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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPELLATE CASE NO. 2020-000578

APPEAL FROM THE SOUTH CAROLINA COURT OF COMMON PLEAS

R. Scott Sprouse, Circuit Court Judge

CIVIL ACTION NOS.: 2018-CP-01-00094 AND 2018-CP-01-00250

Annie L. Myers, Billy R. Nobles, M. Elaine Nobles, James Lewis Willis, James and Lucille Mason, Joann Atkinson, Willie Clyde Smith, Clyde H. Broadwell, Jr., and Stephen Pettigrew of Sawney Creek Farm, LLC, James Tuberville, Dean Burton, Robert W. and Minnie O. New, Walter L. Anders and Mary and Homer Martin……...Respondents,

v.

Town of Calhoun Falls and Savannah Valley Trails, Inc. ……. Appellants.

PETITION FOR REHEARING

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BACKGROUND OF THE CASE

Respondents from McCormick County filed a declaratory judgment action against Appellant Savannah Valley Trails, Inc. ("SVT") in 2016, alleging a claim to a portion of the property at issue in this case, which are strips of land in McCormick County, South Carolina owned by SVT and its predecessors under color of title since 1983. In 2018, the remaining Respondents, who are from Abbeville County, filed a parallel case against the Town of Calhoun Falls ("Calhoun Falls"), staking a claim to the property at issue in the case lying in Abbeville County, South Carolina. Calhoun Falls and its predecessors in title had ownership of the segment of property lying in Abbeville County under color of title since 1983. All Respondents alleged that the property at issue was abandoned by Seaboard Coast Line Railroad Company ("Seaboard Railroad") on or prior to February 25, 1980, and that it reverted to Respondents or their predecessors in title, purportedly as owners of property adjoining some segments of the property at issue. (A. R. pp. 27-36). Appellants refuted Respondents' claims to the property as record titleholder for period exceeding all statutory periods. (A. R. pp. 37-42). The cases were consolidated for hearing and disposition. The parties submitted Joint Stipulated Facts to the trial court and made oral arguments to the trial court. (A. R. pp. 95-97; A. R. pp. 43-94). After a hearing, the trial court requested post-hearing briefs which were submitted by each party. (A. R. pp. 276-285). The trial court issued an order declaring Respondents owners in fee simple of the subject property. (A. R. p. 12). Appellants appealed the trial court's order and ruling. By its order filed July 12, 2023, this court affirmed the Circuit Court's order in favor of Respondents.

STANDARD OF REVIEW

"When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal." Consignment

Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 270, 705 S.E.2d 73, 75 (Ct. App. 2010) (quoting Corley v. Ott, 326 S.C. 89, 92 n.1, 485 S.E.2d 97, 99 n.1 (1997)). A declaratory judgment action is legal or equitable in nature based upon the underlying issue. Lowcountry Open Land Trust v. State, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001). A determination of title is legal in nature. A determination of the scope or extent of an easement is a question of equity. The existence of an easement is a factual question in an action at law. Slear v. Hanna, 329 S.C. 407, 496 S.E.2d 633 (1998); Smith v. Comm. of Public Works, 312 S.C. 460, 441 S.E.2d 331 (Ct. App. 1994). The termination of an easement by abandonment is a factual question in an action at law. Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (1998) ("Eldridge II") (citing Southern Ry. V. Howell, 89 S.C. 391, 71 S.E. 972 (1911)). The issues before the Court are in the nature of an action to determine title or quiet title, while certain defenses are equitable in nature.

"In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law." Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc., 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). In an action at law, "[t]he trial [court's] findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." Id. "In an action at equity, tried by a judge alone, an appellate court may find facts in accordance with its own view of the preponderance of the evidence." Inlet Harbour v. S.C. Dep't of Parks, Rec. & Tourism, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008).

I.

THE COURT OF APPEALS OVERLOOKED THE EVIDENCE OF RECORD ON THE QUESTION OF SUBJECT MATTER JURISDICTION AND MISAPPREHENDED THE

INTENT OF THE INTERSTATE COMMERCE COMMISSION AND SEABOARD COASTLINE RAILROAD.

Appellants argued the exclusive and plenary jurisdiction of the federal government through the Surface Transportation Board as successor in interest to the Interstate Commerce Commission preempted the authority of the lower court as to jurisdiction of the subject matter. This Court ruled that Appellants, as the party claiming preemption, bears the burden of proof thereof. This Court further ruled that Appellants failed to carry such burden, citing the March 2, 1979 ICC certificate, the Correspondence from Seaboard Railroad to the ICC dated February 25, 1980, and "Although the record does not contain any further reference to the journal entries requested in the certificate of abandonment, SVT failed to show Railroad did not comply with the request. In fact, the record does not contain any evidence showing further involvement or communication from the ICC after the issuance of the certificate of abandonment."

