

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CRAIGE CONKLIN and :
BRANDI CONKLIN :
Plaintiffs : **No. 06-02256**
 :
vs. : **CIVIL ACTION – LAW**
 :
 :
CARL K. and KATHLEEN MYERS, : **Plaintiffs’ motion for summary judgment**
Defendants :

ORDER

AND NOW, this ____ day of October 2007, the Court DENIES Plaintiffs’ Motion for Summary Judgment. There are factual disputes between the parties regarding the purpose and use of the easement at the time it was granted. Although the Taylor v. Heffner¹ and Lease v. Doll cases² cited by Plaintiffs are helpful, the Court does not believe they are dispositive. The Court notes the language of the easement in both these cases is more specific regarding the purpose of the easement than the current case.³ Furthermore, in both cases the interpretation of the easement was made after evidentiary hearings.

With respect to the amended motion for summary judgment seeking a ruling against Defendants’ new matter allegations that any claim for vehicular use was extinguished

1 359 Pa. 157, 58 A.2d 450 (1948).

2 458 Pa. 615, 403 A.2d 558 (1979).

3 The deed in Taylor contained the following language: “Excepting and reserving therefrom, a right of way for a driveway forty (40) feet wide, as now used from Center Street, Northeastward across said lands to and through under the trestle of the Cobaugh Colliery Company branch railroad, for use in reading lands at and East of said branch of railroad right of way.” The clause in the Lease deed stated: “UNDER AND SUBJECT to the following restriction: That a right-of-way is granted to the grantees and their heirs and assigns leading from the southeast corner southward on the west side of the stream of water from the said corner to the public road. That the grantee and their successors may at all times have the right to use same as an outlet from the premises hereby conveyed to the public road.” The language of the original conveyance of the easement in Plaintiffs’ chain of title read: “Plus granting easement for right of way on field road located about 200 feet North of the North line of premises conveyed herein, and leading in a Northwesterly and Southerly direction, said Southerly course being the Westerly property line of premises conveyed herein. Said field road as established and in use the date first above written.”

by Defendants blocking the easement with farm equipment, this motion is denied as Defendants would not have thirty (30) days to file a response to the motion as required by Rule 1035.3(a) of the Pennsylvania Rules of Civil Procedure prior to the scheduled trial in this case. The Court rejects Plaintiffs' argument that Defendants' response time would relate back to the date of the original motion for summary judgment, because this is a different issue that was not raised in the original motion.

By The Court,

Kenneth D. Brown,
President Judge

cc: Marc Drier, Esquire
J. Michael Wiley, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)