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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

APPEAL NO.: 21-0776

THE CITY OF CHARLESTON,

Defendant Below, Petitioner,

DO NOT REMOVE FROM FILE

v.

ROBERT ROMAINE,

Plaintiff Below, Respondent.

(Appeal from the Circuit Court of Kanawha County, West Virginia; Civil Action No. 18-C-1495; The Honorable Tera L. Salango)

PETITIONER'S REPLY BRIEF

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I. INTRODUCTION

Chapter 17 of the West Virginia Code addresses roads and highways within the State of West Virginia. Article 1 of Chapter 17 of the West Virginia Code provides definitions for certain words, terms, or phrases used in Chapter 17. Under Section 3 of Article 1 of Chapter 17, the terms and phrases, "road," "public road," and "highway" are defined. In other words, W. Va. Code § 17-1-3 provides the definition for the phrase, "public road," and is useful in determining whether a road is classified as a public road or a private road.

W. Va. Code § 17-1-3 does not provide authority for compelling a municipality to maintain a road situated outside of the municipality's boundaries. Nor does it provide a mechanism for expanding the jurisdictional limits of a municipality. W. Va. Code § 17-1-3 is not useful or relevant in determining whether a municipality can be compelled to maintain a road—public or private—that falls outside of the jurisdictional limits of the municipality.

Yet, Respondent, Robert Romaine ("Romaine"), repeatedly claims that the Circuit Court of Kanawha County, West Virginia correctly interpreted and applied W. Va. Code § 17-1-3 when it held that a portion of Shannon Place, a dead-end road constructed by private parties, which is situated outside of the City of Charleston's jurisdictional boundaries, has been established as a "city road" under the statute. The effect of the circuit court's erroneous order is that the City of Charleston (the "City") has been compelled to maintain the portion of the roadway that falls outside of its jurisdictional boundaries. Romaine, citing no authority, tells this Court that it does not matter that the portion of Shannon Place the City has been forced to maintain falls outside of its jurisdictional limits because W. Va. Code § 17-1-3 makes no reference to whether a "public road" is within a municipality's jurisdictional limits. Without knowing it, Romaine has struck at the heart of the City's argument in this case: W. Va. Code § 17-1-3 provides no authority for a

circuit court to order a municipality to maintain a road that is not in the municipality. Romaine cannot identify any authority that would permit the circuit court to compel the City to maintain a section of road not within its boundaries. No such authority exists. Accordingly, this Court should reverse the circuit court's order and remand this case with instructions to the circuit court to enter an order granting summary judgment in favor of the City.

II. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument under Rule 20 is appropriate because this appeal involves issues of fundamental public importance: whether a circuit court can unilaterally expand the boundaries of a municipality and whether a municipality can be forced by a circuit court to maintain and repair a road outside of its jurisdictional limits.

III. ARGUMENT

A. There is not authority under West Virginia Code § 17-1-3 to compel a municipality to maintain a road outside of its jurisdictional limits.

In this case, Romaine argues that a circuit court has the authority under W. Va. Code § 17-1-3 to compel a municipality to maintain a road outside of its jurisdictional boundaries. (Resp. Br., 10–11.) Romaine's logic is that "nothing in [W. Va. Code § 17-1-3] references a requirement that a city road or street must first lie within the city limits before it can be conclusively established as a city's responsibility." (Resp. Br., 11.) Romaine does not identify any authority for his contention that a municipality is responsible for maintaining a road that falls outside of its boundaries. He simply argues that because W. Va. Code § 17-1-3, a definitions section, does not mention it, it must mean that a municipality can be compelled to maintain a road that falls outside of its boundaries.

Like the circuit court, Romaine conflates the phrases "city road" and "city street" with the phrase "public road." W. Va. Code § 17-1-3 defines the phrase, "public road." The statute does

not mention or provide a definition for "city road" or "city street." The statute is not relevant in determining whether a city or municipality is responsible for maintaining a road that lies outside of its boundaries. Romaine seemingly understood the difference between a "city road" or "city street" and a "public road" when he first filed this lawsuit. In his complaint, Romaine alleged that "Shannon Place is not a private roadway nor is it maintained privately by any of the adjacent property owners . . .." (JA 00002.) Thus, Romaine declared, "[t]he only issue it would appear to be decided here is whether the roadway known as Shannon Place is located within the city limits or outside said city limits in order to determine [who] has the legal duty to maintain and repair said roadway." (JA00003.) Romaine answered this question in discovery when he admitted that the portion of road in the front of his home known as Shannon Place, the portion relevant to this lawsuit, is not within City limits. (JA00143.) With that admission, the "only issue" to be decided in this lawsuit, "whether . . . Shannon Place is located within city limits" was resolved. (JA00003.) Under Romaine's own logic, articulated in his complaint, the circuit court should have granted summary judgment in favor of the City.

