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Ex Parte Cove Props., Inc., No. 1981893, 2000 Ala. LEXIS 320 (Ala. July 28, 2000)

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collected in furtherance of spill level adjustments, thereby reducing water temperatures and gas levels, in the years leading up to this action both temperature and dissolved gas levels regularly exceeded the State's water quality standards.

Alluding to these violations, NWF argued that the Corps' operation of the four dams violated the State's water quality standards, as well as the CWA, in that temperatures and dissolved gas levels continually exceeded the established standards. In support of their APA claim, NWF asserted the Corps had abused its discretion in taking actions that were not in accordance with the law. In support of this assertion, NWF pointed to the 1998 ROD. The 1998 ROD referenced proposed spills at the dams that would violate the State's water quality standards. NWF maintained that judicial review under the APA was proper because the 1995 and 1998 RODs constituted final agency decisions.

In its summary judgment motion, the Corps countered that (1) because many of the same plaintiffs filed an action in 1996 challenging the 1995 BiOp and ROD under the Endangered Species Act, the doctrines of issue and claim preclusion barred the newer claims; (2) the CWA did not authorize NWF to bring actions against federal agencies in order to compel such agencies to comply with the State's standards promulgated under the CWA; (3) the 1995 and 1998 RODs did not represent final agency actions subject to review under the APA; and (4) the Plaintiffs lacked standing to sue because they failed to provide evidence depicting an injury.

In denying the Corps' motion, the court found (1) the 1995 Endangered Species Act claim did not preclude the later claim because the two are "distinct statutory schemes" and "compliance with one statute does not equal compliance with the other;" (2) the APA permits judicial review of the requirement that all federal agencies must comply with state water quality standards; (3) the Corps' RODs sufficiently represented final agency actions reviewable under the APA; and (4) NWF's interests in both the rivers' recreational and aesthetic values and the adverse effects of the dams on those interests were sufficient to fulfill the APA's injury requirement.

Jason Wells

STATE COURTS

ALABAMA

Ex Parte Cove Props., Inc., No. 1981893, 2000 Ala. LEXIS 320 (Ala. July 28, 2000) (holding, with respect to waterfront properties located on generally straight or convex shorelines, one waterfront property owner may not build in front of the riparian lands of an adjacent waterfront property owner).

Plaintiff, Cove Properties, Inc. (“Cove”), and defendant, Walter Trent Marina, Inc. (“Walter Trent”), owned adjoining land fronting Terry Cove in Baldwin County, Alabama. Upon the issuance of appropriate permits, Walter Trent constructed a pier extending southward 350 feet from its shoreline onto submerged property leased to Walter Trent from the State of Alabama. The leased property was also within navigable waters. Under suspicion that Walter Trent’s pier encroached onto Cove’s waterfront property, Cove had the boundary between its property and Walter Trent’s property surveyed. The survey evidenced an encroachment of the southern end of Walter Trent’s pier onto and in front of Cove’s property.

The trial court dismissed Cove’s declaratory judgment action requesting injunctive relief, damages, “just compensation,” and damages under 42 U.S.C. section 1983. The court of appeals affirmed the dismissal of the just compensation and section 1983 claims, but reversed the dismissal of Cove’s claims for declaratory judgment, injunctive relief and damages, and remanded.

On remand, Walter Trent filed a motion for summary judgment and Cove filed a motion for partial summary judgment. Walter Trent claimed the encroachment did not violate Cove’s property rights because the encroachment was within navigable waters. Moreover, Walter Trent provided substantial supporting documentation and authority. The trial court granted Walter Trent’s motion for summary judgment and denied all relief requested by Cove.

Cove appealed the judgment. The court of appeals affirmed the trial court’s order for summary judgment with respect to Walter Trent’s rights for that portion of the pier that extended into navigable water. The court reversed the judgment as it applied to Walter Trent’s rights for that portion of the pier above the high water mark and Cove’s riparian rights up to the point of navigable waters.

The Supreme Court of Alabama granted certiorari and considered whether one waterfront property owner may build in front of the riparian lands of an adjacent waterfront property owner. The court reviewed the statutory rights of riparian landowners set forth in Alabama Code sections 33-7-50 through 33-7-54. Such provisions authorize the installation of certain named structures in front of a landowner’s riparian land. The court interpreted the statutes, giving unambiguous terms their plain meaning. The supreme court determined that the statutes explicitly disallowed construction of structures that extend in front of another’s riparian land. Therefore, the supreme court determined Walter Trent was not authorized to construct its pier in front of Cove’s riparian land, regardless of the pier’s location within navigable waters.

Megan Becher-Harris

Russell Corp. v. Sullivan, No. 1981074, 2000 Ala. LEXIS 340 (Ala. Aug. 4, 2000) (holding a state power company did not commit trespass or