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, Amy Cawthon,

Appellants,

v.

Oconee County, Globe, A South Carolina Limited Partnership, Farmes, A South Carolina Limited Partnership,

Respondents.

REPLY BRIEF OF APPELLANTS

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ARGUMENT IN REPLY

The gaping hole in Respondents' argument is that they still cannot explain how the Private Driveway came to be part of the now claimed County public road system. Was it dedicated, did it revert from the State system with the creation of Lake Keowee, was it by longtime maintenance?

The County began this lawsuit picking up where it left off with the Oconee County Board of Zoning Appeals, claiming that it held a prescriptive easement over the Private Driveway by longtime maintenance. During discovery, the County then argued in the alternative that the road was public because Ellenburg Road was a former state road that was abandoned by the State for the creation of Lake Keowee and reverted to the County by operation of statute. Then, at trial, the County abandoned both arguments in favor of a third theory of public dedication; however, the lower court did not require the County to prove both essential elements of dedication: (1) intent to dedicate, and (2) public acceptance. Instead, the court accepted as sufficient the County's reliance on inconsistent historic deed descriptions and plat references, with nothing more. At no point during trial did the Respondents introduce evidence showing how or when the County, or State, accepted the road into the public road system. Now in their brief, Respondents are again arguing that the County obtained public rights through reversion of a former state road. (Respondent's Br. at 15). Respondents still cannot decide which theory to argue—public dedication, reversion, longtime maintenance?

Even if the Private Driveway was at one time part of a public road, which Appellants contend Respondents failed to prove, Respondents fail to address the additional actions taken by the County over at least the past four decades that satisfy common law abandonment, including:

1) The County has no records of ever having performed any maintenance on the Private Driveway, and has left all maintenance responsibilities to the Ratliff Family for the past forty years;

2) The County stopped paving Ellenburg Road before reaching the Private Driveway in both the mid 1980's and in 2012;

3) The County has made no attempt to pave the Private Driveway;

4) In the mid-1980's, the County placed an "End of County Maintenance" sign on Ellenburg Road before reaching the Private Driveway and left it there for decades;

5) The County has continuously collected taxes on the Private Driveway from Appellants; and,

6) The County has not expended any public funds to maintain the Private Driveway.

The lower court's order should be vacated and this Court should enter an order finding that the Private Driveway is not a public road, either because Respondents failed to prove public dedication, reversion, or longtime maintenance, or because Appellants proved common law abandonment.

I. Respondents Did Not Introduce Sufficient Evidence into the Record Showing Public Dedication of Ellenburg Road.

Respondents did not introduce sufficient evidence to prove that the Private Driveway was ever part of a publicly dedicated road. Surprisingly, even though the lower court observed during trial that Respondents failed to prove their theory that Ellenburg Road was a state road prior to abandonment for Lake Keowee,[1] in their brief, Respondents still rely on this failed theory in arguing that the lower court's order should stand. (Respondent's Br. at 15 ("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.")). Respondents failed to

[1] Trial Tr. 601:20-602:22, 656:17-657:7 (Judge observing that Respondents did not prove prescriptive easement or state road theory).

prove, and the lower court failed to identify and sufficiently analyze, both of the required elements of public dedication.

There are two elements to prove public dedication: (1) the owner's express intent to dedicate in a positive unmistakable manner, and (2) express or implied acceptance of the property offered for dedication.[2] As the party arguing a theory of dedication, Respondents had the burden of proof to establish dedication.[3] Because dedication is "an exceptional and a peculiar mode of passing title to interest in land," South Carolina Courts have held that the burden of proof for dedication "is strict, cogent, and convincing and the acts proved must be inconsistent with any construction other than that of dedication." *Anderson v. Hemingway*, 269 S.C. 351, 354, 237 S.E.2d 489, 490 (1977) (citations omitted). In its final order, the lower court did not undertake an analysis of the two required factors for proving dedication.

