Rel: April 26, 2019

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1170738

Monroe County Commission

v.

A.A. Nettles, Sr. Properties Limited and Eula Lambert Boyles

Appeal from Monroe Circuit Court
(CV-17-900097)

SELLERS, Justice.

A.A. Nettles, Sr. Properties Limited ("Nettles") and Eula Lambert Boyles (hereinafter referred to collectively as "the

plaintiffs")[1] filed in the Monroe Circuit Court an action seeking to quiet title to a right-of-way that had been conveyed by Alabama Railroad Company ("the railroad") to the Monroe County Commission ("the Commission") for use as a recreational trail in accordance with the National Trails System Act ("the Trails Act"), 16 U.S.C. § 1247. The trial court quieted title in favor of the plaintiffs. The Commission appealed. We affirm.

I. Background -- The Trails Act

> "As background, the Interstate Commerce Act of 1887, ch. 104, 24 Stat. 379, and the Transportation Act of 1920, ch. 91, 41 Stat. 477-78, grant the Interstate Commerce Commission, now the Surface Transportation Board ('STB'), exclusive authority over the construction, operation and abandonment of the Nation's rail lines. In order for a railroad company to terminate rail service, the railroad company must obtain the consent of the STB. To obtain consent, the railroad company may apply for permission to discontinue service, seek permission to terminate through abandonment proceedings, or file a request for an exemption from abandonment proceedings. Once the STB consents, the rail line is

[1]The complaint to quiet title identifies Nettles, a plaintiff, as an Alabama family limited partnership doing business in the State of Alabama and as lessee of "the lands herein described." The trial court's order, discussed infra, quieted title to the right-of-way in both Nettles and Eula. Because, however, it appears that Eula holds sole title to the right-of-way and the right-of-way runs across property owned by Eula, we identify her as the owner of the property, where appropriate.

removed from the national transportation system and the STB's jurisdiction comes to an end.

"In 1983, Congress amended the National Trails System Act to include an alternative process for railroad companies to abandon rail lines. 16 U.S.C. § 1247(d)[2]. This process, known as 'railbanking,' preserves corridors or rights-of-way not in use for train service for possible future use as recreational trails.

"In order for a rail line to be 'railbanked,' the railroad company must first file an abandonment application under 49 U.S.C. § 10903, or a notice of exemption from that process under 49 U.S.C. § 10502. Once an abandonment application, or request for an exemption, is filed, a party interested in railbanking may request the issuance of a Certificate of Interim Trail Use ('CITU') (in abandonment application proceedings) or a Notice of Interim Trail Use ('NITU') (in abandonment exemption proceedings). If the railroad company indicates that it is willing to negotiate a railbanking and interim

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[2]16 U.S.C. § 1247(d) states, in part:

"Consistent with the purposes of [the Railroad Revitalization and Regulatory Reform Act of 1976], and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes."

> trail use agreement, the STB issues the CITU or NITU. The issuance of the CITU or NITU preserves the STB's jurisdiction over the rail line and allows the railroad company to discontinue operations and remove track and equipment while the parties negotiate a railbanking and interim trail use agreement.
>
> "The NITU or CITU affords the railroad company 180 days in which to negotiate a railbanking and interim trail use agreement with the third party. If an agreement is reached, the NITU (or CITU) automatically authorizes the interim trail use. If the STB takes no further action, the trail sponsor then may assume management of the right-of-way, subject only to the right of a railroad to reassert control of the property for restoration of rail service. If no agreement is reached, the railroad company may proceed with the abandonment process."

Burnett v. United States, 139 Fed. Cl. 797, 801-02 (2018)(internal citations omitted).

II. Facts and Procedural History

In May 1997, the railroad conveyed, by quitclaim deed, real property to Charles W. Boyles, retaining for itself a right-of-way over Charles's property for the maintenance and operation of a railroad.[3] After Charles died, his wife Eula

[3]The railroad retained, among other things, "a perpetual easement, rights of way, railroad tracks, track fixtures, tunnel structure, wire lines, signal lines, pipelines, wires, cables, apparatus, and other appliances presently existing for the operation of the railroad"; the right to maintain the right-of-way; and the right to restrict Charles's activities so as to prevent him from interfering with or damaging railroad operations or property.

inherited the property subject to the railroad's right-of-way; Nettles leases the property from Eula.

In March 2013, the railroad filed with the Surface Transportation Board ("the STB") a "Notice of Exemption," seeking to abandon approximately 7.42 miles of rail line, which included the right-of-way over the property owned by Eula and leased by Nettles. To support its invocation of the exemption, the railroad certified that it had not run trains over the line for at least two years. The railroad published its Notice of Exemption in the Federal Register on March 21, 2013. By letter dated March 22, 2013, the Commission filed with the STB a request for a public-use condition, as well as a request for interim trail use pursuant to the Trails Act. In that request, the Commission indicated its willingness to assume responsibility for the management, legal liability, and payment of taxes for the right-of-way, and it acknowledged that use of the right-of-way for trail purposes was subject to possible future reconstruction and reactivation of the right-of-way for rail service. The railroad, in turn, filed a response indicating its willingness to negotiate with the Commission for interim trail use. On April 19, 2013, the STB

issued a Notice of Interim Trail Use ("NITU") permitting the Commission and the railroad to negotiate a trail-use agreement. After the railroad and the Commission reached an agreement, the railroad quitclaimed its interest in the right-of-way to the Commission. The plaintiffs thereafter filed a complaint to quiet title to the right-of-way; they sought a judgment declaring that Eula owned the right-of-way in fee simple, as well as an injunction prohibiting the Commission from proceeding with the trail project pending resolution of the quiet-title action.

