

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Certiorari to the Court of Appeals
Appellate Case No. 2024-001729

S.C. SUPREME COURT

Appeal from Horry County
Court Of Common Pleas
The Honorable R. Markley Dennis, Jr, Circuit Court Judge

East Cherry Grove Co., LLC and Ray & Nixon, LLC, Respondent-Petitioners

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 Petitioner-Respondent.

**STATE'S RETURN TO RESPONDENT- PETITIONERS'
PETITION FOR WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
esmith@scag.gov
Counsel for
State of South Carolina

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QUESTION PRESENTED

Did the court of appeals properly determine that no evidence is in the record showing that East Cherry Grove is the owner of the parcel deemed the “pig’s head and the dome of the pig’s head?”

STATEMENT OF THE CASE

The State respectfully craves reference to its Statement in its Petition for Writ of Certiorari. The tract at issue in this proceeding is claimed only by East Cherry Grove (ECG) although this Petition is submitted by both ECG and Ray & Nixon, LLC. To the extent that the arguments are made by both ECG and Ray & Nixon, references herein to ECG collectively refer to both of those Petitioners.

ARGUMENT

NO EVIDENCE SUPPORTS ECG’S 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.

ECG tries to cloak its claim by erroneously contending that the Court of Appeals failed to apply the “any evidence” standard of review. The Court of Appeals did apply the correct standard of not disturbing fact findings unless “no evidence . . . reasonably supports” them and correctly found “no evidence” to support the ECG claim to the area of the pig’s ears and dome of

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).

the pig's head. *E. Cherry Grove Co., LLC v. State*, 443 S.C. 617, 633, 905 S.E.2d 421, 427 & 430 430 (Ct. App. 2024), reh'g denied (Sept. 16, 2024). The Court cited the same case in support of the standard of review as does ECG, *Barnacle Broad, Inc. v. Baker Broad, Inc.*, 343 S.C. 140, 538 S.E. 2d 672,675 (Ct. App. 2000). (Petition at page 7).

A

The Deschamps Testimony Provides No Support

ECG points to no testimony of William Deschamps, its 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 the Court of Appeals, 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 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 area at issue nor did he refute the accuracy of the Courtney map. Contrary to ECG's Petition, the circuit court order, which counsel for ECG drafted, did rely on the Deschamps testimony, but not as to any specifics regarding the

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.

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, ll. 4-23).

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

ECG's 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.

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 the Court of Appeals found, the Order of the Honorable Larry B. Hyman in the action *East Cherry Grove*

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.

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).⁵ 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 provides absolutely no support for 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. 4-12; 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. As stated by the Court of Appeals: "[t]o rebut the State's presumptive title, a claimant must show (1) its predecessor in title possessed a valid grant, and (2) the grant's language was sufficient to convey land below the high water mark." *Grant [v. State]*, 395 S.C. at 228, 717 S.E.2d at 98." *E. Cherry Grove Co., LLC v. State*, 443 S.C. 617, 628, 905 S.E.2d 421, 427 (Ct. App. 2024), reh'g denied (Sept. 16, 2024). No witness at trial presented a grant that covered the pig's ear and head.

The circuit court order did not even address specifically the pig's ears and head, and

⁵ ECG's witness William Fairey did not do any survey maps on the area except for the Teague tract that was determined in the 2014 case nor did he identify any exhibit identifying the property claimed within TMS 1450001001. R. V., p. 144, ll. 15-20.

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 in its conclusion that "there was ample evidence from DesChamps, Floyd, Courtney and Fairey that the . . . area described as the 'pig's ears' and 'dome of the pig's head' [are] a part of a King's 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. ECG's conclusion refers to testimony of Fairey without any citation to the Record or description of the testimony. Fairey provided no support for ECG's claim of ownership of the pig's area. See, R. V. I, p. 143, l. – p. 144, l. 17); Argument C, p. 3, *supra*. ECG's Petition should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

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s/ J. Emory Smith, Jr.
J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680; (803)734-3677 (Fax)
esmith@scag.gov

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COUNSEL FOR STATE OF SOUTH CAROLINA