

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36822

OHIO RAIL DEVELOPMENT COMMISSION—PETITION FOR DECLARATORY ORDER

Decided: March 20, 2025

On December 3, 2024, the Ohio Rail Development Commission (ORDC),¹ filed a petition for declaratory order asking the Board to find that (1) a rail line owned by ORDC, which extends 43.2 miles from milepost 81.1 at North Warren, Ohio, to milepost 124.3 at Ashtabula, Ohio (the Line), remains subject to the Board’s jurisdiction; (2) certain state law adverse possession claims asserted by Charles Supplee with respect to the Line are preempted; and (3) the Line was railbanked pursuant to federal law prior to the issuance of the railbanking regulations in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).

According to the petition, on December 6, 2023, Mr. Supplee filed a state law claim in the Court of Common Pleas of Franklin County, Ohio Civil Division, claiming he had obtained title to the Line by adverse possession. (ORDC Pet. 3 n.3.) On October 4, 2024, the Court of Common Pleas granted ORDC’s motion for judgment on the pleadings for failure to state a claim upon which relief can be granted. (*Id.*) Mr. Supplee appealed that decision to the Court of Appeals of Ohio, Tenth Appellate District (Court of Appeals). (ORDC Letter 1 n.1, Dec. 19, 2024.) On December 5, 2024, ORDC filed a request for a stay with the Court of Appeals asking it to hold Mr. Supplee’s appeal in abeyance pending resolution of ORDC’s petition for declaratory order before the Board. (*Id.* at 1-2.) On December 17, 2024, the Court of Appeals stayed all further proceedings in the matter until the Board rules on ORDC’s petition. (*Id.* at 2, Ex. B.)

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. As demonstrated by Mr. Supplee’s appeal and ORDC’s petition, a controversy exists as to the jurisdictional status of the Line and whether certain state law adverse possession claims to portions of the Line are preempted under 49 U.S.C. § 10501(b). In addition, by staying Mr. Supplee’s appeal pending resolution of ORDC’s petition before the Board, the Court of Appeals has indicated that it would like the Board to address this issue. ORDC has also asked the Board to address the uncertainty regarding whether the Line has been railbanked. Therefore, a declaratory order proceeding will be instituted.

¹ ORDC states that it is an independent commission within the Ohio Department of Transportation that represents the state in non-regulatory interactions with the railroad industry. (ORDC Pet. 1.)

ORDC's petition did not include a certificate indicating service of the petition on Mr. Supplee, and Mr. Supplee did not file a reply to ORDC's petition within 20 days as provided by 49 C.F.R. § 1104.13(a). ORDC's request for a stay filed with the Court of Appeals did include a copy of its petition for declaratory order as an exhibit and a certificate of service indicating that the stay request was served on Mr. Supplee's counsel in the state court proceeding. (ORDC Letter Ex. B, Dec. 19, 2024.) To ensure that Mr. Supplee receives all relevant documents in this proceeding, ORDC will be ordered to serve on Mr. Supplee a copy of its petition for declaratory order and a copy of this decision and certify to the Board that it has done so by March 26, 2025.

ORDC's December 3, 2024 petition will be treated as its opening statement. Mr. Supplee and any other interested parties may file a reply to the petition no later than April 15, 2025. ORDC may file a rebuttal no later than April 25, 2025.

It is ordered:

1. A declaratory order proceeding is instituted.
2. ORDC is directed to serve a copy of its petition for declaratory order and a copy of this decision on Mr. Supplee and certify to the Board that it has done so by March 26, 2025.
3. Mr. Supplee and any other interested parties may file a reply to the petition by April 15, 2025. ORDC may file a rebuttal by April 25, 2025.
4. This decision is effective on its service date.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.