STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SALUDA	)	Civil Action No: 2021-CP-41-00032
	)	
JAN H. BRYAN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER DENYING ALL CLAIMS AND DISMISSING ALL CROSSCLAIMS ASSERTED AGAINST THE DEFENDANTS**
	)	
SALUDA COUNTY, SALUDA COUNTY COUNCIL, DONALD E. HANCOCK IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF SALUDA COUNTY COUNCIL, RHONDA W. BROWNING, AND FIRST COMMUNITY BANK,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court via bench trial on December 10, 2024. All parties were represented by counsel. Wesley D. Peel was present for Plaintiff, Louis H. Lang was present for Browning, and Virginia P. Bozeman was present for the County and Saluda County Council (the "County Defendants") (collectively with Bryan, the "Defendants"). This matter arises out of the Plaintiff's (the "Plaintiff" or "Bryan") claim for a declaratory judgment finding that an area bordering Lot 80 and Lot 1 on a plat of Lake Murray Shores filed in 1950 (the "1950 Plat") is a public road in need of closure, the road should be closed by the Court or subsequently closed at the expense of Defendant Rhonda W. Browning ("Browning") or Defendant Saluda County (the "County"), and once closed, title to the road should be divided equally between Bryan and Browning. Plaintiff additionally asks that the Court declare a quitclaim deed from the County to Browning is void because they claim that the Saluda County Council lacked authority to transfer title.

This Court also heard the counter and crossclaim of Browning seeking a declaratory judgment quieting title in the property at issue in her favor. A large number of exhibits were

stipulated to by the parties in advance and placed in the record at the outset of trial. Additional exhibits were placed in the record over the course of trial. The Court also heard the testimony of all witnesses called by the parties, read the deposition testimony of unavailable witness Billie Ray Corley, and listened to the arguments of counsel. All parties submitted proposed orders to this Court for review.

For the reasons set forth above, all claims asserted against the County Defendants are DENIED. The County Defendants do not assert an ownership interest in the property at issue, so to the extent Browning has asserted an adverse crossclaim against them, it is DISMISSED as moot.

FACTUAL BACKGROUND

Plaintiff's lawsuit follows a quit claim deed from the County to Browning conveying a 30-foot strip of land extending from Moonlight Drive, formerly Greenwood Street, between property owned by Bryan and Browning (the "Browning Quit Claim Deed"). This strip of land is part of a larger strip referred to by Plaintiff as "Moonlight Drive Extension" that extends to the shore of Lake Murray.[1] The County executed the Browning Quit Claim Deed following three readings and a public hearing, as required by S.C. Code § 4-9-130, and § 2-58 of the Code of Ordinances of Saluda County, South Carolina. The Browning Quit Claim Deed and associated ordinance are public records and were exhibits admitted at trial.

[1] Plaintiff asks this Court to declare more than the 30-foot strip of land conveyed in the quit claim deed to be a public road. The 30-foot strip of land conveyed via the quit claim deed is the 30.93-foot by 51.55-foot section shown as a portion of Greenwood Street on the 1950 Plat, shown on Session's 1974 Lot 1 survey, and shown on the 1987 Dinkins plat. Plaintiff additionally asks to have fringe property measuring 30.93 feet in width and running 172 feet along the western border of Browning's property abutting Browning's property declared a public road.

Plaintiff asserts that instead of conveying the 30-foot strip of land via quit claim deed, either the County or Browning should have instituted a road closure action under § 57-9-10, *et seq*., (the "Road Closure Statute"), and asks for a declaration that a much larger area of land is a public county road in need of closure and that, upon closure title to half that road be vested to her in fee simple. Browning and the County Defendants contend no portion of the area referred to for litigation purposes as Moonlight Drive Extension has ever been a public county road and, if it was, that road was closed long before Plaintiff filed suit.

After weighing the evidence presented at trial, the applicable law, and the arguments of counsel, this Court agrees with Browning and the County Defendants and DENIES the relief sought by Plaintiff.