Concerning intent to dedicate, the court simply concluded from its review of one group of historic deeds that Ellenburg Road was public, (Order ¶¶ 1, 3-4); however, the court did not weigh the competing deeds and plats in the Ratliff Family's chain of title to answer the question of whether, in light of these competing deeds and plats, it could still be said that the landowner "*clearly, convincingly and unequivocally indicat[ed] his intention to create a right in the public.*" *Anderson*, 269 S.C. at 354, 237 S.E.2d at 490 (citations omitted, emphasis added);

[2] *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995) (citing *Horry County v. Laychur*, 424 S.E.2d 259 (1993), overruled in part on other grounds by *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016); *Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 413 S.E.2d 821 (1992)).

[3] *Anderson v. Hemingway*, 269 S.C. 351, 354, 237 S.E.2d 489, 490 (1977).

(Appellant Br. at 10-13 (describing chain of title for the Ratliff Family property). Respondents offered nothing more at trial to prove an intent to dedicate.

Concerning acceptance, Respondents failed to offer, and the lower court failed to require, facts supporting implied or express public acceptance of Ellenburg Road into the public road system. If the road was dedicated to Oconee County, then where is the proof that the County expressly or impliedly, by some other act such as maintenance, accepted the road into the public. The only records of public maintenance on Ellenburg Road entered in evidence begin in 1998, well after the creation of Lake Keowee, and none of these records show any maintenance on the Private Driveway. (Dep. Exhibits 27-30). Likewise, if the road was dedicated to the State, then where is any evidence of express or implied acceptance by the State. Instead, a representative for the State Department of Transportation testified that Ellenburg Road[4] has never been part of the state road system and for that reason it was not abandoned as were other area roads for the creation of Lake Keowee. (Trial Tr. 174:5-177:6 (Kalashnikova), Pl. Exhibits 8, 32).

Finally, Respondents fail to address the issue of the Ratliff Family's continual payment of property taxes. This Court and the South Carolina Supreme Court have both held that continued payment of taxes weighs against a finding of public dedication. *Mack*, 320 S.C. at 240, 239 S.E.2d at 126 (continued payment of taxes weighs against public acceptance); *Anderson*, 269 S.C. at 355-

[4] "Ellenburg Road" is used throughout to reference the historic loop road before the creation of Lake Keowee and the modern road dead ending at Ratliff Family property. Ellenburg Road was only named as such after Lake Keowee was created and there is no evidence of a prior name.

56, 237 S.E.2d at 491 (same); *Tupper v. Dorchester County*, 326 S.C. 318, 327, 487 S.E.2d 187, 192 (1997) (payment of taxes is contrary to intent to dedicate).

For these reasons, the lower court erred in concluding that Respondents carried their burden of proof to show that Ellenburg Road and the Private Driveway was historically dedicated to Oconee County and remains a public road.

II. The Record Contains Clear and Unequivocal Evidence that the Private Driveway Was Abandoned After the Creation of Lake Keowee.

Respondents do not even attempt to address the multitude of facts showing that the road in front of 585 & 599 Ellenburg (the Private Driveway) was abandoned after the creation of Lake Keowee. Instead, Respondents still contend, as they did at trial, that there is no such thing as common law abandonment. (Respondent Br. at 16). The lower court correctly determined that common law abandonment is separate and apart from statutory abandonment, (Order at 6). See *K&A Acquisition Group, LLC v. Island Pointe, LLC*, 383 S.C. 563, 577, 682 S.E.2d 252, 259 (2009) (describing standard for common law abandonment). However, the lower court failed to properly weigh the totality of the evidence in the record on abandonment.

