

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	
	:	
William S. Kieser and Virginia E. Kieser,	:	
Appellants	:	No. 1208 C.D. 2007
	:	Argued: September 8, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE BUTLER**

FILED: October 9, 2008

William and Virginia Kieser (Condemnees) appeal from an order of the Court of Common Pleas of Lycoming County (trial court) denying Condemnees' preliminary objections to the Declaration of Taking filed by the Commonwealth of Pennsylvania, Department of Transportation (PennDOT). We now affirm.

Condemnees own a property located at 250 Whitetail Lane, Trout Run, Cogan Township, Lycoming County, Pennsylvania. PennDOT filed a Declaration of Taking on March 7, 2007, which included a partial taking of Condemnees' property. The purpose of the taking was "to acquire property for transportation purposes." Specifically, the taking was for improvements to State Route 0015, a limited access highway.

The condemnation eliminates all access points to Condemnees' land, with the exception of a 25 foot wide easement over an adjoining property which PennDOT acquired amicably two days prior to the taking. The easement was an overlay of existing access rights in Condemnees' chain of title.

Condemnees filed preliminary objections to the Declaration of Taking alleging the condemnation was arbitrary and capricious in its failure to provide an access easement in conformity with the requirements of Lycoming County's Subdivision and Land Development Ordinance. PennDOT filed a motion to dismiss the preliminary objections, a motion for prompt determination, and an answer to preliminary objections. The trial court listed the matter for a hearing on May 15, 2007, at which time the parties were directed to reach stipulations of fact and to narrow the issues. The parties reconvened for a hearing on May 29, 2007, wherein the parties stipulated to the facts in the Declaration of Taking, and Condemnees waived all challenges to the Declaration of Taking except the challenge that the taking was arbitrary and capricious.

The trial court entered an order on May 30, 2007, denying the preliminary objections. Condemnees appealed the order to this Court and the trial court filed a two sentence opinion stating "the [C]ondemnee[s] can without question be adequately compensated monetarily. Thus, Preliminary Objections fail as a matter of law."

On appeal, Condemnees argue their preliminary objections did not raise issues of compensation.¹ Condemnees specifically contend they were seeking

¹ Where a trial court has either sustained or overruled 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).

the relief of conformity and objectivity, and the elimination of arbitrary and capricious standards. We disagree.²

Condemnees' preliminary objections aver that the condemnation eliminated four unlimited and separate points of access and replaced them with a single 25 foot wide access easement. Their contention is the easement is insufficient and leaves the property "landlocked."

The fact that this condemnation may ultimately impact upon the use or value of the parcel is not properly raised in preliminary objections to the instant Declaration of Taking under Section 306 of the Eminent Domain Code, 26 Pa.C.S. §306. *In Re County of Allegheny*, 861 A.2d 387 (Pa. Cmwlth. 2004). A claim relating to the use or value of the property is properly raised in a petition for the appointment of a board of viewers, filed pursuant to Section 502 of the Eminent Domain Code, 26 Pa.C.S. §502. *Id.* At the hearing before the trial court, the parties specifically stipulated:

all issues relative to damages that could flow from the configuration of the access road including the ability to offer into evidence and testimony matters related to any local subdivision ordinance . . . are preserved without waiver for petitions for a board of view on damages under the Eminent Domain Code.

Notes of Testimony, Conference Entry Stipulation, May 29, 2007, at 7.

The preliminary objections clearly raise nothing more than issues of compensation, and Section 306 of the Eminent Domain Code, 26 Pa.C.S. §306(b), provides: "[i]ssues of compensation may not be raised by preliminary objections."

² Condemnees also argue the condemnation was arbitrary and capricious in its failure to provide an access easement in conformity with the requirements of Lycoming County's Subdivision and Land Development Ordinance. However, based on our determination above, we need not reach this issue.

Thus, the trial court properly found that Condemnees' preliminary objections fail as a matter of law.

Accordingly, the order of the trial court is affirmed.

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. :
 :
 William S. Kieser and Virginia E. :
 Kieser, : No. 1208 C.D. 2007
 Appellants :

ORDER

AND NOW, this 9th day of October, 2008, the order of the Court of
Common Pleas of Lycoming County is hereby affirmed.

JOHNNY J. BUTLER, Judge