

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Thomas Kemmerlin, Jr., Special Referee

Case No. 2004-CP-07-2036
Court of Appeals Unpublished Opinion No. 2012-UP-217
Appellate Case No. 2012-212211

RECEIVED

JUL 2 2012

S.C. SUPREME COURT

Forest Beach Owner's Association, Inc.,
and Trevor Howard, Respondents,

v.

Carolyn S. Austin, formerly known as
Carolyn S. Bair, Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Trevor Howard

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Pursuant to Rule 242(f), SCACR, Forest Beach Owner's Association, Inc. (FBOA) and Trevor Howard (collectively "Respondent"), respectfully file this Return to the Petition for Writ of Certiorari served by the Petitioner, dated June 11, 2012. It is the position of the Respondent that the Per Curian Opinion of the Court of Appeals properly addressed all issues in this case and no further review is necessary by this Court.

I. Argument on Questions Presented for Review

1. Both the Trial Court and the Court of Appeals properly considered the 2000 Quit-Claim Deed from Property Research Holdings, Inc. to Petitioner.

Petitioner asserts the Trial Court and the Court of Appeals failed to take into consideration the 2000 quit claim deed (R. pp. 774-777 – "2000 QCD"), leaving Petitioner with unmarketable title. In fact, both the Trial Court and the Court of Appeals properly considered the 2000 QCD and clearly concluded Petitioner does not own the subject properties.

Respondents' Second Complaint specifically alleged the 2000 QCD was invalid since its property description did not close and was based on a defective, fraudulent quiet title action (R. pp. 46-47, ¶ 8). The Trial Court found the quiet title action defective and specifically held the 2000 QCD did not convey title to Petitioner since the property description was invalid (R. pp. 11-12, ¶¶ 22-24). The Trial Court further specifically found that FBOA held record title to both the street extension and beach trust parcel (R. p. 13, ¶ 2). Thus, there is no "unmarketable title" issue yet to be resolved, as asserted by Petitioner, since the Trial Court held she did not own either parcel.

The Court of Appeals also made note of the 2000 QCD in its decision and found the Trial Court ". . . ruled correctly in all respects and affirm[ed]." Thus, the issue of the 2000 QCD and title to the subject properties was in fact carefully reviewed and considered by both courts. As

discussed below, the conclusion that the 2000 QCD did not provide superior title to the Petitioner is well supported under existing South Carolina law.

The genesis of the 2000 QCD was the 1988 Bair quiet title action. The first paragraph of said deed makes this abundantly clear, as follows:

“WHEREAS, Final Judgment was entered by the Honorable Donald W. Beatty, dated May 19, 1999, in the Action captioned Carolyn S. Bair v. Property Research Holdings, Inc., et al, C.A. #98-CP-07-1721 and filed under Judgment Roll #108046 provided that Carolyn S. Bair has good title against Property Research Holdings, Inc.; also, all other persons unknown, claiming any Right, Title, Estate, Interest in or lien upon the Real Estate described below and in the Complaint in the above referenced Action;”

The 1988 Bair quiet title action has been found by four (4) different courts¹ to be at best a sham quiet title action, and at worst a complete fraud on the Court deserving of further investigation by the South Carolina Commission of Lawyer Conduct as to numerous, serious ethical issues.

The Fourth Circuit Court of Appeals’ decision, quoted by the Court of Appeals, also addresses the 2000 QCD from PRHI as follows, at p. 333:

“Specifically, evidence exists to support the conclusions that Bair contrived to obtain title to a portion of the insured premises by adverse possession, filed a quiet title lawsuit that purposely failed to name important parties, and colluded with a local businessman to obtain a quit claim deed covering the property to the end of Avocet Street.”

The Court also noted at p. 334 that the 2000 QCD was obtained for no consideration (Id. p. 334).

As stated above, separate from the serious issues concerning the fraudulent 1998 quiet title action, the Trial Court correctly held the 2000 QCD was fatally defective due to an error in its legal description (R. p. 12, ¶ 23). This is in accord with existing common law.

¹ 1. Thomas Kemmerlin, Jr. at the trial in this case (R. pp. 11-12, ¶ 22); 2. South Carolina Court of Appeals; 3. Honorable Patrick Michael Duffy, Investors Title Insurance Company v. Bair, 2007 WL 6738625 (D.S.C.); and 4. Fourth Circuit Court of Appeals, Investors Title v. Bair, 296 F. App’x. 332 (4th Cir. 2008)

A deed which contains an invalid property description is wholly ineffective to convey any property whatsoever. 26A CJS, Deeds, § 53 – Deed inoperative where the area is not defined; Floyd v. Carswell, 211 Ga. 36, 83 S.E.2d 586 (1954) – Metes and bounds description with no starting point fatally defective; Herrington v. Church of the Lord Jesus Christ, 22 Ga. 542, 150 S.E.2d 805 (1966) – Deed containing an indefinite terminal point and indefinite course is insufficient and renders deed inoperable.

