In The

Supreme Court of Virginia

RECORD NO. 090989

SHIRLEY ANN "SISSY" BAILEY,

Appellant,

v.

TOWN OF SALTVILLE,

Appellee.

BRIEF OF APPELLANT

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SHIRLEY ANN "SISSY" BAILEY,	}	
	}	
Appellant,	}	
	}	
v.	}	Record No. 090989
	}	
	}	
TOWN OF SALTVILLE,	}	
	}	
Appellee.	}	

OPENING BRIEF OF APPELLANT

I. NATURE OF THE CASE AND MATERIAL PROCEEDINGS

Shirley Ann Bailey petitions for appeal from an opinion and order of the Circuit Court of Washington County quieting title in the Town of Saltville to a strip of land formerly included in a railroad right-of-way.[1]

Saltville commenced this suit by filing a Complaint on March 8, 2006. Appendix at 1. Bailey filed her Responsive Pleadings on March 29, 2009. Appendix at 31. Following other filings not pertinent to this appeal, Saltville moved for

[1] The Appellant's legal name is Shirley Ann Bailey; Saltville's complaint included her nickname, "Sissy." For clarity and convenience, the nickname will be generally omitted from this petition.

summary judgment on April 17, 2006. Appendix at 53. Bailey filed a reply to Saltville's motion for summary judgment on April 24, 2006, and filed her own motion for summary judgment with exhibits on July 17, 2006. Appendix at 57. The motions were based in material part on documents in the recorded chains of title of the parties and certain other matters which were not contested.

The parties filed memoranda of law and argued the motions before the Circuit Court of Washington County on July 24, 2006. The Town's claim of title to the strip of land is based on a quitclaim deed of donation from Norfolk & Western Railway to Saltville in 1994. The threshold issue was whether a 1909 deed from Bailey's predecessor in title to Norfolk & Western Railway conveyed an easement or a fee. A contemporaneous 1909 agreement between those parties called for the conveyance of a "right of way" for a "branch of railroad."

The Circuit Court subsequently issued a letter opinion dated December 15, 2006, holding for the Town of Saltville. Appendix at 78. That letter

opinion was referenced in and attached to the Circuit Court's interlocutory order granting partial summary judgment entered on January 3, 2007. Appendix at 83. Defendant added a typewritten statement to the signature page of that order, preserving all objections and including a specific objection that the Circuit Court's reliance on a 1956 Oregon case and the Federal cases cited therein was legally erroneous.[2] Appendix at 85.

Based on an agreement of the parties, the Circuit Court entered a Final Order on February 18, 2009, holding that the Court's "opinion dated December 15, 2006, and the Court's order entered on January 3, 2007, are now FINAL for the purposes of appeal." Appendix at 86. This appeal followed.

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[2] Two other issues treated in the Circuit Court's letter opinion - - the lack of a proper description in the deed to Saltville and the actions of predecessors in interest such as the filing of a plat in 1925 - - are not raised on this appeal. The Circuit Court did not reach the issue of whether the easement had reverted to the Defendant.

II. ASSIGNMENTS OF ERROR

1. Where a 1909 Agreement and a 1909 Deed between the predecessors in title of the parties were executed on the same day; where the 1909 Agreement stated that the deed was to convey a "right of way;" where the Deed and Agreement both specified that the conveyance was for a "railway;" and where the property conveyed by the 1909 Deed was described by a center-line course and widths, but not by a metes-and-bounds description, the Circuit Court erred in holding that the 1909 Deed conveyed a fee simple interest to the railway company. Defendant's Responsive Pleadings - Counterclaim, Appendix at 37-38; Defendants Motion for Summary Judgment, Appendix at 57-59; Transcript, July 24, 2006, Appendix at 69, 71, 74-77; Order entered January 3, 2007, Appendix at 85.

2. Where the established meaning of the term "right of way" at the time of the 1909 transaction here at issue held that the conveyance of a "right of way" to a railway company conveyed only an easement, and not a fee, the Circuit Court erred in

holding that the 1909 Deed, even when considered with the 1909 Agreement, conveyed a fee simple interest to the railway company. Defendant's Motion for Summary Judgment, Appendix at 57-59; Transcript, July 24, 2006, Appendix at 69, 73-76; Order entered January 3, 2007, Appendix at 85.

