Court Reports

Kane Cnty., Utah v. United States, 772 F.3d 1205 (10th Cir. 2014) (holding: (1) as an issue of first impression, to meet the "disputed title" requirement under the Quiet Title Act ("QTA"), a plaintiff must show that the United States has expressly disputed title or has taken action that implicitly disputes title; (2) the omission of two roads from initial maps included in a land management plan was insufficient to create a disputed title under the QTA; (3) the United States' denial of county's allegations regarding four roads identified as "open" in the Plan or BLM's grant of access road permits to private entities for three roads did not create a "disputed title" sufficient for jurisdiction under the QTA; (4) a wilderness study area designation did not trigger the QTA limitation period for another road; (5) the PWR 107 did not reserve two parcels of land for "public use" from R.S. 2477 right-of-way; and (6) remand was necessary to determine reasonable and necessary width of R.S. 2477 rights-of-way for three roads.)

Plaintiff, Kane County of Utah (the "County"), brought action under the QTA to quiet title to fifteen roads on federally owned land in the state of Utah. The County asserted rights-of-way over these public roads under R.S. 2477 (Section 8 of the Mining Act of 1866). State of Utah ("State") filed a motion to intervene as co-plaintiff, which was granted by the District Court for the District of Utah. The district court found that (1) the court had subject matter jurisdiction under the QTA; and (2) the county had rights-of-way on twelve of the fifteen roads and set proper widths for the rights-of-way.

On appeal, the County and State argued that the district court erred (1) in finding that Public Water Reserve ("PWR") 107 reserved two parcels of land crossed by Swallow Park/Park Wash Road ("Swallow Park Road") for "public use" from R.S. 2477 right-of-way, and (2) in requiring proof of the right-of-way by clear and convincing evidence against the United States. In turn, the United States argued that the district court (1) lacked jurisdiction under the QTA over the County's claims regarding six roads due to the absence of "disputed title", and (2) erred in determination of the width of the County's rights-of-way for three roads. In addition, amici Southern Utah Wilderness Alliance ("SUWA"), the Wilderness Society, and the Sierra Club argued that the district court lacked jurisdiction over the County's R.S. 2477 claim over a road due to expired the QTA's limitation period.

On the issue of the QTA's "disputed title" requirement, the Tenth Circuit narrowly read the requirement and reasoned that indirect actions or assertions by the United States that conflict with the plaintiff's title are sufficient and that the United States is not shielded by sovereign immunity on previously disputed titles. The court held that a plaintiff must show that the United States has expressly disputed title or has taken action that implicitly disputes title.

The court next reversed the district court's ruling and found that while the omission of two roads from initial maps included in the Kanab Field Office Management Plan (the "Plan") was ambiguous, such ambiguity was insufficient to create a disputed title under the QTA. The court concluded that the district court had no jurisdiction over the QTA claims to Sand Dunes and Hancock roads.

The court also reversed the district court's findings regarding its jurisdiction under the QTA over the four Cave Lakes Roads. Under *Alaska*, a refusal of the United States to admit or deny allegations at the pleading stage is not enough to show a "disputed title" under the QTA. *Alaska v. United States*, 201 F.3d 1154, 1214 (9th Cir. 2000). Here, the court concluded that the United States' refusal did not create a "disputed title" sufficient for jurisdiction under the QTA. Likewise, the court reversed the district court's finding regarding the Title V access road permits. The court stated that the grant of Title V permits to third parties did not affect the County's right-of-way and that the permits required road maintenance under the County standards. Without the County's evidence of the permits' interference with the County's rights-of-way, the court concluded that the Title V to private entities for three roads did not provide an additional ground for "disputed title" under the QTA.

The court affirmed the finding of the district court that a wilderness study area designation did not trigger the QTA limitations period for North Swag Road. The court opined that the Paria-Hackberry designation, which encompassed North Swag Road as a wilderness area, did not impair existing R.S. 2477 rights-of-way and therefore was insufficient to trigger the limitations period under the QTA. *George v. United States*, 672 F.3d 942, 947 (10th Cir. 2012).

The court reversed the district court's finding and held that (1) the PWR 107 was not a "reservation" of two parcels of land for "public use" under R.S. 2477 right-of-way, and (2) the County could establish a right-of-way on the area of Swallow Park Road that crossed those two parcels.

Lastly, the court disagreed with the district court's findings that the County had established R.S. 2477 rights-of-way on North Swag, Swallow Park, and Skutumpah Roads because the district court failed to inquire whether the rights-of-way width were based on uses established in 1976, the year R.S. 2477 was invalidated. Under SUWA, "the scope of the R.S.

2477 right-of-way is limited by the established" road use on the date the statute is repealed. *S. Utah Wilderness Alliance v. Bureau of Land Mgmt.*, 425 F.3d 735 (10th Cir. 2005), *as amended on denial of reh'g* (Jan. 6, 2006). *Hodel* established that the width of the roads could be "widened" where necessary in light of present travel and safety needs. *Sierra Club v. Hodel*, 848 F.2d 1068, 1083-84 (10th Cir. 1988) *overruled by Vill. of Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir. 1992). *Hodel* also emphasized that the "reasonable and necessary" standard had to be considered by applying traditional uses for which the right-of-way was created in the first place. *Hodel*, 848 F.2d at 1084. Because the district court did not apply *Hodel* and SUWA standards to North Swag and Swallow Park Roads, the Tenth Circuit remanded the question to the lower court.

Moreover, the court reversed the district court finding that allowed for unspecified future improvements to the rights-of-way of the three roads. The court used SUWA's argumentation that the land management agency had to be consulted to ensure the improvement was "reasonable and necessary," and that in the event of disagreement, the matter should be reserved to courts. *SUWA*, 425 F.3d at 748.

Olga Knight

Ala. Dep't of Revenue v. CSX Transp. Inc., 132 S. Ct. 1136 (2015) (holding that a railroad carrier can prove discrimination under the Railroad Revitalization and Regulation Reform Act ("4-R Act"), 49 U.S.C. § 11501(b)(4), by showing that a rail carrier receives a different tax treatment, without sufficient justification, than one applied to a "similarly situated" competitor, but a showing that an alternative, roughly equivalent tax applies to such competitors renders a tax disparity nondiscriminatory).

Alabama taxes businesses and individuals for the purchase or use of personal property. The State applies this tax, at the general tax rate of 4%, to railroads' purchase or use of diesel fuel for their rail operations. Motor carriers were exempt from the tax made on purchases and uses of diesel fuels. Instead, the motor carriers paid a 19-cent per gallon fuel excise tax on diesel. However, water carriers paid neither the sales nor the fuel excise tax on diesel fuel. Respondent CSX Transportation, a rail carrier operating in Alabama and other states, argued that the asymmetrical tax discriminated against rail carriers and violated the 4-R Act. CSX sought injunctive relief against the State of Alabama with respect to the collection of tax on its diesel purchases.