

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes, III, Master-In-Equity for Beaufort County

SC Court of Appeals

2024-001053

Charles Willis Gardner,.....Respondent,

vs.

Taylor Reuben Adams, and
Beaufort County, South Carolina.....Defendants,

of which Taylor Reuben Adams is the.....Appellant,

AND

Beaufort County, South Carolina is a.....Respondent.

RESPONDENT BEAUFORT COUNTY, SOUTH CAROLINA'S FINAL BRIEF

Nathan E. Akers | SC Bar No: 103415
HOWELL, GIBSON & HUGHES, P.A.
PO Box 40
Beaufort, SC 29901-0040
(843) 522-2400
NAkers@hgpha.com
Attorney for Respondent Beaufort County

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Statutes

None.

Rules

None.

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None.

STATEMENT OF ISSUES ON APPEAL

1. Whether the Lower Court Erred in Finding that Respondent Beaufort County Owns the subject property.
 - (a) The April 27, 2022 South Carolina Court of Appeals Opinion is the Law of the Case;
 - (b) A Sufficient Foundation of Competent Evidence Exists to Reasonably Support Judge Duke's Final Orders.

STATEMENT OF THE CASE

On October 12, 2017, Plaintiff filed an action alleging trespass on property he claimed to own. (ROA 199-200). Plaintiff further alleged that Defendant Adams was converting the Plaintiff's property for his own use and requested an injunction and restraining order against Defendant Adams. *Id.* Defendant Adams answered the Complaint and asserted a counterclaim alleging that he was the owner of the property that Plaintiff was seeking to restrain him from using. (ROA 206-208).

Thereafter, Defendant Adams filed a motion for partial summary judgment requesting that the court confirm title to the subject property, which was described in said motion as "the 30' road and property to the south of the 30 foot road." (ROA 86-87). In fact, the subject property referenced is a thirty-foot unpaved portion /extension of Warsaw Island Road, a public right of way, which leads to a boat ramp commonly referred to as the "Warsaw Island Boat Ramp." Warsaw Island Road is located on St. Helena Island, South Carolina, in Beaufort County.

A hearing was held and Order issued on Defendant Adams's Motion for Partial Summary Judgment. (ROA 3-6). The Circuit Court ultimately ruled in favor of Defendant Adams, determining that Adams owned "the thirty foot road, the boat ramp at the end of the thirty foot road and the property to the south of the road." *Id.* The Court further dismissed Plaintiff's causes of action and allowed Defendant Adams's counterclaims to proceed. *Id.* Plaintiff filed a motion for reconsideration, which the Court denied. (ROA 7-9).

Plaintiff appealed the order granting partial summary judgement. (ROA 30-38). On appeal, Plaintiff argued that Defendant Adams failed to show that he was the successor in interest to the predecessor in title; that a 1990 quiet title order that was in dispute between the parties did not confer title in the road or boat ramp to Adams; and that questions of fact existed as to the ownership of the road and boat ramp. *Id.*

In an opinion filed April 27, 2022, the South Carolina Court of Appeals held that “a factual dispute persists as to the road and boat ramp” and that “no interpretation of Judge Kemmerlin’s 1990 decree supports the Circuit Courts conclusion that Adams owns the road and the boat ramp.” (ROA 30-38). The Court of Appeals additionally determined that Plaintiff was never granted the thirty-foot dirt road by his predecessor in title who “had no power to deed ownership of the unpaved county road.” *Id.* However, the Court also explained that “this in no way places title to the road in Adams . . . [n]or does a review of the submitted materials support the circuit court’s conclusion that title to the road had been quieted in [Defendant Adams’s predecessor in title].” *Id.*

Furthermore, the Court determined that:

“A reasonable interpretation of the master-in equity’s 1990 order is that the ‘unpaved county road’ ‘unpaved Beaufort County road’ and ‘thirty (30) foot dirt road’ are all the same road. Neither Leroy Gardner, Sr. nor John Howard (predecessors in title of Plaintiff and Defendant, respectively) owned the road; thus neither Charles Gardner nor Adams (through his position in the Howard Property’s chain of title) owns it now. The 1995 and 2013 plats indicate Leroy Gardner, Sr. claimed ownership of the boat ramp, and the issue of the boat ramp is not explicitly raised in the pleadings. As the record does not support the circuit court’s findings that the Howard Property included the road or boat ramp, or that Adams now owns both, we vacate these findings.”

