

BOARD OF COUNTY COMMISSIONERS OF SOMERSET..., Not Reported in Atl...

2023 WL 2821548

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UNREPORTED

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Appellate Court of Maryland. *

BOARD OF COUNTY COMMISSIONERS
OF SOMERSET COUNTY

v.

HOWARD KEVIN ANDERSON, et al.

No. 1008, September Term, 2020

|

April 7, 2023

Circuit Court for Somerset County

Case No. C-19-CV-17-000128

[Graeff, Nazarian](#), Tang, JJ.

Opinion

Opinion by [Graeff, J.](#)

*1 This is the second time that this Court has reviewed a decision by the Circuit Court for Somerset County regarding the installation of solar power cables beneath two county roads that adjoin properties owned by appellees, William and Kevin Anderson (the “Andersons”). The Andersons initially sought a temporary restraining order, as well as preliminary and permanent injunctions against Great Bay Solar I, LLC (“GBS”) and the Board of Commissioners of Somerset County (“the County”), after the County granted GBS an easement to install the solar cables underneath the roads. Following a three-day bench trial, the court found that neither the County nor the Andersons met their burden to show that they had a fee simple interest in the roads, but the County had a sufficient interest in the roads to permit GBS to install the cables. The court found that the Andersons were barred from equitable relief.

The Andersons appealed, and this Court reversed the court's finding that the Andersons did not own in fee simple the land

under the roads at issue. *Anderson v. Great Bay Solar I, LLC* (“*Anderson I*”), 243 Md. App. 557, 615 (2019), *cert. denied*, 468 Md. 224 (2020). We remanded to the circuit court to issue a declaratory judgment that the Andersons were fee simple owners of the roads and to make further findings with respect to its conclusion that the County had a sufficient interest in the roadways to grant GBS the legal right to install the collections systems. *Id.*

On remand, the circuit court issued a declaratory judgment that the Andersons were fee simple owners of the roads in question. It further declared, contrary to its initial conclusion, and with no explanation, that the County did *not* have a sufficient interest in the roads “to grant [GBS] (or any other person or entity) the right to bury electrical cables or any other device unrelated to the public's right of use for travel and transportation.” It declared that GBS was “not entitled to keep, maintain, repair, or utilize the cables buried” in the roadbeds, and the Andersons were entitled to “take all reasonable actions to remove said cables at the expense of” GBS.

On appeal, the County presents the following questions for this Court's review, which we have rephrased, as follows:

1. Did the circuit court's unexplained finding that the County did not have a sufficient interest in the roads to allow installation of solar cables satisfy this Court's remand for clarification on that issue?
2. Where the County lawfully maintains subsurface pipes for runoff and utilities, could it allow such a pipe to convey solar energy instead of water?

For the reasons set forth below, we shall vacate, in part, the judgment of the circuit court.

DISCUSSION

The County does not challenge the circuit court's order declaring that the Andersons own the roads in question in fee simple. That ruling, which was consistent with *Anderson I*, will not be disturbed by the Court's decision.

The County does challenge, however, the circuit court's ruling that it did not have a “sufficient interest in the roads to allow

BOARD OF COUNTY COMMISSIONERS OF SOMERSET..., Not Reported in Atl....

2023 WL 2821548

installation of solar cables underneath them.” The Andersons note that, subsequent to the circuit court's ruling, they granted GBS an easement for the placement of the existing electric cables in the road. They contend that the issue presented, i.e., whether GBS has the right to maintain its electrical cables beneath the public roads owned by the Andersons, has been resolved at this point, and therefore, the case is moot.

*2 The Supreme Court of Maryland¹ has stated that mootness exists “when there is no longer any existing controversy between the parties at the time that the case is before the court, or when the court can no longer fashion an effective remedy.” *In re Kaela C.*, 394 Md. 432, 452 (2006). *Accord Lee v. State*, ___ Md. App. ___, ___, No. 1291, Sept. Term, 2022, slip op. at 30–31 (filed March 28, 2023); *Tallant v. State*, 254 Md. App. 665, 682–83 (2022) (quoting *Hawkes v. State*, 433 Md. 105, 130 (2013)). As the Court explained:

Because [an appellate court does] not sit to give advisory opinions, we generally order that moot actions be dismissed without a decision on the merits. *In re Rosa A. Riddlemoser*, 317 Md. 496, 502, 506 (1989). Where there might be some effects from the trial court's decision in a moot case we

vacate the judgments below and order that the trial court dismiss the action.

In re Kaela C., 394 Md. at 452.

Here, we agree that the controversy whether GBS may maintain the cables beneath the roads has been resolved, and the issue whether the County had a sufficient interest in the roads to grant GBS the legal right to install the cables is moot. Because the County asserts that there may be some effects from the circuit court's decision on this moot issue, and both parties agree that vacating this portion of the judgment is appropriate, we vacate the portion of the judgment addressing whether the County had “sufficient interest” in the roads to grant rights to GBS and remand to the circuit court to dismiss that portion of the judgment.

JUDGMENT OF THE CIRCUIT COURT FOR SOMERSET COUNTY VACATED IN PART, AND REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 50% BY APPELLANT AND 50% BY APPELLEES.

All Citations

Not Reported in Atl. Rptr., 2023 WL 2821548

Footnotes

- * At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.
- 1 At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.