[J-24-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

BUFFALO TOWNSHIP,	:	No. 86 WAP 2001
	:	
Appellee	:	
	:	Appeal from the Order of the
	:	Commonwealth Court entered June 14,
v.	:	2001, at No. 1875CD2000, affirming the
	:	Order of the Court of Common Pleas of
	:	Butler County, Civil Division, entered on
CARL E. JONES, KATHRYN L. JONES,	:	July 31, 2000, at No. 00-50009.
LARRY W. TREDWAY, KASSIE	:	
TREDWAY, DAVID C. JONES, SYLVIA J.	:	
JONES, JERRY PURCELL AND MARGIE	:	
PURCELL,	:	
	:	ARGUED: March 6, 2002
Appellants	:	

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: DECEMBER 31, 2002**

In rejecting Appellants' contention that their right to a jury trial was implicated, the majority indicates that Appellants overlook that a request for preliminary or permanent injunction is addressed to a court's equitable jurisdiction, and there simply is no right to a jury trial in an equity action. See Majority Opinion, slip op. at 16-17. Appellants, however, do address this point, in effect, with the contention that it was improper for the common pleas court to invoke its equitable jurisdiction to resolve what is effectively a land title controversy.

I find merit in this argument. See Williams v. Bridy, 391 Pa. 1, 7, 136 A.2d 832, 836 (1957); see also Teacher v. Kijurina, 365 Pa. 480, 484-85, 76 A.2d 197, 200 (1950) ("title to real estate is ordinarily not properly raised by an action in equity unless it be by

bill in partition, for the sound reason that in ejectment proceedings (the classic method of determining title to real estate), the parties are entitled to have disputed facts settled by a jury"); accord Dairy Queen, Inc. v. Wood, 369 U.S. 470, 471-73, 82 S. Ct. 894, 896-97 (1962). Indeed, in the present case, the common pleas court recognized the salient restrictions on its equitable jurisdiction, but merely circumvented them by indicating that the facts were clear and there was no room for doubt. See Buffalo Twp. v. Jones, EQ. No. 00-50009, slip op. at 6 (C.P. Butler Jul. 31, 2000). However, the question whether title reverted to Appellants by virtue of an abandonment of Conrail's right-of-way appears to have been keenly disputed, is treated as a fact-laden issue by the majority, and is itself within the range of issues in a land title controversy that must be determined by a jury. See generally Quarry Office Park Assoc. v. Philadelphia Elec. Co., 394 Pa. Super. 426, 436, 576 A.2d 358, 363 (1990).

In my view, the common pleas court's order could potentially be validly sustained (putting aside other questions of appropriate procedure) if the record established that Appellee maintained actual possession of the disputed tracts as of the time of the filing of its complaint. Cf. Siskos v. Britz, 567 Pa. 689, 701-02, 790 A.2d 1000, 1008 (2002) (establishing actual possession as the litmus in determining whether a right to a jury trial pertains in a land controversy). However, the common pleas court made no specific finding in this respect, and, although the record is somewhat vague on the point, there appears to be evidence that one or more of Appellants may have held actual possession for a substantial time period, including in the relevant time frame. See, e.g., N.T., May 24, 2000, at 21, 26, 64, 68; N.T., July 5, 2000, at 131, 154, 171-72; N.T., Jul. 24, 2000, at 11, 15, 24, 29. Accordingly, I am unable to join the majority in approving the grant of a permanent injunction on the record presented.

Mr. Justice Nigro joins this dissenting opinion.