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Winters v. City of Columbus, 735 So. 2d 1104 (Miss. Ct. App. 1999)

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inconsistent with Eveleth's use. Fayal's proposed use was identical to Eveleth's existing use, and condemnation would destroy Eveleth's existing use. The court held that the exception allowing municipalities to take property if a greater public use and benefit would result from purely public ownership or operation did not apply in this case. The exception was not applicable because the only difference is change in ownership, not increased benefit. Therefore, the court held that Fayal had neither express nor implied authority to condemn Eveleth's water lines.

Sommer Poole

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Winters v. City of Columbus, 735 So. 2d 1104 (Miss. Ct. App. 1999)
(upholding City's condemnation of private property under the state "quick take" statute for the purpose of a drainage project).

This case is an appeal from the decision of the Lowndes County Special Court of Eminent Domain upholding the exercise of the City of Columbus' ("City") power of eminent domain over private land under the Mississippi "quick take" statute. The City, after being unable to obtain the property rights necessary to construct a drainage project designed to alleviate flooding and encourage development, initiated condemnation proceedings against private landowners, the Winters. After the trial court found that the City could legally take immediate possession of the land for the purpose of the drainage project, the Winters appealed on the grounds that: (1) the City did not establish the project constituted a public necessity or public use; and (2) the City did not prove that irreparable harm would result if it did not receive immediate possession of the property.

Under the "quick take" statute, a city, in exercising its power of condemnation, may take immediate possession of private property if it can establish two factors. First, that the intended use of the property is a public necessity or public use. Second, that following the normal eminent domain procedures will result in irreparable harm and delay. Absent clear abuse of discretion or fraud, a city's determination that a project is necessary for the public welfare is a valid exercise of its legislative power. Thus, the party challenging a city's condemnation action bears the burden of showing that a proposed project is not a public necessity.

On appeal, the Winters challenged the legal sufficiency of the City's description of the affected property in its resolution. The Winters also alleged that the City Council abused its discretion in pursuing the project by succumbing to threats of legal action by property owners if the City did not address flooding on their land. However, the City's resolution clearly identified and described the

land necessary for the project and clearly stated that the project would “enable future development and growth.” Absent the presentation at trial of supporting evidence to the contrary, the trial judge appropriately decided these issues in favor of the City.

The Winters also argued that because the drainage project would clearly benefit many private landowners, the project could not be considered a public use, therefore, the project was not an appropriate cause of a condemnation action. The Winters argued that as a result of the classification of this project by the City as a mere “drainage” project and not a “flood” control project, the primary purpose was not a public use. However, the court did not accept this distinction and instead noted that the incidental private benefit that may result from the taking of property for a primarily public use will not defeat the taking. Evidence established that the drainage project may also constitute a flood control project. Thus, whether the project corrected disastrous flooding conditions or less significant drainage problems, the project was appropriately deemed a public use.

The final issue appealed was the City’s entitlement to immediate possession of the property under the state “quick-take” statute. The “quick-take” statute allows a city to take immediate possession of property when it proves that it would suffer “irreparable harm and delay” if regular eminent domain proceedings were followed. At trial, all parties agreed that a loss of government funding, as a result of delay, could meet this statutory requirement. However, contradictory evidence presented at trial as to whether the City would lose its funding if the project did not begin within a certain time frame, necessitated a finding by the trial judge as to what evidence she believed more reliable. This court upheld the trial judge’s conclusion that the City could possibly lose its funding unless work began within as short a time period as reasonable.

Thus, the court held that the City had proven the requisite public necessity and public use of the drainage project and the possibility of irreparable harm resulting if the project proceeded through the course of a lengthy normal eminent domain proceeding. Therefore, the court deemed the City entitled to immediate possession of the property under the state “quick take” statute.

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MONTANA

Barnes v. Thompson Falls, 979 P.2d 1275 (Mont. 1999) (finding that a statutorily authorized activity or facility cannot be a nuisance unless the plaintiff shows that the defendant exceeded its statutory authority or that the defendant was negligent in carrying out its statutory authority, resulting in a qualified nuisance).

In 1978, Sally Barnes purchased a duplex in Thompson Falls,