

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001491-MR

CITY OF CADIZ, KENTUCKY

APPELLANT

v.

APPEAL FROM TRIGG CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 01-CI-00041

BELINDA HOLLAND

APPELLEE

OPINION

AFFIRMING

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BEFORE: BAKER AND GUIDUGLI, Judges; and JOHN D. MILLER, Special  
Judge.<sup>1</sup>

GUIDUGLI, JUDGE. City of Cadiz, Kentucky (hereinafter "the  
City") appeals the order of the Trigg Circuit Court granting  
summary judgment in an action brought by Belinda Holland  
(hereinafter "Holland") pursuant to KRS 411.120 to quiet title  
as to a tract of property both parties claimed title to. We  
believe, as did the trial court, that the case of Illinois

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<sup>1</sup> Senior Status Judge John D. Miller sitting as Special Judge by assignment of  
the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

Central Railroad Co. v. Roberts, Ky.App., 920 S.W.2d 822 (1996),  
is controlling and thus, we affirm.

The facts are not greatly disputed and we adopt the  
findings of the circuit court as follows:

This case finds its beginning over a  
hundred years ago. On or about November 26,  
1901, R. T. Ellis, et al, conveyed to the  
Cadiz Railroad Company a sixty foot wide  
right of way easement for the Cadiz Railroad  
Company to construct and operate a railroad  
from the City of Cadiz to Gracey, Kentucky.

In 1981, the Plaintiff purchased  
property across which this sixty foot wide  
right of way easement runs.

The Cadiz Railroad Company operated the  
railroad for approximately eighty-five  
years. In 1985, the railroad line was  
abandoned and the actual rail dismantled.

On October 10, 1989, the Cadiz Railroad  
Company did convey to the Defendant this  
sixty foot right of way strip which runs  
across the property of the Plaintiff. (This  
deed is of record in Deed Book 143, Page 91,  
Trigg County Court Clerk's Office.) Because  
of this deed of conveyance, the Defendant  
City of Cadiz claims title to the sixty foot  
wide strip which is also claimed by the  
Plaintiff.

These facts are uncontested, and  
therefore being material, this action is in  
a proper posture for summary judgment one  
way or the other.

Plaintiff claims that upon the  
abandonment of the right of way easement by  
the Cadiz Railroad Company, she as a  
successor in title to the original grantor  
of this right of way holds the title in fee  
simple to the strip of land now being

claimed by the Defendant. Essentially the plaintiff claims that the deed from R. T. Ellis in 1901 to the Cadiz Railroad Company conveyed an easement only, and not fee simple title. She furthermore argues that with the abandonment of the railroad line, that property reverts back to the successors in title to the original grantor. Plaintiff's argument is anchored in the case of Illinois Central Railroad Co. vs. Roberts, 928 S.W.2d 822 (1996). Citing from that case, Plaintiff argues:

If in a deed to a railroad, the land conveyed is described as a right of way, the deed may be construed as giving an easement right only, and not the full fee, notwithstanding there are other words in the deed referring to the fee simple, that such conveyance does but imply a grant of the easement forever.

Plaintiff's argument concludes, and once again citing the Illinois Central case, that once the abandonment took place, the land reverted to the original grantor or their successor—here the Plaintiff.

The Defendant has responded to the motion for summary judgment by basically stating that there is a determining factual distinction between the Illinois Central case and the one at hand. Defendant states that here the Defendant, to its detriment, has taken action to establish a walking trail, to establish sewer lines, and future plans have been made to extend a necessary water line to the I-24 commercial area utilizing this easement.

Finding the Illinois Central case to be factually similar to the case before it, the trial court granted summary

judgment. In Illinois Central, Id., at 825-826, that Court held:

In light of collective authorities, we are of the opinion it may be generally said that: Where, by instrument or deed, 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.

. . .

A railroad easement, like other easements, is nothing more than the right of the railroad to pass over the land of others. In short, it is a right-of-way easement. In no way does it reflect title to or ownership of the land itself.

. . .

Where a railroad right-of-way easement is abandoned, the original grantor or his successor in title holds the fee in the strip of land comprising the right of way discharged of the easement.

Having thoroughly reviewed this matter, we also believe Illinois Central to be controlling on all issues. Despite the City's arguments to the contrary, we cannot find any relevant factual distinction that would lead to a contrary conclusion. As such, we believe the trial court properly applied controlling law to the facts before it and summary judgment was appropriate.

For the foregoing reasons, the order of the Trigg  
Circuit Court granting summary judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

H. B. Quinn  
Cadiz, KY

BRIEF FOR APPELLEE:

David L. Cotthoff  
Hopkinsville, KY