On December 20, 2017, the trial court conducted a bench trial. At the close of the plaintiffs' evidence and again at the close of all the evidence, the Commission moved for a judgment as a matter of law on the basis that the plaintiffs' quiet-title action was federally preempted. The trial court denied those motions.

On January 10, 2018, the trial court entered a final order quieting title to the right-of-way in the plaintiffs. The trial court, applying Alabama property law, held that the right-of-way had terminated by operation of law before the railroad purported to convey its interest in the right-of-way

to the Commission. Accordingly, the trial court enjoined the Commission from proceeding with the recreational trail on the property owned by Eula and leased by Nettles. The Commission thereafter filed a motion requesting that the trial court alter, amend, or vacate its judgment or, in the alternative, order a new trial on the basis of federal preemption. Following a hearing, the trial court denied that motion. This appeal followed.

III. Discussion

1. Federal Preemption

The Commission contends that the trial court lacked jurisdiction to hold that the right-of-way had been abandoned under state law because, its says, the STB has exclusive jurisdiction over abandonments of regulated rail lines. "We review de novo whether the trial court had subject-matter jurisdiction." Solomon v. Liberty Nat'l Life Ins. Co., 953 So. 2d 1211, 1218 (Ala. 2006). It is undisputed that the Interstate Commerce Commission Termination Act ("ICCTA") vests the STB with exclusive jurisdiction over "(1) transportation by rail carriers" and "(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial,

team, switching, or side tracks, or facilities" and states that "the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. § 10501(b). The STB has explained that there are two broad categories of state regulation that are categorically preempted:

> "Indeed, the courts have found two broad categories of state and local actions to be preempted regardless of the context or rationale for the action. The first is any form of state or local permitting or preclearance that, by its nature, could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the [STB] has authorized.
>
> "Second, there can be no state or local regulation of matters directly regulated by the [STB]--such as the construction, operation, and abandonment of rail lines; railroad mergers, line acquisitions, and other forms of consolidation; and railroad rates and service.
>
> "Both types of categorically preempted actions by a state or local body would directly conflict with exclusive federal regulation of railroads. Accordingly, for those categories of actions, the preemption analysis is addressed not to the reasonableness of the particular state or local action, but rather to the act of regulation itself.
>
> "In other words, state and local laws that fall within one of the precluded categories are a per se unreasonable interference with interstate commerce. For such cases, once the parties have presented

> enough evidence to determine that an action falls within one of those categories, no further factual inquiry is needed.
>
> "For state or local actions that are not facially preempted, the section 10501(b) preemption analysis requires a factual assessment of whether that action would have the effect of preventing or unreasonably interfering with railroad transportation."

CSX Transp., Inc.--Petition for Declaratory Order, STB Finance Docket No. 34662 (STB May 3, 2005)(internal citations omitted).

"Despite its breadth, the jurisdiction of the STB does not foreclose every conceivable state claim." Sunflour R.R. v. Paulson, 670 N.W.2d 518, 523 (S.D. 2003). Rather, "[i]n all pre-emption cases, and particularly in those in which Congress has 'legislated ... in a field which the States have traditionally occupied,' ... we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996) (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)). The United States Supreme Court has explained this assumption: "We rely on the presumption because respect for the States as 'independent sovereigns in

our federal system' leads us to assume that 'Congress does not cavalierly preempt state-law causes of action.'" Wyeth v. Levine, 555 U.S. 555, 565 n. 3 (2009) (quoting Lohr, 518 U.S. at 485). "The presumption thus accounts for the historic presence of state law but does not rely on the absence of federal regulation." 555 U.S. at 566 n. 3. The idea is that, although the STB has "exclusive and preemptive jurisdiction," this expansive jurisdiction is given for a specific reason: to prevent attempts by states to impose economic regulation on rail transportation. In other words, the goal of the STB is to limit, if not prevent, state regulation of interstate rail transportation to avoid the pitfalls and nuances of laws enacted by each state's legislature that would deter a railroad's ability to operate efficiently and the possibility of divergent regulations from each state.

In this case, we are not faced with an Alabama regulation attempting to regulate rail transportation and to limit the use of rail property to deter interstate commerce. Rather, we are dealing with state property laws that existed before the advent of railroads, and we are asked to consider the impact of a railroad right-of-way, reserved in a quitclaim deed, on

the rights of an adjoining property owner when the purpose of the right-of-way has lapsed by nonuse and the holder of the right-of-way attempts to transfer its interest to create a new use, not envisioned by the reservation of rights in the initial instrument conveying the right-of-way.

In Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1001 (1984), the United States Supreme Court stated: "[W]e are mindful of the basic axiom that '"[p]roperty interests ... are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law."'" (Quoting Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 161 (1980), quoting in turn Board of Regents v. Roth, 408 U.S. 564, 577 (1972).) In Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co., 429 U.S. 363, 378 (1977), the United States Supreme Court stated that, "[u]nder our federal system, property ownership is not governed by a general federal law, but rather by the laws of the several States." See also Davies Warehouse Co. v. Bowles, 321 U.S. 144, 155 (1944)("The great body of law in this country which controls acquisition, transmission, and transfer

of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state."). It is clear then that, even in a regime of federal preemption, determining the ownership of real property requires a review of state law.

