

**[J-91-2001]**  
**THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

FRANCES SISKOS, A WIDOW,	:	No. 12 WAP 2001
	:	
Appellant	:	Appeal from the Order of Superior Court
	:	entered June 1, 2000, at No.
	:	1049WDA1999, affirming the Order of the
v.	:	Court of Common Pleas of Westmoreland
	:	County entered June 30, 1999, at No.
	:	5882 of 1997.
EDWIN BRITZ AND CAROL BRITZ,	:	
HUSBAND AND WIFE, BERNARD GAUL,	:	
MARLENE A. VRBANIC, CHARLES E.	:	
BOGGS, III, AND CHERYL KAY BOGGS,	:	ARGUED: September 10, 2001
HUSBAND AND WIFE,	:	
	:	
Appellees	:	

**DISSENTING OPINION**

**MR. JUSTICE CASTILLE**

**DECIDED: FEBRUARY 20, 2002**

In this action to quiet title, appellant sought **alternative** relief, *i.e.*, either (1) issuance of an order compelling appellees to file an action in ejectment under Rule of Civil Procedure 1061(b)(1); or (2) issuance of an order under Rule 1061(b)(2), determining any right, lien, title or interest in the subject parcel of land. The majority employs what is, in my view, an overly formalistic approach and concludes that the trial court erred by not first deciding whether appellant had possession of the disputed parcel before determining the parties' ultimate rights with respect to the parcel. Because I see no error in the trial court's resolving the matter as it was actually pled in the alternative, and because I believe that the

majority's finding of error is premised upon a hypertechnical approach to the issue, I respectfully dissent.

Appellant filed an action to quiet title to the disputed parcel of land seeking relief under either Rule 1061(b)(1) or Rule 1061(b)(2). A party invoking Rule 1061(b)(1) seeks a court order compelling an adverse party to commence an action in ejectment. This section generally applies where the complaining party has possession of the disputed property and seeks a resolution of any dispute with the adverse party over title. Rule 1061(b)(2), on the other hand, applies where the complaining party does not have possession of the disputed property. In such an instance, the complaining party requests that the court "determine any right, lien, title or interest in the land or determine the validity or discharge of any document, obligation or deed affecting any right, lien, title or interest in land." Of course, in any **disputed** matter, the determination of the technically proper form of the action may be unknowable at the outset: it may take resolution of the dispute itself to determine possession or ownership of the disputed property.

In the case *sub judice*, appellant's initial complaint clearly sought an ultimate determination of her rights and the rights of appellees in the disputed parcel. A survey conducted on appellant's behalf prior to the institution of the action to quiet title had indicated that appellant's property extended beyond what she previously believed she owned and encompassed the mouth of the private roadway used by appellees to access their parcels. Appellees Edwin and Carol Britz disagreed, believing the mouth of the roadway was situated on their property. Appellant filed her action to quiet title in an effort to settle this active boundary dispute, not merely to determine which party had possession of the land.<sup>1</sup> Tellingly, the request for relief in appellant's complaint, which is set forth

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<sup>1</sup> Indeed, appellees' active and continuing use of the parcel as a private roadway indicates that they actually were in possession of the parcel.

*verbatim* in the majority opinion, amply demonstrates that appellant requested that the trial court make a **final** determination of the parties' rights to the property, which is precisely what the trial court did.

The majority holds that a trial court faced with such a dispute must determine, as a threshold matter, which party is in possession of the property in order to determine which subsection of Rule 1061 applies. The majority's approach contemplates a required, separate proceeding through which the trial court would then rule under the appropriate subsection. This holding sets up needless procedural roadblocks for courts and litigants and will result in a waste of judicial effort. Appellant here brought her boundary dispute before the court seeking a determination of her rights in the property. She asked for relief under either Rule 1061(b)(1) or (b)(2) or both, and the trial court considered both remedies and rendered an appropriate decision. Now, unhappy with the result, appellant contends that the court lacked jurisdiction to render a decision on the very issue she brought before it.

As the majority notes, Rule 1061 was promulgated in order "to unify into one single procedure all of the diverse procedures by which clouds on title were formerly tried." White v. Young, 186 A.2d 919, 921 (Pa. 1963). Yet, the majority's decision has the opposite effect. It requires a trial court to make a preliminary determination as to possession prior to considering the merits of the property dispute in order to determine which of the subsections of the rule apply. The better approach is to allow trial courts to consider these matters in toto, without requiring procedural gymnastics, to timely resolve the substantive question of the litigants' respective rights in a disputed property.<sup>2</sup> In this regard, I note my

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<sup>2</sup> I do not dispute the majority's statement that "an Action in Ejectment entitles a litigant to a jury trial, while an Action to Quiet Title does not." Slip Op. at 6 n.4. Moreover, I recognize that, in the case *sub judice*, appellant requested, in the alternative, that the trial court require appellees to file an action in ejectment. But the court issued no such directive and, thus, no action for ejectment and no jury trial issue was before the court.

agreement with the Superior Court's approach in Sutton v. Miller, 592 A.2d 83 (Pa. Super. 1991). In that case, the court recognized the need for a practical approach to these disputes in holding that, if a party files an action in ejectment under Rule 1061(b)(1) and the trial court determines that an action in ejectment will not lie, the trial court may *sua sponte* amend the pleading to conform to the requirement for an action under Rule 1061 (b)(2).

In my view, the approach employed by the trial court and the Superior Court in this case was proper. Appellant brought her property dispute to the trial court for resolution, and the trial court did as she requested by determining in a prompt fashion the relative rights of the parties to the property, which is the way our system of justice is intended to operate. I see no error in the trial court resolving this dispute expeditiously and efficiently. Accordingly, because I would affirm the Superior Court's decision, I respectfully dissent.