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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable J. Cordell Maddox, Jr.

Case No. 2022-CP-37-00396
Appellate Case No. 2022-001796

John's Marine Services, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff,
Lucretia B. Morgan, Sherri Akers Crisp and Amy Cawthon,

Appellants,

v.

Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC,
Globe, a South Carolina Limited Partnership, and Farmes, a South Carolina Limited
Partnership,

Respondents.

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STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court err in denying the Ratliff Appeal of the BOZA Decision?

STATEMENT OF THE FACTS

This is an appeal by Appellants of an Order of the Lower Court denying the Appellants' appeal of the Oconee County Board of Zoning Appeals ("BOZA") Decision and the dismissal, with prejudice, of Appellants' Summons and Complaint against BOZA, Ridgewater, Globe and Farmes. In said Order, the Lower Court found that the Decision of BOZA granting Road Variance Application #VA-21-011 (hereinafter "the variance application") of 18.1' from the 50' right-of-way from the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way and the decision of BOZA was clearly supported by the evidence presented to it.

Respondents would show that the BOZA decision was based upon evidence and testimony gathered over the course of three public hearings held November 30, 2021, January 24, 2022 and April 25, 2022. Each of the hearings pertained to the variance application which was granted by BOZA.

By Order dated September 15, 2022, the Lower Court found that the Decision of BOZA was not arbitrary and capricious, that the facts and decisions have a reasonable relation to a lawful purpose and that BOZA did not abuse its discretion as the decision of BOZA is clearly supported by the evidence presented to it. This appeal followed.

STANDARD OF REVIEW

South Carolina law provides, in essence, in S.C. Code § 57-5-120, that if the State abandons a portion of a road, that portion of that road reverts to the local government, in this case, Oconee County, and is subject to an abandonment procedure brought to terminate the public right-of-way pursuant to S.C. Code § 57-9-10, et seq. In this case, there is no history/evidence of such an abandonment procedure having ever been brought.

Under South Carolina law, "the findings of fact by the Board of Appeals must be treated in the same manner as the findings of fact by a jury, and the Court may not take additional evidence." S.C. Code Ann. § 6-29-840(A). Further, "a jury's factual findings will not be disturbed

on appeal unless the record contains no evidence reasonably supporting the jury's findings." *Boehm v. Town of Sullivan's Island Bd. Of Zoning Appeals*, 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018) (citing *Austin v. Bd. Of Zoning Appeals*, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004)(emphasis added). In addition, "in determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840(A). It is well settled that the Court may look to written documents as well as records of proceedings to determine whether the record is sufficient and in proper format for final decisions, i.e., the format of the final decision is immaterial as long as the substance of the decision is sufficiently detailed in the record so as to allow the reviewing Court to determine if the decision is supported by the facts *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct.App. 2004).

The decision in *Venture Engineering, Agent for DT, LLC v. Horry County Zoning Board of Appeals*, 433 S.C. 419, 858 S.E.2d 638 (Ct.App. 2/2021) holds that a decision by the Board must not be disturbed if there is supporting evidence in the record. (S.C. Code Ann. §6-29-840). That court also held that a court must not substitute its judgment for that of the Board of Zoning Appeals even if it disagrees with the decision and also holds that a court reviewing the Board's decision may rely on uncontroverted facts that appear in the record. Certainly, the history of the right-of-way of Ellenburg referenced in the transcripts in the Record on Appeal and the facts giving rise to that right-of-way claim are uncontroverted facts that do appear in the record. In addition, the record establishes that BOZA was provided the final location of the road in question. It is only reasonable and proper that BOZA received that information and considered it.

ARGUMENT

Did the trial court err in denying the Ratliff Appeal of the BOZA Decision?

In denying the relief sought by Ratliff in this matter, the Court made the following Findings of Fact from the evidence presented, all of which are supported by that evidence:

1. Ridgewater submitted variance application #VA21-011 requesting an 18.1' variance from the 50' right-of-way for the entrance of the subdivision because the end of the existing road did not grant full access into the property. TMS #150-00-01-459 is an unaddressed parcel with the closest address of 599 Ellenburg Road, Seneca, South Carolina 29672. This application was submitted by Ridgewater on behalf of Globe and Farnes.

2. Globe and Farnes jointly own an undeveloped 15-acre tract or peninsula on Lake Keowee, TMS #150-00-01-459 (referred to as "Arrowhead Point"), with the trunk section of this track being adjacent to 585 Ellenburg and 599 Ellenburg. Globe and Farnes purchased Arrowhead Point in 2008 (Deed Book 1695 at page 87, Oconee County Records) and have entered into a contract for the development of Arrowhead Point for a nineteen-home subdivision. Further, the area of property affected by the variance request is solely on Globe and Farnes' real property. Therefore, as defined by the application, the variance requested is located at the end of Ellenburg Road and the beginning of the Globe/Farnes property line where the width of their property line pinches down to a short narrow strip of land. Accordingly, the variance requested and granted by BOZA does not directly involve the Ratliff's property.

