

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2022 CP-37-00447

Frances J. Ratliff, et al.

Oconee County, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Andrew K. Holliday, Larry C. Brandt, and James W. Logan, Jr.

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

RECEIVED
Sep 17 2024
SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Frances J. Ratliff, Edward J. Ratliff, Jr.,)
 James L. Ratliff, Lucretia B. Morgan,)
 Sherri Akers Crisp, Amy Cawthon,)
)
 Plaintiffs,)
 v.)
)
 Oconee County, Globe, A South Carolina)
 Limited Partnership, Farmes, A South)
 Carolina Limited Partnership,)
)
 Defendants.)
 _____)

COURT OF COMMONS PLEAS

ORDER

RECEIVED

Sep 17 2024

SC Court of Appeals

Case No.: 2022-CP-37-00447

The above captioned matter came before me, the undersigned, at the regularly scheduled term of Common Pleas Court for Oconee County, South Carolina, commencing on June 12, 2024 as a non-jury matter and was heard over the course of three days in which numerous witnesses testified and a plethora of deeds and plats of record pertaining to Ellenburg Road (WA-42) were admitted into evidence (Defendants' Exhibit 1).

Upon conclusion of the trial, the Court took the matters presented under consideration and, after giving its careful consideration and attention to all of the evidence, particularly the deeds and plats contained in Defendants' Exhibit 1, the Court makes the following findings of fact:

FINDINGS OF FACT

1. Ellenburg Road, also known and designated as WA-42 by Oconee County, has been a public road since at least 1946 as evidenced by deed of J.J. Younce to Larkin Mayfield, Jr., recorded in Deed Book 5-R, Page 190 records of Oconee County. That deed specifically refers to Ellenburg Road as a public road.

2. An express easement or deeded right-of-way for any portion of Ellenburg Road (WA-42) conveying the roadway or an easement for the roadway to any governmental entity over the subject properties evidently does not exist.
3. The deed of J.J. Younce to Eugene J. Kelley, dated November 17, 1947 and recorded in Deed Book 5-Y, Page 283, also references what is now referred to as Ellenburg Road and again describes it as a public road.
4. Other deeds and plats admitted into evidence as part and parcel of Defendants' Exhibit 1 clearly show what is now Ellenburg Road or portions thereof and refer to the road as a public road, county road and/or an unnamed paved road. Even members of the Ratliff family commissioned a plat and placed it of record clearly delineating Ellenburg Road as a public or a county road (Plat Book B-754 at Page 6, Records of Oconee County, South Carolina).
5. Oconee County Roads and Bridges employees testified and presented documentary evidence that the portion of Ellenburg Road not inundated by the waters of Lake Keowee had been maintained by the County to present date (from Knox Road to the border of Defendants' property) and the County considered Knox Road to be a public roadway all the way from Knox Road to the end of the pavement at the border of Defendants' property.
6. As indicated during the cross examination of Jay Ratliff, the spokesman for the Ratliff family at the BZA hearing on November 30, 2021, he clearly stated that Ellenburg Road, according to his memory, originally ran from what is now Knox Road, formerly S.C. Highway 183, to High Falls Church and was a state highway until a major portion of Ellenburg Road, WA-42, was inundated by the waters of Lake Keowee. He also

acknowledged at that time that the portion of Ellenburg Road not flooded by the waters of Lake Keowee devolved to Oconee County pursuant to law.

7. Other maps in evidence were also presented attesting to the fact that Ellenburg Road was a publicly dedicated roadway running from Knox's Store on what is now Knox Road (old SC 183) to High Falls Church and tied in and/or intersected with other public roadways in the community. Evidence further showed that once Lake Keowee was built, a major portion of Ellenburg Road, WA-42, was inundated by the waters of Lake Keowee; however, the westernmost portion of Ellenburg Road extended from Knox Road to the property of Defendants and has continued to be used by the general public to access Harbor Oaks Subdivision as well as John's Marine Service. Also, it was and is the only access to Defendants' property as is shown on Plat Book B291 at Page 1 by which Defendants' property was conveyed to Defendants by Crescent Communities on December 3, 2008.
8. There is also evidence that at sometime there was an End of County Maintenance sign at the end of the pavement at the border of Defendants' property; however, there was a lot of controversy concerning the sign in that there were allegations that there had been an End of County Maintenance sign at the top of the hill where the Ratliff property began. Witnesses attesting to the sign being located at the top of the hill, however, testified that the sign was white with black lettering. Further, Plaintiffs and witnesses called on their behalf regarding the location and description of this sign differed from one another. Conversely, Oconee County employees testified such signs used by Oconee County were green in color with white lettering, and a photo showing such a County sign, at one time, on Defendants' property where the pavement ends was also entered into evidence. Defense witnesses testified and County records entered into evidence show that the End of County

Maintenance sign was only at a single location, at the end of the asphalt and located upon Defendant's property.