Petitioner should not derive any benefit whatsoever from the fraudulent 1988 quiet title action. She owns absolutely no interest in the street extension or the beach strand parcel immediately in front of the street extension, as said properties were part of a carefully designed, longstanding, comprehensive plan by the original developers to ensure perpetual access to the beach for all property owners. Any recognition of ownership by Petitioner in these two (2) properties would defeat this plan, deny access to the beach to the property owners in this platted subdivision, and reward Petitioner for clearly improper actions.

2. The Court of Appeal’s Opinion Properly Addressed Petitioner’s Claimed Ownership Interest in the Subject Property

As discussed above, the Trial Court specifically concluded that the FBOA held record title to both the Avocet Street extension and the beach strand parcel (R. p. 13, ¶ 2). The issue of ownership of these two parcels, including the 2000 QCD, was specifically raised in FBOA’s Second Amended Complaint (R. pp. 46-47, ¶¶ 7-9; p. 48, ¶ 15).

The Trial Court found the 2000 QCD defective and invalid due to an error in the legal description. The Court of Appeals referenced this deed and found the Trial Court correctly ruled it was invalid. Thus, this is not an “overlooked” issue or a decision inconsistent with South Carolina law. Simply put, it is just an issue Petitioner lost.

3. The Court of Appeals Properly Addressed the Removal of Vegetation

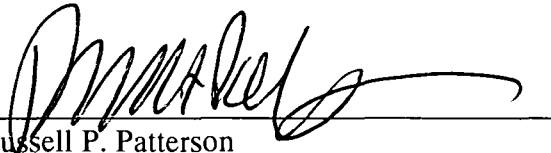
The street extensions and beach strand parcel provide critical beach access to the subdivision community, based on a comprehensive plan implemented in 1956 by the original developer (R. pp. 5-9, ¶¶ 5-9). Specifically addressing the large metal gate, brick columns and extensive landscaping constructed by Petitioner blocking this beach access, the Trial Court was understandably concerned about the removal of some of the improvements so “. . . that a lot holder would view this as a beach access available to him rather than as part of Ms. Bair’s yard” (R. pp. 13-14, ¶ 3). The photos of the beach access support this obvious conclusion (R. pp. 782-784). Without the removal of the brick columns, large metal gate and a portion of the landscaping, no one would use the beach access upon the mistaken belief it was part of Petitioner’s lot. The Trial Court, in its Supplemental Order, was very specific as to what was needed to be removed in order to allow reasonable access across property owned by FBOA – not Petitioner (Tr. pp. 18-23). It should be noted he did not order the removal of all improvements, just certain designated items. Such a careful exercise of discretion is clearly warranted under existing South Carolina law.

As Chief Justice Few stated during oral arguments in response to Petitioner’s complaints concerning the removal of some of her improvements, “Oh what a tangled web we weave, When first we practice to deceive.” Petitioner cannot be heard to complain about removing her landscaping given her elaborate, fraudulent scheme to take title to property rightly belonging to her neighbors in the subdivision.

II. Conclusion

The Petitioner's request for a Writ of Certiorari should be denied. The issue of the 1990 QCD and removal of improvements were tried by the parties, ruled upon by the Trial Court and carefully considered by the Court of Appeals. The Orders issued by each Court were well reasoned and supported by longstanding case law and clear facts. No further review is necessary or warranted.

Respectfully submitted,
RUSSELL P. PATTERSON, P.A.

A handwritten signature in black ink, appearing to read 'Russell P. Patterson', is written over a horizontal line.

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June 28, 2012

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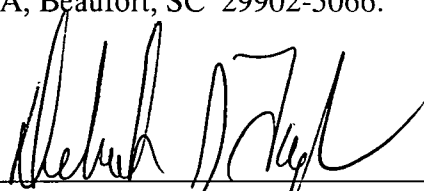
v.

Carolyn S. Austin, formerly known as
Carolyn S. Bair, Petitioner.

PROOF OF SERVICE

I certify that I have served one (1) copy of Return to Petition for Writ of Certiorari on counsel for the Petitioner, Thomas A. Pendarvis, J.D., by depositing one copy of the same in the United States Mail, postage prepaid, on June 28, 2012 addressed to Thomas A. Pendarvis, J.D., Pendarvis Law Offices, PC, 500 Carteret Street, Suite A, Beaufort, SC 29902-5066.

June 28, 2012



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S.C. SUPREME COURT
pm 6-28-12

The Hon. Daniel E. Shearhouse
Clerk of the Supreme Court
of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Forest Beach Owner's Association, Inc. and Trevor Howard v. Carolyn S. Austin
f/k/a Carolyn S. Bair
Appellate Case No.: 2012-212211

Dear Mr. Shearhouse:

Please find attached the original Return to Petition for Certiorari, along with six (6) copies and a Proof of Service.

Please contact me with any questions.

Sincerely,
RUSSELL P. PATTERSON, P.A.


Russell P. Patterson

RPP:djt

Enclosures

cc: John Snodgrass (w/encl.)
Jack Daly (w/encl.)
Thomas A. Pendarvis, Esq. (w/encl.)