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LEGAL SHORT TAKES ON MUNICIPAL CASE LAW (AND OTHER THINGS)

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December 4, 2020

Eminent Domain/Jury trial/Mode of trial for "other condemnee"

South Carolina Department of Commerce v. Clemson University, ___ S.C. ___, ___ S.E.2d ___, 2020 WL 6751311 (Ct. App. 2020)(11/18/20)

Commerce brought condemnation action for a 69-acre tract owned by Clemson and subleased to Charleston County School District. Clemson settled with Commerce for a land swap. School District asserted a right to jury trial on valuation of the entire tract and apportionment of that value for its interest. Held: (1) only landowner (and not "other condemnees") had statutory right to jury trial, and (2) determination of value of School District's equitable interest was for trial court and not a jury.

Inverse condemnation/Prejudgment interest

Burke v. SCDOT, 429 S.C. 319, 838 S.E.2d 534 (Ct. App. 2020)(1/15/20)

Novel issue of law. In an inverse condemnation, award of prejudgment interest is a matter for judge, not jury. Relied primarily on language in Cobb v. SCDOT (2005) that eminent domain and inverse condemnation cases should be treated alike procedurally.

Land use/Maritime forest on accreted beachfront property/Actionability of Town's maintenance

Bluestein v. Town of Sullivan's Island, 429 S.C. 458, 839 S.E.2d 879 (2020)(2/19/20)

Reversed Court of Appeals decision in 2018 (818 S.E.2d 239) that upheld summary judgment in favor of Town. Accreting beachfront land owned by Town by deed. Plaintiffs were previously front row beachfront. Issue was discretion of Town under deed terms in maintenance of shrubs and vegetation as, over time, sea oats and wildflowers became "thickly wooded." Supreme Court determined ambiguous deed language and factual issue precluding SJ.

Multi-county industrial and business parks/Dormitories as a business

South Carolina Public Interest Foundation v. City of Columbia, 431 S.C. 164, 847 S.E.2d 257 (Ct. App. 2020)(7/8/20)

DJ action on legality of inclusion of private residential student dormitories in a multi-county industrial and business park. Court concluded that dormitories, that were private, non-owner occupied, and taxed and zoned as commercial properties, were not residential but were engaged in the commercial business activity of leasing and providing other services. State Constitutional provision (Article VIII, section 13(D)) and correlating statutory provision (S.C. Code section 4-1-170(A)) refer to "an industrial or business park." Dictionary definition of "business" includes "a commercial enterprise carried on for profit."

Special purpose districts/Constitutionality of millage-setting statute for non-elected districts

Weaver v. Recreation District, 431 S.C. 357, 848 S.E.2d 760 (2020)(9/2/20)

DJ action challenging constitutionality of S.C. Code section 6-11-271 that, generally stated, authorizes a baseline FY 1998 tax millage for non-elected SPD's with methods to increase millage. Supreme Court reiterates "beyond a reasonable doubt" standard for a judicial declaration of unconstitutionality, as well as principles of presumption of constitutionality and liberal construction. Rejected assertions of taxation without representation, special legislation, and violation of Home Rule constitutional provisions. Statute here is not special legislation because it is a general law aimed at a valid uniform class. Home Rule did not restrict general laws governing existing SPD's.

Standing/Associational standing/Statutory standing as "affected persons"

Preservation Society of Charleston v. SCDHEC, 430 S.C. 200, 845 S.E.2d 481 (2020) (2/19/20)(Rehearing denied 8/7/20)

Community historic preservation organizations' members were "affected persons" under S.C. Code section 44-1-60(G) for purposes of requesting a contested case ALC hearing. Challenge to State environmental authorizations for expansion of passenger cruise facility at Union Pier Terminal. Organizations met the three-part test for associational standing, including first part that at least one member would otherwise have standing to sue in own right. Although "affected persons" not defined in the related statutes, Supreme Court looks at dictionary definitions and plain and ordinary meaning of phrase as "injured." Also discusses nature of ALC proceeding as akin to administrative rather than judicial review. Exposition on associational standing by majority opinion with a strong dissent from Justice Few.

Standing/Associational standing/Statutory standing as "aggrieved party"

South Carolina Coastal Conservation League v. Dominion Energy South Carolina, Inc., ___ S.C. ___, ___ S.E.2d ___, 2020 WL 5405398 (2020)(9/9/20)

Appeal from PSC decision on rates to be paid by utility to solar and other renewable energy producers. Organizations representing environmental and consumer interests were not "aggrieved parties" under Rule 201 (b), SCACR, or "a party in interest" with right to appeal under S.C. Code section 58-27-2310.

An aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property. A real party in interest is one who has a real, natural or substantial interest in the subject matter of the action. The rates at issue do not affect the interests represented by the two organizations. A requirement for associational standing is that the organization's "members would otherwise have standing to sue in their own right."

