

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FRANCES L. BARNARD,	: NO. 07 - 00,733
Plaintiff	:
	: CIVIL ACTION - LAW
vs.	:
	:
GEORGE and MARILYN BIDLESPACHER,	:
GREGORY and KAREN BROWN, and	:
WILLIAM and BRENDA ULRICH,	: Exceptions to Report of Board of
Defendants	: Viewers

**OPINION AND ORDER**

Before the Court are the exceptions filed on September 5, 2008, by Defendants Bidlespacher and Brown to the Interlocutory Report of the Board of Viewers issued August 7, 2008. Argument on the exceptions was heard November 14, 2008.

After deciding that Plaintiff could establish neither an easement by implication nor an easement by necessity over the property of Defendants, the Honorable Nancy Butts appointed a Board of Viewers with respect to Plaintiff’s claim under the Private Road Act, to determine the necessity and location of a private road and to determine damages, if appropriate. In its August 7, 2008, interlocutory report, the Board determined that a private road should be laid out for Plaintiff’s use over what was referred to by the parties as Bidelspacher Road, finding that any use Plaintiff might make of the Ringler-Harbot Road would be “extremely difficult and burdensome”. In their exceptions, Defendants raise numerous issues; these will be addressed seriatim.

In the first five exceptions, Defendants challenge the Board’s determination that use of the Ringler-Harbot Road would be extremely difficult and burdensome, arguing that “the steeper part of Ringler/Harbot Road, with an average 28% grade according to a topographical map, was the portion of that road located on the Barnard property.” Defendants’ challenge might have merit if indeed the testimony supported their assertion that the steepest portion of the road is located on Plaintiff’s own property. The testimony of Daniel Vassallo, land surveyor and engineer, however, was that the “28% grade portion” began at the “o” rather than

at the “x” on the maps (V-1 and V-2).<sup>1</sup> N.T., July 22, 2008, at 44. The difference is at least 1500 feet. Therefore, the Court finds no error in the Board’s conclusion that use of Ringler-Harbot Road would be extremely difficult and burdensome.

Defendants also argue that the Board erred in finding that to improve Ringler-Harbot Road for use would be “financially impractical and not a viable option”, relying on the testimony of Mr. Brown and Mr. Bidelspacher that improvements could be made at a very reasonable cost. Defendants fail to consider, however, that Daniel Vassallo testified that such improvements would be “cost prohibitive”. N.T., supra at 49. Further, the Board members walked the various routes and thus had a “hands-on” understanding of the terrain. The Court finds the Board’s conclusions in this regard to be supported by the evidence.

Next, Defendants contend the Board erred in considering that Bidelspacher Road was the “long and historic use” for Plaintiff to reach her cabin. In response, the Court suggests Defendants review In re Forrester, 773 A.2d 219 (Pa. Commw. 2001), aff’d on separate ground in 836 A.2d 102 (Pa. 2003). There, the Court approved such a consideration as it explained the basis for the petitioner’s preference, a factor appropriately considered under the Private Road Act.

Next, Defendants urge the Court to reject the Board’s Report “because one member of the Board of Viewers was already predisposed to recommend a private taking of the shortest, easiest route to the Barnard cabin, even prior to the taking of testimony, as will be reflected in the notes of testimony from the hearing of July 22, 2008.” After carefully reviewing those notes of testimony, the Court sees nothing which would support an out-right rejection of the Report on such grounds. The Report appears to have been well-thought out and the Board’s conclusions are amply supported by the evidence.

Next, Defendants argue that the Board erred in finding that winter travel on Ringler-Harbot Road would be more difficult than on the other two roads, emphasizing that Ringler-Harbot Road is on the west side of Trout Run Mountain while the other two roads are on the north side of that mountain, resulting in Ringler-Harbot Road receiving more sun. Defendants fail to consider, however, other testimony to the effect that the canopy on Ringler-Harbot Road

---

<sup>1</sup> The “x” is located on a part of the road where it meets Plaintiff’s property.

eliminates that sun. In light of the grade of that road, the Court finds no error in the Board's conclusion that winter travel on Ringler-Harbot Road would be most difficult.

Next, Defendants contend the Board erred in considering whether Ringler-Harbot Road could provide access for emergency vehicles, arguing that none of the roads considered by the Board would provide easy access for a large emergency vehicle. It is noted that the Board did not find that an emergency vehicle could easily access the Barnard cabin by use of Bidelspacher Road, but, rather, merely noted that it would be impossible for any emergency vehicle to access the cabin by use of Ringler-Harbot Road, and this consideration was in the context of its finding that any attempted use of Ringler-Harbot Road met the test of "extremely difficult and burdensome". The Court sees no error in such consideration.

Next, Defendants contend the Board erred in "depicting Bidelspacher Road as sufficiently wide for two vehicles to pass". The Board noted in its Report that "[t]he viewers found this road to be of gentle grade and usually a width capable of handling two vehicles passing each other." Defendants argue that "photographs presented in earlier proceedings" clearly show "the road being only the width of one vehicle." Defendants do not contend that these photographs were presented to the Board, however, and in any event, the Court cannot say that the Board's own view of the road should be rejected on the basis of such photographs, even had they been so presented.

Finally, Defendants contend the Board erred in considering that Bidelspacheer Road "is the most convenient route", as this consideration "improperly influenced its flawed conclusion that the Barnards had established 'necessity' for taking an alternate path". To the extent Defendants are referring to the Board's conclusion that Bidelspacher Road "clearly appeared to the Board to be the preferable means of access",<sup>2</sup> this conclusion was reached only after the Board had resolved the issue of necessity and thus did not influence their decision in that regard. The Board's determination that use of Ringler-Harbot Road would be unduly difficult and burdensome, and thus its determination that Plaintiffs had shown necessity for the laying out of a private road, was supported by the evidence and was clearly independent of any consideration of alternate routes.

---

<sup>2</sup> Nowhere in the Report does the Board find Bidelspacher Road to be the "most convenient route".

Accordingly, none of the exceptions having merit, the Court enters the following:

**ORDER**

AND NOW, this 1<sup>st</sup> day of December 2008, for the foregoing reasons, the Exceptions to the Interlocutory Report of Board of Viewers, filed by Defendants on September 5, 2008, are hereby DENIED. The Interlocutory Report filed August 7, 2008, is hereby AFFIRMED. The matter is remanded to the Board of Viewers to assess damages.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Marc S. Drier, Esq.  
Kristine L. Waltz, Esq.  
W. Jeffrey Yates, Esq.  
William and Brenda Ulrich, 103 Ringler Road, Trout Run, PA 17771  
Daniel K. Mathers, Esq.  
J. Michael Wiley, Esq.  
Margaret N. Smith, 128 Grammer Road, Williamsport, PA 17701  
Gary Weber, Esq.  
Hon. Dudley Anderson