The text of W. Va. Code § 17-1-3 does not provide a mechanism for expanding a municipality's geographical boundaries or forcing a municipality to maintain roads outside of its boundaries. The text of the statute does not establish a procedure by which a road outside of a municipality's jurisdictional limits can be "conclusively established" as a "city road" as the circuit court held in the order that is on appeal to this Court. Romaine seeks to have this Court go beyond the legislative authority in W. Va. Code § 17-1-3 and force the City to maintain a road outside of its boundaries. W. Va. Code § 17-1-3 does not provide that authority, and Romaine fails to identify authority which would require a municipality to do so. Indeed, the Amicus Curiae brief filed in this matter suggested that the circuit court's decision appears to be based upon the doctrine of

equitable estoppel, but Romaine denies this point. (Resp. Br., 13.) Romaine claims that the circuit court's decision is based upon "black letter law created by the West Virginia legislature (W. Va. Code § 17-1-3) and not equitable estoppel." (Resp. Br., 13.)

Romaine's contention that the circuit court relied upon "black letter law" in ordering the City to maintain a road outside of its boundaries is erroneous. W. Va. Code § 17-1-3 is not "black letter law" for compelling a municipality to maintain something that is not within the municipality. It does not provide "black letter law" for forcing the City in this case to maintain portions of a road that are not within the City. W. Va. Code § 17-1-3 is useful in determining whether Shannon Place is a "public road," but its usefulness ends there. It is not useful in determining whether Shannon Place is a "city road" or a "city street." It is not useful in determining whether the City can be compelled to maintain portions of Shannon Place the lie outside of the City's boundaries. "If the language of an enactment is clear and within the constitutional authority of the law-making body which passed it, courts must read the relevant law according to its unvarnished meaning, without any judicial embroidery." Syl. pt. 3, *W. Va. Health Care Cost Review Auth. v. Boone Mem'l Hosp.*, 196 W. Va. 326, 472 S.E.2d 411 (1996). In this case, W. Va. Code § 17-1-3 should be construed as written and not as interpreted by the circuit court.

Romaine is correct that "W.Va. Code § 17-1-3 does not require a road to be within any certain geographical limits in order to be conclusively established as a public road." (Resp. Br., 3.) However, even if Shannon Place were to be established as a "public road" under the statute,[1] there is still no authority which allows a circuit court to order a municipality to maintain a "public road"

[1] The circuit court also erred when it determined that Shannon Place is a "public road." The City raises this error in this appeal. Shannon Place is a private, dead-end road that is used by or for its residents. However, it is not necessary for this Court to decide the issue of whether Shannon Place is a public or private road because the only portion of Shannon Place at issue in this action is indisputably outside of the limits of the City.

that falls outside of the municipality. Romaine does not identify any such authority in his brief to this Court, and the circuit court did not identify such authority in its order.

Romaine's argument that he receives other City services and therefore the City should be responsible for the portion of Shannon Place outside of the City is misleading. The fact that Romaine, a City resident, receives City services has no bearing on whether the City is responsible for maintaining the portion of Shannon Place that lies outside of the City's boundaries. Of course, Romaine, as a resident of the City, receives City services. He is a City resident, votes in City elections, and pays City fees. Whether Romaine receives City services is entirely different than whether the circuit court in this case can force the City to maintain a portion of a road that falls outside of the City.

Romaine's position that "precedent has been set for [the City] to spend money on roads that are not City roads" is also misleading. (Resp. Br., 4.) The City did agree to expend funds on Oakwood Road in 2019. Oakwood Road is a state road, and the West Virginia Division of Highways did fund half of the 2019 project. What Romaine fails to mention is that Oakwood Road is entirely within the City. Unlike Shannon Place, the portion of Oakwood Road that the City expended money on to repair in 2019 was and is entirely within the jurisdictional limits of the City. Furthermore, the City's decision to spend its funds on maintaining Oakwood Road is entirely different than the judicial branch ordering the City to maintain a road that is not located within the City's boundaries.

Romaine does not identify statutory authority or any authority which would require the City in this case to maintain a portion of property located outside of its boundaries. Knowing that Shannon Place is not physically within the City's jurisdictional limits, Romaine distorts the language of the statute by claiming that "Shannon Place has been conclusively established as a

City street by virtue of the public having used the street for a period of over ten years and [the City] expending public moneys and labor to maintain the street and provide services to the residents along the street – just as W. Va. Code § 17-1-3 requires." (Resp. Br., 11–12.) (Emphasis added.) But W. Va. Code § 17-1-3 does not define the phrase "city street." Nor does it provide a mechanism for converting a street that is otherwise outside of a municipality's jurisdictional limits into a "city street." Moreover, the statute is not intended to serve as a back door for annexation or adjusting a municipality's boundary line. Yet, under Romaine's argument, and the circuit court's erroneous order, W. Va. Code § 17-1-3 has been used to do just that. In its order, the circuit court has effectively extended the boundary line of the City by compelling the City to maintain a portion of a road that is located outside of its limits.

The circuit court's order sets precedent to allow courts to expand the boundaries of municipalities and force municipalities to maintain and repair roads or other property not within their jurisdictional limits. No such authority exists that allows such a sweeping change. Accordingly, this Court should reverse the circuit court's order.

B. Romaine failed to join all necessary property owners whose property rights were directly affected by the circuit court's decision.

The circuit court effectively confers ownership of (and the duty to maintain) Shannon Place to the City without concern for the owner of the property. To do so is a direct violation of the West Virginia Constitution and the property rights of the owner of the road and the right-of-way. *See* W. Va. Const. art 3, §10.

In response to this argument, Romaine, again, cites W. Va. Code § 17-1-3 as the "be-all, end-all." Romaine contends that "[n]owhere in [the statute] does the West Virginia Legislature articulate that it matters who owns a portion of a road if it has been used by the public for ten years or more." (Resp. Br., 24.) Romaine fails to address the fact that the United States Constitution and

West Virginia Constitution guarantee that no person shall be deprived of life, liberty, or property without due process of law. W. Va. Const. art 3, § 10, U.S. Const. amend. XIV. The Framers believed that being deprived of property was equally as reprehensible and odious as being deprived of life or liberty. *See W. Va. Dep't of Transp. v. Contractor Enters.*, 223 W. Va. 98, 104, 672 S.E.2d 234, 240 (2008) (Maynard, J., dissenting).

The issue presented here was addressed by this Court in *O'Daniels v. City of Charleston*, 200 W. Va. 711, 490 S.E.2d 800 (1997). In that case, the City of Charleston appealed a ruling from the circuit court issuing a writ of mandamus involving real property in the absence of the property owners whose rights were directly impacted. *Id.* at 715, 490 S.E.2d at 804. This Court found that it was error for the circuit court to do so and reversed its decision. *Id.* This Court held that it is "axiomatic that when a court proceeding directly affects an interest in real property, any persons who claim an interest in the real property at issue are necessary parties to the proceeding. Therefore, any decree issued in the absence of those parties is void." *Id.* at 716, 490 S.E.2d at 805.

The City does not own Shannon Place. The original tract of land was purchased and placed into trust by Keith O. Bryant. (JA00145–JA00168.) Following Mr. Bryant's death, Roger Dale Monk Builders, Incorporated acquired the property and developed the subdivision where Romaine's home and Shannon Place are located. (JA00145–JA00168.) There is no evidence that the road or right-of-way was ever transferred to the City. Romaine admits that Monk failed to deed "common areas," i.e., Shannon Place, to the City after completion of the development. (JA00179.) There is no record that anyone other than Roger Dale Monk Builders, Incorporated owns the road in question.[2]

[2] Romaine contends that Roger Dale Monk died on July 29, 2018, and that his business entity is no longer active. (Resp. Br., 5) This does not mean that the property interests he held at the time of his death would be extinguished.

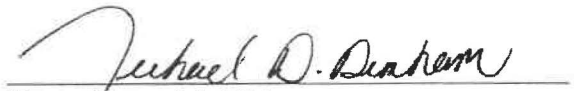
The circuit court's order effectively confers ownership of Shannon Place to the City without concern for the owner of the property. The circuit court's order would have the City enter onto private property located outside its jurisdictional boundary with heavy equipment, jackhammering through the cement and moving soil on property owned by persons who were never made parties to this declaratory judgment action. To do so is a direct violation of the West Virginia Constitution and the property rights of the owner of the road and the right-of-way.

The City cannot take ownership of Shannon Place without destroying the property rights of its lawful owner. The circuit court was therefore required to include its lawful owner, and any other persons who claim an interest in the property, as parties to the underlying proceeding. It was reversible error for it to fail to do so.

IV. CONCLUSION

For the reasons discussed herein, the City of Charleston requests that this Court reverse the circuit court's *Order Granting Plaintiff's Cross-Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment* and remand the matter to the circuit court with direction to grant the City of Charleston's summary judgment motion.

CITY OF CHARLESTON
By Counsel



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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of March 2021, I served the foregoing ***"Petitioner's Reply Brief"*** on the following counsel of record via United States mail, with first-class postage prepaid, in an envelope addressed as follows:

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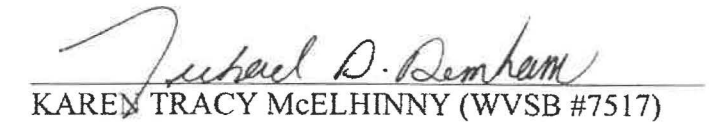

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