

No. 17-757

IN THE
Supreme Court of the United States

Patricia Ragland McGehee and Richard McGehee.
Pro Se Petitioners,
v.

Commonwealth of Kentucky, Transportation
Cabinet, Department of Highways Respondent,

On Petition for a Writ of Certiorari to the
Commonwealth of Kentucky Court of Appeals

PETITION FOR REHEARING

Patricia Ragland McGehee
and Richard McGehee
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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, petitioners hereby respectfully petition for rehearing February 20, 2018 order denying (Pet. App. 173a) writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to United States Constitution provides in relevant part: “. . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Section 1 of the Fourteenth Amendment provides in relevant part: “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law;”

GROUND FOR REHEARING

A. Kentucky Transportation Cabinet’s (KYTC) And Hardin Circuit Court’s Unfounded Designation Of All The \$400,000 Compensation As Compensation For Settlement Of McGehees Claims Against KYTC In State And Federal Courts Leaves Zero For Just Compensation For Taking Property In Violation Of Fifth And Fourteenth Amendments.

U.S. Supreme Court in *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 239 (1897) favorably quoted Mr. Justice Jackson (“that since the adoption of the Fourteenth Amendment compensation for private

property taken for public uses constitutes an essential element in 'due process of law,'").

KYTC's proposed Settlement Agreement and Mutual Release identifies \$400,000 was to include both (1) compensation for a deed of KYTC's condemnation and (2) compensation for settlement of McGehees state and federal claims (Pet. App.46a – 47a) as:

WHEREAS, the KYTC and the McGehees agree to settle the issue of compensation due the McGehees from KYTC in Hardin Circuit Court, Civil Action No. 06-CI-01508; and

WHEREAS, the parties further intend to compromise and settle in full all remaining claims between them, whether arising from the allegations contained or legal authority cited in any of the pleadings in the federal or state cases referred to above, and any appeals of such cases.

NOW THEREFORE, for and in consideration of the payment from KYTC to the McGehees as provided for herein, and in further agreements contained herein, the parties do hereby agree as follows:

1. KYTC will pay to the McGehees the sum of Four Hundred Thousand Dollars (\$400,000).

2. In consideration of the payment above, the receipt and sufficiency of which is hereby acknowledged, the McGehees do hereby release in full and forever discharge the KYTC, the United States Army Corps of Engineers and the Federal Highway Administration,

Hon. Graddy had filed Exceptions to Commissioners' Award (Pet. App. 176 – 179) of \$261,500 KYTC had deposited to Hardin Court in 2008 (Pet. App. 180a). It was dispersed to KYTC on November 15, 2011 (Pet. App. 182a) as KYTC wrote in Item 7 of KYTC's proposed Settlement Agreement and Mutual Release:

7. KYTC will execute an agreed order to disperse the Commissioners' Award of \$261,500.00 as ordered to be deposited with the office of the Hardin Circuit Clerk by the Hardin Circuit Court in Civil Action No. 06-CI-01508. Such amount is to be offset or applied to the agreed upon settlement amount set forth above, which will be reduced by the amount of the Commissioner's Award once dispersed. (Pet. App. 50a)

To make the \$400,000 sum requires an additional \$138,500. Randy Strobo ("RS") hand corrected the "One Hundred Thirty Eight Thousand Five Hundred Dollars" instead of KYTC's "One Hundred Thirty Seven Thousand Five Hundred Dollars" where KYTC tried to withhold the \$1,000 salvage value for retaining the residence (Pet. 14 and Pet. App. 197a):

8. The Commissioner's Award of
~~\$261,500.00~~ ~~\$262,500.00~~ ~~\$261,500.00~~
 /s/ RS and the remaining agreed upon
 settlement of One Hundred Thirty
~~Seven~~ *eight* /s/ *RS* Thousand Five
 Hundred Dollars (~~\$138,500.00~~)
~~\$137,500.00~~ ~~\$138,500.00~~ /s/ RS for a
 total of \$400,000.00 due hereunder shall
 be paid by KYTC to McGehees, (Pet.
 App. 50a)

