

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: CONDEMNATION BY THE BOROUGH : NO. 11 - 01,798
OF SOUTH WILLIAMSPORT OF CERTAIN REAL :
PROPERTY SITUATE IN THE BOROUGH OF : Eminent Domain
SOUTH WILLIAMSPORT :
: Petition for Appointment of
: Viewers

OPINION AND ORDER

Before the court is the Petition for Appointment of Viewers filed by Carl and Mary Nolan on December 28, 2011. After a conference on January 31, 2012, since the Borough objected to the appointment, counsel agreed to submit a stipulation of facts and briefs and to have the court determine preliminarily whether the Nolans are entitled to have a board of viewers appointed. The stipulation of facts was filed February 29, 2012, and briefs were filed March 14 and 16, 2012.

The Nolans own a parcel of real estate in the Borough of South Williamsport which extends between Main Street and Church Street. The northern part of the property extends into each street. The Borough filed a declaration of taking to obtain an easement¹ across the northern part of the property but did not include the portions which extend into the streets. The Nolans seek to have these areas included but the Borough contends that since these portions are in the streets, they need not be included in the condemnation.

While the easement acquired by the public in country roads is an easement of passage only, this is not true in Pennsylvania with respect to the public right in the streets of a city. These are regarded as in the exclusive possession of the municipality, which may authorize the use of the sidewalk, as well as the street, for *any public service*, without further compensation to the abutting lot owners.

46 South 52nd Street Corp. v. Manlin, 157 A.2d 381 (Pa. 1960). Since the Borough plans to place sewer lines beneath the streets, without question a public service, the Nolans are not entitled to compensation for the Borough's use of these portions of their property.

The Nolans argue nevertheless that by taking the part of the property covered by the declaration of taking, the Borough has created two oddly-shaped pieces which have, because of

¹ The easement is to be used to place sewer and storm water drainage lines underground.

their shape, become unusable. While this may be the case if the Borough were taking the property in fee simple, since they are only taking an easement, and the use of the property involves underground lines only, the taking has no effect on the remainder of the property.² Therefore, the court believes the Nolans are not entitled to seek compensation for the Borough's use of the portions under the streets and will enter the following:

ORDER

AND NOW, this 25th day of April 2012, for the foregoing reasons, the Nolans' Petition for Appointment of Viewers is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Scott T. Williams, Esq.
Joseph Orso, III, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

² Moreover, the portions involved are currently being used for streets, and the Nolans are unable to use them for anything else. The Nolans' argument that there is some value based on the prospect that the streets might someday be vacated is based on such extreme speculation as to be unworthy of further consideration.