

[J-70-2010]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN THE MATTER OF: OPENING A : No. 10 WAP 2009
PRIVATE ROAD FOR THE BENEFIT OF :
TIMOTHY P. O'REILLY OVER LANDS OF : Appeal from the Order of the
(A) HICKORY ON THE GREEN : Commonwealth Court entered July 11,
HOMEOWNERS ASSOCIATION, AND (B): 2008 at No. 2214 CD 2007 affirming the
MARY LOU SORBARA; GREGORY E. : Order of the Allegheny County Court of
BURGUNDER; ANN E. CAIN; DON E. : Common Pleas entered on November 9,
COTTRILL & NORMA J. COTTRILL, H/W; : 2007 at No. GD04-02972.
JOSEPH K. CUPPLES; BART V. :
DELCIMMUTO; JAMES D. DRAGOO & :
LINDA J. DRAGOO, H/W; : ARGUED: 9/16/2009
KIMBERLY M. FONZI; BRIAN J. : RESUBMITTED: 8/16/2010
GALLAGHER & DIANE J. GALLAGHER, :
H/W; DOLORES M. GEMBAROSKY; :
MICHAEL J. GRALISH, JR. & VIRGINIA :
A. GRALISH, H/W; JAMES BATTISTA; :
JEFFERY W. HUTCHENS; MICHAEL :
STEINBERG; GEORGE E. WILMOT & :
LINDA M. WILMOT, H/W; HARRY J. LEE, :
JR.; JOHN G. BYRNE; S. GREG :
MALONE; JOSEPH V. MAZUR & KELLY :
L. POOLE; THOMAS C. SCHAAL & :
PATTY G. SCHAAL, H/W; REGIS G. :
NIEDERBERGER & KATHLEEN C. :
NIEDERBERGER, H/W; GORDON J. :
ORR; ANNE M. PAUL; THOMAS G. :
PORTER & MELINDA D. PORTER, H/W; :
JOSEPH ALAN SHRAGER; ERIC H. :
RITTENHOUSE & DANIELLE L. :
RITTENHOUSE, H/W; LISA A. CUSICK; :
JEROME SCHMIER & CAROL FALO, :
H/W; NANCY J. HUFF; MARCUS A. :
SPATAFORE & KRISTIN C. :
SPATAFORE, H/W; WILLIAM E. :
SPRECHER & MARCELLENE :
SPRECHER, H/W, AND FRANK J. :
SPRECHER & AGNES E. SPRECHER, :
H/W, LIFE ESTATE; ROXANNE M. :

SQUILLANTE; SUSAN C. STANKO; :
SHANAN R. STEWART; GERALD W. :
DANHIRES & LINDA DANHIRES, H/W; :
GREGORY TAYLOR; GIANNA M. :
YECKLEY; DENNIS M. ZAMERSKI & :
NOREEN ZAMERSKI, H/W; BETTY B. :
WILLIAMS & LEON I. WILLIAMS (CO- :
TRUSTEES); MICHELINE STABILE; :
WILLIAM F. PITZER; JANET ZEWE; :
FRANKI R. COLANGELO; KAREN R. :
BILLINGHAM; ROMAN M. HLUTKOWSKI; :
VIRGINIA L. KNAUS, TRUSTEE UNDER :
QUALIFIED PERSONAL RESIDENCE :
TRUST AGREEMENT, DATED JULY 27, :
2000; JOAN L. MASSELLA; DONNA :
DURKAN; GERALDINE R. ALTENHOF; :
APRAJITA RATHORE & RAVI :
RAMAMOORTHY, H/W; JAMES E. :
SPENCE & KATHY F. SPENCE, H/W; :
TRACY WEST MALONE; JENNIFER A. :
CALLERY; THE JUDITH F. KOBLITZ :
TRUST; ADRIANNA F. VIOLA; :
DOROTHY D. WAGNER; SPITZIG :
LIVING TRUST AND WILLIAM A. :
SPITZIG AND MARILYN J. SPITZIG :
(TRUSTEES); SANDRA JEAN HANSON; :
THOMAS C. SKENA; ZARAF MOSHIN; :
PAUL W. AMIC & CAROLE L. AMIC, H/W; :
MARGARET M. SHOWALTER; JAMES P. :
FLANNERY & PATRICIA C. FLANNERY, :
H/W; DEBORAH A. GERTZ; CAROL L. :
SCHARTNER; JOHN A. UDISCHAS & :
SUSAN C. UDISCHAS, H/W; DONNA M. :
BARTKO; KYLI J. MARTIN; FREDERICK :
RAPONE SR. & ROBERTA RAPONE, :
H/W; AMY R. SOLOMON; RICHARD M. :
BUCK & BARBARA L. BUCK, H/W; :
ARLENE LIPTON; WILLIAM G. EILER; :
CATHERINE M. SMITH; DAVID J. :
CARROLL; MILDRED K. FINCKE; :
MARGARET M. CORNELLIUS; JOSEPH :
A. TESTA & MARGARET J. TESTA, H/W; :
CANDACE L. SALVINI; A. WHITNEY :

