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Supreme Court of Appeals
Richmond, Va.

209 VA 295

Record No. 6900

In the Supreme Court of Appeals of Virginia at Richmond

TOWN OF LEESBURG

v.

FIRST NATIONAL BANK OF PURCELLVILLE, et al.

FROM THE CIRCUIT COURT OF LOUDOUN COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6900

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 28th day of February, 1968.

TOWN OF LEESBURG, Appellant,

against

FIRST NATIONAL BANK OF PURCELLVILLE, STATE HIGHWAY COMMISSION AND COUNTY OF LOUDOUN, Appellees.

From the Circuit Court of Loudoun County
Rayner V. Snead, Judge

Upon the petition of Town of Leesburg an appeal is awarded it from a decree entered by the Circuit Court of Loudoun County on the 27th day of July, 1967, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and Loudoun County and others were defendants; no bond being required.

RECORD

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BILL FOR DECLARATORY JUDGMENT

Comes now, the Town of Leesburg, Complainant herein and prays that judgment declaring the rights of the Town of Leesburg in and to the hereinafter described tract of land be entered by the Court in this cause and says:

1. That this proceeding is brought pursuant to Section 8-578 et. seq. of the 1950 Code of Virginia, as amended, wherein the Court is requested to make a binding adjudication of right, though consequential relief is not claimed.

2. That the facts present an actual antagonistic assertion and denial of right.

3. That there is a tract or parcel of land situate, lying and being in the Town of Leesburg, Loudoun County, Virginia, commonly known as "Potter's Field", which said tract of land is more particularly described on the plat made by Walter L. Phillips, dated November 24, 1965 attached hereto and by reference made a part hereof as Town of Leesburg, Exhibit 1.

page 2 } 4. That over the years portions of said Potter's Field have been acquired by the Commonwealth of Virginia and by First National Bank of Purcellville by or through quit claim deeds executed by the Board of Supervisors for the County of Loudoun. Complainant avers that the said land and portions thereof acquired, or now claimed as shown on Exhibit 1, compromised a portion of the paupers graveyard and such acquisitions were made without prior authorization by a court of competent jurisdiction; that the County of Loudoun had no title to said land which could be conveyed and that historically the said paupers graveyard has been under the control of the Complainant and Complainant is entitled to obtain a declaration from the Court that the original boundaries were as set forth in said plat and that the title to the original tract is vested in the Town of Leesburg in trust as a burial ground for paupers.

5. Complainant alleges that examination of the land records show that the control of said graveyard was vested in Complainant as evidenced in the recitation in the deed recorded

in Deed Book 5 N, Page 203, dated August 25, 1856, which described a tract of land comprising a part of the late Wallace George farm as bounded "South by the paved road leading from Leesburg to Alexandria, East and North by a graveyard under the control of the Corporation of Leesburg"; that the deed recorded in Deed Book 4 W, Page 338 in the said Clerk's Office describes another parcel of land as bounded "on the west by the paupers and negro graveyard" and the deed wherein the Executors of the will of the late Wallace George conveyed a farm of large acreage which fronted on Route 7 to Claude Honicon and Ward Loveless recited therein that the conveyance was made subject to whatever rights the Town of Leesburg may have in said graveyard.

page 3 } 6. Complainant admits that no deed of dedication or conveyance has been found in the Clerk's Office for Loudoun County conveying the subject land to the Town of Leesburg, but avers that the facts definitely establish that the said land has been held for over a hundred years by the Town of Leesburg in trust for the burial of paupers and that the encroachment upon this graveyard constitutes an unwarranted and illegal invasion of the rights of the Complainant as trustee, and that no title can be claimed by the Commonwealth of Virginia, the State Highway Commission, or First National Bank of Purcellville on the basis of adverse possession, or by reason of any purported title vested in the Board of Supervisors for the County of Loudoun, and conveyance therefrom.

Wherefore, the Complainant requests that the Court shall declare that the boundaries of said graveyard are as described on said plat including all of the areas now occupied by the State Highway Department and First National Bank of Purcellville and that the Complainant holds title to said land in trust for the benefit of deceased paupers as a burial ground.

TOWN OF LEESBURG,
STATE OF VIRGINIA

By: GEORGE M. MARTIN
Counsel

In the County of Loudoun Circuit Court Clerks Office.
Received and Filed this the 28 day of January, 1966.

Teste

J. T. MARTZ, Clerk

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DEMURRER

The Defendant, First National Bank of Purcellville, says that the Bill filed by the Complainant herein is insufficient in law.