KYTC's proposed Settlement Agreement and Mutual Release Item 9 stated the \$400,000 sum created in Item 7 and Item 8 would be allocated between (1) one portion for the deed and (2) a second portion for settlement of McGehees claims ***provided that the parties may agree*** (Pet. App. 51a):

9. At the said closing herein, upon such above-referenced payment, McGehees shall execute and deliver a deed of conveyance for the subject right of way in fee simple absolute and any necessary temporary easements, ***provided that the parties may agree*** to allocate some portion of the amount paid hereunder to the consideration for such deed, and some other portion of such payment to consideration for settlement of McGehees' claims against KYTC. [Italicizing and bolding added by McGehees for emphasis.]

McGehees objected that the ultimatum at the September 6, 2011 mediation to verbally agree on the spot or your house will be bulldozed tomorrow (ROA

Vol. IX p. 1356) was illegal. We opposed (Pet. App. 76a) the entire proposed Settlement Agreement and Mutual Release. On October 6, 2011 KYTC admitted (Pet. 16) McGehees "have never agreed to the terms of the agreement or signed same." Upon McGehees meeting Hon. Bennett, he recommended KYTC's proposed Settlement Agreement and Mutual Release be broken with a defense of duress (Pet. 17 - 18). We hired Hon. Bennett December 1, 2011 to be our counsel (Pet. App. 114a) and remove Hon. Graddy. McGehees only signed KYTC's proposed Settlement Agreement and Mutual Release on October 13, 2011 because Hon. Graddy said KYTC would demolish the buildings we had moved from the proposed right-of-way as KYTC would still have title to them unless we signed (ROA Vol. IX p. 1360). Hon. Graddy assured us objections to KYTC's proposed Settlement Agreement and Mutual Release could be filed later (ROA Vol. IX p. 1359).

KYTC intentionally bypassed the requirement to (1) allocate one portion for the deed and to (2) allocate a second portion for settlement of McGehees claims (Pet. App. 51a) by alleging all \$400,000 was for settlement in their January 9, 2012 Plaintiff's Reply and Motion to Strike (Pet. App. 191a – 192a) stating:

1. KYTC will pay to the McGehees the sum of
Four Hundred Thousand Dollars
(\$400,000.00); . . . [and]
9. At the said closing herein, upon such above-referenced payment, McGehees shall execute and deliver a deed of conveyance for the

subject right of way in fee simple absolute and any necessary temporary easements....

The Plaintiff has notified Defendants repeatedly that the settlement proceeds are available for such Defendants, but the Defendants have refused to accept same or to sign a deed as previously agreed.

* * *

WHEREFORE, Plaintiff prays for an Order authorizing payment of settlement proceeds to the Clerk,

Hardin Circuit Court cannot supply the missing two allocations in Item 9 of KYTC's proposed Settlement Agreement and Mutual Release to (1) allocate one portion for deed and to (2) allocate a second portion for settlement of McGehees claims. See *Walker v. Keith*, 382 SW 2d 198, 204 - 205 - Ky: Court of Appeals 1964 (it is not the business of court to complete a legally incomplete agreement) (Pet. App. 174a - 175a). It is pertinent the Federal Court action did not enforce KYTC's proposed Settlement Agreement and Mutual Release (Pet. App. 159a - 162a).

Nevertheless, without basis both Hardin Circuit Court Orders entered January 9, 2012 and February 6, 2012 (signed January 31, 2012) for a Master Commissioner deed allocated all the \$400,000 compensation as compensation for settlement of McGehees claims by stating, "Plaintiff shall pay to the Clerk of this Court settlement proceeds of

\$400,000.00,” (Pet. App. 14a and 17a). These two orders leave zero compensation for KYTC taking property. On January 20, 2012 KYTC deposited a single check to the court clerk for \$400,000 (Pet. App. 195a – 196a).

