

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jason Paul	:	
	:	
v.	:	C-2020-3019169
	:	
Norfolk Southern Railway Company	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants preliminary objections filed by various respondents who argued that the Commission lacks jurisdiction to hear complaints regarding property disputes alleged in the instant complaint. Even when accepting as true all well pleaded material facts in the complaint, and all reasonable inferences from those facts, and viewing the complaint in the light most favorable to the complainant, the complainant is not entitled to any relief as a matter of law. The complaint will, therefore, be dismissed.

HISTORY OF THE PROCEEDING

On February 18, 2020, Jason Paul filed a formal complaint with the Pennsylvania Public Utility Commission against Norfolk Southern Railway Company (Norfolk), docket number C-2020-3019169. In his complaint, Mr. Paul averred, among other things, that there is a “vague deed from Pennsylvania Lines LLC that is illegible.” Mr. Paul added that runoff from “PA/Norfolk Southern Rail is heavy metal runoff from old pipes and not necessary.” Mr. Paul

requests that he be provided a legible deed and that the railroad company relinquish all claims to his land.

By Secretarial Letter date March 12, 2020, the formal complaint was served on Norfolk, as well as the Borough of Boswell (Boswell), Somerset County, Westmoreland County and the Pennsylvania Department of Transportation (PennDOT).

Subsequently, multiple preliminary documents were filed, including several preliminary objections. For example, on April 21, 2020, Norfolk filed a preliminary objection arguing that the Commission lacks subject matter jurisdiction over private disputes of real property rights. Norfolk added that the Commission has determined that it is not the proper forum for resolving property rights controversies but, rather, such controversies are a matter for a court of general jurisdiction. Norfolk requested that the complaint be dismissed for lack of subject matter jurisdiction.

Also on April 21, 2020, Boswell filed preliminary objections alleging that the complaint is legally insufficient. Boswell argued that, as a political subdivision, it is offered broad protections under the Sovereign Immunity Act and the Political Subdivision Tort Claims Act. Boswell added that the complaint does not set forth any claim which may be reasonably construed, even when construing the complaint in the light most favorable to Mr. Paul, and that the complaint fails to state a claim upon which relief can be granted. Boswell also argued that the Commission lacks subject matter jurisdiction to hear a quiet title action and that Mr. Paul failed to join a necessary party – the Westmoreland County Recorder of Deeds Office. Boswell next argued that the complaint is insufficiently pleaded because, on its face, the complaint fails to state any facts or claims that relate to Boswell. Boswell concludes that the complaint should be dismissed.

Also, on May 11, 2020, Westmoreland County filed a preliminary objection arguing that Mr. Paul's complaint is legally insufficient because, among other things, the alleged deed at issue is a public record in Westmoreland County and it merely being vague and illegible as recorded is not a legal claim, let alone a claim to be made against Westmoreland County.

Westmoreland County also argued that the Commission lacks jurisdiction to hear the complaint as the gist of the matter asserted is a quiet title action, which is not within the jurisdiction of the Commission. Westmoreland also argued that the complaint lacks sufficient specificity to state any claim against Westmoreland. Westmoreland requested that the complaint be dismissed.

Mr. Paul provided various responses to these preliminary pleadings. On April 28, 2020, Mr. Paul filed a response to Boswell's preliminary objections noting that his complaint is related solely to Norfolk and asked that Somerset County, PennDOT and Boswell be removed as parties to this proceeding. In an undated document, Mr. Paul filed a response to Norfolk's preliminary objection noting that Norfolk failed to properly serve him. Mr. Paul also argued that the complaint is well founded in law, noting Section 2709 of the Public Utility Code pertains to dispositions of real property.

In an effort to give Mr. Paul an opportunity to respond orally to the various motions, in addition to his written responses, and to encourage settlement amongst the parties, on May 4, 2020, the Commission issued a prehearing conference notice establishing a telephonic prehearing conference for this matter for Tuesday, May 19, 2020 and assigning me as the presiding officer. A prehearing conference order was issued on the same date setting forth rules that would govern the prehearing conference.

By email to Secretary Chiavetta on May 19, 2020 at 6:26 a.m., however, Mr. Paul indicated that he would be unable to attend the prehearing conference because he was sick and in the hospital. By email to the parties, the prehearing conference was cancelled. An order was issued dated May 20, 2020 rescheduling the hearing to June 8, 2020. On May 20, 2020, a hearing notice was issued formally rescheduling the hearing to June 8, 2020.

By email on May 27, 2020, Mr. Paul requested an extension until June 10, 2020 of the prehearing conference due to health issues. On May 29, 2020, a hearing notice was issued changing the hearing from June 8, 2020 to June 10, 2020, again at 10:00 a.m.

Finally, it is noted that on June 8, 2020, Mr. Paul filed a “Motion for Discontinuance,” noting that the reason for his request is that he is “unable to have pursuit to justice.” Mr. Paul also stated that he did not have time to discuss his motion with opposing counsel. While this document was posted on the Commission’s website as a request to withdraw the complaint, it is unclear whether Mr. Paul sought to withdraw the complaint or to request to have the hearing rescheduled again. In an abundance of caution, and given that the prehearing conference was two days later, the prehearing conference proceeded as scheduled.

The prehearing conference convened on June 10, 2020, as scheduled. Benjamin C. Dunlap, Esquire appeared on behalf of Norfolk; Gina D’Alfonso, Esquire appeared on behalf of PennDOT; David Regoli, Esquire appeared on behalf of Westmoreland County; Andrew Snyder, Esquire appeared on behalf of Boswell; and Michael Barbera, Esquire appeared on behalf of Somerset. Neither Mr. Paul, nor anyone on his behalf, appeared at the prehearing conference. A transcript of 12 pages was created.

The record in this case closed on June 16, 2020, when the transcript was submitted to the Commission. As discussed further below, the complaint will be dismissed based on the preliminary objections.

FINDINGS OF FACT

1. The Complainant in this case is Jason Paul.
2. On February 18, 2020, Mr. Paul filed a formal complaint against Norfolk Southern Railroad Company averring that there is a vague deed from Pennsylvania Lines, LLC that is illegible.
3. On March 12, 2020, the complaint was served on Norfolk, Borough of Boswell, Somerset County and the Pennsylvania Department of Transportation.

4. On April 21, 2020, Norfolk filed a preliminary objection in response to the complaint.
5. On April 21, 2020, Borough of Boswell filed preliminary objections in response to the complaint.
6. On May 11, 2020, Westmoreland County filed preliminary objections in response to the complaint.
7. On April 28, 2020, Mr. Paul filed a response to Boswell's preliminary objections.
8. In an undated document, Mr. Paul filed a response to Norfolk's preliminary objection.
9. On May 4, 2020, a hearing notice was issued setting a prehearing conference for this matter for May 19, 2020.
10. On May 4, 2020, a prehearing order was issued.
11. On May 20, 2020, the prehearing conference was rescheduled to June 8, 2020.
12. On May 29, 2020, the prehearing conference was rescheduled to June 10, 2020.
13. Each hearing notice issued stated "you may lose this case if you do not take part in this hearing and present facts on the issues raised."
14. The prehearing order stated, among other things "Failure of a party to participate in the conference, after being served with notice of the time thereof, without good

case shown, shall constitute a waiver of all objections to the agreements reached and an order or ruling with respect thereto.”

15. Neither Mr. Paul nor anyone on his behalf appeared at the prehearing conference.

DISCUSSION

Section 5.101 of the Commission’s rules of administrative practice and procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). Section 5.101(a) provides:

- (a) *Grounds*. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:
- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
 - (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
 - (3) Insufficient specificity of a pleading.
 - (4) Legal insufficiency of a pleading.
 - (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
 - (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
 - (7) Standing of a party to participate in a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth, 490 A.2d 402 (Pa. 1985); Commonwealth v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Mr. Paul and should dismiss the complaint only if it appears that Mr. Paul would not be entitled to relief under any circumstances as a matter of law. Equitable, supra; *see also*, Interstate Traveler Services, Inc. v. Pa. Dep't of Environmental Resources, 406 A.2d 1020 (Pa. 1979). If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a)

In this case, Mr. Paul stated in his complaint that he is having a reliability, safety or quality problem with his utility service and added “I want a legible or readable copy of deed 3678-312.” Mr. Paul added that “the runoff from PA/Norfolk Southern Rail is heavy metal runoff from old pipes not updated and not necessary.”

The preliminary objections filed by Norfolk, Boswell and Westmoreland County arguing that the complaint should be dismissed because the Commission lacks jurisdiction to hear the issues raised will be granted and the complaint will be dismissed. Even when accepting as true all well-pleaded material facts in the complaint, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Mr. Paul, Mr. Paul is not entitled to relief under any circumstances as a matter of law.

