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**SC14-1465**

# SUPREME COURT OF FLORIDA

STEPHEN J. ROGERS, et al.

*Appellants,*

*v.*

UNITED STATES OF AMERICA,

*Appellees.*

*On Certified Question from the United States Court of Appeals for the Federal Circuit*

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## STATEMENT OF THE CASE AND FACTS

This is an inverse condemnation action against the United States, in which plaintiffs seek payment for the government's taking of their private property. The plaintiffs are Florida landowners whose property was encumbered by a railroad right-of-way from 1910 to 2002, when the railway abandoned and removed its tracks. After the railway's abandonment, Florida law would have returned unencumbered title to the landowners and given them exclusive possession of their land. However, Sarasota County petitioned the federal government under the National Trails System Act for a new easement to build a public recreational trail on the former railroad right-of-way. The federal government granted the petition and seized the land again. Because there is no question that seizure of land under the federal Trails System Act is a compensable taking of private property, *see Preseault v. United States*, 100 F.3d 1525, 1551-52 (Fed. Cir. 1996), nearly 150 Florida landowners sought compensation in the Court of Federal Claims. The government's defense was that none of the landowners owned the land under the railroad right-of-way because the railway owned that strip of land in fee simple. As to most of the landowners, the court rejected the government's argument and awarded compensation. As to the forty landowners involved here, however, the court denied compensation based on its finding that the original deeds to the railway conveyed

fee simple title, not a right-of-way or easement, to the strip of land on which tracks were laid.

The landowners appealed to the Federal Circuit, which found that "the landowners would have no compensable interest in the property if the deeds at issue conveyed fee simple interest to [the railroad]. If the deeds, however, conveyed only an easement or limited right-of-way—either on their face or by operation of law—the landowners would have an interest in the property which could be compensable upon termination of the [original] easement." *Rogers v. United States,* Nos. 2013-5098, 2013-5102, slip op. at 7 (Fed. Cir. July 21, 2014). Because that question is determined by state law, *see Preseault v. ICC*, 494 U.S. 1, 20 (1990) (O'Connor, J., concurring), and because Florida law is not settled, the Federal Circuit certified the following question to this Court:

> Assuming that a deed, on its face, conveys a strip of land in fee simple from a private party to a railroad corporation in exchange for stated consideration, does Fla. Stat. § 2241 (1892) (recodified at Fla. Stat. § 4354 (1920); Fla. Stat. § 6316 (1927); Fla. Stat. § 360.01 (1941)), state policy, or factual considerations—such as whether the railroad surveys property, or lays track and begins to operate trains prior to the conveyance of a deed—limit the railroad's interest in the property, regardless of the language in the deed?

*Rogers*, slip op. at 5.

The certified question cites to versions of the same statute, originally enacted in 1887 as chapter 1987, s. 10, Laws of Florida and recodified several times, including in 1892 as section 2241, Florida Statutes, and in 1941 as section 360.01,

Florida Statutes. Although the statute was repealed in 1982, the text of the provision at issue here did not change between 1887 and 1982. The statute was enacted as part of an effort to curb abuses by a largely unregulated railroad industry. It provided that railroads may "cause such examinations and surveys for the proposed railroad . . . and for such purposes . . . to enter upon the lands . . . of any person for that purpose [and] to take and hold such voluntary grants of real estate . . . as shall be made to it to aid in the construction, maintenance and accommodation of its road." § 2241, Fla. Stat. (1892). However, the statute also provided that "the real estate received by voluntary grant shall be held and used *for purposes of such grant only*." *Id.* (emphasis added).

The following facts are taken from the Joint Appendix submitted to the Federal Circuit (cited as "JA #") and are undisputed:

In 1910, Seaboard Railway began to extend its line by surveying and locating its railway line across private land—and in some cases also laying track and running trains across that land—without first seeking any conveyance from any landowner (JA 2313-14). After surveying, constructing, and operating its trains across the owners' lands, Seaboard obtained instruments from the landowners allowing it to travel "across" and "through" a strip of land described as "one hundred (100) feet wide, being fifty (50) feet on each side of the centerline of the Seaboard Air Line

Railway *as located across lands owned by [grantor]*" (JA 360, 362, 364) (emphasis added). The tracks were laid by 1911 (JA 2384, 2314).