Respondents recognize that the public purpose in traversing the Private Driveway and the Loop Road to reach High Falls Church and State Highway 201 ceased after the creation of Lake Keowee and that there are no records of public maintenance of the Private Driveway; however, they characterize this as mere discontinuance of public maintenance rather than abandonment, in attempt to salvage their position that the Private Driveway remained public despite all of the County's affirmative acts. (Respondents' Br. 19). Contrary to *Ord v. Furgate* cited in support, Respondents did not offer any evidence that the County made a deliberative decision to cease maintenance on an otherwise public road—the Private Driveway—after the creation of Lake Keowee. In fact, Respondents presented no evidence that any public body abandoned and/or

deeded the supposedly public portion of Ellenburg Road and Loop Road to Duke to be inundated for Lake Keowee, which would have been evidence that the road was previously public. Appellants introduced evidence that the State Highway Department took affirmative steps to deed its public rights to surrounding roads to Duke for the creation of Lake Keowee. (Pl. Exhibit 8). Certainly if Duke had needed similar rights from Oconee County it would have obtained them—the Ratliff Family contends this shows that the road was never public to begin with, and instead, Duke obtained all necessary rights from private landowners. Quite unlike the primary case they cite, *Ord v. Fugate*, 152 S.E.2d 54 (Va. 1967), there is no evidence of any public meeting or resolutions stating that Ellenburg Road is a public road and determining after the creation of Lake Keowee to discontinue maintenance of the section of road in front of 565 to 599 Ellenburg. *Id.* at 56 (public meeting resolving to discontinue portion of the road in question).

Moreover, Respondents lean heavily on the absence of a formal statutory abandonment process for the Private Driveway but fail to address the fact that state law allowed counties to abandon county roads which in their discretion were rendered unserviceable after the creation of Lake Keowee without following the standard abandonment process. (1967 S.C. Acts 1819-20 (Act No. 813)). Oconee County did not need to undertake any formal action or court approval to abandon the now dead-end section of road that after the flooding for Lake Keowee only served as access for the one remaining private landowner, T.B. Ellenburg, to reach his remaining six acres of land (modern day 565-599 Ellenburg). (Pl. Exhibits 32, 58, 10).

Common law abandonment can be inferred from the acts and conduct of the County. *Carolina Land Co. v. Bland*, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975). The County abandoning this dead-end section of road and leaving all maintenance responsibilities to T.B. Ellenburg and his heirs and assigns is entirely consistent with the facts of this case showing no County activity on this section of road for at least the last forty years.

Here, the facts showing common law abandonment are similar, and even more substantial, than other cases where courts have found abandonment. In *K&A Acquisition Group, LLC v. Island Pointe, LLC*, the SCDOT successfully argued abandonment of a former toll road right of way based on evidence showing:

1) the old toll road was re-routed to a new location;
2) use and maintenance of the old road diminished significantly because traffic used the new road;
3) the toll road operator deeded a portion of the old road to a private landowner;
4) SCDOT issued a quitclaim deed to a private landowner for a portion of the old road;
5) other landowners built their home on a portion of the old road; and
6) if the public still had a right of way, there would have been no need for the SCDOT to deed the land.

K&A Acquisition Group, 383 S.C. at 578, 682 S.E.2d at 260.

In *Williams v. Woodward*, the Kentucky Supreme Court found that the Kentucky Highway Department abandonment a roadway where:

1) a highway was relocated and the public gained access through a different route;
2) adjacent landowners had built fences over the old road obstructing it; and
3) the old roadway had not been "used to any substantial extent by the public" for just nearly twenty years.

Williams v. Woodward, 240 S.W.2d 94, 95 (Ky. Ct. App. 1951).

In this case, there are numerous facts in the record showing clear and unequivocal acts taken by Oconee County after the creation of Lake Keowee that taken together show an intent to abandon the Private Driveway:

1. Oconee County paved Ellenburg Road in the mid-1980's and stopped at 565 Ellenburg Road and purposefully chose not to pave the Private Driveway;[5]

2. Oconee County installed an End of County Maintenance Sign in the mid-1980's at or near 565 Ellenburg (admitted in its Answer), and the sign existed at this location for decades;[6]

[5] (Compl. ¶ 10, Answer Oconee County ¶ 4; Motion Establish Admitted Facts).

[6] *Id.*; Appellants' Br. at 15-26, 45-47 (detailing testimony of eight witnesses testifying to the sign's location and existence back more than thirty years); Pl. Exhibit 83A-83H (witnesses identifying the location of the End of County Maintenance sign).

