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Heughs Land, LLC v. City of Holladay : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

HEUGHS LAND, LLC, a Utah limited
liability company,

Plaintiff/Appellant,

vs.

CITY OF HOLLADAY, a municipal
corporation and local subdivision of the
State of Utah,

Defendant/Appellee.

Case No. 20040611-CA

District Court Case No. 030919270

REPLY BRIEF OF APPELLANT
(ORAL ARGUMENT REQUESTED)

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, HONORABLE GLENN K. IWASAKI

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SUMMARY OF THE ARGUMENT

The lower court ruled, and the City of Holladay argues here, that the notice provisions of the Utah Governmental Immunity Act bar Heughs Land's state takings claims, and that Heughs Land's federal takings claims are not ripe until the state claims are fully adjudicated.

Article I, section 22 of the Utah Constitution is undisputedly self-executing. It is this self-executing characteristic that vests citizens with immediate, judicially enforceable rights arising from the taking of their private property and exempts the constitutional provision from *any* legislation except for that which broadens the rights created thereunder. The result sought by the City of Holladay would be the unconstitutional, legislative narrowing of a self-executing constitutional right.

In *Williamson County Planning Commission v. Hamilton Bank*, the Supreme Court held that "federal takings claims are not ripe for litigation until the claimant has sought compensation from the state and been denied." 473 U.S. 172, 195 (1985). Many courts refuse to interpret *Williamson* as precluding state courts as an initial and concurrent venue for federal takings claims. Heughs Land asks this Court to do the same.

ARGUMENT

I. SELF-EXECUTING CONSTITUTIONAL PROVISIONS MAY NOT BE LIMITED OR IN ANY WAY RESTRICTED BY LEGISLATION.

A. The City of Holladay does not Contest that Article I, Section 22 of the Utah Constitution is Self-Executing.

The City of Holladay presents not one case opposing the self-executing nature of article I, section 22 of the Utah Constitution.

It is this self-executing nature that prevents the rights arising under article I, section 22 from being limited or in any way restricted by legislation such as the Utah Governmental Immunity Act. Though there was a brief time when Utah jurisprudence was ambivalent as to the nature of article I, section 22 of the Utah Constitution, modern courts have made it unequivocally clear that this constitutional clause is self-executing. *See, e.g., Colman v. Utah State Land Bd.*, 795 P.2d 622, 630 (Utah 1990) (“We now reaffirm that article I, section 22 is self-executing.”); *Farmers New World Life Ins. Co. v. Bountiful City*, 803 P.2d 1241, 1244 n.1 (Utah 1990) (“Recently, in *Colman v. Utah State Land Bd.* (citation omitted), we held that article I, section 22 was self-executing.”); *Spackman v. Bd. of Educ. of the Box Elder County Sch. Dist.*, 16 P.3d 533, 535 (Utah 2000) (“To date, this court has expressly found three constitutional provisions to be self-executing: (1) . . . article XII, section 18, providing for the liability of bank stockholders (citation omitted), (2) article I, section 22, the Takings Clause (citing *Colman*); and (3) article I, section 9, the Unnecessary Rigor/Cruel and Unusual Punishment Clause (citation omitted).”).

B. A Self-Executing Clause is not Subject to Limiting or Contravening Legislation such as the Utah Governmental Immunity Act.

Unlike certain other rights that are born of statute, the rights deriving from a self-executing constitutional clause are effective and enforceable **as is**. In other words, “a self-executing clause is one that can be judicially enforced without implementing legislation.” *Spackman* at 535. Thus, in the case at hand, subject matter jurisdiction over Heughs Land’s state takings claims is presumed to exist.

In *Lynch v. Jacobsen*, 184 P. 929, 933 (Utah 1919), the Court stated that “[i]t is all too well settled to admit of controversy, although not always kept in mind by either courts or counsel, that where certain rights are granted or certain liabilities are imposed by the Constitution, all that is intended thereby, unless otherwise expressed in the instrument itself, is that **the Legislature is bound by the constitutional provision as written . . . such Constitutions are merely limitations upon the powers of the state Legislatures.**” (emphasis added).

The obvious intent of a strict limitation on legislative power is to guarantee the availability of certain, unimpeded constitutional rights. It follows that any legislation aimed at self-executing constitutional rights can only *further* the exercise of such a constitutional right and make it *more* available. See *Colman* at 630 (“[T]he delegates [to the Constitutional Convention in 1895] assumed that article I, section 22 would be a limitation on the state and that further legislation would provide *no less protection* than that mandated by article I, section 22.” (emphasis added); *Bott v. DeLand*, 922 P.2d 732, 738 (Utah 1996) (Courts may avoid legislation incongruous to self-executing constitutional provisions); 16 AM. JUR. 2D *Constitutional Law* § 101 (2004) (“It is clear that legislation which would defeat or restrict a self-executing mandate of the constitution is beyond the power of the legislature.”).

Based on these principles, the City of Holladay’s argument that the legislative restrictions in the Utah Governmental Immunity Act apply to article I, section 22 must fail

First, the notice-of-claim provisions of the Utah Governmental Immunity Act are, by definition, “limiting” vis a vis the Takings Clause. *Colman* at 630 (“The issue is whether an inverse condemnation claim under article I, section 22 is subject to the limitations found in the Governmental Immunity Act.”) (emphasis added); *Farmers New World* at 1244 n.1 (“An inverse condemnation claim under that constitutional provision [article I, section 22] is self-executing and not subject to the limitations found in the Governmental Immunity Act.”) (emphasis added). As discussed above, self-executing constitutional provisions may be broadened but not limited in any way by legislation.

Second, Utah courts have already determined that the Utah Governmental Immunity Act does not apply to article I, section 22 takings claims. *See Colman*. *See also Farmers New World* at 1244 n.1 (“An inverse condemnation claim under [article I, section 22] is self-executing and not subject to the limitations found in the Governmental Immunity Act); *Bateman v. City of West Bountiful*, 89 F.3d 704, 708 (10th Cir. 1996) (“[A]rticle I, section 22 of the Utah Constitution is self-executing . . . [T]he Utah Supreme Court has interpreted Article I, section 22 of the state constitution as allowing a suit for inverse condemnation when the effect of an ordinance is to take or damage private property at a level that gives rise to a constitutional claim.”).

Numerous other jurisdictions specifically agree that state notice-of-claim statutes cannot be applied to constitutionally-derived rights. *Greenway Dev. Co., Inc. v. Borough of Paramus*, 750 A.2d 764, 770 (N.J. 2000) (“We are also persuaded that the notice provision of the TCA does not apply to inverse condemnation claims . . . That constitutional provision against unconstitutional takings is self-executing, in the sense

that such claims arise independently of the TCA. Additionally, ‘statutes [cannot] abrogate constitutional rights.’(citation omitted)’); *Moore Real Estate, Inc. v. Porter County Drainage Bd. of Porter County*, 578 N.E.2d 380, 381 (Ind. Ct. App. 1992) ([O]ur constitution in Article 1, Section 21 requires that no person’s property shall be taken by law without just compensation. The Board may not use [the notice provisions of] a state statute, the tort claims act, to trump the constitutional rights of Moore.”); *Wolff v. Sec’y of the South Dakota Game, Fish and Parks Dept.*, 544 N.W.2d 531, 535 (S.D. 1996) (“Because the claim [for inverse condemnation] proceeds from a [state] constitutional right . . . no notice of injury was required to bring the cause of action against the Secretary.”); *Dishman v. Nebraska Public Power Dist.*, 482 N.W.2d 580, 582 (Neb. 1992) (Court refused to apply notice requirement of tort claims act to an action for inverse condemnation because the state constitutional provision which prohibits the taking of property without just compensation is self-executing).¹

Finally, the City of Holladay’s claim that self-executing clauses are subject to “procedural” legislation is unsupportable. The law simply does not make a “substantive” versus “procedural” distinction with regard to the legislature’s ability to regulate self-executing rights; rather, the law only makes a “limiting” versus “broadening” distinction.

¹ In *Felder v. Casey*, 487 U.S. 131, 152 (1988), the Supreme Court held that “a state court may not decline to hear an otherwise properly presented federal claim because that claim would be barred under a [Wisconsin] state law requiring timely filing of notice. State courts simply are not free to vindicate the substantive interests underlying a state rule of decision at the expense of the federal right.” Several state courts have applied the reasoning in *Felder* to render state notice-of-claim laws inapplicable in actions alleging violations of federal *as well as state constitutional rights*, such as inverse condemnation. See, e.g., *Greenway Dev.* at 770.

In other words, legislatures may broaden self-executing constitutional rights (either substantively or procedurally), but may not in any way, even procedurally, limit those rights. If subject matter jurisdiction of takings claims is conditioned upon compliance with the Utah Governmental Immunity Act's notice-of-claim provisions, the legislation would unconstitutionally limit a litigant's takings rights in a way that did not exist prior to enactment of the statute in 1978.

The City of Holladay argues that courts require "strict compliance" with the Utah Governmental Immunity Act's notice requirements. That may be true, but certainly "strict compliance" can be required only where the underlying claim is subject to the Utah Governmental Immunity Act in the first place. Heughs Land's very contention, which is supported by *Colman*, is that its constitutionally-based takings claims are exempt from the Utah Governmental Immunity Act.

The City of Holladay holds out *Nielson v. Gurley*, 888 P.2d 130 (Utah Ct. App. 1994) in support of the City's distinction between "substantive" and "procedural" immunity, claiming that "procedural" limitations on takings claims are permissible. The case is inapposite for two reasons. First and most importantly, *Nielson* does not involve article I, section 22 or any other self-executing constitutional provision. Because the law is unique with regard to self-executing provisions, *Nielson* has no application to the facts at hand. Second, the "substantive" and "procedural" distinction made in *Nielson* was made within the context of the Utah Governmental Immunity Act, i.e. the Act **did** apply. The plaintiff in *Nielson* brought claims against a State employee. In attempt to avoid the "procedural" notice-of-claim statute, the plaintiff claimed to sue the State employee in his

individual capacity and not his capacity as a government employee. The court found that the plaintiff was, in fact, basing his claims on conduct the employee engaged in while performing his duties as a State employee. The court ultimately held that because the ability of the plaintiff in *Nielson* to bring the claim at all was created by the Utah Governmental Immunity Act's waiver of sovereign or "substantive" immunity, the legislature could clearly create and enforce any corresponding "procedural" notice-of-claim requirements. In contrast, Heughs Land's takings claim is brought under the article I, section 22 of the Utah Constitution, and the legislature is constitutionally prohibited from restricting or limiting self-executing rights.

II. A DECISION WHICH PRECLUDES STATE COURT AS A PROPER VENUE FOR LITIGATING FEDERAL TAKINGS CLAIMS CONCURRENTLY WITH STATE TAKINGS CLAIMS IS IN DIRECT CONTRAVENTION OF THE POLICY SET FORTH IN *WILLIAMSON*.

This Court must decide how to apply the Supreme Court's decision in *Williamson County Planning Commission v. Hamilton Bank* when a plaintiff concurrently raises both state and federal takings claims in state court.²

In *Williamson*, the Supreme Court dismissed the respondent's claims as premature for two reasons. First, the majority of the Court's ripeness analysis focused on the absence of a final decision regarding the development of respondent's property. The Court held that Williamson County Regional Planning Commission's 1981 disapproval

² The Utah Supreme Court applied *Williamson* in *Patterson v. American Fork City*, 67 P.3d 466 (Utah 2003), but to a distinctly different set of facts than exist in the case at hand. In *Patterson*, the plaintiff raised federal takings in state court, but raised no concurrent state takings claims. Because of the plaintiff's failure to avail itself of state inverse condemnation remedies, the Court could not hear the federal claims. In contrast, Heughs Land has raised *both* state and federal takings claims in state court.

of the respondent's plat did not constitute a final, reviewable decision given the availability of a variance procedure that was not pursued by respondent. Second, respondent raised only federal takings claims and failed to invoke available state inverse condemnation remedies.

Because a final administrative decision had not been rendered, and in order to promote the efficient use of judicial resources, the Supreme Court dismissed the case as unripe. In doing so, the Supreme Court did not terminate the federal takings rights guaranteed by the Takings Clause of the United States Constitution.³ Instead, the Court indicated that for purposes of judicial economy, takings claims should preferably be resolved on the merits in state court.


Following *Williamson*, numerous courts have embraced state courts as the sole, proper venue for litigating both state and federal takings claims. *See, e.g., Peduto v. City of North Wildwood*, 878 F.2d 725 (9th Cir. 1989); *Palomar Mobilehome Park Ass'n v. City of San Marcos*, 989 F.2d 362 (9th Cir. 1993); *Wilkinson v. Pitkin County Bd. of County Comm'rs*, 142 F.3d 1319 (10th Cir. 1998); *Fields v. Sarasota Manatee Airport Auth.*, 953 F.2d 1299 (11th Cir. 1992); *Rainey Bros. Constr. County v. Memphis and Shelby Cty. Bd. of Adjustment*, 967 F. Supp. 998 (W.D. Tenn. 1997). These decisions reason that even if a litigant cannot, under *Williamson*, assert federal takings claims in federal court, that does not mean that a litigant could not assert those claims in state court.

³ This is the result under a literal interpretation of *Williamson*, whereby a plaintiff is precluded under the doctrines of *res judicata* and collateral estoppel from litigating federal takings claims in federal court after litigating state takings claims in state court.

The City of Holladay argues that jurisdiction over federal takings claims exists only in federal court and must be preceded by a fully adjudicated state claim involving the same operative facts. In theory, this either eliminates federal takings rights altogether or results in two trials of the same case, which flies in the face of *Williamson*.

CONCLUSION .

This Court should reverse the judgment of the district court for two reasons. First, article I, section 22 of the Utah Constitution is self-executing. Therefore, any right to recover under that constitutional provision may not be modified or restricted in any way by legislation such as the Utah Governmental Immunity Act. Second, the ripeness doctrine set forth in *Williamson* only restricts the ability of a federal court to hear state takings claims before state remedies have been exhausted. *Williamson* does not preclude simultaneous determination by a state court of both state and federal claims. The judgment of the district court should be reversed and this case should be remanded to the district court for trial of both state and federal takings claims.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of January, 2005, I caused to hand-delivered
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