The southernmost two miles of the railroad extension, built in 1910-11 through a 10,000-acre tract with multiple private owners, was relocated in 1926 and 1927 (JA 2316-17). The first trains ran across the relocated track on April 1, 1927 (JA 2316). In April 1927, after the track was relocated and after trains had started running on it, an owner of 1,500 acres within that tract executed an indenture in Seaboard's favor, describing "[a] strip of land 100 feet wide, that is, fifty feet on each side of center line of railway as located and constructed through . . . the lands of the grantor" (JA 1712). In November 1941, Seaboard was granted a quitclaim deed for that same 1,500-acre tract, reciting nominal consideration of one dollar and also describing "[a] strip of land 100 feet wide, that is, fifty feet on each side of center line of railway as now located and constructed through the lands of the grantor" (JA 1768). When ownership of that 1,500-acre tract was transferred the next month, the conveyance referred to the existing "right-of-way of the Seaboard Railroad" (JA 1781, 1770-83, 2327-28). Seaboard never paid anything more than nominal consideration for any of these conveyances. Some landowners were paid one dollar, one other landowner received 10 dollars, and the most Seaboard ever paid was 200 dollars to two landowners (JA 1664($1), 1673 ($1), 1766 ($1), 1768 ($1), 364 ($10), 362 ($200), 392 ($200)). Every subsequent conveyance of land burdened by the

railway line that makes reference to the railway line—there are 75 such references in the joint chain of title—describes that burden as a "right-of-way" or "ROW" (*see* JA1644, 1650, 1655-56, 1665, 1666, 1685, 1696, 1703, 1732, 1733, 1754, 1771, 1773, 1774, 1785, 1818, 1821, 1841, 1849, 1854, 1865, 1871, 1900, 1915, 1917, 1921, 1938, 1944, 1946, 1957).

In 2002, the railway (then owned by CSX) petitioned the Surface Transportation Board ("STB") to allow it to abandon the 12 miles of railway at issue here, and the STB granted the petition (JA 1263-72, 370-75). The Public Trust for Land and Sarasota County then requested that the STB invoke section 1247(d) of the Trails System Act to allow the 12 miles of former railway to be converted to a public recreational trail (JA 370-375). Under the STB order granting the petition, CSX executed a quitclaim deed conveying any interest CSX had in the right-of-way to Sarasota County (JA 370-75, 1274-95). The deed describes the railroad's interest as a "right-of-way," and "acknowledges that certain portions of the Property may be subject to reversionary interests of adjacent property owners and that such interests shall not be treated as title objections under this Agreement" (JA 1278 (p. 5, ¶ 6(d)), 1284; JA2015, 2012-27). The strip of land that was once a railroad is now a public recreational trail used by 125,000-150,000 people annually. *McCann Holdings, Ltd. v. United States*, 111 Fed. Cl. 608, 611 (Fed. Cl. 2013). The Court of Federal Claims found that the trail "caused residents to experience noise, crime, trespass, and loss of

both seclusion and security," which "imposes an intrusive burden on adjacent property owners" and reduced property values by more than 20 percent. *Id.* at 630, 632. Although the railway occupied only a narrow strip in the center of the 100-foot-wide right-of-way, the recreational trail uses the full 100-foot width, and much of the shrubbery and trees that separated the railroad from the homes abutting the strip—some only a few feet away—were removed.

As we show below—under Florida law in the circumstances of this case, as well as Florida public policy—the answer to the certified question is "yes," the railroad's interest in the property is limited to an easement or right-of-way.

## SUMMARY OF ARGUMENT

Under Florida law, a railroad's power of eminent domain is limited to takings "necessary to the business," and the property the railroad takes also is limited by the purpose for which the property was taken.

