

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

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 Defendant’s Emergency Motion with Request for Expedited Consideration filed on August 31, 2021 wherein it requests that the Court enter certain Orders to ensure that it will be able to proceed with roadway construction currently pending on State Route 220 (“SR 220) in Jersey Shore, Pennsylvania.

I. Factual and Procedural History

This matter was initiated with the filing of a Petition for Emergency Injunction Order by Plaintiff on August 6, 2021. The Petition stemmed from Defendant’s active roadway construction on SR 220 for a project to widen the highway, which necessitates the removal of certain pine trees along the side of the highway. Plaintiff claimed that the trees are located on her property and therefore exceeds the scope of Defendant’s right-of-way, as set forth in a 1956 Condemnation Plan (“Plan”). Plaintiff requested that, among other things, the Court order Defendant to cease the roadwork. Argument on Plaintiff’s Petition was held on August 30, 2021 and, in finding that Plaintiff was unable to show that she would likely be successful on the merits of her case, her Petition was denied.

On August 31, 2021, Defendant filed its Motion alleging that Plaintiff and her family members were interfering on multiple occasions with the construction of the roadway and specifically the removal of the pine trees. Defendant has requested, among other things, that the Court enter an Order “directing the Lycoming County Sheriff to serve notice on Plaintiff that future entry onto [Defendant’s] property will constitute civil and/or criminal trespass and that future impediments to [Defendant’s] project are prohibited.” See *Defendant’s Motion at page 5*.

A factual hearing was held on October 1, 2021 at which time Plaintiff appeared and was unrepresented¹ and Anthony Czuchnicki, Esquire appeared on behalf of the Defendant.

II. Discussion

At the time of the hearing, Jeffrey Wenner, a civil engineer and District Right-of-Way Administrator employed by Defendant, testified regarding the current project and Defendant’s right-of-way on SR 220. The project was initiated due to the high rate and high severity of crashes in the area. The scope of the project, as described by Mr. Wenner, is to remove traffic conflict points, remove redundant side access roads, and add acceleration and deceleration lanes.

The Plan, admitted as Exhibit D5, was validly obtained by condemnation and recorded with the Lycoming County Register and Recorder’s Office. It was signed by both the Register and Recorder and Governor at the time. On the second and third pages of D5, what is now Plaintiff’s property is identified as Fred P. Marshall’s property. The Plan shows that Defendant obtained a right-of-

way of 80 feet from one side of the highway to the other. Additionally, Mr. Wenner testified that the right-of-way, from the centerline of southbound lanes, extends 41 feet towards Plaintiff's property ("disputed property"). On Exhibit D5, small circles, representing the location of the trees, are seen within the right-of-way line and adjacent to what is now Plaintiff's property.

Defendant next presented was what admitted at Exhibit D6, which is the plan for the current project on SR 220. On pages three and four, Plaintiff's property is identified as owned by Frank L. Hedges, III and Joan E. Hedges, his wife. Defendant's legal right of way line is clearly marked. Exhibit D7, which was prepared by Defendant when Plaintiff began questioning the location of the right-of-way, shows that the trees which Defendant intends to cut down are located within its right-of-way, with the right-of-way being slightly behind the trees toward Plaintiff's property. In fact, as Mr. Wenner explained, Defendant's "cut-line"² is actually in front of the pine trees, but Defendant will remove them anyway. The removal of the surrounding soil and rock will create an increased chance of the trees falling onto other property or the roadway and thus, the only way to prevent that from occurring is to remove them.³

Mr. Wenner, or another employee of Defendant, has informed Plaintiff of the right-of-way, has provided all relevant plans, has signed an Affidavit

¹ Plaintiff is Joan Hedges, who is 82 years old. Her daughter, Daina Hedges, presented Plaintiff's case on her behalf and questioned the witnesses. Plaintiff's grandson, John Hedges, was also present at counsel table with Daina Hedges.

² The limit to where Defendant will remove soil or rock in order to construct the new roadway.

