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RENDERED: APRIL 8, 2022; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2021-CA-0219-MR

ROBERT G. HICKS, INDIVIDUALLY;
AND ROBERT G. HICKS,
TRUSTEE OF THE ROBERTA
CHERRY HICKS TESTAMENTARY
TRUST APPELLANTS

APPEAL FROM CHRISTIAN CIRCUIT COURT
v. HONORABLE ANDREW SELF, JUDGE
ACTION NO. 20-CI-00875

CITY OF HOPKINSVILLE, SEWERAGE
AND WATER WORKS COMMISSION,
D/B/A HOPKINSVILLE WATER
ENVIRONMENT AUTHORITY APPELLEE

OPINION

**AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING**

** **

BEFORE: CALDWELL, COMBS, AND L. THOMPSON,
JUDGES.

THOMPSON, L., JUDGE: Robert G. Hicks, individually, and Robert G. Hicks, Trustee of the Roberta Cherry Hicks Testamentary Trust (together referred to as “Appellant”), appeal from an interlocutory order and judgment of the Christian Circuit Court, and from an

order denying a motion to strike the interlocutory order and judgment. Appellant argues that the Christian Circuit Court erred in failing to rule that service of process was not properly accomplished, and that the circuit court therefore lacked jurisdiction to sustain a petition for condemnation filed by City of Hopkinsville, Sewerage and Water Works Commission, d/b/a Hopkinsville Water Environment Authority (“Appellee”). For the reasons addressed below, we reverse the interlocutory opinion and judgment insofar as it holds that Appellee properly served the Trust, affirm it in all other respects, and remand the matter for further proceedings. Further, we affirm the order denying Appellant’s motion to strike.

FACTS AND PROCEDURAL HISTORY

In approximately 2017, Appellee sought to begin construction of a public water main adjacent to Highway 41A in Christian County, Kentucky. Prior to commencing construction, Appellee tried to obtain several utility easements from affected landowners along the path of the construction. Appellant owns one of those parcels.

Appellant and Appellee engaged in a series of written communications over the years that followed. Despite diligent effort, Appellee was unable to persuade Appellant to grant the necessary easement. In order to move the project forward, on November 17, 2020, Appellee filed a petition for condemnation in Christian Circuit Court seeking to secure a utility

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easement on Appellant's parcel pursuant to Kentucky Revised Statutes ("KRS") Chapter 416 (eminent domain).

Appellee then sought to serve Appellant, who resides in Florida. Pursuant to KRS 454.210, Appellee prepared summonses to be served by and through the Kentucky Secretary of State. The summons to Mr. Hicks in his individual capacity was mailed by the Secretary of State to an address in Leesburg, Florida, while the summons to Mr. Hicks, Trustee, was mailed to an address in Jacksonville, Florida. Both mailings were sent via certified mail with a return receipt requested.

Thereafter, the Kentucky Secretary of State received notice from the United States Postal Service that the summons addressed to Mr. Hicks, Trustee, was undeliverable. The summons mailed to Mr. Hicks, individually, was presumed to have been delivered, though the Secretary of State did not receive a signed return receipt.

Having received no response from Appellant, on January 11, 2021, Appellee filed a motion for interlocutory order and judgment pursuant to KRS 416.610. Appellee attempted to serve Appellant with this motion at the same addresses previously used. Mr. Hicks, individually, received in the mail a copy of the motion.

On January 21, 2021, Appellant contacted counsel for Appellee and stated that he had received Appellee's motion, but was never served with the underlying petition. Appellee, through counsel, then emailed to

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Appellant all prior pleadings. Appellant immediately filed a motion to dismiss the petition for lack of proper service.

On January 22, 2021, the Christian Circuit Court entered the interlocutory order and judgment pursuant to KRS 416.610. The order and judgment stated that Commissioners had been appointed per KRS 416.580, and that Appellant had been properly served with the summons and petition. The court ordered that Appellee could take possession of the property after payment of \$21,000 to the clerk of court. On January 26, 2021, the court denied Appellant's motion to dismiss.

Finally, on February 1, 2021, Appellant filed a motion to reconsider, along with a supportive affidavit, in which he asserted that he had never been served with the petition in either his individual or Trustee capacities. A hearing on the matter was conducted on February 17, 2021, resulting in an order denying the relief sought. This appeal followed.

STANDARD OF REVIEW

The circuit court's factual findings shall not be disturbed unless they are clearly erroneous, *i.e.*, not supported by substantial evidence. Kentucky Rules of Civil Procedure ("CR") 52.01; *Mays v. Porter*, 398 S.W.3d 454, 458 (Ky. App. 2013). The application of Kentucky's long arm statute, KRS 454.210, to the facts is a question of law which we review *de novo*. *Worrell v. Stivers*, 523 S.W.3d 436, 439 (Ky. App. 2017).

ARGUMENTS AND ANALYSIS

Appellant argues that the Christian Circuit Court committed reversible error in rendering the interlocutory order and judgment sustaining Appellee's petition, and from the order denying a motion to strike the interlocutory order and judgment.¹ He argues that the interlocutory order and judgment were made on the knowingly false representations of Appellee's counsel to the circuit court that process had been properly served on Appellant on a date certain. According to Appellant, Appellee made this claim despite counsel's knowing that 1) service to the Trust was mailed to the wrong address and was returned as undeliverable, 2) Mr. Hicks, individually, and himself a licensed attorney, stated that he was not served,² and, 3) even though service to both locations was attempted by certified mail, neither of the green signature cards was returned to the Secretary of State. Appellant asserts that because proper service was not made, the circuit court was never vested with jurisdiction over Appellant, and committed a reversible error by allowing Appellee to condemn his property interest without due process. In the alternative, Appellant argues that his claim of improper service should have, at a bare minimum, required the circuit court to conduct an evidentiary hearing to determine if service had been made in conformity to the civil rules and the statutory law.

¹ The parties agree that the interlocutory order and judgment are appealable.

² Later in the proceedings, Appellant submitted an affidavit that he never received the summons.

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Appellant goes on to argue that Kentucky's long arm statute, KRS 454.210, is not applicable to the instant facts. In support of this argument, he directs our attention to *Caesars Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51 (Ky. 2011), and *Hinnners v. Robey*, 336 S.W.3d 891 (Ky. 2011), which he argues stand for the proposition that the application of the long arm statute is limited to the nine specific situations set out in KRS 454.210(2)(a)1.-9. The substance of this argument is that Appellee's petition did not arise from any of the activities, contracts, or circumstances identified in the long arm statute as an essential predicate for Kentucky's exercise of *in personam* jurisdiction over a non-resident. Appellant also notes that Appellee never asserted the applicability of the long arm statute until its response to Appellant's motion to reconsider. He further argues that even if the long arm statute is applicable, it cannot be satisfied by providing the wrong mailing address to the Secretary of State. He argues that the failure of actual service on the Trustee is obvious because the Secretary of State and Appellee received notice that the attempted service was undeliverable.