In this case, there is no question that Seaboard Railway took the strips of land at issue for the limited purpose of laying tracks and running trains. Indeed, the railway surveyed land, and in some instances laid track and ran trains, before it sought voluntary conveyances from the landowners whose property was burdened. And it obtained conveyances allowing it to travel "across" and "through" a strip of land described as "one hundred (100) feet wide, being fifty (50) feet on each side of the centerline of the Seaboard Air Line Railway *as located across lands owned by*

*[grantor]*." Seaboard never paid more than nominal consideration for any conveyance; neither Seaboard nor any successor railway ever used the strips of land for any purpose other than running trains; and *every* conveyance in the chain of title that references the railway describes Seaboard's interest as a "right-of-way" or "ROW." Therefore, the parties intended the railway to hold strips of land for the limited purpose of running trains, and under Florida law, the railroad's interest in the land was limited to an easement or right-of-way. Florida public policy—which strongly disfavors the creation of fee estates in strips or "gores" of land because they are valueless when burdened by an easement but when the burden is removed, spawn years of litigation over disputed ownership—dictates the same conclusion. The answer to the Federal Circuit's certified question is "yes"—the railroad's interest in the property is limited to an easement or right-of-way.

## ARGUMENT

### UNDER FLORIDA LAW AND POLICY, THE RAILWAY'S INTEREST IN STRIPS OF LAND CONVEYED TO IT FOR PURPOSES OF LAYING TRACK AND RUNNING TRAINS WAS LIMITED TO AN EASEMENT OR RIGHT-OF-WAY

As we show below, (A) under Florida law, when acting under its eminent domain authority, a railroad's interest in land voluntarily conveyed to it is limited to the interest necessary for the "purposes" of the voluntary grant, and the facts here—for example that the railway paid only nominal consideration for its interest in the land, and that conveyances of the land, in an unbroken string, repeatedly refer to

the railway's interest as a right-of-way—show that the purpose of the grant was a right-of-way to run trains; thus, the railway's interest was limited to an easement; and (B) the result is the same under Florida public policy, which strongly disfavors the creation of fee estates in strips or "gores" of land, which are valueless when burdened by an easement but, when the burden is removed by abandonment of the railway use, spawn years of litigation to resolve ownership.

### A. Under Florida Law and the Facts of This Case, the Railway's Interest in the Strips of Land on Which It Laid Tracks and Ran Trains Was Limited to an Easement or Right-of-Way

When Seaboard seized the 12 miles of railway at issue here, Florida law granted railroads the power of eminent domain to enter upon and take private property "necessary to [their] business." § 2683, Fla. Stat. (1914). *See also State v. Baker*, 20 Fla. 616, 650 (1884) (holding that a railroad's occupation of private land, without the owner's consent, to survey and locate its railway line "is not the case of a mere trespass by one having no authority to enter, but of one representing the State herself, clothed with the power of eminent domain") (citation and internal quotation marks omitted).

The railroad's power of eminent domain, however, was subject to certain limitations—for example, that private property can only be taken "upon making due compensation according to law to private owners." § 2683, Fla. Stat. (1914). Also during that time, section 2241, Florida Statutes, recognized that railroads "shall be

empowered to cause such examinations and surveys for the proposed railroad . . . and for such purposes . . . to enter upon the lands . . . of any person for that purpose [and] to take and hold such voluntary grants of real estate . . . as shall be made to it to aid in the construction, maintenance and accommodation of its road." § 2241, Fla. Stat. (1892). But section 2241 also limited that power, providing that "*the real estate received by voluntary grant shall be held and used for purposes of such grant only*." *Id.* (emphasis added). Thus, under section 2241, the nature of the railroad's interest in land taken by voluntary grant is determined by the nature of the land's use. It is also well established that conveyances in land must be construed to give effect to the parties' intent, and that this Court has the "right to look to the subject-matter embraced in the instrument, and to the intention of the parties and the conditions surrounding them. . . . [T]he intent, and not the words, is the principal thing to be regarded." *McNair & Wade Land Co. v. Adam*s, 45 So. 492, 493 (Fla. 1907).

Therefore, although the certified question assumes that a "deed, on its face, conveys a strip of land in fee simple" to a railroad, the question asks this Court to consider whether "factual considerations"—"such as whether the railroad surveys property, or lays track and begins to operate trains prior to the conveyance of a deed"—limit the railroad's interest under Florida law. The railway's interest was so

limited here, where the circumstances plainly show that the parties intended the railroad to hold the land for the limited purpose of running trains across private land.

