IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARK F. NYE and LINDA L. NYE, *Appellees,* v. DILLON T. SHIPMAN, *Appellant,*	Superior Court Docket No: **1327 MDA 2017** Lower Court Docket No: 15 - 187 [CONSOLIDATED WITH]
MARK F. NYE and LINDA L. NYE, *Appellees,* v. DILLON T. SHIPMAN, JAMES R. SHIPMAN, DENISE J. NEFF, *Appellants* AND RANGE RESOURCES – APPALACHIA, LLC., *Defendant*	Lower Court Docket No: 16 – 790 APPEAL - 1925(a)

OPINION IN SUPPORT OF ORDER
Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

Pursuant to P.R.A.P. 1925(a), this Court issues the following supplemental opinion in support of the Order appealed from by Dillon T. Shipman, James R. Shipman, and Denise J. Neff dated July 17, 2017. That Order denied post-trial relief to Appellants following a non-jury verdict dated June 30, 2017 and filed July 3, 2017. James R. Shipman raised the following issues on appeal.

1. The Court committed clear error or abuse of discretion in using a finding that "The Deed description does not dictate that the light pole be on the East or West of Upper Bobst Mountain Road," where it is uncontroverted that the deed states the boundary to be "along the northern line of said road in an Easterly and Northerly direction to a wooden light pole in said road," and where that unambiguous indication of boundary line being along the northerly and westerly side of the road can only mean, and therefore does dictate, that the pole must be on or near the current western side of Upper Bobst Mountain Road, which fact is consistent with Shipman and inconsistent with Nye.

2. The Court erred as a matter of law in concluding (Conclusion of Law #3) that the pre-existing light pole referred to in the deed, being man-made, is no more important than references to acreage when a court must interpret a deed, and also in then failing to acknowledge and address the various existing references to the tract as being "50 acres."

3. The Court abused discretion and/or erred as a matter of law in concluding (Conclusion of Law #2) that the deed was not ambiguous.

4. The Court abused discretion and/or erred as a matter of law in failing to consider, analyze, and apply the various competent testimonies which support Shipman and contradict Nye, which in addition to items cited above include the apparent and even expressly limited helpfulness of Mr. Harold Griffith's testimony, the many prior determinations of a 50 acre, not 58 acre, tract size, and the well-reasoned testimony of Surveyor Daniel Vassallo (through his Report), which the Court did not even discuss. *Statement of Matters Complained of on Appeal* filed by James R. Shipman on September 8, 2017 (emphasis in original).

The reasons the Court entered a verdict against Appellants may be found in this Court's Opinion and Non-Jury Verdict dated June 30, 2017 and filed July 3, 2017.[1] This Court respectfully relies on that opinion and requests that the Order be affirmed. In addition, the Court respectfully submits the following supplemental opinion with respect to the issues on appeal and in support of the Verdict.

This Court will discuss the asserted errors in the order in which they have been raised. As to the first asserted error, the Court disagrees with Appellants' contention that the deed description dictates that the light pole must be on or near the western side of the Upper Bobst Mountain Road. All of the deeds in Appellees' chain of title start at a beginning corner and state the following.[2]

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[1] The Opinion and Verdict dated June 30, 2017 and filed July 3, 2017 sets forth the findings of fact, the conclusions of law and the reasons for the verdict.

[2] The description quoted by the Court is taken from the Deed from Felix V. Griffith and Marjorie A. Griffith, husband and wife, to Harold L. Griffith and Cintra T. Griffith, husband and wife, dated March 3, 1980 and recorded March 3, 1980 in Lycoming County Record Book 935, Page 87. (Exhibit P-2). Other deed descriptions vary slightly, such as in what words are capitalized and whether the names are specifically mentioned or replaced with "et ux."

The parties stipulated to the following chain of title for the Plaintiffs' Property includes the following instruments:

(a) Article of Agreement between Felix V. Griffith and Marjorie A. Griffith, husband and wife and Harold L. Griffith and Cintra T. Griffith, husband and wife, dated January 15, 1975 and recorded January 15, 1975 in Lycoming Record Book 713, Page 73.

> BEGINNING at a white pine at the northwest corner of the tract conveyed and as described in deed of Charles E. D. Leutze et al., to Felix V. Griffith et ux, parties of the first part herein, and as recorded in Lycoming County in Deed Book 337, at Page 172; thence in a southerly direction along land of Null to a point in the north line of public road leading from the school house across land of Felix V. Griffith; thence along the north line of said road in an easterly and northerly direction to a wooden light pole in said road; thence in an easterly direction at right angles to said road to a point in line of land now or formerly of Phelps or the Goodwill Hunting Club; thence northerly along line of Goodwill Hunting Club and Robert Huffman to the point and place of beginning. Containing 58 acres more or less and being the northerly portion of premises described in said recorded deed.

In the Court's view, nothing in the deed description suggests what side of the road the pole is on or near. The deed states: "the light pole in said road."[3] The road is Upper Bobst Mountain Road. Other than "in said road" the deed description provides no further information about

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> (b) Deed from Felix V. Griffith and Marjorie A. Griffith, husband and wife, to Harold L. Griffith and Cintra T. Griffith, husband and wife, dated March 3, 1980 and recorded March 3, 1980 in Lycoming County Record Book 935, Page 87.
> (c) Deed from Harold L. Griffith and Cintra T. Griffith, husband and wife, to Mark F. Nye, single, and Linda L. Roupp, single, dated May 11, 2001 and recorded on May 18, 2001 in Lycoming County Record Book 3794, Page 265.
> (d) Deed from Mark F. Nye and Linda L. Nye, formerly known as Linda L. Roupp, husband and wife, to Mark F. Nye and Linda L. Nye, husband and wife, dated October 27, 2003 and recorded October 31, 2003 in Lycoming County Record Book 4781, Page 177.

The parties stipulated to the following chain of title for Defendants' Property includes the following Deeds:

> (a) Deed of Felix V. Griffith and Marjorie A. Griffith, husband and wife, to Richard A. Griffith and Louise M. Griffith, husband and wife, dated November 7, 1980 and recorded on November 7, 1980 in Lycoming County Record Book 959, Page 324. The property is described as the remaining portion of the original 109 acre parcel, excepting and reserving the parcel conveyed from the Grantors to Harold L. Griffith and Cinra T. Griffith containing 58 acres, more or less.
> (b) Deed of Richard A. Griffith, Louise M. Griffith and Marjorie A. Griffith to James R. Shipman, dated April 18, 1991 and recorded April 18, 1991 in Lycoming County Record Book 1673, Page161.
> (c) Deed of James R. Shipman and Denise J. Shipman, husband and wife, to James R. Shipman and Denise J. Shipman, husband and wife dated April 26, 2006 and recorded on June 13, 2006 in Lycoming County Record Book 5692, Page 033. The property is described as containing 78.603 acres, in accordance with a survey by Jon P. Seifried, R.S., dated June 3, 1996 (the "Seifried Survey"), which combines Tax Parcels 24-268-173 (the residue of the Griffith parcel) and 24-268-173W.
> (d) Deed of James R. Shipman and Denise J. Neff, formerly known as Denise J. Shipman to Dillon T. Shipman, dated March 30, 2012 and recorded on April 16, 2012 in Lycoming County Record Bok 7584, Page 107. The property is described as containing 78.603 acres, in accordance with the Seifried Survey.

[3] The parties did not explore the extent to which the claimed poles at issue were in the "right of way" of the township road, Upper Bobst Mountain Road.

where the light pole is located in relation to Upper Bobst Mountain Road. The deed describes where the boundary line begins and in what direction the line continues.

The Court found the testimony of an expert surveyor, Mr. Michael Maneval, fully credible, logical and persuasive. Mr. Maneval credibly testified to a reasonable degree of professional certainty that the monument called for in determining the boundary line is: "the pole that you first come to traveling North on the right-hand side of the road or the East side of the road." Notes of Transcript of Proceedings (N.T.) held June 14, 2017 at 66. Even under the rigors of cross-examination, Mr. Maneval repeated that he chose the pole because it was "the first one I came to going up the road." N.T. 75:19; 23-24. In addition, the acreage supported his conclusion. Mr. Maneval's testimony was the only expert testimony subject to cross examination and the Court found him fully credible.

As to the first part of the second error claimed, Appellees misstate and/or misapprehend the Court's Conclusion of Law # 3. The Court's Conclusion of Law # 3 was:

> "[w]here no course or distances or metes and bounds or natural monuments are in the deed description, the man made monuments and acreage amounts specified in the deed are significant in determining the boundary line."

The Court did not conclude, state, or believe that acreage is just as important as monuments when determining the boundary line or more specifically that "the pre-existing light pole referred to in the deed, being man-made, is no more important than references to acreage." The Court concluded that both man-made monuments and acreage amounts specified in the deed are significant in the absence of course, distances, metes and bounds or natural monuments. This conclusion is supported by Mr. Maneval's testimony and the reference Mr. Maneval cites, RETRACEMENT PRINCIPLES AND PROCEDURES FOR PENNSYLVANIA by Knud Hermansen, and Pennsylvania law. *See, e.g.*, NT 60:20-2. Indeed, acreage takes on more significance in the

absence of course, distances, metes and bounds or natural monuments in the deed description than if such identifiers were present in the deed description. *See, e.g.*, Hoover v. Jackson, 362 Pa. Super. 532, 542, 524 A.2d 1367, 1371-72 (Pa. Super. 1987) Pittock v. Cent. Dist. & Printing Tel. Co., 31 Pa. Super. 589, 594-596 (Pa. Super. 1906). This is not to say that acreage takes on the same significance or more significance than a man-made monument such as the light pole.[4]