As shown above (*supra*, at 5) there never has been an agreement dividing the \$400,000 between (1) allocating one portion for the deed and (2) allocating a second portion for settlement of McGehees claims. McGehees oppose the entire proposed Settlement Agreement and Mutual Release (Pet. App. 76a). It is significant Hardin Circuit Court never identifies how \$400,000 is divided between (1) allocation for the deed and (2) allocation for settlement of McGehees claims. Hardin Court simply states, “Plaintiff shall pay to the Clerk of this Court settlement proceeds of \$400,000.00,” (Pet. App. 14a and 17a). All this disproves every statement or implication the amount of compensation for taking the property was agreed to. For example, see Hardin Court Findings of Fact, Conclusions of Law, and Order:

“with a limited purpose of determining the right to take and an amount of compensation.” (Pet. App. 19a)

In federal court, after injunctive efforts failed, an agreement was reached, including the amount to be paid as compensation for the taken property. (Pet. App. 20a)

When the Petitioner sought to finalize this case including payment of the agreed upon amount, (Pet. App. 20a)

“This matter was made final by the Order dated January 31, 2012, addressing the remaining issue of the compensation to be paid.” (Pet. App. 22a)

[In reality the Order signed January 31, 2012 entered February 6, 2012 stated, “Plaintiff shall pay to the Clerk of this Court settlement proceeds of \$400,000.00,” (Pet. App. 17a) that leaves zero for compensation for deed.]

See also the Master Commissioner Deed stating, “WHEREAS, the consideration for the conveyance has been paid to the Clerk of the Hardin Circuit Court, pursuant to Order of the Hardin Circuit Court.” and “in consideration of the \$400,000 sums paid by the second party” (Pet. App. 39a) implying all the \$400,000 is consideration for conveying the property contrary to Hardin Circuit Court orders that \$400,000 is settlement (Pet. App. 14a and 17a). See also Court of Appeals March 24, 2017 Opinion stating, “The settlement agreement not only established the amount of compensation the McGehees would receive from the KYTC,” (Pet. App. 5a) but also states “On January 9, 2012, the trial court ordered the KYTC to remit the settlement proceeds to the Hardin Circuit Clerk’s Office” (Pet. App. 5a). However, Hardin Circuit Court’s January 9, 2012 Order simply states, “Plaintiff shall pay to the Clerk of this Court settlement proceeds of \$400,000.00,” (Pet. App. 14a) which leaves zero for compensation for deed. Hardin Circuit Court again states “Plaintiff shall pay to the Clerk of this Court settlement proceeds of \$400,000.00,” (Pet. App. 17a) in its Order signed January 31, 2012 entered

February 6, 2012. The February 6, 2012 Findings of Fact, Conclusions of Law, and Order relying on this Order (Pet. App. 17a) as "This matter was made final by the Order dated January 31, 2012, addressing the remaining issue of the compensation to be paid." (Pet. App. 22a) therefore also leaves zero for compensation for taking property. Zero for taking property violates the just compensation requirement of Fifth Amendment as applied to states by Fourteenth Amendment. Therefore, all three of these Hardin Court orders (Pet. App. 13a – 22a) and the resulting Master Commissioner's deed (Pet. App. 38a – 44a) are absolute nullities.

B. Without Personal Jurisdiction All Orders Of Civil Action No. 06-CI-01508 Are Absolute Nullities.

The subject matter of this litigation is 7.77 acres referred to as Parcel 12 of Ring Road Extension Item No. 4-7010.00. KYTC's Exhibit A, Right of Way Sheet No. R11, revised March 9, 2006 (Pet. App. 198a – 199a) shows KYTC's title work correctly identified Patricia A. Ragland as sole owner of Parcel 12. Irvin H. Ragland transferred his 85 acre farm to his unmarried daughter Patricia A. Ragland on February 28, 1991, Deed Book 703 Pages 384 - 386 (Def. Ex. 14, Pet. App. 81a - 85a). Pat Ragland and Richard McGehee first met October 23, 1991. By KY Rev Stat § 404.010(1) (Pet. App. 200a) Patricia A. Ragland remains the sole owner even after she married Richard McGehee October 24, 1993, Hardin County Clerk Marriage Book 103 Page 287 which is not in the court record. After marriage Richard McGehee moved in with Pat and her father at the