Lastly, Appellant argues that Appellee's failure to properly serve the petition is a violation of his right to due process under the Fifth Amendment to the United States Constitution. Appellant asserts that Appellee's taking of his property interest without notice and in violation of the relevant statutory and case law constitutes an impermissible breach of his constitutional protection against property deprivation without due

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process of law. Citing a myriad of federal case law, Appellant argues that a state court may not exercise jurisdiction over persons and property absent a proper notice to all parties of the proceedings which affect their constitutional rights. Appellant's property interest, he argues, is clearly such a right, and the Christian Circuit Court's deprivation of this right without proper notice cannot stand. Appellant seeks an opinion and order declaring the circuit court's action void, and imposing sanctions based on the unnecessary amount of time and effort required to oppose the unlawful taking which could have easily been remedied via proper service.

In response, Appellee argues that it fully complied with the long arm statute by tendering to the Secretary of State the correct address for Mr. Hicks in his individual capacity – the same address through which the parties had previously corresponded – and which was known to be a correct address. As to the failure to serve Mr. Hicks, Trustee, Appellee asserts that no harm can be found as Mr. Hicks, individually, and Mr. Hicks, Trustee, are the same person. Notice to one, Appellee argues, satisfies the notice requirement to the other. Appellee distinguishes *Caesars Riverboat Casino, LLC* as inapplicable to the instant facts, and argues that Appellee strictly complied with the statutory scheme for giving notice to nonresidents via the long arm statute.

Appellee directs us to *Haven Point Enterprises, Inc. v. United Kentucky Bank, Inc.*, 690 S.W.2d 393 (Ky. 1985), in which jurisdiction was properly exercised

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over a nonresident even though no signed receipt was received for the mailing of notice. Appellee asserts that this holding is consistent with the general rule that a properly addressed mailing is presumed to have reached its destination. As applied herein, Appellee argues that we may presume that the notice served on Mr. Hicks, individually, reached its destination irrespective of the fact that no signed receipt was returned to the Secretary of State. Appellee requests an opinion sustaining the interlocutory order and judgment on appeal.

KRS 416.550 addresses a governmental entity's right to condemn a citizen's property interest. It states,

[w]henver any condemnor cannot, by agreement with the owner thereof, acquire the property right, privileges or easements needed for any of the uses or purposes for which the condemnor is authorized by law, to exercise its right of eminent domain, the condemnor may condemn such property, property rights, privileges or easements pursuant to the provisions of KRS 416.550 to 416.670. It is not a prerequisite to an action to attempt to agree with an owner who is unknown or who, after reasonable effort, cannot be found within the state or with an owner who is under a disability.

Kentucky's long arm statute, KRS 454.210, provides that,

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- (1) As used in this section, “person” includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who is a nonresident of this Commonwealth.
- (2)(a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person’s:
 1. Transacting any business in this Commonwealth;
 2. Contracting to supply services or goods in this Commonwealth;
 3. Causing tortious injury by an act or omission in this Commonwealth;
 4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth, provided that the tortious injury occurring in this Commonwealth arises out of the doing or soliciting of business or a persistent course of conduct or derivation of

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substantial revenue within the Commonwealth;

5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when the seller knew such person would use, consume, or be affected by, the goods in this Commonwealth, if he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;
6. Having an interest in, using, or possessing real property in this Commonwealth, providing the claim arises from the interest in, use of, or possession of the real property, provided, however, that such in personam jurisdiction shall not be imposed on a non-resident who did not himself voluntarily institute the relationship, and did not knowingly perform, or fail to perform, the act or acts upon which jurisdiction is predicated;

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7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;
 8. Committing sexual intercourse in this state which intercourse causes the birth of a child when:
 - a. The father or mother or both are domiciled in this state;
 - b. There is a repeated pattern of intercourse between the father and mother in this state; or
 - c. Said intercourse is a tort or a crime in this state; or
 9. Making a telephone solicitation, as defined in KRS 367.46951, or a charitable solicitation as defined in KRS 367.650 via telecommunication, into the Commonwealth.
- (b) When jurisdiction over a person is based solely upon this section, only a claim arising from acts enumerated in this section may be asserted against him.
- (3)(a) When personal jurisdiction is authorized by this section, service of process may be made:
1. In any manner authorized by the Kentucky Rules of Civil Procedure;

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2. On such person, or any agent of such person, in any county in this Commonwealth, where he may be found; or
 3. On the Secretary of State who, for this purpose, shall be deemed to be the statutory agent of such person.
- (b) The clerk of the court in which the action is brought shall issue a summons against the defendant named in the complaint. The clerk shall execute the summons either by:
1. Sending by certified mail two (2) true copies to the Secretary of State and shall also mail with the summons two (2) attested copies of plaintiff's complaint; or
 2. Transmitting an electronically attested copy of the complaint and summons to the Secretary of State via the Kentucky Court of Justice electronic filing system.
- (c) The Secretary of State shall, within seven (7) days of receipt thereof in his office, mail a copy of the summons and complaint to the defendant at the address given in the complaint. The letter shall be posted by certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The clerk shall

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make the usual return to the court, and in addition the Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. Summons shall be deemed to be served on the return of the Secretary of State and the action shall proceed as provided in the Rules of Civil Procedure.

- (d) The clerk mailing the summons to the Secretary of State shall mail to him, at the same time, a fee of ten dollars (\$10), which shall be taxed as costs in the action. The fee for a summons transmitted electronically pursuant to this subsection shall be transmitted to the Secretary of State on a periodic basis.
- (4) When the exercise of personal jurisdiction is authorized by this section, any action or suit may be brought in the county wherein the plaintiff resides or where the cause of action or any part thereof arose.
- (5) A court of this Commonwealth may exercise jurisdiction on any other basis authorized in the Kentucky Revised Statutes or by the Rules of Civil Procedure, notwithstanding this section.

Appellant acknowledges that Appellee has the statutory right to condemn real property within the

geographic boundary of its jurisdiction. The first question for our consideration, then, is whether the long arm statute is the proper means by which to give notice to a nonresident condemnee. We must answer this question in the affirmative.

“[D]ue process requires . . . that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945). As such, due process protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful “contacts, ties, or relations.” *Id.* at 319, 66 S. Ct. 154. By requiring that individuals have “fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,” the Due Process Clause “gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit[.]” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

Hinnners, 336 S.W.3d at 897 (footnote omitted).

