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Nov 29 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY

Master-in-Equity, Joseph K. Coffey

Appellate Case No.: 2020-001531

Alvetta L. Massenberg,

Appellant,

v.

Clarendon County Treasurer, Clarendon
County Delinquent Tax Collector,
Blacktop Ventures, LLC,

Respondents.

MOTION FOR RECONSIDERATION

s/A. Peter Shahid, Jr.
A. Peter Shahid, Jr., SC Bar # 5030
145 King St., Suite 309
Charleston, SC 29401
843/853-4500
Peter@shahidlawoffice.com

s/John M. Bleecker, Jr.
John M. Bleecker, Jr., SC Bar # 735
PO Box 148
Charleston, SC 29402
843/577-4352
John@jblawfirm.com
Attorneys for Appellant

The above-named Appellant by and through her undersigned attorneys hereby moves this Court pursuant to Rule 221(a) SCACR for a rehearing of its order issued on November 16, 2022. The Court in its one page Per Curiam decision affirmed the Master in Equity's denial of her action to set aside a delinquent tax sale of real property.

The Appellant's action filed in the Clarendon County Court of Common Pleas sought to set aside a delinquent tax sale on the basis that the posting of the notice of the pending sale was not in a "conspicuous" place as required by § 12-51-40(c) S.C. Code of Laws (1976 as amended). As noted in the hearing before the Master in Equity the notice of levy was posted on the one-lane dirt farm road, identified as Robert Rees Durant Road. The subject property is triangular in shape and fronts a State maintained paved road known as Plowden Mill Road. The notice was placed instead on the back parcel of the Robert Rees Durant Road, the unpaved one lane farm road (R.32), based on the testimony of several of the Appellant's witnesses who were more than familiar with this property and the condition of this road.

The Court in issuing its order stated that "A preponderance of the evidence supports the Master's finding the notice was posted in a conspicuous place because it was posted on a relatively well-traveled road. The Court in reaching this conclusion clearly committed error as there are no facts to support that this dirt farm road was "a relatively well-traveled road". The Appellees' Brief at Page 7, argued that the County presented evidence that the posting was located on a road which was frequently traveled. However, the Appellee failed to introduce any evidence or testimony supporting that contention.

This Court failed to consider the testimony of the Appellant's witness, Frank Frierson (R.36) that the ratio of cars traveling on Plowden Mill Road to those traveling Robert Rees Road

would be 100 to 1. In contrast to the testimony of the County Treasurer who (R.47) was unable to determine based on his lack of familiarity with whether the road was one lane; (R.48) that is whether two cars could pass in opposite directions at the same time. He also testified that the grading of the road was necessary because farm equipment was heavier than normal passenger vehicles (R.49). Thus, negating any conclusion that grading the road was necessary as a result of the amount of traffic on the road. In addition he was also unable to provide a count of the number of cars traveling on the road (R.49).

The evidence presented by the Appellant negated any determination by the Master in Equity that this one-lane farm road was a relatively well traveled road. To the contrary, it was a service road used for agricultural purposes. While the Court is entitled to determine facts within its own view the Court must cite facts to it to make such a finding. In this instance no such facts were available to the Court to make such a determination.

This case rests in equity. The County was obligated to place notice of this delinquent tax sale in a conspicuous place. The issue before the Court was not whether the posting location on a dirt farm road was better or worse than a paved road, the question is whether the placement on the dirt road was conspicuous based on the nature of the road and the lack of empirical evidence that it was well traveled. “If we choose to find facts in accordance with our view, we must state such findings of facts and our reasoning for those findings.” Smith v. Barr 650 S.E.2d 486, 375 S.C. 157 (S.C. App. 2007).

In issuing its affirmation of the Master’s decision that the notice was posted in a conspicuous place as required by statute, the Court failed to acknowledge those facts supporting such a decision. The question which has not been answered is why the notice was not placed on

a state maintained two-lane paved road that everyone concedes was well traveled. A conscious decision was made to place the notice on the road which was obviously less traveled.

“Two roads diverged in a wood, and I— / I took the one less traveled by, / And that has made all the difference.” (*The Road Not Taken* - Robert Frost)

The Appellant respectfully submits that this Court schedule this matter for a rehearing to enable the parties to present oral argument in order to bring to the Court’s attention the glaring discrepancies of this decision.

Respectfully submitted,

November 29, 2022

s/A. Peter Shahid, Jr.
A. Peter Shahid, Jr., SC Bar # 5030
89 Broad St.
Charleston, SC 29401
843/853-4500
Peter@shahidlawoffice.com

s/John M. Bleecker, Jr.
John M. Bleecker, Jr., SC Bar # 735
PO Box 148
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Reconsideration has been served via U.S. Mail this 29th day of November 2022 on: **William H. Johnson, Esquire**, P.O. Box 137, Manning, SC 29102; and **Scott F. Talley, Esquire**, 134 Oakland Ave., Spartanburg, SC 29302.

s/Katherine Gallagher
Law Office of John M. Bleecker, Jr.
PO Box 148
Charleston, SC 29402
843/577-4352