

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Condemnation by the	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation of	:	
Right-of-Way for State Route	:	
6220, Section C12, a Limited	:	
Access Highway in the Townships	:	
of Huston and Patton	:	
	:	
Reed McCormick,	:	
	:	
Appellant	:	
	:	
v.	:	
	:	
Commonwealth of Pennsylvania,	:	No. 1091 C.D. 2010
Department of Transportation	:	Submitted: November 5, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: December 6, 2010

Reed McCormick (Condemnee) appeals from the May 7, 2010 orders of the Court of Common Pleas of Centre County (trial court) dismissing the Preliminary Objections filed by the Condemnee, and granting the Writ of Possession filed by the Commonwealth of Pennsylvania, Department of Transportation (PennDOT), and enjoining Condemnee from obstructing PennDOT's use of the premises. There are two issues before the Court: (1) whether the trial court erred in dismissing Condemnee's Preliminary Objections before determining the prior de facto claim for the same property, and (2) whether the trial court erred in granting possession to

PennDOT based on the dismissal of Condemnee's Preliminary Objections. For the reasons set forth below, we affirm the orders of the trial court.

On December 11, 2009, PennDOT filed a Declaration of Taking constituting of a partial taking of property owned by Condemnee for the purpose of constructing a permanent mitigation site for adverse effects on land adversely affected by its proximity to Interstate 99. On January 8, 2009, Condemnee filed Preliminary Objections to the Declaration of Taking alleging that the property had already been acquired through a de facto taking.¹ On February 19, 2010, PennDOT filed a Motion to Dismiss the Preliminary Objections and a Motion for Writ of Possession alleging that Condemnee had applied for the payment of just compensation. Condemnee subsequently acknowledged acceptance of just compensation.

A hearing was held on May 7, 2010, and the trial court entered orders at the end of the hearing dismissing the Preliminary Objections filed by the Condemnee, granting possession of the land to PennDOT, and enjoining Condemnee from obstructing PennDOT's use of the premises.² Condemnee appealed to this Court.³

Condemnee argues that the trial court erred in dismissing Condemnee's Preliminary Objections prior to determining the earlier de facto taking claim. Specifically, Condemnee had filed a Petition for the Appointment of Viewers alleging

¹ Condemnee also denied the purpose of the taking, and alleged inadequate notice of the taking, however those issues were not argued on appeal.

² The order enjoining Condemnee from obstructing PennDOT's use of the premises was in response to Condemnee's prior threats to block PennDOT's access to PennDOT's previous construction easements on the land.

³ Where a trial court has ruled on preliminary objections to a Declaration of Taking, this Court's scope of review is limited to determining whether the trial court abused its discretion or committed an error of law. *In Re Condemnation by City of Coatesville of Certain Props.*, 822 A.2d 846 (Pa. Cmwlth. 2003).

a de facto taking of his property as a result of PennDOT polluting Condemnee's property in the construction of Interstate 99. Condemnee contends that the trial court could not rule on his current Preliminary Objections to the Declaration of Taking without first determining his prior de facto claim. Condemnee relies on this Court's holding in *Nelis v. Redevelopment Authority of Allegheny County*, 315 A.2d 893 (Pa. Cmwlth. 1974), to support his contention. However, the Court in *Nelis* merely held that a petition for the appointment of viewers could not be filed after the declaration of taking had been filed.

Here, Condemnee did in fact file his Petition for the Appointment of Viewers before the Declaration of Taking was filed, thereby protecting his rights with regard to the de facto taking. If the Preliminary Objections filed by PennDOT in that case are overruled, and it is determined that there was a de facto taking at a certain point in time, then Condemnee would be entitled to damages from that particular point in time, to the filing of the Declaration of Taking. As for the instant Preliminary Objections, they do not warrant delay as Condemnee has already accepted just compensation with respect to the Declaration of Taking, and Condemnee's rights regarding the de facto taking are protected. Thus, the trial court did not err in dismissing Condemnee's Preliminary Objections before determining the prior de facto claim for the same property.

Condemnee next argues that the trial court erred in granting possession to PennDOT based on the allegedly erroneous dismissal of Condemnee's Preliminary Objections. Having already determined that the trial court did not err in dismissing Condemnee's Preliminary Objections, this issue is now moot.

Notwithstanding the above, this Court notes that all of the requirements for granting a writ of possession have been met. "The court, unless preliminary

objections warranting delay are pending, may issue a writ of possession conditioned . . . upon payment to the condemnee or into court of the estimated just compensation and on any other terms as the court may direct.” 26 Pa.C.S. § 307(a)(1)(iv). As the trial court has dismissed Condemnee’s Preliminary Objections, and Condemnee has acknowledged receipt of just compensation, the trial court properly granted the Writ of Possession filed by PennDOT.

For all of the above reasons, the orders of the trial court are affirmed.

JOHNNY J. BUTLER, Judge

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Commonwealth of Pennsylvania,	:	No. 1091 C.D. 2010
Department of Transportation	:	

ORDER

AND NOW, this 6th day of December, 2010, the May 7, 2010 orders of the Court of Common Pleas of Centre County are affirmed.

JOHNNY J. BUTLER, Judge