Id.

As a result, the Court of Appeals reversed the grant of partial summary judgment, vacated the circuit court's findings as to ownership of the road and boat ramp, and remanded for further proceedings consistent with their opinion.

Id.

On remand, the County moved to intervene based upon the Court of Appeals' conclusion that neither of the adjacent property owners to the road and ramp in question (Plaintiff or Defendant) had an interest in title, taking the position that the County owned the road and ramp. (ROA 122-125). The Court granted the County's motion to intervene. (ROA 49). Plaintiff also amended his pleadings to assert that he owned an easement over the subject road, seeking a declaratory judgment to this effect, and asserted claims for trespass, nuisance, and injunctive relief. (ROA 215-219). During the pendency of the appeal, the Trial Court entered an order stating that, "[p]ending further Order of the Court, Defendant may not erect any permanent structure on the road, nor otherwise render the road permanently unusable." (ROA 17).

The parties proceeded with limited discovery, and both Plaintiff and the County moved for summary judgment. (ROA 140, 184). Both motions were denied. (ROA 52-53). The parties agreed that, because the crux of the case is competing claims of property ownership, mediation would be fruitless. Accordingly, the case was set for trial before the Honorable Marvin H. Dukes, III beginning on January 22, 2024. Following the trial, the Court entered judgment in favor of the County's ownership of the 30-foot road and adjoining boat ramp was entered on April 5, 2024. (ROA 67-79). Additionally, it was Ordered that:

- (1) Adams shall disconnect his drain field system and clearly identify all components thereof for purposes of removal within 30 days of the order;
- (2) Adams shall bear the cost of removal of the drain field system as arranged by the County;
- (3) Adams shall remove any barriers to access of the 30-foot road and ramp at his own expense within 30 days of this Order;
- (4) Adams shall remove the fence situated on the side of the 30-foot road bordering Plaintiff's property at his own expense within 30 days of this Order;
- (5) Gardner's claim for an easement over the subject road is denied as moot;
- (6) Each party shall bear their own costs and fees incurred associated with the subject case;
- (7) The parties' remaining claims are dismissed with prejudice;
- (8) The Court retains jurisdiction to enforce the Order and enter monetary judgments, if needed, related to the foregoing paragraphs 2-5.

Id.

Appellant Adams thereafter filed an unsuccessful motion for reconsideration and an order denying the same was entered on May 24, 2024. (ROA 193-195, 84)

Appellant Taylor Reuben Adams now appeals the April 5, 2024 Order from Judge Dukes and the subsequent Order Denying his Motion to Reconsider.

STANDARD OF REVIEW

“In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings.” Townes Associates, Ltd. V. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). “We have held that where a law case is tried by a judge without a jury, his findings of fact have the force and effect of a jury verdict upon the issues and are conclusive upon appeal when supported by competent evidence.” Chapman v. Allstate Ins. Co., 263 S.C. 565, 568, 211 S.E.2d 876, 877 (1975).

ARGUMENT

The Court of Appeals should affirm the Lower Court's decision because neither Gardner nor Adams owns subject property in this matter pursuant to the 2022 Opinion from this Court, which remains the law of this case and because there exists a sufficient amount of competent evidence to reasonably support the decision of the Lower Court finding Beaufort County owns the subject property in its April 5, 2024 Order and its subsequent Order denying reconsideration.

