

Statement of the Case

BIGLER ET AL., APPELLANTS, v. TOWNSHIP OF
YORK ET AL., APPELLEES. (TWO CASES.)[Cite as *Bigler v. York Twp.* (1993), 66 Ohio St.3d 98.]

Roads—R.C. 5553.042 provides the exclusive remedy for abutting landowners who desire a township road to be vacated—Court of common pleas does not have jurisdiction to quiet the title to a township road.

1. R.C. 5553.042 provides the exclusive remedy for abutting landowners who desire a township road to be vacated.

See: West's Ohio Digest, Highways §=77(1).

2. The court of common pleas does not have jurisdiction to quiet the title to a township road.

See: West's Ohio Digest, Quieting Title §=1.

(Nos. 91-2575 and 92-53—Submitted January 13, 1993—Decided April 14, 1993.)

APPEAL from and CERTIFIED by the Court of Appeals for Belmont County, Nos. 91-B-9 and 91-B-10.

York Township Road 125 has been blocked since 1953 as a result of a landslide on appellant's property.

This case began in the Belmont County Court of Common Pleas when Howard Bigler, Jean Bigler, and Brian Bigler ("the Biglers") and others filed a complaint on September 12, 1988 in the Court of Common Pleas of Belmont County against the York Township Trustees and its individual board members seeking an injunction against trespassers on the Biglers' real property and monetary damages. On November 30, 1988, by agreement of the parties a permanent injunction was issued against the York Township Trustees. On December 20, 1988, the Biglers agreed to file a declaratory judgment action within twenty days.

The Biglers filed a complaint in the trial court on January 9, 1989, seeking to quiet title to a portion of York Township Road 125 that abuts their property.

Additionally, the Biglers asked the court "to declare that portion of purported [T]ownship Road 125 which purports to cross the real property of Plaintiffs * * * to be abandoned and lost by nonuse * * *." On October 23, 1990, the parties reached an agreement to settle this case; however, the defendants now attorney revoked this agreement prior to its becoming finalized.

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The Ohio Valley Coal Company filed a motion to intervene as a defendant, claiming that it had an interest to protect; however, it was subsequently determined that Robert Murray was the actual owner of this interest. There was testimony by Murray that Township Road 125 would be the only means of ingress and egress to and from a portion of property for which he owns an option to purchase. Murray also testified that if his option to purchase were to be executed he would repair the road immediately in order that it be open again.

Harrison Leasing Company and Kerogen Resources, Inc., abutting landowners to the disputed road, also filed motions to intervene as defendants, alleging that they too had interests in preserving and keeping open the road.

The trial court overruled all three motions to intervene and, in a judgment entry of February 8, 1991, found that a portion of York Township Road 125 be deemed abandoned through nonuse. The trial court ordered title to this same portion of the road be quieted in the name of Brian Bigler.

On November 5, 1991, the court of appeals reversed the trial court's judgment, holding that the lower court erred as a matter of law when it quieted the title to the disputed portion of York Township Road 125 in the name of Brian Bigler. The court of appeals concluded that the only means available to a landowner who wishes to obtain ownership over a road which abuts his land is to comply with the procedures set forth in R.C. 5553.042.

The appellate court, finding its judgment to be in conflict with the judgment of the Court of Appeals for Franklin County in *Burdge v. Bd. of City Comms.* (1982), 7 Ohio App.3d 356, 7 OBR 454, 455 N.E.2d 1055, certified the record of the case to this court for review and final determination in case No. 92-53. The cause is also before this court pursuant to the allowance of a motion to certify the record in case No. 91-2575.

Rubenstein, Novak, Einbund, Pavlik & Celebrezze, Lewis Einbund and Frank D. Celebrezze; George W. Hinzey and Allan Sherry, for appellants.

Robert W. Quirk, Assistant Prosecuting Attorney, for appellees York Township and Belmont County.

Thornburg & Bean and Charles H. Bean; Thomas, Fregiato, Myser, Hanson & Tomlan and Frank A. Fregiato, for appellees Harrison Leasing Co., Robert Murray, and Kerogen Resources, Inc.

Kigerl & Vavra and John A. Vavra, for appellees Albert Caldwell, Russell Caldwell, and Carol Pittman.

Opinion, per Pfeifer, J.

PFEIFER, J. Appellants contend that "Ohio Revised Code section 5553.042 actually delineates the procedure to be followed by county commissioners to accomplish the vacation of a township road and does not preclude an action by an abutting land owner to quiet title by establishing abandonment by nonuse for at least twenty-one years." For the following reasons we disagree with appellants' assertion and, accordingly, affirm the decision of the court of appeals.

The relevant statute, R.C. 5553.042, provides: "A township shall lose all rights in and to any public road, highway, street, or alley which has been abandoned and not used for a period of twenty-one years, after formal proceedings for vacation as provided in sections 5553.04 to 5553.11 of the Revised Code have been taken; and upon petition for vacation of such road, highway, street, or alley filed with the board of county commissioners by any abutting landowner, if the board finds that said public road, highway, street, or alley has been abandoned and not used for a period of twenty-one years as alleged in such petition, the board of county commissioners may, by resolution, order the road, highway, street, or alley vacated and such road, highway, street, or alley shall pass, in fee, to the abutting landowners thereof, as provided by law * * *."

This statutory scheme which empowers the board of county commissioners to vacate a township road involves the careful weighing of widely diverse interests and public-policy considerations. We hold that R.C. 5553.042 is the exclusive remedy available to abutting landowners who desire to have a township road declared to be abandoned, vacated, and conveyed to them.

Conveying a public road into the hands of private ownership requires the decision maker to balance the interests of the abutting landowners with the public interests. That is not possible in a quiet title action. In the instant case, there were affidavits and testimony indicating that if the court were to convey title to the public road into the name of Brian Bigler, then natural resource leases and options to purchase land of other abutting property owners would lose value or even become worthless due to a lack of effective access to the public highways of this state.

The discretionary language contained in R.C. 5553.042 reinforces the broad public-policy nature of the decision to vacate a township road. The statute provides that, upon determining that an abandonment has occurred, along with finding nonuse for a period of twenty-one years, the board of county commissioners "may"—and is not obligated to—order the road vacated. Thus, the statute gives the board of county commissioners the discretionary power to vacate the road, presumably, in order for the board to become sensitive to the interests, requests, and needs of the community.

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If this court were to hold that an action could also be brought in a common pleas to quiet title to a township road on the grounds of abandonment, we would directly undermine the discretion which the General Assembly expressly granted to the board of county commissioners in R.C. 5553.042. With this separate means to the same end, the statutory powers of the county commissioners in R.C. 5553.042 would be rendered meaningless. Abutting landowners desiring to vacate township roads would surely petitioning the county commissioners. In a quiet title action, the court pleas court would be obliged to grant landowners' requests, as soon as a court determined that the property had been abandoned and not used by public for a period of twenty-one years. *Burdige v. Bd. of Cty. Com.* (1982), 7 Ohio App.3d 356, 7 OBR 454, 455 N.E.2d 1055. Accordingly, we the court of common pleas does not have jurisdiction to quiet the title township road.

The judgment of the court of appeals is affirmed.

Judgment affirm

MOYER, C.J., DOUGLAS, RESNICK and F.E. SWEENEY, JJ., concur.
A.W. SWEENEY and WRIGHT, JJ., dissent.