

WEDNESDAY, MARCH 24, 2010
9:00 A.M.

NO. 1

#25252

LAWRENCE COUNTY, a political
Subdivision of the State of
South Dakota,
Plaintiff and Appellee,

vs.

CHERIE L. MILLER, MILTON E.
MITCHELL and HELEN B. NEUFELD,
co-executors of the estate of
Elvin E. Mitchell and CHRIS
MILLER,
Defendants and Appellants.

Mr. Kenneth E. Barker
Mr. Michael A. Wilson
Barker Wilson Law Firm, LLP
PO Box 100
Belle Fourche SD 57717-0100
Ph 723-8000
(FOR APPELLANTS)

Mr. Thomas E. Brady
Brady & Pluimer
Attorneys at Law
135 E Colorado Blvd
Spearfish SD 57783-2755
Ph 722-9000
(FOR APPELLEE)

Mr. Bruce Outka
Attorney at Law
90 Sherman St
Deadwood SD 57732
Ph 578-1707
(FOR APPELLEE)

The Honorable John W. Bastian
Fourth Judicial Circuit
Lawrence County
(CIV 07-65)

20-20-10

STATEMENT OF LEGAL ISSUES

1. **IS THE GOVERNMENT'S RESTRICTION OF A LANDOWNER'S USE OF AIRSPACE A COMPENSABLE TAKING UNDER THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION OF THE STATE OF SOUTH DAKOTA?**

Comment: The trial court implicitly held in the negative.

Most Relevant Statutes:

US Const. amend. V
SD Const. art. VI, § 13
SDCL 50-13-4
SDCL 50-7-4

Most Relevant Cases:

Krier v. Dell Rapids Twp., 2006 SD 10, 709 NW2d 841
Benson v. South Dakota Dept. of Game, Fish & Parks, 2006 SD 8, 710 NW2d 131
State Highway Comm'n v. Bloom, 77 SD 452, 93 NW2d 572 (1958)
Hurley v. State, 82 SD 156, 143 NW2d 722 (SD 1966)

2. **DOES A TRIAL COURT HAVE JURISDICTION TO DETERMINE AND DENY JUST COMPENSATION FOR PRIVATE PROPERTY TAKEN OR DAMAGED BY CONDEMNATION BUT NOT DESCRIBED IN THE PETITION FILED UNDER SDCL Ch. 21-35?**

Comment: The trial court implicitly held in the affirmative.

Most Relevant Statutes:

SD Const. art. VI, § 13
SDCL 21-35-1
SDCL 21-35-2
SDCL 50-13-3

Most Relevant Cases:

City of Sioux Falls v. Missouri Basin Mun. Power Agency, 2004 SD 14, 675 NW2d 739
Consumers Pub. Power Dist. v. Eldred, 22 NW2d 188 (Neb 1946)
Palazzolo v. Rhode Island, 533 US 606, 121 SCt 2444 (2001)
Krier v. Dell Rapids Twp., 2006 SD 10, 709 NW2d 841

3. **WHETHER EXPERT TESTIMONY DESCRIBING THE LIKELY ADOPTION OF LOCAL ORDINANCES WHICH RESTRICT THE USE OF AIRSPACE ADJACENT TO LAND CONDEMNED FOR AN AIRPORT EXPANSION PRESENTS A GENUINE ISSUE OF MATERIAL FACT THAT A COMPENSABLE TAKING OF THAT AIRSPACE HAS OCCURRED?**

Comment: The trial court held in the negative.

Most Relevant Statutes:

SDCL 50-10-8

SDCL 15-6-56(c)(1), (2)

Most Relevant Cases:

United States v. Causby, 328 US 256, 66 SCt 1062 (1946)

McCarran Int'l Airport v. Sisolak, 122 Nev 645, 137 P3d 1110 (2006)

Hall v. State ex rel. South Dakota Dept. of Transp., 2006 SD 24, 712 NW2d 22

Benson v. South Dakota Dept. of Game, Fish & Parks, 2006 SD 8, 710 NW2d 131

4. **IS THE ISSUE OF JUST COMPENSATION RIPE FOR DETERMINATION BEFORE THE FINAL ADOPTION OF ORDINANCES WHICH RESTRICT A LANDOWNER'S USE OF AIRSPACE ADJACENT TO PROPERTY CONDEMNED FOR AN AIRPORT EXPANSION?**

Comment: The trial court held in the affirmative.

Most Relevant Statutes:

SDCL 50-10-1 – 8

SDCL 15-6-56(c)(1)

SDCL 50-13-3

Most Relevant Cases:

Boever v. South Dakota Bd. of Accountancy, 526 NW2d 747 (SD 1995)

Lewis & Clark Rural Water System, Inc. v. Seeba, 2006 SD 7, 709 NW2d 824

United States v. Causby, 328 US 256, 66 SCt 1062 (1946)

McCarran Int'l Airport v. Sisolak, 122 Nev 645, 137 P3d 1110 (2006)

MUST THE NON-MOVING PARTY FACING A MOTION FOR SUMMARY JUDGMENT DEMONSTRATE THE PRESENCE OF A GENUINE ISSUE OF MATERIAL FACT EVEN THOUGH THE MOVING PARTY HAS MADE NO ATTEMPT TO DEMONSTRATE THE ABSENCE OF ANY GENUINE ISSUE OF MATERIAL FACT?

Comment: The trial court held in the affirmative.

Most Relevant Statutes:

SDCL 15-6-56(c)(1), (2)

SDCL 15-6-56(e)

Most Relevant Cases:

State Auto Ins. Cos. v. B.N.C., 2005 SD 89, 702 NW2d 379

Casey Ranch Ltd. P'ship v. Casey, 2009 SD 88, 2009 WL 3038326

Rowland v. Log Cabin, Inc., 2003 SD 20, 658 NW2d 76

Gul v. Center for Family Medicine, 2009 SD 12, 762 NW2d 629