FIRST NATIONAL BANK
OF PURCELLVILLE

By: CARLETON PENN
Counsel

VIRGINIA

In the County of Loudoun Circuit Court Clerks Office.
Received and Filed this the 25 Day of February, 1966.
Teste

J. T. MARTZ, Clerk

By: F. R. HOWARD, Deputy Clerk

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DECREE

This cause came on this day to be heard upon the Demurrer filed by the Defendant, First National Bank of Purcellville, to the Bill of Complaint filed herein, and was argued by counsel.

It appearing to the Court that the Bill of Complaint does not set forth sufficient grounds to place the Complainant in a position of having any standing to maintain this suit;

THE COURT DOTH ADJUDGE, ORDER AND DECREE that the Demurrer filed herein by First National Bank of Purcellville be, and the same hereby is, SUSTAINED, and the Complainant shall have thirty-one (31) days from the date of the entry hereof within which to file such further pleadings as it may be advised, and all other pleas filed herein are continued.

ENTER this 20th day of April, 1966:

RAYNER V. SNEAD, Judge

I ASK FOR THIS:
CARLETON PENN
Counsel for First National Bank of Purcellville

SEEN AND EXCEPTED TO:
GEORGE M. MARTIN,
Attorney for Town of Leesburg

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AMENDED BILL FOR DECLARATORY JUDGMENT

Comes now the Town of Leesburg, a municipal corporation, the Complainant herein and files its amended bill and shows as follows:

(1) The Complainant is a duly chartered municipal corporation in the State of Virginia. A new charter was granted the Complainant by Acts of Assembly of the General Assembly, Regular Session 1962, Chapter 433.

(2) There is a tract or parcel of land situate, lying and being in the Town of Leesburg, Loudoun County, Virginia, commonly known as "Potters Field" which said tract or parcel of land is more particularly described on the plat made by Walter L. Phillips, dated November 24, 1965, attached hereto and by reference made a part hereof as Town of Leesburg Exhibit No. 1.

(3) The said parcel of land has been used as a Potters Field for more than one hundred and thirty (130) years last past; there have been a number of burials of paupers therein over this period, one which was as recent as fourteen (14) or fifteen (15) years last past; that at times the Complainant has maintained the graveyard; kept it mowed and clean and free of unsightly growth and weeds; that there has
page 17 } been no objection by anyone at anytime to the use of said land for the burial of paupers; that recitals in ancient deeds indicate that this land was set apart and intended for a paupers graveyard and that the Town of Leesburg was responsible for its maintenance and control; that the use of said land for a free burial ground indicates a dedication by the unknown owner of said parcel of land; that such dedication has been accepted by the public as

a paupers graveyard and has been long recognized by the public as such.

(4) That a careful examination of the land records for Loudoun County, Virginia, do not indicate or reveal any deed wherein the title thereto was conveyed to Complainant or to the County of Loudoun or to anyone else; that the owner of said land at the time of the dedication is not known, nor can the owner be determined from the examination of the land records; that said tract of land was excluded from the description of the land known as the Wallace George Farm which surrounds the graveyard; that said land has not been abandoned; nor any part thereof for use as a paupers graveyard; that over the years the Board of Supervisors for the County of Loudoun has conveyed certain portions thereof to certain grantees by quit claim deeds; that the Commonwealth of Virginia and First National Bank of Purcellville are shown by the land records as the present grantees in deeds in the chain of title originating from the original conveyances by the Board of Supervisors for the County of Loudoun.

(5) Complainant admits that while no deed conveying the subject land to Complainant can be produced, but avers that the said land has been dedicated to the public for more than one hundred and thirty years as a place for the burial of paupers and that the encroachment upon this graveyard by the Commonwealth of Virginia and the State Highway Commission through use of said parcels shown on the plat constitutes an unlawful and illegal invasion of the dedication; that no title thereto can be claimed by the Commonwealth of Virginia, State Highway Commission or First National Bank of Purcellville on the basis of adverse possession, or by reason of abandonment, or by reason of purported title vested in the Board of Supervisors for the County of Loudoun and conveyance therefrom. The Complainant further avers that the Board of Supervisors has never acquired title for the tract conveyed by quit claim deeds either by power of eminent domain or by deed, or by devise.

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(6) That the disturbance of any grave situated on the land occupied and utilized by the State Highway Commission and First National Bank of Purcellville may constitute a violation of the criminal statute of the State of Virginia.

(7) Complainant avers that while it does not have fee simple title to the said tract of land Complainant is the proper party to invoke the aid of the Court to protect the dedication from invasion, or any use thereof contrary to the nature of the dedication and that Complainant stands in the shoes of

the public for the purpose of protecting the members of the public in the right to use the land for the charitable purpose for which it has been dedicated and the Town of Leesburg is entitled to obtain from the Court a declaration of the exact area incorporated within the said graveyard and that the Defendants have acquired no rights thereto.

