

# **Bond Case Briefs**

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## **EASEMENTS - PENNSYLVANIA**

### **Schnarrs v. Rush Township Board of Supervisors**

**Commonwealth Court of Pennsylvania - May 31, 2019 - A.3d - 2019 WL 2306305**

Property owners brought action against township board of supervisors alleging trespass and seeking damages for use of paved area that traversed property essentially connecting parallel streets adjacent to property.

The township filed a counterclaim seeking a declaration that paved area was a public road. The Common Pleas Court entered judgment in favor of board that paved area constituted prescriptive easement and that township's use of paved area did not constitute trespass, and property owners appealed.

The Commonwealth Court held that:

- Trial court did not sua sponte consider whether paved area constituted public road under prescriptive easement theory;
- Sufficient evidence in record supported conclusion that paved area was public road by prescription;
- Trial court's lack of use of phrase "clear and positive evidence" did not require reversal of its conclusion that board established public road by prescription; and
- Trial court did not abuse its discretion by accepting testimony of board's witness over property owners' witness.

Township board of supervisors' counterclaim, which sought to establish that paved area on private property was public road, cited facts and law pertaining to both second class township code and prescriptive easement, and thus, trial court did not sua sponte consider whether paved area constituted public road under prescriptive easement theory; board alleged that paved area had been used by residents and general public for over 30 years and that such use had been "open, notorious, continuous, uninterrupted, adverse, and hostile throughout such period," board noted that legal right of public to acquire prescriptive easement in lands of another, and board cited caselaw pertaining to prescriptive easements.

Sufficient evidence in record supported conclusion that paved area traversing private property that essentially connected parallel streets adjacent to property was public road by prescription; the public, school buses, snow plows, and delivery vehicles used paved area for more than 21 years, township maintained paved area over 21 years, township never received permission to use or maintain paved area, and testimony from representatives of broader population established that public use of paved area was exercise of property right.

Trial court's lack of use of phrase "clear and positive evidence" did not require reversal of its conclusion that township board of supervisors established public road by prescription of paved area traversing private property, since use or nonuse of specific phrase was not dispositive of legal issue, trial court findings were supported by substantial evidence, and township board of supervisors proved with clear and positive evidence that paved area was public road by prescription.

Trial court did not abuse its discretion by accepting testimony of witness for township board of supervisors over allegedly conflicting testimony offered by witness for property owners, in action by property owners for trespass and damages for use of paved area on private property, since trial court had authority to make credibility determinations and resolve conflicts in evidence, and trial court was free to believe all, part, or none of evidence presented.