

In the United States Court of Federal Claims

**No. 07-693L and No. 07-675L
CONSOLIDATED
(Filed: August 20, 2009)**

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DOROTHY L. BIERY, et al.,

and

**JERRAMY and ERIN
PANKRATZ, et al.,**

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

* * * * *

**ORDER ON THE NATURE OF THE PROPERTY INTERESTS ACQUIRED BY
THE RAILROADS**

The above-captioned cases concern rails-to-trails takings claims in the state of Kansas. The Pankratz matter concerns a 10.6-mile railroad right of way between milepost 483.62 in Augusta, Kansas and milepost 494.22, near Andover, Kansas. The Biery matter concerns a 2.88-mile railroad right of way between milepost 0.62 and milepost 3.50, near South Hutchinson, in Reno County, Kansas. The plaintiffs are the alleged owners of property that abuts or traverses the subject railroad right of way, and the two cases have been consolidated.

The parties have filed cross-motions for summary judgment on issues of title and liability. With regard to the core liability question of whether the easements acquired by the railroads provide that the property reverts to the abutting landowner upon abandonment of rail operations, the court determined that novel issues of Kansas state law

are involved.¹ Accordingly, on February 27, 2009, the court certified to the Kansas Supreme Court the questions of whether the easements acquired by the railroad would have been considered abandoned under Kansas law and whether the easements include the right of the railroad to use the property for railbanking and/or interim trail use. See Docket No. 68 (Certification Order).

Prior to issuing the Certification Order, on the request of the parties, the court agreed to resolve disputed questions regarding whether the railroads that acquired the subject rights of way by voluntary grant acquired only an easement that would revert to the property owner upon abandonment or whether they acquired fee title to the rights of way, precluding such a reversion.² Where the railroads acquired fee title, the plaintiffs whose land abuts or traverses that portion of the right of way do not have standing to bring a takings claim based on a right of reversion. The court ruled orally on the nature of the interests acquired by the railroads on February 18, 2009. In this Order, in anticipation of the Kansas Supreme Court's forthcoming decision regarding the certified questions on liability, the court will memorialize its ruling on the interests acquired by the railroads in the subject rights of way, as follows:³

- 1) For all of the plaintiffs in the Pankratz case (No. 07-675L), it is undisputed that the railroad acquired only an easement to the property, whether the railroad acquired the property by condemnation or, in the case of the Thad Colling/Jennifer McLaughlin property, by voluntary easement (quitclaim deed; see Def.'s Ex. 10-2). Accordingly, all of the Pankratz plaintiffs remain in the litigation.
- 2) In the Biery case (No. 07-693L),
 - a) With regard to plaintiffs **Gordon Holloway** and **Stacy Judy Trust**, it is undisputed that the railroad acquired only an easement to the property, via condemnations in 1889 and 1899. Accordingly, the claims of Gordon Holloway and Stacy Judy Trust remain in the litigation.

¹The U.S. Supreme Court has emphasized that "state law creates and defines the scope of the reversionary or other real property interest" in federal rails-to-trails cases. Preseault v. United States, 494 U.S. 1, 20 (1990).

²It is not disputed that, under Kansas law in effect in the late 1800s, the railroads acquired only an easement to those segments of the subject rights-of-way which they acquired by condemnation.

³In arriving at its decision, the court considered the deeds at issue and applied Kansas state property law.

- b) With regard to plaintiffs **Julia R. Chalfant Trust** and **K.A.K. Farms, Inc.**, the railroad acquired the property in two phases. First, the railroad acquired an easement to the right of way over Section 35 from Thomas Fair. Ten years later, Julia Ann Fair (Thomas Fair's widow) executed a quitclaim deed conveying a strip of land 100' by 50' on each side of the centerline of the railroad, also in Section 35, for consideration. See Def.'s Ex. 22-4; Pls.' Appx. G (transcription). The quitclaim deed contained no use restrictions or reversionary clause. The court finds that the railroad's purchase by unrestricted quitclaim deed of a strip of land over which it already owned an easement constituted acquisition of a fee title interest in the right of way. Therefore, because no property interest in the right of way remained to revert to Julia R. Chalfant Trust and K.A.K. Farms, Inc., the court finds that those plaintiffs have no property right or interest in the subject right of way on which to base their takings claims in this action. Accordingly, the claims of Julia R. Chalfant Trust and K.A.K. Farms, Inc., are **DISMISSED**.
- c) With regard to plaintiffs **American Packaging Corporation** and **Collins Industries**, the railroad acquired the rail corridor via condemnation in 1899, and by a quitclaim deed in 1896 and two additional quitclaim deeds in 1901. See Def.'s Exs. 22-5, 22-6, 22-7. The quitclaim deeds overlap the entire length of the right of way acquired by condemnation. See Def.'s Exs. 22-14 (American Packaging map), 22-15 (Collins map). Because none of the quitclaim deeds contains any use restrictions or reversionary clause, the court finds that the railroad acquired fee title to the parcels conveyed therein, and no interest in the parcels remained to revert to the plaintiffs. Because the plaintiffs American Packaging Corporation and Collins Industries have not shown that they have a property interest in the subject right of way that was not subject to these voluntary grants of fee title to the railroad, the court finds that those plaintiffs have not demonstrated a property right or interest on which to base their takings claims in this action. Accordingly, the claims of the American Packaging Corporation and Collins Industries are **DISMISSED**.
- d) With regard to plaintiff **Dorothy Biery**, the railroad acquired one portion of the property by condemnation in 1899 and another, possibly overlapping portion by a warranty deed dated August 4, 1899 from the Phillips Investment Company ("the Phillips deed"). See Def.'s Ex. 27. It is not disputed that the railroad acquired only an easement to the portion acquired by condemnation. However, because the Phillips deed stated that it conveyed "an absolute and indefeasible estate of inheritance, in fee simple,

of and in” the premises described therein, Def.’s Ex. 27 (emphasis added), and because the deed did not contain any use restrictions or reversionary clause, the court finds that the railroad acquired fee title to the portion conveyed in the Phillips deed, and no interest in that portion of the property remained to revert to the plaintiff. It is not clear from the record whether Ms. Biery has any property interest in the subject right-of-way extending beyond that acquired by the railroad via the Phillips deed. Thus, Dorothy Biery’s claim will remain in this action only to the extent that she is able to show that she has a property interest in the subject railroad right of way that was not eliminated by the Phillips deed.

Upon receipt of the decision by the Supreme Court of Kansas, the court will contact the parties to set a schedule for resolving the remaining issues in the pending cross-motions for summary judgment.

IT IS SO ORDERED.

s/Nancy B. Firestone

NANCY B. FIRESTONE

Judge