First, the Court misapprehends the jurisdictional question by deviating attention from the plain language of the ICC order, the actions of the Railroad thereafter which evidence intent, and the records of the ICC, looking instead to generic language of 49 C.F. R. Section 1152.29 (e)(2) and general reference to the Eldridge cases. The Court admits that there is absolutely no evidence of record that the requisite journal entries required by the ICC were made by the Railroad. The Court in turn ignores the plain language of the ICC order which states that a proposed abandonment of the track would be subject to the condition that "applicant shall not sell, lease, exchange, or otherwise dispose of the right-of-way underlying the track, including all bridges and all culverts on the line, for a period of 120 days from the service date of this certificate and decision to permit any state or local government agency or other responsible persons to negotiate the acquisition of all or any portion of the property for public use. . . . If the authority granted by this certificate and

decision is exercised, applicant shall submit two copies of the journal entries showing the retirement of the line from service, and shall advise this Commission in writing, immediately after abandonment of the line of railroad, of the date on which the abandonment actually took place. (3) If the authority granted in this certificate and decision is not exercised within one year from its effect date, it shall be of no further force and effect."

A plain reading of the ICC order states the conditions of track abandonment, the requirements for line abandonment, and the continuing jurisdiction of the ICC in the event the requirements were not made. The complete written record of the ICC was submitted to the lower court and included in the Record on Appeal. Although the requirements of the ICC, in the form of written journal entries, were not made a part of the record, the absence of existence of those requirements was stipulated by the parties through the submission of the ICC record. The Court points out that Appellant cannot prove the Railroad did not comply through other means. Appellants' burden is met by showing the ICC records. This evidence was uncontested. The Court's theory that Appellant cannot prove the Railroad did not comply ignores the plain and only evidence before the Court. The Court further points to the fact that the ICC had no further communication to the Railroad as evidence against Appellants' argument. The ICC needed no further communication because its order was not unclear. If the requirements were not met, the abandonment did not occur and jurisdiction was retained by the ICC, necessitating that the Railroad would be required to act further if it desired to later abandon the line. Instead, the only evidence of record, clearly ignored, is that the Railroad salvaged the tracks pursuant to ICC order, maintained the line for possible rail use by state and local government beyond the conditional period set by the ICC, and negotiated with the State of South Carolina to convey the line to the State for rail or interim trail use in consideration of payment on its mortgage to Chemical Bank,

acts which actions were completely inconsistent with abandonment, and completely consistent with the conspicuous absence of journal entries and any final order of the ICC deeming abandonment complete. The only evidence of intent of the Railroad are evidenced by the actions of the Railroad after February 25, 1980.

II.

THE COURT OF APPEALS OVERLOOKED THE STIPULATED FACTS WHICH DEMONSTRATED PREJUDICE AND THAT THE TRIAL COURT COMMITTED AN ERROR OF LAW BECAUSE THERE IS NO DENIAL OF LACHES ON THE BASIS OF GENERAL PREJUDICE.

The trial court concluded that the Respondents did delay any claim to the subject property, and that the delay was unreasonable. The trial court in its findings of fact found that "[t]he [Appellants] have made no permanent structural improvements to the railway bed, but have performed maintenance and grooming of the rail corridor, and extensive refurbishments of a railway trestle within the corridor. (A.R. p. 5) The Court of Appeals upheld the trial court's finding that there was no evidence beyond mere conjecture.

On June 16, 1983, the State of South Carolina through the Clarks Hill-Russell Authority of South Carolina paid the sum of $58,290.00 to Seaboard System Railroad and Chemical Bank. The deed recited the consideration on its face, and the deed was entered into evidence through joint stipulations of the parties (A.R. p. 129). Due to the unreasonable delay of the Respondents in claiming an interest in the property, the consideration is lost. The consideration is neither vague nor mere conjecture. The loss of this consideration is prima facie prejudice to Appellants.

Further, the trial court made its own findings that the Appellants performed maintenance and grooming of the rail corridor. Grooming and maintenance of the corridor to the detriment of

the Appellants for their intended use of the trail and conferring a benefit of a groomed and maintained property to Respondents by virtue of their unreasonable delay is neither vague nor conjecture.

