

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN RE: : NO. 99-01,299
:
CONDEMNATION BY THE BOROUGH : EMINENT DOMAIN
OF MUNCY OF CERTAIN REAL : PROCEEDINGS
PROPERTY LOCATED IN MUNCY :
CREEK TOWNSHIP, LYCOMING :
COUNTY, PENNSYLVANIA :

OPINION and ORDER

At this time, appropriately close to Halloween, we confront the spooky question, “Is a cemetery without any corpses really a cemetery?”

The Borough of Muncy has condemned a piece of land owned by Muncy Cemetery in order to create an easement for a well-head, and the Cemetery has taken refuge under an ancient statute exempting cemeteries from eminent domain proceedings. There is one slight problem, however: no bodies are buried on the land at issue. In fact, it is currently being used as a cornfield. The Cemetery maintains, however, that the land should be considered a cemetery because it will be used for burials in the future. After considering the statute and pondering over its intent, we agree.

Discussion

The power to condemn land for governmental purposes is one of the most awesome powers of government, especially in America, a country founded on Lockean principles regarding the importance of private property rights. This power exists because even in America, the public’s needs often outweigh the private concerns of individuals. But even this sweeping eminent domain power has its limitations. The restriction at issue here is found in the Borough Code, 53 Pa.C.S.A.

§ 47502, which states:

No land or property used for any cemetery, burying-ground, or place of public worship, shall be taken or appropriated by virtue of any power contained in the preceding section of this article.

The passage does not tell us, however, what constitutes a cemetery. Since the answer is not clear from the language of the statute, we must determine the legislative intent underlying it. There are three possible interpretations.

First, the statute could apply only to land where bodies have already been buried. We reject his interpretation as too restrictive, for if that were the case no cemetery containing any unused space would ever be safe from the grasping arm of the government. Under this interpretation, the government could destroy the integrity and sanctity of a cemetery by condemning any vacant plot in its midst or any land used as a walkway or another non-burial purpose. Not even cemeteries filled to capacity would be entirely safe. Furthermore, no cemetery company could hold any land in abeyance for future use without exposing it to risk of condemnation.

The Pennsylvania Supreme Court rejected this narrow interpretation of a similar statute that exempts cemeteries from road construction. Although the language of that law does not entirely match the language of the one we are examining,¹ the intent is surely the same. In re Legislative Route 1018, Section 4, Etc., 422 Pa. 594, 222 A.2d 906 (1966). Although the main issue in that case was whether the restriction applied to the Commonwealth, the court briefly acknowledged the Commonwealth's argument that since there were no internments

¹ "It shall not be lawful to open any street, lane, alley or public road through any burial ground or cemetery within this commonwealth . . ." 9 P.S. § 8.

in the land, it was not protected by the statute. Notwithstanding this argument, the court prohibited condemnation, stating that the land at issue was clearly earmarked for burials. All of the land to be condemned in that case had already been divided, laid out and plotted into graves and lots.

The second possible interpretation is that *any* land owned by a cemetery company is exempt from condemnation. We reject this interpretation as too broad, for it would protect land that is not being used for burial purposes and will never be used for burials. Cemetery companies could buy up and hoard huge tracts of land, never intending to bury anyone on it, and thus unjustly deprive the public of needed roads, electricity, or water. Surely that was not the intent of the statute.

In Route 1018, the Supreme Court recognized the potential for such abuse, and hinted that its holding was not to be interpreted too broadly, to exempt all land owned by a cemetery company. After acknowledging the Commonwealth's argument that cemetery companies could thwart highway construction by purchasing unnecessary land, the court stated, "No such case is presented by this record. Herein, the stipulated facts clearly earmark the lands involved as present cemetery land. This decision is limited to the facts of this case." Id. at 909. Similarly, a Berks County trial court permitted condemnation on land that a cemetery corporation was using as a parking lot, with no plans for future burial use. Good Shepherd Cemetery Co. v. Commonwealth, 75 D. & C. 203 (1976). *See also*, U. B. Cong. V. Emaus Borough, 56 Pa. Super. 136 (1914) (holding that a cemetery corporation's right to protection dates from the time the corporation declares its intention to use it for burial purposes, rather than its inception of title).

That brings us to the third, and most logical, interpretation: only land

intended to be used for burial purposes is protected. This interpretation will prevent abuse of the special exemption, while at the same time protecting the integrity of cemeteries. Most importantly, it will allow cemetery corporations to purchase and put aside land for future use—thereby ensuring that there will be a spot for each and every one of us to rest in peace when our time comes.

The evidence at the hearing established that although the land at issue is not currently laid out in lots, Muncy Cemetery plans to use the land that is the subject of this action for future burials. Officials of the corporation testified that they purchased the land in 1935, as part of a larger tract of 22.38 acres, of which all but 15 acres are used for burial purposes. Mr. Earl Poust, President of Muncy Cemetery, testified that the company will need to use the undeveloped land once the developed portion is full.² In the meantime, the company is generating revenue by renting it as farmland. Moreover, Mr. Poust testified that although the Cemetery had received an offer from the Muncy Borough Water Authority to purchase the land, the Cemetery had responded with a counteroffer stating that they were only willing to lease the land, rather than sell it. A copy of Muncy Cemetery's letter to Muncy Borough Water Authority verified that testimony.

The court finds Mr. Poust to be a credible witness. Moreover, we tend to believe that modern science, in all its glory, is still a long way from finding a cure for death. Unfortunately Muncy area residents, like all of us, will eventually have a need for a final resting place.

Muncy Borough has argued that Muncy Cemetery is challenging the

² The evidence showed that most of the land will be suitable for this purpose, for less than 20% lies in the 100-year flood plain.

condemnation only in an attempt to get a higher price for the land in dispute. While that may be so, the Borough has presented no evidence upon which to make such a finding, and we decline to do so.

Finally, we must say that although we find that the land in question is exempt from condemnation, we cannot understand why Muncy Cemetery is unwilling to part with the small portion of land the Borough wants to use for a well-head. Surely the two parties can come to some amicable agreement that would be mutually beneficial, such as a purchase or rental of the property. The Borough would get its well-head, while Muncy Cemetery would generate additional revenue and gain the satisfaction of helping provide water to the residents and businesses of the Muncy area.

Conclusion

Because Muncy Cemetery intends to use the land at issue for burial purposes, the land is protected under 53 Pa.C.S.A. § 47502, and condemnation is prohibited. In addition to the legal reasons set forth above, the court notes that the land deserves protection because some future residents of the Muncy Cemetery may already be subject to *eternal condemnation*, and that is quite enough!

ORDER

AND NOW, this _____ day of October, 1999, for the reasons stated in the foregoing opinion, the preliminary objection filed by the condemnee Muncy Cemetery on 20 September 1999, relating to the exemption, is granted and it is ordered that the Declaration of Taking filed by the Borough of Muncy on 17 August 1999 is vacated. Title is reinvested in the condemnee, Muncy Cemetery.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Layne Oden, Esq.
Kenneth Young, Esq.
Gary Weber, Esq.