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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2022-CP-37-00447
Appellate Case No. 2025-000982

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp and Amy Cawthon,

Appellants,

v.

Oconee County, Globe, a South Carolina Limited Partnership, and Farmes, a South Carolina Limited Partnership,

Respondents.

INITIAL BRIEF OF RESPONDENTS

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INTRODUCTION AND STATEMENT OF THE CASE

This is an appeal by Appellants of an Order of the Lower Court finding that "Ellenburg Road from its intersection of Knox Road to the border of the Defendant's property is a public road until such time as a party obtains a Court ordered closure of all or some portion of the same or in the event Oconee County, through some clear and unequivocal act, abandons the same." (August 6, 2024 Final Order at 10). In said Order, the Lower Court found that "Ellenburg Road, also known and designated as WA-42 by Oconee County, has been a public road since at least 1946 as evidenced by deed of J.J. Younce to Larkin Mayfield, Jr., recorded in Deed Book 5-R, Page 190 records of Oconee County. That deed specifically refers to Ellenburg Road as a public road." (*Id* at 1, Para. 1). Additionally, the Court found that "Other deeds and plats admitted into evidence as part and parcel of Defendants' Exhibit 1 clearly show what is now Ellenburg Road or portions thereof and refer to the road as a public road, county road and/or an unnamed paved road. Even members of the Ratliff family commissioned a plat and placed it of record clearly delineating Ellenburg Road as a public or a county road (Plat Book B-754 at Page 6, Records of Oconee County, South Carolina)." (*Id* at 2, Para. 4).

Despite Appellant's claims, there is a long history of the portion claimed as a "Private Driveway" being operated as a public road. Many of the Plaintiff's predecessors in interest recognized this road as public in their deeds. Upon the creation of Lake Keowee the road became a dead-end road and no longer continued north to High Falls. Despite this, the road remained public as no Road Closure action was ever filed, the County never took any affirmative steps to abandon the same, and the County continued to maintain the road. Currently the entirety of the road, including the portion claimed by the Appellants as a "Private Driveway" is known as Ellenburg Road and is designated as WA-42 in the road records of Oconee County. Appellant James L. Ratliff has further commissioned at least two surveys within the last four years. The surveys, performed by Michael Henderson, additionally show that the purported "Private Driveway" is in fact a portion of Ellenburg Road. Plaintiffs have produced no records of maintenance of the asphalt road and have only produced receipts and cancelled checks for work unrelated to the asphalt road including for gravel and concrete for improvements constructed solely on the property of the Plaintiffs and not within the roadway.

A majority of the property in this area originated with J.J. Younce who acquired Two Hundred Twenty-Five (225) acres from the Federal Land Bank of Columbia in 1936 (Deed Book 4-P, Page 166). This deed does not specifically reference a road. Mr. Younce subsequently deeded out portions of this property as follows: 34.56 acres to Larkin Mayfield, Jr. in 1946 (Deed Book 5-R, Page 190), 107 acres to Eugene J. Kelley in 1947 (Deed Book 5-Y, Page 283), and 66 acres to T.B. Ellenburg in 1950 (Deed Book 6-I, Page 182). The deed to Larkin Mayfield, Jr. references a **"public road leading from State Highway 183 at Knox's Store to High Falls,"** while the deed to Eugene J. Kelley also references a **"public road leading from Knox Store to High Falls."**

This deed to T.B. Ellenburg does not specifically reference a road. Mr. Mayfield subsequently deeded his 34.56 acres to James E. Sloan in 1951 (Deed Book 6-J, Page 208). Said deed describes the property as being "**located on the public road leading from State Highway 183 at Knox's Store to High Fall(s).**" Mr. and Mrs. Sloan then deeded said 34.56 acres to South Carolina Land and Timber in 1965 (Deed Book 9-Q, Page 154) with the deed again describing the property as being "**located on the public road leading from State Highway 183 at Knox's Store to High Falls**. This property to S.C. Land and Timber, a/k/a Crescent Resources, LLC, is described as K-313 (Plat Book B145, Pages 6 and 7). Mr. Kelly subsequently deeded his 107 acres to Crescent Land and Timber in 1969 (Deed Book 10-N, Page 235). Said deed describes this property as "**lying and being situate on the public road leading from Knox Store to High Falls**." This property to Crescent is described as K-882 (Plat Book B145, Pages 6 and 7). Mr. Ellenburg's 66 acre property was divided four ways. He conveyed one (1) acre to N. A. Dodgin in 1957 (Deed Book 7-N, Page 11). Said deed describes the property as "**bounded…on the west by a county road."** Mr. Dodgin deeded said 1 acre back to T.B. Ellenburg later in 1957 (Deed Book 7-N, Page 19) with the deed again describing the property as **"bounded…on the west by a county road."** Mr. Ellenburg then deeded this 1 acre to James and Helen Pinion in 1962 (Deed Book 8-Q, Page 366) with the property being described as "**lying on the east side of a public road,"** and Mr. and Mrs. Pinion subsequently deeded the property to Crescent Land and Timber in 1969 with the property described as **"being situate on the east side of the public road known as S.C. Road No. S-37-61.**" Said deed also references Plat Book P-30, Page 473 which shows the road labeled S.C. Rd. No. S-37-61 at the northern border of the property going west to S.C. Hwy. No. 183 and east to High Falls Church. This 1 acre property to Crescent is described as K-889 (Plat Book B145, Pages 6 and 7). Mr. Ellenburg deeded one (1) acre to Jerry and Fay Ellenburg in 1963 (Deed

Book 8-Z, Page 188). Said deed describes the property as being on the "**south side of an unnamed paved road**" and "**0.4 mile east of the intersection of Highway 183 and the aforementioned unnamed paved road**." Jerry and Faye Ellenburg deeded this 1 acre to Crescent Land and Timber in 1969 (Deed Book 10-N, Page 62) with the property again described as being on the "south side of an unnamed paved road" and "0.4 mile east of the intersection of Highway 183 and the aforementioned unnamed paved road." This 1 acre property to Crescent is described as K-872 (Plat Book B145, Pages 6 and 7). T.B. Ellenburg additionally conveyed fifty-one and 20/100 (51.2) acres to South Carolina Land and Timber in 1964 (Deed Book 9-H, Page 214). This deed does not specifically reference a road; however, it does reference Plat Book Y, Page 118 **which shows pavement at the southern border of the property and S.C. 183 to the west and High Falls Church to the east.** This property to Crescent is described as K-54 (Plat Book B145, Pages 6 and 7). Mr. T.B. Ellenburg retained 12.8 acres (Described in Deed Book 9-H, Page 214) shown on Plat Book Y at Page 118. Said plat shows pavement at the southern border of the property and S.C. 183 to the west and High Falls Church to the east. T. B. Ellenburg thereafter deeded approximately 6.28 of his 12.8 acres to Crescent Land & Timber in 1966 (Deed Book 9-Y, Page 349 and Plat Book P-27, Page 409) which is now part of Lake Keowee. That deed (9-Y, Page 349) describes the boundary line of that parcel as "**Beginning at the intersection of the center line of South Carolina Road No. S-37-201 and the southeasterly edge of a bridge**".

Thereafter, Mr. Ellenburg conveyed the eastern most portion of his remaining 1.225 acres to Nancy R. Bearden in 1974 (Deed Book 12-A, Page 476). This deed does not specifically describe a road, but it references Plat Book P-39 at Page 61 which shows that the "centerline of road is the property line" at the southern border of the property and that it is "4/10 mi. to S37-12".

This property was subsequently conveyed to the Ratliffs in 1981 (Deed Book 14-I, Page 102) "subject to any **easements or rights-of-way for roadways** or utilities heretofore conveyed by the Grantors herein or any predecessor in title **as may appear** of public record or **upon the ground**" and with the same plat being referenced (Plat Book P-39, Page 61). This is parcel no. 150-00-01-100. T.B. Ellenburg also deeded 3 acres to Claude and Esther Morgan in 1974 (Deed Book 12-B, Page 61). This deed does not specifically describe a road, but it references Plat Book P-39 at Page 67 which shows a **road at the southern border of the property 4/10 mi. west to S37-12**. These 3 acres were later split into 2 parcels (150-00-01-103 and 150-00-01-313). Parcel 150-00-01-103 is 1.813 acres and was conveyed to Brian and Anna Marcedes (Deed Book 1410, Page 145) in 2005. Their plat (B58, Page 5) shows **"Ellenburg Road WA-42 Ditch to Ditch R/W**. Parcel 150-00-01-313 was conveyed to Steve and Janet Kempinski in 1994 (Deed Book 790, Page 59 and Page 790, Page 61). Their plat (A296, Page 10) shows **"Ellenburg Road WA-42 Ditch to Ditch R/W"** and ".4 mi +/- to S37-605." This property was then conveyed to James Ratliff and Lucretia Morgan in 2018 (Deed Book 2403, Page 199) again referencing the plat recorded at A296 at Page 10.

T.B. Ellenburg later deeded 2.765 acres to Terry Ellenburg in 1997 (Deed Book 897, Page 210). This deed does not specifically describe a road, but it references Plat Book P-61 at Page 577 which shows a **road at the southern border of the property 4/10 mi. west to S37-12**. This property was eventually conveyed to James L. Ratliff and Lucretia B. Morgan (Deed Book 2633, Page 1). This deed, however, describes the property as being 2.71 acres (not 2.765) after a new survey recorded in Plat Book B-754, Page 6. Said Plat shows "**Ellenburg Road WA-42 Subject to R/W Public**" as the southern boundary of the property. A portion of these deeds and plats

appear within the Record on Appeal as Defendants 1.2A, 1.2B, 1.3, 1.5A, 1.5B, 1.6, 1.7, 1.8, 1.9, 1.12A, 1.12B, 1.15, and 1.16.

Respondents would show that the Circuit Court correctly determined the public nature of Ellenburg Road and that the same was never closed; as shown at trial:

MR. PAAVOLA: Mr. Ratliff, what property owners would be on notice had you posted a road closure notice?

MR. HOLLIDAY: Same objection.

THE COURT: Sustained. He didn't file a road closure action in this matter. Has there ever been a road closure action filed to your knowledge?

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MR. PAAVOLA: We have never suggested that there is, Your Honor.

THE COURT: Sir?

MR. PAAVOLA: We have never suggested that there was a road closure action filed.

THE COURT: I am not saying that you suggested it, I am just asking if there ever has been.

MR. PAAVOLA: Not to my knowledge.

THE COURT: Thank you.

It should be noted that while raised in the Appellant's Introduction and Statement of the case, the Appellant's appeal of the Oconee County Board of Zoning Appeals matter was decided by the Court of Appeals at the point Appellant's filed their Brief in this matter. That matter raised substantially similar arguments raised by the Appellants herein and included nearly the same

parties. That matter bore appellate case number 2022-001796. A writ of certiorari was ultimately denied on August 13, 2025 in appellate case number 2025-000946. The Court of Appeals affirmation of the Circuit Court and the denial or certiorari in that matter was a clear-cut repudiation of the Appellants' arguments. As admitted by Appellants' Counsel at oral arguments in that matter, the County would not need an easement if it was a county road. As additionally pointed out by Judge McDonald at oral arguments, the Appellant herein (as they were in that matter) can not fill a pot hole or just start using the road and claim it is theirs.

STATEMENT OF THE FACTS

The Record is clear that the Ratliff family is opposed to the development sought by Respondents Globe and Farmes. They have opposed this matter for years. At trial Mr. Jimmy Rattliff made clear this opposition. (Trial Tr. 68:21-69:20, 72:10-12, 73:15-75:17). Mr. Ratliff could provide no evidence of how the road became private (Trial Tr. 140:21-141:14). This opposition and the Ratliff family's position flies in the face of decades of records that reflects Ellenburg Road as public. Mr. Ratliff even admitted that the County had provided some work on Ellenburg Road (Trial Tr. 147:5-149:23). Jimmy Ratliff's brother, Jay Ratliff, additionally testified and admitted that in the Oconee Board of Zoning Appeals hearings that he previously had taken the position that Ellenburg Road was once a state road (Trial Tr. 582:20-22) Further complicating matters for Mr. Ratliff and his family is that there was little consistency as to the location of their purported black and white "End of County Maintenance" sign as shown in Plaintiff's Exhibits 83A-H. Ms. Lorie Ellenburg Bright, the road's name sake's granddaughter testified that even her family did request county maintenance from time to time (Trial Tr. 431:14-432:2), that the County "gave" her grandfather naming rights to the road (Trial Tr. 436:25-437:2), and that she had no

recollections of her grandfather and Mr. Ratliff paving the road in the 1980s (Trial Tr.437:18-438:18).

The testimony of Yelena Kalashnikova who testified on behalf of the South Carolina Department of Transportation confirmed that Ellenburg Road is a public road. Ms. Kalashnikova, testified that based on the records she reviewed that Ellenburg Road is public (Trial Tr. 188:25-189:3). She further testified that despite the Appellants contentions, that the deed to Duke (Plaintiff's Exhibit 8) is immaterial to determining the public nature of the road as it was not inundated by the waters of Lake Keowee (Trial Tr. 190:6-16). Ms. Kalshmikova additionally testified that no portion of Ellenburg Road appeared to be private (Trial Tr. 192:1-24, 194:9-195:21). She also testified as to the mandatory process required to close a road (Trial Tr. 196:11-197:12).