The trial court, in its findings, stated its reasoning that the prejudice was not sufficient that the Appellants made no permanent structural improvements to the railway bed. The rail bed was conveyed to the State of South Carolina for interim trail use under federal policy. The rail bed must be used only for trail purposes pending the possible usage of the rail bed as a railroad line in the future. This interim use does not permit permanent improvements, and permanent improvements are not required to evidence prejudice to Appellants. The mere fact that Appellants detrimentally changed their position, without regard to funds expended, in that they spent years grooming, maintaining and planning through its volunteer network, because none among Respondents made any claim, is material prejudice. The number of funds and volunteer hours expended over a thirty six year span is significant, if not unquantifiable based on the delay, but too general or conjecture it is not. The very fact that the trial court made a finding of fact, admitted the prejudice, without then according weight to his own finding is an error of law, as is ignoring the consideration paid.

In Robinson et. al. v. Estate of Harris, 388 S.C. 630, 698 S.E. 2d 222 (2010), the South Carolina Supreme Court held that claimants of real property in an action to quiet title thirty-nine years after a conveyance was barred by the doctrine of laches. In regard to prejudice, the Court determined that prejudice would undoubtedly be caused given they purchased their lot for significant consideration. In the Robinson decision, the Court clearly ruled that the payment of consideration for land is cause for prejudice. The trial court's ruling that no permanent improvements were made by Appellants in the railway bed demonstrates a tone deaf statement or

complete misapprehension of why the conveyance was made to the State of South Carolina, and the limitations of interim use which are critical to this case. The Court of Appeals glosses over the facts ignored by the trial court noting it did not have to rule upon the issue, but the trial court did issue a ruling and it was in error. This case turns on the issue of prejudice as a matter of law. To do otherwise ignores the black letter law of rulings such as Robinson, and ignores that for the doctrine of laches to apply prejudice must exist, and such prejudice can be financial or a detrimental change of position. It is not a question of receipts or logging volunteer labor hours, it is a question of whether acting as owner in possession for more than thirty-three years, and all the duties and responsibilities associated therewith, can be reduced to nothing by a claimant that rested on its rights for that period. The Court must stand in the shoes of the titleholder before erasing thirty-three years of history as conjecture. For these reasons, Appellants have demonstrated prejudice through the evidence in the record and the trail court's order must be reversed.

III.

THE COURT OF APPEALS MISAPPREHENDED THAT THE BURDEN OF PROOF WAS ON RESPONDENTS TO ESTABLISH A CLAIM OF TITLE.

The Court of Appeals misapprehended a pivotal issue in this case as to burden of proof for claim of title. The trial court erred as a matter of law in not properly applying the burden of proof to Respondents to establish a title claim and rendered a decision based on facts not in evidence. The analysis stopped short on the issue of abandonment. The Court of Appeals upheld the court's finding with little to no analysis by trying to fit the case squarely within Eldridge and upholding the court's finding that all Respondents were owners in fee simple by solely focusing on abandonment and a stipulated representative example of an easement obtained by Savannah Valley Railroad.

The cause of action before the lower court was in the nature of a declaratory judgment or quiet title action. Through the stipulated facts and exhibits, the only evidence presented to the trial court established a chain of record title to the subject property vested in SVT and their predecessors' in interest for a period of thirty-six years prior to the filing of the action. (A.R. pp. 145-208; p.96 #11; pp. 96-97 #13-16). The trial court and Court of Appeals focus on the issue of abandonment and comparing the case to Eldridge and upholding a representative right of way obtained by Savannah Valley Railroad. Assuming for the sake of argument the right of way was abandoned prior to the deed transferring title to the State Authority in 1983, said deed still exists and SVT and its predecessors in interest had possession of the property under color of title until the filing of this action. Our Supreme Court has held that color of title can derive from a defective deed or a quitclaim deed even though the grantor was without interest in or title to the property conveyed. See Graniteville Co. v. Williams, 209 S.C. 112, 39 S.E. 2d 202 (1946). Moreover, the party establishing legal title is presumed to be in possession thereof and any other party's occupation of the property is subordinate unless adverse possession is established by that other party by clear and convincing evidence. Taylor v. Heirs of William Taylor, 419 S.C. 639, 650-51, 799 S.E. 2d 919, 924-25 (Ct. App. 2017). Respondents never presented evidence of any kind regarding title other than the documents supporting a historical abandonment and documents related to the origin of the railroad.