³ "The Department of Transportation shall have the absolute right to trim, cut and remove any trees, grasses, shrubs and vines growing within the legal right of way of any State highway, and to trim and cut away any trees, grasses, shrubs and vines growing on adjacent property in so far as they overhang or encroach upon the legal right of way of any State highway." 36 Pa.C.S.A. § 670-410.

describing the right-of-way, has marked the trees they intend to cut down, and has staked the right-of-way line, as exhibited in Exhibit D4.⁴ Despite these steps, on October 8, 2020, August 10, 2021, and September 9, 2021, Plaintiff and/or Plaintiff's family has entered onto Defendant's legal right-of-way, the disputed property, and refused to move, effectively halting the construction progress. See *Defendant's Exhibit 8 depicting Plaintiff and/or her family members sitting next to the pine trees*. Failure to complete the current phase of the project will result in increased costs to taxpayers, delay damages to the contractor, increased material costs, and additional accidents on the roadway.

On cross examination, Plaintiff presented a printout of a bird's eye view of her property from the County of Lycoming Parcel Viewer. See *Exhibit P1*. This printout purports to show that the tax line includes where the pine trees are located. However, as pointed out by Defendant in Exhibit D9, prior to entering the Parcel Viewer website, a disclaimer is shown in which it states, in relevant part, that the information on the website "should not be construed as a complete and accurate description, whether legal or otherwise, of any particular parcel" and that a "land surveyor should be consulting in the event knowledge of the exact placement, size or shape of a parcel or its boundaries is needed."

Additionally, Plaintiff purports to argue that the disputed land is owned by her because she and her family have maintained it for several years and, as Mr. Wenner admitted, Defendant maintains its right-of-ways only to the extent necessary for safety purposes. However, as consistently held by the Pennsylvania Supreme Court, "claim of title by adverse possession does not lie

⁴ The stakes depicted in D4 are no longer in place and they were not removed by any of

against Commonwealth property.” *Com., Dep't of Transp. v. J. W. Bishop & Co.*, 439 A.2d 101, 103 (Pa. 1981).

Finally, Plaintiff herself testified generally regarding the history of SR 220 and how she obtained her property.

III. Conclusion

While the Court sympathizes with the impact that this project will have on Plaintiff's use and enjoyment of the disputed property, that area has been owned by Defendant for quite a while. Plaintiff and her family have been free to enjoy it; however, that gives them no right to now impede on Defendant's construction, which is being performed within its legal right-of-way.

Based on the above, the Court finds that Defendant has established its right to the disputed property pursuant to the 1956 Plan. Additionally, Defendant's plan for the current project that is underway is consistent with the 1956 Plan. Therefore, Defendant is entitled to 41 feet of land from the centerline of the southbound roadway of SR 220 toward Plaintiff's property.

A civil engineer employed by Defendant shall place stakes to mark where its legal right-of-way is located directly adjacent to Plaintiff's property. Once those stakes are placed, Plaintiff and her family members are prohibited from removing the stakes.⁵ Additionally, Plaintiff and her family members are prohibited from occupying the disputed property or interfering with any of Defendant's use or

Defendant's employees.

⁵ Removal of the stakes may result in criminal charges pursuant to 18 Pa.C.S.A. § 3312 ((1) A person commits a summary offense if he intentionally cuts, injures, damages, destroys, defaces or removes any survey monument or marker, other than a natural object such as a tree or stream. (2) A person commits a misdemeanor of the second degree if he willfully or maliciously cuts, injures, damages, destroys, defaces or removes any survey monument or marker in order to call into question a boundary line.), as well as other criminal charges.

activity of the disputed property.⁶ Law enforcement officers, including the Lycoming County Sheriff's Office, is authorized to remove anyone from the disputed property on that basis alone. Defendant shall not disturb any area outside of the marked right-of-way that is on Plaintiff's property.

⁶ Entry onto the land and/or interference with Defendant's work may result in criminal trespass

ORDER

AND NOW, this 6th day of **October, 2021**, upon consideration of Defendant's Emergency Motion with Request for Expedited Consideration, and Plaintiff's response thereto, for the reasons set forth above, Defendant's Motion is **GRANTED**. Defendant is entitled to 41 feet of land from the centerline of the southbound roadway of SR 220 toward Plaintiff's property.

A civil engineer employed by Defendant shall place stakes to mark where its legal right-of-way is located directly adjacent to Plaintiff's property. Once those stakes are placed, Plaintiff and her family members are prohibited from removing the stakes. Additionally, Plaintiff and her family members are prohibited from occupying the disputed property or interfering with any of Defendant's use or activity of the disputed property. Law enforcement officers, including the Lycoming County Sheriff's Office, is authorized to remove anyone from the disputed property on that basis alone. Defendant shall not disturb any area outside of the marked right-of-way that is on Plaintiff's property.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

CC: Joan Hedges/Daina Hedges
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