3. The Circuit Court of Washington County erred in determining the intention of the grantors in a 1909 agreement and 1909 deed conveying a "right of way" for a "single-track railway" by reference to a case decided by the Supreme Court of Oregon in 1956 holding that a particular right of way was a conveyance in fee, where such a rule of decision had not been adopted in Virginia prior to the 1909 transaction here at issue. Transcript, July 24, 2006, Appendix at 76-77; Order entered January 3, 2007, Appendix at 85.

4. The Circuit Court of Washington County erred in determining the intention of the grantors in a 1909 Agreement and 1909 Deed conveying a "right of way" for a "single-track railway" by reference to Federal cases based on Federal law and

dissimilar circumstances holding that a "right of way" included a conveyance in fee, where such a rule of decision had not been adopted in Virginia prior to the 1909 transaction here at issue. Transcript, July 24, 2006, Appendix at 70-73; Order entered January 3, 2007, Appendix at 85.

III. QUESTIONS PRESENTED

1. Where the a 1909 Agreement and a 1909 Deed between the predecessors in title of the parties were executed on the same day, the Deed stating that the conveyance was for a "single-track railway;" the 1909 Agreement expressly stated that the deed was to convey a "right of way;" and the property conveyed by the 1909 Deed was described by a center-line course and widths, but not by a metes-and-bounds description, did the Circuit Court of Washington County err when it held that the 1909 Deed conveyed a fee simple interest to the railway company? Assignment of Error 1.

2. Where the established meaning of the term "right of way" at the time of the 1909 transaction here at issue held that the conveyance of a "right

of way" to a railway company conveyed only an easement, and not a fee, did the Circuit Court err in holding that the 1909 Deed, even when considered with the 1909 Agreement, conveyed a fee simple interest to the railway company? Assignment of Error 2.

3. Did the Circuit Court of Washington County err in determining the intention of the grantors in the 1909 Agreement and 1909 Deed conveying a "right of way" for a "single-track railway" by reference to a case decided by the Supreme Court of Oregon in 1956 holding that a right of way included a conveyance in fee, where such a rule of decision had not been adopted in Virginia prior to the 1909 transaction here at issue? Assignment of Error 3.

4. Did the Circuit Court of Washington County err in determining the intention of the grantors in the 1909 Agreement and 1909 Deed conveying a "right of way" for a "single-track railway" by reference to Federal cases based on Federal law and dissimilar circumstances holding that a "right of way" included a conveyance in fee, where such a rule of

decision had not been adopted in Virginia prior to the 1909 transaction here at issue? Assignment of Error 4.

IV. STATEMENT OF FACTS

Both parties in this action claim legal title to a parcel of land that was formerly part of the Norfolk & Western Railway's Saltville branch line. The right-of-way at issue traversed a larger parcel of land that was owned in 1909 by James L. White and Kate R. White. Both parties trace their chains of title to the Whites. Appendix at 1-11.

In 1909, the Whites and Norfolk & Western came to an agreement to settle a dispute over the extent of an 1856 right-of-way across the White tract. Appendix at 62. In July of 1909, the parties executed an agreement and a deed to resolve the dispute. The deed sets forth the purpose of the transaction, that is, for a "single-track railway." Appendix at 66. Both the agreement and the deed were recorded in the Office of the Clerk of the Circuit Court of Washington County, Virginia. The

agreement, but not the deed, expressly uses the term "right of way." Appendix at 62-63.

In 1984, due to the collapse of mine workings, the Saltville Branch became unusable. Norfolk & Western Railway applied to the Federal Surface Transportation Board for abandonment of the line. This application was not merely for discontinuance of service, but was for permanent abandonment of the Saltville Branch from Glade Spring to Saltville. The application was granted in 1991. Thereafter, the Norfolk & Western Railway in 1994 gave to the Town of Saltville a quitclaim "deed of donation" for its rights in the Saltville Branch right-of-way. Appendix at 19.

As set forth in its Complaint, the Town of Saltville does not plan to operate a single-track railway line, but wants to "convert the railroad line into a public recreation trail." Complaint, ¶ 26; Appendix at 13. The Town contracted for the removal of railroad track materials. Complaint, ¶ 10; Appendix at 10. Bailey disputed the Town's

title to the line. Complaint, ¶ 11; Appendix at 10.

V. PRINCIPLES OF LAW, ARGUMENT, AND AUTHORITIES

This Court holds that a deed should be construed to give effect to the grantor's intent. *Shirley v. Shirley*, 259 Va. 513, 517, 525 S.E.2d 274, ___ (2000), and cases cited therein. Attested copies of the 1909 Agreement and the 1909 Deed were submitted to the Circuit Court as Defendant's Motion Exhibit 2, Appendix at 61, and Defendant's Motion Exhibit 3, Appendix at 65. These documents were part and parcel of the same transaction and the Circuit Court correctly found that they should be considered together in order to ascertain the intent of the parties. *E.g.*, *Parr v. Alderwoods Group, Inc.*, 268 Va. 461, 461-462, 604 S.E.2d 431, ___ (2004); *Portsmouth Refining Co. v. Oliver Refining Co.*, 109 Va. 513, 64 S.E. 56 (1909) (held: error to refuse to admit agreement executed contemporaneously with a deed).

A. At the Time of the 1909 Conveyance, The Term "Right of Way" Had an Established Meaning and Was Held To Denote an Easement.

The 1909 Deed does not state whether the premises conveyed were to be in fee or in easement; there is only a center-line description and a width specification, as one would expect to see for an easement. Nonetheless, the 1909 Agreement states that the Whites agreed to convey a "right of way" to Norfolk & Western "for a branch of railroad," Appendix at 62, and the Deed expresses the purpose of the conveyance to be for a "single-track railroad," Appendix at 66.

What did the Whites intend to convey - - an easement or a fee? The intention of the grantors expressed in the 1909 Agreement was that the deed executed the same day would grant a "right of way."

In 1909, the term "right of way" had a definite and unambiguous meaning, both in common usage and in legal usage. The term "right of way" meant the right or privilege to pass over the lands of another; it was understood to be an <u>easement</u>. The

following examples of definitions, copies of which were attached to Bailey’s trial Memorandum, plainly establish this point:

(1) Webster’s New International Dictionary (Merriam-Webster 1909) defined “right of way” as follows: “Law a. A right of passage over another person’s ground. See EASEMENT 3, SERVITUDE . . . .”

(2) Funk & Wagnalls’ New Standard Dictionary of the English Language (1910; 1927 Ed.) provided the following under “way:” “12. Law. (1) A place across, through, or by which one has the right of passage. (2) The right of passage over the land of another.”

(3) Bouvier's Law Dictionary (Revised 6th Edition, 1856) provided under the definitions of “way:” “A right of way is a privilege which an individual or a particular description of persons . . . may have, of going over another person's ground.”

(4) The first edition of Black’s Law Dictionary, originally titled A Dictionary of Law,

by Henry Campbell Black, M.A. (West Publishing Co. 1891), defined "right of way" as follows: "The right of passage or of way is a servitude imposed by law or by convention, and by virtue of which one has the right to pass . . . through the estate of another." Black added to this definition a Wisconsin case reference quoted as stating: "'Right of way,' in its strict meaning, is the right of passage over another man's ground; and in its legal and generally accepted meaning, in reference to a railway, it is a mere easement in the lands of others . . . ." (Emphasis in original.)

(5) The first edition of Black's Law Dictionary also provided the following definition of "way:" "A right of way is the privilege which am individual, or a particular description of persons . . . have of going over another's ground." Black added to this definition an Indiana case reference quoted as follows: "The term 'way' is derived from the Saxon, and means a right of use for passengers . . . . By the term 'right of way' is generally meant a private way . . . in which a particular person, or

particular description of persons, have an interest and a right, though another person is the owner of the fee of the land in which it is claimed."

(6) The second edition of Black's Law Dictionary, originally titled A Law Dictionary, by Henry Campbell Black, M.A. (West Publishing Co. 1910), defined "right of way" in identical language as used in the first edition, quoted above, and provided case citations to five state supreme court decisions. The second edition also set forth the same definition of "way," while adding case decisions from four additional states.

These definitions bracket the time when the 1909 Agreement was executed and demonstrate that the definition of "right of way" had been established by 1856, more than half a century earlier, and continued unchanged through at least 1927. Such sources, and Black's Law Dictionary in particular, are often used by courts to determine the meaning of words and phrases. *E.g.*, *PMA Capital Ins. Co. v. US Airways*, 271 Va. 352, 626 S.E.2d 369 (2006) (Black's Law Dictionary); *Sheets*

v. Castle, 263 Va. 407, 559 S.E.2d 616 (2002) (Black's Law Dictionary); *Lower Chesapeake Assoc. v. Valley Forge Ins.*, 260 Va. 77, 532 S.E.2d 325 (2000) (Webster's New International Dictionary).