132 Arnold Lane farm, a Kentucky Landmark (Pet. App. 194a).

KYTC seeking 7.77 acres of Pat Ragland's 85 acre farm does not conflict with the potential Richard might obtain curtesy interest in half the farm if Richard outlives Pat, according to KY Rev Stat § 392.020 (Pet. App. 201a). *See Whisman v. Whisman*, No. 2007-2534, 2009 WL 2971552, at *9 (Ky. App. Sept. 18, 2009) (unpublished) ("curtesy interest does not accrue until the death of the other spouse with the surviving spouse 'not entitled to any interest until the happening of that event[.]'"). Nevertheless, without justification and contrary to KY Rev Stat § 404.010(1), § 404.020, and § 404.060(1) (Pet. App. 200a, 202a, and 203a), KYTC made their condemnation Petition against defendants "Patricia A. Ragland McGehee and Richard McGehee, her husband" (Pet. App. 204a – 211a) stating,

(2) That the Defendants named herein are the owners or have an interest in and to the land sought to be condemned in this action, said land lying and being within the limits of the proposed highway, *supra*. (Pet. App. 205a)

However, KYTC's petition itself states Patricia Ragland's sole ownership:

Being portions of the property that Irvin H. Ragland, by and through his Attorney-in-Fact Patricia A. Ragland, ***conveyed to Patricia A. Ragland, single***, in the Deed dated February 28, 1991, and recorded in Deed Book 703,

Page 384, in the office of the County
Clerk of Hardin County, Kentucky. (Pet.
App. 208a)

Hardin Circuit Court knowingly cooperated with
KYTC's bad faith falsehood the owners were
"Patricia A. Ragland McGehee and Richard
McGehee, her husband" by issuing summons to
Patricia A. Ragland McGehee (Pet. App. 212a - 213a)
and to Richard McGehee (Pet. App. 214a - 215a). By
petition and summons not being on the known
owner, Hardin Circuit Court lacks personal
jurisdiction.

For McGehees to sign a deed conveying Ragland
property, Deed Book 703 Pages 384 - 386 (Def. Ex.
14, Pet. App. 81a - 85a), would have McGehees
illegally representing to be title holders while
knowing Patricia A. Ragland has exclusive title in
order to receive a large sum of money. Nevertheless,
this illegality is demanded by KYTC's proposed
Settlement Agreement and Mutual Release Item 9
(Pet. App. 51a) "McGehees shall execute and deliver
a deed of conveyance for the subject right of way".
This illegality is demanded in the two Hardin Court
Orders entered January 9, 2012 and February 6,
2012 (Pet. App. 14a and 17a), as "should Defendants
fail to deliver to the Plaintiff a general warranty
deed conveying the property described in the
Interlocutory Judgment".

By Deed Book 703 pages 384 to 386 Irvin H.
Ragland conveyed the property to Patricia Ragland,
single (Pet. App. 81a - 85a). However, Master
Commissioner's deed claiming "for and on behalf of
the *Defendants*, Patricia A. Ragland McGehee and

Richard McGehee, her husband, *parties of the first part*,” (Pet. App. 39a) falsifies Irvin H. Ragland conveyed the property to “*First Parties*” and it is “*Defendants*” property being conveyed.

