

DOCKET NO. 7

Number

4

Term

May SS

Year

1955

In Re: Vacation of Four Roads in

Burnside Township

Versus

11/22/55 Copy mailed
to Pa Highway Dept Cgd

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNA.

IN RE: VACATION OF ROADS IN :
: No. 4 May Sessions, 1955
BURNSIDE TOWNSHIP :

PETITION

To The Honorable John J. Pentz, President Judge of said Court:

The Petition of D. T. MITCHELL, JR. and THOMAS E. REITZ,
Agent for A. H. REITZ, respectfully represents:

1. That to the above styled number and term is filed, in said Court, "A report of hearing" of the supervisors of Burnside Township. Said report of hearing was filed April 18, 1955, and proposes therein to vacate a portion of a township road in Burnside Township, Clearfield County, Pennsylvania, being Township Road No. 314, "Starting 0.4 miles from the intersection of L. R. 17130 and T. R. 314, in a northerly direction for 0.3 miles." Said portion of said road purported to be vacated runs through lands of William Rorbaugh.

2. It is averred that the attempt to vacate said road is not supported by Petition of a majority in interest of the owners of property or properties through whose lands such road passes or upon whose land it abuts, or of other interested citizens or persons to be affected thereby, and/or if any such Petition exists it was not made a part of the report of hearing or referred to therein.

3. That it does not appear from said report of hearing whether or not in the judgment of the supervisors it was necessary for the public convenience that said road be vacated.

4. It is averred that the township supervisors wholly failed to enact an ordinance vacating said road and/or if any such ordinance was enacted the same was not made a part of the

report of hearing.

5. It is averred that the Board of Road Supervisors gave no notice to the property owners affected by said proposed vacation proceedings of the time and place when and where interested parties could meet and be heard.

6. It is averred that the supervisors did not file a copy of any ordinance as required by the Act of Assembly, together with a draft and survey of the road showing the location and the width thereof in the office of the Clerk of Quarter Sessions.

7. No notice was given to your petitioners and/or to any other person insofar as your petitioners are able to determine of the filing of any such proposed action by the Board of Supervisors and/or of the filing of the alleged report of hearing so that your petitioners had no opportunity to file exceptions to the report.

8. It is averred that no notice was given by hand bills posted in conspicuous places along the line of the road or highway proposed to be vacated, or of the requisite ordinance.

9. It is averred that your petitioner, D. T. Mitchell, Jr., is the co-owner of two adjoining tracts of land situate in Burnside Township, containing 301 acres and 324 acres respectively, and that said township road No. 314, now purported to be vacated, was the only road from his lands. Said township road No. 314 terminated at the boundary line of the James Rorbaugh tract, which said terminal point of said township road No. 314 was a distance of approximately 132 perches south of the lands owned by your petitioner.

10. It is averred that A. H. Reitz is the owner of an undivided one-half (1/2) interest in the coal under the said

James Rorbaugh tract, and is presently without any means of access to or from the said James Rorbaugh tract for his coal.

11. By proceedings filed to No. 1 April Sessions, 1954, in the Court of Quarter Sessions of Clearfield County, William Mahaffey and D. T. Mitchell, Jr., setting forth their need of relief, filed a Petition in this Court, praying for the establishment of a private road through James Rorbaugh lands for the use and benefit of the lands owned by your petitioners.

12. As the result of said Petition a view was held on the premises, hearings were held by the viewers and after survey and testimony concerning damages the report of the viewers was filed, establishing a private road through the James Rorbaugh lands to the then northern terminal of township road No. 314.

13. Thereafter, to wit, on December 15, 1954, D. T. Mitchell, Jr. and William Mahaffey paid the damages assessed by the board of viewers to be paid for said private road through the Rorbaugh lands.

14. It would now appear that the said proposed vacation proceedings were instituted immediately thereafter and without notice to either William Mahaffey or D. T. Mitchell, Jr. or A. H. Reitz, and if allowed to stand will constitute a fraud upon your petitioners and deprive them of any access to a public highway.