These definitions show that both the ordinary and accepted meaning and the legal meaning of "right of way" in 1909 were the same: the term denoted an easement that provided a right or privilege to pass over the land of another person. Virginia still holds to this general definition. *See Ryder v. Petrea*, 243 Va. 421, 416 S.E.2d 686 (1992)("A 'right of way' is a term used to describe a right belonging to a party to pass over the land of another").

The 1909 Agreement resulted from a disagreement concerning the extent of "a right-of-way for [a] . . . branch of railroad" originally granted in 1856. Appendix at 62. The 1909 Agreement then stated, "the parties hereto desire to settle and adjust all questions as to *said right-of-way* in an amicable manner," referring back to the 1856 right-of-way. Appendix at 62 (emphasis added). There is no

indication in the Agreement or the Deed that the parties in 1909 understood "right-of-way" to mean something other than what it had meant in 1856.

Returning to the question of what the Whites intended to convey to Norfolk & Western in 1909, there is only one answer. The 1909 Agreement used the term "right of way" and stated that this estate in land was to be conveyed by the 1909 Deed. The term "right of way" had a plain, straight-forward, unambiguous and well-established meaning. Therefore, what the Whites intended to convey was an easement to pass over the land they owned in fee simple.

Prior to the 1909 transaction, no court of last resort in any state had ruled to the contrary. The first Virginia case dealing with this subject appears to be *Hale v. Davis*, 170 Va. 68, 195 S.E. 523 (1938), in which the Court held that a metes-and-bounds description conveyed a fee interest, even though the term "right of way" was used, but also held that in the absence of a metes-and-bounds description the term "right of way" would convey

only an easement. The Court noted, "The last part of the deed conveys a right of way 'over and through all of her other land including forty feet from the center of the roadbed * * * on each side thereof as the said railroad is now located and graded . . . ,'" and held that "[t]here is no uncertainty about the fact that this part of the deed conveys only a right of way, which is accurately described." *Hale v. Davis*, 170 Va. at 71, 195 S.E. at ___. Since the 1909 deed in the present case does not contain a metes-and-bounds description, the *Hale* case supports the position of the Defendant.

The term "metes and bounds" means "[t]he boundary lines of land, with their terminal points and angles." Black's Law Dictionary, 5th Edition; *see Spainhour v. B. Aubrey Huffman & Assoc.*, 237 Va. 340, 377 S.E.2d 615 (1989). There are two general types of such legal descriptions. One, the classic metes-and-bounds description dating from the time of the Norman Conquest, describes land with respect to landmarks and property boundaries.

The more recent variation, known as the courses-and-distances method, uses landmarks, compass points, and distances to describe the boundaries of a parcel of land. In either case, the metes-and-bounds description sets forth the boundaries which enclose a parcel of land. The 1909 Deed does not contain such a description; instead, it describes a line and specifies a width, which is variable, on either side of the line. As noted in *Hale*, this is a common method of describing an easement.

B. The Circuit Court Erred in Relying On an Oregon Case and on Federal Cases Decided in Different Contexts.

Ultimately, the Circuit Court of Washington County erred by relying on the 1956 Oregon case cited by the Plaintiff, *Bouche v. Wagner*, 206 Or. 621, 193 P.2d 203 (1956). The holding in *Bouche*, decided nearly five decades after the White to Norfolk & Western conveyance, cannot be assumed to have been known to those grantors in 1909. That case, moreover, is factually distinguishable, in that there was no description, in the deed or

otherwise, of the land conveyed as a "right of way." The *Bouche* court found this lack of descriptive language to be a critical factor.

In addition, *Bouche* rested in substantial part on Federal cases construing Union Pacific land grants *which had been made in fee* by the Act of July 27, 1866, c. 278, 14 Stat. 292 (United States)(conveying fee title *in praesenti* upon presentation of a route map). The Circuit Court expressly noted that the Supreme Court of Oregon relied on these Federal cases in deciding *Bouche.*

The issue presented to the United States Supreme Court in *Territory of New Mexico v. United States Trust Co.*, 172 U.S. 171 (1898), was whether Section 2 of the Act of July 27, 1866, exempted certain railroad property from taxation. The U.S. Supreme Court expressly stated that its decision "rests . . . simply on the terms of the statute." *Territory of New Mexico*, *supra*, 172 U.S. at 171 (syllabus). Thus the case clearly arose under Federal law.

