In the United States Court of Federal Claims

No. 99-6L
(Filed: January 21, 2003)

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ARNE & DOROTHY AMALIKSEN,
et al.,

Plaintiffs,

v.

Takings; Rails to Trails Act; Easements.

THE UNITED STATES,

Defendant.

* *

Cecilia Fex, Washington, D.C., for plaintiffs. *Nels Ackerson*, of counsel.

Kristine S. Tardiff, with whom was *Acting Assistant Attorney General Thomas L. Sansonetti*, Washington, D.C., for defendant.

OPINION AS AMENDED[*/]

BRUGGINK, *Judge*.

This is an action alleging a Fifth Amendment, uncompensated taking

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[*/]This opinion was originally issued July 31, 2002. The court granted plaintiff's unopposed motion to clarify the record regarding the availability of certification to the Vermont Supreme Court. Accordingly, the Court has removed the footnote which indicated that the Vermont Supreme Court did not have a method for certification of questions of state law.

the lake parcel in 1868. The purpose of such maps was to identify parcels for valuation, not to distinguish types of ownership. The easement preceded the fee interest. Short of devising a hybrid designation of areas covered initially by easement and then by fee, the map originators would have had to show a break in the easement in the stretch obtained from House. There would have been no obvious reason for such a distinction, thus the court attaches little significance to the colorations on the valuation map.

Defendant's analysis admittedly leaves room for the possibility that there is a gore underlying the eastern half of the right of way. It attempts to dispose of this by invoking presumptions against such unclaimed parcels which would dictate reattaching that strip to the dominant chain of title (House). It is unnecessary to resolve that issue in this suit. It is sufficient to conclude that the plaintiffs have not established title to any of the parcel allegedly taken.

CONCLUSION

Plaintiffs' claims of a taking cannot succeed due to failure of proof of an ownership interest. Accordingly, defendant's motion for summary judgment as to this group of plaintiffs is granted. The parties are directed to consult to prepare a status report, to be filed on or before August 23, 2002, proposing further proceedings in the balance of this action.

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ERIC G. BRUGGINK
Judge