegation in *Town of Nags Head v. Toloczko*. The court categorized the 21 counter claims offered by the Toloczkos as three distinct issues and addressed the federal court’s refrain from judgment for each.

First, the court analyzed the district court’s abstention from deciding the plaintiff’s claim for declaratory relief: specifically, the town’s authority to regulate public trust lands under a city ordinance.²⁷ In this respect, North Carolina law is quite clear. A town carries no authority to enforce the *state’s* public trust doctrine.²⁸ In *Cherry*, the North Carolina Supreme Court held only the state has proper standing to bring an action to enforce the state’s public trust rights.²⁹ Since there was no question of state law, the court determined that abstention was inappropriate.

Second, the court addressed the district court’s abstention from deciding the Toloczkos’ § 1983 claim alleging violations of due process.³⁰ The court quickly dispatched this issue as the district court already decided an identical issue in the *Sansotta* decision, without offending North Carolina’s land laws.³¹ Since the district court was disposed to deciding that issue, the Toloczko’s claim was also allowable and abstention was again inappropriate.

Finally, the court considered the district court’s abstention from deciding the Toloczko’s claim of taking without just compensation. Under the 5th Amendment of the U.S. Constitution,

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at *4.

²⁹ *Town of Nags Head v. Cherry, Inc.*, 723 S.E.2d 156 (N.C. Ct. App. 2012).

³⁰ *Toloczko* at *5.

³¹ *Sansotta v. Town of Nags Head*, ___F.3d___, 2013 WL 3827471 (4th Cir. 2013).

it is unlawful for the government to “take” property without just compensation.³² In a situation where the state provides an avenue for seeking such compensation, the owner cannot claim said violation until fulfilling all the requirements of the state procedure, followed by a denial of compensation.³³ This is known as the *Williamson County* ripeness doctrine.³⁴ However, the Toloczkos preempted their state law claim upon removal to federal court before the state court could find remedy.³⁵ Since all of the other claims had been remanded to the district court, the court suspended this requirement at its own discretion in fairness to the Toloczkos and to preserve judicial efficiency.³⁶

V. CONCLUSION

Federal courts have a longstanding tradition to leave public land disputes to state authority and jurisdiction. In *Nags Head*, the court found this tradition wanting as the municipality attempted to implement the public trust doctrine when it had no authority to do so. Moreover, the federal court would not offend state judicial authority by hearing the case. As a result, *Nags Head* could open the door for further federal intrusion into matters of primarily local importance.

³² *Toloczko* at *6.

³³ *Id.*

³⁴ *Williamson Co. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

³⁵ *Toloczko* at* 6.

³⁶ *Id.* at *7.