15. It is averred that William Mahaffey, one of the owners of the lands affected by said proposed vacation proceedings, died on May 5, 1957, and that prior to his death he had no knowledge of the proposed vacation proceedings, and that his widow, Harriet Mahaffey, Administratrix of the Estate of William Mahaffey had no knowledge of the same prior to being informed by D. T. Mitchell, Jr., and the said D. T. Mitchell, Jr. was first informed of the alleged vacation proceedings when he was stopped in his

attempt to gain access to his aforementioned lands by way of township road No. 314. Thereupon, having made inquiry, he learned for the first time of the proceedings herein complained of. A. H. Reitz had no notice of the proceedings herein complained of until December, 1957.

WHEREFORE, for the reasons hereinbefore set forth, your petitioners request this Honorable Court to issue a Rule on L. G. Repine, George Kauffman, and J. C. Brothers, Burnside Township Supervisors, to showcause why the report of hearing filed to the above styled number and term should not be stricken off and said proposed vacation proceedings annulled and said township road No. 314 reinstated with the same force and effect as if said proceedings had never been instituted. All with respect only to township road No. 314, being Item 1 in said proposed vacation proceedings.

And they will ever pray,

D. D. Mitchell
Thomas E. Reitz
Agent for A. H. Reitz

STATE OF PENNSYLVANIA:
: SS:
COUNTY OF CLEARFIELD :

Before me, the undersigned, personally appeared D. T.
MITCHELL, JR., who, being duly sworn, according to law, deposes
and says that the facts set forth in the foregoing Petition are
true and correct.

Sworn to and subscribed before :
me this 17 day of December, :
A. D., 1957. :

D. T. Mitchell

Dick Reed

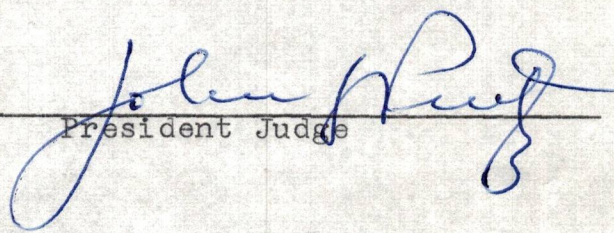
RECORDER OF DEEDS

My Commission Expires
First Monday in January 1960

ORDER OF COURT

AND NOW, December 17th, 1957, the foregoing
Petition having been presented, read and considered, it is
Ordered that a Rule issue on L. G. Repine, George Kauffman,
and J. C. Brothers, Burnside Township Supervisors, to show
cause why the prayer of this Petition should not be granted.
A copy of this Petition to be served, along with the Rule,
on each of said supervisors.

By The Court,



President Judge

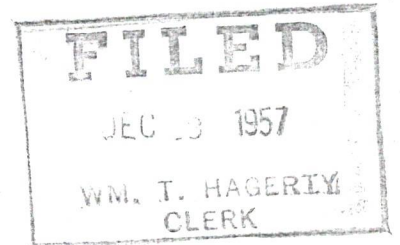
Lee

IN THE COURT OF QUARTER
SESSIONS OF CLEARFIELD CO., PA.

No. 4 May Sessions, 1955

IN RE: VACATION OF ROADS
IN BURNSIDE TOWNSHIP

PETITION



W. ALBERT RAMEY
ATTORNEY AT LAW
CLEARFIELD, PENNA.

400 By atty

Now, to wit, this 26th Day of December 1957 service
of the within petition and order is accepted and receipt is
acknowledged of this copies thereof on behalf of the
named respondents. Inasmuch as the rule is hereby
waived.

James J. Lee
Attorney for
J. J. Hagerly, et al
Respondents.

hearing, the facts going to make up the same being in the exclusive control of the Petitioners.

NEW MATTER

(16). It is averred that D.T. Mitchell, Jr. was not, at the time of the proceedings complained of, a property owner affected by said proceedings as contemplated by the Act of 1951, and therefore it is requested that your Honorable Court strike him as a party from these proceedings.