Mr. Hicks, individually, and as Trustee, are separate and distinct “persons” as contemplated by KRS 454.210(1), and each has the necessary minimum contacts with the Commonwealth sufficient to invoke jurisdiction. These minimum contacts are found by virtue of Mr. Hicks’ and the Trust’s ownership interests in the parcel of real property located within the borders of the Commonwealth. The circuit court may properly exercise jurisdiction over a person who possesses a property interest within the Commonwealth. KRS 454.210(2)(a)6.

KRS 454.210(3)(a)3. establishes the Kentucky Secretary of State as the agent for nonresident persons, and describes the means by which process is served. The Secretary of State complied with this provision by sending separate certified mailings, return receipt requested, to Mr. Hicks at the two addresses provided by Appellee. Appellee properly relied on the long arm statute to attempt service of process on Mr. Hicks and the Trust.

The next question, then, is whether Mr. Hicks, individually, was properly served. KRS 454.210(3)(c), cited above, states:

The Secretary of State shall, within seven (7) days of receipt thereof in his office, mail a copy of the summons and complaint to the defendant at the address given in the complaint. The letter shall be posted by certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The clerk shall make the usual return to the court,

and in addition the Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. ***Summons shall be deemed to be served on the return of the Secretary of State*** and the action shall proceed as provided in the Rules of Civil Procedure.

(Emphasis added.)

The record demonstrates that the Secretary of State performed the acts contemplated by the statute. Within seven days of receipt, the Secretary mailed the summons and petition to Mr. Hicks, individually, to the correct address by certified mail, return receipt requested. Mr. Hicks acknowledges that the address was correct, as it was the same address successfully used by Appellee to communicate with Appellant both before and after the filing of this action. The Secretary of State then made “a return” to the court, *i.e.*, an acknowledgement that the required acts were completed. While a signed return receipt would have left no doubt as to delivery, the lack of a receipt does not render the service invalid as the statute provides that the Secretary of State will attach the receipt “if any.” *Id.*

“[A]ctual notice of the lawsuit is not required to effectuate service as long as it is done in compliance with the applicable statute.” *HP Hotel Management, Inc. v. Layne*, 536 S.W.3d 208, 214 (Ky. App. 2017) (citing *Cox v. Rueff Lighting Co.*, 589 S.W.2d 606, 607 (Ky.

App. 1979)). Further, a recipient's inattention to the mail he receives does not constitute good cause for a finding of lack of service.³ *VerraLab Ja LLC v. Cemerlic*, 584 S.W.3d 284, 288 (Ky. 2019). As the Secretary of State complied with KRS 454.210(3)(c) by mailing the summons and petition to the correct address via certified mail, return receipt requested, and because the statute and the case law unambiguously provide that the summons is deemed served by the Secretary of State's return to the court, we find no error in the Christian Circuit Court's conclusion that Mr. Hicks, individually, was properly served.

We next turn to the question of whether Mr. Hicks, Trustee, was properly served. The certified mail sent to the Trust in Jacksonville, Florida, was returned to the Secretary of State as undeliverable. While KRS 454.210(3)(c) provides that service is effective when the Secretary of State reports to the court that the summons has been mailed and a return receipt (if any) received, implicit in the statutory language is the requirement that the summons must be mailed to the correct address. In the matter before us, notice to the Trust was not mailed to the correct address. As such, it was not possible that the Trust was properly served. The circuit court's finding that the Trust was properly served is clearly erroneous.

³ There is no evidence that Mr. Hicks, individually, was inattentive to his mail, though he did acknowledge that he frequently travels and is not at home to see his mail.

Complicating matters is the fact that Mr. Hicks, individually, is the same person as Mr. Hicks, Trustee. Appellee asserts that service on Mr. Hicks in his individual capacity effectively serves Mr. Hicks, Trustee, and that no harm has resulted therefrom. We disagree. We have no basis for concluding that service to Mr. Hicks, individually, in Leesburg, Florida, constitutes constructive service or other legal notice to Mr. Hicks, Trustee, sufficient to establish jurisdiction over the Trust. For purposes of ensuring that each party has received due process, service must be made on every person. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 320, 70 S. Ct. 652, 660, 94 L. Ed. 865 (1950). “No personal judgment shall be rendered against a defendant constructively summoned[.]” KRS 454.165. “Absent an appearance by the party, constructive service alone is not sufficient to subject nonresidents to a personal judgment[.]” *Soileau v. Bowman*, 382 S.W.3d 888, 891 (Ky. App. 2012). Therefore, service on Mr. Hicks, individually, does not constitute constructive service on the Trust.

Appellant’s final argument is that the condemnation of his property rights without proper service violated his right to due process. Having determined that Mr. Hicks, individually, was properly served, this argument is moot. Further, we find no basis for imposing sanctions on Appellee.

CONCLUSION

Appellee properly utilized Kentucky's long arm statute to attempt service of process on Appellant both individually and as Trustee. Mr. Hicks, individually, was properly served, as the Secretary of State posted the certified mail to the correct address and otherwise complied with KRS 454.210(3)(c). The Roberta Cherry Hicks Testamentary Trust was not properly served, evinced by the returned mail from the United States Postal Service stating that the certified mail was undeliverable. Further, service of process on Mr. Hicks, individually, did not constitute constructive service on Mr. Hicks, Trustee.

Accordingly, we reverse the Christian Circuit Court's interlocutory order and judgment as to its finding that Mr. Hicks, Trustee, was properly served, and remand the matter for further proceedings. The Christian Circuit Court does not have jurisdiction over the Trust, nor its property interest within the Commonwealth, until Appellee serves process on Mr. Hicks, Trustee, at the correct address and in the manner prescribed by the long arm statute. Appellee, at its discretion, may again attempt such service. Appellee may not proceed with condemnation as against Appellant until jurisdiction is established. The interlocutory order and judgment are in all other respects affirmed, as is the January 26, 2021, order denying Appellant's motion to dismiss the petition and motion to strike the interlocutory order and judgment.

ALL CONCUR.

App. 20

BRIEFS FOR APPELLANT:	BRIEF FOR APPELLEE:
Robert G. Hicks, <i>pro se</i>	Duncan Cavanah
Leesburg, Florida	Hopkinsville, Kentucky

App. 21

Commonwealth of Kentucky

Court of Appeals

NO. 2021-CA-0219-MR

ROBERT G. HICKS AND APPELLANTS
ROBERT G. HICKS,
TRUSTEE OF THE ROBERTA CHERRY
HICKS TESTAMENTARY TRUST

APPEAL FROM CHRISTIAN CIRCUIT COURT
v. HONORABLE ANDREW SELF, JUDGE
ACTION NO. 20-CI-00875

CITY OF HOPKINSVILLE, APPELLEE
SEWERAGE AND WATER WORKS
COMMISSION, D/B/A HOPKINSVILLE
WATER ENVIRONMENT AUTHORITY

ORDER

DENYING PETITION FOR REHEARING

** ** *

BEFORE: CALDWELL, COMBS, AND THOMPSON,
JUDGES.

