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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ROBERT ROMAINE,

Plaintiff,

vs.

Civil Action No. 18-C-1495
The Honorable Tera L. Salango

CITY OF CHARLESTON,

Defendant.

**ORDER GRANTING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

On the 3rd day of August, 2021, came the parties by their respective counsel for a hearing on their duly noticed Cross-Motions for Summary Judgment. Upon reviewing all of the pleadings with exhibits as well as hearing the argument of counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff seeks a Declaratory Judgment from this Court that the City of Charleston is responsible for repair and maintenance of the street on which he resides, Shannon Place.
2. The parties agree there are no material facts in dispute.
3. Plaintiff purchased a home in the Shadow Hills subdivision in the City of Charleston on a roadway known as Shannon Place located in the Shadow Hills Suddivision.
4. The purchase occurred on or about January 15, 2016 by Deed from Kathy Toma of record with the Kanawha County Clerk at Deed Book 2930, Page 819.
5. The property description contained in the deed prepared by Attorney Robert P. Howell specifically references a "Final Map Showing Shadow Hills Subdivision. . ." in Photostatic Map Book 47.

6. The parties agree that the section of Shannon Place on which Plaintiff's home is situated lies outside the Charleston city limits. However, one or more homes on the street are located within the borders of the City of Charleston.

7. It appears from the property description in the deed that the subdivision was created in or around 1992.

8. Since Dr. Romaine purchased the home at 16 Shannon Place from Kathy Toma in 2016, he and his wife and children have continuously lived there.

9. They have voted in various city elections.

10. The road has been open to the public and used by various delivery and service providers.

11. Dr. Romaine receives monthly bills for City of Charleston Fees and defendant City provides a number of services to Dr. Romaine, including: sewage, refuse collection, recycling, road maintenance including snow removal, salt application and leaf collection, street sweeping, yard waste removal and Christmas tree removal and Dr. Romaine receives City Fees invoices. Further, on one occasion when Dr. Romaine's home security system was inadvertently activated, Charleston Police Department promptly responded.

12. The City of Charleston presented affidavits of Brent Webster, Director of Public Works and William Tate, Deputy Director of the Street Department, who each testified that the City of Charleston has never authorized any snowplowing, street sweeping, salt application, or other road maintenance on any portion of Shannon Place located outside of the City of Charleston's borders. This conflicts with Plaintiff's evidence showing such services having been provided for a number of years.

13. Shannon Place is in need of repair.

14. Photographs submitted by Plaintiff depict conditions that will likely worsen with time and will not improve without repair work.

15. To date, no repairs have been made.

16. When Dr. Romaine brought the street's condition to the attention of Defendant City, he was told that it was not a city street and that it could only be annexed after it was repaired.

17. It is not disputed that the portion of Shannon Place in front of Plaintiff's home is outside the city limits, leaving at least part of the area in need of repair outside the city limits.

18. Despite Defendant City's denial of responsibility for maintenance of Shannon Place, the evidence indicates that the Romaines and other Shannon Place residents have, for many years, received various city services, including the former owner of Plaintiff Romaine's home, Kathy Toma.

19. Ms. Toma resided at 16 Shannon Place from 2006 through 2016.

20. Similar to the Romaines, she voted in City elections, received monthly invoices for City of Charleston Fees, and received services such as refuse collection, sewer, recycling, and road maintenance from Defendant City.

21. Other residents have had the same experience with City services on Shannon Place.

22. In addition, the street sign marking Shannon Place, presumably placed by the Defendant, is adorned with the seal of the City of Charleston.

23. Plaintiff submitted photographic evidence of a City street sweeper in front of Romaine's house and a photograph of the City recycling truck entering Shannon Place.

24. When the Romaines purchased the home at 16 Shannon Place, the property was listed by Old Colony.

25. Old Colony Property Data associated with the listing was submitted in evidence.

26. This document shows multiple city services provided including Police, refuse and most importantly, road ownership by Defendant City and that the property is in the city.

27. Despite the Defendant's protest, precedent has been set whereby defendant City of Charleston agreed to spend money on roads that lie, at least in part, outside of the city limits.

28. In 2019, Defendant City of Charleston partnered with the West Virginia Division of Highways to pave Oakwood Road, which all parties agree lies both without and within the City of Charleston.

29. On July 15, 2019, City Council introduced Resolution No. 222-19 for the Defendant City to expend funds on the Oakwood Road project and to seek 50% reimbursement from the WVDOH.

30. Councilmember Minardi astutely observed that the resolution would set the precedent of the City paying to pave roads it did not own.

31. Defendant City argued that the Oakwood Road project was an exception due to the high volume of city residents that use Oakwood Road to access George Washington High School and that any City funds expended on the repair work were applied only to the portion of the road within City limits. Further, the Defendant City argues that Shannon Place is dissimilar to Oakwood road based on markedly lower traffic and public utilization.

32. Defendant City asserts that Rodger Dale Monk Builders, Inc. ("Monk") is the owner of Shannon Place, having acquired the same by deed in 1991.

33. Monk developed the neighborhood and was to have deeded the common areas to Defendant City upon completion of the development.

34. He failed to do so.

35. Rodger Dale Monk passed away on July 29, 2018 and Monk has been terminated as a business by the West Virginia Secretary of State.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to make this determination in favor of Plaintiff pursuant to W.Va. Code §55-13-1, et seq., known as the Uniform Declaratory Judgment Act, which confers upon courts the right to declare the rights of parties to a dispute such as this.

2. In particular, any citizen whose rights are affected by a statute or ordinance may have a court determine the construction of that statute or ordinance. W.Va. Code §55-13-2.

3. Defendant City contends that the road is outside their limits, and therefore an unestablished road pursuant to W.Va. Code §17-1-3, and consequently, the responsibility of the road's owner and not the City of Charleston.

4. Considering the evidence before it, including affidavits submitted by the Plaintiff, as well as the applicable law, the Court finds that Shannon Place is a public roadway.

5. Therefore, under West Virginia law, it is either a City street or State road.

6. Pursuant to Chapter 2, Article IV, Div. 8, Sec. 2.281 of the Defendant City of Charleston Municipal Code, Defendant City is responsible for the streets within its jurisdiction through the Director of Public Works.

7. By Affidavit of Sandra S. Wanless of Defendant WVDOH submitted with its Response to Petition of Declaratory Action, WVDOH does not own or maintain Shannon Place.

8. While Defendant City of Charleston maintains that Shannon Place is owned by Rodger Dale Monk Builders, Inc., no evidence establishing such ownership is before this Court.

9. Defendant City further relies upon a survey indicating that Shannon Place is outside its jurisdiction and therefore not its responsibility.

10. Defendant City argues that Shannon Place has not been “established” as a city street pursuant to W.Va. Code §17-1-3.

11. W.Va. Code §17-1-3 provides:

“Any road shall be conclusively presumed to have been established when it has been used by the public for a period of ten years or more, and public moneys or labor have been expended thereon, whether there be any record of its conveyance, dedication or appropriation to public use or not.” (Emphasis added).

12. Defendant City has collected fees and taxes, and in return has provided services to the residents of Shannon Place.

13. Per the statute, it matters not whether there has been a formal conveyance or dedication of Shannon Place.

14. What matters are the nearly 30 years of action by Defendant City.

15. In the instant matter, the evidence demonstrates that Shannon Place has been conclusively established as a City street by virtue of its usage and the provision of City services over the course of its 30-year existence.

16. Defendant City argues that any maintenance performed on Shannon Place was not authorized, citing a storm water management plan request that was denied. However, the Memo only identifies that a portion of Shannon Place is outside the city limits.

17. The City further argues that snow plowing, street sweeping, and salt application, though occurring, were not authorized.

18. Nearly thirty years of providing services is fairly conclusive evidence that such actions were either expressly or tacitly authorized.

19. Defendant also argues that such expenditures were sporadic and not consistent. This argument fails to consider that services of this nature – snow removal and tree limb removal – are seasonal in nature and would only be sporadically necessary.

20. Further, the City's insignia remains a constant on the Shannon Place street sign. The street sign does not distinguish to the public at large that any portion of Shannon Place is outside the city limits, and thereby outside its control or maintenance.

21. To the extent such services as snow removal and treatment and tree limb removal are sporadic, they are so because we are fortunate to live in a climate where snow removal and tree limb removal are not needed on a daily basis, but rather only seasonally.

22. Defendant relies on a Memo from David Alvis, Planning Director to Mark Holstine, Public Works Director, dated January 8, 1997, and attached to its *Motion*.

23. Defendant asserts that this Memo is evidence that any maintenance or repairs to Shannon Place were not authorized. However, evidence proffered by Plaintiff shows that maintenance has been provided since 1997.

24. Nowhere in the Memo is anyone specifically directed not to provide city services to that portion of Shannon Place that lies outside the city limits.

25. Additionally, Defendant relied on an Engineering Department Inspection and Work Request dated May 7, 1996 in support of its argument that Defendant City has in the past not authorized maintenance at Shannon Place.

26. But, per the Deeds submitted in support of Defendant's *Motion*, Monk Builders did not acquire the land upon which the subdivision was built until 1993.

27. Refusing a work request in 1996, only three years after the acquisition of the property by the builder, fails to account for the Defendant's actions in providing consistent services to Shannon Place from 1996 to the present – a period of twenty-five years; a period sufficient to conclusively establish it as a city road under W.Va. Code §17-1-3.

28. Accordingly, Defendant City is and should be responsible for the much-needed repairs to the entirety of Shannon Place.

29. Defendant City has treated Shannon Place as a City street for nearly 30 years, collecting fees and providing services.

30. The Court has considered a request for costs and has determined that no costs shall be awarded.

31. This is a final and appealable Order and the Pre-trial Conference and Trial set for this matter are hereby cancelled and the Clerk is directed to remove this matter from the active docket.

32. The Court notes the exceptions and objections of all parties to any adverse ruling.

33. The Clerk is directed to send a true copy of this Order to all counsel of record.

ENTERED 30th day of August, 2021.



TERA L. SALANGO, JUDGE

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. CATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 31
DAY OF August
Cathy S. Catson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 