The above described parcels being a portion of the same property *conveyed to First Parties* by Irvin H. Ragland, single, by deed dated February 28, 1991, and duly recorded in Deed Book 703, page 384, in the office of the County Clerk of Hardin County, Kentucky. (Pet. App. 42a)

The parties to said action, whose title is passed by this conveyance, are the *Defendants* in Hardin Circuit Court, Civil Action No. 06-CI-01508. (Pet. App. 42a – 43a)

Hardin Court approved this falsehood February 13, 2012 (Pet. App. 43a) despite knowing the property was conveyed only to Patricia Ragland as stated in June 2, 2008 Interlocutory Order and Judgment:

Being portions of the property that Irvin H. Ragland, by and through his Attorney-in-Fact Patricia A. Ragland, *conveyed to Patricia A. Ragland, single*, in the Deed dated February 28, 1991, and recorded in Deed Book 703, Page 384, in the office of the County Clerk of Hardin County, Kentucky. (Pet. App. 26a – 27a)

Despite evidence of Pat Ragland's sole ownership the Interlocutory Order and Judgment also alleges Defendants, "Patricia A. Ragland McGehee and Richard McGehee, her husband" own the property:

that this Court has reviewed all memorandums and other pleadings filed herein; * * * in deciding its need to acquire portions of the property of the Defendants; (Pet. App. 24a)

KYTC and Hardin Court have had the deed reference Patricia A. Ragland is sole owner since initiating petition but falsehoods of McGehees ownership have persisted throughout Civil Action No. 06-CI-01508. Court of Appeals February 19, 2010 Opinion Affirming falsely states:

The McGehees own property in Hardin County, Kentucky. On August 21, 2006, the Transportation Cabinet Department of Highways (the "Cabinet") filed a petition with the Hardin Circuit Court to condemn a portion of their property. (Opp. App. 2a)

Court of Appeals March 24, 2017 Opinion Affirming falsely states "condemn a portion of the real property owned by the McGehees." (Pet. App. 2a). Hearsay of ownership doesn't override authority of deed.

McGehees "special appearance" status in Hardin Circuit Court was established as a continuing objection (2/13/2007 @ 10:16:35 – 10:19:19). See *Weant's Adm'r v. Ellis*, 287 S.W.2d 446 (Ky. Ct. App. 1955) ("he did not waive that defense and the courts

did not acquire personal jurisdiction by virtue of the steps taken by him subsequently in resisting the actions.”). Therefore, all orders of Civil Action No. 06-CI-01508 are absolute nullities.

C. Judicial Notice Proves Federal Nexus To Ring Road Extension.

Since Hardin Circuit Court obstructed defense evidence, it is appropriate to take judicial notice of evidence that a fair trial with due process would have had a different result. For example, evidence regarding necessity for FHWA’s approval for creating an I-65 interchange requires Ring Road Extension be developed in compliance with federal requirements (Pet. App. 216a - 223a). Therefore, federal analysis of alternatives was to be before actions limited alternatives (Pet. 42 - 43). Alternatives to avoid Pat Ragland’s historic farm and avoid the wellhead protection area would have proven abuse of discretion in locating Ring Road Extension (Pet. App. 122a – 128a).

CONCLUSION

For the foregoing reasons, this Court should grant Petition For Rehearing. Unless this case is resolved on the merits the mootness tactic can persist to evade the policies Congress established.

Respectfully submitted,

Patricia Ragland McGehee
and Richard McGehee
Pro Se Petitioners

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March 17, 2018

CERTIFICATE OF *PRO SE* PETITIONERS

We hereby certify that this Petition For Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Patricia Ragland McGehee
Richard McGehee

Patricia Ragland McGehee
and Richard McGehee
Pro Se Petitioners

COMMONWEALTH OF KENTUCKY

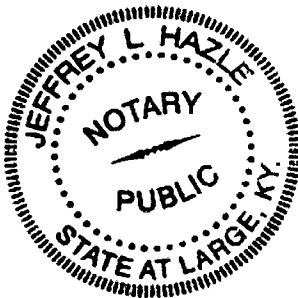
COUNTY OF

Hazard

Subscribed, sworn to, and acknowledged before
me this 16th day of March, 2018.

J. L. Hazle
NOTARY PUBLIC--STATE AT LARGE

My commission expires: 2/6/2021



**Additional material
from this filing is
available in the
Clerk's Office.**