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3–10--0299

Order filed March 25, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

JEROME B. KLOSE and RUTH B. KLOSE	))	Appeal from the Circuit Court For the 13th Judicial Circuit
	)	LaSalle County, Illinois
Plaintiffs-Appellants,	))	
v.	))	No. 2000-MR-123
FREDERICK E. MENDE, Commissioner of Highways, MERIDEN TOWNSHIP, LASALLE COUNTY, ILLINOIS	))))	Honorable Eugene P. Daugherity,
	)	Judge, Presiding
Defendants-Appellees.	)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

Held: Addressing only those issues over which the court has jurisdiction: the trial court did not err in finding the defendant's documents authentic or in declaring the width of the road dedication; the trial court did not err in sustaining the defendant's objections to the plaintiffs' interrogatories, denying the plaintiffs' motions for sanctions, and denying the plaintiffs' requests to alter the trial transcripts.

In the third appeal concerning the dedication of road right-of-ways adjacent to the plaintiffs' property, the plaintiffs assert the trial court erred in finding the defendant's documents authentic and

original and erred in finding the right-of-ways had been opened to the full extent mandated by statute. For the reasons that follow, we affirm the trial court on these and other issues raised by the plaintiffs.

FACTS

Because this case has a history in this court, we draw our facts, in part, from our previous reviews. This action commenced in the year 2000 when defendant the township of Meriden notified plaintiffs Jerome and Ruth Klose that it intended to improve North 4450th Road by blacktopping it eastward from East 10th Road for a distance of 3,000 feet. The Kloses' land is bounded on the north and west sides, respectively, by the roads. Frederick Mende, the township commissioner at the time, asserted the township had acquired a 66-foot-wide right-of-way in the road to be paved by a statutory dedication made in 1856. As proof of the township right, Mende sent the Kloses certain pages of the township ledger kept by the Meriden township clerk, which indicated a dedication by statute of the 66-foot right-of-way. The township was unable to produce any other documents, including the survey that was prepared at the time the road was originally constructed, the original order dedicating the road, or the plat describing the road. The proposed roadway work as staked out by the township included several feet of land the Kloses had cultivated.

The Kloses objected to the township's plans, claiming they owned by warranty deed the road right-of-ways at issue. The Kloses filed an action for declaratory relief, seeking an order from the court confirming their fee simple title to the road right-of-ways for North 4550th Road and East 10th Road in Meriden Township. The township filed a motion to dismiss the Kloses' complaint. The trial court found the township had a valid dedication and that it did not matter with respect to the declaratory action whether the township had acquired fee simple title or an easement in the property

at issue. The trial court granted the township's motion and denied the Kloses' request to amend. The Kloses appealed the trial court's order.

On appeal, this court held the township's claim to the roads failed because it had not established a valid dedication of the roads. *Klose v. Mende*, 329 Ill. App. 3d 543, 547 (2001) *(Klose I*). We found that the documents offered by the township were incomplete and therefore insufficient to establish the dedication. *Klose*, 329 Ill. App. 3d at 547. Specifically, we found that to satisfy the statutory requirements for a finding of a valid dedication, the township was required to provide the petition in which permission to build the roads was requested, a surveyor's report, a survey and plat, and the road commission's order granting the dedication. *Klose*, 329 Ill. App. 3d at 546-47 (quoting 1851 Ill. Laws 72 (§4) (hereinafter 1851 Act)). We further concluded the township had acquired an easement by prescription for the portion of the roads in use at the time of the action. *Klose*, 329 Ill. App. 3d at 548-49.

Following this court's decision, the Kloses filed a motion to reinstate, to enter a second amended complaint, to set a date for the township's answer, and to order the township to produce right-of-way maps. While various matters were pending in the trial court, the township, on April 10, 2003, filed a petition to reopen proofs pursuant to section 2-1401 of the Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2002). The township's section 2-1401 petition was based on documents the township officials discovered in March 2003. The documents included the original order dedicating the roads, the original surveyor's report and plat, and receipts from adjoining landowners indicating the compensation paid for the taking of their land for the roads. In May of 2003, the trial court granted the Kloses' motion to dismiss the township's section 2-1401 petition based on the township's failure to adequately assert due diligence. The township filed an amended petition on

June 16, 2003, setting forth the township's diligence efforts. The amended petition included affidavits from Mende and the township clerk, Ellen Atherton, in which they attested to their efforts to find the necessary documents. The township filed a second amended petition on June 15, 2005. The Kloses responded to the township's second amended section 2-1401 petition with an answer, defenses and counterclaims. The section 2-1401 action was transferred to a different trial court judge based on the Kloses' motion pursuant to 735 ILCS 5/2-1001(a)(2)(West 2002) for a substitution of judges as a matter of right . Other pending matters were considered and disposed of by the original trial court judge. A hearing was had on the township's section 2-1401 petition. At the hearing, Mendes, Atherton, and two township trustees testified regarding the details of the search for, and the discovery of, the missing documents.

