

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

JOAN HEDGES, Plaintiff	:	
	:	NO. CV-21-0778
vs.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, Defendant	:	CIVIL ACTION
	:	

ORDER

AND NOW, this 3rd day of **September, 2021**, a hearing on Plaintiff's Petition for Emergency Injunction Order was held August 30, 2021 at which time Plaintiff appeared and was unrepresented and Anthony Czuchnicki, Esquire appeared on behalf of Defendant. Following the conclusion of Plaintiff's case-in-chief, Defendant made an oral Motion to Dismiss. For the reasons set forth on record and in the forthcoming, separately issued Opinion, Defendant's Motion is **GRANTED** and Plaintiff's Petition is **DENIED**.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

CC: Joan Hedges

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JOAN HEDGES,	:	
Plaintiff	:	NO. CV-21-0778
	:	
vs.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION,	:	CIVIL ACTION
Defendant	:	

OPINION

This matter is before the Court on a Petition for Emergency Injunction Order filed by Plaintiff on August 6, 2021 wherein she alleges that the Defendant is attempting to construct a roadway onto her property, which exceeds the scope of a right-of-way set forth in a 1956 Condemnation Plan (hereinafter "Plan"). Plaintiff requests that, among other things, the Court order Defendant to cease the roadwork being performed on State Route 220 in Jersey Shore, Pennsylvania. Defendant, in its response to the Petition, avers that it is currently engaged in a project to widen the highway, which necessitates removing certain pine trees located within its legal right-of-way. *See Defendant's Response at Paragraphs 5 and 6.* This project has come to a halt due to Plaintiff's interferences with the removal of the trees. *See Defendant's Response at Paragraph 8.*

An argument and factual hearing was held on August 30, 2021 at which time Plaintiff appeared and was unrepresented and Anthony Czuchnicki, Esquire appeared on behalf of the Defendant. Plaintiff called one witness, Tony Mussare, a Lycoming County Commissioner, who testified that he inspected the Plan and other maps of Plaintiff's property and the surrounding right-of-way and took

measurements at Plaintiff's property. He came to the conclusion that Defendant's right-of-way came "very, very close to [Plaintiff's] garage" but did not opine to whether or not the Defendant's construction exceeded its legal right-of-way. Following the close of Plaintiff's case-in-chief, Counsel for Defendant made an oral Motion to Dismiss which, for the reasons set forth below, was granted.

It is well-settled in Pennsylvania that in order to obtain a preliminary injunction a petitioner must establish all of the following elements:

- (1) relief is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages;
- (2) greater injury will occur from refusing to grant the injunction than from granting it;
- (3) the injunction will restore the parties to their status quo as it existed before the alleged wrongful conduct;
- (4) the petitioner is likely to prevail on the merits;
- (5) the injunction is reasonably suited to abate the offending activity; and
- (6) the public interest will not be harmed if the injunction is granted.

Brayman Const. Corp. v. Com., Dep't of Transp., 13 A.3d 925, 935 (Pa. 2011) (internal citations omitted).

Here, the burden is on the Plaintiff to prove the above elements. As Defendant's primary argument is that Plaintiff has failed to prove that she will likely prevail on the merits, the Court will begin with the analysis of the fourth element. In order to prove that she is entitled to relief, Plaintiff must at the very least be able to show the Court where the right-of-way set forth in the Plan is

located and that the trees that Defendant is trying to cut down are located outside of that right-of-way. However, Plaintiff has presented no testimony or evidence to establish the boundary lines of the right-of-way or that Defendant has exceeded the boundary. In fact, Plaintiff has not produced the Plan, photographs or maps of the property in question, measurements, or other evidence showing that the Plan does not include the area that Defendant claims to legally own. The only testimony that Plaintiff provided was that the right-of-way was “very close” to Plaintiff’s property. This is not enough for the Court to conclude that Plaintiff will likely succeed on the merits of her case. In order to do so, Plaintiff would likely need to hire an engineer with a background in land surveying.

As the Court has determined that Plaintiff has not proved that she is likely to prevail on the merits of her case, it need not address the remaining elements. Defendant’s Motion to Dismiss is granted and Plaintiff’s Petition denied. An Order stating the same was entered separately on September 3, 2021.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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