9. The evidence also shows that numerous deeds and plats of property included in Defendants Exhibit 1 show Ellenburg Road (WA-42) as an Oconee County maintained roadway from Knox Road to the end of the asphalt at the border of Defendants' property where the pavement ends.
10. A photograph of an End of County Maintenance sign where the pavement stopped at the border of Defendants' property was also entered into evidence. No photo was introduced into evidence showing any other End of County Maintenance sign at any other location.
11. It is also undisputed that the northernmost portion of the previous paving which is at issue to the beginning of Defendants' property is owned approximately to the centerline of said roadway by the Plaintiffs and the southernmost half of the disputed road is owned by Defendants. Plaintiffs, however, never offered any evidence or attempted to explain how they could dispossess the Defendants of land to which they owned the fee.
12. The Ratliffs also claim that in or about 2009 they had a meeting with Prince Brown, a road department technician with Oconee County, who represented to them that the County did not maintain that part of Ellenburg Road that ran in front of the Ratliff property. Prince Brown is deceased, however, and was not available to testify or refute the allegations of Plaintiffs, but even if he did make such statements there is/was no evidence presented by the Plaintiffs that Mr. Brown had the authority to make the alleged representations and/or that he was duly empowered or authorized to abandon maintenance on public roadways belonging to the County or, in essence, to give away public assets [*City of Myrtle Beach v. Parker* 260 S.C. 475, 197 S.E.2d 290 (Sup. Ct. 1973)]. Again, the Ratliffs admitted that

they only owned to the approximate center of the disputed portion of the roadway and Defendants owned the other approximate half, notwithstanding that they are now claiming “ownership” of all of the road as it being their private driveway.

13. The Plaintiffs also testified that their father had, in conjunction with T. B. Ellenburg (a prior owner of a portion of the subject real estate in question and for whom the Road is named) paved the road in the 1980s. None of the Plaintiffs could place an absolute date on when this occurred and they produced no records for this paving. The only maintenance records produced were for gravel and concrete which were placed solely on the Plaintiff’s property and not within the roadbed. Plaintiffs further testified that they were unaware of any survey of their property from the “Bearden Plat” of 1973 until 2020. Plaintiff’s expert witness, surveyor Eliotte Quinn, additionally testified about finding the historical pins set in the asphalt, which included a rail road spike, a common practice in the 1970s. Mr. Quinn further testified in his expert opinion that any later repaving would have destroyed or at least covered these magnetic nails and rail road spikes. Therefore, the Plaintiff’s claims of their father paving the road are simply not credible.
14. It is also uncontroverted that no action has ever been brought by anyone to close any portion of Ellenburg Road pursuant to *S.C. Code §57-9-10* and the same was stipulated to by the Plaintiffs.
15. Ms. Kalashnikova of the South Carolina Department of Transportation testified that although the South Carolina Highway Department did not have any records of Ellenburg Road ever being in the state inventory, it did have records which, in her opinion, showed that the road was a public roadway.

16. There was also testimony and evidence presented that Oconee County has, to present date, claimed such portion of the roadway in question as a public County road and has on several occasions mowed the shoulders, cleaned out the ditches and did some sporadic maintenance thereon.
17. Although the maintenance records for that portion of the roadway over which abandonment was alleged was somewhat sparse, there was absolutely no showing that County had abandoned and/or relocated the highway to a new location nor that abutting property owners had built fences around any portion of the roadway and/or otherwise obstructed the roadway. In fact, it was the County's claim that it was in their system for maintenance all the way from Knox Road to the border of Globe and Farnes' property.

CONCLUSIONS OF LAW

The Defendants assert that the only way to close a public road is by compliance with *S.C. Code §57-9-10* pursuant to the holding of the cases of *S.C. Dept. of Transportation v. Henson Family Holdings, LLC, et al.*, 361 S.C. 649, 606 S.E.2d 781 (2004) and *Town of Kingstree v. Chapman*, 405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013), and all parties agree that no action has been brought by anyone to close any portion of Ellenburg Road pursuant to that statutory process. The Court, however, is of the opinion that the claim of abandonment under common law is independent of said statute. Accordingly, over the objections of Defendants, the Plaintiffs were granted full opportunity to be fully heard on the grounds of abandonment; however, the Court finds that there is no evidence that Oconee County abandoned the road by unequivocal acts showing a clear intent to abandon.

