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Machipongo Land & Coal Co., Inc. v. Dep't of Env'tl. Res., 799 A.2d 751 (Pa. 2002)

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PENNSYLVANIA

Machipongo Land & Coal Co., Inc. v. Dep't of Env'tl. Res., 799 A.2d 751 (Pa. 2002) (holding that courts must consider horizontal conceptualization of property must be considered when determining whether the Environmental Quality Board effected a taking of property in designating property unsuitable for surface mining of coal).

Owners of coal mining property sued the Pennsylvania Department of Environmental Protection ("DEP") for declaring their property unsuitable for mining, thus rendering the property unavailable for mining in the future. The Pennsylvania Commonwealth Court declared that some but not all of the designations by the DEP were invalid, and both the DEP and the owners appealed to the Pennsylvania Supreme Court. The court affirmed the ruling that one property parcel had no value for mining purposes, but reversed the remainder of the judgment and remanded to the trial court with directions to consider: (1) whether a taking occurred under all applicable analyses; and (2) whether mining could be enjoined under a theory of public nuisance.

In 1989, the Brisbin Recreation Board and the Locust Grove Sportsmen club petitioned the Pennsylvania Department of Environmental Resources ("DER") to declare the Goss Run Watershed "unsuitable for mining" ("UFM"). Such a regulation would affect the property rights of Machipongo Land and Coal Co., Inc., the Victor E. Erickson Trust, and Joseph Naughton ("property owners"). All the property owners stipulated that they use their property for activities other than coal mining and that they owned interests in their land for several decades. The property owners intervened in the DER administrative proceedings, however, DER determined that surface mining of coal within the Goss Run Watershed had a "high potential to cause increases in dissolved solid and metal concentrations in Goss Run that would adversely affect the use of the stream as an auxiliary water supply" and "a significant potential to disrupt the hydrologic balance causing decreases in the net alkalinity of discharges. . .destroying the habitat for wild trout populations."

The Pennsylvania Surface Mining Control and Reclamation Act ("PaSMCRA") determines if use of land for mining: (1) is incompatible with existing state or local land use plans or programs; (2) will affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems; (3) will affect renewable resources of lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products and such lands to include aquifers and

aquifer recharge areas; or (4) will affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

The Pennsylvania General Assembly revised PaSMCRA in 1980 to comply with Federal SMCRA in creating a mechanism to designate certain lands as UFM. It stated the purpose of PaSMCRA was to prevent the pollution of rivers and streams, protect wildlife and the environment generally, and to maintain jurisdiction over in-state mining activities. The statute delineated standards to determine whether land should be deemed UFM.

The DER recommended to the Environmental Quality Board (“EQB”) that the Goss Run Watershed be designated UFM. The EQB, effective May 23, 1992, designated the 555-acre area of the Goss Run Watershed UFM and the property owners protested. The property owners challenged designation of the land as UFM and argued alternatively that if the land was UFM, then such designation constituted a government taking of property which requires just compensation pursuant to article I, section 10 of the Pennsylvania Constitution. The Pennsylvania Supreme Court articulated three categories of land analysis to determine whether all economical, beneficial, or productive use of land was prevented by government intervention.

The court found that property rights could be severed on a piece of land by: (1) a horizontal, physical division; (2) a vertical division, severing by air, surface, and/or mineral rights; or (3) a temporal division. The property owners urged the court to divide their property vertically, thus by regulation declaring the Goss Run Watershed property UFM, the government deprived them of economic use of the land.

The court rejected the property owner’s argument that courts, including the United States Supreme Court, have refused the vertical severance of mineral, air, and surface estates. The court held that, in determining whether a government designation of UFM constituted a taking, it may only look at horizontal property rights, not vertical or temporal.

Also on appeal was the issue of whether the Commonwealth of Pennsylvania could present evidence that the proposed use of the Goss Run Watershed by the property owners constituted a public nuisance. The court held that the lower court erred by not allowing the Commonwealth to present evidence of nuisance because the Commonwealth recognized that “polluting the waters of the Commonwealth is a public nuisance.”

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