LEGAL STANDARD

In a bench trial, the trial judge acts as the finder of fact. *Lollis v. Dutton*, 421 S.C. 467, 483, 807 S.E.2d 723, 731 (Ct. App. 2017). "[T]he judge, as the finder of fact, may believe all, some, or none of the testimony, even when [the testimony] is not contradicted." *Id*. (internal citation omitted). A trial judge will be accorded great deference where matters of credibility are involved. *Id*. (internal citations omitted).

FINDINGS OF FACT

Plaintiff and Browning own neighboring real estate in Lake Murray Shores, a residential subdivision in Saluda County, South Carolina. Portions of the Bryan and Browning properties are shown on a plat dated September 1950 ("1950 Subdivision Plat")[2]. The part of Bryan's property shown on the 1950 Subdivision Plat are Subdivision Lots 79 and 80. Browning's property is part of the 1950 Subdivision Plat Lot 1. Plaintiff alleges a public county road, referred to for the

[2] See Figure 1

purpose of litigation as "Moonlight Drive Extension," runs between her parcel and Browning's parcel, ending once it reaches the Lake Murray shoreline. This disputed portion, is not shown on the 1950 Subdivision Plat, however it extends from the end of Moonlight Lane, between Lots 80 and Lot 1, as shown on the 1950 Subdivision Plat, south to the 360-contour line of Lake Murray.

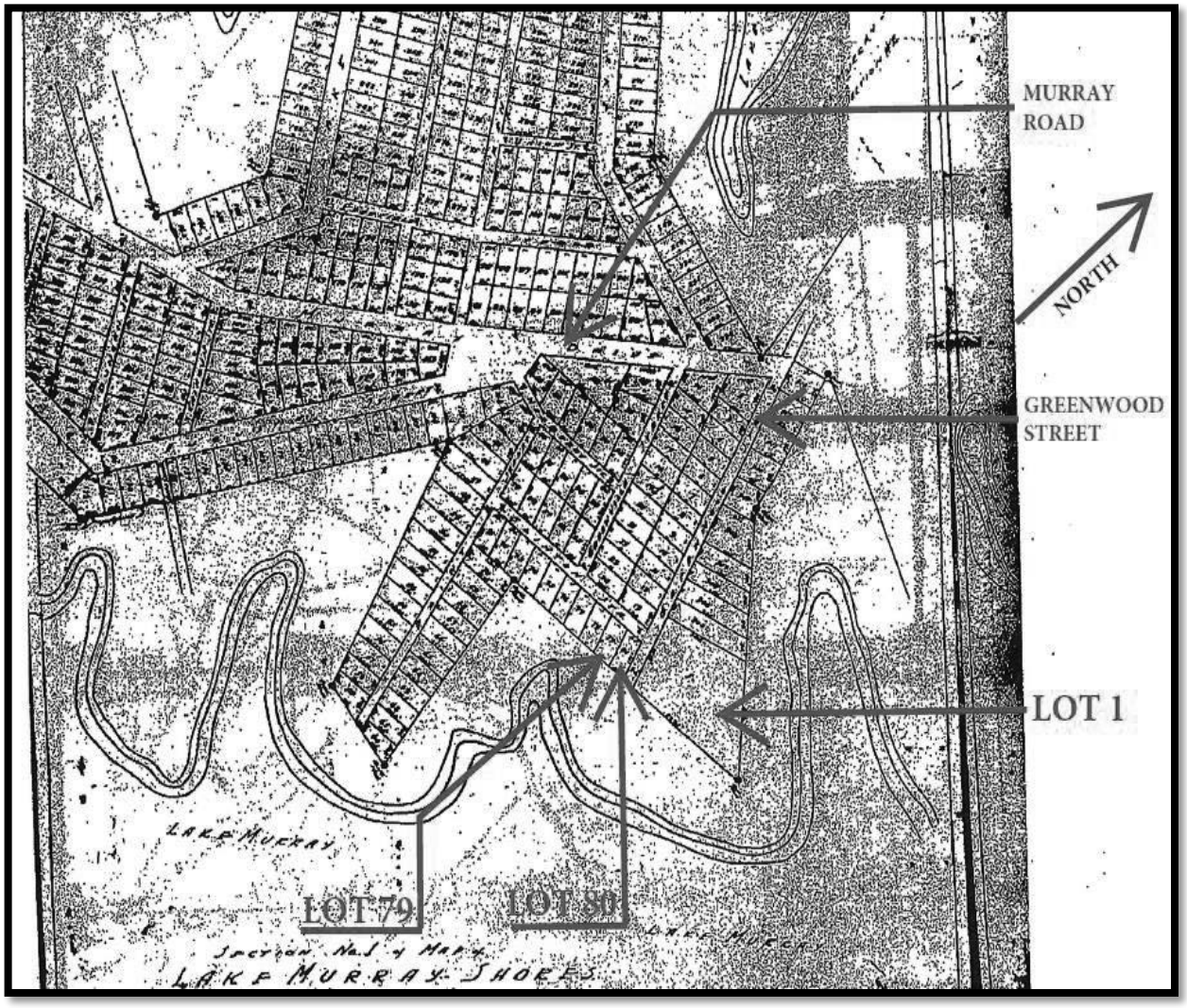

Figure 1: 1950 Subdivision Plat

In support of her assertion that Moonlight Drive Extension is a public county road, Plaintiff called Gregg Anderson as a witness. Mr. Anderson testified that approximately fifty years ago, there was a barbeque pit on Moonlight Drive Extension, and he would drive his golf cart on

the property. While present, Mr. Anderson never saw anyone conducting road maintenance along Moonlight Drive Extension

Plaintiff next called Wiley Ben Easton, Jr. as a witness. Mr. Easton's parents previously owned the lake house now owned by Plaintiff. Mr. Easton testified that he thought there was an old public road bordering the property line that had since become overgrown. His father cleared the area himself. People then began loitering in the area and leaving their trash behind, so his father had the road closed by a Saluda County court. His father then placed a chain across the closed road to prevent public access. That area was solely maintained by his father.

Bryan then testified that at the time she purchased the property at issue, the real estate agent told her a public road once bordered the property, but it had been closed by the prior owner, so the County no longer maintained it. Bryan and her family put a boat and barbeque pit in the area. Bryan confirmed that since her purchase of the property, the County has never maintained the area bordering her property.

Plaintiff next called Amanda Rowe, an employee of Saluda County Roads and Bridges Department ("Roads and Bridges"), as a witness. Ms. Rowe testified that the County's public road system contains 380 miles of road, and the area identified as Moonlight Drive Extension is not and has never been part of that public road system. To confirm Moonlight Drive Extension is not and has never been a public county road, Ms. Rowe reviewed the maintenance records kept by her office, the County department tasked with road maintenance, and did not locate any records documenting maintenance of the area referred to as Moonlight Drive Extension. The County does not have road maintenance records pre-dating 2007, so Ms. Rowe also spoke with two long-term employees of Roads and Bridges, one who has been with the County since 1983 and the other since

1986, regarding Moonlight Drive Extension. Neither employee remembers the County treating Moonlight Drive Extension as a part of the county road system through maintenance or otherwise.

Per Ms. Rowe, the County is tasked with maintaining roads that are part of its public road system. If Moonlight Drive Extension had been a public county road, it would have been maintained by Roads and Bridges. Additionally, had Moonlight Drive Extension been a public county road, Mr. Easton would not have been permitted to block public access by putting a chain across the road. Likewise, Ms. Bryan would not have been permitted to obstruct the road by putting a boat and barbeque pit in the area.

Ms. Rowe testified that the County does not own the roads that are part of its public road system. Rather, they are maintained as an easement for public right-of-way. The property developer typically maintains ownership of the underlying dirt. With respect to the 30-foot strip of land subject to the Browning Quit Claim Deed, Ms. Rowe confirmed that area was not a part of the County's public road system at the time of conveyance or otherwise. Instead, it was a private right-of-way used by Browning to access her home.