The issue is that the trial court must determine the *current* state of title. The Court cannot make a ruling on the status of title in 1980 and ignore subsequent history that impacts the chain of title. Further, the Court cannot work its way forward in establishing title. The Court is bound to look to determine who holds current legal title. That party, for lack of better terminology, is "King of the Mountain" until such time as any other party collaterally attacks that title. Respondents had

no evidence to present to attack the current state of title over the last thirty-six years, so they make an argument that addresses ownership of the property in 1980. The ownership of the property in 1980 is relevant for history's sake only. It is not determinative of current ownership. This issue was raised under Issue III in Appellant's brief, and is overlooked in the Court of Appeals' Order. The trial court erred as a matter of law when it declared that Respondents were the legal owners of the subject property because Respondent's abandonment claim is insufficient to challenge Appellants' vested legal title absent evidence of a possessory claim such as adverse title or legal claim by way of deed or recorded instruments from and after the 1983 deed. (A. R. pp. 1-13).

IV.

THE COURT OF APPEALS MISAPPREHENDED THE BURDEN OF PROOF AND ABANDONMENT AND THE APPLICATION OF ELDRIDGE TO AFFIRM THE TRIAL COURT'S ABANDONMENT RULING.

The Court of Appeals found "the trial court did not err in finding Railroad abandoned the line in 1980. Railroad ceased operations, sought permission for abandonment from the ICC, removed the tracks from the railway corridor, and transferred its property interests." First, it is critical to review the ICC orders and the requirements for compliance. The Court of Appeals finds "nothing in the record indicates Railroad failed to comply with the Certificate of Abandonment." The ICC order required the written ledgers to be made a part of the official record. The same are not in the record. The record itself is evidence of noncompliance. The Court of Appeals' statement would require, in the words of the Court's Order, complete conjecture to assume the ledgers were submitted as they are not of record. In reviewing the evidence actually in the record, the Railroad by deed and for railroad purposes, did negotiate for the transfer of the rail corridor to the State of South Carolina and conveyed the same in 1983, not 1980. This action is completely inconsistent

with abandonment and completely consistent with holding the corridor until it negotiated with the State of South Carolina to transfer for interim use. Moreover, the Railroad still had the corridor pledged as collateral to Chemical Bank at the time of the ICC order and at the time of the Railroad's February 25, 1980 letter to the ICC confirming track removal. This evidence is completely inconsistent with abandonment and completely consistent with continuing to hold the corridor for rail purposes.

Again, assuming the finality of the ICC's order, which would be based upon facts not in evidence, which the Court has upheld, the question of abandonment would become a question of fact based upon the intent of the Railroad as demonstrated through its actions. See Lorick & Lowrance, Inc. v. Southern Ry. Co., 87 S.C. 71, 68 S.E. 931 (1910). The abandonment of railroad rights of way rests upon the party claiming that abandonment has occurred. State Ex. Rel Dept. of Transp. v. Penn Central Corp., 445 A. 2d 939 (Del. Super. Ct. 1982.) The abandonment of a railroad easement must be proven by clear and convincing evidence. Jordan v. Stallings, 911 S.W. 2d 653 (Mo. Ct. App. S.D. 1995). The removal of tracks and the acquisition of an abandonment certificate from a regulatory board does not give rise to abandonment. Lacy v. East Broad Top R.R. & Coal Co., 77 A. 2d 706 (PA. Sup. Ct. 1951).

The Court of Appeals noted the precedent of Eldridge v. City of Greenwood, 300 S.C. 369, 388 S.E.2d 247 (1989) ("Eldridge I") and Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (1998) ("Eldridge II"). Eldridge I correctly recognized that the question of whether a right of way has been abandoned is a question of fact. The Court in Eldridge I also cited the case of Raleigh, C. & S. Ry. Co. v. McGuire, 171 N.C. 277, 280, 88 S.E. 337, 339 (1916) as establishing the doctrine of abandonment as it relates to railroads as follows:

> It includes both the intention to abandon and the external act by which such intention is carried into effect. There must be

> concurrence of the intention with the actual relinquishment of the property. It is well settled that to constitute an abandonment or renunciation of a claim to property there must be acts and conduct, positive, unequivocal and inconsistent with claims of title.

The Court of Appeals has misapprehended the burden of proof on abandonment and overlooked the factors distinguishing this instant case from the line of Eldridge cases. On the issue of abandonment, the Court makes two errors. First, the Court states "… nothing in the record indicates the Railroad failed to comply with the requirements of the certificate of abandonment." The Court upheld the trial court's argument on burden shifting under preemption, where the Court analyzes the same issue, but has wrongfully shifted the burden on abandonment to Appellants. The burden to show abandonment was at all times on Respondents. Respondents provided no evidence other than the ICC record. The ICC record clearly in writing sets forth the requirements that Railroad was required to meet. The evidence of compliance is missing from the ICC record. For the Court to cite to the absence of evidence against the presumption of compliance is nothing more than shifting the burden on abandonment.