Most damaging for the Appellants was the testimony of the expert witness that they hired, Elliott Quinn. Mr. Quinn drafted an opinion (Defendants Ex. 9) and subsequently disavowed nearly every meaningful conclusion he reached in the opinion on the stand at trial. He initially testified under direct examination that "1994 was the first plat that was recorded that called the road WA-42. Prior to that there was nothing that ever indicated that it was a County road of any sort." (Trial Tr. 298:11-13). Right off the bat during cross examination, Mr. Quinn admits that the road had been paved since the 1940's (four decades prior to the Ratliff's owning their property) (Trial Tr. 300:7-19) and that there is no indication anywhere in the County's records that indicates any portion of Ellenburg Road is private. (Trial Tr. 302:7-10). Mr. Quinn was then forced to admit there were numerous deeds that he apparently did not find which reference Ellenburg Road as a public road (Trial Tr. 303:25-311:7). Mr. Quinn subsequently changed his opinion when

confronted with these deeds (Trial Tr. 312:13-24) and further admitted that the dashed lines on the 1974 Bearden Plat (Plaintiff Ex. 16, Defendant Ex 1.17) could in fact indicate a right of way (Trial Tr. 314:10-315:19). Mr. Quinn also admitted that County maintenance does in fact go all the way to and past the border of Globe and Farmes property and that his opinion that it stopped short of their property was in error (Trial Tr. 319:22-320:19, 322:25-323:10, 323:14-20). Further damaging to Mr. Quinn's credibility is that he was unaware of where the property boundaries were when he wrote his opinion and he had not conducted a survey at the time he drafted his opinion (Trial Tr. 320:20-321:16).

Fatal to the Ratliff's claim of paving the road in the 1980's, Mr. Quinn during his direct examination testified as to his survey and how he found all of the historical pins in the asphalt (Trial Tr. 252:23-253:9). He further confirmed this during his cross examination (Trial Tr. 316:8-317:12). He further testified that any repaving of the road after 1974 would have destroyed or covered the spikes (Trial Tr. 318:1-319:21) which renders the Ratliff's claims of paving Ellenburg Road not just unlikely but untrue.

Mr. Quinn further emphasized that county maintenance can take many forms and that plenty of public roads within the state are not well maintained (Trial Tr. 323:24-324:25). Mr. Quinn goes on to say that he agrees that Ellenburg Road is a public road (Trial Tr. 353:22-354:3). Mr. Quinn goes on to say that while his original opinion did not show Ellenburg Road as a public road that "knowing what I know now" it is a public road (Trial Tr. 357:13-22). He also clarifies that public maintenance extends past 585 Ellenburg Road, despite the Appellants contention otherwise (Trial Tr. 357:23-358:8). Lastly, Mr. Quinn makes it clear that despite his knowledge of the road

closure procedures that the Ratliff's have not brought such an action to close the road (Trial Tr. 358:9-359:25).

STANDARD OF REVIEW

Pursuant to Rule 208(b)(2), the Respondents are satisfied with the Appellant's Standard of Review.

ARGUMENT

1. Did the trial court properly determine that Ellenburg Road was a public road?

It is clear from the numerous deeds and plats and the testimony of Ms. Kalashnikova and Mr. Quinn that Ellenburg Road is a public road. The absence of any evidence that an abandonment procedure was ever brought to terminate the public right-of-way for Ellenburg Road requires a determination that, as a matter of law, Ellenburg Road remains an Oconee County maintained road. See *Wessinger v. Goza,* 231 S.C. 607, 99 S.E.2d 395 (Sup.Ct. 1957), *Sloan v. State Highway Department,* 150 S.C. 337, 148 S.E. 183, S.C. Code §57-9-10, *S.C. DOT v. Hinson Family Holdings, LLC,* 361 S.C. 649, 505 S.E.2d 781 (Sup.Ct. 2004), and *Bancohio National Bank v. Neville,* 310 S.C. 323, 426 S.E.2d 773 (Sup.Ct. 1993). This determination, based upon "public knowledge" from the Ratliff testimony, is certainly in line with the" institutional knowledge" established by the testimony, the plats referenced above and the absence of any abandonment proceeding from the Oconee County public records that show the existence of the right-of-way as extending past the Ratliff property to the real property owned by Globe and Farmes.