Tripp Bryan, Bryan's son, testified as Plaintiff's final witness. Mr. Bryan confirmed his family maintains Moonlight Drive Extension, not the County, and since their ownership of the property, the County has never maintained Moonlight Drive Extension. Mr. Bryan testified he once spoke with Billie Ray Corley, former director of Roads and Bridges, about purchasing Moonlight Drive Extension. Mr. Corley told him the strip of land he wanted to purchase was an old public road and could not be purchased. Despite being generally aware of the judicial road closure process available under the Road Closure Statute, Mr. Bryan did not file a petition seeking the closure of Moonlight Drive Extension. Following Mr. Bryan's testimony, Plaintiff rested.

This Court also heard testimony regarding Ms. Browning's chain of title. Accordingly, by deed dated September 1, 1951, the Lake Murray Shores developers conveyed 1950 Subdivision Plat Lots 79 and 80 to Lonnie and Bertha Goodwin.

By deed dated November 9, 1960, the Goodwins conveyed Lot 79 to Wiley B. Easton.

By deed dated June 26, 1961, SCE&G conveyed a .19-acre tract of fringe land to Wiley Easton. This .19-acre fringe land tract is located to the south of and is contiguous to 1950 Subdivision Plat Lots 79 and 80.

By deed dated August 31, 1962, SCE&G conveyed a .20-acre tract of fringe land to the Goodwins. Like the .19-acre fringe land tract, this .20-acre fringe land tract is located to the south of, and is contiguous to, the 1950 Subdivision Lots 79 and 80.

By deed dated February 14, 1963, the Goodwins conveyed Lot 80 to Wiley Easton, along with the .20-acre fringe land tract conveyed to the Goodwins by SCE&G in 1962.

By deed dated December 7, 1987, Wiley Easton conveyed Lots 79 and 80 and the .20 and .19-acre fringe land tracts to Bryan.

The 1987 Wiley Easton deed to Bryan describes the property conveyed with reference to a plat prepared by Ralph Vanadore dated November 30, 1987 (the "Vanadore Plat"). The Vanadore Plat shows the Bryan property and the fringe land to the south of the Bryan Lots 79 and 80, and shows what it labels a "public road" noting that the "public road" has a "30' r/w [right of way]". The solid line showing the eastern boundary of the "public road" stops at what appears to be the southwest corner of the original 1950 Subdivision Plat Lot 1, followed by a dotted line extending to the south of the solid line. This dotted line does not go all the way to the 360-foot contour line of Lake Murray, which is also shown on the 1987 Vanador Plat.

Browning presented several witnesses of their own including Gene L. Dinkins, PE, PLS, a professional land surveyor, as a witness. Mr. Dinkins testified that most of the area identified by Plaintiff as Moonlight Drive Extension is known as "fringe property," not a public road. South Carolina Electric & Gas Company ("SCE&G") owned this fringe property at the time the 1950 Plat was recorded and created, and due to this fringe property, none of the roads depicted in the 1950 Plat ran all the way to the lake. Over time, SCE&G sold this fringe property to bordering landowners.

Browning then testified as the final witness. Browning purchased the property in August of 2007, and originally accessed it by driving across the land of a neighboring property owner, who subsequently sold the property. The new owner no longer allowed Browing to use the property to access her home, so she called Mr. Corley with Roads and Bridges to see if she could clear an overgrown area along her property boundary and use it to access her property instead. Mr. Corley indicated it was not County property, so she hired a tree company to clear the area and began to use it to access her home. Browning testified that the County did not maintain the area at the time she cleared it and has not maintained it since.

The Bryans later hired legal counsel, who complained about Browning's use of the area for property access. Mr. Corley then sent Browning a letter dated July 10, 2014, indicating he and members of the road committee visited the site and recommend that she begin the process of closing the road. At that point, Browning secured legal counsel to assist. Relying on the advice of that counsel, Browning eventually received the Browning Quit Claim Deed dated September 15, 2015, entered as Joint Exhibit 7. Browning then closed.