Second, the Court quickly summarizes the track salvage, cessation of operations and request for abandonment along with "transfer of property interests" to support abandonment, and then generically references state law precedent of Eldridge. If the trial court ruled abandonment occurred on February 25, 1980 (A.R. p. 10) at the time of the issuance of the Railroad's letter that it had salvaged the track, why do both the trial and appellate courts recite the "transfer of property interests" in support, which did not occur until June 16, 1983. This is completely inconsistent with the trial court's ruling on abandonment. If the transfer of property interests is a part of the analysis for abandonment, as would be required under Eldridge, why is this overlooked in the Court's analysis. Again, if the ICC order were final, which again is not proven by the evidence submitted by Respondents at trial, but assuming for the sake of argument it is so, the question of abandonment

is a factual determination based on the intent and the act of the Railroad. The trial court ruled abandonment occurred on February 25, 1980. The only evidence presented to the Court by Respondents as the February 25, 1980 letter. Based on that evidence, what could be concluded is that the Railroad salvaged the track and had filed for abandonment before the ICC.

Respondents did not carry the burden on abandonment by clear and convincing evidence. Respondents did not submit evidence that a transfer was made for other than railroad purposes. Notably, the court in Eldridge II discussed interim trail use and the Federal Government's policy of establishing interim trail use as a mere discontinuance of rail service as opposed to abandonment, but the court pointed out that it could not reach any issue of interim use because those facts were not before the court. The only evidence before the Court was that the property was held by the State of South Carolina for interim use. There is no evidence otherwise. The Appellants' use is consistent therewith. However, again it is not the Appellants' burden to bear.

Although the common law principles of Eldridge apply, the instant case is clearly distinguishable from Eldridge. The Court in Eldridge did not create a bright line test for abandonment. The Court, however, in Eldridge II subsequent to remand upheld a finding of abandonment where the railroad conveyed the rail corridor for other than railroad purposes. In Eldridge, the corridor was conveyed to the local City and County Governments to be exchanged with the Department of Transportation for highway purposes. In the instant case, in compliance with the ICC order, the Railroad conveyed the corridor to the State of South Carolina for interim use, which has been found to be consistent with railroad purposes. The Court can only cite to the removal of tracks and cessation of operations. Again, the Court in Eldridge did not find that to be a bright line test for abandonment.

CONCLUSION

The burden to collaterally attack Appellants SVT title was on Respondents. The Court of Appeals overlooked that in spite of a finding of abandonment the analysis does not end and the only record evidence over the last 40 years supported Appellants claim to title. The Court of Appeals misapprehended the burden of proof on the issue of abandonment and shifted the burden to Appellants SVT. The Court cites to Appellants not proving that the Railroad failed to comply with the ICC orders, when it was the burden of Respondents to prove compliance, and the evidence fell far short. The Court of Appeals misapprehended the application of Eldridge, which case law is still applicable, but squarely requires that even upon the Issuance of ICC certificate and track salvage, abandonment rests on the intent and the actions of the Railroad. The Court cites to the transfer of interests, but the Eldridge case and the body of case law it represents requires that the transfer be for other than railroad purposes. The Court ignores that the trial court specifically ruled abandonment occurred three years prior to the transfer, and that the only evidence is that the Railroad acted inconsistently with an intent to abandon, and the transfer, and the ownership since the transfer has not been for other than railroad purposes, as interim trail use is deemed otherwise, although this was Respondents' burden to bear. Respondents failed to meet their burden, and it is manifestly unfair to shift such burden to Appellants. The Court of Appeals overlooked the ruling of the trial court on the first two prongs of laches and the evidence of record on prejudice, which is clear. Appellants are entitled to a ruling of this Court granting relief from the Order of the trial court filed February 21, 2020 and Court of Appeals filed July 12, 2023.

Respectfully submitted,

August 8, 2023

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PROOF OF SERVICE

I, Douglas L. Bell, attorney for Appellants above-named, hereby certify that the Petition for Rehearing has been served upon the attorney for the Respondents, along with a copy of this Proof of Service, via electronic mail, on this 8th day of August, 2023 addressed as follows:

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August 8, 2023

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