2. State-Law Quiet-Title Action

As indicated, the plaintiffs filed a complaint seeking to quiet title to the right-of-way. It is helpful to remember that the right-of-way was created by reservation in a 1997 quitclaim deed and that the railroad, as the holder of the easement, attempted to convey the right-of-way also by quitclaim deed. As a matter of Alabama law, the precise language and nature of the rights reserved under the 1997 quitclaim deed are critical in assessing whether the railroad had any right or title to effectively quitclaim its interests in the right-of-way to the Commission. The trial court determined that, under the quitclaim deed, the railroad reserved for itself a right-of-way for the maintenance and operation of a railroad only; that the railroad had changed the character of the right-of-way from a railroad right-of-way to a right-of-way for recreational trail use; that the

railroad had abandoned the right-of-way when it failed to rebuild a burnt train trestle and removed the rails and cross ties from the right-of-way; and that the right-of-way was thus extinguished by operation of law. Accordingly, the trial court concluded that, because the right-of-way had been extinguished by operation of law, the railroad had nothing to convey to the Commission. See Benedict v. Little, 288 Ala. 638, 643, 264 So. 2d 491, 494 (1972)(noting that, under Alabama law, "[a] quitclaim deed can convey nothing more than what the grantor actually owns"). The analogy used by the trial court is the same analogy employed by a federal claims court assessing a claim under the Miller Act, 28 U.S.C. § 1491. See, e.g., Burnett, 139 Fed. Cl. at 804:

> "To determine whether a Fifth Amendment takings has occurred in a rails-to-trails case, the Court follows a three-part analysis established by the United States Court of Appeals for the Federal Circuit. First, the Court must determine who owned the land at issue at the time of the takings, and specifically, whether the railroad company owned the land in fee simple or held only an easement. Second, if the railroad company owned only an easement, the Court must determine whether the terms of the easement are limited to use for railroad purposes, or whether the terms include use as a public recreational trail. Third, if the railroad company's easement is broad enough to encompass recreational trail use, the Court must determine whether the easement terminated prior to the alleged

> takings, so that the property owner held a fee simple estate unencumbered by easement at the time of the takings."

(Citations omitted.)

Thus, as did the trial court, we look to what the railroad owned at the time it executed and delivered the quitclaim deed to the Commission. When the railroad undisputedly ceased using the right-of-way for railroad purposes, under Alabama property law, its right-of-way across Eula's property lapsed by nonuse. When the right-of-way lapsed by nonuse, the right-of-way was extinguished, and the property burdened by the right-of-way vested in Eula automatically, by operation of law. Thus, the quitclaim deed conveyed nothing to the Commission because the railroad, at the time of conveyance, had nothing to transfer. In other words, the railroad's inaction in failing to use its right-of-way terminated the right-way-of, divesting it of any further interest in the property. Further, the right-of-way was limited to use for railroad purposes; even under decisions from the federal courts, conveying a railway easement for another use allows the adjoining property owner to look to state law to determine the owner's rights in the property.

Under Alabama law, one holding an easement cannot change the character of that easement. Blalock v. Conzelman, 751 So. 2d 2 (Ala. 1999). Neither can the easement holder "enlarge upon an easement for other purposes." Roberts v. Monroe, 261 Ala. 569, 577, 75 So. 2d 492, 499 (1954). An easement, then, specifically for railroad purposes precludes the easement holder from expanding the use of the easement to anything other than railroad operations. Alabama has specifically addressed railroad easements and has determined that they are limited and cannot be expanded. See Nashville, Chattanooga & St. Louis Ry. v. Karthaus, 150 Ala. 633, 43 So. 791 (1907); West v. Louisville & Nashville R.R., 137 Ala. 568, 34 So. 852 (1903). "[A]n easement given for a specific purpose terminates as soon as the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment." Tatum v. Green, 535 So. 2d 87, 88 (Ala. 1988). Thus, under the facts of this case, the trial court did not err in applying state-law principles to conclude that the right-of-way had been extinguished by operation of law, causing title to the right-of-way to revert to Eula. "In an action to quiet title, when the trial court hears evidence ore tenus, its judgment

will be upheld unless it is palpably wrong or manifestly unjust." Woodland Grove Baptist Church v. Woodland Grove Cmty. Cemetery Ass'n, Inc., 947 So. 2d 1031, 1036 (Ala. 2006). We cannot say that the trial court's determination here was wrong, much less unjust.

3. Mobile & Gulf R.R. v. Crocker, 455 So. 2d 829 (Ala. 1984)

The Commission relies on Mobile & Gulf R.R. v. Crocker, 455 So. 2d 829 (Ala. 1984), to support its argument that the trial court lacked subject-matter jurisdiction to determine that the railroad had abandoned its right-of-way over Eula's property. In Crocker, the landowners sought a judgment declaring that a railroad had abandoned its right-of-way over their property. At the time the landowners filed their state-court action, the railroad had not initiated any proceedings with the Interstate Commerce Commission ("ICC"), now the STB, seeking to abandon the right-of-way; thus, the ICC had not authorized the abandonment of the right-of-way. The railroad filed, among other things, a motion to dismiss the landowners' declaratory-judgment action on the basis that the trial court lacked subject-matter jurisdiction over it. The trial court

denied that motion. This Court granted the railroad permission to appeal pursuant to Rule 5, Ala. R. App. P. The Crocker Court reversed the judgment of the trial court, concluding that the ICC had exclusive jurisdiction over the abandonment of the right-of-way; that the ICC had not authorized the abandonment of the right-of-way; and that the trial court, thus, lacked jurisdiction to hear the landowners' action.

