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**City of Murfreesboro v. Pierce Hardy Real Estate, Inc., No. M2000-00562-COA-R9-CV, 2001 Tenn. App. LEXIS 767 (Tenn. App., Oct. 12, 2001)**

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**TENNESSEE**

**City of Murfreesboro v. Pierce Hardy Real Estate, Inc., No. M2000-00562-COA-R9-CV, 2001 Tenn. App. LEXIS 767 (Tenn. App., Oct. 12, 2001)** (holding determination of navigability is an issue for the trier of fact; if a waterway is determined navigable, the riparian landowner is not entitled to compensation for the portion of condemned land below the low water mark because no private ownership rights in a navigable waterway can exist).

The City of Murfreesboro ("City") condemned 2.36 acres of a 10.5-acre commercial tract of land Pierce Hardy Real Estate, Inc. ("Hardy") owned along the West Fork of the Stone's River. The condemned land consisted of .61 acres in the riverbed and 1.75 acres along the riverbank. Hardy's deed described the property as extending to the center of the river. The condemned property included land at the bottom of the river from the centerline to the riverbank, the riverbank, and a strip across the top of the riverbank.

The City filed a motion to have the West Fork of the Stone's River declared a navigable waterway, contending navigable waterways were not entitled to private ownership; therefore Hardy was not entitled to compensation for the condemned land. The City supported its contention by asserting the United States Army Corps of Engineers ("Corps") determined the waterway was navigable and gave public notice of that determination. In addition, the City argued, due to the federal government's asserted jurisdiction over the river, it was navigable. The trial court held in favor of the City, and stated the river could neither be privately owned nor owned by the state. Hardy appealed.

The court examined the Corps' determination that the West Fork of the Stones River was a navigable waterway, and stated the determination bound Corps activities, but not federal courts, and therefore did not bind Tennessee courts. While the Corps' determination may be accorded "substantial weight," the court stated, Hardy was entitled to introduce contrary proof.

No federal court had determined the West Fork of the Stones River a navigable waterway. The court stated a determination of navigability by the Corps for federal purposes did not equate to the same finding for state regulatory purposes. "The federal government has ... dominant control over navigable waters used in interstate commerce for purposes and to the extent necessary to protect interstate commerce." However, that control applies to the waterway, not to ownership of the underlying soil. The court stated ownership of the bed and banks of navigable waters is generally a matter for state determination, subject to the United States' interest that they remain accessible for interstate commerce and foreign commerce.

Navigable waters in the United States are public. Neither the state

nor riparian owners can interfere with their use. When the United States does not hold title to land upon which navigable waters lie, ownership determination of the navigable waters and the soil beneath them lies with states.

The court stated that the district court correctly identified the elements of the test for navigability: "a navigable waterway of the United States must (1) be or have been; (2) used to susceptible of use; (3) in the customary modes of trade and travel on water; (4) as a highway for interstate commerce."

Due to the lack of evidence on the navigability of the West Fork of the Stones River, aside from the notice by the Corps, the court reversed the ruling of the trial court and remanded for determination by the trier of fact based on evidence relevant to that determination.

The court stated if the West Fork of the Stones River was determined navigable, the riverbed was not subject to private ownership. As a result, Hardy would not be entitled to compensation of the condemned land below the low-water mark. In Tennessee, grants of land along navigable streams extend to the low-water mark only, and title to the streambed remains with the state. If the waterway is navigable, the soil covered by water and the use of the stream belongs to the public. Therefore, any deed Hardy had only conveyed property extending to the low-water mark.

*Rachel M. Sobrero*

## TEXAS

**Bragg v. Edwards Aquifer Auth., No. 00-0436, 2002 Tex. LEXIS 13 (Tex. February 14, 2002)** (holding that the Edwards Aquifer Authority's adoption of well-permitting rules falls within the exception to the Property Rights Act for actions taken under a political subdivision's statutory authority to prevent waste or protect rights of owners of interest in groundwater).

Upon being denied a permit application for one of their two pecan orchards, Glenn and JoLynn Bragg ("Braggs") brought suit against the Edwards Aquifer Authority ("Authority") and its general manager.

The Edwards Aquifer Act ("EAA") created the Authority to manage groundwater withdrawals from the aquifer through a permit system. The EAA charged the Authority with carrying out the state legislature's mandate of conservation. The legislature anticipated that an increased withdrawal of water from the aquifer could cause a drought with potentially devastating effects.

The issue in the case hinged on the Authority's adoption of rules governing the issuance of well permits. The permit system gave preference to "existing users," which the EAA defined as people who withdrew and beneficially used the aquifer on or before June 1, 1993. The Braggs only accessed the aquifer by means of a well on one of