

TITLE PAGE

INITIAL APPEAL

In The South Carolina Court of Appeals

Nadine Brantley

Appellant

v.

**The City of Rock Hill, a body politic
and subdivision of the State of
South Carolina and Wherry Construction
Co., Inc, Defendants**

**Of which Wherry Construction Co., Inc.
is not the Respondent**

**Of which The City of Rock Hill, a body
politic and subdivision of the State of
South Carolina is the Respondent**

Respondent

Case No. 2015-000079

RECEIVED

MAY 15 2015

SC Court of Appeals

TABLE OF CONTENTS

Form 13 Initial Appeal	page 1-2
Form 14 Designation of Matter	page 3-6
Form 7 Proof of Service Form 13	page 7-8
Form 7 Proof of Service Form 14	page 9-10
Statement of the Case	page 11
Facts	page 12-16
Arguments	page 17-23
Conclusion	page 24
Table of Authorities	page 25
Certificate of Counsel	page 26

**FORM 13
BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 15 2015
SC Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2009-CP-46-2211

Appellate Case No. 2015-000079

Nadine Brantley

Appellant

v.

The City of Rock Hill, a body politic and
subdivision of the State of South Carolina
and Wherry Construction Co., Inc., Of which
Wherry Construction Co., Inc. is not a respondent

Of which The City of Rock Hill, a body
politic and subdivision of the State of South
Carolina is the Respondent

Respondent

INITIAL BRIEF OF APPELLANT

Nadine Brantley

Nadine Brantley
9501 Greyson Ridge Drive
Charlotte, North Carolina 28277
704-779-2357
Appellant

cc: Jeremy Melville, Esq.
Spencer and Spencer
P.O. Box 790
Rock Hill, SC 29731
803-327-7191

FORM 14
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

RECEIVED

MAY 15 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court Of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2015-000079

Nadine Brantley

Appellant

v.

The City of Rock Hill, a body politic
and subdivision of the State of South
Carolina, and Wherry Construction
Co., Inc., Defendants,

Of Which The City of Rock Hill, a body
politic and subdivision of State of South
Carolina is the Respondent

Respondent

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the record on appeal

1. The Summons and Complaint 01/12/2012
2. All Motions for Discovery And Answers
3. Deposition of Nadine Catalfano Brantley Rock Hill, SC December 4, 2013
4. Deposition of Robert Glenn Barfield, R AIA, NCARB Rock Hill, SC
December 11, 2013
5. Deposition of Ronald E. Wright, P.E. Rock Hill, SC December 10, 2013
6. Deposition of Timothy Elvy Brooks Rock Hill, SC August 15, 2013
7. 30(B)(6) Deposition of James Gwin Bagley, Jr Rock Hill, SC
August 15, 2013
8. Defendant's Memorandum in Support of Summary Judgment
August 8, 2014

9. Plaintiff's Memorandum in Opposition to the City of Rock Hill's Motion
For Summary Judgment 04/11/2014
10. Nadine Brantley Affidavit in Support of Summary Judgment and in
Opposition to Motion 08/06/2014
11. Nadine Brantley Memo In Opposition to Defense Motion for Summary
Judgment 08/06/2014
12. Affidavit of James G. Bagley, Jr 08/07/2014
13. Nadine Brantley Memo in Support of Summary Judgment Against
The City 08/11/2014
14. Nadine Brantley Order/Summary Judgment 08/28/2014
15. Nadine Brantley Motion to Reconsider Alter or Amend 09/17/2014
16. Nadine Brantley Order Form 4 (Motion Pursuant to Rule 59(e) denied
12/18/2014
17. Transcript of Proceedings York South Carolina August 11, 2014
18. Transcript of Record October 16, 2014 York South Carolina
19. All Photographs

20. All Exhibits

21. All Reports

22. All Matters of Public Record.

23. All Studies Relating to City of Rock Hill Stormwater Master Plan

24. All Evidence presented to The Court

25. All letters to and from Plaintiff's Counsel

26. Value-To be determined

I certify that this designation contains no matter which is irrelevant to this appeal.