The Ratliffs' claim is solely based upon their assertion that Prince Brown, Oconee County's road supervisor or technician, told them several years ago that it was not a county road or that the county would abandon the road at a point beyond the top of the hill where the Ratliff

property began. Plaintiffs have also produced affidavits from numerous people concerning a sign regarding County Maintenance some of whom testified at trial and produced no meaningful testimony; however, whether or not there was a sign out there at any point along the road is totally irrelevant. There is no record of the Brown conversation with the Ratliffs other than what the Ratliffs say was said, and the county still claims the road from Knox Road to the border of the Globe and Farmes property (at the end of the pavement). However, even if Prince Brown made the representation as alleged, it exceeded his authority and did not bind the county or anyone else to anything [City of Myrtle Beach v. Parker, 260 S.C. 475, 197 S.E.2d 290 (1973)]. Brown's conversation with the Ratliff Family, therefore, is of no value in determining the underlying issue in this case, i.e. the operation of the South Carolina law upon the facts thus rendering the matter an equitable issue. Although a case cannot be found in which this exact issue has ever been presented to our courts, the case of Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997), holds that if an action mandates the interpretation of a deed, it is an equitable matter. It further holds that even though the existence of an easement may be for a jury, the scope of an easement is equitable [see unpublished opinion Collins v. Griffin, 2006 WL7287897]. There is no question that an easement exists; therefore, the question here is scope of the easement which is clearly equitable. This is a declaratory judgment action brought pursuant to S.C. Code Ann. §15-53-10 et seq. that does not necessitate a jury's determination of facts in order to arrive at the legal status of the roadway. The only fact that Plaintiffs seem to be relying on is whether Prince Brown, Oconee County's road technician, made statements that abandoned or closed a portion of Ellenburg Road (WA-42). Whether he did or not is not an issue since Prince Brown did not have the authority to make such a decision and/or bind the county or any other public entity to an abandonment or closure of the roadway. In essence, he did not have any authority to give away a

county asset. Even if he had made the statement as alleged by the Ratliffs, the closure procedure outlined in S.C. Code §57-9-10, first enacted in 1962, had to be complied with in order to legally effect the alleged closure [S.C. Dept. of Transportation v. Hinson Family Holdings, LLC, et al., 361 S.C. 649, 606 S.E.2d 781 (2004), Town of Kingstree v. Chapman, 405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013)]. There is absolutely no evidence that Oconee County Council ever considered abandoning or vacating a portion of Ellenburg Road, and neither the county nor any of the landowners or tenants along the roadway sought to have the road or any portion thereof closed or abandoned in accordance with S.C. Code §57-9-10. It cannot, therefore, be held that the county abandoned any portion of the road which has still been used by the public and/or other landowners served by the road at least to a limited extent [City of Myrtle Beach v. Parker, 260 S.C. 475, 197 S.E. 2d 290 (1973)]. Further, the rights of Globe and Farmes and members of the general public in and to Ellenburg Road cannot be lost by the unauthorized act of a county employee (Prince Brown) or any other official exceeding his authority or even by neglect. Everyone agrees that Ellenburg Road was a public road connecting with other public roads and devolved to the county upon the South Carolina Highways abandonment of a portion of Ellenburg Road (WA-42) pursuant to S.C. Code §57-5-120 when Lake Keowee was constructed. Jay Ratliff in his statement to the BZA Board on November 30, 2021 admits that it was a state (public) road (Trial Tr. 582:20-22). Furthermore, the property records, deeds and descriptions of other properties in this area before Lake Keowee was constructed refer to the road now known as Ellenburg Road as a public road.

An abandonment procedure must be brought to terminate the public right-of-way pursuant to S.C. Code § 57-9-10, et seq. As previously stated, there is no history or evidence of such an

abandonment procedure having ever being brought. The Ratliff's further admitted that they never brought such an action.

