Pba murr vs wisconsin case analysis

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I. The question being asked is should two legally distinct but commonly owned contiguous lots of land be combined for takings analysis purposes? Joseph P. Murr and his family bought 2 lots approximately the same size and at different times. The issue before us is that Murr no longer wishes to hold one of the lots and St. Croix rules that he is not allowed to sell only one of the lots due to environmental concerns. Petitioners claim that “ state and federal courts are in substantial conflict” with respect to the issue at hand and cite numerous cases in an attempt to derive support for their proposition. Those cases – as well as the examples provided below – all involve different facts and circumstances. They confirm that a flexible, ad hoc, approach has consistently been used by the lower courts to define the relevant property and to determine whether compensation is due. The Wisconsin appellate court ruled that because the two lots are contiguous, and happen to be owned by the same people, this Court’s “ parcel as a whole” rule from Penn Central requires combining the two parcels for takings analysis. From the Murrs’ perspective, Lots E and F are two separate parcels, created as legally separate lots, taxed separately, and purchased separately. The lots were never developed together, and were purchased for completely different reasons. Nevertheless, because the Murrs own both parcels, the Wisconsin court ruled that these two parcels combined were the Murrs’ “ parcel as a whole.” This conclusion was driven by the contiguous ownership.

II. The parents of Joseph P. Murr and his siblings (the Murrs) purchased two adjacent lots (Lots E and F) in St. Croix County in 1960. The two lots together made up approximately . 98 acres. In 1994 and 1995 respectively, the Murrs’

parents transferred Lot F and Lot E to their children. In 1995, the two lots were merged pursuant to St. Croix County's code of ordinances. The relevant ordinance prohibits the individual development or sale of adjacent lots under common ownership, unless an individual lot was at least one acre. The ordinance further specified that if each lot is not at least one acre, the lots may be measured together to equal one acre. Seven years later, the Murrs wanted to sell Lot E and not Lot F. The St. Croix County Board of Adjustment denied the Murrs' application to sell the lots separately. The Murrs sued the state and county and claimed the ordinance in question resulted in an uncompensated taking of their property and deprived them of " all, or practically all, of the use of Lot E because the lot cannot be sold or developed as a separate lot." The circuit court granted summary judgement to the state and county. The Court of Appeals of Wisconsin affirmed and held that the Murrs were not deprived of their practical use of the property. Nevertheless, Petitioners submitted their plan to the St. Croix County Board for consideration. The Board denied their plan and refused to make an exception to the longstanding regulations. Instead of modifying the plan – or submitting a less-intrusive plan that complied with the existing regulations – Petitioners filed this lawsuit alleging a regulatory taking. The Supreme Court confirmed the " parcel as a whole" rule in Keystone Bituminous Coal Association v. DeBenedictis , where coal operators asserted that a court should only consider the coal that could not be mined to determine whether a state law requiring them to leave a certain amount of coal in the ground amounted to a regulatory taking. The Supreme Court again endorsed the " parcel as a whole" rule in Concrete Pipe & Products, Inc. v. Construction Laborers Pension Trust. There, Concrete Pipe claimed that a regulatory

taking occurred when federal law required it to pay “ withdrawal liability” to a pension trust. In 2006, the Murrs brought suit in St. Croix County Circuit Court, which ruled against them and affirmed the Zoning Board’s decision denying the variance to sell or use the two lots as separate building sites. The Murrs claim that since Lot E and F were created as legally separate lots purchased separately for different purposes and taxed separately, they should also be able to sell them separately. The Murrs reject the claim that Penn Central v City of New York [1] established a rule stating that two legally distinct properties should be considered as contiguous parcels. Under Penn Central, to determine whether a particular government action has accomplished a taking, courts are to focus “ both on the character of the action and on the nature and extent of the right interference with rights in the parcel as a whole.” [2] On appeal in 2011, the Wisconsin State Appellate Court once again upheld the board’s decision. It held that the two lots are contiguous and also happen to be owned by the same people, so implementing the Court’s “ parcel as a whole” rule from Penn Central does in fact require combining the two parcels for takings analysis. Furthermore, the Court of Appeals rejected the petitioner’s notion that the lots had not merged as a result of the Grandfather Clause because the lots were already subject to the 1976 environmental regulation when they had been merged under joint ownership in 1995. The Appellate Court ruled that it was not a taking because “ the Murrs’ property, taken as a whole, could be used for residential purposes, among other things.” [3] The circuit court had also stated that a “ year-round residence could be built on top of the bluff and the

residence could be located entirely on Lot E, entirely on Lot F, or could straddle both lots.” [4]

III. The “ Takings Clause” of the U. S. Constitution states simply “ nor shall private property be taken for public use, without just compensation.” However, that clause has taken on a distinguished role in constitutional jurisprudence, notably with relation to the boundaries of state and native restrictive power. Any discussion of the Takings Clause ought to begin with the history that led to its enactment and therefore the approach case law has developed. The Takings Clause found its origin in Section 39 of the Magna Carta, which declared that land would not be taken without some form of due process: “ No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.” The Fifth Amendment was solely a restriction against the central. Whereas there have been some limits on the powers of the States before 1865, the Civil War caused the federal government to restrict the powers of the state governments against their own voters through the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments. The Fourteenth Amendment created restrictions to the States through Due Process clause. The Due Process Clause gradually shifted. One shift was procedural and was developed to assure that hearings and alternative governmental decision-making processes were conducted fairly. This review of the processes of government is understood as “ procedural due process of law.” A second line of cases extended the boundaries on the federal government within the Bill of Rights to state and local government action exploiting the Due Process Clause. For

