

Wastewater Plant Construction/Calion Lake: Arkansas Court of Appeals Addresses Challenge to Condemnation



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The Arkansas Court of Appeals in a February 20th opinion addressed issues arising out of the construction of a wastewater plant (“Plant”) by the City of Calion, Arkansas, (“City”) on Calion Lake (“Lake”). See *James Randall Amason, Sr., v. City of Calion, Arkansas*, 2019 Ark. App. 106.

The issues involved an individual property owner’s challenge to the City’s condemnation action that sought two easements – a permanent easement and a construction easement – for construction of the Plant.

James Randall Amason, Sr. (“Amason”) owned property on the Lake. Amason challenged the city’s Condemnation Complaint in regards to the construction of the Plant asking the Union County Circuit Court to declare that:

. . . if the City of Calion goes forward with its stand-alone sewer system and dumps effluent into Calion Lake such will void the Surface Lease that was executed on July 13, 1934.

The 1934 Surface Lease states in part as follows:

The purpose of this lease is to provide a public fishing lake for the use, pleasure and enjoyment of the members of the public . . . This lease shall continue and remain in full force and effect for such time as said lake is maintained and used for the purpose aforesaid, and no longer. If said lake is not maintained or the purpose of the lease abandoned, then rights herein surveyed shall cease and the right of possession to the surface of the lands shall return and vest in the respective owners.

The lease had been assigned to the Arkansas Game and Fish Commission in 1955 with the conditions that it be maintained, operated, and preserved the Calion Lake as a public fishing lake for the use, pleasure and enjoyment of the members of the public generally and in keeping with purposes of said Lake.

On May 18, 2015, the City filed a declaration of taking the previously referenced two easements across Amason’s property. Just compensation was stated to have been deposited in the Court’s registry.

The City filed a Motion for Summary Judgment on Amason’s declaratory-judgment action arguing that there was no standing and a failure to join necessary parties. It further argued that the construction of the wastewater plant did not void the Surface Lease.

In support of its Motion for Summary Judgment, the City offered an affidavit by the County Judge noting that plans to construct the Plant were for the purpose of combating pollution levels and that the County did not object to the Plant. An additional affidavit by personnel from the Arkansas Natural Resources Commission indicated that pollution levels in the Lake prevented recreational activities and that the water

would be tested regularly to comply with regulatory standards. There was an additional indication that the Plant would not negatively affect the fish population and complied with all environmental requirements.

The Union County Circuit Court, based on the previously referenced documents and additional ones, granted the City's Motion for Summary Judgment. It further provided that Amason was procedurally barred from bringing the declaratory-judgment action because:

1. There was no standing
2. Failure to join necessary parties
3. No justiciable controversy

The Circuit Court further found that the Plant did not void the Surface Lease.

The Court of Appeals noted that the Surface Lease stated as a purpose the provision of a public fishing lake and that the uncontested evidence indicated that the Plant would improve water quality in the Lake. Further, it noted the Lake had significant water quality problems and had been listed on the United States Environmental Protection Agency's Clean Water Act Section 303(d) Impaired-Waters List. The previously referenced documents noting that the Plant would help address the existing pollution in the Lake were referenced. Also noted were the approvals by the state agencies and future monitoring efforts.

The Court noted that there was a failure to:

. . . meet proof with proof to rebut the City's evidence that the wastewater plant did not void the surface lease, we cannot say that the circuit court erred in granting the City's summary-judgment motion on the declaratory-judgment action.

The Court also rejected the argument that the City acted in bad faith by condemning the property with knowledge of the Surface Lease's condition of the Lake. It noted that an Order had been entered on the City's motion to enforce the Settlement Agreement referencing the fact that Amason accepted \$3,810 in full satisfaction of the taking. A negotiated Settlement Agreement reached during the pendency of an appeal is stated to render the appeal mute.

A copy of the opinion can be found [here](#).