

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ALFRED R. HANSCOM and VERNA G. HANSCOM, : NO. 05-00,408
Plaintiffs :
 :
vs. :
 : CIVIL ACTION - MANDAMUS
RICHARD M. BITLER, DAVID A. RUPERT and :
ROBERT J. McKAY, all as Supervisors of Muncy Creek :
Township, and MUNCY CREEK TOWNSHIP, :
Defendants : Preliminary Objections

OPINION AND ORDER

Before the Court are Defendants' Preliminary Objections to Plaintiffs' Complaint in Mandamus, filed March 24, 2005. Argument was heard May 2, 2005.

Plaintiffs purchased land in Muncy Creek Township and thereafter, their subdivision plan having been approved by the Muncy Creek Planning Commission, subdivided such into a residential development, including a road known as Shawnee Drive. Plaintiffs' proposed deed of dedication of the road to the Township was not accepted, however, leading to the instant Complaint in Mandamus. Plaintiffs contend that since the road was constructed in accordance with the standards of the land development ordinance for "streets proposed for dedication to the municipality", the Township must accept the dedication of the road. The preliminary objections filed by Defendants demur to the claim, arguing Plaintiffs have failed to make out a case for mandamus.

Mandamus is an extraordinary remedy which compels the performance of a ministerial act or mandatory duty. A writ of mandamus may only be issued where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and a lack of any other appropriate and adequate remedy. Stivala Investments, Inc. v. South Abington Township Board of Supervisors, 815 A.2d 1 (Pa. Commw. 2002). Thus, unless Plaintiffs can show that the Township is required to accept the road, mandamus does not lie.

Plaintiffs argue that since the subdivision ordinance prescribes "conditions of acceptance of public improvements by the Township", distinguishing in its requirements

between roads that are to be private streets and those that are to be public streets, once a road is constructed in accordance with the standards required of a public street, it must be accepted by the township. Why, Plaintiffs argue, would the ordinance make such a distinction if the roads were not to be accepted once the conditions were met? Simply by having to ask the question, however, Plaintiffs own argument points out the lack of a clear right or a mandatory duty. Nowhere in the ordinance does it state that any road, constructed in accordance with the standards established for a public street, must be accepted by the township, and there is nothing illogical in the township establishing standards for public streets, even though not all of the roads constructed in accordance with those standards will be accepted. The acceptance of a street under the ordinance is clearly discretionary, not mandatory, and an action in mandamus is thus indeed without a basis in law.

ORDER

AND NOW, this 3rd day of May 2005, for the foregoing reasons, Defendants' preliminary objections are hereby sustained and Plaintiffs' Complaint in Mandamus is hereby DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: J. Howard Langdon, Esquire
Garth D. Everett, Esquire
Gary Weber, Esquire
Hon. Dudley Anderson