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Tuttle v. Olds, 155 P.3d 893 (Utah Ct. App. 2007)

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The court recognized that OPHSCA imposes strict liability on any party “using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such . . . into the waters of the State.” However, the court also reasoned that the third-party exception to OPHSCA liability precluded strict liability for discharges of oil or other hazardous substances if the potentially liable party proved that an act or omission of a third party caused the discharge. This defense applies regardless of whether or not the act or omission was negligent.

Following precedent, the court first determined whether the trial court erred in refusing to give certain jury instructions. The court considered whether the evidence presented at trial was sufficient to support the third-party liability exception defense. Next, the court reasoned that if the evidence supported the jury instructions, the trial court’s failure to provide the instructions was reversible error. The court remanded the case for a new trial because evidence supported giving third-party liability instructions to the jury.

In conclusion, the court declared that neither it nor the dissent offered any binding precedent showing a duty to affirmatively plead the third-party exception to strict liability. The court further explained that even if it were to require that defendants affirmatively plead such a claim, Gosai and Mini Mart met that burden. Because the trial court found sufficient evidence that Barrett caused the gasoline leak, the court held that the trial court erred in failing to instruct the jury on the third-party exception to strict liability under OPHSCA. Therefore, the court reversed and remanded the case for a new trial.

Eric Stevens

UTAH

Tuttle v. Olds, 155 P.3d 893 (Utah Ct. App. 2007) (holding that no takings occurred when Olds informed Tuttle that no water rights existed on property and that Tuttle did state a claim of negligence upon which relief may be granted).

Landowners William Tuttle, Charlene Tuttle, J. Kenton Tuttle, and Lori Tuttle (collectively the “Tuttles”) appealed the Third District Court of Utah’s dismissal of negligence and takings claims against Utah State Engineer Jerry Olds and the Department of Natural Resources (the “State”) stemming from a \$1.4 million judgment entered against the Tuttles in a related case involving water rights.

In 1994, the State created a groundwater management plan for the Pahvant Valley following a federal study that showed an overdraft of water in that area. The Tuttles owned a 1700-acre farm in the valley. As part of the management plan, the State conducted a survey comparing actual irrigated acreage with the theoretical acreage that all valley landowners’ water rights could irrigate. This survey revealed substan-

tial illegal watering, and the State mailed warning letters to landowners engaged in this practice. After some neighbors received these letters, the Tuttle became concerned and visited the Utah Division of Water Rights. An employee referred the Tuttle to a map delineating areas of illegal watering in red; the Tuttle's farm was not included in the red area. In 1996, the State mailed letters to all valley landowners that explained that all irrigated lands had valid water rights and that the State had notified all illegal water users.

In 1998, the Tuttle decided to sell the farm to the Ellsworths. During the negotiations, the State notified the Tuttle that the survey overlooked a diesel-powered well on their property, and no valid water rights existed for the well. Nonetheless, the Tuttle provided the Ellsworths with a copy of the 1996 letter confirming sufficient and valid water rights for the farm and completed the sale in 1999. After learning that the farm did not have valid water rights for the well, the Ellsworths brought a successful \$1.4 million suit against the Tuttle. The Tuttle subsequently filed negligence and takings claims against the State; however, the trial court dismissed the claims.

On appeal, the Tuttle argued that the trial court improperly considered matters outside of the pleadings in dismissing the claims. The Court of Appeals of Utah agreed, and held that the trial court erred by considering the Ellsworths' judgment against the Tuttle.

Examining the pleadings under the correct standard, the court held that the Tuttle satisfactorily stated a claim for negligence by alleging that the State was not required to perform the water usage survey, the State did not conduct the survey with reasonable care, and the negligent survey resulted in a \$1.4 million verdict against the Tuttle. Accordingly, the court held that negligent surveying could result in a successful suit by the Tuttle.

However, the takings claim did not survive the motion to dismiss. While water rights are a protectable property interest in Utah, the court held that the Tuttle did not allege facts showing that the State deprived the Tuttle of any legal water rights. The State did not decrease or change the Tuttle's water rights; rather, the 1998 letter only deprived them of the illegal use of water for the diesel-powered well. Accordingly, the court held that the trial court properly dismissed the takings claim.

Matt Larson

WYOMING

Bentley v. Dir. of State Lands & Invs., 2007 WY 94, 160 P.3d 1109 (Wyo. 2007) (holding that water rights were validly severed from real property and conveyed by the owners of the lands to the Wyoming Game and Fish Commission with an easement).