2. **Did the trial court properly determine that Oconee County failed take any "unequivocal acts showing a clear intent to abandon" Ellenburg Road?**

There is no evidence sufficient to rise to "unequivocal acts showing a clear intent to abandon" Ellenburg Road. It remains the position of the Respondents that the Court's determination of the status of Ellenburg Road, as a public road, was correct. Further, since the Defendants also established as a fact (and as stipulated by Appellant's Counsel) that the Appellants never filed a formal judicial procedure for terminating the public road under §57-9-10 of the South Carolina Code of Laws, the Respondents are entitled to a verdict by the Court in their favor regardless of the argument that the County abandoned the same. However, while finding that Ellenburg Road was a public road, the Court determined that it was appropriate in this case to address the issue of "abandonment" under "common law" as opposed to the formal judicial procedure referenced above (which Respondents believe is the only process at present for the termination of the public's rights to traverse public roads). Therefore, it remains the Respondent's position that the failure of the Appellants to institute a judicial procedure for terminating the public road under §57-9-10 is fatal to the Appellant's case thus requiring a verdict for the Respondents. However, even assuming common law abandonment is presently possible, there is no evidence that such an abandonment ever occurred. There is no portion of the Record that supports the assertion that the road was abandoned.

There are several cases cited by Appellants that are controlling and determinative on the "abandonment" issue under common law but do not support the Appellant's

position. In the first case the South Carolina Supreme Court, in *Wessinger v. Goza,* 231 S.C. 607; 99 S.E.2d 395 (1957), held that a basic tenant of common law is that once a public road, always a public road and even an abandoned highway may not be closed without the consent of the persons whose property fronts thereon or over whose land it passes. The second case of is *K & A Acquisition Group, LLC, v. Island Pointe, LLC,* 383 S.C. 563; 682 S.E.2d 252 (2009). In that case, the Department of Transportation (DOT) and the City of Folly Beach sought a declaration that a tract of land on a neighboring island that was part of a former toll road remained a public right of way. In its opinion, the Supreme Court of South Carolina made the following statements: ""We find this appeal essentially presents four questions: (1) was the "old" Folly Beach toll road dedicated to the public; (2) if so, did the construction or relocation of the "new" Folly Beach toll road effectively abolish the public easement on the "old" Folly Beach Road; (3) if the public easement on the "old" Folly Beach toll road remained intact after the relocation, was it abandoned by the SCDOT; and (4) if abandoned, did the SCDOT properly convey a portion of this property? … "In short answer, we find the "old" Folly Beach Road was dedicated to the public and this public easement remained intact after the new road was created and until the SCDOT affirmatively abandoned the route of the former toll road. Additionally, we hold the SCDOT properly conveyed by quitclaim deed a portion of this abandoned property to the Walkers." … "Given the "old" Folly Beach Road was established as a highway and dedicated to the public, the public right of way continued until it was affirmatively abandoned by the SCDOT." … "The mere act of relocating the toll road did not have the effect of abolishing the public easement created in the original route. Although the Folly Roadway Company may have vacated the "old" Folly Beach route, this action

did not operate to eliminate the public right of way. Thus, the "old" Folly Beach Road remained dedicated to the public despite the relocation." … "[T]his Court has specifically found that once a toll road is dedicated to the public the easement is not revoked upon cessation of the toll road operation." … "[T]he road [a toll road] remains as before, a public highway, wholly freed from the burden of tolls." … "…[W]e disagree that the "discontinuance" or relocation of the route was sufficient to constitute abandonment. The terms "discontinuance" and "abandonment" are not synonymous." … "Under our state's case law, for a party to prove abandonment it must present evidence beyond the mere relocation of a road. See *Wessinger v. Goza*, 231 S.C. 607, 611, 99 S.E.2d 395, 397 (1957) ("It is axiomatic that a public highway is not abandoned simply because a new highway is built."). Instead, a party must "show the abandonment by clear and unequivocable evidence." *Carolina Land Co. v. Bland*, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975). This Court has explained the principles of abandonment as follows: An abandonment occurs where the use for which the property is dedicated becomes impossible of execution, or where the object of the use for which the property is dedicated wholly fails. Any use which is not inconsistent with the declared purpose of a dedication will not support a charge of abandonment." … "An easement created by dedication may be abandoned by unequivocal acts showing a clear intent to abandon. To constitute abandonment, the use for which the property is dedicated must become impossible of execution, or the object of the use must wholly fail. Generally, a mere misuser or nonuser does not constitute abandonment of land dedicated to public use.' 23 Am.Jur.(2d) 57, Dedication, Sec. 66. *City of Myrtle Beach v. Parker*, 260 S.C. 475,

486, 197 S.E.2d 290, 295-96 (1973)." *K & A Acquisition Group, LLC, v. Island Pointe, LLC,* 383 S.C. 563; 682 S.E.2d 252 (2009).

