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Mar 19 2024

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 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 Farmes, a South Carolina Limited Partnership,

Respondents.

APPELLANTS' REPLY IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD

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Attorney for Appellants

Appellants should be permitted to supplement the Record on Appeal with sworn testimony from the South Carolina Department of Transportation stating that Ellenburg Road is not, and has never been, a state road. The Oconee County Board of Zoning Appeals's ("BOZA") variance order and the lower court's order denying the variance appeal were based on the now clearly erroneous conclusion that Ellenburg Road was once a state road. The BOZA's variance order and the lower's court's order should not be allowed to stand where they are based on a clearly erroneous factual conclusion.

On appeal from the circuit court, the Zoning Board's decision should not be interfered with unless it is arbitrary or *clearly erroneous*.

Clear Channel Outdoor v. City of Myrtle Beach, 360 S.C. 459, 464, 602 S.E.2d 76, 78 (Ct. App. 2004) (citing *Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 406, 552 S.E.2d 42, 44 (Ct. App. 2001); *Rest. Row Assocs. v. Horry County*, 327 S.C. 383, 389, 489 S.E.2d 641, 644 (Ct. App. 1997)). For this reason, the Record on Appeal should be supplemented with the SCDOT's sworn testimony.

Additionally, the SCDOT's testimony is relevant to Appellants' argument that the factual dispute of whether Ellenburg Road was ever a state road fell outside of the BOZA's limited jurisdiction in a variance hearing. (Reply Br. at 2-3). Sworn testimony from the SCDOT has now demonstrated that this fact is no longer in dispute—according to SCDOT, Ellenburg Road has never been a state road.

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, Exhibit A to Motion to Supplement).

The BOZA's and lower court's reliance on this now demonstrably erroneous conclusion undercuts the entire basis for the variance order and the lower court's ruling upholding it. This further highlights the procedural shortcomings of allowing the BOZA to operate outside of its limited jurisdiction. Appellants had no opportunity in the BOZA hearing to develop facts, depose witnesses, present sworn testimony, or enter evidence, such as would be done in a court of competent jurisdiction. Appellants were forced to file a separate lawsuit in order to have the ability to develop the necessary evidentiary foundation to answer the question of state ownership over Ellenburg Road. The importance of the lack of due process in the BOZA forum cannot be overstated and supports reversal.

Finally, in response to Respondents' apparent designations, Appellants also designate pages 152 and 156-158 of SCDOT's sworn testimony. (Excerpts attached as **Exhibit 1**). Ms. Kalashnikova did not testify that SCDOT determined that Ellenburg Road is a public road, rather she testified that any information on county roads comes from the county and she readily admitted that all she can say about Ellenburg Road is that it is not state maintained and SCDOT does not know whether in fact Ellenburg Road was paved or who has maintained any section of the road.

A. So the assumption is that if it doesn't have a shield, it's possibly a county road, non-state maintained road.

Q. It's not state maintained?

A. Correct.

Q. It doesn't mean it's a county road?

A. No, it does not.

Q. City road, private road, okay.

A. Correct.

Q. And you -- I think maybe you testified earlier that the information -- such as the October 21 2016 map, the information from the county is what's -- what roads are county, that comes from the county itself?

A. Correct.

Q. So designated in 2016 Ellenburg Road as county paved, that's information that came from the county?

A. Correct.

Q. DOT is not going out to these roads and looking at whether it's paved or not?

A. Initially from the very, very beginning when we were creating the old notes that you saw, SCDOT would ride state road and just note the intersecting routes across the street. But they would just say that this is another road, non-state maintained, for example, that it's a road, and if they see the name, they would put a name to it.

Q. Okay.

A. That's it.

Q. DOT is not driving down Ellenburg Road and figuring out whether it's paved or not paved?

A. No.

Q. And it's not looking to see whether a portion is county maintained and a portion is not county maintained?

A. Correct.

(Kalashnikova Dep. 157:10-158:21, attached as Exhibit 1).

All parties to this appeal¹ are parties in the declaratory judgment action and had the opportunity to cross examine the SCDOT on this issue. The SCDOT's testimony is relevant to this appeal and should be considered.

¹ Ridgewater Engineering & Surveying, LLC is not a party to the declaratory judgment action and is only a party to this action because it submitted the variance application at issue.

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Columbia, South Carolina
March 19, 2024

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
2 COUNTY OF OCONEE Case No. 2022-CP-37-00447
3 Frances J. Ratliff, Edward J. Ratliff, Jr.,
James L. Ratliff, Lucretia B. Morgan,
4 Sherri Akers Crisp, Amy Cawthon,
5 Plaintiffs,
6 vs.
7 Oconee County, Globe, A South Carolina Limited
Partnership, Farmes, A South Carolina Limited
8 Partnership,
9 Defendants.

10

11

30(b)(6)

12 DEPOSITION OF: SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION'S REPRESENTATIVE
13 YELENA KALASHNIKOVA
14 DATE: Thursday, January 25, 2024
15 TIME: 9:16 a.m.
16 TIME ENDED: 12:53 p.m.
17 LOCATION: 1201 Main Street, Suite 1980
Columbia, South Carolina

18

19 REPORTED BY: YVONNE R. THURSTON-BOHANNON
Registered Merit Reporter,
Certified Realtime Reporter

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1 ownership of properties?

2 A. No. That is our right-of-way office.

3 Q. Okay. So when you were asked questions
4 about ownership transfer and that sort of thing,
5 you're -- you're reading pages, but that's not part
6 of your normal duties, is it?