Following the hearing, the trial court granted the township's section 2-1401 petition to reopen proofs. The trial court found the newly discovered evidence constituted the records that we had determined were necessary to establish a valid dedication, thus the township had satisfied the meritorious defense element necessary for a section 2-1401 petition. The trial court also determined the township was not negligent or lacking in diligence in searching for the original records. The trial court further found that the town clerk's record-keeping was not negligent, that the existence of the original records constituted newly discovered evidence, and that the township's petition was not barred by the statute of limitations because the original section 2-1401 petition was timely filed. The Kloses again appealed. On appeal, we agreed with the trial court that the township had satisfied the requisite elements necessary to a favorable ruling on its section 2-1401 petition. *Klose v. Mendes*, 378 Ill. App. 3d 942, 952 (2008) (*Klose II*). We noted that the documents the township had discovered were the "exact documents that this court found were necessary but lacking to sustain the

validity of the dedication of the roads at issue." *Klose*, 378 Ill. App. 3d at 947. We also stated that "[h]ad the township known of [the records] existence and been able to present the documents during the original proceedings, the trial court's rulings in its favor would have been affirmed by this court." *Klose*, 378 Ill. App. 3d at 947. We concluded the trial court did not abuse its discretion in granting the township leave to reopen proofs. *Klose*, 378 Ill. App. 3d at 952.

Upon remand to the trial court, the Kloses filed a motion entitled "Plaintiffs' Notice of Matters For Consideration *** and Motion For Transfer Under 735 ILCS 5/2-100[1], (a)(2)(i)(ii)," in which the Kloses, in part, again requested a different trial court judge as a matter of right. Following a hearing on August 20, 2008, the trial court denied the Kloses' section 2-1001 motion to substitute judges and granted them leave to file an amended complaint. Later, the Kloses' motion for reconsideration of the order denying them a substitution of judges was denied as well.

The Kloses filed a "2008" complaint for declaratory judgment and equitable relief in which they asserted, in part, that the township's "allegedly newly discovered evidence" was not proved to be the original documents because there had been no expert testimony or analysis that established the authenticity of the documents. The Kloses further asserted that even if the documents were proven to be authentic, they did not establish that the township had acquired a fee simple title to the road right-of-way of North 4550th rather than "an easement for a road of undetermined width." The Kloses also alleged that, at most, the township had obtained only an easement in the East 10th Road, the width of which was determined by the existing width of the road. The trial court granted, in part, the township's responsive section 2-615 motion to strike portions of the Kloses' complaint. As a consequence, the trial court struck portions of the complaint, including the allegations questioning the authenticity of the newly discovered documents, which the township argued were "entirely new

pleadings" and which, as asserted by the township, questioned evidence properly admitted at the trial on the township's section 2-1401 motion of the township. In response, the Kloses filed a "First Amended 2008" complaint and in their motion to file the complaint reserved their right to continue to argue the authenticity of the documents. In their complaint, the Kloses reiterated their fee simple and easement allegations. The Kloses alleged the lines of cultivated land on each side of the highway represented the approximate location of previous fences which in turn defined the width of the highway recognized by the public's actual use. They asserted that any dedicated easement to the township consisted of only the width of North 4550th Road as it had been used at the beginning of the cause of action. The Kloses made similar allegations with respect to the East 10th Road right-of-way. In addition to their complaint, the Kloses filed a motion under "Rules 137 and 219(c)" for sanctions and costs directed against the township for its delay in responding to the plaintiffs' complaint beyond the October 10, 2008, deadline ordered by the trial court.

In response to the Kloses' complaint, the township alleged that the issue of fee simple title to the dedicated road right-of-way was not at issue, and that rather than disputing fee simple title, the township was claiming the rights of a valid dedication which included a perpetual 33 foot (on either side) statutory roadway easement to which the Kloses' land was subject. The township also asserted there had been no "partial abandonment" on the part of the township of the dedicated right-of-way.

The Kloses filed a motion for summary judgment "On Fee Simple Ownership Of The Road Right-of-Ways," in which the Kloses asked for a trial court order indicating their fee simple title to the road right-of-ways and an order describing the length and width of the road right-of-ways. The Kloses also filed a motion for sanctions for '[n]onfeasance" on the part of the township and its attorney in illegally claiming fee simple ownership in the road right-of-ways. On March 5, 2009, the

trial court granted the Kloses partial summary judgment on the issue of fee simple ownership of the property under the roadway, "in the event of a proper, valid dedication. Defendant having admitted that fee would be in Mr. Klose." All other matters were left to be decided. A petition by the Kloses to substitute judges for prejudicial cause was denied on April 17, 2009, and the cause returned to the trial court for further proceedings.

In June 2009, the trial court denied the Kloses' motions for sanctions against the township for "illegally claiming fee simple ownership," and for the late filing by the township of responsive pleadings. The trial court found, in part, that when the original trial court ruled on the township's motion to dismiss the Kloses' declaratory judgment action, it had found any determination of fee simple ownership unnecessary to the decision. In this regard, the trial court stated, it considered the status of the proceedings had remained unchanged for the ensuing eight years. The trial court found it was not until the cause had been remanded to the trial court following this court's affirmation of the grant of the township's section 2-1401 petition to reopen the proofs that the Kloses, in their amended complaint, "set out *** the question of ownership of the roadway." The trial court found the township had "promptly admitted" the Kloses' fee ownership. In conclusion, the trial court ruled that because the parties were informed that the issue of ownership of the roadway was not material to a decision regarding the proper dedication of the road, the township's response to the Kloses' "innumerable attempts to raise [the] issue could in no way *** justify the imposition of sanctions." The trial court also granted a township motion to strike portions of interrogatories submitted by the Kloses, one of which requested an answer to the question: "What is the basis of your claim to fee simple title to the right-of-way for North 4550th Road and East 10th Road from at least prior to June 2000 and up to about the end of 2008?"

On August 3, 2009, the trial court issued an order, *nunc pro tunc* to July 16, 2009, describing the Kloses' fee simple ownership and stating the township "[b]y the alleged dedication *** would only acquire an easement (width to be determined) for each road right-of-way and the fee simple title for each road would remain in the landowner subject to the easement." Although the Kloses submitted for entry a proposed order describing their property using metes and bounds description different from that in their original deed, the trial court's order contained the description of property as defined in the Kloses' deed.

After several evidentiary rulings, in January 2010, the cause proceeded to trial on the Kloses' 2008 amended complaint. As the trial court stated in the prelude to its order issued after trial, the issue at trial was not a question of the ownership of the property, but rather, "whether *** the documents discovered in the spring of 2003 and the subject of the 2-1401 petition and the *Klose II* opinion were authentic original documents which established the roads by statutory dedication in 1856," and if so, what was the width of the two roads as dedicated.

We summarize the trial testimony and evidence as follows. The testimony of the township officials indicated the documents pertaining to the dedication were found in the old town hall. When the town commissioner and other township employees were cleaning out the old town hall in preparation for its demolition, they discovered several old documents in a cupboard. Although the safe in the old town hall had been accessed before, the cupboard, which had been blocked by a broken piano, had not been opened in the memory of any of the witnesses. The officials had not anticipated any town records would be stored in the cupboard. To their knowledge, township records were kept in the safe or in the township hall garage. Although the township clerk had a ledger that indicated a dedication by statute of the 66-foot right-of-way, until the township discovered the old documents,

they did not have "control" of the supporting records. Among the documents recovered from the cupboard were the documents that formed the basis of the township's section 2-1401 petition to reopen the proofs.