May 11, 2015

Nadine Brantley



9501 Greyson Ridge Drive
Charlotte, North Carolina
28277

704-779-2357

cc: Jeremy D. Melville, Esq.
P.O.Box 790
Rock Hill, South Carolina 29731
803-327-7191

FORM 7

**PROOF OF SERVICE OF A NOTICE OF APPEAL
Appellant Brief**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 15 2015

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

R. Jackson Kimball, Special Circuit Court Judge

Case No. 2012CP46000146

Appellate Case No. 2015-000079

Nadine Brantley

Appellant

v.

The City of Rock Hill, a body politic
and a subdivision of The State of South Carolina and
Wherry Construction Co., Inc.
Defendants

Of Which Wherry Construction Co., Inc. is not a
Respondent

Of Which The City of Rock Hill, a body politic and
subdivision of the State of South Carolina is
the Respondent

Respondent

PROOF OF SERVICE

I certify that I have served The Notice of Appeal, Appellant Brief
on The City of Rock Hill a body Politic and subdivision of the State of South Carolina by
depositing a copy of it in the United States Mail, postage prepaid, on May 12, 2015,
addressed to Attorney of Record, Jeremy Melville, Esq. at P.O. Box 790
Rock Hill, SC, 29731

May 12, 2015

Nadine Brantley

Nadine Brantley

9501 Greyson Ridge Drive
Charlotte, NC 28277
704-779-2357

FORM 7

PROOF OF SERVICE OF A NOTICE OF APPEAL

Designation of Matter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 15 2015
SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

R. Jackson Kimball, Special Circuit Court Judge

Case No. 2012CP46000146

Appellate Case No. 2015-000079

Nadine Brantley

Appellant

v.

The City of Rock Hill, a body politic
and a subdivision of The State of South Carolina and
Wherry Construction Co., Inc.
Defendants

Of Which Wherry Construction Co., Inc. is not a
Respondent

Of Which The City of Rock Hill, a body politic and
subdivision of the State of South Carolina is
the Respondent

Respondent

PROOF OF SERVICE

I certify that I have served The Notice of Appeal, Designation of Matter
on The City of Rock Hill a body Politic and subdivision of the State of South Carolina by
depositing a copy of it in the United States Mail, postage prepaid, on May 12, 2015,
addressed to Attorney of Record, Jeremy Melville, Esq. at P.O. Box 790
Rock Hill, SC, 29731

May 12, 2015

Nadine Brantley

Nadine Brantley

9501 Greyson Ridge Drive
Charlotte, NC 28277
704-779-2357

STATEMENT OF THE CASE

On December 12, 2012, The Case of Nadine Brantley v. The City of Rock Hill, South Carolina was filed in York County Sixteenth Judicial Circuit Court. The suit brought action alleging Inverse Condemnation, Nuisance and Gross Negligence.

On 12/18/2014 an order for Dismissal was entered into the Court record, thus ending the case through Summary Judgment in favor of the Defendant.

Facts

Plaintiff, Nadine Brantley, acquired the property at 1020 Willowbrook Avenue in Rock Hill, South Carolina on July 7, 2010. The acquisition was by exercising a Deficiency Judgment. Prior to the acquisition, Plaintiff had a title search done and Plaintiff and another person examined the existing Floodplain maps.

Plaintiff then finished a renovation/rehabilitation that was being done on the home as the result of fire damage and made significant upgrades.

On August 23, 2011 it was discovered that the property had been flooded and the home completely inundated by stormwater coming off of Spencer Park, a property owned and operated by the Defendant, The City of Rock Hill.

Spencer Park is the adjoining neighbor to the rear and left side of the Plaintiff's property.

Since that day the home has been completely inundated on four more occasions, all of which have been reported to the Defendant. The Defendant has responded to only the first event by way of a denial of claim and to none since the Plaintiff filed suit in December of 2011

The Plaintiff alleges that the Defendant has made her property part of the Stormwater Management System by aggressive acts of bringing stormwater off of Public Roadways and channeling, pooling, intensifying, and directing this stormwater by means of manmade structures at the top and throughout Defendant's property, Spencer Park.

