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Oct 21 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2024-000659

David L. Lambert and Julia H. Beamish, Appellants,

v.

Aiken County Planning Commission, Aiken County
Government, Pyramid Network Solutions for Verizon
Wireless, Respondents.

NOTICE OF MOTION AND MOTION
TO INTRODUCE NEWLY DISCOVERED
EVIDENCE

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APPELLANTS' MOTION TO INTRODUCE
NEWLY DISCOVERED EVIDENCE

The Appellants respectfully move before this Court to introduce newly discovered evidence into the record for this case pursuant to Rule 60(b)(2), SCRPC. In support of this motion counsel for the Appellants respectfully shows unto the Court as follows:

1. As part of this appeal the Appellants have included in the Record on Appeal a copy of a plat depicting the Bluffwood East development in Aiken County. This plat is attached to this Motion as Exhibit "A".¹

2. Exhibit "A" was given to the Appellants by Gerald L. Waters when they purchased their property in the Bluffwood East development, and shows that Lots 34, 35 and 36 are part of Bluffwood East. The Appellants also contend that Exhibit "A" shows that Lots 34, 35 and 36, which are owned by Mr. Waters or his Living Trust, are subject to the Restrictive Covenants for Bluffwood East. Whether Lots 34, 35 and 36 are subject to those restrictive covenants is critically relevant to the issues presented to this Court as part of this appeal.

3. On April 19, 2024 the Appellants in this matter and several other residents of the Bluffwood East development commenced a civil action in the Court of Common Pleas for Aiken County against Gerald L. Waters and the Gerald L. Waters Living Trust, titled Julia H. Beamish, et al. v. Gerald Waters, et al., and bearing Civil Action No. 2024CP0200989. Mr. Waters and his Living Trust are not parties to the appeal pending before this Court.

4. By way of that civil action the Appellants and other residents of the Bluffwood East development seek a declaration from the court that Lots 34, 35 and 36, as depicted on Exhibit "A", are subject to the Restrictive Covenants for Bluffwood East.

5. Mr. Waters and his Trust recently answered the plaintiffs' complaint in the civil action and also asserted counterclaims against the plaintiffs. As part of their counterclaims, Mr. Waters and his Living Trust produced a copy of another plat depicting the Bluffwood East development. This plat is attached to this Motion as Exhibit "B".

6. The Appellants in this matter and the plaintiffs in the civil action had never seen

¹ Counsel is prepared to provide a larger copy of Exhibit "A" to the Court, as well as Exhibit "B" referenced later herein, if requested by the Court.

Exhibit “B” before it was produced by Mr. Waters’ counsel in the civil action pending in Aiken County.

7. There are significant differences between Exhibit “A” and Exhibit “B”. Specifically, Exhibit “B” does not include a depiction of Lots 34, 35 and 36.

8. It is clear that Exhibit “A” was prepared after Exhibit “B” was prepared, as Lots 34, 35 and 36 are drawn over and obscure portions of certain surveying information shown on the upper right side of Exhibit “A”. The Appellants contend that Exhibit “B” has likely been used by Mr. Waters in an attempt to show that Lot 34, where the cell tower involved in this appeal is proposed to be located, is not a part of Bluffwood East and is, therefore, not subject to its Restrictive Covenants. In other words, Mr. Waters probably has used two plats of Bluffwood East, which contain conflicting information, and for different purposes.

9. As there are no means of discovery allowed in the matter heard by the Aiken County Planning Commission, which is the subject of this appeal, there is no way the Appellants herein, using due diligence or otherwise, could have uncovered the existence of Exhibit “B” during the course of the Commission’s consideration of the application for construction and operation of the Verizon cell tower.

10. The Appellants contend that had the Planning Commission been made aware of the existence of Exhibit “B” a majority, if not all, of its members would have denied Verizon’s application for the cell tower; such new evidence clearly shows that after Exhibit “B” was prepared Mr. Waters expanded the boundaries of Bluffwood East using Exhibit “A” - which he gave to the Appellants - and made Lot 34, as well as Lots 35 and 36, subject to the Restrictive Covenants, which bar construction and operation of the Cell Tower on those properties. At a minimum, Lots 34, 35 and 36 are “nearby property” owned by Mr. Waters as defined by the Restrictive Covenants and, therefore, are subject to the Covenants.

11. The Appellants respectfully assert that this Court should grant the Appellants’ Motion to introduce Exhibit “B” as newly discovered evidence as part of this matter, and remand this matter to the Planning Commission for additional proceedings before it with respect to consideration of Verizon’s application to build and construct a cell tower on Lot 34.

I hereby affirm that I have consulted with Counsel for the Respondents before the filing of this Motion.

s/ Clarke W. McCants, III
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Attorneys for Appellants

Dated: October 21, 2024

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PROOF OF SERVICE

I certify that I have served a copy of the Notice of Motion to Introduce Newly Discovered Evidence on Counsel for the Aiken County Planning Department and Aiken County Government, Bradley T. Farrar, Esquire, by depositing a copy of these documents in the United States Mail, postage prepaid, or by electronic transmission, on October 21, 2024, addressed to Mr. Farrar at 1930 University Parkway, Aiken, S.C. 29801 and on Counsel for Pyramid Network Solutions, LLC for Verizon Wireless, Catherine F. Wrenn, Esquire, by depositing a copy of these documents in the United States Mail, postage prepaid, or by electronic transmission, on October 21, 2024, addressed to Ms. Wrenn at 850 Morrison Drive, St. 775, Charleston, S.C. 29403.

MCCANTS & MCCANTS

s/ Clarke W. McCants, III
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Attorneys for Appellants

Dated: October 21, 2024