(17). It is averred that A.H. Reitz is not a party of record in these proceedings, and that if she has an interest which was affected by the vacation proceedings, she should assert the same in persona propria and not through Thomas H. Reitz, the alleged agent.

(18). It is averred that the Petitioners are estopped from attacking the vacation proceedings by virtue of the Statute of Limitations set forth in the Act of 1951, as aforesaid, and also by laches.

(19). It is averred that said vacation proceedings were undertaken by the Respondents in response to the request of the Township Engineer of the Department of Highways of the Commonwealth of Pennsylvania, and that prior to the vacation of the portion of Route 314 the same had not been used for a great number of years.

WHEREFORE, your Respondents pray that the rule requested by the Petitioners in this matter be discharged, with costs on the Petitioners.

Respectfully submitted,

L. G. Repine
(L.G. Repine)

George Kauffman
(George Kauffman)

J. C. Brothers
(J.C. Brothers)

STATE OF PENNSYLVANIA:
:SS
COUNTY OF CLEARFIELD :

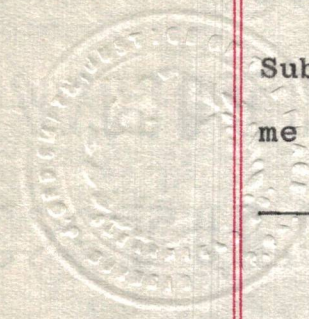
J.C. BROTHERS, being one of the Respondents in the foregoing Answer and New Matter, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Answer and New Matter to the Petition are true and correct to the best of the Respondents information, knowledge and belief.

J C Brothers
(J.C. Brothers)

Subscribed and sworn to before
me this 7 day of January, 1958.

J. O. Smith

MY COMMISSION EXPIRES
FIRST MONDAY IN JANUARY 1962



50% PAID - U.S.A.

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA
RE: VACATION OF ROADS IN :
BURNSIDE TOWNSHIP : No. 4 May Sessions, 1955

RESPONDENTS ANSWER TO PETITION

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

COME NOW, the Respondents, L.G. Repine, George Kauffman, and J.C. Brothers, duly elected Supervisors of Burnside Township, and by their attorney, Joseph J. Lee, file this Answer to the Petition of D.T. Mitchell, Jr. and Thomas E. Reitz, agent for A.H. Reitz, and aver as follows:

(1). Admitted.

(2). Admitted, and in further answer thereto it is averred that under the Act of May 24, 1951, P.L. 370, which was the Act in force and effect at the time the proceedings referred to in said Petition were conducted, makes no requirement that road vacation proceedings be supported by a Petition of a majority in interest of the owners of property or properties through whose lands such roads pass or upon whose land such road abuts, nor does the Act then in effect require that the same be supported by the Petition of other interested citizens or persons affected thereby.

(3). Paragraph 3 of the Petition is denied, and on the contrary it is averred that said report speaks for itself. In further clarification of the Answer, a portion of said report of hearing as filed reads as follows:

The Township Supervisors being familiar with the sections of road to be vacated and the conditions existing, are of the opinion that the said sections of road have become useless, inconvenient and burdensome and that their abandonment is necessary for the public's convenience "

(4). Paragraph 4 of the Petition is denied as stated, and on the contrary it is averred that after filing the report of hearing an Ordinance was passed on June 4, 1955, being designated as Ordinance No. 1, and attached hereto and made a part of this

Answer is a copy of said Ordinance No. 1. In further answer to paragraph 4 it is averred that the Act of 1951, as aforesaid, did not require that said Ordinance be made a part of the report of hearing.

(5). Paragraph 5 of the Petition is denied, and on the contrary it is averred that the Board of Supervisors did give notice to the property owners affected by said proposed vacation proceedings of the time and place, when and where interested parties could meet and be heard.

(6). In answer to paragraph 6 it is averred that the Act of 1951 did not require the filing of a copy of any Ordinance, and it is averred that a draft and survey of said road was filed with the report of hearing, which said report of hearing and draft and survey are incorporated herein by reference.