In this matter, there was no affirmative act by the County or any other governmental entity and the mere discontinuance of Ellenburg Roads use as a means to get to High Falls Church does not terminate the public's right to traverse the entirety of Ellenburg Road.

The discontinuance of public road should not carry the same effect as abandonment and "under the present statutes the discontinuance of a secondary road means merely that it is removed from the state secondary road system. Discontinuance of a road is a determination only that it no longer serves public convenience warranting its maintenance at public expense. The effect of discontinuance upon a road is not to eliminate it as a public road or to render it unavailable for public use." *Ord v. Fugate,* 207 Va. 752, 152 S.E.2d 54, 59 (1967).

In the present case, Ellenburg Road is still being used as a public road for access to properties along and on both sides of Ellenburg Road, including the Appellant's property used by the "public" for "public" purposes to deliver and pick-up their boats at John's Marine Service, Inc., which specifically includes the portion of the Appellant's real property directly across from a portion of Respondent's Farmes and Globe real property. There certainly has been neither a discontinuance of the public road in question nor an abandonment of that road and no sufficient evidence of any abandonment of that road has been shown by clear and convincing evidence. As stated in the cases above cited, there is no evidence that the use for which the property was dedicated has become impossible or that the object of the use for which the property is dedicated has failed. Any past/present use of this road is totally consistent with the declared purpose of dedication and, therefore,

will not support a charge of abandonment. At best for the Appellants, there is conflicting evidence of the discontinuance of maintenance at some portions of Ellenburg Road, but no evidence of any abandonment as defined by the applicable case authorities exists. Oconee County has never abandoned any portion of Ellenburg Road. (Trial Tr. 650:15-17) Oconee County records only indicate one spot for the "End of County Maintenance", which is on the Respondent's property. (Trial Tr. 648:8-649:11) and the County has consistently maintained that Ellenburg Road is a county road (Trial Tr. 644:24-645:12) The real property owner (Globe and Farmes) of approximately one half of the underlying fee on which Ellenburg Road is located has never consented to the abandonment of that section and intends to use that public road for access to the public development of its property. Thus, a determination of abandonment would be contrary to the common law in this State and would constitute an immeasurable burden to Farmes and Globe based upon an action filed over twelve (12) years after purchase by Globe and Farmes purchased this property and inconsistently with the documents associated with Respondent's purchase an numerous other publicly recorded documents indicating the Ellenburg Road is a public road.

3. Did the trial court properly deny Appellants a jury trial in this matter?

The Appellants herein had no right to a jury trial. Appellants failed to comply with SCRCP 38(b) in that they did not demand a jury trial when the case was initially filed and the demand was not timely made thereafter, i.e. not later than ten (10) days after service of last pleading directly to the issue. SCRCP 39(b) provides that issues of law and issues not demanded for trial by jury as provided in Rule 38 should be tried by the Court or may be referred to a Master as provided in Rule 53. Appellants however, requested that,

notwithstanding their failure to comply with such rules, they should still be granted a jury trial and argue there are facts in dispute which must be determined by a jury. There was no dispute in this matter as to the relevant facts of the case and this matter merely requires the Court to apply the law upon the facts that are germane. Additionally, as stated at the motion hearing regarding this order, the presentation of this case to a jury would be an unnecessary utilization of the Court's resources and the potential jurors' time, and that this case could be more efficiently disposed of by a bench trial. Further the Respondents would have been prejudiced in two regards. First, this case, along with the recently resolved Board of Zoning Appeals case, have now been pending for over three years. If a jury trial would have been required, it would have further delayed the resolution of this matter. As the Respondent developers are ready and willing to begin construction and time is of the essences any delay costs them money. Secondarily, the Appellants have for years spread numerous untruths about the Respondents throughout the community using social media and the customers and friends of the Ratliff's family and as such an impartial jury may not have even been able to have been impaneled.

It is clearly the law of South Carolina that declaratory judgment actions are neither inherently legal nor equitable, and whether a particular case is to be handled as an equitable matter or a legal matter is determined by the nature of the primary underlying issues involved [Campbell v. Marion County Hospital District, 354 S.C. 274, 580 S.E.2d 163, (Ct. App. 2003), see also unpublished opinion Collins v. Griffin, 2006 WL7287897]. In this case there are no material issues as to the facts and all evidence points to the fact that Ellenburg Road was and is a public road. Jay Ratliff, the Ratliff spokesman at the BZA hearing on November 30, 2021, admitted that the road was once a state road and devolved

to the county in accordance with state law and further confirmed the same at trial in this matter (Trial Tr. 582:20-22). Absolutely no evidence has was produced that indicates Ellenburg Road was ever private, in whole or in part, nor has there been an action by Oconee County or any person, to close the road or abandon any portion of Ellenburg Road in accordance with S.C. Code §57-9-10.