The Defendant has taken all of the economic and investment backed expectation value from the Plaintiff. The Defendant has refused the Plaintiff connection of electrical and water services unless the Plaintiff promised not to rent the house, thereby recognising the dangerous situation that exists there by virtue of the repeated flooding. The elicitation of the promise came from The Defendant's Risk Management Department. Since then power and water have been made conditional a second time, so there are no utilities. This lack makes it impossible to make necessary repairs to the home.

It sits unoccupiable and continues to be a liability to the Plaintiff.

Plaintiff also alleges that the flooding of her property and the use of

her property have made it a part of the Defendant's stormwater system

(MS4) as the property acts to retard stormwater from entering the

Defendant's property and flooding it's multi-family property on Gordon St.

This City property is located within the FEMA Floodplain. The Plaintiff's property

was not in any floodplain until the maps were recently changed by a study for,

and commissioned by the Defendant using it's own choice of engineers.

Now Plaintiff's entire property, part of the property at 1012 Willowbrook Ave, and

a good portion of the lower part of Spencer Park are included in the floodplain.

Plaintiff alleges that the Defendant is using her private property for the Public

good without just compensation. Defendant has no easement or right of way

on Plaintiff's property.

Information received through the Freedom of Information act proves that there

were 3 flood claims against the Defendant by prior residents. There has been

not even slight care taken on the part of the Defendant in any of these flooding

instances. Also included in the documents were a report on the hydraulic

conditions within the general area of Spencer Park, the watershed, Plaintiff's property and Gordon St. There was a permit and permit inspection card and a site plan. A survey showed that part of the house was allowed to be built within the setback. The inspection card had verbiage on the first line that said, "deep- too close to branch- filling with water-need engineer to OK." The same statement appears on the inspection card for the adjoining property at 1012 Willowbrook. That statement constituted a "stop work order" that could not be lifted without such approval.

As it appears, a City employee without such credentials or authorization wrote "OK" on both the inspection cards and construction resumed. Another City employee issued a certificate of occupancy (CO) almost a year after the property was purchased by Asia Renwick by means of an FHA loan.

Approximately 3 months after the CO was issued there was a severe flood that "overtopped the road."

There cannot be found in any record such an approval. Given these events,

would a reasonable person not make sure that evidence of approval by an engineer would have been preserved? Yet, The Defendant claims it is lost from both records and has no proof the engineer's OK ever existed..

The card also indicates the the construction failed a subsequent inspection because the footings were not inspected prior to the slab being poured.

There are also dates that are out of sequence on the card . The irregularities are too many to ignore.

The Plaintiff does not argue that the Defendant does not have a right to issue a permit, only that the Defendant exercise only the slightest care and that the Defendant do things it ought to do and not do things it ought not to do.

Plaintiff certifies that these are the facts in the two actions brought against the Defendant, Inverse Condemnation and Gross Negligence.

Nadine Brantley
Nadine Brantley, Plaintiff

ARGUMENTS

I. Inverse Condemnation

We respectfully ask for a review of the following:

In granting summary judgement to the Defendant by The Court, The Court assumes there are no manmade elements in the water course of which the Plaintiff's property lie. This assumption is not consistent with the pictorial evidence and the reports and testimony of the expert 5 depositions taken on behalf of the plaintiff, thus these are questions of fact for a Jury to decide.

In the transcript dated August 11 2014 The Judge ask the defense counsel for condensed versions of the depositions of Mr. Brooks and Mr. Bagley to make it easier for him. He did not ask to review the Depositions from the Plaintiff or the Plaintiff's expert witness. We believe that reviewing all the evidence in complete context would greatly change the conclusions in and outcome of the case.

Issue number 1

We believe there to be genuine questions of fact on inverse condemnation with the following :

in error The Court states under analysis Item I paragraph 3 there is no evidence that the city has performed any work upstream of Spencer Park to increase either volume or rate of flow, of stormwater discharged into the stream running through Spencer Park since well before Plaintiff's purchase that would have such effect. There are man made structures in the Spencer Park not naturally occurring cited in the Ronald R Wright P. E. deposition.

The Defendant states that they do not know who is responsible for the creation of these structures. This alone would be a genuine question of fact. We believe these structures would be reasonably proved at a jury trial to have been constructed and installed by the City.