Indeed, as shown above, when Seaboard exercised its eminent domain power to extend its line, it surveyed and located its right-of-way across private land even though it had no conveyance from any landowner. *After* surveying, Seaboard obtained conveyances allowing it to travel "across" and "through" a strip of land "one hundred (100) feet wide, being fifty (50) feet on each side of the centerline of the Seaboard Air Line Railway *as located across lands owned by [grantor]*." Seaboard surveyed, laid track and even ran trains (for two miles of the line) before obtaining any conveyance from the owner. And the conveyance it later received described "a strip of land 100 feet wide, that is, fifty feet on each side of center line of railway as located and constructed through . . . the lands of the grantor." Seaboard never paid more than nominal consideration for any of those conveyances; Seaboard and its successor railways never used the strips of land for any purpose other than running trains; and *every* subsequent conveyance in the chain of title that references the railway—75 of them—describes Seaboard's interest as a "right-of-way" or "ROW."

Under these circumstances, the parties intended the railroad to hold strips of land for the limited purpose of running trains, and Florida law limits the railroad's interest in the land to an easement. *See* § 2241, Fla. Stat. (1892) ("the real estate

received by voluntary grant shall be held and used [by railroads] for purposes of such grant only"); *Craft v. Craft*, 76 So. 772, 773-74 (Fla. 1917) (holding that the payment of nominal consideration influences the determination of the parties' intent and the interest they intended to convey); JON W. BRUCE AND JAMES W. ELY, JR., LAW OF EASEMENTS AND LICENSES IN LAND §1, 22 ("Generally, courts conclude that a conveyance of a 'right-of-way' creates only an easement."). *See also Ogg v. Mediacom, LLC*, 142 S.W.3d 801, 812 (Mo. Ct. App. 2004) (considering a deed as a whole and construing it to convey only an easement, because "there are no clear, overriding indicia of an intent to convey full fee ownership of the land . . . the recited consideration was nominal ($1.00), which is 'not a sum that would suggest purchase of a fee simple interest' in the strip") (citation omitted); *Hash v. United States*, 403 F.3d 1308, 1321 (Fed. Cir. 2005) (citing *Neider v. Shaw*, 65 P.3d 525, 530 (Idaho 2003)) (noting that "use of 'right-of-way' in the substantive part of the deed creates an easement").[1]

[1] This Court's opinion in *Atlantic Coast Line Railroad Co. v. Duval County*, 154 So. 331, 332 (Fla. 1934), which stated, without citing any authority, that a "railroad right of way [] is not a mere easement [but] vests a fee in the company acquiring it," does not change the result. *Atlantic Coast Line* did not decide that issue because the plaintiff "admitted that [the railroad] owns the fee," *id.* at 256, and the Court did not address or construe section 2241. Moreover, only one case has cited *Atlantic Coast Line* for that proposition—*Florida Power Corp. v. McNeely*, 125 So. 2d 311, 317 (Fla. 2d DCA 1960), in which the Second DCA stated that "[o]rdinarily, a railroad right of way in Florida is not a mere easement . . . but is a fee vested in the railroad"—but that statement also is dictum because *McNeely* was not a railroad

Based on statutes similar or even identical to section 2241, courts of several other states have reached the conclusion we advocate. For example, the Kansas Supreme Court, applying a statute identical to section 2241, stated "[t]his Court has uniformly held that railroads do not own fee titles to narrow strips taken as right-of-way, regardless of whether they are taken by condemnation or right-of-way deed. The rule . . . gives full effect to the intent of the parties who execute right-of-way deeds rather than going through lengthy and expensive condemnation proceedings." *Harvest Queen Mill & Elevator Co. v. Sanders*, 370 P.2d 419, 423 (Kan. 1962) (citations omitted); *see also Brown v. Weare*, 152 S.W.2d 649, 652 (Mo. 1941) (the "law is settled in this state that where a railroad acquires a right of way whether by condemnation, by voluntary grant or by a conveyance in fee upon a valuable consideration the railroad takes but a mere easement over the land and not the fee") (citations omitted); *Ill. Cent. R.R. Co. v. Roberts*, 928 S.W.2d 822, 825 (Ky. Ct. App. 1996) (where "land is purportedly conveyed to a railroad company for the laying of a rail line, the presence of language referring in some manner to a 'right of way' operates to convey a mere easement notwithstanding additional language evidencing the conveyance of a fee"); *Ross, Inc. v. Legler*, 199 N.E.2d 346, 348 (Ind. 1964) ("[p]ublic policy does not favor the conveyance of strips of land by simple