There are four (4) cases that are controlling and determinative on the "abandonment" issue under common law. In the first case, the South Carolina Supreme Court, in *Wessinger v. Goza*,

231 S.C. 607; 99 S.E.2d 395 (1957), held that a basic tenant of common law is that once a public road, always a public road and even an abandoned highway may not be closed without the consent of the persons whose property fronts thereon or over whose land it passes. In the present case, Ellenburg Road is still being used as a public road for access to properties along and on both sides of Ellenburg Road, including the Plaintiffs' property used by the "public" for "public" purposes to deliver and pick-up their boats at John's Marine Service, Inc., which specifically includes the portion of the Plaintiffs' real property directly across from a portion of the Farmes and Globe real property. As such the entirety of the portion of Ellenburg Road, having not been inundated by the waters of Lake Keowee, is still possible to traverse and the use of the same has not wholly failed. There has been neither a discontinuance of the public road in question nor an abandonment of that road and no sufficient evidence of any abandonment of that road has been shown by clear and convincing evidence. There is no evidence that the use for which the property was dedicated has become impossible or that the object of the use for which the property is dedicated has failed. Any past/present use of this road is totally consistent with the declared purpose of dedication and, therefore, will not support a charge of abandonment. At best for the Plaintiffs there is conflicting evidence of the discontinuance of maintenance at some portions of Ellenburg Road, but no evidence of any abandonment as defined by the applicable case authorities exists. Oconee County has never abandoned any portion of Ellenburg Road! The real property owner (Globe and Farmes) of approximately one half of the underlying fee on which Ellenburg Road is located as well as the strip property to southeastern side of the road directly across from the Ratlif property has never consented to the abandonment of that section and intends to use that public road for access to the public development of its property purchased from Crescent Communities SC, LLC!

The second case is *K & A Acquisition Group, LLC, v. Island Pointe, LLC*, 383 S.C. 563; 682 S.E.2d 252 (2009). In that case, the Department of Transportation (DOT) and the City of Folly Beach sought a declaration that a tract of land on a neighboring island that was part of a former toll road remained a public right of way. In its opinion, the Supreme Court of South Carolina made the following statements:

- A. "...we find the "old" Folly Beach Road was dedicated to the public and this public easement remained intact after the new road was created and until the SCDOT affirmatively abandoned the route of the former toll road.
- B. "...[W]e disagree that the "discontinuance" or relocation of the route was sufficient to constitute abandonment. The terms "discontinuance" and "abandonment" are not synonymous."
- C. "*Ord v. Fugate*, 207 Va. 752, 152 S.E.2d 54, 59 (1967) (noting that discontinuance of public road should not carry the same effect as abandonment and stating "under the present statutes the discontinuance of a secondary road means merely that it is removed from the state secondary road system. Discontinuance of a road is a determination only that it no longer serves public convenience warranting its maintenance at public expense. The effect of discontinuance upon a road is not to eliminate it as a public road or to render it unavailable for public use."
- D. "...a party must "show the abandonment by clear and unequivocal evidence. An abandonment occurs where the use for which the property is dedicated becomes impossible of execution, or where the object of the use for which the property is dedicated wholly fails. Any use which is not inconsistent with the declared purpose of a dedication will not support a charge of abandonment." (Emphasis added).

- E. “The rights of purchasers under a map and of the general public cannot be lost by the unauthorized acts of the governing or controlling officials of the municipality, or by their neglect, but only by legal abandonment by the public as well as the officials.’ 26 C.J.S. *Dedication* s 63 at page 552.” (Emphasis added).
- F. “An easement created by dedication may be abandoned by unequivocal act showing a clear intent to abandon. To constitute abandonment, the use for which the property is dedicated must become impossible for execution or the object of the use must wholly fail. Generally, a mere misuser or nonuser does not constitute abandonment of land dedicated to public use.” (Emphasis added).
- G. By way of example, the Court quoted the case of *Williams v. Woodward*, 240 S.W.2d 94 (Ky.Ct.App. 1951) which held that the State Highway Department abandoned roadway and relocated new highway, abutting property owners built fences around roadway and otherwise obstructed it, and roadway had not been used to any substantial extent by the public for some years are examples of an abandonment of a highway. (Emphasis added).
- H. The case of *Hart v. Town of Shafter*, 348 Ill.App.3d 713, 284 Ill.Dec. 699, 810 N.E.2d 489, 491 (2004) the Court cited with approval the statement that “[A]n abandonment will be found only where the public has acquired the legal right to another road or where the necessity for another road has ceased to exist.” (Emphasis added).
- I. See also the final two (2) cases: *Carolina Land Co. v. Bland*, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975) and *Judy v. Kennedy*, 398 S.C. 471, 728 S.E.2d 484 (2012).

Based upon this controlling authority, the Court finds that there is no evidence that Oconee County has abandoned the road by clear and unequivocal acts showing a clear intent to abandon. Accordingly, Plaintiffs' petition to have the road deemed abandoned and closed is denied. Further, Ellenburg Road from its intersection of Knox Road to the border of the Defendant's property is a public road until such time as a party obtains a Court ordered closure of all or some portion of the same or in the event Oconee County, through some clear and unequivocal act, abandons the same.

IT IS SO ORDERED this _____ day of _____, 2024.

The Honorable R. Lawton McIntosh,
Presiding Judge, Oconee County,
Tenth Judicial Circuit



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Judgment and Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH