42533 SERVICE DATE – MARCH 4, 2013
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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 3 (Sub-No. 121X)

MISSOURI PACIFIC RAILROAD COMPANY
—ABANDONMENT EXEMPTION—
IN MORRIS AND DICKINSON COUNTIES, KAN.

Digest:[1] This decision denies as premature Petitioners' request that the Board end recreational trail use on two parcels of land they claim to own in Kansas so that they can sell one of the parcels. There is an underlying property dispute as to Petitioners' ownership of the parcels that should be resolved by a state court before the Board could address the Trails Act issues they raise.

Decided: March 1, 2013

By a petition filed on July 16, 2012, Jim and Bonnie Bowman (collectively, Petitioners) request that the Board partially vacate the notice of interim trail use (NITU) issued to the Kansas Horseman Foundation, Inc.[2] in a decision served on July 25, 1997.[3] Petitioners allege that in 2001 their company, Bowman Livestock Equipment, Inc. (Bowman Livestock), purchased two parcels of land in Herington, Kan., from Kanza, including the full-width railroad right-of-way over the two parcels, and that Bowman Livestock later transferred the land to them as principals of Bowman Livestock. Petitioners claim that, if the Board vacates the NITU for the portion of the right-of-way crossing the land, the right-of-way will become subject to the abandonment exemption authorized in this proceeding and can be disposed of in accordance with state property law. On August 2, 2012, Kanza filed a reply in opposition to the petition. For the reasons next discussed, we will deny the petition as premature.

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[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] The Kansas Horseman Foundation is now known as Kanza Rail Trails Conservancy, Inc. (Kanza). For purposes of clarity, we will refer to the Kansas Horseman Foundation and Kanza collectively as Kanza.

[3] See Mo. Pac. R.R. Co.—Abandonment Exemption—in Osage, Lyon and Morris Counties, KS, AB-3 (Sub-No. 111X) (STB served Jul. 25, 1997).

BACKGROUND

The Missouri Pacific Railroad Company (MP) filed a notice of exemption under 49 C.F.R. pt. 1152, Subpart F—Exempt Abandonments, to abandon a line of railroad (Line) extending from milepost 425.0 near Council Grove, Kan., to milepost 451.57 near Herington, a distance of approximately 26.57 miles. The notice of exemption was served on March 2, 1995, and published in the Federal Register (60 Fed. Reg. 11,995) on March 3, 1995. The exemption was scheduled to become effective on April 2, 1995. On March 31, 1995, a decision and NITU was served that reopened the proceeding to provide time for MP to negotiate an agreement with the Rails-to-Trails Conservancy (RTC) for interim trail use/rail banking under 16 U.S.C. § 1647(d) (Trails Act) and 49 C.F.R. § 1152.29 for the Line. On December 18, 1995, MP notified the Board that the Line (including the right-of-way crossing the land), bridges, and ballast had been conveyed to RTC in accordance with the Trails Act. MP stated that the conveyance was effective on December 15, 1995. By decision and NITU served April 22, 1996, the proceeding was again reopened, and the previous NITU was vacated to allow the Seranata Farms School of Equestrian Arts (Seranata) to be substituted as the new trail sponsor. Then again, by decision and NITU served on July 25, 1997, the proceeding was reopened and the April 22, 1996 NITU was vacated and Kanza was substituted for Seranata as the new trail sponsor.

Petitioners allege that Kanza sold Bowman Livestock the land in 2001. According to Petitioners, Bowman Livestock inquired about the land and was told by Charles Benjamin, who asserted that he was the executive director and attorney for Kanza, that the land was for sale for $180. Petitioners state that Bowman Livestock agreed to purchase the land, assume all back taxes, and take on any liability for the railroad right-of-way. According to Petitioners, on June 28, 2001, the parties executed a real estate contract and Mr. Benjamin conveyed the land to Bowman Livestock in exchange for the $180 sale price. Petitioners state that Mr. Benjamin subsequently left Kansas and is now deceased.

Petitioners further state that in 2004, Bowman Livestock conveyed the land to them as the principals of Bowman Livestock. Petitioners claim that they recently decided to sell one of the parcels, but have encountered title difficulties because of alleged irregularities in the Kanza-Bowman Livestock sale.

Petitioners assert that if the NITU is vacated as to the land, the portion of the right-of-way crossing the property would become subject to the abandonment exemption authorized in this proceeding and could then be disposed of in accordance with state property law once abandonment is consummated. In support of their request to vacate the NITU, Petitioners argue that no trail has been developed on the land and that, prior to their acquisition of the land, the right-of-way was overgrown and not maintained. Petitioners state, however, that should the Board grant them the relief sought, they would: (1) agree to refrain from building any structures within a minimum-width corridor of the railroad right-of-way so that the Line potentially could be reactivated, and (2) make that restriction a condition of any conveyance by the Petitioners to any subsequent purchaser of the land.

In response, Kanza argues that Petitioners do not own the land conveyed to them by quit claim deed because Mr. Benjamin did not have actual authority, or a power of attorney, from Kanza to convey the land to Bowman Livestock, making the deed conveyed to Bowman Livestock void under Kansas law. Kanza also asserts that, by their offer not to build any structures on the right-of-way and to condition any sale of the land accordingly, Petitioners appear to acknowledge that rail service could be restored in the future, and, in essence, are impermissibly seeking to be substituted as the interim trail sponsor for the portion of the right-of-way traversing the land. For these reasons, Kanza asserts that the Board should deny the petition and leave the NITU undisturbed.

DISCUSSION AND CONCLUSIONS

There is a clear dispute between Petitioners and Kanza as to the validity of the alleged sale of the land and its current ownership. Resolution of such a dispute is a matter for a state court. "[I]t is well settled that the interpretation of deeds and the determination of who owns good title to property are issues of state law that are outside the expertise of the Board." Cent. Kan. Ry.—Aban. Exemption—In Marion & McPherson Cntys., Kan., AB 406 (Sub-No. 6X), slip op. at 2 (STB served May 8, 2001). While both parties have raised issues regarding partial vacation of a NITU that are within our jurisdiction under the Trails Act, it would be premature to address these issues without a prior state court determination as to the ownership of the land.

Accordingly, we will deny the relief sought by Petitioners here. The proper course of action is for Petitioners to seek the resolution of the underlying state property law issues in an appropriate state court. If a state court finds that the alleged Kanza-Bowman Livestock sale was invalid under state law, there would be no issues for the Board to address, as Petitioners' request for partial vacation of the NITU is based on the validity of the alleged sale of the land to them by the trail sponsor. If, on the other hand, a state court were to find that there was a valid Kanza-Bowman Livestock sale under state law, the parties would need to return to the Board for consideration of the Trails Act issues.[4]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition is denied as premature.

[4] A state court decision finding the Kanza-Bowman Livestock sale to be valid and inclusive of the full-width right-of-way over the two parcels would not automatically terminate the NITU and the Board's jurisdiction over the Line. In making a determination as to the status and scope of the NITU, the Board would need to assess, based on submissions from the parties, the extent of the parties' compliance with the Trails Act regulations at 49 C.F.R. § 1152.29, as well as the impact of the Kanza-Bowman Livestock sale on future trail use and rail banking.

2. The decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.