The Saluda County Defendants called a single witness – Billie Ray Corley, who was unavailable due to his death on September 5, 2022, via deposition taken July 7, 2022. When deposed, Mr. Corley testified that he was the superintendent of Roads and Bridges from March of 1999 until

October of 2020. Mr. Corely testified that the County has never ever maintained Moonlight Drive Extension or considered it part of the county road system. The Roads and Bridges Department does not have a record of maintenance done on the 30-foot portion of Moonlight Drive Extension conveyed via the Browning Quit Claim Deed, and he does not remember the County ever maintaining that 30-foot portion of Moonlight Drive Extension. He has spoken with Roads and Bridges employees that have been in the department since 1986 or so, and they likewise do not remember the County maintaining Moonlight Drive Extension. It simply was not considered to be part of a public county road or the overall system of county roads. The Saluda County Defendants then rested. The parties waived closing arguments.

CONCLUSIONS OF LAW

After considering the applicable law, all documentary evidence exhibited at trial, listening to the testimony of the witnesses at trial, assessing the demeanor and credibility of those witnesses, and weighing the evidence accordingly, this Court finds Plaintiff did not meet her burden of proof by a preponderance of the evidence that Moonlight Lane Extension is a public county road in need of closure by the Court and that, once closed, she is entitled to half of it in fee simple. Likewise, Plaintiff failed to meet her burden of proving the County lacked proper authority to execute the quit claim deed.

A. Road Status

Per the Road Closure Statute, "[a]ny interested person, the State or any of its political subdivisions or agencies may petition a court of competent jurisdiction to abandon or close any street, road or highway whether opened or not." S.C. Code Ann. § 57-9-10. Implicit to this procedure is that the road to be closed is public. *Id*. This can only occur if the area at issue has been dedicated and accepted as such.

It is well-established that public road dedication requires two elements. *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (1995). "First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication." *Id.* (citation omitted). The party claiming dedication and acceptance has the burden of proof. *Id*.

The intent to dedicate may be express or implied by conduct on the part of the landowner that clearly, convincingly, and unequivocally indicates his or her intent to create a right to the public to use the property in question adversely to the owner. *Boyd v. Hyatt*, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct. App. 1988). "South Carolina law recognizes two types of implied dedication—'one where the question of implied dedication arises from the sale of land with reference to maps or plats; the other when the dedication arises . . . from an abandonment to or acquiescence in public use.'" *Vick v. S.C. Dep't of Transp.*, 347 S.C. 470, 477, 556 S.E.2d 693, 697 (Ct. App. 2001). Additionally, "[o]nly the owner of a fee simple interest can make a dedication." *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 316, 433 S.E.2d 875, 883 (Ct. App. 1992).

Once it has been shown by clear and unequivocal evidence that the landowner intended the land be dedicated, "[t]o have a completed dedication, there must be some form of acceptance of the offer to dedicate." *Tupper v. Dorchester Cty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 192 (1997). Maintenance of a road by a public entity may be considered evidence of acceptance of an implied dedication. *County of Darlington v. Perkins*, 269 S.C. 572, 575, 239 S.E.2d 69, 70 (1977). Such maintenance can include filling potholes, spraying for mosquitoes, and removal of trees following storm damage. *Milton P. Demetre Family L.P. v. Beckmann*, No. 2009-UP-029, 2009

S.C. Unpub. LEXIS 33 * 9 (Ct. App. January 14, 2009). "It is the duty of the fact finder to determine whether or not the public dedication has been accepted." *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990).

The testimony of Mr. Dinkins indicates the vast majority of Moonlight Drive Extension was "fringe land" at the time the subdivision plat was recorded and thus not identified on the plat as a public roadway. Based on the testimony of the seven additional witnesses who testified at trial, including the five witnesses who testified on behalf of Plaintiff, this Court finds the remainder of Moonlight Drive Extension was never accepted by the County as a public road through maintenance or otherwise. Moreover, even if the remaining 30-foot portion had been accepted into the county road system a very long time ago, of which there is no proof, that road was closed by the father of Mr. Easton and remained closed at all times pertinent to this lawsuit.