The township presented Karl Moore to testify regarding the authenticity of the found documents. Moore's position with the State of Illinois as chief archivist required him to review records of local governments, including townships, for their historical value and advise the entities regarding the preservation of documents. Moore has worked in this field from 1976, and his experience includes work in the field, at township offices and other governmental sites. Moore stated his opinion that the township records at issue were the original dedication documents. He opined the documents were drawn up on forms that were published and distributed to each township by the State prior to the date of the dedication; although, he also admitted that people other than township personnel may historically have had access to similar forms. Moore also stated the visible characteristics of the documents, the paper, pen, ink, and method used to fasten the documents was in keeping with his opinion of their historical nature. He admitted his opinion was not based on scientific testing of the document characteristics. Moore also testified that the manner in which the documents had been found and their location indicated to him that the documents had remained under township control until they were found. Moore stated his opinion that the fact that the documents were supported by the notations in the township clerk's ledger supported a finding they were authentic as the process of recording them in the ledger was in keeping with the 1851 Act. Although the Kloses were allowed to cross-examine Moore regarding contrary opinions, the trial court denied the Kloses' attempt to introduce into evidence expert writings to refute Moore's testimony.

Following the close of the evidence, the trial court issued an order and several findings. The

trial court acknowledged the plaintiffs bore the burden of proof for their allegations. The trial court specifically found the township documents, including the surveyor's report, the plat describing the route, the original dedication order, and the receipts from adjoining landowners were the original road dedication documents. The trial court found the documents satisfied the ancient document rule because the documents on their face were more than 30 years old, were free from suspicion and came from such custody as to show a reasonable presumption of genuineness. The trial court also considered the documents met the requirements of both a public records hearsay exception and a business record hearsay exception.

The trial court also found the roadways at issue were 66 feet or 4 rods wide. The trial court found the original dedication documents specifically stated the dimension and the 1851 Act required public roads laid out pursuant to the Act to be not less than 4 rods wide. The trial court considered the plaintiffs had not sustained their burden of proof in establishing that at the time the road was dedicated in 1856, it was not opened to the full 66 feet. Finally, the trial court stated its ruling upholding the defendant's objections to interrogatories regarding fee simple ownership had not been in error as the issue was not pending at the time of trial.

On March 23, 2010, the Kloses filed a "[r]enewed" petition for sanctions against the township for "illegally claiming fee simple ownership." The gist of the Kloses' petition was that the township, throughout the litigation, had engaged in an ongoing campaign to claim fee simple title in the road right-of-way. The Kloses noticed this petition and their petition for sanctions based on the late filing of responses by the township for hearing on April 8, 2010. The trial court denied both petitions.

In their notice of appeal, the Kloses specifically noticed that they were appealing from the trial court orders dated March 19, 2010 and April 8, 2010. As noted in the notice of appeal, the March 19,

2010, order provided that the documents presented by the township at trial were the original road dedication documents and that the roads, as dedicated, were entitled to the full width of 66 feet or 4 rods. According to the Kloses, the March order also "deprived them of the opportunity to develop evidence, in support of their request for sanctions." The Kloses "appeal[ed] from every one of the above listed holdings *** as well as others used to support the ultimate holdings." The April 8, 2010, order from which the Kloses also specifically appealed, denied their renewed petition for sanctions on "the fee simple matter" and the township's delay in responding to their 2008 complaint. In the April order, the trial court also denied the Kloses' motion to obtain access to audio recordings of the January 2010 trial proceedings. The Kloses follow with this appeal.

ANALYSIS

In their first issue on appeal, the Kloses assert the trial court erred in denying them a substitution of judges pursuant to section 2-1001(a)(2) of the Code of Civil Procedure. 735 ILCS 5/2-1001 (a)(2) (West 2006). We find we are without jurisdiction to review this issue. "A reviewing court has an independent duty to consider issues of jurisdiction, regardless of whether either party has raised them." *People v. Smith*, 228 Ill.2d 95, 104-06 (2008) (taking the opportunity to remind the appellate court of the importance of ascertaining whether it has jurisdiction in an appeal). Under Supreme Court Rule 303(b)(2), when an appeal is taken from a specified judgment, the appellate court acquires no jurisdiction to review other judgments or parts of judgments not specified or inferred from the notice of appeal. Ill. S. Ct. R. 303(b)(2) (eff. June 4, 2008); *Neiman v. Economy Preferred Insurance Co.,* 357 Ill. App. 3d 786, 790 (2005). Although a notice of appeal is jurisdictional, it is generally accepted that such a notice is to be construed liberally. *Smith*, 228 Ill. 2d at 104. For this reason, a notice of appeal should be considered as a whole and deemed sufficient to

confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thereby advising the successful litigant of the nature of the appeal. *Smith*, 228 Ill. 2d at 105. Where, on the other hand, the notice of appeal not only fails to mention the appealed order but specifically mentions a different judgment, and only that judgment, even under a liberal construction, the defect is more than in mere form. *Smith*, 228 Ill. 2d at 104.

