

File #9.5

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA, )  
DEPARTMENT OF HIGHWAYS, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
 )  
WILLIAM G. OLLIKAINEN, )  
MARGARET E. OLLIKAINEN, )  
DONALD J. HUDSON, and )  
KAY L. HUDSON, )  
 )  
Defendants. )  
 )  
 )

FILED in the Superior Court  
State of Alaska, Fourth District

JUL 19 1976

OLGA T. STEGER, Clerk  
*Olga T. Steger* Deputy

No. 76-128

MEMORANDUM DECISION

On January 29, 1976, the State of Alaska, Department of Highways, filed a forcible entry and detainer action against William G. Ollikainen, Margaret E. Ollikainen, Donald J. Hudson and Kay L. Hudson. At a hearing on February 5, 1976, testimony and oral arguments were heard on the matter and briefing on the issues involved was requested by the Court. In reaching its conclusion the Court has considered the evidence presented, the briefs and exhibits attached thereto filed by the parties.

Defendants are the owners of certain real property located along the Elliott Highway near Fairbanks, Alaska. In conjunction with a business enterprise conducted on defendants' premises a permanent advertising sign has been erected adjacent to the road surface. The State of Alaska has asserted that the property upon which this advertising sign has been posted is within the highway right-of-way owned by the State. Accordingly, the State of Alaska contends it is entitled to immediate possession of the property occupied by the advertising sign and

requests the court to order it removed. The Defendants, however, contend that any right-of-way reserved by the Federal Government in the subject property was revoked or, alternatively, if not revoked, the Federal Government has not conveyed that right-of-way to the State of Alaska.

On August 16, 1949, Public Land Order 601 signed by the Secretary of Interior, designated the Elliott Highway a "Feeder Road" and withdrew 100 feet on each side of the center line for a highway right-of-way. On October 16, 1951, PLO 757 amended PLO 601 by altering paragraph 6 of that order to drop all reference to feeder roads. That same day, however, Public Land Order 2665 went into effect which named the Elliott Highway as a "Feeder Road" and again fixed the width of the Elliott Highway at 100 feet on each side of the center line. Section 3(b) of that order created a right-of-way for highway purposes covering the lands embraced in feeder roads. Although PLO 601 was later revoked in 1958, PLO 2665 remains in effect withholding 100 feet on each side of the center line of the Elliott Highway as a government right-of-way.

Section 21(a) of the Alaska Omnibus Act provides:

"The Secretary of Commerce shall transfer to the State of Alaska by appropriate conveyance without compensation, but upon such terms and conditions as he may deem desirable, all lands or interest in lands, including buildings and fixtures, all personal property, including machinery, office equipment, and supplies, and all records pertaining to roads in Alaska, which are owned, held, administered by, or used by the Secretary in conjunction with the activities of the Bureau of Public Roads in Alaska."

With regard to the federal right-of-way that obviously exist within defendants' property, the State of Alaska has not come forward with proof that it has received a conveyance of this right-of-way from the Federal Government. Although the language of the above statutory provision does suggest that

the Secretary of Commerce is required to transfer all public roadways to the State of Alaska, a conveyance of such lands with attending easements and right-of-ways is also necessary.

The Plaintiff claims to have acquired from the Bureau of Land Management by virtue of a "Decision, Right of Way Granted" dated March 17, 1964, the right-of-way through defendants' property asserted in this action. However, it is clear that the Decision is intended only to convey to the State of Alaska land required to apparently straighten out certain curves in the existing roadway. None of the land that is described in the complaint is included in any of the parcels that are granted to the Department of Highways by the Decision mentioned. It is only reasonable to conclude that the Decision does add new lands for an existing highway right-of-way held by the State but there has been no indication as to the time or the means of a conveyance by the Federal Government to the State of Alaska.

However, defendants' discussion of "additional lands" being taken by the terms of the Decision does implicitly admit that the defendants' land, omitted from the Decision, already bore a state highway easement by virtue of the public land orders discussed above.

Therefore, it appearing that neither party has fully and completely briefed the court on the existence or non-existence of a conveyance of the subject Federal right-of-way to the State of Alaska, the parties will submit additional briefs upon the issue. The State of Alaska will file its brief with exhibits, if any, by July 23, 1976. Defendants will file their brief by August 2, 1976. A reply brief may be filed on or before August 6, 1976, by the State of Alaska.

IT IS SO ORDERED.

DATED at Fairbanks, Alaska, this 15 day of July, 1976.

  
WARREN W. TAYLOR  
Superior Court Judge