This case did not turn on disputed facts which require the services of a jury but merely requires the Court to apply the applicable law to the facts that are obvious and render a legal opinion. It is, therefore, equitable in nature and requires the Court, not a jury, to apply the law accordingly. "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) (See, e.g., Defender Properties, Inc. v. Doby, 307 S.C. 336, 415 S.E.2d 383 (1992). The Plaintiff does not have a right to a jury trial in a wholly equitable matter.

4. Did the trial court properly deny Appellant's motion to disqualify attorney Andrew Holliday?

Appellant's motion to disqualify attorney Andrew Holliday was exceedingly untimely. It was filed eight (8) days prior to the start of trial in this matter. Appellants Counsel stated in communications roughly a month prior to trial to Mr. Holliday that he "just learned that your firm represented Jimmy Ratliff and Lucretia Morgan in their 2020 purchase of 585 Ellenburg Road" (See Exhibit H to Plaintiff's Motion to Disqualify) which is not credible (See Exhibit I to Plaintiff's Motion to Disqualify). Appellants would have been aware of Mr. Holliday's involvement in this manner no later than July 22, 2022 when the Answer of Globe and Farmes was filed. Further, Appellants would have been aware that the room

where depositions were taken in this matter on October 30, 2023 was the same room where they closed on their purchase of 585 Ellenburg Road in 2020. Appellants filed this motion in bad faith to prejudice Defendants Globe and Farmes on the eve of trial in an attempt to use the provisions of the South Carolina Rules of Professional Conduct as a sword against their attorney, Mr. Holliday.

Despite that, the South Carolina Rules of Professional Conduct do not require disqualification in this matter. Pursuant to Rule 1.10, SCRPC any conflict of a firm's attorneys would be imputed to all attorneys of that firm. The Affidavit of Harvey Watson (attached Defendant's Memorandum in Opposition of Disqualification as Exhibit 1) states that he does not believe that the Firm had a conflict pursuant to Rule 1.9, SCRPC. As stated in Judge McIntosh's June 10, 2024 Form 4 order, "Plaintiffs motion to disqualify attorney Holliday is denied based upon memorandum and affidavits submitted". Mr. Watson's affidavit makes clear that the declaratory judgment action is not substantially related to the Ratliff's closing several years earlier. Appellant's argument relies on the assumption that the Firm would have obtained "confidential information" or "could have gained information in the first matter that would be relevant in the second matter". This could not be further from the truth in that title exams and other relevant services with regards to a closing rely exclusively on public information. Closing attorneys, title abstractors, surveyors, and title companies rely solely on public records. Likewise, information that is not publicly recorded is unable to be certified by title companies and closing attorneys. All public information in this matter specifically including the Henderson Plat (Plaintiff Ex. 20) and all of Oconee County's records indicate that Ellenburg Road is a public road and the Firm's prior representation is consistent with this position. Appellants procured and

paid as part of the closing and as a perquisite from their lender, Mr. Henderson for his survey, and the Henderson Plat which shows Ellenburg Road as a public road. Additionally, the ALTA Owners Policy attached as Exhibit 6 of Lucretia Morgan's Affidavit and Exhibit 3 of James Ratliff's Affidavit attached to the Motion to Disqualify further make it clear that the Firm took the position at the 2020 closing that Ellenburg Road was a public road and the Plaintiffs accepted title to it as such, without objection.

Comment #3 to Rule 1.9, SCRPC indicates that "Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. ... Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations, but would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. ... A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services." Plaintiffs are asking for a declaratory judgment that is inconsistent with numerous publicly recorded

documents that indicate Ellenburg Road is a public road. This requested relief is at odds with Appellant's prior position as no one and no other entity has ever wavered about the public nature of Ellenburg Road. As such, the Firm is not 'switching sides." There is no duty of confidentiality with regards to a document like the Henderson plat whose sole purpose is to put the public on notice of a person's ownership of property and any associated facts with regards to that property.

Therefore, the Record on Appeal is supportive of the facts and conclusions as determined by the Circuit Court.

CONCLUSION

Based upon the above reasoning and authority and pursuant to Rule 220(c), SCACR, it is respectfully requested that the decision of the Lower Court be affirmed in all respects.

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