Having considered the Petition for Rehearing and
the Response thereto, and being sufficiently advised,
the COURT ORDERS that the petition be, and it is
hereby, DENIED.

ENTERED: /s/ Sara Combs
05/18/2022 JUDGE, COURT OF APPEALS

App. 22

COMMONWEALTH OF KENTUCKY
THIRD JUDICIAL CIRCUIT
CHRISTIAN CIRCUIT COURT
DIVISION I
Civil Action No. 20-CI-00875

CITY OF HOPKINSVILLE, PETITIONER,
SEWERAGE AND WATER WORKS
COMMISSION, D/B/A HOPKINSVILLE
WATER ENVIRONMENT AUTHORITY,

VS. **INTERLOCUTORY ORDER
AND JUDGMENT**

(Filed Jan. 22, 2021)

ROBERT G. HICKS,
PO Box 491634
Leesburg, Florida 34749

ROBERT G. HICKS
TRUSTEE OF THE ROBERTA CHERRY
HICKS TESTAMENTARY TRUST
7901 Baymeadows Circle East, Apt. 367
Jacksonville, Florida 32256 RESPONDENTS

THIS MATTER having come before the Court pursuant to a Petition for Condemnation filed by Petitioner herein on November 17, 2020; and this Court being otherwise sufficiently advised, does hereby find as follows:

1. Commissioners have been appointed by the Court pursuant to 416.580, and the appointed commissioners have filed their report, said Report dated November 20, 2020;

2. The Respondents have been properly served with summons and Petition, and has failed to file a

timely answer or other pleading pursuant to KRS 416.610(1);

3. The Court has examined the Report of Commissioners dated November 20, 2020 pursuant to KRS 416.610(1) and has found that same conforms to the provisions of KRS 416.580;

4. Wherefore, pursuant to the Motion of Petitioner pursuant to KRS 416.610(2), and the Court being sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED:

1. All parties to this action are properly before the Court.

2. The Report of Commissioners dated November 20, 2020 conforms to the requirements of KRS 416.580.

3. The Petitioner has the right, pursuant to the Kentucky imminent domain act, KRS 416.550 et seq. and other applicable law, to condemn the property identified by the attached Exhibit A.

4. The Petitioner is authorized to take possession of the property upon the payment to the Respondent or to the clerk of this Court of the commissioner's award in the amount of \$21,000.00.

5. If no exception is taken from this interlocutory Order and Judgment within thirty (30) days, the Master Commissioner of this Court shall execute and deliver an easement conveying all rights related thereto to the Petitioner upon payment of the funds set forth in paragraph 4 above in conformance with this Judgment.

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6. This is a final and appealable Order as to the Petitioner's rights to condemn the property, and there is no just cause for delay.

SO ORDERED, this 22nd day of January, 2021.

/s/ Andrew Self
Hon. Andrew Self
Judge, Christian Circuit Court

TENDERED BY:

/s/ Duncan Cavanah
Duncan Cavanah
J. Daniel Kemp
ISON & CAVANAH, LLP
Post Office Box 648
Hopkinsville, Kentucky 42241-0648
Telephone: 270-886-8272
Facsimile: 270-886-1099
Counsel for Petitioner

App. 25

CHRISTIAN

Filed 20-CI-00675 Paige Parker, Christian
02/22/2021 Circuit Clerk
Prep Info @00000096345
01/25/2021 3:22:14PM 2
HON. ANDREW SELF 01/25/2021 Court Docket
Page 2 of 3
CI 20-CI-00675 D/B/A HOPKINSVILLE WATER
ENV AUTH VS. HICKS, ROBERT G. ET AL

☐

(Filed Jan. 26, 2021)

[BAR CODE]

Pty Memo: *ASA EXISTS*

<input type="checkbox"/> CAVANAHA, DUNCAN	ATTORNEY FOR PLAINTIFF
<input type="checkbox"/> HICKS, ROBERT G.	ALTERNATIVE SERVICE ADDRESS
<input type="checkbox"/> HICKS, ROBERT G., TRUSTEE OF THE	ALTERNATIVE SERVICE ADDRESS
<input type="checkbox"/> HICKS, ROBERT G.	DEFENDANT / RESPONDENT
<input type="checkbox"/> HICKS, ROBERT G.	DEFENDANT / RESPONDENT
<input type="checkbox"/> D/B/A HOPKINSVILLE WATER ENV AUTH	PLAINTIFF / PETITIONER
<input type="checkbox"/> Ball Credit Denied	<input type="checkbox"/> Danger to self or others
<input type="checkbox"/> Flight Risk	

App. 26

MOTION NOT REQUIRING HEARING

MOTION TO DISMISS DEFENDANT / RESPONDENT

MOT. TO DISMISS PET. FOR CONDEMNATION

MOTION TO STRIKE DEFENDANT / RESPONDENT

*MOTION TO STRIKE MOTION FOR INTER-
LOCUTORY ORDER AND JUDGMENT*

SUMMONS

CI 20-CI-00875 CI

[– Motion to Dismiss (filed by A) – DENIED]

[– Motion to Strike (filed by A) – DENIED]

Judge Signature: /s/ Andrew Self

App. 27

CHRISTIAN

09:08 AM CI Run Date: 02/12/2021
Court CI CIRCUIT 11:16:46AM
COURTROOM 1 DocketListRpt
Judge HON. ANDREW Prep Info @00000096863
SELF 02/12/2021
11:16:45AM 2
02/17/2021 Court Docket
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CI 20-CI-00675 D/B/A HOPKINSVILLE WATER
ENV AUTH VS. HICKS, ROBERT G. ET AL

☐

[BAR CODE]

