

COA Opinion: Just compensation for a taking includes moving and relocation expenses resulting from business interruption, but not lost profits

16. July 2010 By Aaron Lindstrom

In order to widen a portion of M-24 in Lapeer County, the Michigan Department of Transportation exercised eminent domain over a parcel owned by the Gillings, where the Gillings ran their nursery and landscaping business.

Because the Gillings did not challenge the necessity of the condemnation or that it was for a public use, the primary issue was the amount of just compensation under the Michigan Constitution and under state statutes. In particular, the Gillings claimed compensation not just for the value of the property, but also for expenses involving the interruption of their business (including moving their nursery first to an interim location and then moving it again to a permanent site) and for moving what they considered to be trade fixtures (the bushes and trees from the nursery). MDOT argued that the moving expenses were essentially a claim for lost profits, which are not compensable, that the trees and bushes were not trade fixtures, and that Michigan's administrative recovery statutes supplant a right to recover under the Michigan Constitution.

In *MDOT v. Gilling*, No. 285369 (published July 15, 2010), the Court of Appeals held that the Gillings' constitutional right to just compensation entitled them to compensation for the actual moving and relocation expenses resulting from the interruption of their business. Judge Saad, writing for the Court, explained that a string of four Michigan Supreme Court decisions compelled this outcome. Turning to the trade-fixture argument, the Court concluded that the trees and bushes were the products of the nursery, not special equipment (like water pumps or flower display racks) that might be considered constructively annexed onto the property and whose removal would impair the value of the fixture or the property. Finally, the Court rejected MDOT's contention that the administrative recovery statutes precluded the Gillings from pursuing a constitutional claim: "[N]o act of the Legislature can take away what the Constitution has given." But the Court did conclude that the trial court abused its discretion by excluding an expert witness for MDOT who would have testified that the permanent location was available at the outset and that the Gillings therefore had no need for the Gillings to move twice, by moving first to an interim location. This testimony went to the central issue of the case—whether the Gillings expenses resulted from the taking—and therefore should have been admitted. Accordingly, the Court remanded for a new trial to include expert testimony on that issue.