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Telford Lands LLC v. Cain, 303 P.3d 1237 (Idaho 2013)

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economy. However, the Court held that the SRBA court did not abuse its discretion in declining to address when a storage water right is filled, because that duty is reserved to the IDWR Director.

Robert Montgomery

Telford Lands LLC v. Cain, 303 P.3d 1237 (Idaho 2013) (holding that (i) the servient landowners were not denied due process, (ii) there was reasonable necessity for condemnation of an irrigation pipeline easement, (iii) the irrigators' beneficial use of water allowed them to exercise eminent domain, (iv) the irrigators only needed to make the required good faith effort to purchase property prior to filing a lawsuit, and (v) the district court erred in dismissing the servient landowners' counterclaim for trespass).

This case involved three ranchers: Telford Lands LLC ("Telford Lands"), Mitchell D. Sorensen, and PU Ranch (collectively, "the Ranchers"). In 2009 the Ranchers collectively constructed pipelines to carry water from their respective wells to a ditch in an unused portion of the Moore Canal, which conveyed the water to the Ranchers' farmlands. One of the pipelines, disputed here, crossed a one-hundred-foot-wide strip of land owned by Donald and Carolyn Cain ("the Cains"). The Ranchers contended that the Cains gave them oral permission to run the pipeline across their property, but the Cains protested the pipeline's location in August 2009. After unsuccessful attempts to negotiate an easement purchase, in May 2010 the Cains dug up the pipeline, punctured a hole in it to disable its flow, and sent a letter to the Ranchers informing them of their actions. Thereafter, the Ranchers filed an action against the Cains seeking damages, condemnation of an easement across the Cains' property for the pipeline, and specific performance pursuant to the Cains' oral agreement. The Cains subsequently filed an answer and a counterclaim for trespass.

The Ranchers filed a motion for partial summary judgment regarding the condemnation claim, which the Cains matched with their own motion for summary judgment seeking the dismissal of all of the Ranchers' claims. The Seventh Judicial District of Butte County ("district court") granted the Ranchers' motion for summary judgment regarding the condemnation claim and dismissed the Ranchers' remaining claims. The Cains appealed.

On appeal, the Supreme Court of Idaho (the "Court") first reviewed whether the Cains were denied due process of law. The Cains argued they were denied due process of law when the Ranchers constructed a pipeline across their property before paying just compensation. The Cains further argued that because the Ranchers were in possession of the Cains' land before initiating a condemnation proceeding, the district court should have ruled on the Cains' trespass claim. The Court, however, concluded that because the Cains did not raise the issue of due process in the district court but waited until after the district court entered a judgment for condemnation, the Cains waived their right to raise the issue.

Second, the Court reviewed whether the district court erred in holding that there was a reasonable necessity for condemning a pipeline easement. The Cains argued that Telford Lands and PU Ranch voluntarily gave up their respective transport agreements and should not be able to create the necessity for condemning an easement by giving up the alternative means for transporting

their water; that Mr. Sorensen should not be able to condemn an easement where another method of transporting his water was available; and finally, that the Ranchers' transport agreements for other water rights indicated that the Moore Canal was a reasonable and available alternative to the disputed pipeline for transporting the water. The Court held that the Moore Canal was not reasonably adequate or sufficient for the Ranchers' conveyance needs, and that the Idaho Constitution, Article 1, section 14, authorized the taking of private land for public use. In so concluding, the Court validated the district court's determination that the Ranchers were failing to receive their full proportionate share and that the disputed pipeline would eliminate loss. The Court noted that the Ranchers' use of the Moore Canal would result in a conveyance loss ranging from thirty-five to forty percent and that the disputed pipeline did not have a material effect on the Cains' use of their property. Therefore, the Court concluded that the Ranchers' utilization of reasonable measures to reduce conveyance loss was in support of Idaho's strong policy to secure the maximum use and benefit of its water resources. The Cains argued that the district court ignored conditions placed on Telford Lands's and PU Ranch's water rights requiring them to transport water via the Moore Canal and, according to the Cains, displaying a pre-existing means to transport water from the Ranchers' wells. The Court upheld the district court's finding that the condition's language was merely for descriptive purposes and had no binding effect on the Ranchers' condemnation claim.

