

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Mitchell J. Pacconi           | : |                             |
|                               | : |                             |
| v.                            | : |                             |
|                               | : |                             |
| Stephen A. Wolfe and Karen M. | : |                             |
| Wolfe, his wife,              | : | No. 544 C.D. 2008           |
| Appellants                    | : | Submitted: October 14, 2008 |

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: November 19, 2008

Stephen and Karen Wolfe (the Wolfes) appeal from an interlocutory order of the Court of Common Pleas of Indiana County (trial court) denying the Wolfes' preliminary objections to the appointment of a Board of View (Board), appointed to determine whether a proposed right-of-way over the Wolfes' property is necessary for Mitchell Pacconi's use and enjoyment of his property. For reasons stated, we affirm.

Mitchell Pacconi filed a petition pursuant to Section 11 of the Act of June 13, 1836, P.L. 551, *as amended*, 36 P.S. § 2731 (commonly referred to as "The Private Road Act")<sup>1</sup> in the Court of Common Pleas of Indiana County for the

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<sup>1</sup> Section 11 provides in relevant part: "[t]he several courts of quarter sessions shall ... upon the petition of one or more persons ... direct a view to be had of the place where such road is requested, and a report thereof to be made, in the same manner as is directed by the said act of thirteenth June, one thousand eight hundred and thirty-six."

appointment of a Board of View to determine the necessity of a proposed right-of-way to Kauffman Road, a nearby public street, over land belonging to the Wolfes. Pacconi's property is landlocked.

Pacconi acquired his landlocked property in 2007. The Wolfes' property borders Pacconi's property, and stands immediately between Pacconi's property and Kauffman Road. In addition, however, the property belonging to the Wolfes' next door neighbor, Michael Yackuboskey, also borders Pacconi's property and stands immediately between Pacconi's property and Kauffman Road. Pacconi's property is also adjacent to land belonging to other property owners.

The Wolfes filed preliminary objections to Pacconi's petition contending, *inter alia*, that Pacconi failed to join the owners of all properties adjacent to the landlocked property. Citing *Bitting v. Beaston*, 549 A.2d 611 (Pa. Cmwlth. 1988), the trial court rejected the Wolfes' assertion that Pacconi was required to join all owners of adjacent property. The court gave Yackuboskey special consideration given that his property abutted the proposed right-of-way (and was therefore in the same general area as the proposed right-of-way). The court stated that it did not read *Bitting* to require that Yackuboskey be joined as an additional respondent at this stage in the action. The trial court reasoned: "[i]f, in the course of [the Board of View's] consideration it finds an issue as fairly raised as to whether the right-of-way should instead be laid over lands of Yackuboskey, at that stage the Board may so recommend, and [Pacconi] then can take appropriate action." *Pacconi v. Wolfe* (C.P. Pa. (Indiana) No. 12348 CD 2007, filed March 27, 2008) at 5. Thus, the Wolfes' objections were overruled.

The question presented is whether the trial court erred in relying on *Bitting v. Beaston* and in dismissing the preliminary objections relating to the failure of Pacconi to join necessary and indispensable parties as respondents to the

petition for the appointment of viewers and as such has divested the Board of the ability to carry out and fulfill their statutorily imposed duties. Our review is limited to determining whether the trial court abused its discretion or committed an error of law. See *In re Condemnation of Certain Properties*, 822 A.2d 846 (Pa. Cmwlth. 2003). The Wolfes do not argue abuse of discretion.

We hold that the trial court committed no error of law in overruling the Wolfes' preliminary objections. The Wolfes argue the trial court erred in relying on the *Bitting* case to overrule the Wolfes' preliminary objections, primarily because Pacconi failed to join adjoining property holders as indispensable parties. Adjoining property owners, however, are not indispensable to the determination of whether Pacconi should be granted a right-of-way over the Wolfes' property. "A party is indispensable when his or her rights are *so connected* with the claims of the litigants that no decree can be made without impairing those rights.' If the merits of a case can be decided without prejudice to the rights of an absent party, the court may proceed." *Pennsylvania Ass'n of Rehabilitation Facilities v. Foster*, 608 A.2d 613, 618 (Pa. Cmwlth. 1992) (citations omitted).

Under Section 11 (the "Private Road Act") on its face, and as interpreted by this Court in *Bitting*, the Board is required to determine the necessity of a road in the general area where it is requested, no place else. Under *Bitting*, the Board is to decide only the necessity of the road specified in the petition at issue. The trial court demonstrated its awareness that the Board may find a question fairly raised as to whether the right-of-way should be placed over property belonging to someone other than the Wolfes, and provided that Pacconi could proceed accordingly by taking the necessary steps for joinder at that time. Until the Board so finds, the only parties whose property rights are implicated by the petition at

issue are the Wolfes. Therefore, in naming the Wolfes in his petition for a right-of-way over the Wolfes' property, Pacconi did in fact join all indispensable parties.

The Wolfes argue that after determining whether a private road is necessary, the Board's duty is to determine the shortest and best ground for a road, least injurious to private property and agreeable to the desire of the petitioning party as far as practicable. Wolfes' Brief at 10 (citing Section 2 of the Act of June 13, 1836, P.L. 551, *as amended*, 36 P.S. § 1785). The Wolfes further argue that the Board cannot carry out this duty, *i.e.*, cannot make a full and fair assessment taking all surrounding properties into account, unless the Board has the authority to enter and view all properties adjacent to the landlocked property. Whether the Board can carry out its duties is for the Board to determine, and the Court is not convinced at this point that the Board must "enter" all adjacent properties to determine the shortest and best ground for the proposed right-of-way, agreeable to the petitioning party. The Wolfes present this Court with no authority presently implicating the rights of property owners other than those already accounted for by the trial court, *i.e.*, the Wolfes and potentially (but not currently) Yackuboskey. Unless and until the Board determines that it must enter and view an additional property, no additional property owners are implicated.

The trial court's interlocutory order overruling the Wolfes' preliminary objections is affirmed.

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JOHNNY J. BUTLER, Judge

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 Appellants :

ORDER

AND NOW, this 19th day of November, 2008, the order of the Court of Common Pleas of Indiana County dated February 29, 2008, and overruling the Preliminary Objections is hereby affirmed.

Jurisdiction relinquished.

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JOHNNY J. BUTLER, Judge