3. Oconee County paved Ellenburg Road in 2012 and stopped at 565 Ellenburg Road and purposefully chose not to pave the Private Driveway;[7]

4. Oconee County allowed the Ratliff Family to use the roadway and shoulders for staging boats for service at John's Marine since the 1980s and has never informed them that boats and vehicles were parked in the public right-of-way;[8]

5. Oconee County employees met with Ratliff Family members in 2009 and provided a map indicating the End of County Maintenance at 565 Ellenburg;[9]

6. Oconee County has no records of ever performing road or shoulder maintenance in front of 585 & 599 Ellenburg and no records of expending public funds to maintain this section of road;[10]

7. Oconee County has foisted all maintenance responsibility for the roadway and shoulders of 585 & 599 Ellenburg onto the Ratliff and Ellenburg families for at least the last 40 years;[11]

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[7] (Dep. 163:2-164:9 (Kyle Reid)). This is consistent with the pavement quality and faded center line striping on the ground at that location. (Pl. Exhibit 49).

[8] The County testified that when paving in 2012 it made no attempt to pave in front of 565 to 599 Ellenburg Road and did not request or demand that the Ratliff Family move boats or vehicles so that it could pave the road and strip the centerline to the end of the road. (Dep. 167:25-168:3 (Reid)). John's Marine has used the entirety of the roadway in front of their property for boat staging and vehicles for decades, which was confirmed by ariel photographs taken throughout the decades. (Trial Tr. 556-566 (Jay Ratliff), Pl. Exhibit 51); Trial Tr. 423:15-22 (Bright); Trial Tr. 45:23-50:22 (Jimmy Ratliff), Pl. Exhibits 52-56, Def. Exhibit 3 (Letter to BOZA describing use of road)).

[9] Appellants Br. at 21, 53-54 (testimony of Karen Rasbornik detailing this meeting); Pl. Exhibits 62, 63.

[10] Appellants' Br. at 48-50 (Maintenance of the Private Driveway); Dep. Exhibit 23, 27-30.

[11] *Id.* Respondents contend that Elliott Quinn's testimony on finding one railroad spike in the current roadway fully discredited Jay Ratliff's testimony that his father paved the Private Driveway with T.B. Ellenburg in the mid-1980s. (Respondents' Br. 12). Respondents are incorrect. Mr. Quinn testified that the roadway in front of the Ratliff Family's property was improved at some level prior to the creation of Lake Keowee based on historic maps labeling it as "bituminous (low type)," but he was unable to say that this type of road would be any different from the bumpy and uneven tar and gravel road testified to exist by Jay Ratliff and Jimmy Ratliff. (Trial Tr. 360:23-361:19 (Quinn); Trial Tr. 43:16-44:9 (Jimmy Ratiff); Trial Tr. 548:4-18, 549:6-25, 552:1-13, 552:14-553:20, 553:21-555:15 (Jay Ratliff)). In their post-trial motions, Appellants responded to the lower court's citation of Mr. Quinn's testimony concerning the existence of one historic rail spike set in the road. Appellants explained that Mr. Quinn's testimony on this point was misleading because Quinn only testified that if the road was milled before paving then the railroad spike would have been destroyed. However, if the asphalt were simply laid on top of the tar and gravel road without milling then the rail spike would not have been destroyed. Appellants

8. Oconee County prepared tax maps for more than twenty years (1986-2008) showing Ellenburg Road ending at 565 Ellenburg Road;[12]

9. Oconee County has continuously collected property taxes from the Ratliffs and Ellenburgs for the roadway in front of 585 & 599 Ellenburg and taxes have never been reduced for the dimensions of the roadway.[13]

Taken together, these facts and circumstances show "unequivocal acts showing a clear intent to abandon." *K&A Acquisition Group*, 383 S.C. at 577, 682 S.E.2d at 259. Accordingly, the Court should find that if Ellenburg Road was historically dedicated before the creation of Lake Keowee, then the Private Driveway was abandoned after the creation of Lake Keowee as evidenced by all of these unequivocal acts.

