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Aug 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court Of Common Pleas

The Honorable R. Markley Dennis, Jr, Circuit Court Judge
Trial Court Case No. 2018CP2600120

Appellate Case No. 2021-000078

East Cherry Grove Co., LLC and Ray & Nixon, LLC, Respondents,

v.

State of South Carolina, South Carolina Department of Health and Environmental Control, and
Matt Leonhard, Defendants,

Of whom The State of South Carolina is the Appellant

**STATE'S RETURN TO RESPONDENTS'
PETITION FOR REHEARING**

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The State respectfully requests that Respondents' Petition for Rehearing be denied for the foregoing reasons.

ARGUMENT

I

NO EVIDENCE SUPPORTS RESPONDENTS' CLAIM OF OWNERSHIP OF THE PIG'S EARS AND DOME OF THE PIG'S HEAD

The Record does not contain “any evidence that reasonably supports”¹ East Cherry Grove's (ECG's) ownership of the area described as the pig's ears and the dome of the pig's head. When ECG's own surveyor, as well as the State's surveyor, excluded the area, no evidence supports Plaintiff's claim.

A

The Deschamps Testimony Provides No Support

Respondent ECG points to no testimony of William Deschamps, Respondents' title opinion expert, which supports ownership of this area. ECG cites only general testimony of Mr. Deschamps referring to the surveys of ECG's and the State's experts (Floyd and Courtney respectively), but those surveys, as found by this Court, do not include the pig's ears and head. R. V.1, p. 106, pp 18-24, p. 233 (State Ex. 25, Courtney map); p. 107, ll. 2 – 21); V. 1, p. 246 (Pl. Ex. 4, Floyd Map).² Mr. Deschamps' testimony about the general area of TMS

¹ *Hoyler v. State*, 428 S.C. 279, 290, 833 S.E.2d 845, 851 (Ct. App. 2019), reh'g denied (Oct. 17, 2019), cert. dismissed (Jan. 29, 2020).

² Surprisingly, Mr. Deschamps indicates that the Courtney and Floyd maps are the same, but they obviously are not. However, both experts' maps are in agreement that the pig's ears and head are not covered by grants. Mr. Deschamps said absolutely nothing to contradict the exclusion of the pig areas by both surveyors.

1450001001 is insufficient as he is not a surveyor³ and cannot override the testimony of the two surveyors that exclude that area. Mr. Deschamps never mentioned the pig's ears area at issue nor did he refute the accuracy of the Courtney map. Contrary to Respondent's Petition, the circuit court order, which counsel for Respondent drafted, did rely on the Deschamps testimony, but not as to any specifics regarding the pig's area. R. V1, p. 4; p. 232, ll 20-21).⁴

B

Joel Floyd's Testimony Does Not Support Ownership of the Pig's Ears and Head

Respondents' own witness, Joel Floyd acknowledged that his map did not include the pig's ears area. R. V.1, p. 132, ll. 12-21. He vaguely referred to a King's Grant but did not identify it and acknowledged that it was not platted. *Id.* Grants not in evidence cannot support a claim to tidelands. *See Hoyler v. State*, 428 S.C. 279, 293-295, 833 S.E.2d 845, 853 (Ct. App. 2019)("the claimant must show that the language of the conveyance is specific enough to determine a reasonably precise location of its boundaries;" "[w]hile a property description need not be perfect, it must allow one examining it to identify the property conveyed"); *State v. Hardee*, 259 S.C. 535, 543, 193 S.E.2d 497, 501 (1972)("In the absence of specific language, either in the deed or on the plat, showing that it was intended to go below high water mark, . . . the portion of the land between high and low water mark remains in the State."). ECG did not show specific language in a grant or plat that covered the pig's area. Therefore, its claim to that area completely failed.

³ Deschamps was qualified only as an expert in the "field of title examination, title opinions, and the like" R. p. 96, l. 19 – p. 97, l.10. He acknowledged that he was not a surveyor and could not render a surveying opinion. R. p. 111, l.l. 4-23).

⁴ As asserted in the State's Petition, the State did argue in its brief that the circuit court improperly relied upon the title expert's opinion.

C

The Teague Property Is Not at All Determinative as to the Pig's Ears and Head

Contrary to the plainly worded order in the Teague case, ECG is continuing to argue that order in that case is somehow determinative of ownership of the pig's area. As this Court found, the Order of the Honorable Larry B. Hyman in the action *East Cherry Grove Realty, LLC v. State and Teague*, 2014CP2601412, July 8, 2015 (V. 2, p. 473 Exhibit 18) only determined that ECG owned the marsh under the proposed dock. That dock is below the pig's ears, not across them. R. V. 1, p. 302 (Pl. Ex. 15). ECG's statement that the pig's area is "clearly covered by the unappealed ruling in *Teague*" is patently wrong.

D

Russ Courtney's Testimony Is Contrary to ECG's claim to the Pig's Ears and Head

Mr. Courtney's testimony absolutely is not supportive of ECG's claim. R. V1, p. 161, ll. 2-4 (did not find a King's Grant that applied to that pigs' ear area); p. 162, ll. 17-19 (Pig's ear area outside the grant line). ECG refers to his testimony about his being 70 % sure that the ECG property was part of a King's grant, but Mr. Courtney explained that the reason that he was not 100% sure was the absence of a grant to the pig's head area. R. V1, p. 151, ll. 7-12; p. 165, ll. 5-7. A grant is essential to overcome the State's presumptive ownership of tidelands property, and neither Mr. Courtney nor ECG's witnesses identified any grant to the pig's area.

The circuit court order did not even address specifically the pig's ears and head, and instead merely referred to the Tax Map No. for parcel 1450001001. R. V1, p. 8. Without a grant, no evidence supports the circuit court judge's ruling to the extent that it applies to the pig's ears and head area.

CONCLUSION

As explained above, the Record does not contain a shred of evidence to support ECG's statement that "DesChamps, Courtney and Floyd - all testified that the pig's ears were part of a Kings Grant." Courtney expressly stated that he did not find a grant to that area. Mr. Floyd excluded the area from his map overlaying the grant and did not identify any specific grant to the area. Mr. Deschamps did not address the area and referred to the surveys that excluded it. The ECG statement is baseless, and its Petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this August 16, 2024, served the State's Return to Respondents' Petition for Rehearing by emailing it to counsel for Respondents at the address below (copy of email attached).

Gene M. Connell, Jr.
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/s J. EMORY SMITH, JR.

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August 16, 2024

From: [Emory Smith](#)
To: [Gene Connell](#)
Subject: RE: Appellate Case No. 2021-000078 East Cherry Grove v. State of South Carolina
Date: Friday, August 16, 2024 2:34:00 PM
Attachments: [State's Return to Respondents' Petition for Rehearing \(03666277xD2C78\).PDF](#)
[image001.png](#)

Good afternoon, Gene. Attached is our Return. Will efile thru the COA's portal.

Have a good weekend.

Emory

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