Third, the Court reviewed whether the Ranchers were entitled to exercise the right of eminent domain while their lands were under irrigation. The Court found no language, in the case the Cains cited or in any constitutional provisions or statutes, supporting the Cains' desired restrictions. Pursuant to Idaho law, the Court limited the issue to whether the Ranchers would put the water to a beneficial use after it traveled through the disputed pipeline. Finding that the Ranchers would put the water to beneficial use, the Court rejected the Cains' argument and held that the Ranchers were entitled to exercise eminent domain.

Fourth, the Court reviewed whether the Ranchers' complaint was facially deficient. The Cains argued that the Ranchers' complaint was deficient because it did not contain a legal description of the property and did not adequately allege a good faith attempt to purchase the property. As to the first argument of deficiency, the Court noted that the Cains did not raise this issue until after the district court's judgment and therefore declined to address it. As to the second argument of deficiency, the Cains argued that good faith negotiations to purchase must have been made prior to the pipeline's installation, and that the Ranchers' construction of the pipeline before obtaining a determination and executing a payment of just compensation made their complaint deficient. The Court, however, pointed to Idaho Code section 7-707(7), which states that good faith negotiations must take place only prior to the filing of the lawsuit. After the Cains were not able to present authority suggesting the contrary, the Court rejected the Cains' argument and determined the Ranchers' complaint was not facially deficient.

Fifth, the Court reviewed whether the district court erred in failing to dismiss Telford Lands as a party. The Cains argued that Telford Lands lacked standing to pursue a claim for condemning a right-of-way across their property. The Court found that the district court properly dismissed the Cains' motion to

dismiss Telford Lands as a party to the condemnation claim. In so concluding, the Court upheld the district court's finding that Telford Lands shared in costs with the other Ranchers, Telford Lands's well produced the most water and was necessary to produce a sufficient flow, and Telford Lands had a two-year lease to use water from the Old Moss Well, which flowed through the disputed pipeline. On appeal, the Cains contended that temporary leaseholders do not have the private power of eminent domain. The Court cited Idaho Constitution Article 1, section 14, in finding that an easement for temporary use can be condemned. However, the Court noted that easements for temporary use must be limited to the time that the party can use the land burdened by the condemned easement. Because the district court's judgment did not limit the right of Telford Lands to use the disputed pipeline only for the duration of its two-year water lease, the Court remanded this issue.

Lastly, the Court reviewed whether the district court erred in dismissing the Cains' counterclaim for trespass. The Court noted that there was conflicting evidence as to whether the Ranchers installed the disputed pipe with the Cains' permission. There was also nothing in the record to suggest that the Cains intended to abandon the claim, and the Ranchers never addressed the district court's dismissal of the Cains' counterclaim. The Court therefore vacated the district court's dismissal of the Cains' counterclaim and remanded the case for further proceedings regarding this issue.

Accordingly, the Court vacated and remanded the portions of the district court's judgment that dismissed the Cains' counterclaim and provided Telford Lands with a perpetual easement, but affirmed the remainder of the judgment granting the condemnation of an easement across the Cains' property.

Devon Bell

MONTANA

Nelson v. Brooks, 329 P.3d 558 (Mont. 2014) (holding that (i) the claimants' motion to amend a Statement of Claim was not a repudiation of the originally filed water rights claim; (ii) a claim of an existing right is prima facie proof of its contents; (iii) a water court's determination of the type of water right should be reviewed for harmless error; and (iii) ownership of the land containing the water source is not dispositive of ownership of the water right related to that source).

This case involved a dispute over the water rights to a well ("Disputed Well") located on Bureau of Reclamation land in Beaverhead County, Montana. Minerals Engineering originally drilled the Disputed Well, along with other wells in the area, in the 1950s. During that time, Carl Kambich ("Kambich") owned a ranch immediately adjacent to the Minerals Engineering site. In 1953 Minerals Engineering and Kambich entered a contractual agreement ("the Indenture") that granted Kambich the exclusive right to a water well on "Minerals No 3 mill site mining claim." The Indenture contained no other description of the well or its location. In 1982 Kambich filed a Statement of Claim to the Disputed Well for existing water rights. The Statement of Claim listed a priority date of January 1, 1954, a pump as the means of diversion, a