

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SCOTT and SANDRA RAAP,	:	NO. 11 – 00,989
Plaintiffs,	:	
vs.	:	CIVIL ACTION - LAW
	:	
STEPHEN and CATHY WALTZ,	:	
Defendants	:	

OPINION IN SUPPORT OF ORDER OF MARCH 19, 2012,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Plaintiffs have appealed this Court’s Order of March 19, 2012, which granted Defendants’ motion for summary judgment, in effect denying Plaintiffs’ request for appointment of a board of view under the Private Road Act.¹ Plaintiffs seek the opening of a road across Defendants’ property to provide access to their property and they do not dispute that their primary purpose is to benefit themselves privately, and not the public. The Court thus granted the motion under the holding of In re: Opening A Private Road for the Benefit of O’Reilly, 5 A.3d 246, 258 (Pa. 2010), that in order for application of the Private Road Act to pass constitutional muster, “the public must be the primary and paramount beneficiary of the taking.”

Although Plaintiffs argued that a recent amendment to the Eminent Domain Code, specifically Section 204, supports a public purpose finding,² the Eminent Domain Code does not, by its terms, apply to matters under the Private Road

1 36 P.S. Section 2731 et seq.

2 Where the property is acquired to provide access to a public thoroughfare for a property which would be otherwise inaccessible as the result of the use of eminent domain, the prohibition against the exercise of the power of eminent domain to take private property for a private use does not apply. 26 Pa. C.S. Section 204(b)(9). Here, Plaintiffs allege in their Complaint that their tract was divided by the Commonwealth’s condemnation of part of their land to relocate Route 15.

Act.³ In any event, even were the court to apply the principle of that section to the matter at hand, it still believes Plaintiffs are not entitled to relief as the exercise of eminent domain by the Commonwealth which resulted in the present situation occurred *prior* to Plaintiffs having acquired the property. Plaintiffs purchased a landlocked parcel and presumably paid a price which reflected its situation and thus the prior condemnation *cannot* be seen as having effected a taking from them, the remedying of which is surely the purpose behind the amendment.

Finally, the court wishes to address Plaintiffs' contention that it is "of significance" that the Supreme Court affirmed the invocation of the private Road Act in the case of In re Private Road in Speers Boro, II, 11 A.3d 902 (Pa. 2011), and the case arose after the amendments to the Eminent Domain Code. Since the issue of "public versus private purpose" was not presented in that case, however, the court cannot afford it the significance Plaintiffs suggest. This court did not conclude that the Private Road Act was unconstitutional, merely that under the O'Reilly case, to be entitled to relief under the Private Road Act Plaintiffs needed to show that the public was the primary and paramount beneficiary of the taking and they failed to do so.

Respectfully submitted,

Dated: April 23, 2012

Dudley N. Anderson, Judge

cc: Marc Drier, Esq.

³ "There are also a number of statutes requiring the viewers to make findings as to the necessity of a private road or the location of utility lines, etc. (Finding as to necessity of private roads, see Act of 1836, June 13, P.L. 551, Section 12 (36 P.S. Section 2732)). These statutes are not repealed or affected by this act." 26 Pa.C.S. Section 512 (comment). See also In re: Interest of Forrester, 836 A.2d 102, 105 (Pa. 2003).

Charles Greevy, III, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson