

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Modesto Bigas-Valedon and :  
Julie Seda-Bigas, : No. 513 C.D. 2013  
Husband & Wife and Victor J. : Submitted: December 27, 2013  
Navarro and Cheryl A. Navarro, :  
Husband & Wife :  
:

v. :

Mary McIlvaine and Margaret :  
Shippen McIlvaine, and Alexander :  
Hayes, Townsend Whelen, and John :  
Does 1-2 and Jane Does 1-2 and Lynn E. :  
Landes and Clifford W. Landes, :  
Husband & Wife :  
:

Appeal of: Lynn E. and Clifford :  
W. Landes :

Clifford Landes & Lynn Landes, H/W, :  
Appellants : No. 603 C.D. 2013  
:

v. :

Modesto Bigas-Valedon and :  
Julie Seda-Bigas, H/W, and :  
Victor J. Navarro and :  
Cheryl A. Navarro, H/W :  
and City of Philadelphia :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FRIEDMAN

FILED: March 6, 2014

Clifford and Lynn Landes, husband and wife (Intervenors), appeal from the judgments entered on March 5, 2013, by the Court of Common Pleas of Philadelphia County (trial court) in these consolidated cases. The trial court entered judgments in favor of Modesto Bigas-Valedon and Julie Seda-Bigas, husband and wife, and Victor and Cheryl Navarro, husband and wife (collectively, Plaintiffs), at appeal number 513 C.D. 2013 and in favor of Plaintiffs and the City of Philadelphia (City) at appeal number 603 C.D. 2013. We affirm both judgments.

In October 2011, Plaintiffs filed an action to quiet title to a 15-foot-by-37-foot alley (Alley) against the identified and unknown heirs of Edward Shippen Burd.<sup>1</sup> Plaintiffs' properties, located at 221 and 223 South Jessup Street in the City, are adjacent to the Alley. Intervenors, who live at 217 South Jessup Street, intervened in the quiet title action<sup>2</sup> and, in February 2012, filed a separate action against Plaintiffs and the City, seeking, *inter alia*, a declaration that the Alley is a public street. The trial court consolidated the cases for trial.

The trial court made the following findings regarding the geographic layout of the contested area:

Jessup Street, both the East and West sides, runs in a North-South direction. To the North, it intersects with Locust

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<sup>1</sup> Burd's father conveyed the land to Burd in the early 19th century. Eventually Burd subdivided the land, resulting in the private homes that exist today. Burd, who died in 1848, is the last record owner of the Alley. (Trial Ct. Op., 3/5/13, at 3-4.) Prior to this litigation, the Alley had been out of title for almost 200 years.

<sup>2</sup> The trial court granted Intervenors permission to intervene in the quiet title action "only as to Intervenors' claims to existing easement rights and/or rights of passage." (Trial Ct. Order, 3/8/12.)

Street; to the South, it ends before reaching Spruce Street. The street East of and parallel to Jessup Street is 11th Street and the street to the West and parallel to Jessup Street is Quince Street. The [Alley] . . . begins between the Plaintiff[s'] properties and proceeds East approximately [37] feet to a small, three-foot-wide alleyway. This alleyway runs parallel to Jessup Street and abuts the homes on the East Side of Jessup and the back of certain properties situated on the West side of 11th Street. This three-foot-wide alleyway was originally ten feet, but due to encroachment is now reduced to three feet in width. The [Alley] intersects with this three-foot-wide alley[way] at the end of Plaintiffs' properties, terminating and abutting the property of Shirley Mouny, of 258 South 11th Street. . . . The 15' x 37' [Alley], as stated, begins at the Northeast and Southeast corner of Jessup Street between the properties of the Plaintiffs. Across from the Plaintiffs' properties, at a straight line with [Alley], is Irving Street . . . . [Irving Street] begins at the Northwest and Southwest side of Jessup Street, running West for about a block, where it ends after intersecting with Quince Street[].

(Trial Ct. Op., 3/5/13, at 2-3.)<sup>3</sup>

At trial, Plaintiffs claimed that each Plaintiff owns the Alley from his or her property line to the Alley's midpoint. Intervenors claimed that the Alley is a public street and, thus, they are entitled to free and unobstructed use of the Alley. Alternatively, Intervenors claimed that even if the Alley is not a public street, they are entitled to private easement rights.

Plaintiffs testified extensively about the nature and physical condition of the Alley. The Alley has granite curbs and a six-foot-wide cartway comprised of

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<sup>3</sup> We note that the trial court, along with the parties and their counsel, conducted an on-site visual review of the disputed area before trial.