In the instant case, the Kloses specifically noticed in their notice of appeal the trial court's orders of March 19, 2010, and April 8, 2010, laying out in detail the rulings of those orders. The order in which the trial court denied the Kloses' motion for a substitution of judges as a matter of right was issued on August 20, 2008, and the order denying their motion for reconsideration of that ruling was issued on September 29, 2008. Moreover, we do not consider the substitution of judges rulings comprise steps in the procedural progression leading to the orders on appeal. See *Neiman*, 357 Ill. App. 3d at 790-91 (a non-specified judgment may be reviewed if it has been a step in the procedural progression leading to the specified judgment). A substitution of judges as a matter of right has no inherent relationship to the subjects addressed in the orders of March 19, 2010, and April 8, 2010. See *Neiman*, 357 Ill. App. 3d at 791 (a substitution of judges and refusal to disqualify are matters of an ancillary nature which have no impact on the substantive judgments). For this reason, we review only the Kloses' citations of error with respect to those orders specified in their notice of appeal.

The Kloses' next three issues on appeal are basically an assertion that the trial court erred in finding the documents discovered by the township were authentic and the original records of the dedication. In this respect, the Kloses question the trial court's conclusion that the ancient document exception or any other exception to the objection of hearsay was satisfied. The Kloses assert the

documents were not proven to have been in the control of the township since the documents were executed. The Kloses also allege the documents in question were not properly authenticated because the township's expert was not qualified to evaluate the documents and did not conduct any scientific testing of the documents. The Kloses further argue the documents could have been prepared by someone other than a township official.

We consider this issue involves the trial court's determination of the admissibility of evidence and whether the evidence as presented supports a finding the documents are valid. For these reasons our standard of review involves evaluating the trial court's discretion and considering whether the trial court's ruling is against the manifest weight of the evidence. *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003) (the decision of whether to admit expert testimony is within the sound discretion of the trial court and its ruling will not be reversed absent an abuse of that discretion); *Knoob Enterprises*, *Inc. v. Village of Colp*, 358 Ill. App. 3d 832, 835 (2005) (following a bench trial, we will not disturb a trial court's ruling unless it is against the manifest weight of the evidence). A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on evidence, or when the opposite conclusion is clearly evident from the record. *In re Estate of Savio*, 388 Ill. App. 3d 242, 247 (2009).

Under the ancient documents hearsay exception, documents affecting real estate that are 30 years old or older may be authenticated by evidence that the writing or recording is in such condition as to create no suspicion concerning its authenticity, was in a place where it, if authentic, would likely be, and has been in existence 30 years or more at the time it is offered. *People ex rel. Adams Electric Co-op. v. Village of Camp Point*, 286 Ill. App. 3d 247, 255 (1997) (quoting *M. Graham, Cleary & Graham's Handbook of Illinois Evidence* § 901.9, at 814 (6th ed. 1994)). An ancient document may

be admitted under the exception if it was made by competent authority, recorded or accepted as a public document and produced from proper custody. *Village of Camp Point*, 286 Ill. App. 3d at 255. On the other hand, a document, even if ancient, which was made at the direction of a private person and which has no official authorization or recognition may not be admitted as an ancient document. *Village of Camp Point*, 286 Ill. App. 3d at 255. The accumulation of a document in a library or other such repository does not in itself make the document official. *Village of Camp Point*, 286 Ill. App. 3d at 255. Furthermore, even if the documents are considered ancient documents, ancient documents that do not fit under the public records exception to the hearsay rule are admitted only as *prima facie* evidence of their contents and are not conclusive without evidence tending to substantiate their correctness. *Village of Camp Point*, 286 Ill. App. 3d at 255-56.

Generally, documents may come within the public records exception to the hearsay rule if they are either required by statute or authorized to be maintained by the nature of the office. *Lombard Park District v. Chicago Title & Trust Co.*, 105 Ill. App. 2d 371, 378 (1969). Such records are evidence of those matters which are properly required to be maintained and recorded. *Lombard Park District*, 105 Ill. App. 2d at 378. The public records exception to the hearsay rule is premised upon assumptions that public officers will perform their duties and are without motive to falsify, and that public inspection to which such records may be subject will disclose inaccuracies. *Lombard Park District*, 105 Ill. App. 2d at 378.

