Altman v. Brevard County, No. 5D19-1839, 2020 WL 3886181 (Fla. 5th DCA July 10, 2020)

Fourth DCA Holds That a Court May Not Substitute Its Judgement for Governmental Body Asserting Right of Eminent Domain

In 2018, the Board of County Commissioners of Brevard County ("County") passed Resolution 2018-175 ("Resolution"), declaring the need to acquire easements over five beachfront properties for the Brevard County Shore Protection Project ("Project"). The County sought an unrestricted public use on the entire easement. The County filed a petition for eminent domain (the "Petition") of the properties in December 2018.

The trial court heard the County's petition in February 2019, but in the middle of trial, the County moved for leave to amend its Petition in order to clarify the boundaries of the easements at issue. Testimony revealed a surveying error regarding the appropriate legal description of the easement. The County argued that its amendment had no practical effect because it brought the boundary of the easement in line with the conducted survey. The property owners argued that the original Petition failed due to a conflict of interest between the easement's legal descriptions and the conducted surveys, which necessarily effected the property owners. Settling under the original Petition, the trial court entered an order of taking in favor of the County because it understood the importance of the easements. The trial court stated, however, that the order of taking would be limited to "merely reference such public use as is currently in existence" and added needed clarifications and limitations to the easement.

The Fifth DCA reversed on appeal, finding that the County's Petition was fatally defective because it did not demonstrate substantial evidence that the entire easement was reasonably necessary for public use. The property owners argued that the trial court erred in granting the order because, in part, the County's Petition did not comply with the Florida statutory requirements. The Court disagreed, but did hold that the County failed to provide an adequate description of the properties to be acquired and to ensure the entire property was reasonably necessary for the Project.

The Court noted that the County only needed a portion of the properties in question as public use on the easement rather than the entirety of the properties. Furthermore, the Court found that the trial court unlawfully attempted to cure the defects in the County's Resolution and Petition by limiting the taking order to reference only the existing public use. With obvious boundary errors in the existing legal descriptions as shown in the Resolution and Petition, the trial court "substituted its judgment for that of the governmental body" and acted outside the scope of its authority. The Court stated that "[a] court is not authorized to substitute its judgment for that of the governmental body acting within the scope of its lawful authority."