

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clark Cook, :
Appellant :
v. :
Department of Property Assessment :
of Allegheny County, Pennsylvania : No. 784 C.D. 2010
and South Allegheny School District : Submitted: August 20, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: November 8, 2010

Clark Cook (Cook) appeals, *pro se*, from the order of the Court of Common Pleas of Allegheny County which granted the Preliminary Objections of the Department of Property Assessment of Allegheny County (Department) and South Allegheny School District (School District) and dismissed Cook's Complaint in Mandamus with prejudice.

The background of this controversy is complicated and involves an underlying condemnation proceeding commenced in 2002, and two actions filed by Cook outside the Eminent Domain Code, 26 Pa.C.S. §§101-1106¹, in an attempt to correct what he perceived as an error in the County's identification of his two parcels located in Liberty Borough. The Department and Cook appear to disagree

¹ These proceedings began under the former Eminent Domain Code before the unconsolidated Eminent Domain Code was in effect. This Court has cited to the new Code for ease of reference.

as to the geographical location of the parcels identified by the information in the deeds attached to the School District's Declaration of Taking.

The only question before this Court is whether this action in mandamus was properly dismissed.

2002 Declaration of Taking

On January 23, 2002, the School District filed a Declaration of Taking pursuant to Section 302 of the Eminent Domain Code, 26 Pa.C.S. §302, condemning "vacant and land locked property" consisting of two acres of realty. A copy of the School District's Resolution condemning the properties was attached to the Declaration of Taking and provided that the properties were "currently owned by Clark Cook, Lot/Block **556-A-384**." South Allegheny School District Resolution at 1; Reproduced Record (R.R.) at 9a. Also attached to the Declaration of Taking were two deeds: Deed No. 47865 (Parcel 1) and Deed No. 25382 (Parcel 2). The deeds, dated 1958 and 1968 respectively, evidenced conveyances from Lucy Williams to Andrew and Mae Cook, Clark Cook's parents. There were no Lot/Block numbers on these two deeds.

Cook did not file Preliminary Objections to the Declaration of Taking pursuant to Section 306 of the Eminent Domain Code, 26 Pa.C.S. §306, because he had been trying to sell the parcels and "welcomed" the taking of the two properties that were identified by the descriptions in the attached deeds. Cook's Brief, at 10.

Appointment of Viewers

On July 3, 2003, Cook filed a Petition for an Appointment of Viewers to Determine Just Compensation pursuant to Section 502 of the Eminent Domain Code, 26 Pa.C.S. §502.

In his Petition for Appointment of Viewers, Cook identified the properties by referencing and attaching “[t]he deeds included with the Declaration of Taking as Exhibit ‘A’” (Deed Nos. 25382 and 47865). In addition, Cook referenced and attached a copy of his “current” deed, Deed No. 108793, dated September 14, 1990, in which Andrew Cook, Jr. (Clark Cook’s brother) conveyed Parcels 1 and 2 to Clark Cook.²

Subsequently, the trial court appointed three viewers. A view was held on September 22, 2004. The view was attended by three court-appointed viewers, Cook, and the School District’s counsel. According to Cook, the viewers viewed the correct parcels, that is, Lot/Block Nos. **556-A-304** and **556-A-316**. However, at some point between when the view took place, and the Valuation hearing which was scheduled to take place on October 6, 2004, the Department took the position that the correct designation for Cook’s parcels was Block and Lot No. **556-A-384**, not Lot/Block Nos. **556-A-304** and **556-A-316**. In other words, the Department and School District believed Board of View had viewed the wrong parcels.

² In Cook’s “current” deed, Parcel 1 was designated as Lot/Block No. 556-A-376 and Parcel 2 was designated Lot/Block No. 556-A-384. According to Cook, in 1977, the County re-designated the parcels and assigned them Lot/Block Nos. 566-A-376 and 556-A-384. Subsequently, Lot/Block Nos. 556-A-376 and 556-A-384 were combined to the single Lot/Block No. **556-A-384**.

It is not entirely clear “how and why” the eminent domain proceedings were halted. But, the record reflects that no Board of View hearing was scheduled to determine compensation and no valuation report was filed.

Cook apparently then contacted a professional land surveyor. On May 8, 2008, the surveyor authored a report which explained the discrepancy in the deeds, and concluded that Cook’s parcels were, in fact, the properties designated as Block/Lot Nos. **556-A-304** and **556-A-316**.

On January 26, 2009, and May 14, 2009, Cook wrote letters to the Office of Property Assessment and explained the situation. He asked that it conduct a site visit for the purpose of determining the exact location of the parcels. The Office of Property Assessments did not respond.

Declaratory Judgment Action

On January 19, 2005, Cook filed an action for Declaratory Judgment against the County and alleged that the County misidentified and/or mislocated his two parcels. Cook requested that the trial court declare the metes and bounds descriptions contained in his current Deed No. 108793, in reality, described Block/Lot Nos. **556-A-304** and **556-A-316**, not **556-A-384**. He argued that the information contained in Deed No. 108793 could not reasonably be used to identify the property at Lot/Block **556-A-384**, which is what the School District intended to evaluate in the condemnation proceeding.

Following a bench trial, the trial court ruled that Cook failed to meet his burden of showing that the County had acted unreasonably in locating Cook’s parcels. Cook appealed to the Superior Court which dismissed his appeal.

Instant Complaint in Mandamus

On June 26, 2009, Cook filed a Complaint in Mandamus asking the trial court to order the County, through its Department of Property Assessment, to compel it to make a site visit and determine the correct location of his parcels.