In this case, the Commission's reliance on Crocker is misplaced; Crocker is easily distinguished, not only procedurally, but also by changes in the law since Crocker was decided. Consider the manner in which the rights-of-way were created. The right-of-way easement in Crocker was created by a condemnation action. In this case, the right-of-way easement was reserved in a quitclaim deed when the railroad conveyed its property to Eula's predecessor in title. Because a condemnation action is a much more aggressive means to create a right-of-way and requires not only judicial action but also a showing of necessity, the lapse of a right-of-way by nonuse is much harder to establish in such a case and requires judicial scrutiny. By merely reserving the right-of-way in a

quitclaim deed and limiting it to railroad use, establishing lapse by nonuse in such a case involves a lower threshold, especially because the railroad had reserved the right-of-way without any court action and the right-of-way would lapse by nonuse without a specific finding or the necessity of any court action. Thus, reserving a right-of-way in a quitclaim deed is a nonjudicial method by which a railroad can establish an easement, and it stands to reason that such an easement could be undone without judicial action. Condemnation, on the other hand, is a much more involved judicial process such that any lapse in use and establishing nonuse would require judicial action to vacate the right-of-way and change its use. Additionally, in Crocker, both the landowners and the railroad requested a judgment declaring whether the right-of-way had been abandoned. As noted, the railroad had never invoked the jurisdiction of the ICC seeking permission to abandon the right-of-way. In other words, the declaratory-judgment action in Crocker would have required the trial court to specifically invade the ICC's jurisdiction to determine whether the right-of-way had been abandoned. Here, neither the plaintiffs nor the Commission sought a judgment concerning whether the right-

of-way had been abandoned. Rather, the plaintiffs merely filed a statutory action seeking to quiet title to the right-of-way because the Commission had represented, in conjunction with the trails project, that it held fee title to the right-of-way. Section 6-6-540, Ala. Code 1975, provides:

> "When any person is in peaceable possession of lands, whether actual or constructive, claiming to own the same, in his own right or as personal representative or guardian, and his title thereto, or any part thereof, is denied or disputed or any other person claims or is reputed to own the same, any part thereof, or any interest therein or to hold any lien or encumbrance thereon and no action is pending to enforce or test the validity of such title, claim, or encumbrance, such person or his personal representative or guardian, so in possession, may commence an action to settle the title to such lands and to clear up all doubts or disputes concerning the same."

See also Dake v. Inglis, 239 Ala. 241, 243, 194 So. 673, 674 (1940)("The purpose of the [quiet-title] proceeding is not to invest the court with jurisdiction to sell or dispose of the title to the land, but merely to determine and settle the same as between the complainant and the defendants.").

In entertaining the plaintiffs' quiet-title action, the trial court had before it various documents, including the decision of the STB granting the NITU based on the railroad's certification that it had not used the right-of-way for at

least two years. In other words, the trial court had an admission by the railroad as the former title holder affirming that it had ceased to use the right-of-way for railroad purposes. The trial court clearly had jurisdiction to decide the nature and extent of the right-of-way under Alabama law and to quiet title in Eula. Accordingly, unlike Crocker, where the jurisdiction of the ICC had not been invoked, the STB had already acted in this case, and the trial court merely relied on the STB's findings to quiet title to the right-of-way.

Finally, we note that Crocker was decided in July 1984, shortly after Congress amended the Trails Act in March 1983 to include interim trail use as an alternative process by which railroad companies could abandon rail lines. Contrary to the Commission's interpretation of Crocker, i.e., that the plaintiffs' quiet-title action falls exclusively within the STB's jurisdiction, we note that the STB has routinely issued decisions refusing to intervene in actions involving property disputes that can be resolved under state law. See, e.g., Allegheny Valley R.R.--Petition for Declaratory Order--William Fiore, STB Finance Docket No. 35388 (STB April 25, 2011) (denying a railroad's request for a declaratory order that state-law claims and remedies concerning the size and extent of a railroad easement were preempted by 49 U.S.C. § 10501(b),

where the disputes involved "the application of state property law and properly are before the state court"). In the Allegheny Valley case, the landowner purchased a parcel of land subject to a railroad's right-of-way; the railroad had acquired the right-of-way from another railroad via a quitclaim deed. The landowner filed a state-court action seeking a determination under Pennsylvania law as to the width and location of the property claimed by him and the railroad, as well as a determination whether the railroad owned the property in fee simple or had only an easement. The STB declined the railroad's request for a declaratory order because the landowner's action involved questions of state property law that would be best handled by state courts. Again, the STB's decisions express an unwillingness to accept jurisdiction of matters involving state-property issues even when railroad companies attempt to invoke the STB's exclusive jurisdiction. See also Ingredion Incorporated--Petition for Declaratory Order, STB Finance Docket No. 36014 (STB September 30, 2016), where the STB declined to issue a declaratory order when the case arose from a property dispute originating in state court concerning the application of state property law on the ground that those are questions that the state court

should resolve--"questions of [state] property law generally are more appropriately decided by [state] courts."

4. Sufficiency of the Evidence -- Abandonment

Alternatively, the Commission argues that the trial court erred in refusing to grant it a new trial because, it says, there was no evidence indicating that the railroad had abandoned its interest in the right-of-way before it conveyed the property to the Commission by quitclaim deed. It is undisputed that, at all times relevant to this appeal, the rail line fell into disrepair and had not ben used for many years. The trial court stated in its order that the character of the right-of-way was changed when the railroad conveyed its interests in it to the Commission and that both the failure of the railroad to construct an essential trestle and the removal of the rails indicated an abandonment of the right-of-way and rendered the specific purpose of the easement impossible. Thus, the trial court held that the right-of-way was extinguished by operation of law, causing title to the right-of-way to vest with Eula. In Chatham v. Blount County, 789 So. 2d 235, 241 (Ala. 2001), this Court stated explained:

> "As a general rule, one holding an easement cannot change the character of that easement, Blalock v. Conzelman, 751 So. 2d 2 (Ala. 1999), or 'enlarge upon [that] easement for other purposes.' Roberts v.