roughly one hundred years after the passage of the post-Civil War amendments, The Due Process Clause judicial proceeding resulted in “ incorporation” of a number of the restrictions on the federal government within the Bill of Rights to state and local actions moreover. The Supreme Court applied the Takings Clause of the Fifth Amendment to the States through the Fourteenth Amendment Due Process Clause in Chicago Burlington and Quincy R. R. v. City of Chicago, 166 U. S. 226 (1897). Beginning with Mugler v. Kansas, 123 U. S. 623 (1887), during which the U. S. Supreme Court indicated that that Court may review, through the due process of law Clause, the substance of legislation. To review both the procedure as well as the substance of legislation can be referred to as “ substantive due process.” This part of the Due Process Clause allows judges to “ second-guess” state and local legislative decisions. Under substantive due process, a court may verify whether or not the ends and means of legislation were acceptable and whether or not the legislation was “ unduly oppressive” to regulated parties. In Kelo v. city of new London, 125 S. Ct. 2655 (June 23, 2005), the question arose on whether or not the utilization of eminent domain alone for economic development purposes may be a valid public use. Any regulations placed on one’s property does indeed infringe on their right of land. That does not mean however it can be deemed a taking. Takings Clause is tricky, because it is not always clear what is a taking and what is not. The unclear interpretation of what a takings is expected to remain in an unpredictable path.

IV. St. Croix County and the State of Wisconsin cite numerous environmental interests with the regulations in question. According to the St. Croix County

Zoning Board, granting the Murrs the variance “ could result in yet another residence with access to the river, additional tree cutting and excavating, and another sanitary system in an area with serious limiting factors.” We must discuss if these environmental interests are legitimate in preventing landowners from selling. We must decide to either uphold or reverse the Appellate Court’s decision that Penn Central, whose building and airspace were considered contiguous parcels, establish a rule that is applicable to the case in question. Furthermore, we must decide if under Lucas v South Carolina Coastal Council , [5] in which the land essentially useless, the Murrs could be entitled to Monetary compensation. Congress enacted the National Wild and Scenic Rivers Act (Act) in 1968 to preserve certain rivers for the enjoyment of present and future generations, to wit: “ It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dams and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.” [6] Under both cases, I suggest that we uphold the Board’s original decision in 2005. As the circuit and appellate courts both stated, after the lots were placed under common ownership as contiguous parcels, they are subject to the county’s

current zoning regulations. In 1986, Lucas bought two residential lots on the Isle of Palms, a South Carolina barrier island. He intended to build single-family homes as on the adjacent lots. In 1988, the state legislature enacted a law which barred Lucas from erecting permanent habitable structures on his land. The law aimed to protect erosion and destruction of barrier islands. Lucas sued and won a large monetary judgment. The state appealed. Since unlike Lucas, the Murrs may build on both parcels and sell them together for a reasonable price, there is no need for compensation. Furthermore, the County's environmental interest outweighs that of Murrs. Just v. Marinette County , 56 Wis. 2d 7, 201 N. W. 2d 761 (1972), a shoreland zoning ordinance established a conservancy district over wetlands within 1, 000 feet of a lake and prohibited any filling without a permit. This, in effect, prevented " the changing of the natural character of the land …." [7] The landowner asserted the ordinance was unconstitutional because it amounted to constructive taking without compensation. The court disagreed, finding the ordinance a valid exercise of the police power to " protect navigable waters and the public rights therein from the degradation and deterioration which results from uncontrolled use and development of shorelands." [8] In Penn Central, New York City's landmark preservation interest outweighed the use of airspace as a skyscraper.

V. Based on the foregoing, we conclude the circuit court properly granted summary judgment in favor of the County and State of Wisconsin. The undisputed facts establish that the Murrs' property, viewed as a whole, retains beneficial and practical use as a residential lot. Accordingly, we conclude they have not alleged a compensable taking as a matter of law.

Bibliography

1. Brown v. Board of Education of Topeka, 347 U. S. 483 (1954).
2. Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226 (1897).
3. Just v. Marinette County, 56 Wis. 2d 7, 201 N. W. 2d 761 (1972).
4. Kelo v. New London 545 U. S. 469 (2005).
5. Lucas v. South Carolina Coastal Council 505 U. S. 1003 (1992).
6. Magna Carta, Chapter 39, June 15, 1215.
7. Mugler v. Kansas, 123 U. S. 623 (1887).
8. Murr v. Wisconsin, Oyez, https://www. oyez. org/cases/2016/15-214 (last visited Dec 19, 2016).
9. Nectow v. City of Cambridge, 277 U. S. 183 (1928).
10. Penn Central Transportation Co. v. New York City, 438 U. S. 104 (1978).
11. Slaughterhouse Cases, 83 U. S. 16 Wall. 36 36 (1872).
12. United States v. Carolene Products Co., 304 U. S. 144 (1938).
13. Village of Euclid v. Ambler Realty Co., 272 U. S. 365 (1926).

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[1] Penn Central Transportation Co. v. New York City, 438 U. S. 104 (1978).

[2] ibid.

[3] Murr v. Wisconsin, Oyez, https://www. oyez. org/cases/2016/15-214 (last visited Dec 19, 2016).

[4] ibid.

[5] Lucas v. South Carolina Coastal Council 505 U. S. 1003 (1992).

[6] Murr v. Wisconsin, Oyez, https://www. oyez. org/cases/2016/15-214 (last visited Dec 19, 2016).

[7] Just v. Marinette County, 56 Wis. 2d 7, 201 N. W. 2d 761 (1972).

[8] ibid.