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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
James B. Jackson, Jr., Master in Equity

Court of Appeals Case No. 2023-000436

Timothy J. Judy and Dana A. Judy.....Respondents,

v.

Alice Soto, Joseph B. Rodriguez, Matthew Rodriguez, Gwen Rodriguez and Stephanie B. Wells
.....Petitioners.

REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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December 30, 2024

In support of their Petition for Writ of Certiorari, the Petitioners argued two bases for granting a hearing before the Supreme Court of South Carolina: (1) whether the Court of Appeals erred in ascertaining the intent of Betty Edwards – a subsequent co-owner of Lot 1 and Lot 14 – and Lawrence Stroman, the original common owner and grantor, to determine the boundary line between the two parcels; and (2) whether the use of evidence not in the record – specifically the lack of evidence of the alleged ditch – can properly serve as the basis for the Court of Appeals’ affirmance of the lower court ruling. The Respondents’ Return does not address the arguments made by the Petitioners, instead merely quoting the reversible rulings of the Master in Equity and Court of Appeals without discussion of the actual contents of the record. Therefore, the Petitioners respectfully request that the Court grant the Petition for Writ of Certiorari.

1. The Respondents fail to address key language from the Master in Equity’s Order concerning the intent of Betty Edwards, whose intent is wholly irrelevant.

The Master in Equity plainly stated the following in his Order:

I find that because Betty Edwards conveyed Lot 14 to the Plaintiffs, which included the disputed area, this showed that she and her husband Dewey Edwards did not intend to include the disputed area in the deed they gave to Champion Mortgage Company.

(R. 6 ¶ 7). As noted in the Petition, Champion Mortgage Company is the predecessor in title to Lot 1, and deeded the property to Petitioner Alice Soto. It was Lawrence Stroman, and not Betty Edwards, who was the common grantor of Lot 1 and Lot 14. This error in looking to the intent of Betty Edwards polluted the rest of the Master in Equity’s Order, and was improperly affirmed by the Court of Appeals. As noted in the Petition, the Master in Equity looked to the course of a now-covered ditch to determine the grantor’s intent in establishing the boundary line, but there was no evidence that the ditch was in existence at the time that Lawrence Stroman deeded Lot 1 to Petitioner Alice Soto’s predecessor in interest in 1951. Therefore, the Master in Equity could

only have been ascertaining the intent of Betty Edwards, a later part-owner of both parcels. This was a plain error of law which must be reversed. *Garrett v. Locke*, 309 S.C. 94, 98, 419 S.E.2d 842, 845 (Ct. App. 1992) (Where, as here, there is a dispute as to the boundary between two parcels, the “vital question is the intent of the grantor at the time the deed is executed.”).

2. The Respondents failed to address Petitioners’ detailed arguments concerning the lack of evidence supporting the existence of the now-covered ditch at the time of the original 1951 conveyance of Lot 1 and lack of evidence that the boundary line established by the Master in Equity followed the ditch line.

As set forth in the Petition, there is no evidence in the record that the now-covered ditch was in existence at the time of the original conveyance of Lot 1 from Lawrence Stroman to Petitioner Alice Soto’s predecessor in title. The Respondent glosses over this argument, but it is critical on two fronts. First, for the ditch to serve as evidence of Mr. Stroman’s intent, it must have actually existed. Second, the Master in Equity appears to use the ditch to ascertain the intent of Betty Edwards when she conveyed Lot 1 to Champion Mortgage in 2016. As set forth above, her intent is irrelevant under South Carolina law. Simply put, for the ditch to serve as evidence of the original grantor’s intent, it must have been in existence in 1951. There is no evidence in the record that it was, and the Respondents cite no such evidence. The Court of Appeals therefore erred in affirming the lower court ruling.

Further, as did the Court of Appeals, the Respondents rely entirely on the testimony of Kevin Edwards to establish that the now-covered ditch line is reflected in the Smith Survey, which served as the basis for the boundary line established in the Master in Equity’s Order. Curiously, the Respondents cite only the conclusory and incorrect opinion of the Court of Appeals rather than Kevin Edwards’ actual testimony. That is because Kevin Edwards’ testimony contradicts Respondents’ position and the Court of Appeals Opinion. This is Kevin Edwards’ testimony:

Q. I'm gonna refer you back to Plaintiffs' Exhibit No. 2, and I'm gonna show - it's the northeast line between the 1.32 acres and now and formally Alice Soto. Is that line -- how was that line determined or how was it run by Don Smith?

A. When I talked to Ms. Soto and she, you know, wanted it done the way the tax map showed it and everything. So when I went to Don and told him what I was in the process of doing, we needed a survey. I told Don that, you know, she's supposed to get an acre of property with the house, and we need to get it surveyed and she wants to make it look like the tax map. So I said try to get it surveyed and look like the tax map, which is what Ms. Soto wanted at the time. So he went in and did that. And it ended up being a little bit more than 1 acre. **But that put it to where I thought that would be good for everybody.** You know, that was as close as we could get to the tax map like it was supposed to be.

Q. And did that establish the line between the old home place and the 1.32 acres your mother still owned?

A. Yes. Because I don't think there was ever an actual survey done since they owned everything around it.

Q. Okay. And is that similar to or comport with Exhibit No. 3, the tax map and aerial flown in 2017?

A. Yes, sir.

Q. And in your conversation with Ms. Soto, is that the way she wanted it?

A. Yes. This is what I thought she wanted.

(R. pp. 64-65). He plainly testifies that he instructed the surveyor to make the survey look like an unspecified tax map and to “put it where I thought that would be good for everybody.” There is no reference to the ditch line, and no evidence that the survey depicts the old ditch line that served as the entire basis of the Master-in-Equity’s order. A court’s order cannot rest on facts not in the record or facts only contradicted by the record. Therefore, the Master in Equity erred, and the Court of Appeals also erred by its affirmance.

The Respondents had every opportunity to cite for this Court any evidence in the record showing that the Smith Survey and Master in Equity's Order established that the boundary line depicted follows the old ditch line. They did not do so because they cannot do so.

CONCLUSION

For the reasons set forth above, the Petitioners respectfully request the Court to grant this Petition and reverse the Court of Appeals' affirmance of the Master-in-Equity's trial order.

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