

TINA M. MOORE,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	LYCOMING COUNTY, PENNSYLVANIA
	:	
vs.	:	NO. 97-00,821
	:	
GENE I. KNARR and BETTY C. KNARR,	:	CIVIL ACTION - LAW
his wife, all of their heirs, successors and	:	
assigns, and anyone claiming by through or	:	
under them, or any of them,	:	1925(a) OPINION
Defendants	:	

Date: September 5, 2000

**OPINION IN SUPPORT OF THE ORDER OF JULY 14, 1999 AND MAY 26, 2000
IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

This matter is a boundary line dispute between the parties, which began its journey through the court system with the filing of a complaint by Plaintiff June 2, 1997. It involves the rights of the parties to a driveway easement located between and separating the parties' properties -- Plaintiff Moore's property is situated to the west of the disputed area and Defendants Knarrs' to the east. The easement area consists of a strip of land referred to in earlier deeds as being a fourteen-foot wide farm road or easement. Defendants' deeds ostensibly include this disputed area. The easement provides access to the respective properties of the parties and extends northerly from a public road, (Pa. 150 or Hopple Road), which road abounds the southern boundaries of the properties.

After non-jury trial held October 7, 1998, the Court found, *inter alia*, that a visible cartway of an unspecified width had existed upon the fourteen-foot wide easement since the 1940's, located between two embankments and situated more toward the eastern side of the easement area. *See* Non-Jury Equity Trial Adjudication/Decree Nisi, filed October 23, 1998 Findings of Fact, paragraphs 15 and 18, Discussion pages 11, 12, Conclusions of Law 1 and 4. Plaintiff used the cartway until 1997,

when Defendants began filling it in and otherwise interfering with the easement area, leading to the initial litigation. By this Court's Order filed October 23, 1998, Plaintiff was granted an easement in common with Defendants to use the cartway. Plaintiff also was declared owner in fee simple of the land in the easement area lying west of the western edge of the cartway. Order and Decree Nisi, filed October 23, 1998, paragraphs 1-2. The Pennsylvania Superior Court in a Memorandum Opinion subsequently affirmed the determinations of this Court by Judgment dated November 30, 1999 (No. 673 MDA).

During the pendency of the initial appeal, specifically on June 7, 1999, Plaintiff filed a petition pursuant to Pa. R.A.P. 1701(b) requesting this Court to enter an order to maintain *status quo* pending the appeal in relation to the cartway area. After a hearing on July 14, 1999, this Court entered an Order directing that the Defendants should restore the eroded dirt bank to the west of the stone cartway to the condition that it existed at the time of the Court's Order of October 23, 1998, by replacing the soil and seeding the grass. The bank area to be restored in that Order was the area to which title was awarded to Plaintiff by the prior Order. The July 14, 1999, Order described the area as being from two to four feet in width and would extend westerly from the stone cartway area up a slope to the top of the grass-sodded bank. This area had been depicted to the Court through Plaintiff's photographs, as referred to in that Order.

The Court also, in its Order of July 14, 1999, noted that the intent of the October 23, 1998, Order was to grant both parties the free and uninterrupted use of the cartway. The Court also noted in response to the Defendants' contentions that the October 23, 1998 Order would not prohibit

Defendants from erecting a fence along the eastern line of the right-of-way depicted in a survey, prepared by William C. Hilling, R.S., referred in the prior decision (hereinafter referred to as the “1980 Survey”).¹

Following the entry of the Superior Court Judgment on November 30, 1999, which affirmed our 1998 decision, the next and current stage of litigation was initiated by contempt petitions filed by each party. Plaintiff filed her petition December 29, 1999, alleging that Defendants had failed to restore the bank area west of the cartway to its original condition as ordered. Plaintiff also asserted Defendants’ counsel had informed counsel for Plaintiff that Mr. Hilling had resurveyed the area at Defendants’ request, and the new survey showed Defendants’ western property line being within the visible cartway area by three to four feet, at which location Defendants intended to erect a fence. Defendants filed a response and counter-petition for contempt on January 7, 2000, asserting Plaintiff was blocking the right-of-way area by placing logs along the bottom of the embankment. Defendants also asked the Court to declare the new survey correct and that they not be prevented from erecting a fence on the line that had been marked on the ground in accordance with the new survey.

A hearing was convened on both contempt petitions on March 20, 2000. At that time, rather than proceeding with introduction of testimony counsel stipulated that this Court should make a view of the property. A view had not been conducted in the 1998 proceedings. The parties proposed the Court should view the property to see the location on the ground where Mr. Hilling, the surveyor, had now marked the eastern line of the fourteen-foot-wide easement area, particularly

¹ See the Survey of William C. Hilling, R.S., 7/29/80, recorded in Lycoming County Deed Book 1097, page 146; Map Book 44, page 53 – Defendants’ Exhibit No. 2 in the proceedings of October 1998.

as it related to the existing cartway and also for the Court to view the location of the cartway in relation of the embankments and whether the western bank had been restored in accordance with prior orders of court. It was agreed that the surveyor, Mr. Hilling, would be present and that the Court could question the surveyor concerning his work. It was agreed that the Court should try to obtain enough information from the view and the surveyor at the view to make an order which would resolve the issues raised in the respective contempt petitions.

Accordingly, the determination made by this Court which is now being appealed was based upon this Court's observations made during the site view as to the location of the physical features on the ground. It was the intention of the Court in our Opinion and Order of May 26, 2000, to accurately express the full effect and purpose of our prior Orders in relation to the actual physical location of the western embankment, the easement, the cartway and the survey lines. This Opinion expresses this Court's observations made at the site view and further details the reasons for the May 26, 2000 Order.

The Court carried out a site inspection at the property on March 23, 2000. As referenced in this Court's Opinion and Order dated May 26, 2000, the Court found during the site inspection that Mr. Hilling, the surveyor, had painted orange circles on the ground surrounding pk nails to designate the eastern line of the fourteen-foot-wide easement area and the proposed fence location in a line running northerly from the public road. Surprisingly to this Court, the orange circled pk nails were placed in the approximate center of the well-established cartway, which this Court by its prior orders had indicated was to be an unimpeded easement for purposes of serving as a driveway for the properties of both the Plaintiff and Defendants.

This Court's October 12, 1998 findings and conclusions, which have been affirmed by the Superior Court, had found the visible cartway to which Plaintiff was given the right to use was located between an embankment to the left and right and had existed in that location since at least the 1940's. *See*, Adjudication/Decree Nisi filed October 23, 1998, Finding of Fact 18. The Court also found that the Plaintiff had gained title by adverse possession of the property that was situate between the western line of the easement area and the western line of the cartway, the bottom of the embankment forming the western line of the cartway. *See Id.* at Findings of Fact 18, 22, Discussion, pp. 11-12, Conclusions of Law 1 and 4.

The 1980 survey had shown the west line of the easement area to be marked by iron pins. Two of the iron pins were depicted on that survey as being adjacent to telephone poles – one at the northwest corner of the easement and the second near the southern end of the easement's western line, at the top of a bank just north of the public road right-of-way. The 1980 survey showed the western line of the easement to be parallel and almost coinciding with a line established between the two poles. Specifically at the southern pole the pin on the survey seemed to be placed as touching the west side of the pole. These 1980 survey depictions were also substantiated by photographs and testimony received at the 1998 proceedings. In those proceedings the Plaintiff had also accepted the pin at the southern pole as correctly denoting the boundary line of the property described by her deeds which also would be the western line of the fourteen-foot-wide easement area. *See, Id.*, at Finding of Fact No. 13.

Upon making the site inspection the surveyor pointed out that upon doing the re-survey a different western line was established due to a variation in the location of the pin at the northeast corner of Defendants' lands which in turn altered the location of the easement area northwest corner pin as well as

the angle at the northwest corner of the easement. Based upon this Court's view the new pin location at the northwest corner of the easement was two feet east of the telephone pole rather than a few inches from it. The difference in the angle of the western line of the easement caused the western line to diverge westerly from the line between the two poles (rather than being parallel) to the extent that at the southern pole the pin denoting the western line of the easement was almost three feet west of the pole rather than immediately adjacent to it.

The view demonstrated clearly that the original slope of the western embankment extended to a point which would be approximately 8 feet east of the pin location at the southern utility pole making the bottom of the bank when restored to its original location, five to six feet east of that pole. This point would constitute the western line of the cartway as found in our prior decision. The straight line formed by the orange circled pk nails was located approximately six feet east of the bottom of the original embankment area. If the embankment were restored to its original slope, as directed by our prior orders, six feet would remain between the bottom of the bank and the fence defendants proposed to erect along the line depicted by the orange-circled pk nails. This would not be a sufficiently wide area for a cartway over which normal vehicles could pass

The March 2000 site view also clearly revealed to the Court a plainly visible cartway that was at least twelve feet in width. Although the parties had not produced any evidence at the prior trial as to the exact width of the cartway they had no dispute that it was plainly visible and wide enough for normal vehicular traffic. A cartway of sufficient width for normal vehicles, as this Court envisioned at that time, would not be less than eight feet nor greater than twelve feet. The photographs viewed by the Court in the 1998 trial also substantiated such a width

At the October 1998 proceedings this Court had found the cartway as it had been used was situate within the fourteen-foot-wide easement area and to the eastern side of the easement area. *See* Adjudication/Decree Nisi, October 23, 1998, Finding of Fact No. 15. However, based upon the observations made at the site view that the bottom of the embankment adjoining the western line of the cartway would – when restored to its original location – be in a line six feet west of the telephone pole at the easement’s southern end, it became apparent the cartway’s location as envisioned in the October 23, 1998 Order would be in an area starting six feet west of the pole and extend to a point east of the telephone pole at least fourteen and perhaps as much as eighteen feet.

Therefore, an inconsistency confronted this Court at the site view, which had not been evident from the 1998, or 1999 evidentiary hearings. Nevertheless, the 2000 site view enabled this Court to correctly determine the physical location of the cartway because of the basic findings we established in 1998. The Court’s 1998 determination indicated the cartway as used since the 1940’s was within the fourteen-foot-wide easement area and that this easement area on the west was marked by a utility pole in the survey plan of Mr. Hilling. The view conducted by the Court established the cartway could not be located entirely within the fourteen-foot-wide easement area, particularly if the western line of the easement was west of the utility poles. The 1998 determination had assumed the poles formed the western line of the fourteen-foot-wide easement area. The 1998 determination found the cartway as it was then used to be sufficiently wide for normal vehicles but no evidence as to an exact width was given in those proceedings. The cartway was also found to exist between two embankments. The embankment area to the west had been cut back, westerly, by Defendants. That embankment had also comprised the area to the west of the cartway which the Court in 1998 found Plaintiff owned by adverse possession.

Applying the factual observations made during the site view to the clear intent of this Court's 1998 Adjudication that the Plaintiffs obtained the easement area west of the cartway through adverse possession, our May 26, 2000 Order established the physical location of the twelve foot cartway to be placed so that its western line would coincide with the bottom of the embankment inasmuch as the view enabled this Court to determine that when the bank would be restored to its original slope by Defendants (as directed by our July 14, 1999 Order, it would meet the edge of the cartway. The site view demonstrated this location to be consistent with the actual physical location of the existing cartway.

The site view also established the basis for the determination in our May 26, 2000 Order as to the width and physical location of the cartway in relation to the orange circled pk nails. In the prior proceedings this Court was unable to specify a cartway width based upon the testimony presented. Upon making the site inspection it became clear to the Court that the cartway was at least twelve feet in width. It was also very clear to this Court that the cartway as it has been used extended at least six feet on either side of the orange-circled pk nails that the surveyor had placed on the ground. This placement of the cartway also results in the western line coinciding with the bottom of the to-be-restored western embankment. Therefore, this Court entered its Order of May 26, 2000 establishing that the orange-circled pk nails placed by Mr. Hilling would denote the centerline of the cartway to be used as a common easement by the parties, in accordance with this Court's prior Order of October 23, 1998.

The foregoing discussion should make clear that all of these determinations set forth in the May 26, 2000 Order, now under appeal, were based upon this site inspection and based upon the agreement of the parties the contempt proceedings should be resolved by a site view to ascertain

what did and did not interfere with the cartway Plaintiff is entitled to use. The position now advanced by Defendants is clearly inconsistent with giving the Plaintiffs title by adverse possession to the area of the western embankment and would deprive Plaintiff of an appropriate cartway for access to Plaintiff's property.²

Accordingly, we must take exception to Defendants' characterization of this Court's determination as a unilateral reversal of our prior decisions. In the first place, the Court clarified its position as a result of and at the request of the parties, who both filed the contempt petitions before the Court. This is clearly documented in the transcript of the proceedings of March 20, 2000. After a short conference with counsel, it was agreed a view of the property was appropriate. Transcript of March 20, 2000 (unnumbered), p. 2. The Court further indicated every effort would be made to gain enough information from viewing the property so as to resolve the conflict without further evidentiary hearing. *Id.* at p. 4. This was accomplished in the presence of all parties as they had agreed. Moreover, the meaning and effect of our prior opinions and Orders has always been, and continues to be, that Plaintiff has obtained the area west of the cartway by adverse possession and that both Plaintiff and Defendants are entitled to an easement with respect to the cartway itself sufficient to allow passage of a normal vehicle.

BY THE COURT,

William S. Kieser, Judge

² The site view also revealed that while the fence Defendants propose to erect in the middle of the existing cartway would also deprive Defendants of use of that particular access they have ample area east thereof for a cartway.