Pty Memo: ASA *EXISTS*

- | | |
|--|---|
| <input type="checkbox"/> HUMPHRIES, KENNETH WAYNE | ATTORNEY FOR DEFENDANT |
| <input type="checkbox"/> CAVANAH, DUNCAN | ATTORNEY FOR PLAINTIFF |
| <input type="checkbox"/> HICKS, ROBERT G. | ALTERNATIVE SERVICE ADDRESS |
| <input type="checkbox"/> HICKS, ROBERT G., TRUSTEE OF THE | ALTERNATIVE SERVICE ADDRESS |
| <input type="checkbox"/> HICKS, ROBERT G. | DEFENDANT / RESPONDENT |
| <input type="checkbox"/> HICKS, ROBERT G. | DEFENDANT / RESPONDENT |
| <input type="checkbox"/> D/B/A HOPKINSVILLE WATER ENV AUTH | PLAINTIFF / PETITIONER |
| <input type="checkbox"/> Ball Credit Denied | <input type="checkbox"/> Danger to self or others |
| <input type="checkbox"/> Flight Risk | |

App. 28

MOTION HOUR

MOTION TO

RECONSIDER

ATTORNEY FOR DEFENDANT

SUMMONS

CI 20-CI-00875 CI

[– Motion to Reconsider – DENIED]

Judge Signature: /s/ Andrew Self

App. 29

Supreme Court of Kentucky

2022-SC-0225-D
(2021-CA-0219)

ROBERT G. HICKS, ET AL.	MOVANTS
CHRISTIAN CIRCUIT COURT	
V.	20-CI-00875
CITY OF HOPKINSVILLE, SEWERAGE AND WATER WORKS COMMISSION, D/B/A HOPKINSVILLE WATER ENVIRONMENT AUTHORITY	RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

The opinion of the Court of Appeals is ordered not to be published.

ENTERED: October 12, 2022.

/s/ John D. Minton, Jr.
CHIEF JUSTICE

Kentucky Revised Statute

454.210 Personal jurisdiction of courts over non-resident – Process, how served – Fee – Venue.

- (1) As used in this section, “person” includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who is a nonresident of this Commonwealth.
- (2) (a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person’s:
 1. Transacting any business in this Commonwealth;
 2. Contracting to supply services or goods in this Commonwealth;
 3. Causing tortious injury by an act or omission in this Commonwealth;
 4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth, provided that the tortious injury occurring in this Commonwealth arises out of the doing or soliciting of business or a persistent course of conduct or derivation of substantial revenue within the Commonwealth;

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5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when the seller knew such person would use, consume, or be affected by, the goods in this Commonwealth, if he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;
6. Having an interest in, using, or possessing real property in this Commonwealth, providing the claim arises from the interest in, use of, or possession of the real property, provided, however, that such in personam jurisdiction shall not be imposed on a nonresident who did not himself voluntarily institute the relationship, and did not knowingly perform, or fail to perform, the act or acts upon which jurisdiction is predicated;
7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;
8. Committing sexual intercourse in this state which intercourse causes the birth of a child when:
 - a. The father or mother or both are domiciled in this state;

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- b. There is a repeated pattern of intercourse between the father and mother in this state; or
 - c. Said intercourse is a tort or a crime in this state; or
- 9. Making a telephone solicitation, as defined in KRS 367.46951, or a charitable solicitation as defined in KRS 367.650 via telecommunication, into the Commonwealth.
- (b) When jurisdiction over a person is based solely upon this section, only a claim arising from acts enumerated in this section may be asserted against him.
- (3) (a) When personal jurisdiction is authorized by this section, service of process may be made:
 - 1. In any manner authorized by the Kentucky Rules of Civil Procedure;
 - 2. On such person, or any agent of such person, in any county in this Commonwealth, where he may be found; or
 - 3. On the Secretary of State who, for this purpose, shall be deemed to be the statutory agent of such person.
- (b) The clerk of the court in which the action is brought shall issue a summons against the defendant named in the complaint. The clerk shall execute the summons either by:
 - 1. Sending by certified mail two (2) true copies to the Secretary of State and shall also

mail with the summons two (2) attested copies of plaintiffs complaint; or

2. Transmitting an electronically attested copy of the complaint and summons to the Secretary of State via the Kentucky Court of Justice electronic filing system.
- (c) The Secretary of State shall, within seven (7) days of receipt thereof in his office, mail a copy of the summons and complaint to the defendant at the address given in the complaint. The letter shall be posted by certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The clerk shall make the usual return to the court, and in addition the Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. Summons shall be deemed to be served on the return of the Secretary of State and the action shall proceed as provided in the Rules of Civil Procedure.
- (d) The clerk mailing the summons to the Secretary of State shall mail to him, at the same time, a fee of ten dollars (\$10), which shall be taxed as costs in the action. The fee for a summons transmitted electronically pursuant to this subsection shall be transmitted to the Secretary of State on a periodic basis.
- (4) When the exercise of personal jurisdiction is authorized by this section, any action or suit may be brought in the county wherein the plaintiff resides

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or where the cause of action or any part thereof arose.

- (5) A court of this Commonwealth may exercise jurisdiction on any other basis authorized in the Kentucky Revised Statutes or by the Rules of Civil Procedure, notwithstanding this section.
-

Kentucky Rules of Civil Procedure (CR)
Rule 76.28 Opinions

(1) Written Opinions.

(a) Appellate court opinions and orders may be announced orally but shall be reduced to writing and, except for unanimous actions of the Supreme Court, shall list the names of the members concurring or dissenting and indicate the name of any member who did not participate in the decision.

(b) Opinions and orders finally deciding a case on the merits shall include an explanation of the legal reasoning underlying the decision.

(2) Time of Announcement.

Unless otherwise determined by the Supreme Court, opinions of the Supreme Court will be released for publication on Thursdays. Opinions of the Court of Appeals shall be released on Fridays. However, if a Friday is a state holiday, the Court of Appeals, at the discretion of the Chief Judge may render opinions on the last working day before the holiday. The time of publication shall be 10:00 A.M. prevailing Frankfort time.

(3) Distribution of Copies.

Promptly after an opinion is handed down the clerk shall send a copy to the trial judge, to any intermediate court which made a decision in the case, and to each attorney in the case. Copies shall be furnished to other persons as directed by the court.

(4) Publication.

(a) When a motion for discretionary review under Rule 76.20 is filed with the Supreme Court, the opinion of the Court of Appeals in the case under review shall not be published until the Supreme Court rules on the motion for discretionary review or until the Court permits the motion to be withdrawn. Unless otherwise ordered by the Supreme Court, upon entry of an order denying the motion for discretionary review or granting withdrawal of the motion, the opinion of the Court of Appeals shall be published if the opinion was designated "To Be Published" by the Court of Appeals. Upon entry of an order of the Supreme Court granting a motion for discretionary review the opinion of the Court of Appeals shall not be published, unless otherwise ordered by the Supreme Court. All other opinions of the appellate courts will be published as directed by the court issuing the opinion. Every opinion shall show on its face whether it is "To Be Published" or "Not To Be Published."