3. During the BOZA meeting on November 30, 2021, the following information was furnished by the Ratliff family ("Ratliff"):

a. While Ratliff has used access to all of Ellenburg Road from 585 Ellenburg Road, it was admitted that Ratliff only owns approximately one-half of the real property

that is subject to the old Ellenburg Road right-of-way at the point where it abuts the property line of the Globe and Farmes property, that Globe and Farmes own approximately the remaining half of the real property subject to the old Ellenburg Road right-of-way in that area, and, that Ratliff was, in fact, using some of the old Ellenburg Road right-of-way located on the Globe and Farmes property in the conduct of its business interests (Transcript of November 30, 2021 BOZA Meeting, pp. 75-76);

b. Ratliff described the history of Ellenburg Road in Oconee County as running all the way from Knox Road and along the lakebed of what is now Lake Keowee; that a portion of that roadbed continuing under Lake Keowee was a tar and gravel road; and that, at a point about where the Globe/Farmes property line is located, Ellenburg Road split and a dirt road went along the lakebed toward High Falls but that Route 1 Ellenburg continued along the edge of the shoreline of the Globe/Farmes property which is now flooded but can still be seen as a tar and gravel road under the water (Transcript of November 30, 2021 BOZA Meeting, p. 81);

c. Finally, Ratliff stated that Ellenburg Road was a State road when the address of his mother's house was Route 1 Box 268 Ellenburg Road; that he "guessed" the State of South Carolina later transitioned all such roads, including Ellenburg Road, to local governments, in this case, Oconee County, and thus Ellenburg Road would have become an Oconee County Road (Transcript of November 30, 2021 BOZA Meeting, pp. 81, 83).

4. The Record on Appeal also reveals that Oconee County representatives furnished the following information regarding the "institutional knowledge" of Oconee County concerning Ellenburg Road:

a. Kyle Reid, Oconee County Road Supervisor, testified regarding County work on Ellenburg Road in 2012 and explained that the 2012 paving repairs did not go all the way to the end of the prior pavement; that his road supervisor at that time, Matt Kelly, instructed him to stop short of the end of the road as they were merely trying to patch the “cracked up and alligatored” part of the road past the subdivision up the hill (Harbor Oaks); that he was instructed to get the worst of it and then pull back; that there was no evidence that the road was ever turned over to the adjoining property owners; that the “institutional knowledge” of Oconee County is that Ellenburg Road is a County road that runs all the way to the Globe and Farnes property line; that a photograph in the record shows a County sign at the edge of the Globe/Farnes property line stating “County Maintenance ENDS Here” with a date stamp of January 16, 2015, and, that Oconee County maintains the right-of-way for that road to the end of the existing pavement (Transcript of April 25, 2022 BOZA Meeting, pp. 96-97).

b. Both Reid and David Root, Oconee County Attorney, as well as counsel for Ridgewater stated that there is no “institutional knowledge” of any abandonment procedure ever being brought pursuant to S.C. Code § 57-9-10, et seq. pertaining to Ellenburg Road but that said road is shown as being in the Oconee County inventory with the number WA42 (Transcript of April 25, 2022 BOZA Meeting, pp. 24-28).

5. In addition to the “institutional knowledge” referenced above, several plats in the Record on Appeal recorded in the public records of Oconee County specifically refer to and/or show the right-of-way for Ellenburg Road running along the Ratliff property in question to the property of Globe and Farnes, in particular, a plat prepared for James L. Ratliff and Lucretia B. Morgan referenced in Deed Book 2633 at page 1 and recorded in Plat Book B754 at page 6, Oconee

County records. This plat is also shown on page 283 of the Transcript of Record. This plat was prepared for James L. Ratliff and Lucretia B. Morgan (two (2) of the Ratliff Petitioners/Appellants) and recorded on December 4, 2020 in the Oconee County records. Another deed and plat in the Record on Appeal also show the continuation of that Ellenburg Road right-of-way past the above referenced Ratliff and Morgan property to the property of Globe and Farnes. That deed is recorded in Deed Book 14-I at page 102 and references a plat recorded on August 30, 1974 in Volume P-39 at page 61, and is contained in the Record on Appeal at P. 293-294, Oconee County records. Accordingly, the right-of-way for Ellenburg Road at these two critical sections involved in this case is shown, as a matter of public record, as a right-of-way that affects both the Ratliff property and the Globe/Farnes property and the deeds for these properties refer to the conveyances as being subject to "...easements or rights-of-way for roadways..."

6. The Record on Appeal also establishes that the area of the real property for which this variance is requested is solely located on the real property owned by Globe and Farnes. BOZA clearly defined the variance area as located beginning at Globe/Farnes' property line where the width of their property pinches down to a short narrow strip of land for which the variance was requested. Therefore, BOZA correctly found that the variance granted does not directly involve the property of Ratliff.

7. The Record on Appeal also establishes that the tract of land owned by Globe and Farnes containing 15.35 acres was conveyed to them by Special Warranty Deed from Crescent Communities S.C., LLC, recorded in Deed Book 1695 at page 87 (Oconee County Records) subject to exceptions contained therein including, but not limited to, "(6) easements, covenants, restrictions and conditions of record and rights-of-way of public and private streets and roads, including, but not limited to, the right-of-way shown on the plat as Ellenburg Road." Exhibit A to

that deed refers to a plat dated December 8, 2008 and recorded in Plat Book B291 at page 1, Oconee County Records. That Deed and Plat are contained in the Record on Appeal on pp. 20 – 35 and p. 46, respectively.

The Lower Court then applied the appropriate legal analysis as follows to those Findings of Fact, all of which are supported by evidence in the record in this case:

The history of Ellenburg Road presented to BOZA during the hearings regarding this matter support a determination that Ellenburg Road was once a state-maintained road running from Knox Road across and now under what is now the lakebed for Lake Keowee. At some point in the past, the State abandoned that road and Ellenburg Road became an Oconee County road. Further, the absence of any evidence that an abandonment procedure was ever brought to terminate the public right-of-way for Ellenburg Road requires a determination that, as a matter of law, Ellenburg Road remains an Oconee County maintained road. See *Wessinger v. Goza*, 231 S.C. 607, 99 S.E.2d 395 (Sup.Ct. 1957), *Sloan v. State Highway Department*, 150 S.C. 337, 148 S.E. 183, S.C. Code §57-9-10, *S.C. DOT v. Hinson Family Holdings, LLC*, 361 S.C. 649, 505 S.E.2d 781 (Sup.Ct. 2004), and *Bancohio National Bank v. Neville*, 310 S.C. 323, 426 S.E.2d 773 (Sup.Ct. 1993). This determination, based upon “public knowledge” from the Ratliff testimony, is certainly in line with the “institutional knowledge” established by the testimony, the plats referenced above and the absence of any abandonment proceeding from the Oconee County Public records that show the existence of the right-of-way as extending past the Ratliff property to the real property owned by Globe and Farnes.

South Carolina law provides, in essence, in S.C. Code § 57-5-120, that if the State abandons a portion of a road, that portion of that road reverts to the local government, in this case, Oconee County, and is subject to an abandonment procedure brought to terminate the public right-of-way

pursuant to S.C. Code § 57-9-10, et seq. As previously stated, there is no history/evidence of such an abandonment procedure having ever being brought. The Ratliffs had this same knowledge as well as “actual knowledge” based upon the testimony presented by the Ratliff family during the hearing, as set forth above.

While possessed with this “actual” knowledge, there is no evidence that the Ratliffs, or anyone else, at any time, ever instituted an abandonment procedure to terminate the public right-of-way for Route 1, Ellenburg Road at the area in question. They could have done so but never did. This fact is fatal to their case. Accordingly, as a matter of law, Ellenburg Road remains an Oconee County public road/right-of-way.

The Ratliffs’ only comment about the plats mentioned above deals with “hearsay” testimony from a Ratliff attorney that the surveyor who prepared the plat for James Ratliff and Lucretia Morgan (Plat Book B754 at Page 6) told them that the Oconee County “was requiring this notation.” While this is/was inadmissible testimony, it certainly is consistent with the position of Oconee County in this case, as discussed above, and is another example that Ellenburg Road is a public road and that the Ratliffs had actual knowledge of that fact.

With the exception of a few lines in Appellants’ Brief where the plats are mentioned (Appellants Brief, pp. 22-23), Ratliff makes no mention of the “public” right-of-way status of Ellenburg Road, the testimony of the Ratliff family referenced herein and the “abandonment” process available and required to terminate a public right-of-way in this state. Accordingly, whether Ellenburg Road is a “prescriptive” easement or public right-of-way is immaterial to this case. It is one or the other, or both, and, as such, is evidence that supports the jury findings!

Therefore, the Record on Appeal is supportive of the facts/conclusions as determined by BOZA in its written decision in this case which complies with the statutory obligations of BOZA pursuant to S.C. Code 6-29-800 (A)(2), i.e.:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of a variance will not be of substantial detriment to adjacent users or to the public good, and that the character of the district will not be harmed by the granting of the variance.

CONCLUSION

Based upon the above reasoning and authority, it is respectfully requested that the decision of the Lower Court be affirmed in all respects.

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