I. That Neither Appellant Adams nor Respondent Gardner Owns the Subject Property is the Law of the Case.

Neither Judge Kemmerlin's 1990 Quiet Title Order nor the Court of Appeals' Opinion in the present case were appealed by any party. (ROA 30-39). Both parties' predecessors in title were parties to the 1990 Quiet Title action, which involved the property at issue in the present case. (ROA 281-287). As a result, the 1990 Quiet Title Order is a legally binding judgment as to the parties and the property at issue. The Court of Appeals' opinion in this case interpreted the 1990 Quiet Title Order in reaching the conclusion that neither Plaintiff nor Defendant Adams owned the 30-foot road or adjoining boat ramp and remanding the case for further proceedings consistent with the opinion. *Id.* "An un-appealed ruling is the law of the case and requires affirmance." Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.C.2d 778, 785 (2013) (citing Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 432, 699 S.E.2d 687, 691 (2010)). Neither Gardner or Adams appealed the 2022 Court of Appeals decision on the ownership of the thirty-foot road. Accordingly, the Court of Appeals holding that neither Gardner nor Adams owns the road is the law of this

case and neither Gardner nor Adams may now argue, on remand, ownership of the thirty-foot road.

II. A Sufficient Foundation of Competent Evidence Exists to Reasonably Support the Trial Court's Findings and Final Order.

The Court of Appeals should affirm the Trial Court because the Trial Court considered a significant body of evidence within the record to reasonably support its findings and Final Order.

Appellant Adams argues that the Lower Court erred because it relied *entirely* on the Quiet Title Action and the April 2022 Court of Appeals Opinion and ignored other evidence. This is not the case. At trial, Judge Dukes did consider Judge Kemmerlin's 1990 Order as well as the 2022 Court of Appeals Opinion as well as a wealth of other competent evidence to reasonably support the conclusion that Respondent Beaufort County owns the road and ramp. (ROA 67-79). This included "eight witnesses and the introduction of approximately forty exhibits" demonstrating not only the dubious nature of Gardner and Adams' claims but supporting Beaufort County's ownership of the subject property. *Id.*

Moreover, Judge Duke's April 5, 2024 Order specifically cites "additional evidence submitted on remand," as well as other documentary evidence upon which he based his decision to find that Beaufort County owns the subject property including "deeds within the chain of title for Plaintiff and Defendant Adams; lease and permit application documents; various correspondence; plats and surveys; mortgage and tax documents; documents to and from DHEC; documents from the Beaufort County Sheriff's Office to include incident reports; and court rulings, to *include* Judge Kemmerlin's 1990 Quiet Title Order and the

Court of Appeals' opinion in the case.” (ROA 75). The Appellant's suggestion that there was not a sufficiently competent evidentiary basis with which the Lower Court could reach a reasonable decision is not accurate. Moreover, there was sufficient evidence to contradict the assertion—now irrelevant pursuant to the Court of Appeals 2022 Opinion—that Appellant Adams owns the subject property.

Specifically, both the thirty-foot road and the Warsaw Boat Ramp have been historically and repeatedly used by members of the Warsaw Island Community and Beaufort County residents alike—the public. Ed Atkins, a local resident, testified that he had utilized the 30-foot road and adjacent boat ramp since he was 8 or 9 years old in 1959 or 1960. (ROA 415). When Mr. Atkins began working several years later, he used the road and ramp to make a living, ultimately opening a bait business. *Id.* Mr. Atkins testified he and other members of the community had used the road and ramp without any impediments until Appellant Adams arrived in 2015 and blocked access to the road. (ROA 417). He testified this caused him hardship because he had to travel to another boat landing to conduct his business. (ROA 415-416). This is consistent with Gardner's own testimony that, notwithstanding his mistaken belief that he owned the subject property, that the “whole community” and “different groups” had used the road while he had lived on Warsaw Island. (ROA 268-273).

David Gasque's testimony regarding a revised 2017 plat of the subject property revealed that it was marked as a “problem plat” by the Beaufort County Assessor's Office and only offered testimony that Appellant Adams *may* own the

subject property via a process of elimination. (ROA 488, 784). However, this assertion was debunked by a 2017 letter from Lolisa Daise, Real Property Records Clerk for Beaufort County, denying Adams' request for a property line revision because the County's judgment rolls did not grant him ownership of the road. (ROA 786). She testified that that her review of the relevant title documentation demonstrated that Adams did not own the subject property, citing the explicit "save and except" clause of Judge Kemmerlin's 1990 Quiet Title Order stating that John Howard owned "the 1.054 acre portion of Lot 15 situate immediately below (southeast) the unpaved *Beaufort County Road*" (ROA 599). While Defendant Adams offered additional evidence regarding his predecessor in interest's title before the 1990 Quiet Title Order, it is insufficient to demonstrate that he owns any more than the 1.054 acres specified in his deed and described in the Order as lying immediately below the 30-foot road. The most plausible reading of the relevant documentation is that Plaintiff's predecessor in title owned the parcel of property situated to the northwest of the 30-foot road, Defendant Adams' predecessor in title owned the 1.054 acre parcel to the southeast of the 30-foot road, and the road itself was explicitly excluded from either's ownership. The road is referred to repeatedly as "the unpaved Beaufort County road" and "the unpaved county road," and the evidence indicates the road and adjoining boat landing were used by members of the community for recreation and to make their living until Defendant Adams blocked access to it in 2015.

Appellant Adams may argue that a single mistaken statement made to him in previous correspondence with County personnel somehow serves to undo the reality that Beaufort County owns the subject property and transfer the ownership of the property to him despite the evidence to the contrary. His testimony cited a 2015 letter from Eric Klatt, who was the Right-of-Way manager for Beaufort County's engineering department at the time for this assertion. (ROA 777). In the letter, Klatt erroneously opined that Beaufort County did not maintain or own the subject property and Adams also introduced a list of public boat ramps produced by the County which did not contain the public boat ramp at issue in the present case. Adams believes this constitutes proof of his ownership and that it is binding on the County; this is not so. Ownership of real property is a matter of law, and South Carolina's courts have held that a government employee's error as to such matters does not bind the government body. See Carolina Chloride, Inc. v. Richland Cnty., 394 S.C. 154, 167–68, 714 S.E.2d 869, 875–76 (2011); Quail Hill, LLC v. Richland Cnty., 387 S.C. 223, 692 S.E.2d 499 (2010); Northernair Productions, Inc. v. Crow Wing Cnty., 309 Minn. 386, 244 N.W.2d 279 (Minn. 1976). The same is true for Ms. Daise's decision denying Defendant Adams's request for a property line revision—it is evidence for the Court's consideration, but not dispositive as to legal ownership of property.

Adams' assertion is that the context in which these cases above were decided—zoning—therefore discounts the reasoning of the court in reaching its conclusion and to bind the County in this case. However, this is a distinction without a difference and the court reasoned that, in principle, certain

unintentional errors made, in good faith, by county personnel to respond to public inquiries does *not* bind the government. “To subject county officials to the prospect of liability for innocent misrepresentation would discourage their participation in local government or inhibit them from discharging responsibilities inherent in their office . . . it would be unreasonable to impose a requirement of 100% fail-proof accuracy under the threat of tort liability on matters of law.” 394 S.C. at 168.

By recognizing that the “unpaved county road,” “unpaved Beaufort County road,” and “thirty (30) foot dirt road” are all the same road, the Court appreciated that the road was and is a Beaufort County road, and subsequently concluded that ownership had not been transferred. (ROA 78). Regardless, because the Court of Appeals determined that neither Gardner nor Adams owns the thirty-foot road, neither may so claim on remand, and the evidence submitted makes clear that the County is the rightful owner of the thirty-foot road. The evidence in the record, especially the explicit language in the “save and except clause” found within Judge Kemmerlin’s 1990 Quiet Title Order, does in fact indicate that the subject property is public property owned by the County and contradicts ownership interest in the other parties. If this were erroneous as they now claim, Gardner and Adams would not have slept on their perceived rights by failing to appeal the 1990 Quiet Title Order and the 2022 Order from this very Court.

