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Montana Department of Natural Resources & Conservation v. Abbco Investments LLC

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Montana Department of Natural Resources & Conservation v. Abbco Investments, LLC, 2012 MT 187, 366 Mont. 120, 285 P.3d 532.

William Fanning

ABSTRACT

Defendant landowners claimed possession of riparian lands bordering the Missouri River. However, the State of Montana proved these lands had emerged vertically from the bed of the Missouri after Statehood and thus were the property of the State under both the public trust and the equal footing doctrines. While the case was in front of the Montana Supreme Court, a legislative amendment to HB 165, personally sponsored by Montana Governor Brian Schweitzer, identified these lands as State school trust lands. HB 165 further specified that income from “certain islands, abandoned riverbeds, riverbeds, and power sites” be deposited in the public schools’ facility and technology account. Because substantial oil and gas royalties are attached to the lands in this case, the schools received a windfall, and the defendants were left to pay the State’s costs.

I. INTRODUCTION

The Montana Department of Natural Resources and Conservation (DNRC) and the Montana Board of Land Commissioners (collectively “the State”) succeeded in quieting title to three naturally accreting islands in the Missouri River which had been occupied and claimed by numerous defendants.¹ Although the State won its case, it appealed several rulings made by the district court in Richland County.² The Montana Supreme Court reversed the procedural

¹ *Montana Dept. of Natural Res. & Conservation v. Abbco Investments, LLC*, 2012 MT 187, 366 Mont. 120, 285 P.3d 532, 534.

² *Id.*

holdings, and using a newly revised statute (Mont. Code. Ann § 77-1-102) clarified which public trust lands are to be characterized as school trust lands.³

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 12, 2006, the State filed an action in the Seventh Judicial District of Montana to quiet title to three islands in the Missouri River.⁴ These lands encompass 487 acres, and are no longer surrounded by water but are attached to shore land.⁵ Under the theory of adverse possession, defendant landowners claimed title by virtue of having paid taxes and improved the land.⁶ The State entered the lands to survey, map, and photograph the islands in question.⁷ On May 5, 2011, the Montana District Court granted the State's motion for summary judgment, and declared the State held title to the islands because they had naturally accreted in a navigable river after statehood.⁸ Following precedent established in *PPL Montana, LLC v. State*,⁹ the court ruled the islands were held as public trust lands but not school trust lands.¹⁰ Further, the district court *sua sponte* used the theory of unjust enrichment to rule that the State was required to reimburse defendants for their payment of property taxes and improvements to the land.¹¹ The court also directed each party to pay their own costs.¹²

On May 18, 2011, the State asked the court to alter or amend the portion of the order requiring them to reimburse the defendants, maintaining that it was entitled to costs incurred by bringing the quiet title action.¹³ The court did not rule on the motion and entered judgment on

³ *Id.* at 536.

⁴ *Id.* at 534.

⁵ *Id.*

⁶ *Id.* at 535.

⁷ *DNRC*, 285 P.3d at 534.

⁸ *Id.* at 535.

⁹ *PPL Mont., LLC v. State*, 2010 MT 64, 355 Mont. 402, 229 P.3d 421.

¹⁰ *DNRC*, 285 P.3d at 536.

¹¹ *Id.* at 535.

¹² *Id.*

¹³ *Id.*

December 1, 2011.¹⁴ After the motion was deemed denied, the parties stipulated to the amount in question for taxes and improvements, and the State raised four issues on appeal.¹⁵ On August 28, 2012, the Montana Supreme Court held that: 1) islands arising vertically from the bed of the Missouri River after statehood are held by the State in trust for the financial benefit of the public schools;¹⁶ 2) the district court should have provided enough detail to render a legal description of the property;¹⁷ 3) it was improper for the court to *sua sponte* award defendants damages they never sought and the State had no opportunity to oppose;¹⁸ and 4) as the prevailing party in a quiet title action, the State was entitled to recover its costs including expenses for making a map.¹⁹

III. ANALYSIS

When the district court declared islands vertically arising in the Missouri after statehood were not held by the State in trust for the financial benefit of the public schools, it was following precedent regarding designation of these lands established by the Montana Supreme Court.²⁰ In the case at bar, the Montana Supreme Court analyzed both the public trust and the equal footing doctrine and came to the same conclusion: title vests with the state for both navigable waters and the real property beneath the waters.²¹ The 2011 Montana Legislature's revision of a statute that became effective between the district court and the Supreme Court decisions caused the Supreme Court to break with its own precedent and overrule the district court. The new statute, Mont. Code Ann. § 77-1-102, provides:

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *DNRC*, 285 P.3d at 536.

¹⁷ *Id.* at 537.

¹⁸ *Id.* at 538.

¹⁹ *Id.*

²⁰ *PPL Montana, LLC v. State*, 2010 MT 64, 355 Mont. 402, 444, 229 P.3d 421, 450 *cert. granted in part*, 131 S. Ct. 3019, 180 L. Ed. 2d 843 (U.S. 2011) and *rev'd and remanded*, 132 S. Ct. 1215, 182 L. Ed. 2d 77 (U.S. 2012).

²¹ *DNRC*, 285 P.3d at 536.

- (1) The following lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state: ...
- (b) all islands existing in the navigable streams or lakes in this state that have not been surveyed by the government of the United States.
- (c) all lands that at any time in the past constituted an island or part of an island in a navigable stream or lake, except those lands that are occupied by and belong to the adjacent landowners as accretions.²²

The Supreme Court then corrected the district court on three issues. It held: 1) that the State's research and evidence was sufficient to create a detailed description of each parcel, which should have been included in the final judgment;²³ 2) that due process made it improper for the district court to award the defendants a remedy they never sought and the State had no opportunity to oppose; and 3) the State as prevailing party in a quiet title action was entitled to its costs, which included the costs of a survey, based on Mont. Code Ann. § 25-10-101.²⁴

IV. CONCLUSION

The Montana Supreme Court decided *Montana Department of Natural Resources. & Conservation v. Abbco Investments, LLC* on the basis of a newly revised statute specifically addressing ownership of naturally accreting islands in navigable rivers. Because these lands are now classified as school trust lands, rather than public trust lands, the State has a fiduciary responsibility to use these lands to generate income.²⁵ One very material result of the rewriting of Mont. Code Ann. § 77-1-102 is that Montana's school facility and technology fund will receive the significant oil and gas royalties from these properties which have been held in escrow.²⁶ The State's brief called the Court's attention to the statute's crucial language change; however, it was Montana's Governor Brian Schweitzer who personally inserted the changed

²² Mont. Code Ann. § 77-1-102 (2011).

²³ *DNRC*, 285 P.3d at 537.

²⁴ *Id.* at 538.

²⁵ Mont. Code Ann. § 77-1-219 (2011).

²⁶ Appellant's Brief *2 (Mar. 21, 2012) WL 1122866.

language as an amendment to House Bill 165, which was subsequently approved by the legislature.²⁷

²⁷ Governor Brian Schweitzer's letter to House Speaker Mike Milburn April 19, 2011. <http://governor.mt.gov/news/docs/042011-HB%20165-Hollandsworth-AV-Ltr-And-Amndmts.pdf> (accessed September 17, 2012).