7 A. It is not.

8 Q. Okay. You're not here to make an
9 opinion -- or give an opinion on the transfer of
10 ownership or where certain properties were located
11 or what roads were public, were you?

12 A. No, not an expert.

13 Q. On page -- and this is Defense
14 Exhibit 1, page three, this was the picture --
15 picture of what's -- someone had handwritten
16 "Knox's Store" on. I mean, I was confused as to
17 where this was located in your mind. Do you
18 know -- any idea what is Knox store or --

19 A. I do not.

20 Q. Well, somebody asked you a question
21 whether this is on a connector, right? Go to page
22 four. This is a Google map. There's a circle on
23 it -- a circle with a building. Do you see that
24 building?

25 A. Yes.

1 Q. I think I have one -- one final
2 question. On page -- on Exhibits 13 and 14 these
3 were the October 2016 maps.

4 A. Yes.

5 Q. Just look at Exhibit 13. Yeah, Exhibit
6 13.

7 Is it fair to say we've got 11 -- page
8 two is a legend?

9 A. Uh-huh.

10 Q. And if you go to Exhibit 4 in front of
11 you, Exhibit 4 is a 1969 map that's -- yeah, that
12 one.

13 The legends have clearly changed,
14 haven't they?

15 A. Yes.

16 Q. The road system -- today's map -- 2016
17 map it now has a county section. It's called
18 county paved, unpaved, correct?

19 A. Correct.

20 Q. The old system didn't have any kind of
21 county markings, did it?

22 A. Correct.

23 Q. Okay. So --

24 A. The only difference between the state
25 maintained and non-state maintained, I would refer

1 to road system and the shields would be the
2 indications of whether the route is state
3 maintained or not.

4 Q. Right.

5 There was no -- I don't know when it
6 changed, but in the historic maps from '69 there --
7 there was not a designation for a county road?

8 A. Correct.

9 Q. And --

10 A. So the assumption is that if it doesn't
11 have a shield, it's possibly a county road,
12 non-state maintained road.

13 Q. It's not state maintained?

14 A. Correct.

15 Q. It doesn't mean it's a county road?

16 A. No, it does not.

17 Q. City road, private road, okay.

18 A. Correct.

19 Q. And you -- I think maybe you testified
20 earlier that the information -- such as the October
21 2016 map, the information from the county is
22 what's -- what roads are county, that comes from
23 the county itself?

24 A. Correct.

25 Q. So designated in 2016 Ellenburg Road as

1 county paved, that's information that came from the
2 county?

3 A. Correct.

4 Q. DOT is not going out to these roads and
5 looking at whether it's paved or not?

6 A. Initially from the very, very beginning
7 when we were creating the old notes that you saw,
8 SCDOT would ride state road and just note the
9 intersecting routes across the street. But they
10 would just say that this is another road, non-state
11 maintained, for example, that it's a road, and if
12 they see the name, they would put a name to it.

13 Q. Okay.

14 A. That's it.

15 Q. DOT is not driving down Ellenburg Road
16 and figuring out whether it's paved or not paved?

17 A. No.

18 Q. And it's not looking to see whether a
19 portion is county maintained and a portion is not
20 county maintained?

21 A. Correct.

22 MR. PAAVOLA: All right. I think
23 that's all the questions I have. Mr. Holliday may
24 have a question -- he may or may not have a
25 question for you.

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Respondents.

PROOF OF SERVICE

I certify the Appellants' Reply In Support of Motion to Supplement the Record has been served on James W. Logan, Jr., counsel for Respondent Oconee County Board of Zoning Appeals, by email sent to his primary e-mail address listed in the Attorney Information System, logan@loganandjolly.com and on Larry C. Brandt and Andrew K. Holliday, counsel for Respondents, Globe, a South Carolina Limited Partnership, and Farmes, a South Carolina Limited Partnership, by email sent to their primary e-mail addresses listed in the Attorney Information System, lcb.brandtlawfirm@att.net and andrew@drwmlaw.com, on March 19, 2024. See attached email.

/s/ David L. Paavola
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March 19, 2024

Johns Marine, et al v. Oconee County, et al - Appellants Motion Supplement Reply

David Paavola <paavola@conlaw.com>

Tue 3/19/2024 5:03 PM

To: Jim Logan <logan@loganandjolly.com>; andrew@drwmlaw.com <andrew@drwmlaw.com>; larry@larrybrandtlaw.com <larry@larrybrandtlaw.com>

Cc: Kim Manley <manley@loganandjolly.com>; Angelia Shaw <shaw@conlaw.com>; David Paavola <paavola@conlaw.com>

📎 1 attachments (700 KB)

20240319_Johns Marine Reply Support Motion Supplement Record_w Exhibit_FINAL.pdf;

Jim, Larry, Andrew,

Attached is the Appellants' Reply in Support of Motion to Supplement the Record for service in accordance with SCARC. This will be filed in the Court of Appeals shortly.

Sincerely,



David L. Paavola

Attorney

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PROOF OF SERVICE

I certify that the Appellants' Reply In Support of Motion to Supplement The Record has
been served on the Respondent, Ridgewater Engineering & Surveying, LLC, by depositing a copy
in the U.S. Mail, postage pre-paid, addressed as follows:

Ridgewater Engineering & Surveying, LLC
211 Society Street
Anderson, South Carolina 29621

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