In the instant case, the trial court found the documents discovered by the township were authentic and the original dedication documents. The trial court based its finding on the observation that the documents on their face were more than 30 years old and free from suspicion. To this end, the trial court found the testimony of the township expert, Moore, convincing. Moore opined the

documents at issue were the original records of the dedication. He based his opinion on his experience in the field, the visible characteristics of the documents, including the paper, pen, ink and method of fastening, and the fact that the documents conformed to the standard form used by the townships of the day, the "Haines" publication, which was by law mailed to each township in a period before the dedication took place. The Kloses argued that other similar forms were also in use at the time, however, this fact in itself does not imply the recovered documents were not authentic and original.

Furthermore, although the Kloses objected to the admission of Moore's testimony, we find the trial court did not abuse its discretion in allowing the testimony. "Expert testimony is admissible if the proffered expert is qualified by knowledge, skill, experience, training, or education, and the testimony will assist the trier of fact in understanding the evidence." *Snelson*, 204 Ill. 2d at 24. In the instant case, Moore offered as his credentials his 34 years of experience working for the archive office for the State of Illinois, often in the field with government entities. At the time he testified, Moore was the chief archivist for the State of Illinois. His experience included helping local governments identify and collect records for the purpose of permanent retention or disposal. To this end, he had been involved in identifying the records of many local government units and discerning their historical value. The trial court found that Moore based his opinion on his vast experience as an official dealing with government documents and was a qualified expert in the field. We find no reason to conclude the trial court abused its discretion in this regard. We also find no abuse of discretion in the trial court denying the Kloses' attempt to introduce the writings of others to refute Moore's testimony. The Kloses were allowed to cross-examine Moore and question him regarding other opinions. See *Stapleton ex rel. Clark v. Moore*, 403 Ill. App. 3d 147, 157 n.1 (2010) (although the use of treatises and other published materials may be used in cross-examination, in Illinois state

courts, the materials themselves are not admissible as substantive evidence).

The trial court also relied on the testimony of the township officials regarding the circumstances surrounding the discovery of the documents to infer "such custody as to show reasonable presumptiveness of genuineness." The township personnel testified that they discovered the documents when cleaning out the old township building, that the documents were in a cupboard obstructed by a broken piano, and that the cupboard had not been accessed in the living memory of any of the officials. Furthermore, the trial court found the records qualified as a hearsay exception under the public records exception because they were kept pursuant to statute. Under section 4 of article 24 of the 1851 Act, on which we relied in *Klose I*, it is specifically stated:

> "Whenever the commissioners of highways shall determine to lay out any new road, *** they shall cause a survey to be made *** accompanied with a plat[.] *** They shall incorporate such [survey] report and survey, accompanied with the plat, in an order, to be signed by them ***; which order, together with the petition, shall be deposited with the town clerk, who shall note the time of filing the same." 1851 Ill. Laws 72 (§4).

Furthermore, under section 5 of the 1851 Act it is stated:

> "It shall be the duty of the town clerk, whenever any order of the commissioners for laying out, altering or discontinuing a road shall be received

> by him, to carefully file the same[.] *** [T]he town clerk shall not record such order until a final decision is made, and not then unless such order is confirmed." 1851 Ill. Laws 72 (§5).

The trial court also noted the township ledger was maintained during the time the documents were misplaced. See *Klose*, 378 Ill. App. 3d at 949 (because the ledger contains handwritten copies of the missing documents transcribed by the town clerk, it offered some documentation concerning the dedication of various township roads). We consider the trial court's finding that the documents in question were authentic and proved to be the original documents was a well-reasoned ruling based on the evidence and we find no other conclusion clearly evident. We further agree with the trial court that because the township in *Tucker v. Bunger*, 108 Ill. App. 3d 227, 230-31 (1982), did not produce reconstructed records, let alone the original records, the case is not dispositive here. The fact that in the instant case, the original records were found, albeit not where anticipated, but in a place it was not unlikely they would be, is one reason *Tucker* is distinguished from this case.

The Kloses next argue the trial court erred in concluding the dedication of the roads was laid out to have a width of 4 rods or 66 feet. The Kloses assert that under the 1851 Act, if the dedicated road is not "opened" within five years of the dedication, the dedication is vacated. The Kloses conclude that whether by prescriptive or dedicated easement, the rights of the township in this case are limited to the width of each road as accepted by use. The Kloses rely on plat documents from the last several years in arguing the road dimensions cover less property than the township claims.