III. Access to John's Marine By Its Patrons Does Not Make the Private Driveway Public.

The general public does not travel to the dead end of Ellenburg Road. The general public has no need to travel to the dead end of the road, no place to park, and no place to turn around absent a trespass on private property.

Respondents contend the public still accesses the Private Driveway for boat service at John's Marine. (Respondents' Br. at 19). Likewise, the Order concludes, in various places, that access to John's Marine by members of the public makes Ellenburg Road a public road. (Order at 3, 7). However, Respondents failed to enter any evidence that the general public uses the disputed section of Ellenburg Road for any purpose whatsoever.

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also provided a current photograph of the one rail spike identified by Quinn showing that it was set below the asphalt layer and that the asphalt around it had deteriorated such that it was no longer covered. There is no contradiction between the existence of the rail spike and the Ratliff Family having paved the road if the asphalt was poured over the road without milling. (Post Trial Motions at 12-13 and Exhibit 3 thereto). Accordingly, this testimony was misleading and given improper weight by the court.

[12] Appellants' Br. at 50-51 (Lucretia Morgan testifying to property tax payments; James Coley testifying to County tax maps); Dep. Exhibit 8 (Tax Maps).

[13] *Id.*

The testimony in the record from members of the Ratliff Family, having lived on the property since the 1980s, and from Laurie Ellenburg Bright, who lived at 585 Ellenburg Road for 40 years prior to it being sold to Ratliffs, was that the only persons that drive down to the dead end of Ellenburg Road are owners, visitors to the owners, and patrons of John's Marine. (Appellants' Br. at 47-48).

Visitors to John's Marine for boat service do not transform Ellenburg Road into a public road. Permissive, recreational, or sporadic use does not imply an intent to dedicate to the public. *Mack v. Edens*, 320 S.C. at 239, 464 S.E.2d at 126 ("[D]edication may not be implied from the permissive, sporadic, and recreational use of property."). In *Mack*, the dirt road at issue was used by the public "to deliver mail; to travel to a saw mill and a flour mill; to swim, fish, and attend baptismal services and school parties at a pond . . . to erect and maintain utilities; and to have emergency access to Mack's property." *Id.* at 238-39, 464 S.E.2d at 126. Yet, none of these uses ripened to public dedication. *Id.*; *see also Cleland v. Westvaco Corp.*, 314 S.C. 508, 509, 431 S.E.2d 264, 265 (Ct. App. 1993) (evidence of fifty years of public use of a dirt road to reach the river did not amount to dedication); *Charleston Joint Venture v. McPherson*, 308 S.C. 145, 151, 417 S.E.2d 544, 548 (1992) (shopping center inviting public to do business did not transform private property into public property).

Testimony at trial was that the only persons that travel to 585 & 599 Ellenburg Road are landowners, family members, and invitees of John's Marine for boat service, clearly a recreational activity. These uses do not amount to public use to transform the Private Driveway into a public road.

IV. The Lower Court Erred in Not Granting a Jury Trial on Disputed Facts

Respondents incorrectly state that there were no factual issues in this case appropriate for a jury's determination. In reality, there were numerous disputed issues of material fact that required a fact finder, including, inter alia:

- Were there sufficient facts to show that Ellenburg Road/Loop Road was intended to be dedicated to the public prior to the creation of Lake Keowee;
- Were there facts showing public acceptance of Ellenburg Road/Loop Road into the public road system, if so, what public body;
- Was the Ellenburg Road/Loop Road ever a State road as Respondents claim;
- What was the public purpose of Ellenburg Road and Loop Road and did this purpose cease after creation of Lake Keowee;
- Did Oconee County ever perform maintenance on the Private Driveway before or after the creation of Lake Keowee;
- Did Ratliff and Ellenburg families maintain the Private Driveway since their ownership began;
- Did Oconee County place an End of County Maintenance sign at 565 Ellenburg Road and maintain it at that location for decades;
- Did Oconee County produce tax maps showing Ellenburg Road ending at 565 Ellenburg for decades;
- Did Oconee County collect taxes on Ratliff Family property.

