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Eminent Domain -- Cul-de-Sac Doctrine

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The writer only suggests that to impose first degree murder automatically without inquiry into whether the actor had the requisite culpability with respect to the result threatens the very foundation of the criminal law—the principal of punishing according to culpability. If the Code with its firm foundation has not been accepted, the law enforcement officials must analyze each fact situation and if necessary, as in the principal case, punish *only* the justifiable crimes —armed robbery and manslaughter. The system should not be jeopardized in an attempt to gain the maximum penalty in every case.

DAVID A. IRVIN

Eminent Domain—Cul-de-Sac Doctrine

In *Wofford v. Highway Comm'n*,[1] the North Carolina Supreme Court abolished the doctrine of eminent domain known as the cul-de-sac principle.[2] If a public authority blocks or vacates a portion of a road, leaving any owner whose land abuts the remaining road without access from one direction, the situation is generally called a cul-de-sac. In the 1931 decision of *Hiatt v. City of Greensboro*,[3] the court held that the creation of a cul-de-sac was compensable under eminent domain.[4] The rationale of the court was that the owner whose property abuts a road has a private easement to have the street remain open in both directions, and that the damage to abutting owners was different in kind as well as in degree from that of the general public. The court stated that the majority of courts agreed with this view.

Since *Hiatt* the court has gradually restricted the application of

[1] 263 N.C. 677, 140 S.E.2d 376 (1965).

[2] Cul-de-sac is French for "the bottom of a bag." The North Carolina Supreme Court has defined the cul-de-sac principle as:

> The rule that an abutting owner has a right of access to the general system of streets and to the remainder of his street with all of its connections to a point where they cease to be of more than remote advantage to him, and that when one end of the street is closed he is entitled to compensation . . . .

Snow v. Highway Comm'n, 262 N.C. 169, 172, 136 S.E.2d 678, 681 (1964).

[3] 201 N.C. 515, 160 S.E. 748 (1931).

[4] North Carolina has no eminent domain provision in its constitution. However, just compensation for the taking of private property for public use has been considered necessary under art. I, § 17 of the North Carolina Constitution. Town of Morganton v. Hutton & Bourbonnais Co., 251 N.C. 531, 112 S.E.2d 111 (1960); Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955).

this doctrine. In *Sanders v. Town of Smithfield*[5] the court refused to allow compensation when the road was obstructed in a block other than the one on which plaintiff's land was situated. *Hiatt* was distinguished on the grounds that a cul-de-sac is not created when there is an intersecting street between plaintiff's property and the obstruction. This distinction seems to be generally recognized by courts which hold cul-de-sac to be recoverable.[6]

In *Snow v. Highway Comm'n*[7] the court refused to apply the cul-de-sac principle in a rural situation. It made no justifiable distinction between the application of cul-de-sac in urban and rural situations. The real reason for making such a distinction apparently was that the court did not wish to overrule *Hiatt* without warning. The distinction made will not bear analysis, but the case did serve to give warning that the end of cul-de-sac was near in North Carolina. This was particularly emphasized by the last sentence of the case: "Quaere: If the questions presented by *Hiatt* arise again in this jurisdiction, should this court re-examine its holding in that case in the light of modern conditions and the trend of recent opinion in other States?"[8]

Within a year the *Wofford* case overruled the *Hiatt* decision. The first principle asserted by the court by *Hiatt*—that the owner had a private easement of travel in both directions—had been considerably weakened by well-settled rules that there is no compensation when a municipality converts a street to a one-way street[9] or places permanent divider strips between the traffic lanes.[10] With all the degrees of interference that are said to be reasonable under the police power, it is doubtful if the abutting owner has any right to a flow of traffic by his property.[11] Because of this, the

[5] 221 N.C. 166, 171, 19 S.E.2d 630, 634 (1942).

[6] *E.g., In re* Hull, 163 Minn. 439, 204 N.W. 534 (1925); Annot., 49 A.L.R. 361 (1927), 93 A.L.R. 642, 644 (1934).

[7] 262 N.C. 169, 136 S.E.2d 678 (1964).

[8] *Id.* at 177, 136 S.E.2d at 684.

[9] *E.g.*, Cities Serv. Oil Co. v. New York, 5 N.Y.2d 110, 154 N.E.2d 814, 180 N.Y.S.2d 769 (1958); City of Memphis v. Hood, 208 Tenn. 319, 345 S.W.2d 887 (1961); Walker v. State, 48 Wash. 2d 587, 295 P.2d 328 (1956).

[10] *E.g.*, Daugherty County v. Hornsby, 213 Ga. 114, 97 S.E.2d 300 (1957); Turner v. Roads Comm'n, 213 Md. 428, 132 A.2d 455 (1957); Walker v. State, *supra* note 9.