Justice McKenna, writing the opinion of the Court in *Territory of New Mexico*, relied on *Missouri, Kansas and Texas Ry. Co. v. Roberts*, 152 U.S. 114 (1894), which held that Act of July 26, 1866, granting a right of way to a railway company across the public lands in the State of Kansas, vested title of the lands composing that right of way. Justice Field's opinion in *Missouri, Kansas and Texas Ry. Co.* rested on the particular terms of the Federal statute; it did not purport to modify or abrogate the general definition of right-of-way or to alter in any way state law concerning rights of way. Neither did Justice McKenna in *Territory of New Mexico* purport to modify or abrogate the general definition of right-of-way or to alter in any way state law concerning rights of way.

Another United States Supreme Court case, *Joy v. St. Louis*, 138 U.S. 1 (1891), relied on in *Territory of New Mexico*, was cited by the Oregon Supreme Court in *Bouche* and was expressly relied on by the trial court in this case. However, the *Bouche* decision misconstrues *Joy v. St. Louis*,

which did not hold that a railroad right-of-way as such constituted fee simple ownership. The language quoted in *Bouche* was taken largely from a lengthy quotation from the lower court opinion deciding whether a three-party contract "covers not merely the right of way through the park and up to the terminus of the road in the City of St. Louis, but also the tracks for that extent . . . ." The circuit court's opinion had stated, in relevant part:

> Now the term 'right of way' has a two-fold signification. It sometimes is used to describe a right belonging to a party, a right of passage over any tract, and it is also used to describe that strip of land which railroad companies take upon which to construct their roadbed. Obviously in this paragraph [of the contract] it is used in the latter sense. Through both of these contracts, the terms 'right of way,' 'track,' and 'roadbed' frequently appear, and in all cases *the term 'right of way'*

is used as descriptive of the strip above referred to.

Joy v. St. Louis, 138 U.S. at 44 (emphasis added). Neither the circuit court nor the United States Supreme Court in *Joy v. St. Louis* purported to hold that the term "right of way" denotes fee simple ownership in connection with a railway, and neither opinion purported to abrogate state law on that subject matter.

In *Territory of New Mexico*, Justice McKenna stated, "But if it may not be insisted that the fee was granted, surely more than an ordinary easement was granted -- one having the attributes of the fee, perpetuity and exclusive use and possession; also the remedies of the fee, and, like it, corporeal, not incorporeal, property." 172 U.S. at 183. After examining authorities for this proposition, Justice McKenna concluded, "The interest *granted by the statute* to the Atlantic and Pacific Railroad Company therefore is real estate of corporeal quality, and the principles of such apply." 172 U.S. at 184-185 (emphasis added).

The state cases examined by Justice McKenna had stopped short of holding that a railway right-of-way must be ownership in fee. The reason for this is that a railway may be, but is not necessarily, a perpetual occupant of the easement:

> The easement is not that spoken of in the old law books, but is peculiar to the use of a railroad, which is *usually* a permanent improvement -- a perpetual highway of travel and commerce -- and will *rarely* be abandoned by nonuser. The exclusive use of the surface is acquired, the damages are assessed, on the theory that the easements will be perpetual, so that *ordinarily* the fee is of little or no value unless the land is underlaid by a quarry or mine.

172 U.S. at 183, *citing Smith v. Hall*, 72 N.W. 427 (Iowa) (emphasis added). Thus, while a railway easement may have aspects "peculiar to the use of a railroad," it remains an easement which can be abandoned.

C. Properly Construed, The 1909 Agreement and Deed Conveyed an Easement, Not a Fee.

This Court has held that where a business transaction is based upon more than one document, they must be construed together to determine the intent of the parties; that each document will be employed to ascertain the meaning intended to be expressed by the others; and that "the court will not treat any word or clause as meaningless if any reasonable interpretation consistent with the other portions of the contract can be ascribed to it." *Daugherty v. Diment*, 238 Va. 520, 524-525, 385 S.E.2d 572, ___ (1989)(citations omitted).

In the present case, it is significant that the 1909 Deed states several times that the right of way is for a "single-track railway." Appendix at 17. The 1909 Agreement describes the line as "a branch railway" and measures the right-of-way "from the centre of the track." Clearly, the Whites in 1909 intended to convey the land in dispute for a particular purpose. Nothing in the 1909 Agreement or the 1909 Deed can be construed to say that the

railroad was taking fee simple title for any and all purposes. Consequently, while the Whites certainly must have acknowledged that the right of way they granted in 1909 was "peculiar to the use of a railroad," the only reasonable reading of the documents is that an easement, not a fee, was intended, and that it was intended for a specific use, that is, for a single-track railway. Any other interpretation misconstrues the definition of the term "right of way" as it was used in 1909 and effectively eliminates from both the agreement and the deed the terms "railroad" and "single-track railway."