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case. Moreover, no case has ever cited *McNeely* for that proposition, and *McNeely*, like *Atlantic Coast Line*, did not address or construe section 2241.

titles to railroad companies for right-of-way purposes, either by deed or condemnation"); *Mich. Dep't of Natural Res. v. Carmody-Lahti Real Estate, Inc.*, 699 N.W.2d 272, 280 (Mich. 2005) ("a deed granting a right-of-way typically conveys an easement"); *Pollnow v. State Dep't of Natural Res.*, 276 N.W.2d 738, 744 (Wis. 1979) ("normally a right of way condemned by a railway would only constitute an easement"); *Neider v. Shaw*, 65 P.3d 525, 530 (Idaho 2003) ("use of the term right-of-way in the substantive portions of a conveyance instrument creates an easement").[2]

When the conveyances at issue here were drafted, it was understood that, "upon general principles . . . a railroad company . . . could acquire no absolute fee-simple, but only the right to use the land for their purpose." 1 ISAAC F. REDFIELD, THE LAW OF RAILWAYS, 255 (1869); *see also* LEONARD A. JONES, A TREATISE ON THE LAW OF EASEMENTS § 211, p. 178 (1898) ("[a] grant of a right of way to a railroad company is a grant of an easement merely, and the fee remains in the grantor"). Indeed, "[p]rominent experts took the position that, absent statutory

[2] Only two courts have reached a different outcome. In *Old Railroad Bed, LLC, v. Marcus*, 95 A.3d 400, 406 (Vt. 2014), however, the Vermont Supreme Court expressly did *not* decide whether the statute limited a railroad's property interest because the landowner had no standing to challenge the railroad's interest. And in *Corning v. Lehigh Valley Railroad Co.*, 14 A.D.2d 156, 161 (N.Y. App. Div. 1961), an intermediate appellate court rejected the plaintiff's reliance on a similar statute passed in 1850 where a subsequent 1869 special act directed to the specific railroad at issue contained "no provision . . . that the lands so received should be 'held and used for the purposes of such grant only.'"

provisions expressly authorizing the taking of a fee simple, railroads should receive just an easement in land condemned for their use." JAMES W. ELY, JR., RAILROADS AND AMERICAN LAW 197-98 (2001) (citing SIMEON F. BALDWIN, AMERICAN RAILROAD LAW 77 (1904).[3]

For these reasons, the railway's interest in the strips of land at issue here was limited to an easement or right-of-way.

### B. Florida Public Policy Strongly Disfavors the Creation of Fee Estates in Strips or "Gores" of Land

The common law has long disfavored the creation of fee estates in strips or gores of land used as rights of way. For example, in *Paine v. Consumers' Forwarding & Storage, Co.*, 71 F. 626, 629-30, 632 (6th Cir. 1895), the court held that the "existence of 'strips or gores' of land along the margin of non-navigable lakes, to which the title may be held in abeyance for indefinite periods of time, is as great an evil as are 'strips and gores' of land along highways or running streams. The litigation that may arise therefrom after long years, . . . [is] vexatious. . . . [P]ublic policy [seeks] to prevent this by a construction that would carry the title to

[3] This Court has followed similar sources as authority when deciding the nature of a railroad's interest in land. *See Pensacola & Atl. R.R. Co. v. Jackson*, 21 Fla. 146, 148-49 (1884) (citing Pierce on Railroads and Redfield); *Jacksonville R. & K.W. Ry. Co. v. Lockwood*, 15 So. 327, 330 (Fla. 1894) ("The opinion in *Railroad Co. v. Jackson, supra*, relies on Pierce on Railroads."); and *Seaboard Air Line Ry. Co. v. Knickerbocker*, 94 So. 501, 501 (Fla. 1922) (citing Elliott on Railroads (2nd ed.)).

the center of a highway, running stream, or non-navigable lake that may be made a boundary of the lands."