All of these factual issues should have informed the lower court's final opinion as to whether the Private Driveway is a public road and would have been for a jury to decide had the court granted Appellants' jury request. The court did not undertake a prejudice analysis of converting this case to a jury trial early in the discovery phase, rather it was concerned that the issues were too complicated for a jury and not a good use of jury resources, but those factors are not part of the Rule 39 analysis. (Hearing Tr. 34:3-10); *Patterson v. McNeill-Patterson & Assoc.*, 312 S.C. 471, 472, 441 S.E.2d 328, 329 (Ct. App. 1994) (explaining that "a party's failure to make

a timely demand for a jury trial does not mean the opposing party acquires a right to have, as a matter of law, a non-jury trial." (citation omitted)). For these reasons, a jury trial should have been ordered.

V. The Lower Court Erred in Denying Appellants' Request to Disqualify Globe's & Farmes' Counsel.

Respondents' brief sums up the entire ethical issue that Appellants have with Attorney Holliday and his Law Firm continuing to prosecute this case against them.

> 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 . . . .

(Respondents' Br. at 24 (emphasis added)). Respondents admit that the Law Firm took a position that was contrary to the interests of Jimmy Ratliff and Lucretia Morgan at their closing and now continues to push this contrary position in this lawsuit.

Morgan and Ratliff both offered sworn affidavits stating that the Law Firm did not tell them about the new purported right-of-way added to the 2020 Henderson Plat and did not walk them through the title policy exceptions that included this purported right-of-way and specifically the exclusion of coverage for "Easement and right of way for Ellenburg Road as shown on the new plat to record." (Aff. Morgan ¶¶ 7, 10-11; Aff. Ratliff ¶¶ 6, 9-10).

Because this lawsuit concerns what rights, if any, Oconee County has over 585 Ellenburg and 599 Ellenburg, throughout discovery the Globe and Farmes have consistently referred to and used the 2020 Henderson Plat against Appellants, arguing that the 2020 Henderson Plat is evidence of a public right-of-way. (Deposition James Ratliff 30-37, 130-132 (Oct. 5, 2023), excerpts attached as Exhibit G to Motion Disqualify; Trial Tr. 82:7-85:18, 118:17-121:18, 123:2-125:11 (Jimmy Ratliff cross examination on the 2020 Henderson Plat and work of the Law Firm on closing)). This clearly connects the Law Firm's representation of Lucretia Morgan and James

Ratliff in the purchase of 585 Ellenburg with this matter and the lower court erred in denying the motion to disqualify.

CONCLUSION

In this equitable action, the Court will take its own view of the preponderance of the evidence.

Respondents failed to introduce sufficient evidence to prove the landowners' intent to dedicate Ellenburg Road and introduced no evidence showing when and how Ellenburg Road was accepted into the public system. For these reasons, Respondents' dedication theory fails.

On the other hand, even assuming that Ellenburg Road was public, Appellants carried their burden of proof to show common law abandonment by clear and unequivocal acts by Oconee County evidencing an intent to abandon the Private Driveway after the creation of Lake Keowee.

For all of these reasons, the Court should reverse the lower court's order and find that the Private Driveway is private property and Oconee County has no rights over it. If a new trial is granted on any issues of disputed fact, it should be with a jury.

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CERTIFICATE OF SERVICE

I certify that the Appellants' Reply Brief has been served on James W. Logan, Jr., counsel for Respondent Oconee County, by email sent to his primary e-mail address listed in the Attorney Information System, logan@loganandjolly.com and on Andrew K. Holliday, counsel for Respondents, Globe, a South Carolina Limited Partnership, and Farmes, a South Carolina Limited Partnership, by email sent to his primary e-mail addresses listed in the Attorney Information System, andrew@drwmlaw.com, on October 3, 2025.

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