A party allowed to "intervene" at the PSC meets a less restrictive standard. The fact a party was allowed to intervene at the PSC does not equate to standing to appeal the PSC decision.

State Constitution/Prohibition on direct aid to religious and other private educational institutions

Adams v. McMaster, ___ S.C. ___, ___ S.E.2d ___, 2020 WL 5939936 (2020)(10/7/20)

Action for DJ and injunctive relief in original jurisdiction challenging constitutionality of Governor's allocation of Federal emergency education funding to a program providing for one-time tuition grants for students to attend private and independent primary and secondary schools. School District, S.C. Education Association and others have "public importance" standing to maintain action. The funds (transferred directly from State Treasury to the school) are public funds. Program violates State Constitutional provision (Article XI, section 4) prohibiting direct aid to religious and other private educational institutions. Federal CARES Act does not clearly preempt state constitutional provision.

Summary courts/Competency evaluations/Inherent power to order such evaluations/Prosecution pays for indigents

State v. Bellardino, 429 S.C. 563, 841 S.E.2d 621 (2020)(Filed 10/23/19)(Re-Filed 4/8/20)

Substituted opinion (for withdrawn 2019 WL 5415856 filed on 10/23/2019). DJ in original jurisdiction. S.C. Code section 44-23-410 (A) does not limit authority of summary courts to order mental competency evaluations. Summary courts may order a party to pay for the evaluation and may order the prosecuting entity to pay costs of evaluation as a condition of going forward with prosecution.

Tort Claims Act/Claim of failure to provide police protection

Shelley v. South Carolina Highway Patrol, ___ S.C. ___, ___ S.E.2d ___, 2020 WL 6301394 (Ct. App. 2020)(10/28/20)

Wrongful death/survival causes of action with allegation that Highway Patrol was grossly negligent in leaving alleged impaired individual on roadside and failure to protect from harm. Affirmed trial court grant of DV on ground that failure to protect claim barred under S.C. Code section 15-78-60(6) (no governmental liability for "the failure to provide [or] the method of providing police or fire protection"). Decision tracks history of provision and construing cases. Rejects requested limitation of the exception to waiver of liability to policy formulation or to planning and operational activities.

Tort Claims Act/Monetary cap is self-executing

Campbell v. City of North Charleston, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020) (7/22/20)(Rehearing denied 10/29/20)

The monetary cap for liability articulated in the SCTCA is self-executing and is not an affirmative defense. Default case with capped award by judge in the order of default. Default and cap upheld on cross-appeals. Under the plain meaning of S.C. Code section 15-78-120(a) (providing that liability "shall not exceed" the limits in the Act), courts must apply the statutory cap to actions brought pursuant to the Act.

Tort Claims Act/Premises liability/Invitee or licensee/Constructive notice

LeFont v. City of Myrtle Beach, 430 S.C. 534, 846 S.E.2d 355 (Ct. App. 2020)(3/11/20)
(Rehearing denied 8/24/20)

Premises liability case involving pothole in employee parking lot of Myrtle Beach Convention Center and trip and fall by vendor at trade show. Court of Appeals reversed post-evidence directed verdict for City, concluding factual issues for jury on (1) invitee or licensee and (2) constructive notice of defect. Citing prior case language that an invitee "confers a benefit on the landowner," Court reasoned that vendor at trade show conferred a benefit on City by paying to participate in trade show. Jury issue on constructive notice due to expert witness testimony, including testimony on City's adoption of IPMC and its provision that parking lots be maintained free from hazardous conditions.

Zoning and land development/Appeal from Planning Commission decision on development permit

Grays Hill Baptist Church v. Beaufort County, ___ S.C. ___, ___ S.E.2d ___, 2020 WL 5542089 (2020)(9/16/20)

Reversed Court of Appeals 2019 decision (828 S.E.2d 234). Original development permit for Church tract included both sanctuary building and fellowship hall, as well as language that permit expired in two years unless substantial improvement occurred. Completion of sanctuary within one year but no start on fellowship hall for 10 years. Because sanctuary completed, substantial improvement as referenced for continuation of permit occurred, with result that original development permit had not expired and new development permit not necessary. No provision of local law or written administrative procedure supported the contention of the County that the permit expired when one building was completed.

OTHER THINGS

Fair Housing Act/Zoning Variance

United States v. Town of Irmo, ____ F.Supp.3d ____, 2020 WL 2322714 (D.S.C. 2020) (5/11/20) (Childs)

First Amendment/Tour guide licensing ordinance

Billups v. City of Charleston, 961 F.3d 673 (4th Cir. 2020) (6/11/20)

Taking/Police power

Yawn v. Dorchester County, 446 F.Supp.3d 41 (D.S.C. 2020) (5/5/20) (Seymour)