

RECEIVED

Sep 09 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Patrick C. Fant, III, Circuit Court Judge

Case No. 2023-CP-23-04246

(Appellate Case No. 2024-000999)

Anderson Laurens Road AA, LLC and
Anderson Laurens, Road ZZ, LLCAppellants,

v.

Annacey Park Homeowners Association, Inc.
and the City of Greenville.....Respondents.

INITIAL BRIEF OF RESPONDENT

Logan M. Wells, Esq. (SC Bar No. 78434)
Deputy City Attorney
Michael J. Spinelli, Esq. (SC Bar No. 100762)
Assistant City Attorney
City Attorney's Office
P.O. Box 2207
Greenville, South Carolina 29602
Phone: (864) 467-4420

Attorneys for Respondent City of Greenville

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES ON APPEAL	1
1. IS STIPULATION AS TO REVERSIONARY INTERESTS OF ABUTTING LANDOWNERS IN PROPERTY UPON WHICH KELLETT DRIVE IS SITUATED, TOGETHER WITH AN ABSENCE OF A CLAIM OF INTEREST IN THE ROADWAY BY THE CITY OF GREENVILLE, TANTAMOUNT TO A DENIAL OF PUBLIC INTEREST UNDER S.C. CODE ANN. § 57-9-20?.....	1
2. DID THE CIRCUIT COURT APPLY THE APPROPRIATE STANDARD UNDER S.C CODE ANN. § 57-9-20 IN DETERMINING THAT ABANDONMENT OR CLOSURE OF KELLETT DRIVE MUST BE IN BEST INTEREST OF ALL CONCERNED?.....	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
STANDARD OF REVIEW	4
ARGUMENT	4
I. A STIPULATION AS TO REVERSIONARY INTERESTS OF ABUTTING LANDOWNERS IN PROPERTY UPON WHICH KELLETT DRIVE IS SITUATED, TOGETHER WITH AN ABSENCE OF A CLAIM OF INTEREST IN THE ROADWAY BY THE CITY OF GREENVILLE, IS NOT TANTAMOUNT TO A DENIAL OF PUBLIC INTEREST UNDER S.C. CODE ANN. § 57-9-20	4
II. THE CIRCUIT COURT APPLIED THE APPROPRIATE STANDARD UNDER S.C CODE ANN. § 57-9-20 IN DETERMINING THAT ABANDONMENT OR CLOSURE OF KELLETT DRIVE MUST BE IN THE BEST INTEREST OF ALL CONCERNED.....	6
CONCLUSION	6

TABLE OF AUTHORITIES

Cases	PAGE(S)
<i>BancOhio Nat'l Bank v. Neville</i> , 310 S.C. 323, 426 S.E.2d 773 (1993).....	5
<i>Byrant v. City of Charleston</i> , 295 S.C. 408, 368 S.E.2d 899 (1988)	6
<i>First Baptist Church of Mauldin v. City of Mauldin</i> , 308 S.C. 226, 417 S.E.2d 592 (1992)	4, 6
<i>Ledford v. Pa. Life Ins. Co.</i> , 267 S.C. 671, 230 S.E.2d 900 (1976)	4
<i>S.C. Dep't of Transp. v. Hinson Family Holdings, LLC</i> , 361 S.C. 649, 606 S.E.2d 781 (2004)	5
Statutes	
S.C. Code Ann. § 57-9-10.....	4
S.C. Code Ann. § 57-9-20.....	4, 6
S.C. Code Ann. §§ 57-9-10 through -40	2, 4

STATEMENT OF THE ISSUES ON APPEAL

1. IS STIPULATION AS TO REVERSIONARY INTERESTS OF ABUTTING LANDOWNERS IN PROPERTY UPON WHICH KELLETT DRIVE IS SITUATED, TOGETHER WITH AN ABSENCE OF A CLAIM OF INTEREST IN THE ROADWAY BY THE CITY OF GREENVILLE, TANTAMOUNT TO A DENIAL OF PUBLIC INTEREST UNDER S.C. CODE ANN. § 57-9-20?
2. DID THE CIRCUIT COURT APPLY THE APPROPRIATE STANDARD UNDER S.C. CODE ANN. § 57-9-20 IN DETERMINING THAT ABANDONMENT OR CLOSURE OF KELLETT DRIVE MUST BE IN BEST INTEREST OF ALL CONCERNED?