While the current movement to use dormant railway easements as recreational trails is commendable in many respects, this case is <u>not</u> covered by the Federal law permitting such use because the line in question was abandoned, not merely taken out of service; and established jurisprudence should not be strained or retro-actively altered even for a popular purpose. The case of *Michigan Department of Natural Resources v.*

Carmody-Lahti Real Estate, Inc., 472 Mich. 359, 699 N.W.2d 272 (2005), presented similar factual circumstances: a railway company had deeded a right of way to the Michigan DNR, which asserted that it had fee simple ownership and therefore was entitled to use the right of way as a public recreational trail. The real estate company claimed that the right of way was an easement which had been abandoned. The Supreme Court of Michigan correctly decided in favor of the real estate company.

The right of way at issue in *Michigan DNR* had been conveyed in 1873 by a deed which provided in part:

> [Landowner] does grant, bargain, sell, remise, release, alien and confirm unto [railway company] its successors and assigns forever a right of way for the railroad . . . as already surveyed and located . . . to consist of a strip of land one hundred feet in width being fifty feet on each side of said surveyed line across the following described parcels or

> tracts of land . . . . Also a right of way for said railroad surveyed and located as aforesaid to consist of a strip of land twenty feet in width on the north side of said surveyed line and eighty feet in width on the south side of said surveyed line across [a certain] . . . tract or parcel of land.

Michigan DNR, *supra*, 472 Mich. at ___, 699 N.W.2d at 276.

The right of way was utilized as a railroad line until 1982, when the company petitioned the Interstate Commerce Commission (now the Surface Transportation Board) for permission to abandon the line. The petition was granted. Six years later, the railway company conveyed the right of way to the Michigan DNR. When the real estate company blocked the right of way, litigation ensued. After examining the circumstances and relevant precedents at length, the Michigan court concluded the 1873 deed conveyed an easement rather than a fee simple and that the easement had been abandoned.

The same result should obtain in the present case. The 1909 Agreement called for a "right of way" for a "railway" or "railroad;" the 1909 Deed described the conveyance in a manner often used to convey easements and also specified that it was for a "single-track railway." In 1909 the term "right of way" clearly indicated an easement, and later Virginia decisions affirm that meaning. Thus the Circuit Court of Washington Country erred in holding that the Town of Saltville had acquired a fee simple title to the land.

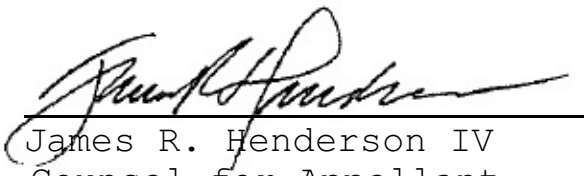
VI. CONCLUSION

The Appellant, Shirley Ann Bailey, requests that the Court hold that the Circuit Court of Washington Country erred in holding that the Town of Saltville had acquired a fee simple title to the land by virtue of the quitclaim deed from Norfolk & Western Railway. This Court should hold that the 1909 Agreement and Deed conveyed to the railway company an easement, but not a fee simple. The orders entered by the Circuit Court should be reversed and vacated and the case should be

remanded to the Circuit Court of Washington County for further proceedings, including a determination of whether the right-of-way in dispute has been abandoned.

Respectfully submitted,

SHIRLEY ANN "SISSY" BAILEY



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CERTIFICATE

The undersigned counsel for Shirley Ann "Sissy" Bailey hereby certifies that Rule 5:26(d) has been complied with on September 8, 2009, and that he has caused fifteen (15) bound copies each of this Opening Brief of Appellant and of the Appendix to be hand-filed with the Clerk of this Court, and also has caused a three copies of each to be mailed, first class, postage prepaid, to opposing counsel, Christen W. Burkholder, Christen W. Burkholder, P.C., P.O. Box 505, Bristol, VA 24203-0505, counsel for the Appellee, on the date of filing. An electronic copy of the Opening Brief of Appellant and Appendix also has been filed with the Clerk contemporaneous with the brief. Counsel for Appellant respectfully requests oral argument.

By: James R. Henderson IV
Counsel for Appellant