

AGO (Lyle) D.P.

THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 0.947 acres more or less; )  
 WALTER H. BULLWINKLE; FAIRBANKS )  
 NORTH STAR BOROUGH; and also )  
 all other persons or parties )  
 unknown claiming a right, title, )  
 estate, lien, or interest in the )  
 real estate described in the )  
 complaint in this action, )  
 )  
 Defendants. )

FILED in the Trial Courts  
State of Alaska, Fourth District

SEP 16 1991

By \_\_\_\_\_ Deputy

Project No. RS-RRS-M-000S(52)  
Parcel No. 6  
Case No. 4FA-86-2479 Civil

ORDER CONFIRMING SECTION LINE, EASEMENT  
AND NOMINAL DAMAGES

This matter comes before the court upon the motion of the state to confirm a section line easement and determine nominal damages. The court has considered the following:

1. Motion for Summary Judgment - Section Line Easement
2. Affidavit of John Bennett
3. Answer to Mr. Bennett's Affidavit (Opposition filed by Mr. Bullwinkle)
4. Reply to Opposition to Motion for Summary Judgment - Section Line Easement
5. Mr. Bullwinkle's Supplemental Opposition
6. Supplemental Reply to Motion for Summary Judgment - Section Line Easement

I certify that on 9-9-91  
 copies of this form were sent to: C+S  
 CLERK: AGO (Lyle)  
Bullwinkle (PROSE)

7. Reply to Supplemental Reply to Motion for Summary Judgment - Section Line Easement
8. Supplemental materials submitted by Mr. Bullwinkle at oral argument

The court heard oral argument on August 27, 1991. Having considered all the pleadings and arguments this court finds that no genuine issues of material fact exist and hereby grants summary judgment to the state.

This condemnation is a partial taking of 0.947 acres of property belonging to Mr. Bullwinkle. The land is a strip of property on the East side of Government Lot 10 bordering Peger Road. Peger Road is built on the section line between section 8 and 9 of Township One South (T1S), Range One West (R1W), Fairbanks Meridian. Mr. Bullwinkle contends that no section line easement for Peger Road exists and therefore the state must compensate him for the land underlying Peger Road.

Mr. Bullwinkle asserts that the Federal Land Policy Act of 1976 revoked the R.S. 2477 Easement for Peger Road. However, the R.S. 2477 section line easement survived pursuant to the Act's saving provision for existing rights of way. 43 U.S.C.A. § 1701. The section line easement in question was a valid existing right of way and was not revoked.

Mr. Bullwinkle asserts that actual road construction was required prior to his entry to perfect any R.S. 2477 easement. This court finds Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1224-27 (Alaska 1975) controlling. The Alaska

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Supreme Court found that only a "positive act" was needed by a state or territory to establish R.S. 2477 easements and the legislative enactment 35 SLA 1953 (AS 19.10.010) constituted such an act. Actual construction is not required in Alaska. The legislative act is sufficient. Brice v. State, 669 P.2d 1311, 1314-15 (Alaska 1983). Mr. Bullwinkle argues that the Alaska Railroad Transfer Act of 1982 vacated the R.S. 2477 easement. The railroad easement was set forth in Mr. Bullwinkle's patent under the 1914 Alaska Railroad Act, 43 U.S.C.A. § 975, et seq. Any revocation by the 1982 Railroad Transfer Act applies only to railroad reservations and does not by its language or subsequent statutory or case law apply to R.S. 2477 easements.

Mr. Bullwinkle asserts that repeal of 19 SLA 1923 vacated R.S. 2477 easements. Brice v. State, 669 P.2d 1311, 1315-16 (Alaska 1983) is controlling. Brice held that the repeal of 19 SLA 1923 did not operate retroactively to vacate previously accepted grants of easements. Mr. Bullwinkle asserts that the Alaska Territorial Legislature had no authority to accept the R.S. 2477 grant from the Federal Government. Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Alaska 1975) is controlling. Girves expressly rejected Alaska Attorney General Opinion No. 11 (July 26, 1962), and found that the legislature did have authority to accept the R.S. 2477 grant.

Finally, Mr. Bullwinkle argues that federal court decisions and BLM's position should be controlling, not state

law. However, the general rule is applicable as set forth in United States v. Oklahoma Gas & Electric Co., 318 U.S. 206 (1943). The United States Supreme Court stated that "[a] conveyance by the United States of land which it owns... is to be construed, in the absence of any contrary indication of intention, according to the law of the state where the land lies." This rule of law was adopted by the Alaska Supreme Court in Fisher v. Golden Valley Elec. Ass'n., Inc., 658 P.2d 127, 130 (Alaska 1983). Therefore, this court finds state law controlling and confirms the section line easement.

The state asserts that \$100.00 is a reasonable nominal compensation amount. There is no evidence of special value attaching to the fee underlying the highway easement on this property. There is no assertion or evidence by Mr. Bullwinkle that \$100.00 is not a reasonable nominal amount of damages. Therefore, this court finds there is no genuine issue of material fact and determines \$100.00 is a reasonable amount to be awarded for nominal damages for the easement. Therefore,

IT IS HEREBY ORDERED that

1. The existence of the section line easement for Peger Road is hereby confirmed.
2. Walter H. Bullwinkle is entitled to nominal compensation for the taking of the fee underlying the section line easement. \$100.00 is a reasonable figure for nominal compensation.

ORDER

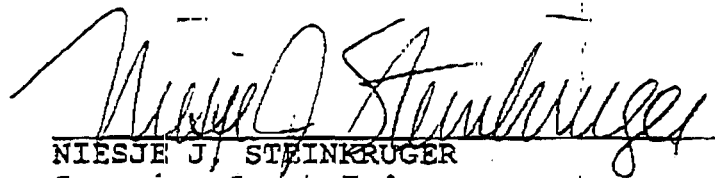
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3. The issue of compensation for the remaining 0.947 acres taken by the state is still to be decided.

DATED this 6 day of September, 1991, at Fairbanks, Alaska.

  
NIESJE J. STEINKRUGER  
Superior Court Judge