STATEMENT OF THE CASE

Appellants brought this action against Respondents Annacey Park Homeowners Association, Inc. (“HOA”) and City of Greenville, South Carolina (the “City”), by way of the Petition for Statutory Abandonment of Public Rights and Permanent Road Closure, filed on August 18, 2023, in the Greenville County Court of Common Pleas, seeking closure of Kellett Drive in Greenville, South Carolina, pursuant to S.C. Code Ann. §§ 57-9-10 through -40. (Summons & Pet.). The HOA answered on September 20, 2023, denying that Appellants were entitled to the relief sought. (HOA Answer). The City answered on October 9, 2023, denying that it claimed an interest in Kellett Drive apart from certain easements located thereon. (City Answer).

This matter was heard by the Honorable Patrick Cleburne Fant, III, on April 8, 2024. (Trial Tr.). On April 10, 2024, the court denied Appellants’ Petition via Form 4 Order, finding “it is not in the best interest of all concerned that Kellett Drive be abandoned or closed.” (Form 4 Order). On April 19, 2024, Appellants moved to reconsider, or alternatively, to alter or amend the April 10 Order. (Appellants’ Mot. To Reconsider). The court issued a formal order denying Appellants’ Motion to Reconsider on June 4, 2024. (Formal Order). This appeal followed; Appellants filed the Notice of Appeal on June 13, 2024.

STATEMENT OF FACTS

This case arises out of Appellants' petition to close or abandon Kellett Drive in Greenville, South Carolina. (Summons & Pet.).

Kellett Drive is a roadway located off Laurens Road in the City of Greenville in Greenville County, South Carolina. (Stipulation of Facts, p. 2). It is not built to City street standards and the City does not claim an interest in Kellett Drive apart from certain utility easements located thereon. (Feb. 14, 2023 Email from Clint Link; City Answer). The parcels of property abutting Kellett Drive are owned by either Appellants or the HOA, with those parcels owned by Appellants being the closest to Laurens Road, and the parcel owned by the HOA being situated at the opposite end of Kellett Drive. (Stipulation of Facts, p. 2). Kellett Drive has historically been used by Appellants or Appellants' predecessors in interest as a drive for the automobile dealerships that are or have been located on Appellants' property. (Feb. 14, 2023 Email from Clint Link). The HOA has used and uses Kellett Drive primarily for secondary and emergency access for residents of the private community of Annacey Park and emergency services. (*Id.*; Trial Tr., p. 27, l. 22- p. 31, l. 19).

STANDARD OF REVIEW

The standard of review for determinations as to whether a road should be abandoned or closed pursuant to S.C. Code Ann. §§ 57-9-10 through -40 is abuse of discretion. *First Baptist Church of Mauldin v. City of Mauldin*, 308 S.C. 226, 229, 417 S.E.2d 592, 594 (1992). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *Ledford v. Pa. Life Ins. Co.*, 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976).

ARGUMENT

Pursuant to S.C. Code Ann. § 57-9-10, "Any interested person, the State or any of its political subdivisions or agencies may petition a court of competent jurisdiction to abandon or close any street, road or highway whether opened or not." S.C. Code Ann. § 57-9-10. Whether such road should be abandoned or closed is controlled by a best interest standard: "If the court shall determine that it is to be the best interest of all concerned that such street, road or highway be abandoned or closed, the court shall then determine in whom the title thereto shall be vested and issue an appropriate order." S.C. Code Ann. § 57-9-20. Thus, a road should not be abandoned or closed pursuant to S.C. Code Ann. § 57-9-20 unless it is in the best interest of all concerned.

