

Case

SHIRLEY ANN "SISSY" BAILEY v. TOWN OF SALTVILLE
(Record Number 090989)

From

The Circuit Court of Washington County; C. Randall Lowe, Judge.

Counsel

James R. Henderson IV (Henderson & Forster, PLLC) for appellant.

Christen W. Burkholder(Christen W. Burkholder, P.C.) for appellee.

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 "single-track 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.
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.
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.
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.

Date Granted

7-28-2009