

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 21-CV-03920

E. Lauck Parke et al v. Town of Richmond

### **DECISION ON MOTIONS TO DISMISS**

Plaintiffs E. Lauck Parke and Elizabeth H. Parke own land over which the Town of Richmond has asserted public highway rights. They seek a declaration that this highway is not, in fact, a public road, and injunctive relief requiring the Town to update its records accordingly and prohibit public access. They also appeal the Town’s denial of a petition to discontinue the highway, “insofar as the denial decision purports to recognize and continue the existence of the [highway].” In separate motions, the Town moves to dismiss for lack of standing, failure to substitute the real parties in interest, and failure to state a claim recognized by Rule 75 (Motion 3) and failure to join indispensable parties (Motion 4). The court denies the first of these motions on the first two grounds stated, leaving the third for later resolution. It grants the second motion in part.

#### Facts Alleged

The Parkes own land and premises at 1360 Williams Hill Road in Richmond. Since at least early 2020, the Town of Richmond, largely through its trails committee, has sought to develop recreational trails throughout the town. One of the areas identified for possible recreational use is a 0.7 mile long segment depicted on town highway maps since 1931 as a class 4 portion of Williams Hill Road, known as Town Highway 20 (the “disputed segment”).

In early March 2020, members of the trails committee arrived at the Parkes’ doorstep and informed them that they were there to clear the disputed segment for a bike trail. In response, the Parkes petitioned the Town to discontinue the alleged public highway, thus extinguishing any public right to traverse their land. In a decision dated November 17, 2021, the Town denied the discontinuance request and purported to keep “the Class 4 segment of Williams Hill Road (Town Highway 20) . . . as currently classified.” This appeal followed.

## Discussion

In its first motion, the Town asserts that the Parkes are not the real parties in interest, as they hold title to the premises at 1360 Williams Hill Road not in their individual capacities but as trustees. Bluntly, this is a sophistical argument. To the extent it has any substantive merit, it can easily be cured by a technical amendment, making clear that the Parkes assert their claims in their representative capacities. The court, on its own motion, will allow such an amendment.

In its first motion, the Town also asserts that the Parkes lack standing, as their own deed makes clear that they do not own the land over which the disputed road runs. Instead, the Town suggests, the Parkes (or, more properly, the trust of which they are trustees) own two parcels that are separated by the disputed road. To this, the court would observe that the interpretation of the deed is more properly a matter for summary judgment, on a more fully developed record. Moreover, the argument does not withstand logical scrutiny. Whether the road transects or bisects the Parkes' property, the impact of its legal existence, *vel non*, on their property rights is obvious. If, as they assert, the town highway does not exist, then they surely have an interest in determining who has rights to traverse what their deed expressly describes as "one lot."

In the second of its motions, the Town argues that the Parkes failed to join necessary and indispensable parties pursuant to V.R.C.P. 12(b)(7) and 19. The Town asserts that, as demonstrated by portions of its tax parcel map, there are at least five (and as many as ten) parcels that either abut or are transected by the disputed segment. Thus, they contend, the owners of those properties must be joined. This argument has obvious merit.

Rule 12(b)(7) provides a defense for failure to join a party under Rule 19. The rule, in turn, "states pragmatic tests for determining when joinder of parties is necessary in order for the court adequately to dispose of the action and when, where joinder is necessary, the action should be dismissed in the absence of the parties who cannot be joined." Reporter's Note, V.R.C.P. 19. The first step is to decide whether the absent parties are "necessary" under Rule 19(a):

A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.

V.R.C.P. 19(a). Thus, the rule provides three separate ways in which a non-party may be deemed necessary.

According to the maps provided as exhibits to the dismissal motion filings, the disputed segment appears either to abut or transect several other parcels in addition to the Parkes' property. The owners of those other parcels are plainly necessary parties to this action. Certainly, they have an interest in whether a town highway crosses or abuts their land, and this action is their opportunity to protect that interest. If not joined, and if the ultimate ruling is that the disputed segment is a public highway, they will have lost what may be their best practical opportunity to contest whether a right of public access burdens their property. Conversely, due to the one-way operation of collateral estoppel, if other owners were not parties, the Town would face the risk of inconsistent obligations. If the Parkes were to prevail, other property owners could assert collateral estoppel. *See In re M.V.*, 2022 VT 31, ¶ 41 (explaining factors to consider in deciding application of offensive collateral estoppel). If the Town prevailed, however, the lack of agency or privity would preclude its assertion of collateral estoppel against non-parties. *Id.* ¶¶ 26, 36. This risk alone is sufficient reason to require joinder of all other property owners whose parcels abut or are transected by the putative town highway.

The proper remedy, however, is not dismissal. "If the person has not been so joined, the court shall order that the person be made a party." V.R.C.P. 19(a). To the extent the Town suggests that the absent party must affirmatively claim a legal interest in the case, that is not a requirement. *See City of Montpelier v. Barnett*, 2012 VT 32, ¶ 15, 191 Vt. 441 (holding that it was proper for trial court to join State in action where State had interest that "might" be impaired by its absence, and subsequently dismiss State from action after State expressly disavowed any such interest that would be jeopardized by its absence from the litigation). Once joined, the other property owners will have the opportunity to disavow any such interest if they so desire.

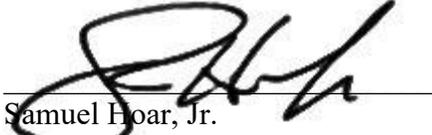
## **ORDER**

The court denies the Town's first motion to dismiss (Motion 3) on the first two grounds stated, leaving the third for later resolution. The clerk and the parties will amend the caption to make clear that the Parkes are proceeding here in their capacity as Trustees; counsel shall submit the amended caption promptly upon receipt of this Order.

The court grants the Town's second motion (Motion 4) in part. Within 30 days of this Order, Plaintiffs shall join all other neighboring landowners whose parcels are abutted or transected by the

Class IV portion of Williams Hill Road, and shall certify such joinder to the court. The Town may then renew its motion to dismiss for failure to state a claim.

Electronically signed pursuant to V.R.E.F. 9(d): 8/23/2022 3:21 PM



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Samuel Hoar, Jr.  
Superior Court Judge