With respect to Appellant’s Motion to Reconsider, the Court heard, considered, and ruled against Defendant Adams’ contentions that the chain of title showed him to be the owner of the subject property; that there was no

evidence of Beaufort County ownership of the property; that County personnel and communications stated that the County did not own the subject property; and that Plaintiff's expert testified that, based on "process of elimination," his best guess was that Defendant Adams owned the subject property. (ROA 67-79, 84). The Court's Order thoroughly explained the bases for rejecting these arguments, and no reconsideration was required. *Id.* Defendant Adams' contention that the Court of Appeals' opinion has no precedential value is incorrect, as the Order itself remands the matter for further proceedings "consistent with [the] opinion." (ROA 38). Adams is likewise mistaken that Gardner first conceded he did not own the subject property at trial, when the evidence demonstrated that Gardner argued the County owned the road in his motion for reconsideration prior to the appeal. (ROA 88-93). As to the fence and drain field, Adams asserts that the removal of these structures was not requested at trial. (ROA 193). Adams erected a fence on the border of property owned by the County and Gardner and has no ownership interest in the area whatsoever. *Id.* The County and Gardner are well within their rights to require him to remove it. The drain field was erected within the bounds of a County road even after the Court ordered that Adams was not permitted to erect any permanent structure on the road, nor render it unusable. (ROA 17). Adams thereby did both and violated the Court's order accordingly. *Id.* While he now argues the drain field was built before the Court of Appeals' Opinion, the interim order was issued for the pendency of the appeal and before the drain field was built.

Finally, Adams takes issue with the Court's treatment of his remaining claims involving unneighborly behavior and seeking costs and fees associated with the suit. (ROA 194). The Court recounted the evidence heard as to the various trespass and harassment claims, noting the behavior of both Gardner and Adams. (ROA 67-79). The Court understandably concluded that neither party could demonstrate trespass where the subject property did not belong to either of them. *Id.* The Court specifically dismissed all remaining claims with prejudice, thereby ruling upon them, and ruled that each party to the case was obligated to bear their own costs and fees. (ROA 79). No reconsideration was warranted as to any of Defendant Adams' contentions; thus, the Court committed no error.

The 2022 Order from this Court and the trial evidence provided a clear foundation of competent evidence which reasonably supports Judge Duke's own 2024 Final Order finding that Beaufort County owns the subject property as well as his May 24, 2024 Order denying Adams' Motion to Reconsider. Therefore, the Lower Court Committed no error. See Townes Associates, Ltd. V. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); Chapman v. Allstate Ins. Co., 263 S.C. 565, 568, 211 S.E.2d 876, 877 (1975) (stating "[w]e have held that where a law case is tried by a judge without a jury, his findings of fact have the force and effect of a jury verdict upon the issues and *are conclusive upon appeal when supported by competent evidence.*") (emphasis added).

CONCLUSION

For the foregoing reasons, the Respondent Beaufort County respectfully requests the Court of Appeals AFFIRM the Lower Court and Judge Dukes' Order

April 5, 2024 Final Order as well as his Order denying the Appellant's Motion to Reconsider.

HOWELL, GIBSON & HUGHES, P.A.

By: /s/ Nathan E. Akers
Nathan E. Akers | SC Bar No. 103415
PO Box 40
Beaufort, SC 29901-0040
(843) 522-2400
NAkers@hgpha.com
Attorney for Respondent Beaufort
County, South Carolina

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RESPONDENT BEAUFORT COUNTY, SOUTH CAROLINA'S
CERTIFICATE OF COUNSEL
PURSANT TO RULE 211(b) SCACR

I certify that Respondent Beaufort County, South Carolina's **Final Brief** is in compliance with Rule 211(b), SCACR in that no changes were made excepting references to the Record on Appeal.

By: /s/ Nathan E. Akers

Nathan E. Akers | SC Bar No: 103415

HOWELL, GIBSON & HUGHES, P.A.

PO Box 40

Beaufort, SC 29901-0040

(843) 522-2400

NAkers@hgpha.com

Attorney for Respondent Beaufort

County, South Carolina

August 20, 2025