> Monroe, 261 Ala. 569, 577, 75 So. 2d 492, 499 (1954). Specifically as to a railroad easement, this Court has held that such an easement was limited in use to railroad purposes. Nashville, C. & St. L. Ry. v. Karthaus, 150 Ala. 633, 43 So. 791 (1907); West v. Louisville & N. R.R., 137 Ala. 568, 34 So. 852 (1903). An easement granted for a specific purpose is deemed abandoned when its owner '"'by his own act renders the use of the easement impossible, or himself obstructs it in a manner inconsistent with its further enjoyment.'"' Byrd Cos. v. Smith, 591 So. 2d 844, 847 (Ala. 1991) (quoting Polyzois v. Resnick, 123 Neb. 663, 668, 243 N.W. 864, 866 (1932) (quoting treatise)). See also Tatum v. Green, 535 So. 2d 87, 88 (Ala. 1988) ('[A]n easement given for a specific purpose terminates as soon as the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment.')."

The Commission contends that there was no evidence before the trial court indicating that the railroad had removed the tracks and ties from the railroad corridor. Notably, there is nothing in the trial transcript indicating that the tracks and ties had been removed from the railroad corridor. However, the record does indicate that the parties had been before the court on at least two other occasions; those transcripts are not before us. In any event, we conclude that the trial court had sufficient evidence before it to determine that the railroad intended to abandon its interest in the right-of-way. The trial court had before it pictures of a train trestle that had burned in January 2007; the railroad never rebuilt that trestle, thereby making the specific purpose of the right-of-

way, i.e., operation of a railroad, impossible. The evidence of intent to abandon is further bolstered by the railroad's actions of negotiating with the Commission to sell all of its interest in the right-of-way for use as a recreational trail. See, e.g., Lawson v. State, 107 Wash. 2d 444, 452, 730 P.2d 1308, 1313 (1986)(holding that, where deed conveyed right-of-way for railroad purposes only, change in use from "Rails to Trails" constituted abandonment). Accordingly, the trial court did not err in concluding that the easement reserved to the railroad by a right-of-way as provided in the quitclaim deed conveying the property to Charles lapsed by nonuse and was thus extinguished by operation of law, leaving nothing for the railroad to convey to the Commission.

IV. Conclusion

Based on the foregoing, the judgment of the trial court is due to be affirmed.

AFFIRMED.

Bolin, Wise, Mendheim, and Mitchell, JJ., concur.

Bryan, J., concurs in the result.

Parker, C.J., and Shaw and Stewart, JJ., dissent.

PARKER, Chief Justice (dissenting).

I reluctantly dissent. The rule of law requires that we cannot ignore the federal statute, the United States Supreme Court's interpretation of it, and this Court's precedent in Mobile & Gulf R.R. v. Crocker, 455 So. 2d 829 (Ala. 1984).

When we interpret an express-preemption clause in a federal statute, we must "'focus on the plain wording of the clause.'" Norfolk Southern Ry. v. Goldthwaite, 176 So. 3d 1209, 1213 (Ala. 2015) (quoting CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 664 (1993)). The statutory scheme underlying the Rails-to-Trails Act gives the Surface Transportation Board ("the STB") exclusive jurisdiction over the "abandonment[] or discontinuance" of a rail line. 49 U.S.C. § 10501(b)(2). Although "[s]tate law generally governs the disposition of reversionary interests, ... [the STB has] 'exclusive and plenary' jurisdiction to regulate abandonments." Preseault v. ICC, 494 U.S. 1, 8 (1990).

Thus, the federal courts have repeatedly held that "there could be no abandonment until authorized by federal law." Barclay v. United States, 443 F.3d 1368, 1374 (Fed. Cir. 2006); see Jackson v. United States, 135 Fed. Cl. 436, 443

(2017) ("The Trails Act prevents a common law abandonment of the railroad right-of-way from being effected, thus precluding state law reversionary interests from vesting." (emphasis added)); Preseault v. ICC, 853 F.2d 145, 150 (2d Cir. 1988) ("Until the [STB] issues a certificate of abandonment, the railway property remains subject to the [STB's] jurisdiction, and state law may not cause a reverter of the property."); National Wildlife Fed'n v. ICC, 850 F.2d 694, 704 (D.C. Cir. 1988) ("Nor may state law cause a reverter of a right-of-way prior to an [STB]-approved abandonment.").

Moreover, this Court has already decided the issue whether a state court has "subject matter jurisdiction of an abandonment of a railroad right-of-way, or ... [whether] the question of abandonment [is] pre-empted by ... 49 U.S.C. § 10501 et seq." Crocker, 455 So. 2d at 830. After reasoning that the "act is among the most pervasive and comprehensive of federal regulatory schemes," the Court held that "the [STB] has exclusive jurisdiction to determine whether there was an abandonment of the railroad right-of-way." Id. at 832, 834. Because Crocker squarely addressed preemption of the issue of abandonment, I am unpersuaded that Crocker is distinguishable

based on the vagaries of how or when the issue arises in the state court. I am also not convinced that the prior denials of relief by the STB are relevant here, because those denials either addressed legal issues not within the scope of 49 U.S.C. § 10501(b)(2) or simply declined to rule on preemption. Therefore, this Court should reverse the circuit court's judgment and remand the case with directions to dismiss the plaintiffs' action.

