

ORDER

NOW, this 25th day of April, 1983, the plaintiff's rule to show cause is discharged, and his motion for change of venue dismissed. Exceptions are granted the defendant.

IN RE: PROCEEDING TO DETERMINE NECESSITY FOR CONDEMNATION OF PRIVATE RIGHT OF WAY, C.P. Franklin County Branch A.D. 1981 - 91

Private Road - Board of Viewers - Objection to Board's Report

1. A trial courts review of a Board of Views report is limited to the validity of the courts' jurisdiction, the regularity of the proceedings, questions of law and whether there has been an abuse of discretion.
2. Both necessity for a road and location of the road are factual matters within the province of the Board of Viewers.
3. An appeal from a Board of Views' report must be limited to the award of damages.

David C. Cleaver, Esquire, Counsel for Petitioners/Condemnors

Frederic C. Antoun, Jr., Esquire, Counsel for Respondent/Condemnees

OPINION AND ORDER

KELLER, J., May 17, 1983:

This action was commenced by the filing of a single petition on March 18, 1981, by various landowners requesting the appointment of a Board of View to determine the necessity and location for two private roadways for access to the petitioners' properties. Preliminary objections were filed on behalf of the condemnees, Melvin L. and Nancy L. Bland. Pursuant to stipulation of counsel, the objections were withdrawn and plaintiff filed two amended petitions on January 21, 1982, to separate the requests for roadways. Both petitions were filed to the same term and number. A Board of View consisting of J. Edward Beck, Jr., Esquire,

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William A. Brindle, and O. H. Lashley was appointed by the Court on the same day the petitions were filed.

After giving notice to all the involved parties through their attorneys, the Viewers met on March 25, 1982, to conduct a view of the property. After viewing "the site and locality of potential access roads to the Petitioners' lands" (Report of Viewers, paragraph 3), the meeting was adjourned. William A. Brindle Associates was directed to prepare drafts of surveys of the two proposed private roadways which were completed in July of 1982. The Viewers discovered that Owen C. and Mary L. Henry were the owners of land over which part of one proposed roadway was located. They were accordingly advised of the proceedings held to that date and were notified of all future hearings.

After giving proper notice, the Viewers held a hearing on September 9, 1982, at the Franklin County Court House. Testimony from several witnesses, including Mr. Bland and Mr. Henry, was heard before the meeting was adjourned for a second view of the property to re-examine the proposed roadway for Group "B" petitioners. The surveyors were then asked to relocate a portion of the roadway laid out for the benefit of the Group "B" petitioners.

Another hearing was held on November 9, 1982, during which testimony as to the necessity and the preferable locations of the roadways was elicited from several witnesses, again including both Mr. Bland and Mr. Henry. Testimony concerning the matter of damages was also heard.

The Report of Viewers was filed on November 29, 1982, wherein two private roadways, twenty feet in width, were found to be a necessity within the meaning of the Act of June 13, 1836, P.L. 551 as amended (36 P.S. 2731 et seq). Their locations are set forth on surveys attached to the Report and are situated on the lands of the Blands and the Henrys. At the November 9, 1982, hearing, the Henrys stated that they would waive all damages as applied to their property. Therefore, the Report only sets forth the damages awarded by the Viewers to the Blands.

An Appeal from Report of Viewers was filed on behalf of the Blands on December 29, 1982, which sets forth specific objections and exceptions taken to the findings of the Board of View. Petitioners followed on February 10, 1983, with the filing of their Motion to Quash Appeal and Confirm Report of Board of View. Briefs were exchanged and oral arguments were heard by

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this Court on April 14, 1983. The matter is now ripe for disposition.

The first matter to be disposed of is whether the condemnees have followed the proper procedure in bringing their objections to this Court's attention. The procedure followed by the parties in *Mattei v. Huray*, 54 Cmwlth. Ct. 561, 422 A.2d 899 (1980) is quite similar to the instant case. In *Mattei*, the Board of View filed its report; the condemnees filed an appeal to the Common Pleas Court demanding a jury trial and specifically objecting; and condemnors then filed a motion to quash the appeal. The Court denied the motion to quash but ordered an evidentiary hearing after which the lower court confirmed the Board's report and granted a jury trial solely on the issue of damages. On appeal, the Commonwealth Court affirmed and held that a trial court's review is limited to a confirmation or a rejection of the Board's report. The Court also noted that the lower court did more than the law authorized when it held an evidentiary hearing.

The *Mattei* Court also held that an appeal may be had but it must be strictly limited to the award of damages. There is no question but that the Blands, condemnees, may proceed to a jury trial on the matter of damages. However, based on the *Mattei* decision, our sole task at this stage of the proceedings is to either accept or reject the Board of View's Report.

"Appellate review...is solely to ascertain the validity of the court's jurisdiction, the regularity of the proceedings, questions of law, and whether there's been an abuse of discretion. We (the Court) cannot look beyond the record...or consider questions of fact."

Little Appeal, 180 Pa. Super. 555, 558, 119 A.2d 587 (1956).

The condemnees' objections to the report basically express their disagreement with the Board's findings of necessity and with the location of the roads. Both necessity and location are factual matters within the province of the Board of Viewers. *Little Appeal*, supra; *Marinclin Appeal*, 204 Pa. Super. 552, 205 A.2d 885 (1965).

"Viewers appointed by the court under the road laws constitute an independent tribunal set up by the law. Although their findings are subject to review and may be set aside, their authority should not be infringed on by the substitution of the judgment of the court for that of the viewers."

Marinclin Appeal, supra, 204 Pa. Super. at 558.

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NOTICE

To all Subscribers, prospective Advertisers and others concerned.

Please take notice that the office of the managing editor of this journal will be moving, effective Monday, October 17, 1983. The address of the editor as of that date, for all Journal business will be:

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The record indicates that two views of the property were conducted by the Board of View and two hearings were held for the purpose of taking testimony regarding the necessity and location of the roads. The condemnees were heard as were several other witnesses. Therefore, the decision of the Board of View cannot be labeled "arbitrary". The Board members obviously put much time and careful consideration into their decision. It is not proper for this Court to now substitute its judgment for that of the Board of View absent a showing of abuse of discretion. The record indicates only that the Board performed its assigned task in a thorough and conscientious manner and its decision is hereby confirmed by this Court.

ORDER OF COURT

NOW, this 17th day of May, 1983, the motion to quash the appeal of Melvin L. Bland and Nancy L. Bland and confirm the Report of the Board of View is granted except as to the issue of damages due Melvin L. Bland and Nancy L. Bland by reason of said condemnation. The trial on the issue of damages shall be heard by a jury commencing at 9:00 A.M. on June 9, 1983.

NEWCOMER v. MARTIN, C.P. Franklin County Branch, No. 397 - 1982

Trespass - Auto Accident - Damages - Loss of future earning capacity - more specific complaint

1. A claim may be made for loss of future earning capacity apart from a claim for loss of earnings.
2. Where plaintiff does not plead facts setting forth his earning capacity prior to the accident he will be required to be more specific in his pleading.
3. Without allegations of prior earning capacity, plaintiff would be unable to introduce at trial, evidence in support of an allegation of reduced earning capacity.

William S. Dick, Esq., Counsel for Plaintiffs.