Belgian brick. Because the Alley and its adjoining sidewalk are in severe disrepair, Plaintiffs placed decorative planters in the Alley to cover the most dangerous portions and protect pedestrians from injury. Plaintiffs also testified that, at one point, a metal chain bearing a “no parking” sign hung across the entrance to the Alley, but it has since been removed. Plaintiffs testified that the purpose of the chain was to prohibit vehicular traffic and parking that could further damage the Alley. (N.T., 1/23/13, at 6-7, 16-20.) Intervenors acknowledged that the Alley and its sidewalk are in disrepair. Intervenors testified, however, that the planters prevented Intervenors from parking their work vehicles in the Alley, although they admitted that doing so could further damage the Alley. Intervenors also admitted that they have no ownership interest in the Alley. (N.T., 1/17/13, at 84-86, 104-107.)

On January 24, 2013, the trial court entered verdicts in favor of Plaintiffs and the City and against Intervenors. The trial court concluded that the Alley is not a public street and that Plaintiffs each own the Alley in fee simple, from their original property lines to the Alley’s midpoint. The trial court further found that Plaintiffs’ fee simple ownership is subject to the easement rights of property owners located on the east side of Jessup Street and the west side of 11th Street, including Intervenors. The trial court defined those easement rights as follows:

The easement rights conveyed in this Order are limited to the owners of the properties named herein [215-233 South Jessup Street and 250-268 South 11th Street] with the exception of any unnamed property owner who has obtained an easement right to [the Alley] through deed or document of record.

The terms and conditions of these easement rights are as follows:

1. The dominant tenements, their invitees and licensees shall have ingress and egress from the rear of their properties to Jessup Street.
2. There shall be no parking permitted.
3. There shall be no vehicular traffic permitted, unless reasonably necessary for delivery purposes. The vehicle, if so used, shall not pose danger to person or property.
4. The pachysandra and planters located on the South side of the [A]lley shall remain intact.
5. Neither the dominant nor the servient tenements shall inhibit or obstruct the rights conveyed to the other in this Order.
6. The servient tenements shall assume all rights, title, and interest in the [A]lley subject to the terms and conditions of this Order.

(Trial Ct. Order, 1/24/13, at 2 (citations omitted).)<sup>4</sup> The trial court explained that its intent was to clarify the Alley's ownership and existing easement rights and "give[] structure and direction to all of the Jessup Street neighbors." (Trial Ct. Op., 1/24/13, at 7.)

Intervenors timely filed post-trial motions, which the trial court denied on March 5, 2013. Intervenors now appeal to this court.<sup>5</sup>

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<sup>4</sup> The trial court filed identical orders in both cases.

<sup>5</sup> Our review of a judgment following a non-jury verdict is limited to determining whether the trial court's findings are supported by competent evidence and whether the trial court committed an error of law. *See M & D Properties, Inc. v. Borough of Port Vue*, 893 A.2d 858, 861 n.4 (Pa. Cmwlth. 2006).

First, Intervenor's assert that the trial court lacked jurisdiction in the quiet title action because Plaintiffs failed to join necessary and indispensable parties. Specifically, Intervenor's claim that Plaintiffs should have joined as defendants to the litigation all property owners who potentially possess easement rights to the Alley. We disagree.

“A party is indispensable when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.” *Sprague v. Casey*, 520 Pa. 38, 48, 550 A.2d 184, 189 (1988); *see* Pa. R.C.P. No. 2227(a). In their quiet title action, Plaintiffs sought to obtain title to the Alley “subject to any and all easements and rights of passage of record.” (Pl. Compl., Count I, ¶ A.) Plaintiffs did not seek to extinguish any easement rights, nor did they seek any adverse ruling against property owners who might have an easement claim over the Alley. Thus, we conclude that such property owners were not indispensable parties because Plaintiffs did not seek to redraw property lines, extinguish easement rights, or dispute the existence of any easements. *See Pennsylvania Game Commission v. K.D. Miller Lumber Company, Inc.*, 654 A.2d 6, 9 (Pa. Cmwlth. 1994) (holding that an adjacent property owner was not an indispensable party in the plaintiff’s action to determine the ownership of 19 acres of disputed land; the plaintiff did not request that boundaries be redrawn, only that rightful ownership be determined); *see also Sprague*, 520 Pa. at 49, 550 A.2d at 189 (stating that “a party against whom no redress is sought need not be joined”; if the merits can be determined without prejudice to the absent party’s rights, the court may proceed).

