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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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

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

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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.

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**STATE'S REPLY TO RETURN TO STATE'S  
PETITION FOR WRIT OF CERTIORARI**

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## ARGUMENT

### I

#### A CLEAR AND CONVINCING STANDARD OF EVIDENCE SHOULD HAVE BEEN APPLIED

Although, as the State has recognized, the courts of this state have not expressly applied a clear and convincing evidence standard in tidelands ownership cases, the courts have indicated that such a standard should apply. The courts have not used the words “clear” and “convincing” together, but they have used them separately in cases involving tidelands ownership. *Hoyler v. State*, 428 S.C. 279, 292, 833 S.E.2d 845, 852 (Ct. App. 2019), reh'g denied (Oct. 17, 2019), cert. dismissed (Jan. 29, 2020) (“one claiming an interest in tidelands pursuant to section 48-39-220(A) must convince the court that the State intended to include the tidelands within the boundaries expressed in the deed.” (emphasis added)). *Lowcountry Open Land Tr. v. State*, 347 S.C. 96, 104, 552 S.E.2d 778, 783 (Ct. App. 2001) (“[the] facts convince us the master correctly ruled the grant from the State of South Carolina intended to convey fee simple title of the tidelands. . . .” (emphasis added)); *Hobonny Club, Inc. v. McEachern*, 272 S.C. 392, 398, 252 S.E.2d 133, 137 (1979) (“We conclude that it was the clear intent of the grants in question to convey title to all tidelands . . . .” (emphasis added)), quoted in *Hoyler, supra*; *State v. Holston Land Co.*, 272 S.C. 65, 68, 248 S.E.2d 922, 924 (1978) (“We conclude the grant and plat when read together evince a clear intent to convey the disputed tidelands to Holston's predecessor in title . . . .”) (emphasis added).

East Cherry Grove calls such references dicta, citing *Nash v. Tindall Corp.*, 375 S.C. 36, 40, 650 S.E.2d 81, 83 (Ct. App. 2007), but they are not. Here, the courts' separate use of the words “clear” and “convincing” demonstrates the degree of evidentiary support on which the

courts relied for their decisions. Furthermore, as noted in the State's Petition, a clear and convincing standard is entirely consistent with the Court's decisions regarding the burdens placed on a plaintiff to rebut the State's presumption of ownership. *State v. Yelsen Land Co.*, 265 S.C. 78, 216 S.E. 2d 876 (1975)(“Necessarily, the claimant must show that the language of the conveyance is specific enough to determine a reasonably precise location of its boundaries so that members of the public will not be excluded from property rightfully belonging to them); *Hobonny Club, supra*, 252 S.E.2d at 135-36, 272 S.C. at 396 (a grant from the sovereign to a subject is construed strictly in favor of the government and against the grantee.).

Although ECG has cited cases in which the courts have used the word “convince” in connection with a preponderance of the evidence standard, those cases are not tidelands cases with the heavy burdens placed on parties claiming land subject to a presumption of State ownership. Requiring clear and convincing evidence to overcome the State's presumption of ownership is consistent with the importance that the courts of this State attach to public trust property and with the other authority set forth above.

## II

### **THE COURTNEY PLAT (STATE'S EX. 25) MUST BE APPLIED BECAUSE RESPONDENTS PRESENTED NO EVIDENCE OF THE ACTUAL BOUNDARIES OF THE PROPERTY THEY CLAIM**

Although the State agrees with the Court of Appeals that Respondents did not establish ownership of the section of TMS 145000100 described as the pig's ears and the dome of the pig's head, Respondents produced no evidence showing precise boundaries of the other land they claimed in that area. It is not enough for them to show grants in the general area. There is no evidence in the record showing accurate deed based renderings of the boundaries of Respondent's

property other than the Courtney plat, State's Ex. 25 (R. V. 1, p.233). As discussed in the State's Petition, ECG's witnesses' testimony offered only generalities rather clear boundaries as to the property they were claiming. ECG's aerials and maps lacked metes and bounds descriptions and adjoining lot owners would not be able to discern the boundary of the property claimed by ECG under the grants. The circuit court judge described ownership in terms of the county tax map /TMS numbered depiction (R. V. 1, p. 3 (Amended Order at p. 3)), but as noted in the State's Petition, TMS numbered plats lack specificity and are disclaimed by Horry County as to accuracy. R. V. 1, pp. 51, 169, ll. 2 - 18, 219 and 285.<sup>1</sup>

ECG drifts into talking about the pig's ears area which is in an issue in ECG's Petition not this one. Therefore, that argument should be disregarded. Furthermore, contrary to ECG's Return, its witness Floyd did not testify that the pig's ears area was part of the Teague case. The Judge. The Judge commented on it but said the Teague property was at the base of the ear not part of it as ECG asserts. R. V. I, p. 134, l. 15 – p. 135, l. 6.

As stated in *Hoyler*, a “claimant must show that the language of the conveyance is specific enough to determine a reasonably precise location of its boundaries so that members of the public will not be excluded from property rightfully belonging to them.” 428 S.C. at 293, 833 S.E.2d at 852. East Cherry Grove failed to establish a reasonably precise location of its boundaries under *Hoyler* to avoid confusion with ownership of adjoining landowners and demarcate its property in relation to the State's.

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<sup>1</sup> <https://www.horrycountysc.gov/online-services> - select “Land Records”.

### III

#### **THE STATE DID ARGUE IN ITS BRIEF THAT THE CIRCUIT COURT IMPROPERLY RELIED UPON THE TITLE EXPERT'S OPINION AND ECG HAS WAIVED THIS POINT**

Instead of addressing this argument, ECG makes a different contention that it has not previously raised and is not before the Court or even relevant. ECG argues that the State never objected to Deschamps testimony and cannot do so now. ECG is correct, but the State is not objecting to the testimony. Instead, the State is arguing that the testimony did not support the circuit court's conclusion. The State raised that point in its motion to alter or amend (R. V. I. ¶3, p. 70) and in its brief. See Final Brief of State at page 13 ("Testimony of the Mr. Deschamps, Respondents' title opinion expert, about the general area of TMS 1450001001 is insufficient as he is not a surveyor and cannot override the testimony of the two surveyors that exclude that area."); *see also*, Reply Brief of State at pp.6 & 7 ("his remarks about the general area of TMS 1450001001 are insufficient as he is not a surveyor and did not render a surveying opinion . . . Mr. Deschamps did not address the pig's ears area at issue nor did he refute the accuracy of the Courtney map.). ECG does not dispute that the briefs include the argument that the circuit court improperly relied upon the Deschamps testimony. Clearly, that argument was briefed.

## CONCLUSION

For the foregoing reasons the State respectfully requests that this Court grant its Petition.

Respectfully submitted,

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