As a preliminary matter, it is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth. 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling

legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

In his complaint, Mr. Paul averred that he would like a legible copy of a deed and there is heavy metal runoff from old pipes. As Norfolk, Boswell and Westmoreland argued, the Commission lacks jurisdiction to hear such arguments. Boswell is correct that the gist of the matter asserted by Mr. Paul is a quiet title action which the Commission lacks jurisdiction to hear. The Commission regulates and enforces the safety of railroad crossing and is not vested with the authority over a boundary dispute or runoff from old pipes. The Commission lacks subject matter jurisdiction over private disputes of real property rights. Boczar v. PPL Electric Utilities Corporation, Docket No. C-20016332 (Opinion and Order entered Feb. 10, 2003). The Commission is not the proper forum for resolving property rights controversies; rather, such controversies are a matter for a court of general jurisdiction. Scott v. Pennsylvania-American Water Co., Docket No. C-2016-2529902 (Initial Decision dated May 18, 2016; Final Order dated July 14, 2016). As a result, even when accepting as true as well pleaded material facts from Mr. Paul's complaint, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Mr. Paul, the Commission lacks jurisdiction to hear the claims made in the complaint and the complaint must be dismissed.

As a result, since the complaint will be dismissed based on the Commission's lack of subject matter jurisdiction, the preliminary objections raised regarding legal insufficiency, insufficient specificity and non-joinder of a necessary party are moot. It is further noted that Mr. Paul was given notice and opportunity to be heard in response to the preliminary objections during the prehearing conference but decided not to avail himself of that opportunity. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are afforded notice and the opportunity to be heard. Id. No one appeared on behalf of Mr. Paul at the date and time set for the prehearing conference when he was given an opportunity to respond orally to the preliminary motions. As a result, Mr. Paul will be deemed to have waived the opportunity to participate in the conference. *See*, 52 Pa. Code § 5.245(a)(1). A hearing is not necessary. 66 Pa.C.S. § 703(a).

As such, even when accepting as true all well pleaded material facts in the complaint, and all reasonable inferences from those facts, and viewing the complaint in the light most favorable to Mr. Paul, Mr. Paul is not entitled to any relief as a matter of law. The Commission lacks subject matter jurisdiction to hear complaints regarding property disputes. Therefore, Mr. Paul's complaint must be dismissed.

CONCLUSIONS OF LAW

1. Section 5.101 of the Commission's rules of administrative practice and procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101.

2. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenor v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

3. Preliminary objections are available to parties, may be filed in response to a pleading except motions and prior preliminary objections, must state specifically the legal and factual grounds relied upon and may include lack of Commission jurisdiction or improper service of the pleading initiating the proceeding. 52 Pa.Code § 5.101(a)(1)-(7).

4. For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth, 490 A.2d 402 (Pa. 1985); Commonwealth v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988).

5. The Commission must view the complaint in this case in the light most favorable to Mr. Paul and should dismiss the complaint only if it appears that Mr. Paul would not be entitled to relief under any circumstances as a matter of law. Interstate Traveler Services, Inc. v. Pa. Dep't of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

6. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a).

7. As a preliminary matter, it is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super. 1945).

8. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967).

9. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth. 1992).

10. As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.*

11. The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

12. The Commission lacks subject matter jurisdiction over private disputes of real property rights. Boczar v. PPL Electric Utilities Corporation, Docket No. C-20016332 (Opinion and Order entered Feb. 10, 2003)

13. The Commission is not the proper forum for resolving property rights controversies; rather, such controversies are a matter for a court of general jurisdiction. Scott v. Pennsylvania American Water Co., Docket No. C-2016-2529902 (Initial Decision dated May 18, 2016; Final Order dated July 14, 2016).

14. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. Pub. Util. Comm'n., 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. Id.

15. Even when accepting as true all well pleaded material facts in the complaint, and all reasonable inferences from those facts, and viewing the complaint in the light most favorable to Mr. Paul, Mr. Paul is not entitled to any relief as a matter of law.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Norfolk Southern Railway Company, the Borough of Boswell and Westmoreland County at docket number C-2020-3019169 are granted.

2. That the formal complaint filed by Jason Paul against Norfolk Southern Railway Company on February 11, 2020 at docket number C-2020-3019169 is hereby dismissed.

3. That this matter be marked closed.

Date: July 16, 2020

_____/s/_____
Joel H. Cheskis
Deputy Chief Administrative Law Judge