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## Albahary v. City of Bristol, No. CV 970482781, 1999 WL 185131 (Conn. Supp. Mar. 16, 1999)

Kim Shropshire

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matter jurisdiction was properly invoked, a party's failure to comply with a procedural requirement could justify the court's dismissal of that action. A procedural requirement, service must be accomplished upon all proper and necessary parties. The court held that actual service, however, rather than its timing, perfected the appeal. Accordingly, because the thirty day service of notice requirement was procedural, plaintiff's failure to timely serve the three parties did not require dismissal of the action.

*Caroline Payne*

## CONNECTICUT

**Albahary v. City of Bristol, No. CV 970482781, 1999 WL 185131 (Conn. Supp. Mar. 16, 1999)** (holding that a statute authorizing the City of Bristol's condemnation of an easement on plaintiffs' property was constitutional because it was enacted for the legitimate and public purpose of complying with a Consent Order).

In 1995, the Connecticut Department of Environmental Protection ("CDEP") entered into a Consent Order with the City of Bristol ("City"). The City agreed to investigate and study the damage to a city-owned landfill that was leaking contaminants. The Consent Order did not require the City to clean up the contaminants. Instead, the Consent Order required the City to take control of all affected land within the contamination's zone of influence. The Consent Order defined the zone as the area where leachate and ground water mixed, or could potentially mix.

The Albahary's land bordered the landfill and was deemed within the contaminated zone. In 1996, the Connecticut General Assembly enacted Special Act 96-12 ("Special Act"). The Special Act allowed for condemnation in those cases involving city-owned landfills when the condemned land was outside a municipality's corporate limits. In August of 1997, pursuant to the Special Act, the City began condemnation proceedings to acquire an easement onto Albahary's land. Albahary challenged the constitutionality of the Special Act, seeking to have the Special Act declared invalid, unconstitutional, and against public policy.

The court first noted that the constitutional issue was dispositive. If the court found the Special Act unconstitutional, the need to address Albahary's additional arguments was obviated. The court found the Special Act to be constitutional and valid.

The court pointed out that any legislation for the economic or social welfare of its constituents would be constitutional if there were a rational and legitimate state purpose. If the Special Act met this two-part test, then it satisfied the due process requirement. Here, the Special Act met the two-part test. Albahary did not contest the validity

of the Consent Order mandating acquisition of all water rights affected by contamination. The Consent Order itself served a public purpose in trying to assure clean water. Therefore, the City's attempt to comply with the Consent Order was for the benefit of the public. The Special Act facilitated the fulfillment of the Consent Order, and was therefore enacted for a legitimate purpose.

Albahary next argued that the Special Act only permitted the City to take ground water rights, not easement rights. Because the Special Act did not mention the word easement, Albahary argued that by taking easement rights, the City exceeded the express authority of the Special Act, thus rendering the condemnation *ultra vires*. Conceding there was no express language regarding easements in the statute, the court relied on the traditional view that ambiguous statutes must be construed to satisfy the legislature's purpose. The court determined that it was plain from the legislative history that the City was not limited to the water rights of the property. The court thus held the City had statutory authority to acquire an easement necessary to comply with the Special Act's purpose. Therefore, the court allowed the City to condemn an easement across Albahary's property.

Finally, Albahary argued that the taking was statutorily prohibited by General Statutes which provide that a municipality may take only a fee simple interest in private property. The court first stated that nothing prohibited the legislature from authorizing less than a fee interest in property. The court next pointed out that the Special Act, authorizing taking of ground water or rights or interests therein, could reasonably be interpreted as allowing a condemnation of less than fee interest. Accordingly, the City's condemnation of the Albahary's property under the Special Act did not violate the General Statutes.

*Kim Shropshire*

**Middlefield Citizens Action, Inc. v. Middlefield Inland Wetland, Nos. 82372, 85259, 82830, 83209, 1999 WL 195882 (Conn. Super. Ct. 1999)** (holding an agency did not receive ex parte information when it received technical information from its engineer explaining a perched water table).

White Water Mountain Resorts of Connecticut ("White Water") runs Powder Ridge Ski Area in the winter. To expand its business to include summer sports, White Water intended to build a summer water park adjacent to the ski area.

White Water applied to the Town of Middletown Planning and Zoning Commission ("Commission") for a special permit to create the park and the road. During the mandatory public hearings, the Commission created the special permit's conditions, which primarily addressed traffic problems. The Commission subsequently approved the permit.