(7). Paragraph 7 of the Petition is denied as stated, and on the contrary it is averred that the Respondents did, after passage of the Ordinance No. 1, and within ten days from said passage, give notice of the passage thereof by posting in conspicuous places along the line of the road notice thereof, all as required by the Act then in force and effect.

(8). Paragraph 8 of the Petition is denied, and on the contrary it is averred that the Act of 1951, as aforesaid, did not require notice to be given by hand bills posted in conspicuous places along the line of the road or highway proposed to be vacated prior to the vacation thereof, and with respect to the posting of notice of the passage of the requisite Ordinance it is averred that notice was posted and the averments in connection with the same as set forth in paragraph 7 hereof are incorporated by reference.

(9). The averments set forth in paragraph 9 of the Petition relating to the location of the property of D.T. Mitchell, Jr. are neither admitted nor denied as the facts going to make up the same are in the control of the Petitioner, D.T. Mitchell, Jr., and it would be unreasonable to require the Respondents to con-

duct an examination of the records of Clearfield County and a survey on the ground with respect to the same. However, if said averments with respect to the land in which D.T. Mitchell, Jr. has an interest are correct, then your Respondents aver that under the Act of 1951 the said D.T. Mitchell, Jr. has no standing to complain of the action of the Board of Supervisors and the Respondents in vacating said portion of Township Road No. 314.

Insofar as said paragraph 8 avers that said Township Road No. 314 terminated at the boundary line of the James Rorbaugh tract is concerned, the exact location of the James Rorbaugh boundary line being a matter requiring a survey thereof, the same is denied, it being unreasonable to require the Respondents herein to conduct a survey to determine the truth or falsity of said averment, and therefore strict proof of said averment is demanded at the hearing on this matter.

(10). Paragraph 10 of the Petition is neither admitted nor denied as the facts going to make up said averment are in the exclusive control of A.H. Reitz as there are insufficient facts averred with respect to the title of A.H. Reitz contained in said Petition upon which the Respondents can act. The said A.H. Reitz is known by the Honorable Court to have various claims of ownership, both determined and undetermined, of vast acreages of land or mineral interests in Clearfield County, and it would be unreasonable to require the Respondents to conduct a title examination with respect to her properties to determine the truth or falsity of said averment. In further answer to paragraph 10, strict proof of the averments set forth therein is demanded at the hearing thereof, and it is further demanded that the respondents be given an opportunity to determine, through counsel, what interest the said A.H. Reitz has or does not have in the coal underlying the James Rorbaugh tract.

(11). Paragraph 11 of the Petition is admitted, and in further answer thereto it is averred that said proceedings as filed speak for themselves.

(12). The answer set forth in paragraph 11 above is applicable to the averments of paragraph 12 as well.

(13). Paragraph 13 of the Petition is neither admitted nor denied, and is not relevant to the cause set forth in the Petition.

(14). Paragraph 14 is a conclusion, and insofar as notice to either William Mahaffey or D.T. Mitchell, Jr. is concerned, it is averred the Act of 1951 did not require the same, and insofar as A.H. Reitz is concerned, it is averred that the title of A.H. Reitz is not sufficiently set forth to permit the Respondents to make answer thereto. Specifically it is denied that any fraud has been perpetrated upon the Petitioners, and the averment thereof is a conclusion and is scandalous in nature.

(15). The averments set forth in paragraph 15 of the Petition are neither admitted nor denied as the facts set forth therein are within the exclusive control of William Mahaffey or Harriet Mahaffey or D.T. Mitchell, Jr., one of the Petitioners, and therefore strict proof of said averment is demanded at the hearing. In further answer thereto, however, it is averred that neither William Mahaffey, Harriet Mahaffey nor D.T. Mitchell, Jr. have or had any standing to complain with respect to the vacation proceedings as they were not at the time property owners affected by said proceedings within the meaning of the Act of 1951, as aforesaid.

It is not known whether A.H. Reitz had notice of the proceedings until as averred in said paragraph 15, and it is averred in answer thereto that there is no basis or reason why the said A.H. Reitz should have notice of said proceedings. With respect to this averment, strict proof thereof is demanded at the