More recently, the Seventh Circuit Court of Appeals explained the doctrine and applied it to a railroad's interest in a strip of land used for a railway:

> The presumption is that a deed to a railroad or other right of way company . . . conveys a right of way, that is, an easement, terminable when the acquirer's use terminates, rather than a fee simple. . . . If the railroad holds title in fee simple to a multitude of skinny strips of land now usable only by the owner of the surrounding or adjacent land, then before the strips can be put to their best use there must be expensive and time-consuming negotiation between the railroad and its neighbor . . . . A further consideration is that railroads and other right of way companies have eminent domain powers, and they should not be encouraged to use those powers to take more than they need of another person's property – more, that is, than a right of way.

*Penn Cent. Corp. v. U.S. R.R. Vest Corp.*, 955 F.2d 1158, 1160 (7th Cir. 1992) (citations omitted).

Florida follows the strip-and-gore doctrine as well. For example, in *Seaboard Air Line Ry. v. Southern Inv. Co.*, 44 So. 351, 353 (Fla. 1907) (citing and quoting *Rawls v. Tallahassee Hotel, Co.*, 31 So. 237 (Fla. 1901), and *Jacksonville, T. & K.W. Ry. Co. v. Lockwood*, 15 So. 327 (Fla. 1894)), this Court noted its holdings that "the proprietor of lots abutting on a public street is presumed, in the absence of evidence to the contrary, to own soil to the center of the street." And Florida law provides that when a landowner grants a right-of-way across his or her land, the owner retains title to the land under the easement, and that when an owner conveys title to land abutting

an easement or right-of-way, the conveyance includes title to the land under the right-of-way absent a clear intention to the contrary. *See Smith v. Horn*, 70 So. 435, 436 (Fla. 1915); *Servando Bldg. Co. v. Zimmerman*, 91 So. 2d 289, 293 (Fla. 1956); *see also Fla. S. Ry. Co. v. Brown*, 1 So. 512, 513 (Fla. 1887).

Indeed, in *Servando*, this Court found that a ten-foot-wide alley on a subdivision plat would serve no "practical use or service," and that an "isolated piece of land of such proportion could be of no use to anyone except owners of property it touched and persons dealing with them." 91 So. 2d at 293. This Court reaffirmed the principle in *United States v. 16.33 Acres of Land in Dade County*, 342 So. 2d 476,480 (Fla. 1977), holding that the owner of lots abutting road easements took title to the centerline of the easements.

This Court also has applied the doctrine in the context of railroads, holding, in *Silver Springs, O.& G. R. Co. v. Van Ness*, 34 So. 884 (Fla. 1903), and *Van Ness v. Royal Phosphate Co*., 53 So. 381 (Fla. 1910), that a railroad running trains on a strip of land acquired an easement across that land, not an estate in the land itself. Indeed, if a railroad were to obtain title to the entire fee estate in the land, the mineral interests, as well as any and all other "sticks in the bundle" of rights that compose property, would be held by the railroad. We are aware of no Florida case holding that a railroad holds such a broad claim of title to the strips of land under its tracks. This limitation on a railroad's property interest in strips and gores of land is

consistent with their lack of need for any greater interest: "Except to site a station house or similar land use here and there, the railroads had no need or desire for any interest except 'right-of-way.'" *Davis v. MCI Telecomms. Corp.*, 606 So. 2d 734, 738 (Fla. 1st DCA 1992). *See also Dean v. MOD Props., Ltd.*, 528 So. 2d 432, 434 (Fla. 5th DCA 1988) ("only an easement is needed to lawfully construct and maintain a road right-of-way").

Therefore, Florida public policy dictates that the railway's interest in the strips of land at issue here was limited to an easement or right-of-way.

## **CONCLUSION**

For the reasons stated, this Court should answer the Federal Circuit's certified question "yes"—the railroad's interest in the property is limited to an easement or right-of-way.

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**CERTIFICATE OF SERVICE**

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief is submitted in Times New Roman 14-point font, which complies with the font requirement. *See* Fla. R. App. P. 9.210(a)(2).

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