Nevertheless, although I recognize that the Rails-to-Trails Act preempts Alabama law, I am concerned that the Act violates landowners' fundamental rights of contract and property. When the railroad reserved an easement over Charles W. Boyles's property, it negotiated for the right to use the easement for railroad operations. The railroad did not negotiate for a public recreational trail. The United States Court of Appeals for the Federal Circuit has recognized this disparity in anticipated use, noting that "[i]t is difficult to imagine that either party to the original transfers had anything remotely in mind that would resemble a public recreational trail." Preseault v. United States, 100 F.3d

1525, 1543 (Fed. Cir. 1996). Comparing the two uses, the court observed:

> "When the easements here were granted ... specifically for transportation of goods and persons via railroad, could it be said that the parties contemplated that a century later the easements would be used for recreational hiking and biking trails, or that it was necessary to so construe them in order to give the grantee railroad that for which it bargained? We think not. Although a public recreational trial could be described as a roadway for the transportation of persons, the nature of the usage is clearly different. In the one case, the grantee is a commercial enterprise using the easement in its business, the transport of goods and people for compensation. In the other, the easement belongs to the public, and is open for use for recreational purposes, which happens to involve people engaged in exercise or recreation on foot or on bicycles."

100 F.3d at 1542-43.

Other courts have similarly noted that "[r]ecreational hiking, jogging and cycling are not connected with railroad use in any meaningful way." Glosemeyer v. United States, 45 Fed. Cl. 771, 779 (2000); see also Harley-White v. United States, 129 Fed. Cl. 548, 556 (2016) ("Because the easements were held for a railroad purpose, the transformation of the right-of-way into a recreational trail goes beyond the scope of the easements ...."); Lawson v. State, 107 Wash. 2d 444, 451, 730 P.2d 1308, 1312 (1986) ("[A] hiking and biking trail

is not encompassed within a grant of an easement for railroad purposes only."); Toews v. United States, 376 F.3d 1371, 1376-77 (Fed. Cir. 2004) ("[U]se of these easements for a recreational trail -- for walking, hiking, biking, picnicking, frisbee playing, with newly-added tarmac pavement, park benches, occasional billboards, and fences to enclose the trailway -- is not the same use made by a railroad, involving tracks, depots, and the running of trains. ... Some might think it better to have people strolling on one's property than to have a freight train rumbling through. But that is not the point. The landowner's grant authorized one set of uses, not the other."). More than a slight alteration, the Rails-to-Trails Act creates "a new easement for a new use -- for recreational trail use." Hornish v. King Cty., 899 F.3d 680, 696 (9th Cir. 2018).

The Federal Circuit has also acknowledged that "different uses create different burdens." Toews, 376 F.3d at 1376.

> "It is one thing to have occasional railroad trains crossing one's land. Noisy though they may be, they are limited in location, in number, and in frequency of occurrence. ... When used for public recreational purposes, however, in a region that is environmentally attractive, the burden imposed by the use of the easement is at the whim of many individuals, and ... has been impossible to contain

> in numbers or to keep strictly within the parameters of the easement."

Preseault v. United States, 100 F.3d at 1543.

This use of the Rails-to-Trails Act thus thwarts landowners' expectations. Before the Act, landowners "would have been secure in the knowledge ... that the only use that could be made of their lands were those related to the operation of a railroad." Glosemeyer, 45 Fed. Cl. at 781. However, "[s]olely because of the operation of the Rails-to-Trails Act," the lands are "now burdened by new easements -- for recreational trails. Whereas previously the [landowners] could exclude all but the railroads from use of the right-of-ways, now the public at large has access." Id. In this way, the Act strong-arms landowners into a new, unnegotiated agreement -- a new contract for which they were not given consideration and to which they did not assent.

The Rails-to-Trails Act also violates a landowner's property rights. The importance of those rights was emphasized by those whose ideas helped organize the English common law, inspire American independence, and create the United States Constitution. John Locke explained: "The reason why men enter into society is the preservation of their

property .... [W]henever the legislators endeavor to take away and destroy the property of the people, ... they put themselves into a state of war with the people ...." John Locke, Concerning Civil Government, Second Essay 75-76 (Robert Maynard Hutchins ed., Encyclopedia Britannica, Inc., 1952) (1690). The English jurist William Blackstone called the right to property "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." 2 William Blackstone, Commentaries *2.

During the Founding Era, James Madison, Father of the Constitution, echoed this right before the Virginia Constitutional Convention. He argued that "the rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted." James Madison, "Speech in the Virginia Constitutional Convention" (1829), in James Madison: Writings at 824 (Jack N. Rakove ed., Library of America 1999). Madison also wrote that "[g]overnment is instituted to protect property of every sort; ... [T]hat alone is just government, which impartially secures to every man, whatever is his own." James Madison, "Property"

(1792), in Madison: Writings at 515. Conversely, Madison warned that it "is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest." Id. at 516.

The Rails-to-Trails Act violates a landowner's property rights by taking his land and giving it to a railroad company for use by the public at large. Specifically, the Act "takes a landowner's right to use or sell his or her reversionary interest and gives this right to a railroad company. The railroad company now has the right ... to sell an interest in the landowner's property." Mark F. Hearne II, Lindsay Brinton & Meghan Largent, The Trails Act: Railroading Property Owners and Taxpayers for more than a Quarter Century, 45 Real Prop. Tr. & Est. J. 115, 162 (2010). Where once the owner held the full bundle of sticks (minus an easement allowing a railroad to operate), the Act "takes this entire bundle of sticks from the owner and gives them to the railroad .... The landowner is left with nominal title ...." Id. As a consequence, the landowner may be stuck with increased crime from those using

the trail, loss of privacy, decrease in property values, and litigation costs. See Emily Drumm, Comment, Addressing the Flaws of the Rails-to-Trails Act, 8 Kan. J.L. & Pub. Pol'y 158 (Spring 1999).