As to the second part of the second error claimed, the following explains why the Court found that "58 acres, more or less," was the acreage to use to determine which light pole was supported by the acreage. The evidence that the acreage was "58, more or less" was more credible and more persuasive than the evidence that the acreage could be "50, more or less." Notably, every single deed description in the chain of title for the Nye parcel unambiguously and unequivocally stated "58 acres more or less." As to the reference to the Article of Agreement in the chain of title, there was insufficient evidence that the Article of Agreement called for "50" as opposed to "58" acres more or less. No evidence suggested that the typeover on the Article of Agreement was any more likely to be a correction to "50" than a correction to "58". There was no testimony as to the intent of the typeover.[5] As a result, the Court did give any weight to the typeover in the Article of Agreement in determining whether the acreage supported the light pole identified by Mr. Maneval.

The third issue raised on appeal concerns the Court's conclusion that "the deed was not ambiguous." The Court should have specified that the deed was not ambiguous with respect to the number of acres being 58, more or less. As stated previously, every single deed description in

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[4] In this case, the Court found Mr. Manevel's expert opinion that the man-made monument of the light pole was the first one you come to traveling North on the road, and determined that, in the absence of other identifiers (such as course, distances, metes and bounds or natural monuments, mentioned above), the acreage provides support for Mr. Maneval's determination.

[5] That is, it is just as likely that 50 was typed first, and then a strike over was done to make the number look more like a 58 as it is that the number was corrected to be 50. Indeed, as Mr. Maneval noted, it "looks like an 8 to me." N.T. 79:6.

the chain of title for the Nye parcel unambiguously and unequivocally stated "58 acres more or less."

As to the final issue raised on appeal (that the Court failed to analyze or discuss evidence contrary to the Court's findings and conclusions), the Court respectfully submits the following. The preponderance of all of the evidence presented at trial weighed and tipped in favor of Mr. Maneval's opinion that the wooden light pole was the first one you come to traveling North on the road.[6] The Court did not find the report of expert Surveyor Daniel Vassallo well-reasoned, compelling or fully credible as to the boundary line at issue in this case. Mr. Vassallo issued two reports with somewhat different theories as to why the boundary line was North of where the Court found it to be.

In his first report, dated February 11, 2015, Mr. Vassallo found that the corner of the boundary line was consistent with the Seifried survey, based upon the assumption that Mr. Seifried touched base with Harold Griffith concerning the location of the line. In his deposition testimony, however, Mr. Griffith testified that Mr. Seifried never contacted him and that Mr. Griffith was not aware that the Seifried survey was being done. Griffith dep. 11:11-12; 12:3-10. So many of the assumptions expressed in Mr. Vassallo's first report were proven incorrect by Harold Griffith's deposition testimony. As a result, Mr. Vassallo's first report in this matter is extremely questionable.

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[6] Mr. Harold Griffith's deposition testimony was contradictory as to where the pole was located and was objected to as hearsay. At one point, Mr. Griffith stated the pole was on the right-hand-side of the road traveling North, which would be consistent with the Mr. Maneval's opinion. Deposition of Harold Griffith, held on August 14, 2015 (Griffith depo.) at 8:21-22.15:1-6.

The preponderance of the evidence also weighed and tipped in favor of concluding that the acreage was "58 acres, more or less." The fact that other documents (such as tax records, a clean and green application, gas leases and a right of way) reference the parcel as 50 acres, did not tip the weight of the evidence in favor of using 50 acres. Again, the Court found the testimony of Mr. Maneval credible, logical and compelling. Every single deed description in the chain of title for the Nye parcel unambiguously and unequivocally stated "58 acres more or less," and every document in the chain of title since the Article of Agreement stated 58 acres more or less. In the face of the language in the deeds, Mr. Harold Griffith's deposition testimony that he thought the deed description was 50 acres was of insufficient weight to overcome the number 58 that was on the deed description itself.

In the second report by Vassallo, dated February 9, 2017, Mr. Vassallo abandoned the theory underlying the Seifried survey (that the corner was in the center of the road where the overhead power lines diagonally cross) and reported that the corner was a light pole. In direct contradiction to the testimony of Mr. Maneval, however, Mr. Vassallo reported that the light pole must be on the west side of Upper Bobst Mountain Road. By contrast, under oath and being subject to cross-examination, Mr. Maneval testified to the contrary. *See, e.g.,* N.T. 75:19; 23-24. As stated previously, the Court found the testimony of expert surveyor, Mr. Maneval, fully credible, logical and persuasive and it did not find Mr. Vassallo's reports credible or well-reasoned as to the boundary line in this case.

For these reasons, and those stated in this Court's Opinion and Verdict dated June 30, 2017 and filed July 3, 2017, this Court respectfully requests that the Verdict be affirmed.

BY THE COURT,

November 1, 2017
Date

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Richard A. Gray, J.

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