- I. A STIPULATION AS TO REVERSIONARY INTERESTS OF ABUTTING LANDOWNERS IN PROPERTY UPON WHICH KELLETT DRIVE IS SITUATED, TOGETHER WITH AN ABSENCE OF A CLAIM OF INTEREST IN THE ROADWAY BY THE CITY OF GREENVILLE, IS NOT TANTAMOUNT TO A DENIAL OF PUBLIC INTEREST UNDER S.C. CODE ANN. § 57-9-20.

Appellants aver that the City unequivocally denied or disavowed any public interest Kellett Drive, and thus title to Kellett Drive should be confirmed in accordance with the stipulations as to the reversionary interests of Appellants and HOA in the property upon which Kellett Drive is situated. *See* (Appellants' Initial Brief, pp. 7-9). Such argument is based on misapprehension of

both the facts and the law; the City did not deny any interest Kellett Drive, and even assuming *arguendo* that the City did so, such denial would not be the equivalent of denying the existence of any public interest in Kellett Drive.

The City did not “unequivocally” deny any interest in Kellett Drive. Rather, the City denied it claims any interest in Kellett Drive.¹ (City Answer, p. 1). While at first blush the distinction may seem a matter of semantics, the difference in meaning is significant. Denial of an interest is an affirmative representation that such interest does not exist, whereas denial that an interest is claimed is neutral; it is the absence of both a claim of interest and a disavowal of interest. The City’s position is one of neutrality. *See* (Trial Tr., p. 50, ll. 15-19); *compare* (Feb. 14, 2023 Email from Clint Link), *with* (Jan. 23, 2023 Email from Austin Rutherford).

Moreover, denial of any claim of interest, or of any interest, in Kellett Drive by the City is not tantamount to a denial of a public interest. As discussed *supra*, the City simply does not claim an interest in Kellett Drive; it does not affirmatively deny an interest in Kellett Drive, and it does not affirmatively deny that there may be some public interest in Kellett Drive although the City does not claim such an interest. (City Answer, p. 1). The City is not the only body by which a public interest in Kellett Drive can be expressed. *See, e.g., S.C. Dep’t of Transp. v. Hinson Family Holdings, LLC*, 361 S.C. 649, 655, 606 S.E.2d 781, 784-75 (2004) (DOT and the local municipality are indispensable parties that must be joined in an action to abandon a public road); *BancOhio Nat’l Bank v. Neville*, 310 S.C. 323, 426 S.E.2d 773 (1993) (same).

¹ More specifically, the City denied it claims any interest “apart from existing and planned public utility easements.” (City Answer, p. 1).

In short, the City does not claim an interest in Kellett Drive, nor does it affirmatively deny an interest in Kellett Drive or that there may be a public interest in Kellett Drive. As such, the City cannot be said to have “unequivocally” denied any public interest in Kellett Drive.

II. THE CIRCUIT COURT APPLIED THE APPROPRIATE STANDARD UNDER S.C. CODE ANN. § 57-9-20 IN DETERMINING THAT ABANDONMENT OR CLOSURE OF KELLETT DRIVE MUST BE IN THE BEST INTEREST OF ALL CONCERNED.

Appellants contend the circuit court misconstrued the “best interest” standard set forth in S.C. Code Ann. § 57-9-20. (Appellants’ Initial Brief, pp. 10-12). In so arguing, it appears Appellants may advocate construing S.C. Code Ann. § 57-9-20 so as to place the burden on the party opposing abandonment or closure of a road to demonstrate that a road remaining open and/or public is in the best interests of all concerned. To the extent Appellants advocate S.C. Code Ann. § 57-9-20 be interpreted in such a manner, the City disagrees with such a construction of the “best interest” standard. Instead, the “best interest” standard should be applied in accordance with the plain language of the statute and construed to require that the party advocating for abandonment or closure of a road demonstrate that abandonment or closure of the road is in the best interest of all concerned. *See First Baptist Church of Mauldin v. City of Mauldin*, 308 S.C. 226, 229, 417 S.E.2d 592, 593 (1992) (In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation) (citing *Byrant v. City of Charleston*, 295 S.C. 408, 368 S.E.2d 899 (1988)).