(8) The Complainant alleges that this proceeding is brought pursuant to Section 8-578 seq. for the 1950 Code of Virginia, as amended, whereas, the Court is requested to make a binding adjudication of right and that the facts present an actual antagonistic assertion and denial of rights.

Wherefore, the Complainant prays that the Court shall declare that there has been a dedication of a graveyard for the burial of paupers in the area described on said plat including all of the areas now occupied and utilized by the said State Highway Commission and the First National
page 19 } Bank of Purcellville; that such dedication has not been abandoned and that the Defendants have no title to the areas shown as occupied by them and that the Court shall further afford consequential relief and perpetually enjoin the Defendants from occupying or utilizing said areas for any purpose.

TOWN OF LEESBURG,
STATE OF VIRGINIA

By: GEORGE M. MARTIN
Counsel

In the County of Loudoun Circuit Court Clerks Office.
Received and Filed this the 5th day of May, 1966.

Teste

J. T. MARTZ, Clerk

By: F. R. HOWARD, Deputy Clerk

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DEMURRER

Comes now the Defendant, First National Bank of Purcell-

ville, and doth say that the Amended Bill for Declaratory Judgment exhibited against it herein is insufficient in law.

FIRST NATIONAL BANK
OF PURCELLVILLE

By: CARLETON PENN
Counsel

* * * * *

In the County of Loudoun Circuit Court Clerks Office.
Received and Filed this the 24 Day of May, 1966.

Teste

J. T. MARTZ, Clerk

By LOUISA S. SHIRVER, Deputy Clerk

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DECREE

This cause came on this 3rd day of March 1967 to be heard upon the Amended Bill for Declaratory Judgment and the Demurrer thereto by First National Bank of Purcellville, Purcellville, Virginia, adopted by the State Highway Commissioner without objection by Counsel for Complainant and by leave of Court, and was argued by Counsel.

It appearing to the Court that the Complainant is without standing to maintain this suit, since the said Amended Bill fails to show that dedication, if any, of the real estate constituting the subject matter of this cause to public use as and for a public cemetery, was to the Town of Leesburg, rather than to the County of Loudoun, or to the public in general, the Court taking judicial notice of the fact that the said land has been within the limits of the Town of Leesburg only since annexation proceedings before this Court during the year 1957, and the Complainant having failed to show any source or color of title to said property;

And it further appearing that there is no purpose to be served by permitting the Complainant to file further pleadings herein;

THE COURT DOTH ADJUDGE, ORDER AND DECREE that the Demurrer filed herein by the Defendant, First National Bank of Purcellville, Purcellville, Virginia, be, and the same hereby is, sustained, and this cause shall be page 30 } placed on the Ended Docket, this Decree being FINAL.

ENTER THIS 27 day of July, 1967:

RAYNER V. SNEAD, Judge

WE ASK FOR THIS:
PENN & OTTINGER
Attorneys at Law
Drawer 741
Leesburg, Virginia

By: CARLETON PENN
Counsel for First National Bank of Purcellville

STIRLING M. HARRISON
Attorney for the Commonwealth for the County of Loudoun

SEEN:
STILSON H. HALL and
WILLIAM W. NICKELS
Of Counsel for State Highway Commission

SEEN AND EXCEPTED TO:
GEORGE M. MARTIN
Of Counsel for the Town of Leesburg

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To: J. T. Martz, Clerk of the Circuit Court of Loudoun County; Stilson H. Hall and William W. Nickels, Counsel for the State Highway Commission

The Complainant, by its attorney hereby gives notice pursuant to the provisions of Section 4, Rule 5:1 of the Rules

of the Supreme Court of Appeals of Virginia, dated February 1, 1950, of its appeal from that certain decree entered in the above styled cause on the 27th day of July, 1967, in which the demurrer filed by the First National Bank of Purcellville, Purcellville, Virginia, was sustained.

ASSIGNMENTS OF ERROR

Further pursuant to said rule, Complainant assigns the following errors:

(1) The Court erred as a matter of law in sustaining the demurrer.

(2) The Court erred as a matter of law in finding that the Complainant is without standing to maintain page 32 } the suit.

TOWN OF LEESBURG

By GEORGE M. MARTIN
Counsel

In the County of Loudoun Circuit Court Clerks Office.
Received and Filed this the 8 Day of August, 1967.

Teste:

J. T. MARTZ, Clerk

By RICHARD KIRLS, Deputy Clerk

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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