LOBDELL & ROBERTA S. LOBDELL,
H/W; RONALD G. BAUER & TERESA L.
BAUER, H/W; ANNA MARIE CIMAROLLI;
JOR R. PALMER & ANN D. PALMER,
H/W; RITA V. FRIZLEN; JOSEPH J.
ASTORINO & MARILYN J. ASTORINO,
H/W; THOMAS S. PHILLIPS; JOHN A.
GERCHER; NAOMI H. PATTON;
STANLEY A. HACK & CHRISTINE E.
HACK, H/W; MELISSA J. SCHILLER &
MELANIE M. SCHILLER; JOHN
SCHLATER & PAULETTE SCHLATER
H/W; WILLIAM J. GARRITY, SR. &
PATRICIA ANN GARRITY, H/W; ARCHIE
L. MCINTYRE; CLARENCE JOSEPH
WELTER & MARA WELTER, H/W;
LISBETH A. DINEEN; CHARLES W.
FETROW & MARGARET A. FETROW,
H/W; JOCELYN BREAKWELL, MARK A.
PETROZZA & DOROTHY M. PETROZZA,
H/W; JAMIE A. BRACE, AS THEIR
INTERESTS MAY APPEAR

APPEAL OF: HICKORY ON THE GREEN
HOMEOWNERS ASSOCIATION, ET AL.

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: SEPTEMBER 30, 2010

I respectfully dissent from the majority's opinion, as the constitutionality of the Private Road Act (Act) is well settled.¹ Despite the Act's 173-year history and numerous

¹ See In Re: Pocopson Road, 16 Pa. 15 (1851) (rejecting constitutional challenge to Private Road Act); In Re: Dickinson Township Road, 23 Pa. Super. 34 (1903) (rejecting contention that Private Road Act is unconstitutional); In Re: Private Road in East Rockhill Township, Bucks County, Pa., 645 A.2d 313 (Pa. Cmwlth. 1994) (confirming (continued...))

opportunities to review its constitutionality, this Court has never determined the Act to be unconstitutional, nor has the Legislature indicated a desire to repeal it. Indeed, as Appellee argues, the Legislature seems to have recently bolstered the Act's purpose of providing relief to a landlocked landowner. After the United States Supreme Court's decision in Kelo v. City of New London, 545 U.S. 469 (2005), which generated much debate regarding eminent domain and private property rights, the Legislature specifically permitted the use of eminent domain proceedings to create access to a landlocked property. See 26 Pa.C.S. § 204(b)(9) (stating power of eminent domain may be used to take private property where "The property is used ... for any road ... to provide access to a public thoroughfare for a property which would be otherwise inaccessible as the result of the use of eminent domain"). While this is not an eminent domain case, § 204(b)(9) suggests the Legislature clearly intends to ensure landlocked landowners will have a continuing remedy to gain access to a public thoroughfare.

By simply granting a private right of action to an otherwise landlocked landowner, the Act is akin to the common law doctrine of easement by necessity, which has long been used to allow a landlocked landowner to access a public highway over another's private land when no other relief is available. Although an easement by necessity is typically the result of land which has been severed by its original owner, here, Appellee's land was severed by the Commonwealth in order to facilitate construction of Interstate 79. Therefore, without the Act, Appellee would have no other relief to gain access to the property, leaving it unproductive — a result which is not in the public's interest.

(continued...)

Private Road Act's constitutionality); T.L.C. Services, Inc. v. Kamin, 639 A.2d 926 (Pa. Cmwlth. 1994) (confirming Private Road Act's constitutionality).

Furthermore, I believe the majority's justification to remand is based, in part, upon irrelevant considerations. The majority fails to explain how a determination of whether the Act was contemplated at the time the Commonwealth possessed the land or "whether Appellee acted with reasonable promptitude" will significantly alter the analysis of this issue to justify additional proceedings and expenditure of resources. Majority Slip Op., at 20. The parties' briefs and opinions below sufficiently addressed the arguments necessary for a determination of the issue presented on appeal. Accordingly, I see no need to remand for additional proceedings and respectfully dissent.

Mr. Chief Justice Castille and Mr. Justice Baer joins this dissenting opinion.