[11] See Barnes v. Highway Comm'n, 257 N.C. 507, 126 S.E.2d 732 (1962). It seems odd that courts holding cul-de-sac compensable would take this position since the real damage is suffered from the loss of traffic by the property, not from the landowner's own inability to travel in either direction.

court decided that any damage done to an abutting owner's property by being placed in a cul-de-sac was different only in degree from that of the general public and not in kind. Therefore, the damage was not compensable. The fact that the owner can now travel only in one direction, necessitating a more circuitous route to go in the other, is *damnum absque injuria.*

The above is a synopsis of the court's reasoning. However, two reasons that were probably the real basis for the change in the North Carolina view were unmentioned by the court: (1) the impractical consequences of the *Hiatt* rule under modern conditions, and (2) a shift of the weight of authority on the question. It is apparent that the theory of building roads and highways is quite different today from what it was at the time of the Hiatt decision. Limited access highways for rapid transit in rural and in urban areas have become a necessity, and their costs are extremely high. A recovery for the creation of a cul-de-sac would add considerably to the costs. The Kansas Supreme Court, which has held cul-de-sac to be compensable, recently recognized in dictum that "this new concept [controlled access highways], which was not fully recognized in our previous decisions, requires a complete review and reappraisal of the correlative rights of . . . owners of abutting lands"[12] and "a present statement of public and private highway rights must reflect prevailing conditions."[13]

In *Hiatt,* the court cited American Law Reports annotations to show that its decision was consistent with the weight of authority.[14] This majority has clearly shifted.[15] Of the latest decisions that could be found in the United States, twenty-three courts do not allow recovery in the cul-de-sac situation,[16] and fourteen

[12] Brock v. Highway Comm'n, —— Kan. ——, ——, 404 P.2d 934, 939 (1965).

[13] *Id.* at ——, 404 P.2d at 942.

[14] See Annot. 49 A.L.R. 361 (1927), 93 A.L.R. 642 (1934).

[15] Justice Parker, dissenting in *Wofford,* disagrees. 263 N.C. at 685, 140 S.E.2d at 386.

[16] Ralph v. Hazen, 93 F.2d 68 (1937); Jackson v. Birmingham Foundary & Mach. Co., 154 Ala. 464, 45 So. 660 (1908); Gayton v. Dep't. of Highways, 149 Colo. 899, 367 P.2d 899 (1962); Micone v. City of Middletown, 110 Conn. 664, 149 Atl. 408 (1930); Tift County v. Smith, 219 Ga. 68, 131 S.E.2d 527 (1963); Warren v. Highway Comm'n, 250 Iowa 473, 93 N.W.2d 60 (1958); Dep't of Highways v. Jackson, 302 S.W.2d 373 (Ky. 1957); La Croix v. Commonwealth, —— Mass. ——, 205 N.E.2d 228 (1965); Krebs v. Uhl, 160 Md. 584, 154 Atl. 131 (1931); Phelps v. Stott Realty Co., 233 Mich. 486, 207 N.W. 2 (1926); Handlan-Buck Co. v. Highway Comm'n, 315 S.W.2d 219 (Mo. 1958); State v. Hoblitt, 87 Mont. 403, 288

do.[17] It is unclear in two jurisdictions previously permitting recovery whether such is still the law.[18] Of the courts that have decided or reaffirmed their positions since 1955, eleven have said there is to be no recovery[19] while only six have held that the owner can recover.[20] Therefore, it would seem that the weight of authority has shifted and that the cul-de-sac principle is disappearing.

The courts holding that one may recover for his property's being

Pac. 181 (1930) (limited to rural roads); Fougeron v. County of Seward, 174 Neb. 753, 119 N.W.2d 298 (1963); Cram v. City of Laconia, 71 N.H. 41, 51 Atl. 635 (1901); Mayor v. Hatt, 79 N.J.L. 548, 77 Atl. 47 (Ct. Err. & App. 1910) (damages not allowed in the absence of statute); State *ex rel.* Highway Comm'n v. Silva, 71 N.M. 350, 378 P.2d 595 (1962); Reis v. City of New York, 188 N.Y. 58, 80 N.E. 573 (1907); Wofford v. Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965); Babin v. City of Ashland, 160 Ohio St. 328, 116 N.E.2d 580 (1953); Hyde v. Minnesota D. & P. Ry., 29 S.D. 220, 136 N.W. 92 (1912); City of Lynchburg v. Peters, 145 Va. 1, 133 S.E. 674 (1926); State *ex rel.* Woods v. Road Comm'n, —— W.Va. ——, 136 S.E.2d 314 (1964) (dictum upholding previous case); Stefan Auto Body v. Highway Comm'n, 21 Wis. 2d 363, 124 N.W.2d 319 (1963). In addition intermediate courts of two states have held that no damages were recoverable. Jarnagin v. Highway Comm'n, 5 So. 2d 660 (La. Ct. App. 1942); City of Waco v. DuPuy, 386 S.W.2d 192 (Tex. Civ. App. 1964).