(b) The court rendering an opinion that is to be published shall provide a copy of it forthwith to the reporter for West Publishing Company. Except for those that are not to be published, opinions of an appellate court shall be released for publication by its clerk.

(c) Opinions that are not to be published shall not be cited or used as binding precedent in any other case in any court of this state; however, unpublished Kentucky appellate decisions, rendered after January 1, 2003, may be cited for consideration by the court if there is

no published opinion that would adequately address the issue before the court. Opinions cited for consideration by the court shall be set out as an unpublished decision in the filed document and a copy of the entire decision shall be tendered along with the document to the court and all parties to the action.

(5) Withdrawal of Opinions.

Parties to an appeal may not by agreement dismiss an appeal and have an opinion withdrawn after it has been issued.

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COMMONWEALTH OF KENTUCKY
THIRD JUDICIAL CIRCUIT
CHRISTIAN CIRCUIT COURT
DIVISION I
Civil Action No. 20-CI-00875

CITY OF HOPKINSVILLE,
SEWERAGE AND WATER
WORKS COMMISSION,
D/B/A HOPKINSVILLE
WATER ENVIRONMENT
AUTHORITY, PETITIONER,
VS.
ROBERT G. HICKS
ROBERT G. HICKS
TRUSTEE OF THE
ROBERTA CHERRY HICKS
TESTAMENTARY TRUST RESPONDENTS.

MOTION TO DISMISS PETITION FOR
CONDEMNATION AND
MOTION TO STRIKE MOTION FOR
INTERLOCUTORY ORDER AND JUDGMENT

(Filed Jan. 25, 2021)

COME NOW the Respondents, Robert G. Hicks, individually, and as trustee of the Roberts Cherry Hicks Testamentary Trust, and state to the Court that:

1. Respondents have no knowledge of Petitioner having perfected service of the Petition for Condemnation on Respondents in any manner provided by Kentucky law, and certainly not on or about December 2,

2020, as alleged in paragraph numbered 4 in Petitioner's Motion for Interlocutory Order and Judgment.

2. Petitioner having not perfected service of process on Respondents, the Petition for Condemnation should be dismissed, as the Court has yet to obtain jurisdiction over Respondents in this case.

3. Petitioner having not perfected service of process on Respondents, the Motion for Interlocutory Order and Judgment is premature and should be stricken, as the Court has yet to obtain jurisdiction over Respondents in this case, and, under these circumstances, Petitioner certainly can not be said to have "meticulously followed the statutory guidelines," as alleged in paragraph 6 of the Motion for Interlocutory Order and Judgment.

WHEREFORE, Respondents pray that this Court dismiss the Petition for Condemnation and strike the Motion for Interlocutory Order and Judgment for the aforementioned reasons and that Respondents be provided such other and further relief as this Court shall deem just and proper.

Respectfully submitted,

/s/ Robert G. Hicks

Robert G. Hicks,
individually and as
trustee of the
Roberta Cherry Hicks
Testamentary Trust
Post Office Box 491634
Leesburg, Florida 34749

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email: robertghicks@embarqmail.com
Respondents

CERTIFICATE OF SERVICE

The foregoing was served by email to Duncan Cavanah at dcavanah@kihtlaw.com and to J. Daniel Kemp at dkemp@kihtlaw.com and by first class United States Mail postage prepaid to Duncan Cavanah, Post Office Box 648, Hopkinsville, Kentucky 42241-0648 and to J. Daniel Kemp, Post Office Box 648, Hopkinsville, Kentucky 42241-0648, this 21st day of January, 2021.

/s/ Robert G. Hicks

Robert G. Hicks

Duncan Cavanah

From: Duncan Cavanah
<dcavanah@kihtlaw.com>
Sent: Friday, January 22, 2021 8:09 AM
To: andrewself@kycourts.net
Subject: HWEA v. Robert Hicks
Attachments: SKM_C36821012209010.pdf

Judge Self,

I am e-filing this morning my Interlocutory Order and Judgment in the above-referenced case. However, I wanted to let you know that I was contacted yesterday by Mr. Hicks, who claims to have not been served. We served through Secretary of State, and I filed my Motion based on the appearance from Court.net and from speaking to the clerk, that service had been accomplished. Without really being able to go physically look at the file, it's a little hard to tell. Since nothing has been filed, I informed Mr. Hicks that I would file the Order today and let you decide if service is sufficient for entry of the Order. If not, a hearing can be scheduled. Mr. Hicks also sent me the pleading that is attached to this e-mail. He does not have the ability to e-file and asked me to give it to you. In the interest of full disclosure, I wanted you to have access to it before you decided whether or not to enter my proposed Order. Thanks, Duncan

COMMONWEALTH OF KENTUCKY
THIRD JUDICIAL CIRCUIT
CHRISTIAN CIRCUIT COURT
DIVISION I
Civil Action No. 20-CI-00875

CITY OF HOPKINSVILLE,
SEWERAGE AND WATER
WORKS COMMISSION,
D/B/A HOPKINSVILLE
WATER ENVIRONMENT
AUTHORITY, PETITIONER,
VS.
ROBERT G. HICKS
ROBERT G. HICKS,
TRUSTEE OF THE
ROBERTA CHERRY HICKS
TESTAMENTARY TRUST RESPONDENTS.

AFFIDAVIT OF ROBERT G. HICKS
STATE OF FLORIDA
COUNTY OF Baker

Before me, the undersigned authority authorized to take and administer oaths in the State of Florida, personally appeared Robert G. Hicks, who upon oath, swears and affirms the following:

1. It has been represented to the court by petitioner's counsel, and has apparently been taken as fact by the court in its orders of January 22, 2021 and January 26, 2021, that I was served process in the

above-captioned case on or about December 2, 2020. I was not even in Lake County, Florida, which is the county in which Leesburg is located, and to which mailings were purportedly made, in December of 2020 until December 14th, 2020. Petitioner has clearly benefited in this case by the court entering an order based on petitioner's counsel's erroneous representation.

2. City of Hopkinsville tax records clearly show Roberta Cherry Hicks Testamentary Trust tax bills being sent to the mailing address for the trust, specifically, Post Office Box 491634, Leesburg, Florida 34749. However, there is no indication from Petitioner that any effort has been made to serve process on the Trust or the trustee at that address, and affiant confirms that there has been no such effort, to Affiant's knowledge. However, it is my recollection that every draft of a proposed easement which has been provided to me by Hopkinsville Water Environment Authority for review, comment or execution, including the one attached to the petition for condemnation, has included only the Leesburg Post Office box address for me and the Trust.