Contrary to Intervenor’s assertion, the trial court’s ruling did not alter third-party easement rights. The trial court preserved existing easement rights and

merely clarified the extent of those rights, which had been undefined for decades. The trial court: permitted the easement holders, their invitees, and their licensees ingress and egress over the Alley; prohibited vehicle parking in the Alley; restricted vehicular traffic unless reasonably necessary for delivery purposes; permitted the planters to remain on the Alley's south side for safety reasons; and enjoined Plaintiffs and the easement holders from inhibiting or obstructing each other's rights. (Trial Ct. Order, 1/24/13, at 2; *see* N.T., 1/23/13, at 197-201.)<sup>6</sup>

We also conclude that Intervenors' reliance on *Hartzfeld v. Green Glen Corporation*, 552 A.2d 306 (Pa. Super. 1989), is misplaced. In *Hartzfeld*, the Superior Court held that Hartzfeld was required to join in her quiet title action all property owners adjacent to the strip of land at issue due to a specific covenant of incorporation for all property owners in the subdivision. *Id.* at 310. The Superior Court stated that the issue was "whether [legal documents executed after Hartzfeld's purchase of the deeded property] grant[ed] others rights to the disputed property, *which rights [Hartzfeld] must extinguish before prevailing in her claim of ownership.*" *Id.* at 307 (emphasis added). Here, however, there was no similar covenant of incorporation, nor did Plaintiffs seek to extinguish the rights of any easement holders. Rather, Plaintiffs sought ownership to the Alley *subject to existing*

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<sup>6</sup> The trial court also advised the parties:

[Plaintiffs], you now own the property, but now you have responsibilities in that you have to maintain it.

There may be insurance you have to get for liability, so it's not an unfettered right. You have obligations and also obligations to [Intervenors]. On the other hand, [Intervenors] have an obligation to act reasonably in their ingress and egress.

(N.T., 1/23/13, at 200.)

*easement rights*, which is the relief the trial court granted. Therefore, *Hartzfeld* is distinguishable from this case.<sup>7</sup>

Second, Intervenor's assert that the trial court improperly allowed Plaintiffs to file a renewed Pa. R.C.P. No. 1066 motion for specific relief<sup>8</sup> in lieu of presenting evidence to support their quiet title action. This claim lacks merit. Plaintiffs orally renewed their Rule 1066 motion at the October 25, 2012, pretrial hearing. (N.T., 10/25/12, at 16-17.) After hearing argument from both Plaintiffs and Intervenor's, the trial court declined to rule on the motion and proceeded to a full trial on the merits of the consolidated cases, during which Plaintiffs presented extensive documentary and testimonial evidence. (*See id.* at 99-100.)<sup>9</sup>

Third, Intervenor's contend that Plaintiffs were not entitled to relief in the quiet title action because they violated the clean hands doctrine. *See In re Estate of Aiello*, 993 A.2d 283, 288 (Pa. Super. 2010) ("A party seeking equitable relief must come before the court with clean hands."); *see also Barcia v. Fenlon*, 37 A.3d 1, 6 (Pa. Cmwlth. 2012). The clean hands doctrine, however, is inapplicable here because

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<sup>7</sup> As Plaintiffs correctly note, it was Intervenor's, not Plaintiffs, who effectively sought to extinguish third-party easement rights in their cause of action against the City. Had the Alley been declared a public street, as Intervenor's requested, that ruling would have extinguished all private easement rights in the Alley. Notably, Intervenor's failed to join any third-party easement holders in their litigation against the City.

<sup>8</sup> Pa. R.C.P. No. 1066(a) provides that the trial court in a quiet title action "shall grant appropriate relief upon affidavit that a complaint containing a notice to defend had been served and that the defendant has not filed an answer, or after a hearing or trial on the pleadings or merits."

<sup>9</sup> At the conclusion of the October 25, 2012, hearing, Plaintiffs' counsel stated, "To be clear, Judge, I'm resting on the 1066 rule but . . . I'll put on evidence." (N.T., 10/25/12, at 100.) The trial court responded, "I'm not precluding anybody here. I think that's the worst thing I can do." (*Id.*)



Plaintiffs' quiet title action is an action at law, not an action in equity. *See Roberts v. Estate of Pursley*, 700 A.2d 475, 478 (Pa. Super. 1997) (noting that an action to quiet title under Pa. R.C.P. No. 1061 is an action at law); Pa. R.C.P. No. 1061.

Finally, Intervenors argue that the trial court erred in concluding that the Alley is not a public street. We conclude that the trial court thoroughly and correctly analyzed this issue in its March 5, 2013, opinion and, therefore, we incorporate and adopt that portion of the trial court's opinion herein.

Accordingly, we affirm the judgments entered in the above-captioned matters.

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ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 6<sup>th</sup> day of March, 2014, we hereby affirm the judgments entered on March 5, 2013, by the Court of Common Pleas of Philadelphia County in the above-captioned matters.

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ROCHELLE S. FRIEDMAN, Senior Judge