[17] Highway Comm'n v. Kesner, —— Ark. ——, 388 S.W.2d 905 (1965); Mabe v. State, 83 Idaho 222, 360 P.2d 799 (1961); Gibbons v. Paducah & I.R.R., 284 Ill. 559, 120 N.E. 500 (1918); Falender v. Atkins, 186 Ind. 455, 114 N.E. 965 (1917); Lacascio v. Northern Pac. Ry., 185 Minn. 281, 240 N.W. 661 (1932) (dictum following the leading case *in re* Hull, 163 Minn. 439, 204 N.W. 534 (1925)); Highway Comm'n v. Fleming, 248 Miss. 187, 157 So. 2d 792 (1963); Turnpike Authority v. Chandler, 316 P.2d 828 (Okla. 1957); Ail v. City of Portland, 136 Ore. 654, 299 Pac. 306 (1931); Hedrich v. City of Harrisburg, 278 Pa. 274, 122 Atl. 281 (1923); Wolfe v. City of Providence, 77 R.I. 192, 74 A.2d 843 (1950); Sease v. City of Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963); Sweetwater Valley Memorial Park v. City of Sweetwater, 213 Tenn. 1, 372 S.W.2d 168 (1963) (dictum indicating the court would follow two earlier cases); Boskovich v. Midvale City Corp., 121 Utah 445, 243 P.2d 435 (1952); Fry v. O'Leary 141 Wash. 465, 252 Pac. 111 (1927).

[18] In Bacich v. Board of Control, 23 Cal. 2d 343, 144 P.2d 818 (1943), the court declared that an abutting landowner could recover for his property's being placed in a cul-de-sac. However, in Breidert v. Southern Pac. Co. 61 Cal. 2d 659, 39 Cal. Rptr. 903, 394 P.2d 719 (1964), the court said a cul-de-sac alone would not give recovery unless there has been a "substantial impairment" of plaintiff's access to the streets. What the court considers a substantial impairment is not yet clear. In Bolmar v. Board of Comm'rs, 114 Kan. 552, 220 Pac. 245 (1923), the court said there could be recovery for cul-de-sac. But in Brock v. Highway Comm'n, —— Kan.—, 404 P.2d 934 (1965), the court said it would have to re-examine its rules in this area in the light of the modern controlled-access highway.

[19] See cases from Colo., Ga., Iowa, Ky., Mass., Mo., Neb., N.M., N.C., W.Va., and Wis. cited in note 16 *supra.*

[20] See cases from Ark., Idaho, Miss., Okla., S.C., and Tenn. cited in note 17 *supra.*

placed in a cul-de-sac generally base their decisions on reasoning similar to that in the *Hiatt* case—*i.e.*, that an abutting land owner has an easement in travel on the streets and highways in both directions, and there is damage to him different in kind and in degree from that suffered by the public generally.[21] On the other hand, courts holding that no recovery can be had reason much as the court in *Wofford*—that a person has no right to traffic in front of his property, and that the damage to the abutting landowner is different only in degree from damage to the general public. It is suggested that none of these reasons is the real basis for any of the courts' decisions. The courts' decisions are in reality a result of a balancing of interest of the landowner, who has unquestionably been damaged, with that of society in having an efficient and safe means of transportation at the lowest possible cost. If the cases are viewed in this manner, the reason for the shift of the weight of authority is obvious. With the costs of building highways and other means of land transportation rising and with the shift in highway building to the limited-access road, the balance has swung to the side of the public interest.

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Investment Securities—Duty to Register Transfer

In *Kanton v. United States Plastics, Inc.*,[1] the plaintiff, a New York resident, was owner and holder of 10,920 shares of Class A stock of defendant, United States Plastics, Inc. ("Plastics"), a Florida corporation.[2] Plaintiff acquired the shares while employed by Plastics from one Scharps who, as president, "dominated and controlled" Plastics.[3] On termination of his employment, plaintiff decided to sell the shares. The stock certificates carried a legend

[21] Textual writers generally favor giving compensation in this situation. *E.g.*, 4 MCQUILLAN, MUNICIPAL CORPORATIONS 358-59 (Moore, 2d ed. 1943).

[1] 248 F. Supp. 353 (D.N.J. 1965).

[2] Plaintiff actually paid $27,500 for 10,000 Class B convertible shares, which he later converted on a share-for-share basis into an equal number of Class A shares. In addition, 920 shares were received through stock dividends in 1962 and 1964. *Id.* at 355.

[3] *Id.* at 363. Scharps was held not to be an indispensable party to this suit, which concerns not Scharps' possible adverse claim to the shares, but solely the question of the duty of Plastics and the transfer agent to register transfer of the shares. *Id.* at 360.