We again look to whether the trial court's finding that the road was laid out to the width of 66 feet is against the manifest weight of the evidence. *Yaste v. Rust*, 169 Ill. App. 3d 800, 803 (1988)

(finding trial court's ruling that public roadway was abandoned against the manifest weight of the evidence). The parties do not disagree that relevant to this issue is the 1851 Act which states in section 29 of article 25,

> "All public roads to be laid out by the commissioners of highways of any town shall not be less than four rods wide." 1851 Ill. Laws 77 (§29)

Also stated under the 1851 Act, is section 17 of article 26, which reads:

> "All roads laid out by order of the commissioners of highways shall be opened within five years from the time of laying out the same. If not opened within the time aforesaid, the same shall be deemed to be vacated." 1851 Ill. Laws 81 (§17).

A footnote to this section states:

> "It is held in New York that the road must be completely opened; if any part thereof is permitted to remain fenced up for the space of time in which the road is required to be opened and the travel turned another way to avoid the field, this will vacate so much of the road as remains fenced up.– Lyon v. Munson, 2 Cow. 426." 1851 Ill. Laws 81(§17) n.3.

In *Pilgrim v. Chamberlain*, 91 Ill. App. 2d 233, 236 (1968), a case upon which the Kloses rely, the issue was whether the township had title to and could utilize a 66 foot width for a road when the road had been used continuously between fence lines bordering on both sides of the road and the road had never been opened or used to a width of four rods. In *Chamberlain*, the record indicated that in

1858 the township commissioner of highways had refused to lay out the road. *Chamberlain*, 91 Ill. App. 2d at 235. Following an appeal, a survey was done on the authority of three town supervisors. *Chamberlain*, 91 Ill. App. 2d at 235. The resulting plat consisted of only a single line drawn on a paper with no mention of the width of the proposed road. *Chamberlain*, 91 Ill. App. 2d at 235. The evidence disclosed that "for years the road *** was not opened or used to a width of four rods and fence lines had comprised the road boundary for 60 to 70 years," notwithstanding the statute pursuant to which the township procedures were undertaken provided that all public roads laid out by commissioners would be not less than four rods wide. *Chamberlain*, 91 Ill. App. 2d at 235. The court in *Chamberlain* concluded the township had never opened the road to the 66 foot width and was therefore limited to an "acceptance" of only that portion of the road that was inside the fences. *Chamberlain*, 91 Ill. App. 2d at 240. In *Chamberlain*, the court stated the road had not been originally laid out by the commissioner of highways and it was the actions of the supervisors, who had the right to alter the road, that determined the nature of the road established. *Chamberlain*, 91 Ill. App. 2d at 238-39. The court found "no showing that the supervisors complied with the applicable statute in that the plat, being a single line did not describe the width of the road." *Chamberlain*, 91 Ill. App. 2d at 237. Although the *Chamberlain* court found only a common law and not a statutory dedication, the court stated that even assuming a valid statutory dedication, the record indicated the township had never accepted the entire 66 foot width. *Chamberlain*, 91 Ill. App. 2d at 240.

In *Department of Transportation v. Thomas*, 59 Ill. App. 3d 684, 687 (1978), a case the trial court referenced, the plat and notes in evidence, like the evidence in *Chamberlain*, gave no indication of the width of the roadway, although the department of transportation (hereinafter Department) claimed an easement of 66 feet. Although the *Thomas* court did not agree with the Department that

it had acquired a statutory dedication, the court did find the Department's claim was grounded in the 1829 enabling act of the legislature establishing the highway. *Thomas*, 59 Ill. App. 3d at 689-90. The *Thomas* court further agreed that the plat filed by the highway commissioners in 1829 complied with all of the mandatory provisions of the enabling statute, which established the highway as four rods wide. *Thomas*, 59 Ill. App. 3d at 689-90. The *Thomas* court concluded that notwithstanding the failure of the highway commissioners to denote more than the centerline of the roadway, the width of the highway as authorized by statute was the width the Department was authorized to claim and the fact that the road was evidently opened to its entire length repelled any presumption of abandonment that might otherwise have arisen. *Thomas*, 59 Ill. App. 3d at 690

In the instant case, unlike in the case of *Chamberlain*, there is no evidence that the highway commissioners deviated from the standard procedure as required under the statute when they laid out the roadways at issue. In *Chamberlain*, the evidence presented indicated the highway commissioner refused to lay out the road and the process was then undertaken by the supervisors following an appeal. In the instant case, the evidence indicates that, as in the case of *Thomas*, the highway commissioners fully complied with the statutory mandates regarding the dedicated roadways, including the requirement that the roads be laid out to 66 feet. As stated in *Thomas*, "[a]bsent a provision in the *** statute requiring the commissioners to determine or establish the width of the highway in the plat they were under no duty to do so." *Thomas*, 59 Ill. App. 3d at 689-90. Further evidence of the highway commissioners' intentions is the fact that the documents in the instant case specifically state the roads are laid out to the width of 4 rods. Furthermore, the evidence indicates any objections to the roadways were apparently settled by way of monetary damages for enclosed and cultivated land. As the township points out, the fact that the township settled with landowners over

property involved in the dedication is further evidence it opened the road to its full width as directed by statute.

Although the Kloses argue the currently cultivated land is indicative of where fences used to be, there are no fences on the property now and there was no testimony to indicate there have been fences erected at any time after the dedication of the road right-of-ways. In this respect there is no proof in conformity with the footnote to section 17 of article 26 of the 1851 act regarding fences, and this fact further distinguishes our case from *Chamberlain*. We also take note of this court's observation in *Yaste*, 169 Ill. App. 3d at 803, in which we stated that "[u]nder aged but nonetheless vital case law, a public highway remains such until it is vacated by the public authorities in the manner prescribed by the statutes, or is abandoned by non-user on acquiring the legal right to another road, or where the necessity for another road has ceased to exist" (Internal quotes omitted). Mere non-use is not sufficient to established abandonment. *Yaste*, 169 Ill. App. 3d at 803. For these reasons, we conclude the trial court's finding that the road was laid out to the statutorily mandated width of 66 feet or 4 rods is reasonable and supported by the evidence; it is not against the manifest weight of the evidence. The Kloses have not proved otherwise and they have not presented evidence the township later abandoned its right. In *Klose II*, we stated that had the township been able to present the documents at issue here during the original proceedings, the trial court's ruling in its favor would have been affirmed by this court. See *Klose*, 378 Ill. App. 3d at 949. After this further review, we find no reason to deviate from our prior reasoning.

The Kloses also assert on appeal that the trial court erred in sustaining the township's objections to interrogatories concerning fee simple title to the road right-of-ways. In a related argument, the Kloses also contend the trial court erred in denying their motions for sanctions. When

reviewing a trial court's decision to impose sanctions, we must determine whether the trial court's decision was informed, based on valid reasons, and followed logically from the circumstances of the case. *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1051 (1999). Furthermore, when reviewing a trial court's sanctions ruling, we consider whether the proposed challenges are material to the cause alleged. *First of America Trust Co. v. First Illini Bancorp, Inc.*, 289 Ill. App.3d 276, 288 (1997). We give considerable deference to the court's decision regarding sanctions and that decision will not be reversed absent an abuse of discretion. *Burrows*, 306 Ill. App. 3d at 1051.

In the instant case, in its original order denying sanctions, the trial court reasoned the issue of fee simple ownership was not material to the cause of action proposed for trial. The trial court also noted in its March 19, 2010, order that issues concerning fee simple ownership were disposed of when the trial court granted the Kloses partial summary judgment and as such these issues were not pending at the time of the trial. We consider the trial court's decisions were informed, based on valid reasons, and followed logically from the circumstances of the case. For these reasons, and others sustained by the record, we find no abuse of discretion in the trial court's rulings regarding the sanctions or interrogatories.

Although the Kloses also allege the trial court erred in failing to set forth in its order of July 16, 2009 (*nunc pro tunc*) the description of property proposed by the Kloses, we find this order is also not subject to our review as it was not included in the notice of appeal and we do not consider it noticed even from a liberal perspective. Finally, having reviewed the record and the Kloses' objections to it, we find no abuse of discretion in the trial court's ruling denying the Kloses' objections to the transcripts of the trial and certifying the record without changes. See *Brown v. Schintz*, 98 Ill. App. 452, 455 (1901) (if the transcript fully and fairly presents all matters material and

necessary for a decision of the questions involved, it is sufficient to address assignments of error).

For the foregoing reasons, the judgment of the circuit court of LaSalle County is affirmed.

Affirmed.