CONCLUSION

In conclusion, for the foregoing reasons, the City respectfully requests this Court act in accordance with the S.C. Code Ann. § 57-9-20 and in the best interest of all concerned.

Respectfully Submitted:

s/Logan M. Wells

Logan M. Wells, Esq. (SC Bar No. 78434)
Deputy City Attorney
Michael J. Spinelli, Esq. (SC Bar No. 100762)
Assistant City Attorney
City Attorney's Office
P.O. Box 2207
Greenville, South Carolina 29602
Phone: (864) 467-4420
Fax: (864) 467-4424
lmwells@greenvillesc.gov
mspinelli@greenvillesc.gov
Attorneys for Respondent City of Greenville

Dated: September 9, 2024

RECEIVED

Sep 09 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Patrick C. Fant, III, Circuit Court Judge

Case No. 2023-CP-23-04246

(Appellate Case No. 2024-000999)

Anderson Laurens Road AA, LLC and
Anderson Laurens, Road ZZ, LLC.....Appellants,

v.


Annacey Park Homeowners Association, Inc.
and the City of Greenville.....Respondents.

PROOF OF SERVICE

I certify that I have served the City of Greenville’s Initial Brief of Respondent on Anderson Laurens Road AA, LLC, Anderson Laurens Road ZZ, LLC, and Annacey Park Homeowners Association, Inc. by emailing copies to their attorneys of record at the email addresses below, pursuant to Section (d)(1) of the Order in Appellate Case No. 2020-000447:

William B. Swent, Esq.
Aimee V. Leary, Esq.
FOX ROTHSCHILD LLP
wswent@foxrothschild.com
aleary@foxrothschild.com
Attorneys for Appellants

A. Lyon Bixler, Esq.
Patrick O. Dollar, Esq.
Bixler and Dollar, LLC
lbixler@bbdlawsc.com
PDollar@bbdlawsc.com
Attorneys for Respondent Annacey Park
Homeowners Association



Tonya B. Gramann
Legal Office Administrator
City Attorney’s Office
P.O. Box 2207
Greenville, South Carolina 29602
Phone: (864) 467-4420
Attorneys for Respondent City of Greenville



RECEIVED

Sep 09 2024

SC Court of Appeals

Office of the City Attorney

Via email (ctappfilings@sccourts.org)

September 9, 2024

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *Anderson Laurens Road AA, LLC and Anderson Laurens Road ZZ, LLC v. Annacey Park Homeowners Association, Inc. and the City of Greenville*
Appellate Case No.: 2024-000999

Dear Ms. Kitchings:

Attached for filing please find Respondent City of Greenville's Initial Brief along with our proof of service. By copy of this letter, copies of same are being served upon attorneys of record for Anderson Laurens Road AA, LLC, Anderson Laurens Road ZZ, LLC, and Annacey Park Homeowners Association, Inc.

Sincerely,

Logan Wells
Deputy City Attorney

LMW/tbg

cc: (via email w/ attachments: wswent@foxrothschild.com to William B. Swent and aleary@foxrothschild.com, Esq. to Aimee V. Leary, Esq., Attorneys for Appellants)

(via email with attachments : lbixler@bbdlawsc.com to A. Lyon Bixler, Esq. and PDollar@bbdlawsc.com to Patrick O. Dollar, Esq. Attorneys for Respondent Annacey Park Homeowners Association, Inc.)