Notably, the Act permits the whole public onto a landowner's property, terminating one of the most important property rights: the right to exclude. "In the bundle of rights we call property, one of the most valued is the right to sole and exclusive possession -- the right to exclude strangers, or for that matter friends, but especially the Government." Hendler v. United States, 952 F.2d 1364, 1374 (Fed. Cir. 1991); see also Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435-36 (1982) ("The power to exclude has traditionally been considered one of the most treasured strands in an owner's bundle of property rights. ... [T]he permanent physical occupation of property forever denies the owner any power to control the use of the property ....").

Compounding these violations of contract and property rights, the rails-to-trails process does not require actual notice to the landowner before conversion of the easement. See National Ass'n of Reversionary Prop. Owners v. ICC, 70

F.3d 638 (D.C. Cir. 1995)(table). Although the Act requires notice of a railroad's intent to abandon a rail line, that notice is not sufficient to apprise the landowner that the easement will be converted to a recreational trail. Thus, the Act essentially effects a taking without notice.

In all these ways, the Rails-to-Trails Act allows the federal government to take property rights away from Alabamians. "[T]he right to control one's property is a sacred right which should not be taken away without urgent reason." Smith v. Smith, 254 Ala. 404, 409, 48 So. 2d 546, 549 (1950). A recreational trail is not such a reason. However, due to express federal preemption by the Rails-to-Trails Act, the jurisdiction to address these violations of fundamental contract and property rights lies exclusively in the federal government.

SHAW, Justice (dissenting)

I respectfully dissent. Under federal law, the Surface Transportation Board ("the STB") has exclusive jurisdiction over this action that seeks to quiet title to an allegedly abandoned railroad easement.

The Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 et seq. ("the ICCTA"), established the STB and gave it "exclusive jurisdiction over certain aspects of railroad transportation." Adrian & Blissfield R.R. v. Village of Blissfield, 550 F.3d 533, 539 (6th Cir. 2008). Additionally, "Congress intended to preempt state and local laws that come within the [STB's] jurisdiction." Texas Cent. Bus. Lines Corp. v. City of Midlothian, 669 F.3d 525, 530 (5th Cir. 2012). The intent of the ICCTA to "preempt state and local regulation of railroad transportation has been recognized as broad and sweeping." Union Pac. R.R. v. Chicago Transit Auth., 647 F.3d 675, 678 (7th Cir. 2011). See also New England Cent. R.R. v. Springfield Terminal Ry., 415 F. Supp. 2d 20, 27 (D. Mass. 2006) ("Courts have consistently found that state law that directly or indirectly regulates railroads is preempted by § 10501(b).").

The main opinion holds that the STB's "exclusive and preemptive jurisdiction" is limited by its "specific reason": to prevent "economic regulation" by the states of rail transportation. ___ So. 3d at ___. Numerous federal court decisions, however, have rejected the idea that the ICCTA is limited only to "economic" regulation. Although economic regulation has been described as the "core of ICCTA preemption," its preemptive effect "may not be limited to state economic regulation." Elam v. Kansas City S. Ry., 635 F.3d 796, 806 (5th Cir. 2011) (footnote omitted). The ICCTA "does not preempt only explicit economic regulation. Rather, it preempts all 'state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation.'" New York Susquehanna & W. Ry. v. Jackson, 500 F.3d 238, 252 (3d Cir. 2007) (quoting Florida E. Coast Ry. v. City of W. Palm Beach, 266 F.3d 1324, 1331 (11th Cir. 2001)). See also Wisconsin Cent. Ltd. v. City of Marshfield, 160 F. Supp. 2d 1009, 1014 (W.D. Wis. 2000) ("The ICCTA expressly preempts

more than just state laws specifically designed to regulate rail transportation.").

In City of Auburn v. United States, 154 F.3d 1025 (9th Cir. 1998), a city challenged the STB's finding that the ICCTA preempted state and local environmental permitting laws, arguing that "the ICCTA legislative history establishes Congress' intent to preempt only economic regulation of rail transportation, not the traditional state police power of environmental review." 154 F.3d at 1029. The city, pointing to legislative history, stated in its brief that the local environmental regulations at issue were not "economic regulations" but rather "'essential local police power required to protect the health and safety of citizens....'" 154 F.3d at 1029.

The court noted that "there is nothing in the case law that supports [the city's] argument that, through the ICCTA, Congress only intended preemption of economic regulation of the railroads." 154 F.3d at 1030. Further, it stated: "[I]f local authorities have the ability to impose 'environmental' permitting regulations on the railroad, such power will in fact amount to 'economic regulation' if the carrier is

prevented from constructing, acquiring, operating, abandoning, or discontinuing a line." 154 F.3d at 1031.

Thus, contrary to the main opinion, the preemptive effect of the ICCTA and the jurisdiction it provides to the STB is not limited to "economic" regulation.

In addressing whether the ICCTA preempts state-law claims that rail lines have been abandoned, courts have looked to the plain language of 49 U.S.C. § 10501(b), which states, in pertinent part:

> "(b) The jurisdiction of the [STB] over--
>
> > "(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
> >
> > "(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,
>
> "is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law."

(Emphasis added.)

Under the ICCTA, "transportation" has a very broad meaning that includes "property ... regardless of ownership or agreement concerning use." 49 U.S.C. § 10102(9)(A). Union Pacific, 647 F.3d at 678 ("Congress also defined 'transportation' to include railroad property, facilities, and equipment 'related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use.' 49 U.S.C. § 10102(9)."). Thus, as discussed below, the STB has exclusive jurisdiction over railroad property and the issue of abandonment of that property--and any remedy provided by state law--is preempted.