3. Neither I, personally, or any entity with which I am associated, has had a routinely used mailing address in Jacksonville, Florida, since probably 2001. The Baymeadows address in Jacksonville, Florida, which appears in the court file that attempts to effectuate service were attempted, has not been my address since some time in the early 1990's. See Exhibits A and B, obtained from a copy of the court file received on January 27, 2021.

4. I obtained by email from Vonita Bennett of the Kentucky Secretary of State's office on February 1, 2021, a copy of a memorandum of January 20, 2021, confirming that no service had been made of process in this case, presumably in Leesburg, Florida, and no further details were provided in that memorandum. A copy of that memorandum is attached to this affidavit as Exhibit C. Status information would have been equally available to Petitioner's counsel at the time of the filing of his January 11, 2021 motion, but he, apparently, made the conscious or unconscious decision not to pursue the best source of information on the subject of status.

5. I first became aware of Petitioner's Motion filed January 11, 2021, on the morning of January 21, 2021. I immediately emailed Petitioner's counsel Duncan Cavanah and informed him that service of process was an issue in this case, informed him that I had not been served with process on or about December 2, 2020 (as represented in his motion), requested that he withdraw his motion under these circumstances, requested of him legal authority for any purported service of process, and requested evidence of any service of process. A copy of my emails of that date with Petitioner's counsel, Duncan Cavanah, are transcribed into this affidavit as follows:

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From: Robert Hicks
Sent: Thursday, January 21, 2021 9:31 AM
To: Dan Kemp dcavanah
Subject: HWEA condemnation

I have been informed this morning that I have received in the mail a pleading in which you seek relief and represent to the court that I was served with process on or about December 2, 2020. In point of fact, I have not been served with process in any manner provided by Kentucky law. While not having read the complaint to which you have made reference, I can assure you that I will file an answer, once properly served. The forgoing being the case, it is my position that the court is presently without jurisdiction in this matter. Given your attempt to expedite this matter without hearing and the possibility that the court will mistakenly enter the order you have requesteddat [sic] any time, I would request that you inform the court and withdraw your pleading immediately and effect proper service of process.

Thanks
Robert Hicks

From: Duncan Cavanah
To: robertghicks dkemp
Sent: Thursday January 21, 2021 10:21:26 am
Subject: Re: HWEA condemnation

Mr. Hicks,

I am surprised to hear from you. The clerk informed me you were served as of the date written on

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our pleading. The Order is not yet filed as the 10 day rule expires tomorrow.

Please call me should you wish to discuss. (270)
886-8272 Duncan Cavanah

From: robertghicks
To: Duncan Cavanah
Cc: dkemp robertghicks
January 21, 2021 1:14 pm

All I can say is what I said previously as to the purported service. Show me any proper documentation to the contrary. I stand by my earlier email.

Thanks.
Robert Hicks

From: Robert Hicks
Sent: Thursday, January 21, 2021 2:52 PM
To: Duncan Cavanah
Cc: Dan Kemp
Subject: Re: pleadings

I have not read the Petition, but it will be my intention to file an answer, once properly served with a copy of the Petition. That is a point of information you are free to convey to the court. If there is a procedure for e-filing pleadings, please let me know. The original hard copy is being mailed to the clerk today. I am quite interested in whatever evidence you may have of service because I can assure you that it is defective and will not pass muster on any level. If you choose to submit a proposed order under these circumstances, I will expect, at a minimum, that a copy of the pleading I provided to you

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today be provided to the judge at the same time and that his attention be drawn to it.

Thanks
Robert Hicks

On Jan 21, 2021, at 3:16 PM, Duncan Cavanah wrote:
Mr. Hicks,

Thank you for the pleading you furnished today. Is it your intent to e-file same? Because I do not know which pleadings you have in your possession, I have copied the Petition, Commissioner's Report, Order to Pay Commissioners, my current Motion for Interlocutory Order and Judgment and my proposed Interlocutory Order. I will tender the Order tomorrow. I will allow Judge Self to review the file and determine whether service is proper, and he can enter the Order, or whether a hearing is necessary. As I'm sure you are aware, we are only asking the Court to grant the condemnation at this time. Even after that Order is entered, you may request a trial on the amount awarded should you choose to do so, Thanks, Duncan Cavanah

From: Duncan Cavanah
To: robertghicks
Cc: dkemp
January 21, 2021 3:48 pm

I will inform the Court that you contacted me today, and are contesting entry of the Order on grounds of service. I cannot physically view the court file at this time, so I can only go on what I see on court.net, and what I am told by the clerk. I am sure Judge Self can

determine whether or not service has been achieved to allow entry of the Order.

Our court does accept pleadings via e-filing. You can contact our circuit clerk to get set up. Thanks, Duncan.

Petitioner's counsel complied with none of my requests concerning legal authority and documentation of service of process. The degree to which he complied with other requests is not fully known. However, it is known for a certainty that he was in some manner responsible for providing to Judge Self the Order which was entered on January 22, 2021.

6. Petitioner's attorney, Dan Kemp, has been aware of my email address since at least as early as September 2, 2020, but I received not so much as a courtesy copy of the Petition by that means until Duncan Cavanah provided me with a copy of same on January 21, 2021, and despite the fact that I had informed Derrick Watson of Hopkinsville Water Environment Authority by a letter emailed to him on October 16, 2020, that I was routinely in travel status. See Exhibit D.

7. The memoranda of the Secretary of State's office dated January 5, 2021 and January 20, 2021, Exhibits A and C, respectively, confirm that Respondents have not been served in this case in any manner contemplated by the Kentucky Secretary of State's office.

8. It is believed by Affiant in his professional capacity as a lawyer that the procedure and January 22,

2011 [sic] and January 26, 2011 [sic] orders in this case are clearly violative of the 14th Amendment, Due Process Clause, and the spirit of such authority as *Veralab Ja LLC v Cemerlic*, 584 S.W.3d 284 (Ky 2019).

9. Once properly served with process, Affiant anticipates filing an answer and affirmative defenses raising substantial issues in this case.

FURTHER AFFIANT SAYETH NOT

/s/ Robert G. Hicks
Robert G. Hicks
Affiant

The foregoing instrument was acknowledged before me by means of physical presence, this 12th day of February, 2021, by Robert G. Hicks, who is personally known to me or who has produced personally known, as identification.

