An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-598

Filed: 20 March 2018

Forsyth County, No. 17 CVS 246

DEPARTMENT OF TRANSPORTATION, Plaintiff,

v.

MDC INVESTMENTS, LLC and FIRST COMMUNITY BANK, Defendants.

Appeal by Plaintiff from orders entered 23 February 2017 and 25 April 2017 by Judge John O. Craig, III in Superior Court, Forsyth County. Heard in the Court of Appeals 13 November 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General James M. Stanley, Jr., Assistant Attorney General J. Aldean Webster, III, Assistant Attorney General Alexandra M. Hightower, and Assistant Attorney General William A. Smith, for Plaintiff-Appellant.

Hedrick Bryant Nerhood Sanders & Otis, LLP, by Matthew H. Bryant, T. Paul Hendrick, Timothy Nerhood, W. Kirk Sanders, and Kenneth C. Otis III, for Defendant-Appellee MDC Investments, LLC.

McGEE, Chief Judge.

This appeal involves Article 2E, Chapter 136 of the North Carolina General Statutes, "Transportation Corridor Official Map Act," (the "Map Act"), that has been the source of substantial litigation involving hundreds of real property owners. These

"Map Act" cases have been before this Court and our Supreme Court on multiple occasions, and the general factual and procedural history has been repeatedly and thoroughly addressed many times. *See, e.g., Beroth Oil Co. v. N.C. Dep't of Transp.*, 220 N.C. App. 419, 725 S.E.2d 651 (2012) ("*Beroth I*"), *aff'd in part, vacated in part, Beroth Oil Co. v. N.C. Dep't of Transp.*, 367 N.C. 333, 757 S.E.2d 466 (2014) ("*Beroth II*"); *Beroth Oil Co. v. N.C. Dep't of Transp.*, __ N.C. App. __, 808 S.E.2d 488 (2017) ("*Beroth III*"); *see also Kirby v. N.C. Dep't of Transp.*, 239 N.C. App. 345, 769 S.E.2d 218 (2015) ("*Kirby I*"), *aff'd by separate opinion*, *Kirby v. N.C. Dep't of Transp.*, 368 N.C. 847, 786 S.E.2d 919 (2016) ("*Kirby II*").

The present matter involves real property located in Forsyth County (the "Property") owned by MDC Investments, LLC ("Defendant"). Pursuant to its authority under N.C. Gen. Stat. § 136-44.50 (2015) of the Map Act, the North Carolina Department of Transportation ("DOT") recorded a Transportation (roadway) Corridor Map for State Project 34839 (the "Corridor Map") with the Register of Deeds, Forsyth County, on 26 November 2008, as part of DOT's Northern Beltway Project (the "Project").[1] The Property was included in the Corridor Map, and thus subject to the

[1] Effective 11 July 2016, all transportation corridor maps were rescinded. Act of July 1, 2016, ch. 90, sec. 17(a), 2016 N.C. Sess. Laws 2016 ("All transportation corridor official maps adopted pursuant to Article 2E of Chapter 136 of the General Statutes, and any amendments thereto, are hereby rescinded, and all restrictions under Article 2E of Chapter 136 of the General Statutes shall no longer apply to properties or portions of properties within the affected transportation corridors.").

provisions of the Map Act related to the Project.[2] Defendant filed a complaint in an earlier action ("Defendant's Action") on 29 May 2015, seeking, *inter alia*, a declaratory judgment that the Property had been taken through inverse condemnation by DOT pursuant to DOT's actions under the Map Act, and requesting DOT be ordered "to purchase [the] Property for the inverse condemnation[.]" Defendant moved for judgment on the pleadings, and the trial court consolidated Defendant's Action with a number of additional related actions pursuant to N.C. Gen. Stat. § 1A-1, Rule 42.[3] *Beroth Oil Co. v. N.C. Dep't. of Transp*, 2016 WL 9234026, *1 (N.C. Super. 2016) ("*Beroth* Order"). With regard to the motion in Defendant's Action, the *Beroth* Order determined that (1) the Property was located in the area of the Project; (2) certain property rights of Defendant's were taken by DOT pursuant to inverse condemnation; (3) the trial court was not prepared to rule on whether the taking constituted a fee simple taking; and (4) the issue of the nature of the taking and damages would be revisited. *Id.* at *1-2. The trial court ordered DOT to comply with the procedural requirements of Article 9, Chapter 136, "Condemnation," for all the plaintiffs; including filing plats, obtaining appraisals, and depositing good faith estimates of the value of the properties involved. *Id.* at *2-3. DOT appealed the *Beroth* Order, but

[2] Two companion cases, with opinions filed concurrently with this opinion, also involve property recorded in the Corridor Map of the Project on 26 November 2008. Those cases are COA17-596, *Dep't of Transp. v. Stimpson* and COA17-597, *Dep't of Transp. v. Chapman*.

[3] Along with Defendant, other plaintiffs added in the consolidation included the defendants in the companion cases, *Stimpson* and *Chapman*; the *Beroth* plaintiffs, and the *Kirby* plaintiffs.

this Court dismissed the appeal as an improper interlocutory appeal. *Beroth III*, __ N.C. App. at __, 808 S.E.2d at 502.

DOT filed the complaint in the present action on 12 January 2017, seeking to take the Property pursuant to its powers of direct condemnation under Article 9, Chapter 136. Defendant filed a motion to dismiss on 18 January 2017 arguing, *inter alia*: "As there is a prior pending action [Defendant's Action] and judgment on the exact property and area and interest/interest valuation, and involving the same parties, the Prior Pending action and judgment for taking precludes [DOT] filing and prosecuting this action." The trial court granted Defendant's motion to dismiss by order entered 23 February 2017. DOT filed a motion for relief from judgment pursuant to Rule 60(b)(6) on 24 March 2017. The trial court entered an order on 25 April 2017 denying DOT's motion to reconsider its 23 February 2017 ruling dismissing the action. DOT appeals.

For the reasons stated in our analysis in the companion appeal in COA17-596, *Dep't of Transp. v. Stimpson*, filed concurrently with this opinion, we hold that the trial court did not err in dismissing DOT's action filed 12 January 2017, nor in denying DOT's 24 March 2017 motion for relief from judgment.

AFFIRMED.

Judges ELMORE and MURPHY concur.

Report per Rule 30(e).