In the context of attempts to use state law to obtain property from railroads, such as by condemnation or adverse possession, federal courts, in applying § 10501(b), have explicitly held that such claims are preempted and fall under the jurisdiction of the STB. In Soo Line R.R. v. City of St. Paul, 827 F. Supp. 2d 1017 (D. Minn. 2010), the court held that a city's proposed condemnation action seeking an easement over railroad property that ran along a rail line "falls squarely within the definition of 'transportation' as defined

by '49 U.S.C. § 10102(9),'" despite the city's argument that the easement it sought would not interfere with railroad operations. 827 F. Supp. 2d at 1021. The proposed condemnation, the court held, "would be an act seeking to control" the property and was thus "a form of regulation" that fell "into the broad category of actions that are per se preempted under the ICCTA." 827 F. Supp. 2d at 1022. See also Union Pacific, 647 F.3d at 683 (holding that a state-law action to condemn an easement over a portion of a railroad's property that was being leased to the plaintiff was "preempted because it prevents and unreasonably interferes with railroad transportation" on the property); B & S Holdings, LLC v. BNSF Ry., 889 F. Supp. 2d 1252, 1260 (E.D. Wash. 2012) (holding that a quiet-title action alleging that property along a rail line had been adversely possessed under state law "necessarily involve[d] the regulation of rail transportation"); and 14500 Ltd. v. CSX Transp., Inc. (No. 1:12CV1810, March 14, 2013) (N.D. Ohio 2013) (not reported in F. Supp. 2d) (holding that the ICCTA preempted an action to quiet title over railroad property that had allegedly been adversely possessed).

In the context of allegations identical to the one in the instant case, i.e., that railroad easements or rights-of-way were abandoned, courts have held that the ICCTA preempts state-law actions. In Cedarapids, Inc. v. Chicago, Central & Pacific R.R., 265 F. Supp. 2d 1005 (N.D. Iowa 2003), the plaintiff contended that a railroad had abandoned a section of a rail-line easement by ceasing operations and, thus, under Iowa state law, that the property reverted to the plaintiff. 265 F. Supp. 2d at 1007. After discussing the language of 49 U.S.C. § 10501(b) and the broad definition of "property" under 49 U.S.C. § 10102(9)(A), the court stated that "the ICCTA grants to the STB exclusive jurisdiction over nearly all matters of rail regulation." 265 F. Supp. 2d at 1012. Such regulation included not only state "economic" regulation, but also regulation of the abandonment of rail lines, which included the plaintiff's state-law suit to declare a rail line abandoned:

> "The Court's review of the nature and purpose of the ICCTA, as evidenced by both the legislative history and the plain language of the statute, leads the Court to conclude that, in enacting the ICCTA, Congress intended to occupy completely the field of state economic regulation of railroads. The Court also finds that the ICCTA preempts state regulation of the abandonment of lines of railroad. The ICCTA's

> grant of exclusive jurisdiction to the STB over the abandonment of tracks and its expansion of the types of tracks within this exclusive jurisdiction to include wholly intrastate spur and industrial tracks indicates that Congress intended for the abandonment of all types of tracks to be under the STB's jurisdiction. This comports with Congress' stated desire of deregulation of the railroad industry by ensuring that states do not impose regulations which conflict with or undermine those set forth in the ICCTA and imposed by the STB with respect to the abandonment of tracks."

265 F. Supp. 2d at 1013 (emphasis added). See also Wedemeyer v. CSX Transp., Inc. (No. 2:13-cv-00440-LJM-WGH, Oct. 20, 2015) (S.D. Ind. 2015) (not reported in F. Supp. 2d) (holding that "the term 'regulate' does not only refer to a state regulation or state action; rather it refers to controls or limitations of any kind" and, thus, that an action to quiet title alleging that a railroad had abandoned an easement was an attempt to use state law to "regulate" the railroad's use of the easement), and Groh v. Union Pacific R.R. (No. 17-00741-CV-W-ODS, Dec. 1, 2017) (W.D. Mo. 2017) (not reported in F. Supp. 2d) (holding that a state-law action alleging that a railroad had abandoned its easement fell within the scope of the ICCTA).

This concept is not new in Alabama. In Mobile & Gulf R.R. v. Crocker, 455 So. 2d 829 (Ala. 1984), certain

landowners sought a judgment declaring that a railroad easement across their property had been abandoned because the railroad "ceased all operation of trains across the right-of-way in dispute." 455 So. 2d at 831. This Court held, however, that the STB's predecessor agency, the Interstate Commerce Commission, "had exclusive jurisdiction to determine whether there was an abandonment of the railroad right-of-way." 455 So. 2d at 834. The main opinion attempts to distinguish Crocker by noting a distinction in the way the easement in Crocker was obtained as compared to the easement in the instant case. However, 49 U.S.C. § 10501(b) does not provide that its application is contingent on how a railroad obtains property initially. Furthermore, no proceedings before the STB are required to "invoke" its jurisdiction; the ICCTA itself preempts remedies under state law, and the STB's jurisdiction is "exclusive." Grosso v. Surface Transp. Bd., 804 F.3d 110, 114 (1st Cir. 2015) ("Whether or not the [STB] is exercising its regulatory authority over the transportation, state and local laws governing such transportation are generally preempted." (footnote omitted)).

Under the plain language of 49 U.S.C. § 10501(b), the claims in the underlying action are preempted by the ICCTA and

exclusive jurisdiction of the action rests with the STB. Under Crocker, the trial court lacked subject-matter jurisdiction in this case.

Stewart, J., concurs.