/s/ Amy Knabb
Print name: Amy Knabb
Notary Public
My Commission Expires: 10/28/2022

[NOTARY STAMP]

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EXHIBIT A

[SEAL]

**Commonwealth of Kentucky
Office of the Secretary of State**

**Summons Division
PO BOX 718**

**Michael G. Adams FRANKFORT, KY 40602-0718
Secretary of State Phone: (502) 564-3490
Fax: (502) 564-5687**

Circuit Court Clerk
Christian County
Christian County Justice Center
100 Justice Way
Hopkinsville, KY 42240-2368

FROM: SUMMONS DIVISION
SECRETARY OF STATE

RE: CASE NO: 20-CI-00875

DEFENDANT: **ROBERT G. HICKS**

DATE: January 5, 2021

The Office of the Secretary of State was served with a
summons and accompanying documents for the cap-
tioned defendant on

December 2, 2020

This office served the defendant by sending a copy of
the summons and accompanying documents via certi-
fied mail, return receipt requested, on

December 2, 2020

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We are enclosing the undelivered letter bearing the
postal mark:

Not Deliverable As Addressed/Unable to Forward

EXHIBIT B

AOC-105 Rev. 1-07 Page 1 of 1 Commonwealth of Kentucky Court of Justice www.courts.ky.gov CR 4.02; CR Official Form 1	Doc. Code: CI	Case No. <u>20-CI-00875</u>
		Court <input checked="" type="checkbox"/> Circuit <input type="checkbox"/> District
		County <u>Christian</u> <input checked="" type="checkbox"/>

CIVIL SUMMONS

PLAINTIFF

City of Hopkinsville, Sewerage and Water Works Commission
dba Hopkinsville Water Environment Authority

401 East 9th Street
Hopkinsville

Kentucky

VS.

Robert G. Hicks, Trustee of the
Roberta Cherry Hicks Testamentary Trust
7901 Baymeadows Circle East, Apt. 367
Jacksonville
Florida

Service of Process Agent for Defendant:

U.S. Postal Service
CERTIFIED MAIL RECEIPT

OFFICIAL USE

Certified Mail Fee	3.55
Postage and Fees	9.00
Postage	.80
Postmark Here	
Sent to <u>Robert G. Hicks</u> <u>20-CI-875</u> <u>Jacksonville, FL</u>	

THE COMMONWEALTH OF KENTUCKY
TO THE ABOVE-NAMED DEFENDANT

You are hereby notified a legal
the document delivered to you with this
your behalf within 20 days following th
for the relief demanded in the attached

The name(s) and address(es) c
delivered to you with this Summons.

Date: NOV 23 2020

SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
P.O. BOX 718
FRANKFORT, KY 40602



9590 9402 6190 0220 0113 90

Article Number (Number from service label)
7020 1810 0001 0369 0855

This Summons was served by date

PS Form 3811, July 2020 PSN 7530-02-000-8068

this day of 2

Served by:

Title

7020 1810 0001 0369 0855 Secretary of State

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EXHIBIT C

[SEAL]

**Commonwealth of Kentucky
Office of the Secretary of State**

**Summons Division
PO BOX 718**

**Michael G. Adams FRANKFORT, KY 40602-0718
Secretary of State Phone: (502) 564-3490
 Fax: (502) 564-5687**

Circuit Court Clerk
Christian County
Christian County Justice Center
100 Justice Way
Hopkinsville, KY 42240-2368

FROM: SUMMONS DIVISION
 SECRETARY OF STATE

RE: CASE NO: 20-CI-00875

DEFENDANT: **ROBERT G. HICKS**

DATE: January 20, 2021

The Office of the Secretary of State was served with a
summons and accompanying documents for the cap-
tioned defendant on

December 2, 2020

This office served the defendant by sending a copy of
the summons and accompanying documents via certi-
fied mail, return receipt requested, on

December 2, 2020

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To date, this office has received neither the postal return receipt card, nor the undelivered letter. Should we receive either, a Supplemental return to the court will be made.

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EXHIBIT D

ROBERT G. HICKS

Attorney at Law

Post Office Box 491634

Leesburg, Florida 34749

Email: robertghicks@embarqmail.com

October 16, 2020

Mr. Derrick W. Watson
Hopkinsville Water Environment Authority
Post Office Box 628
Hopkinsville, Kentucky 42241
email: dwatson@hwea-ky.com

Dear Mr. Watson:

Re: U.S. 41-A 20" Water Main Extension

I appreciate your letter of October 2, 2020. I hope the matters expressed therein will receive further consideration in light of my following comments prior to commencement of eminent domain proceedings.

The offer being made by HWEA is predicated on Ben Bolinger's appraised value of my property of \$22,715 per acre, which I have adequate basis for considering substantially low. I am forced to view his figure in the context of Mr. Bolinger having provided me with an appraisal of 25.545 acres of property directly across 41-A from the property he has recently appraised. His earlier appraisal, as of July 20, 2012, determined a value of \$27,000 and acre. I am confident that values have only increased since then.

An adverse appraisal generated by G. Herbert Pritchett, with a valuation date of January 13, 2014, provided a valuation of that whole 199 acre tract of \$20,500 per acre, which included much less paved road frontage than the present tract. Also of note in that Pritchett appraisal was the observation that that tract's highest and best use was as "a large industrial site or a series of small industrial sites." The present tract under consideration, in my opinion, has equal or greater suitability for such purposes. The very fact that this project is under consideration confirms same.

Also worthy of consideration is the amount Michael D. Hale and Alice H. Shepherd were paid when the Kentucky Department of Transportation purchased property from them to reroute 756 (Fidelio Road) to its current intersection with U.S. 41-A at Crenshaw Boulevard. I do not have that figure in front of me at present, but it was substantial, in addition to conferring [sic] on them two corners at a stoplight on a divided highway.

In reviewing the recorded easement I negotiated with Pennyrile Rural Electric Authority, it appears that the permanent easement in that transaction encumbered .963 acres. Total compensation received was \$85,000. That implies a per acre rate of \$88,265 per acre. The Bolinger appraisal indicates that HWEA is seeking an easement permanently encumbering .696 acres. At an \$88,265 per acre rate, that would imply \$61,430 for the current taking, before any increase in that amount for the 6 years since the effective date of that taking and the fact that what HWEA is basically

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asking for here is an exclusive easement involving permanently embedded pipes, that may have to be revisited by it over time.

In any negotiations, I will request that any construction easement and any permanent easement be memorialized in separate documents and that the maximum possible amount of the consideration for the interests be attributed to severance damages.

Again, I raise that the matter of the closed portion of 756 is a matter to be resolved with me, and, I presume, with Michael D. Hale and Alice H. Shepherd, and that I expect that an appropriate legal action will be commenced against the Kentucky Department of Transportation by me prior to or during the course of any eminent domain action which may ensue.

Please email to me any communication or correspondence pertaining to this matter as I am routinely in travel status with no ready itinerary.

I will look forward to your consideration of these matters and to our further discussion.

Sincerely yours,
