

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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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

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**SC Court of Appeals**

John's Marine Service, 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 Farnes, a South Carolina Limited Partnership,

Respondents.

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APPELLANTS' MOTION TO SUPPLEMENT THE RECORD

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The Appellants hereby move pursuant to Rules 212 and 240, SCARC, to supplement the Record on Appeal with testimony and exhibits from the Rule 30(b)(6), SCRCPP, deposition of the South Carolina Department of Transportation (“SCDOT”) taken on January 25, 2024, in a related declaratory judgment action that seeks to establish what rights, if any, Oconee County has over Ellenburg Road. (Proposed deposition excerpts and exhibits attached as **Exhibit A**).

During its deposition, the SCDOT testified that Ellenburg Road has never been a state road and was not abandoned by the state as part of the creation of Lake Keowee. This testimony directly contradicts the position taken by Respondents in this appeal and changes the central premise of the lower court’s order denying Appellants’ zoning board appeal.

The lower court’s Order Denying Appellants’ Appeal (the “Order”), R. p. 3, was based on the court’s determination that Ellenburg Road was once a state road that was abandoned to Oconee County. In its legal analysis, the lower court concluded as follows:

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.*

...

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.

(R. pp. 8-9 (emphasis added)). As is evident, the court’s legal conclusion was premised on the determination that Ellenburg Road was a state-maintained road that was abandoned by the state

and reverted to Oconee County. As shown by the SCDOT sworn testimony set forth below, this was an erroneous premise.

Respondents' central argument in this appeal is also based on this erroneous premise. Respondents argue that Ellenburg Road was a state road before the creation of Lake Keowee and after the creation of Lake Keowee the state abandoned Ellenburg Road to Oconee County. (Respondents' Br. 2, 8-9). As with the Order, once this erroneous premise is corrected, Respondents' argument fails.

The SCDOT testified, through its designee Yelena Kalashnikova, that Ellenburg Road has never been a state road. Prior to the creation of Lake Keowee, there were several state roads in the vicinity of Ellenburg Road—State Highway 201, State Highway 183, and State Highway 61. It is clear from maps prior to the creation of Lake Keowee that State Highway 183 (also now known as Knox Road) ran north to south past the intersection with Ellenburg Road. (Ex. A. at 25 (Dep. Exhibit 4 1969 Oconee County Map)).

Ms. Kalashnikova testified that the 1969 Oconee County map predating the creation of Lake Keowee showed that State Highway 201 ran east to west connecting State Highway 92 and State Highway 45. Highway 201 did not turn south at High Fall Church and did not become part of Ellenburg Road:

Q. But your understanding is that it goes -- 201 connects Secondary 92 to Secondary 45?

A. Correct.

Q. And that means it -- it would not go south past the High Falls Church building?

A. Correct.

Q. Okay. And you notice there's a --south past High Falls Church there is a loop, for I don't know, lack of better description.

A. Uh-huh.

Q. So is it your understanding -- do you have an understanding of what that road was called, if anything?

A. By looking at the map I cannot tell the name of the road, but because it doesn't have the shield, it tells me that it's not state maintained road.

Q. Okay. So are you able to say today that that circled -- that -- that loop drive -- looped road is not a state road at the time this map was created?

A. Correct.

Q. Okay. And then you'll see the green highlighting is on a shorter section of roadway. Do you see that green highlighting?

A. I do.

Q. And does this -- does that road indicate -- do you -- are you able to tell what the name of that road is?

A. Not from this map, but from my knowledge. That's the road in question, Ellenburg Road.

Q. Okay. And does this map have an indication of whether that road is a state road at this time at 1969 or not?

A. Looking at the map only, because it doesn't have a shield, it looks like, no, it's not a state maintained road.

(Yelena Kalashnikova Dep. 43:6-44:18, Ex. A (Jan. 25, 2024)). Ms. Kalashnikova also testified that Ellenburg Road was never part of State Highway 61:

Q. Okay. And there's a shield here. It says 61. Do you see that shield?

A. I do.

Q. Okay. Is that State Secondary Road 61?

A. Connector, yes.

Q. Connector. And what does a connector mean?

A. So if you look at the map, so this route is Secondary 61 --

Q. Okay.

A. -- and this is the connector. You see the arrow pointing to it? So this little piece is 61 connector. So basically it connects 183 to 61. It's possible that this leg of the road was one way and this one was the other way. So --

Q. Okay. Is it --

A. -- that's -- that's the 61 connector.

Q. Okay. Is there any indication that 61 -- or the green -- the green section that's highlighted might have been 61?

A. No.

Q. There's no indication on this map that it might have been Highway 61?

A. Correct.

(Kalashnikova Dep. 46:3-47:1, Ex. A).

When reviewing the 1973 Oconee County map post-dating the creation of Lake Keowee,

Ms. Kalashnikova testified that Ellenburg Road was still not a state road:

Q. Okay. And then if you look at Exhibit 12, this is the map -- Oconee County map from DOT from 19 -- it says '71 on the first page, but the revised date says March 1st, 1974, right, on page two?

A. Correct.

....

Q. Okay. And the green section we're -- we're here about today which is the current Ellenburg Road, again, there's no state highway indication marking that road, is there, in 1974?

A. No, there isn't.

(Kalashnikova Dep. 90:5-21 and Ex. 12). The SCDOT left no doubt that Ellenburg Road has never

been a state road and was never abandoned to Oconee County:

Q. And -- and even though the road in question was not a state maintained road, and that's what you -- that's what you've testified to today, right, Ellenburg Road was not a state maintained road?

A. Correct.

(Kalashnikova Dep. 113:9-14).

Q. Okay. And the -- the only name that y'all were able to identify for Ellenburg Road was local 900?

A. Yes, based on our records.

Q. Okay. And so y'all don't have any records of turning that road over to Oconee County?

A. *We do not.*

Q. Okay. And you don't have any records of state maintenance on Ellenburg Road?

A. *We do not.*

Q. How -- how would a public road lose its status as a public road?

A. Again, if it's a public road that is not state maintained, it can be I guess abandoned by the county or the city or a development is being placed or the route is being closed through court order closure. There is multiple ways. For state maintained roads, as I mentioned from the very beginning, it can be abandonment due to relocation, again, court order closure, or transfer to another government or nongovernment entity. But the transfer doesn't mean that the road is no longer a public road. It just means that it is not maintained by South Carolina DOT by the state.

Q. So if historically that had been transferred to Oconee County, there should be some documentation of that?

A. We should have a record of it, yes.

Q. And if it had been ordered closed by a court order, there would be a record of that? There would be a court order?

A. There would have to be a record of that, yes.

(Kalashnikova Dep. 118:12-119:15 (cross examination, emphasis added)).

Finally, the SCDOT's testimony that "Route 1" has no correlation to whether a road is within the state system also undercuts the Respondents' and the lower court's reliance on statements made by Jay Ratliff during the Board of Zoning Appeals hearing (Respondents' Br. 5; Order at R. p. 6) and further demonstrates that Mr. Ratliff's comments have no relation to the question of whether Ellenburg Road was ever a state road.

Q. Does that address mean anything – or help me understand what Route 1 was.

A. SCDOT does not operate by addresses.

Q. Okay. So -- so Route 1 is a meaningless identification or maybe just a mail identification like from -- from the postal office?

A. It could be. You know how people say Highway 1. To SCDOT that doesn't mean anything because is it a C-1? Is it a Secondary 1? Is it U.S. 1? We're -- we're number people.

Q. Okay. And the -- the only name that y'all were able to identify for Ellenburg Road was local 900?

A. Yes, based on our records.

(Kalashnikova Dep. 118:2-15 (cross examination, emphasis added)).

The SCDOT's sworn testimony is clear, Ellenburg Road was never a state road and, as such, it was never state-maintained or abandoned by the state to Oconee County as part of the creation of Lake Keowee. Once this erroneous premise is corrected, the Order is no longer supported by the facts and the law. The SCDOT's testimony is central to this appeal. As such, Appellant's motion to supplement to the Record on Appeal should be granted.

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