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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Patrick C. Fant, Circuit Court Judge

Case No. 2023-CP-23-04246
Appellate Case No. 2024-000999

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

Respondents,

v.

Anderson Laurnes Road AA and Anderson Laurens Road ZZ

Appellants.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS	Page
Table of Authorities	1
Statement of Issues on Appeal	2
Statement of the Case	3
Standard of Review	5
Facts	6
Arguments	8
I. Is there sufficient evidence to support the Circuit Court’s ruling that the Kellett Drive is a public street?	9
II. Did the Circuit Court err by finding that Petitioners request to abandon any public interest and permanently close Kellett Road should be denied?	10
Conclusion	13
Certificate of Service	14

TABLE OF AUTHORITIES

Cases

Page

First Baptist Mauldin Church v. City of Mauldin, 308 S.C. 226, 417 S.E.2d 448 5, 10, 11, 12

Historic Charleston Holding, LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448..... 5

Town of Kingstree v. Chapman, 405 S.C. 282, 747 S.E.2d 494 5

Statutes

S.C. Code Ann. § 57-9-10 through 40 5, 8

S.C. Code Ann. § 57-9-20..... 10, 11

Other Authorities

Office of Register of Deeds for Greenville County, Deed Book 2397, Page 3947 6, 9

Office of Register of Deeds for Greenville County, Deed Book 2679, Page 3870..... 6, 9, 10

SCRCP Rule 52(b) 4

SCRCP Rule 59(e) 4

STATEMENT OF ISSUES ON APPEAL

- I. Is there sufficient evidence to support the Circuit Court's ruling that the Kellett Drive is a public street?

- II. Did the Circuit Court err by finding that Petitioners request to abandon any public interest and permanently close Kellett Road should be denied?

STATEMENT OF THE CASE

Appellants filed a Petition for Statutory Abandonment of Public Rights and Permanent Road Closure seeking the abandonment and permanent closure of Kellett Drive. (*Appellants' Summons and Complaint*) (R. pp 9-30). Appellants identified Kellett Drive as a public right of way. (*Appellants' Summons and Complaint and Exhibit A to Summons and Complaint*) (R. pp.9-30 and R. p.16 and R. p. 7). The Appellants named Annacey Park Homeowners Association, Inc., ("Association") and the City of Greenville ("City") as Defendants. Both parties filed an Answer. The Association filed an Answer on September 20, 2023, and the City file its Answer on October 9, 2023. (*Answer of Annacey Park Homeowners Association, Inc. and Answer of the City of Greenville*) (R. pp 31-33 and R. pp34-35).

The Association's Answer did not dispute Appellant's identification of Kellett Drive as a public right of way. (*Answer of Annacey Park Homeowners Association, Inc*) (R. pp.31-33). The City's Answer asserted it had no interest in Kellett Drive and thus did not object to the closure of Kellett Drive. (*Answer of the City of Greenville*) (R. pp.34-35).

The parties entered a Stipulation of Facts as to the reversionary interests in the event the Court permanently closed Kellett Drive, as to numerous letters from owners of nearby properties which opposed the closure of Kellett Drive and a letter from a vendor for the Association opposing the closure of Kellett Drive. (*Stipulation of Facts*) (R. pp. 36-101).

On April 8, 2024, a hearing was held on the closure of Kellett Drive and on April 10, 2024, the Honorable Patrick C. Fant, III issued a Form 4 Order denying Appellants Petition to permanently close Kellett Drive. (*Form 4 Order dated April 10, 2024*) (R. pp. 1-3). The Honorable Patrick C. Fant, found and

concluded that the closure of Kellett Drive, “it is not in the best interest of all concerned.” (*Id.*) (R. pp. 1-3).

Appellants filed Petitioners’ Notice of Motion and Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative for Reconsideration Pursuant to Rule 59(e) on April 19, 2024. (*Petitioners’ Notice of Motion and Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative for Reconsideration Pursuant to Rule 59(e)*) (R. pp. 102-114).. On June 4, 2024, the Honorable Patrick C. Fant, III issued another order denying Petitioners’ Notice of Motion and Motion to Alter or Amend Pursuant to Rule 52(b) or, in the Alternative for Reconsideration Pursuant to Rule 59(e). (*Order dated June 4, 2024*) (R. pp. 4-8). Thereafter Appellants filed their Notice of Appeal on June 13, 2024.

STANDARD OF REVIEW

I. SUFFICIENT EVIDENCE TO SUPPORT COURT’S RULING.

“On appeal in an action in equity, the appellate court may find fact in accordance with its views of the preponderance of evidence.” Town of Kingstree v. Chapman, 405 S.C. 282, 300, 747 S.E.2d 494, 503 (Ct. App. 2013). “This does not require the appellate court to disregard the finding of the trial court, which saw and heard the witnesses and was in a better position to evaluate their credibility.” Id. “Furthermore, the appellant is not relieved of the burden of convincing this court the trial court committed error in its findings.” Id.

II. STATUTORY ROAD CLOSURE.

Respondent agrees with Appellant that the review of a trial court’s decision on abandonment of public rights pursuant to S.C. Code Ann. §57-9-10 *et. seq.* is subject to the abuse of discretion standard. See, First Baptist Church Mauldin v. City of Mauldin, 308 S.C. 226, 417 S.E.2d 592 (1992). “An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.” Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 435, 673 S.E. 2d, 448, 457 (2009).

FACTS

Kellett Drive is a road located in the City of Greenville. Kellett Drive serves as one of two entrances or access points to Annacey Park Subdivision, with the other access point being on Henderson Road. (*Hearing Transcript at 30*) (R. p. 141).

Kellett Drive is bounded on both side by properties owned by Appellants: 2448 Laurens Road, Greenville, South Carolina owned by Anderson Laurens Road AA, LLC, a South Carolina Limited Liability Company and 2512 Laurens Road, Greenville South Carolina owned by Anderson Laurens Road ZZ, LLC, a South Carolina Limited Liability Company. (*Stipulation of Facts*) (R. pp. 39 and 40). The property now owned by Anderson Laurens Road AA, LLC, A South Carolina Corporation, includes a piece of property deeded from the City of Greenville to William H. Bradshaw. (*Deed recorded in the Office of Register of Deeds for Greenville County, Deed Book 2679, Page 3870*) (R. p. 19). The City of Greenville previously abandoned potion of the public right-of-way known as a portion of Kellett Drive and conveyed the property to Willam H. Bradshaw. (*Deed recorded in the Office of Register of Deeds for Greenville County in Deed Book 2397, Page 3947*). Willam H. Bradshaw subsequently conveyed the property to Appellant, Anderson Laurens Road AA, LLC. (*Deed recorded in the Office of Register of Deeds for Greenville County, Deed Book 2679, Page 3870*) (R. p. 19).

William H. Bradshaw, Appellants predecessor in title, treated Kellett Drive as a public Road as he sought to have the City abandon and permanently close Kellett Drive. (*Stipulation of Facts, Hearing Transcript at 12*) (R. pp. 39 and 40 and R. p. 123). However, Mr. Bradshaw's petition did not gain any traction and when the City refused to act, Appellants brought the current action. (*Hearing Transcript at 12-13*) (R. pp. 123 and 124).

There was disagreement amongst City representatives as to whether Kellett Road should be abandoned and permanently closed. (*Stipulation of Facts*) (R p. 165). Clint Link and Eddie Littleton were in favor of abandoning Kellett Drive. (*Stipulation of Facts*) (R p. 165). In their opinion Kellett Drive did not meet City standards and preferred not to maintain Kellett Drive. (*Stipulation of Facts*) (R p. 165). The City's Planning Department recommended denying the Closure of Kellett Drive. (*Stipulation of Facts*) (R p. 165). Austin Rutherford recommended denying Mr. Bradshaw's request to abandon Kellett Drive because: (1) abandoning Kellett Drive does not meet the intent of the Land Management Ordinance pertaining to the promotion of interconnectivity; (2) the abandonment of Kellett Drive does not meet the requirements of the Land Management Ordinance pertaining to the gating of communities and restriction of access; (3) the abandonment of Kellett Drive does not meet the City's comprehensive plan; (4) the abandonment of Kellett Drive does not meet the City's plan to extend the Swamp Rabbit Trail; and (5) the city should hold onto all its rights-of-way due to plans for future development on the opposite side of Laurens Road. (*Stipulation of Facts*) (R p. 165).

ARGUMENT

I. **IS THERE SUFFICIENT EVIDENCE TO SUPPORT THE CIRCUIT COURT'S RULING THAT THE KELLETT DRIVE IS A PUBLIC STREET?**

The Appellants argue that the Association failed to assert that Kellett Drive is a public street. However, Appellants, themselves identify Kellett Drive as a public right-of-way. (Stipulation of Facts; Summons and Complaint). The Respondent Association had no reason to dispute Appellants identification. Appellants identify two ways in which a public right-of-way may be abandoned: (i) a city ordinance and the city process and (ii) the statutory process. (*Hearing Transcript at 12*) (R. p. 123). The Appellants predecessor in title, William H. Bradshaw, sought to have the public right-of-way abandoned through the first method – the city ordinance. (*Hearing Transcript at 12*) (R. p. 123). William H. Bradshaw Identified Kellett Drive as a public right-of-way and sought to have the City of Greenville close the public right-of-way, but when the City refused to act, Appellants then sought to court intervention to close the public right-of-way pursuant to S.C. Code Ann. § 57-9-10, *et. seq.* (*Summons and Complaint, Hearing Transcript at 12-13*) (R. pp. 9-30 and R. pp. 123-124). The mere fact that both Appellants and its predecessor in title, William H. Bradshaw, attempted to avail themselves of the two methods to abandon and permanently close a public right-of-way, show that both identified Kellett as a public right-of-way. Furthermore, The Road Abandonment Survey prepared for Appellants identify the right-of-way to be abandoned. (*Stipulation of Facts; Exhibit to Summons and Complaint*) (R. pp. 39-40 and R. pp. 16-21). The very documents the Appellant intends to rely on to document the reversionary interest, a fact to which the Respondents have stipulated, identify the public right-of-way. (*Stipulation of Facts; Exhibit to Summons and Complaint.*) (R. pp. 39-40 and R. pp. 16-21).

As an initial matter, portion of the property now owned by Appellant, Anderson Laurens Road AA, derives from a portion of Kellett Road previously abandoned by the City and deeded Appellants predecessor in title (*Deed recorded in the Office of Register of Deeds for Greenville County in Deed Book 2397, Page 3947 and Deed recorded in the Office of Register of Deeds for Greenville County, Deed Book 2679, Page 3870*) (R. p. 19). At some point, the City believed that Kellett Drive was a public right-of-way as it undertook the process to abandon a portion of the road.

In the City's Answer, the City "denies that it has any interest in the Kellett Drive" (*City of Greenville's Answer*) (R. p.p. 34-35). The Appellants argue that this is the city denying that Kellett Drive is a public right-of-way. However, there is a difference between denying that Kellett Drive is a public right-of-way and disclaiming any interest in Kellett Drive. If the City were in fact claiming that Kellett Dive was not a public right-of-way, the City in would/should have alleged that closure and abandonment is unnecessary. However, the City made no such allegation, rather it stated it was not opposed to the abandonment and closure of Kellett Drive. (*City's Answer*) (R. pp. 34-35). This is yet another example of the City's acknowledgement of Kellett Drive as a public right-of-way.

Eddie Littleton's testimony that he was unable to locate Kellett Dive in the City's inventory is not dispositive. (*Hearing Transcript at 44*) (R. p. 155). The City would rather not maintain Kellett Drive. (*Hearing Transcript at 44; Stipulation of Facts*) (R. p. 155; R. p. 165). If Kellett Drive were to be declared not to be a public right-of-way then the City would not need to maintain Kellett Drive, there is certainly an incentive for the City engineer to claim that Kellett Road is not in its inventory.

The Trial Court was in the best position to determine the credibility of witnesses and compared with all the other evidence tending to show that Kellett Drive is a public right-of-way, the Circuit Court

denied Appellants Motion to Reconsider. (*Order dated June 4, 2024*) (R. pp. 4-8).

In summation, both the Appellants and their predecessor in title both treated and identified Kellett Drive as a public right-of-way. (*Transcript of Hearing at 12; Summons and Complaint; Stipulation of Facts.*) (R. p. 123; R. pp. 9-30; R. p. 39-40). The City has previously treated Kellett Drive as a public right-of-way and made no claim in its Answer that the Kellett Drive was not a public right-of-way. (*Deed recorded in the Office of Register of Deeds for Greenville County, Deed Book 2679, Page 3870; City's Answer*) (R. p. 19). There is ample evidence to support the Circuit Court's ruling that Kellett Drive is a public Right of Way.

II. DID THE CIRCUIT COURT ERR BY FINDING THAT PETITIONERS REQUEST TO ABANDON ANY PUBLIC INTEREST AND PERMANENTLY CLOSE KELLETT ROAD SHOULD BE DENIED?

S.C. Code Ann. §57-9-20 states “[i]f the court shall determine that it is in the best interest of all concerned that such street, road or highway be abandoned or close, the court shall then determine whom the title thereto shall be vested and issue an appropriate order.” Relying on First Baptist Church of Mauldin v. City of Mauldin, 308, S.C. 226, 417S.E.2d 226 (1992) Appellant argues that the appropriate standard of review when determining whether to close or abandon a public street is the public interest served by the closure. However, the Court in First Baptist make clear, that the appropriate standard is in the best interest of all concerned. In First Baptist, the City appeal the lower court's ruling to close the road, alleging that the court had abused its discretion. Id.

However, the Court disagreed stating “[u]nder Section 57-9-20, the court is empowered to close roads on a finding that it is in the best interest of all concerned.” Id. at 594.

The streets in Annacey Park Subdivision are private and very narrow and can be very difficult to navigate. (*Hearing Transcript at 35-36*) (R. pp. 146-147). Numerous residents in Annacey Park Subdivision wrote letters in opposition to the closure of Kellett Drive. (*Stipulation of Facts*) (R. pp. 42-100). Additionally, a vendor for Annacey Park provided a letter in opposition to closure stating that Kellett Drive was necessary in order to properly provide services and for the safety of its employees. (*Stipulation of Facts*) (R. p. 101). James Kines, an expert in public safety testified that, in his expert opinion, the safety of the residents of Annacey Park – in particular quick access of first responders is best served by keeping Kellett Drive open. (*Hearing Transcript at 27-29*) (R. pp. 138-140). Not only is Kellett Drive necessary for the safety of the residents of Annacey Park, at time it becomes their only means of access. Scott Johnson testified that every six or seven years it becomes necessary to maintain – resurface the streets within Annacey Park. When that is occurs the access from Henderson Road is closed and the residents necessarily must access/use Kellett Drive. (*Hearing Transcript at 36*) R. p. 147, lines 4-12). Based on the foregoing, the Circuit Court did not abuse its discretion in determining that the closure of Kellett Drive was not in the best interest of all concerned.

Furthermore, the Court in First Baptist held, “[a] public street may not be vacated for the sole purpose of benefiting an abutting owner On the other hand, it must appear clearly that no consideration other than that of public interest could have prompted the action.” Id. at 594. Here, the record is clear the sole purpose for bringing this action is for the benefit of the Appellants.

Appellants have expressly stated that they want Kellett Drive closed so that area can be used to place inventory. (*Hearing Transcript at 12*) (R. p. 123, Lines 8-10). Further, Appellants exhibit the sole basis for this action is that they are concerned about their inventory. (*Hearing Transcript at*

11) (R. p. 122, Lines 2-3). Appellants allege that the use of Kellett Drive is a hazard to Appellants inventory. (*Hearing Transcript at 11*) (R. p. Lines 2-3). Thus, using the standard set out in First Baptist, the Circuit Court did not abuse its discretion in denying the closure of Kellett Drive.

Appellant argues that the only evidence as to the broader public interest was in support of closing Kellett Drive and relies on an email correspondence between Clint Link, Austin Rutherford and Eddie Littleton. (*Stipulation of Facts*) (R. p. 165). However, that email correspondence contains the City of Greenville's Planning Department ("Planning Department") formal recommendation as to the closure of Kellett Drive. The Planning Department recommended denying the closure of Kellett Drive because: (1) abandoning Kellett Drive does not meet the intent of the Land Management Ordinance pertaining to the promotion of interconnectivity; (2) the abandonment of Kellett Drive does not meet the requirements of the Land Management Ordinance pertaining to the gating of communities and restriction of access; (3) the abandonment of Kellett Drive does not meet the City's comprehensive plan; (4) the abandonment of Kellett Drive does not meet the City's plan to extend the Swamp Rabbit Trail; and (5) the city should hold onto all its rights-of-way due to plans for future development on the opposite side of Laurens Road. (*Stipulation of Facts*) (R. p. 165). All of these reasons exhibit that the boarder public interest is not served to close Kellett Drive.

In summary, the Circuit Court did not abuse its discretion when denying the permanent closure of Kellett Drive. The Circuit Court correctly found that the closure is not in the best interest of all concerned. Further, the record is clear that the sole purpose of Appellants action was to obtain the property on which Kellett Drive now sits for their sole benefit. Additionally, there is evidence that the boarder public is served by the denial of the closure of Kellett Drive.

CONCLUSION

For these reasons stated, this Court should affirm the judgment of the circuit court.

Respectfully submitted

BY: 

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SC Court of Appeals

Case No. 2023-CP-23-04246

Appellate Case No. 2024-000999

CERTIFICATE OF SERVICE

I, Lyon A. Bixler, did this date serve the Final Brief of Respondent, by placing a copy of the same via UPS Overnight Mail, postage paid and address as follows:

The Honorable Jenny Abbot Kitchings
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Appellants.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent on Anderson Laurens Road, AA, LLC, Anderson Laurens Road ZZ, LLC and the City of Greenville by depositing a copy of it via e-mail and in the United States Mail, postage prepaid on 12th day of November 2024, addressed to their attorneys of record as follows:

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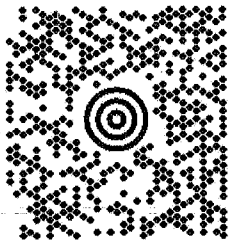
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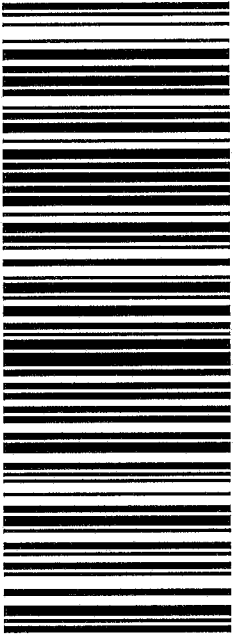
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RE: Annacey Park Homeowner Association, Inc., and the City of Greenville v. Anderson
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Appellant Case No. 2024-00099

Dear Ms. Kitchings:

Please find enclosed the Final Brief of Respondent. If you have any questions, please do not
hesitate to contact us.

With kindest regards, I am

Cordially yours,
Babb, Bixler & Dollar

A. Lyon Bixler
Attorney at Law

Enclosures