This Court respectfully declines to follow Plaintiff's continued reliance on *Corbin v. Cherokee Realty Co.*, 91 S.E.2d 542, 229 S.C. 16 (1956). During the course of litigation, Plaintiff has cited *Corbin* and a string of North Carolina decisions in support of her argument that by maintaining Moonlight Drive, the County also accepted Moonlight Drive Extension into its public road system. This Court does not agree with Plaintiff's interpretation of *Corbin*. In *Corbin*, our Supreme Court cited legal principles, as dicta, indicating that where a governmental entity only partially accepted the roads dedicated on a subdivision plat into its public road system, the developer, who maintained ownership of the roads, could not deny the purchasers of lots in the subdivision a right-of-way over the unaccepted roads. *Id.* at 24, 229 S.C. at 546. Those unaccepted roads were to be held open for public use, presumably as privately owned and maintained roads or common spaces. *Id.* Ultimately, those principles did not apply to the relief sought by Corbin or to the holding of the Supreme Court. *Id*. at 28, 229 S.C. at 548.

Corbin owned property abutting an unopened road in a subdivision. *Id.* After learning the City of Greenville intended to open that road for public use, Corbin demanded that the public use of the strip of land be limited to sidewalk and beautification purposes per the specifications of the original subdivision plat. *Id.* at 28. 229 S.C. at 548. However, the City's right to the strip of land adjacent to Corbin's property was not based on its dedication as a public thoroughfare in the original subdivision plat. *Id*. It was based on the City's acquisition of the property in a condemnation proceeding filed after the recording of the plat, making any dedication or acceptance that occurred by virtue of the plat inapplicable. *Id.*

Corbin is inapposite to the facts before this Court. To the extent the principles cited in dicta apply to the current situation, they at most support a conclusion that any portion of Moonlight Drive Extension dedicated on the 1950 plat as a public thoroughfare, thus not comprised of fringe land, continues to be privately-owned land held open for public purposes *by the developer*, a.k.a. a private road. The Road Closure Statute applies only to public roads.

Plaintiff has not proven that, more likely than not, the County expressly or impliedly accepted any portion of the strip of land referred to in this lawsuit as Moonlight Drive Extension into its public road system through maintenance or otherwise. The maintenance of Moonlight Lane, formerly known as Greenwood Street, a street that is undisputedly part of the County's public road system, is not evidence that Moonlight Drive Extension was also accepted, and Plaintiff has not pointed to controlling law or material evidence from which a different conclusion can be drawn. The facts at issue here point to only one reasonable conclusion – the County never accepted Moonlight Drive Extension into its public road system through maintenance or other overt act.

B. Quit Claim Deed

Plaintiff additionally asks for a declaration voiding the Browning Quit Claim Deed because the County lacked authority to transfer title. This argument also fails. State and local laws require that county governments sell and lease real property with the approval of an ordinance passed after three readings and a public hearing. S.C. Code Ann. § 4-9-130; Saluda County Code § 2-58 (mimicking the language of § 4-9-130). The ordinance authorizing the Browning Quit Claim Deed had readings July 13, 2015, August 10, 2015, and September 14, 2015. A public hearing on the ordinance was also held September 14, 2015. This ordinance gave the County the authority to execute the quit claim deed.

Moreover, despite Plaintiff's arguments to the contrary, the Road Closure Statute does not deprive the County of legal authority to execute a quit claim deed like the one to Browning. The Road Closure Statute "shall not be construed to repeal any other provision of law but shall be cumulative thereto." S.C. Code Ann. § 57-9-40. Therefore, § 57-17-10 gives the County discretion as to the manner in which it chooses to open, close, or relocate public roads, stating in pertinent part, "[t]he county supervisor and the governing body of the county may order the . . . discontinue[ance of] such roads as shall be found useless." To the extent Moonlight Drive Extension was ever a public road, the County exercised the discretion available to it pursuant to this statute when executing the deed to Browning and enacting the associated ordinance.

CONCLUSION

For the reasons set forth above, all claims asserted against the County Defendants are DENIED. The County Defendants do not assert an ownership interest in the property at issue, so to the extent Browning has asserted a crossclaim against them, that crossclaim is DISMISSED as moot.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

Saluda Common Pleas

Case Caption: Jan H Bryan VS Saluda County , defendant, et al

Case Number: 2021CP4100032

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod