

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHARLES S. LOWRY and BESSIE,	:
G. LOWRY,	:
Plaintiffs	:
	: No. 04-00827
vs.	:
	: CIVIL ACTION - LAW
TINA L. DAY and KENNETH DAY,	:
JOHN L. MOREY,	: ACTION FOR DECLARATORY
LILLIAN M. FEASTER and COUNTY	: JUDGMENT
OF LYCOMING,	:
Defendants	:

VERDICT

AND NOW, this _____ day of July 2006, after completion of non-jury trial, and after a site view of the land and right-of-way subject to the litigation, it is **ORDERED and DECLARED** as follows:

1. The court finds that plaintiffs' Charles and Bessie Lowry have an easement by implication to use the right-of-way known as River Wood Road. The court notes Plaintiffs' Exhibit 11, acknowledgment of easement, refers to the easement as an easement by implication. The court also notes this easement was not referred to in plaintiffs' chain of title in the deed of Warden to Kochowicz, in plaintiffs' predecessor in title, May 29, 1990, plaintiffs' Exhibit 6.

The court does not feel that it is bound in regard to the width of the easement to the dimensions found in the quitclaim deed of Feaster to Bloom on June 30, 1972. which found the road to 33 feet in width at the starting point where River Wood Road intersects Township Road 409, a/k/a Cemetery Hill Road and narrowing to 16 ½ feet at the Woodland. The court notes as stated in finding number 1 above that the easement was not expressly referred to in

plaintiffs' chain of title.

However, the court would find the width of the easement at its starting point to be its actual width where River Wood Road meets Cemetery Hill Road. Thereafter, the court finds the width of the easement to be the width of the cartway to the drainage ditch on each side of the cartway. The easement will end at the drainage ditch.

The court notes that the drainage ditch runs alongside the cartway and several feet from the cartway.¹

3. Plaintiffs Lowry may from time to time perform routine, ordinary and reasonable maintenance to said right-of-way.

a) Plaintiffs may cut shrubbery, tree branches, brush and the like up to and within the drainage ditch to help insure proper drainage of water from cartway²

b) Plaintiffs may fill in potholes, remove large stones and bring gravel, 2RC,

1 The court has not measured this distance nor have the parties. The court has included the drainage ditch because it is close to the cartway and is important for the maintenance of the right-of-way. The court has no objection to the parties measuring the distance from the cartway to the drainage ditch as it may record such distance for the easement. It is not the court's intent to extend the easement substantially beyond the cartway. The court is mindful of the sensitivities of defendants Tina and Kenneth Day who own land, which runs contiguous with part of the easement.

2 Defendants Day is opposed to Plaintiffs being able to clear cut shrubbery and growth up the drainage ditch. They claim removal of such would cause their property to be exposed to more dust and noise from the right-of-way and would decrease their privacy by not screening her property from the right-of-way.

The court, at the site view carefully looked at the brush in front of the drainage ditch from the vantage point in front of the home of the Days.

The home of the Days is at the extreme end of their lot away from the right-of-way. The home is a substantial distance from the right-of-way. The court observed high brush both in front of the drainage ditch near the right-of-way and in back of the drainage ditch. It appeared to the court that the brush in back of the drainage ditch, where the Day property abuts the right-of-way, is as high as the brush in front of the drainage ditch. Thus, it appears that this brush will screen the right-of-way so in most areas the right-of-way will not be in view of the Days' home. The court does not see any substantial privacy detriment to the Days in allowing the cutting of brush from the right-of-way to the drainage ditch. The court also does not believe the cutting of brush will create any more dust or noise. The main traffic sounds heard from to come from nearby Route 15, a heavily traveled road. Better maintenance and drainage of the right-of-way should also help to eliminate dust. Finally, the court notes the brush is basically wild evergreen and includes poison ivy.

shale or some other similar material from time-to-time as necessary to restore and bring the grade of the right of way up to or slightly above the terrain of the land on both sides of the right-of-way. Consistent with the acknowledgment of easement, Plaintiffs' Exhibit 11, Plaintiffs may not pave or substantially change the present condition of the right-of-way, that being a stone and dirt roadway.

c) Routine grading of the right-of-way.

d) Plaintiffs may keep the drainage ditches open along the right-of-way as is reasonably necessary.

4. The Days will have no maintenance obligation.

5. The County of Lycoming shall have the same maintenance rights for the right-of-way contiguous to their land as listed for Plaintiffs Lowry.

6. Property owners with land contiguous to the right-of-way who use the right-of-way will have the same maintenance rights as listed for Plaintiffs Lowry.

7. No party shall in any way obstruct or damage the right-of-way or in any way interfere with the right-of-way's purpose of passage for appropriate individuals.

By The Court,

Kenneth D. Brown, P.J.

cc: Williams L. Knecht, Esquire
Allen K. Neyland, Esquire
Benjamin E. Landon, Esquire
Work File
Gary Weber, Esquire, (Lycoming Reporter)