The Department and School District filed Preliminary Objections and argued that the complaint was barred by collateral estoppel, waiver, lack of standing, and failure to exhaust his statutory remedy under the Eminent Domain Code. On December 30, 2009, the trial court issued its order and opinion granting the Preliminary Objections and dismissing Cook's Complaint.

The trial court found that Cook was actually challenging the description of the property in the Declaration of Taking and that he waived his right to challenge the Declaration of Taking because he failed to file Preliminary Objections in accordance with Section 306 of the Eminent Domain Code, 26 Pa.C.S. §306.

...[u]nder the Eminent Domain Code, if Plaintiff [Cook] wished to contest the "description" of the condemned property, Plaintiff [Cook] was required to file preliminary objections to the Declaration of Taking. Plaintiff [Cook] cannot now argue, through a separate lawsuit filed more than seven years after the Declaration of Taking action, that the description of the condemned property was not correct.

Here, Plaintiff [Cook] argues that the Department of Property Assessment incorrectly interpreted the deeds and, as a result, incorrectly identified the actual, condemned land in the Declaration of Taking. This is clearly a "challenge" to the "declaration of taking;" therefore, the challenge had to be raised via

“preliminary objections to the declaration of taking.”
26 Pa.C.S. §306.

Trial Court Opinion, December 30, 2009, at 4-6 (Emphasis added).

On appeal, Cook disagrees with the trial court’s conclusion that he should have objected to the description of his properties contained in the Declaration of Taking. To the contrary, he agreed wholly that the two deeds attached to the Declaration of Taking **correctly** identified **his** properties. The two deeds accurately represented the two conveyances from Lucy Smith to his parents, one acre each, in 1958 and 1968.

Rather, Cook’s challenge all along was to the Department’s later use of those descriptions to physically locate the parcels for purposes of the view. He could not have known that the Department would take the position that his parcels were not located where he believed they were located until the Department voiced its position after the view. Therefore, he could not have filed Preliminary Objections to the Declaration of Taking raising that issue when he first became aware of the discrepancy after the view took place on September 22, 2004. According to Cook, the Declaration of Taking correctly reflected the property description in his deeds and the deeds contained an accurate description of his parcels. He was unaware of any reason to file Preliminary Objections.

First, this Court must agree with the trial court that the complaint in mandamus must be dismissed, but for reasons different than those stated by the trial court. Primarily, this conclusion rests upon the conclusion that the Eminent Domain Code provides the exclusive remedy in condemnation proceedings: Section 102 of the Eminent Domain Code provides, in part:

General Rule.- This title provides a complete and exclusive procedure and law to govern all condemnations of property for public purposes and the assessment of damages.

26 Pa.C.S. §102.

Here, Cook seeks to order the Department to conduct a site visit to determine the exact locations of his parcels for purposes of obtaining just compensation for them. Any issue relating to the compensation for the appropriated property must be brought pursuant to the exclusive procedures of the Eminent Domain Code. As Cook's exclusive remedy lies in the Eminent Domain Code, he had no right to seek relief in a mandamus action. Gardner v. Allegheny County, 382 Pa. 88, 114 A.2d 491 (1955); Holmes Petition, 383 Pa. 99, 117 A.2d 704 (1955).

In Commonwealth of Pennsylvania Department of Transportation v. Lakeview Motel, Inc., 473 A.2d 262 (Pa.Cmwlth. 1984), a property owner filed a petition for declaratory judgment requesting the entry of a decree that PennDOT's actions constituted a *de facto* taking under the Eminent Domain Code. PennDOT filed preliminary objections which were dismissed by the court of common pleas. On appeal, this Court quashed the appeal as interlocutory but noted that in any event the declaratory judgment action was "inappropriate and should be dismissed." 473 A.2d at 264, n 1. The owner's remedy at law was a petition for appointment of viewers pursuant to Act of June 22, 1964, P.L. 84, Sp. Sess., as amended, 26 P.S. 1-502, now codified at 26 Pa. C.S. §502(c).

As in Lakeview Motel, Inc., the dismissal of Cook's mandamus action does not necessarily leave Cook without a remedy.

Although this Court has found no similar case on point, the Court proposes, based on the provisions of the Eminent Domain Code and the limited information it has, that Cook's proper remedy in this matter would be for the proceedings in the condemnation action to continue and any stay in the matter lifted. If, in fact, the Board of View conducted its view at the site of Cook's parcels it, in effect, interpreted the deeds in favor of Cook and adopted his account of where his parcels were physically located. The Board should complete and file its valuation report based on its view as it is required to do under Section 512 of the Eminent Domain Code, 26 Pa.C.S. §512. If the School District disagrees with the Board's factual or legal conclusions, the School District may appeal to the trial court under Section 516 of the Eminent Domain, 26 Pa.C.S. §516, which will then conduct all further proceedings in accordance with the provisions of the Eminent Domain Code. This procedure will allow for the most expeditious determination of the matter in issue.

For the foregoing reasons, the order of the trial court is affirmed.

BERNARD L. McGINLEY, Judge

Judge McCullough did not participate in the decision in this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clark Cook,	:
	:
Appellant	:
	:
v.	:
	:
Department of Property Assessment	:
of Allegheny County, Pennsylvania	:
and South Allegheny School District	:

No. 784 C.D. 2010

ORDER

AND NOW, this 8th day of November, 2010, the Order of the Court of Common Pleas of Allegheny County in the above-captioned case is hereby affirmed.

BERNARD L. McGINLEY, Judge