Expert witness testimony in the deposition not taken out of context, rather read in its entirety state that these structures collect, concentrate, channel, and intensify water flow onto 1020 Willowbrook Rd. Reference complete testimony of Ronald E Wight. P.E. deposition pg 49 Line

18-21, pg 55 line 20, pg 74 line 6-10 & 20, 21, pg 89 line 11, pg 90 line 17.

Issue 2

In error The court states in Item I paragraph 3 " It Is also apparent from the record, including the opinion of the Plaintiffs experts, that the flooding occurs directly as a result of the undersized culvert running under Willowbrook Ave , Which is entirely the responsibility of the SCDOT."

This statement is an assumption made merely by the virtue of the culvert running under a State owned roadway.

We believe this to be a genuine question of fact to be determined by a jury.

The court states when denying the plaintiffs motion for summary judgement on pg 56 line 23-25. "Okay . Implicit in what you say, Mr. Halford, is that there's a question of fact so I deny the motion"

We believe that if there is a Question of fact on the record as such, then both of the defendants motions should have been denied.

The Plaintiffs expert Ronald E. Wright P. E. testified when asked by Plaintiff's

Counsel in deposition . "Take me down and tell me about that culvert down at Willowbrook Avenue . Is that culvert serving as part of the City's stormwater management system." Answer from Ronald E Wright "Yes"- (Ronald E. Wright P.E. deposition pg 77 lines 14-17.) Even though SC may or may not own the Culvert it is being used as part of the City's Stormwater management system . This makes it a genuine question of fact as to it being a responsibility of the Defendant as well as the SCDOT.

Reference Ronald E. Wright P. E.

deposition pg 77 line 14-25, pg 78 lines 1-3, Pg 99 lines 12-14, additional

Robert Glenn Barfield ,AIA, NCARD deposition pg 30 line 11-18

II. Gross Negligence

Issue 1

Plaintiff identified gross negligence in the allowance of the continuation of a structure to be built once a City inspector issued a stop work order by the comment "deep-near branch-filling with water- Need Engineer to OK"

for work to resume . The same requirement also was issued on the adjacent house being built simultaneously at 1012 Willowbrook Ave. There are several items that would make the determination of an engineer approval a definite question of fact.

Item A

1. As is a rule with SC labor and licensing , along with common industry standard there would have to be a written engineer approval stamped and sealed for the building to continue. This point has been raised many times. The defendant has been unable to produce any report. The claim has been that it must have been lost from both 1020 and 1012 Willowbrook Ave Files
2. The court is relying on defense counsels claim to be able to supply a witness to verify verbal approval was called in. At best we believe it would be up to a jury to hear this testimony under oath and decide the validity of such testimony.
3. Plaintiffs experts have testified under oath in a deposition the belief that no

professional engineer would have okayed the issue on the first line of the inspection cards of both referenced properties on which the inspector wrote "deep, close to branch filling with water-need engineer to OK". Ronald E Wright P. E. Deposition pg 84 lines 21-25 & pg 85 Lines 1-3.

Tim Brooks - Rock Hill City plan review engineer as stated on City of Rock Hill's website- tasked with evaluating the flooding of 1020 Willowbrook Ave States in his deposition "the property is in the hydraulic gradeline of that channel or that creek. ". Thus making it extremely improbable that any engineer would have approved the situation being addressed by the first inspector. The first inspector raised a red flag that there was a problem with water on the property . When the Plaintiff , defendant and the expert witnesses state that no such report was found in either file, that would refer to a written record. We believe this to show that not the slightest of care was taken. If it was certainly any engineer would never have allowed the house to be built.

Tim Brooks deposition pg 22 Lines 22-25, pg 23 1-8.

Gross Negligence definition cited in the court's decision :

Gross Negligence is the Intentional , conscious failure to do something which it is incumbent upon one to do or **doing of a thing intentionally that one**

ought not to do...Negligence is a failure to to exercise due care, While

Gross Negligence is the failure to exercise slight care." Contrary to the

findings of The Court we believe there is **NOT** confirmation of an engineer's

approval, merely a suggestion of available witness testimony . Testimony we

believe is up to a jury to decide the validity of. We believe this constitutes a

genuine question of fact of Gross negligence of the Defendant allowing the

continuation of a building once its own body issued a stop work order that

could not be lifted without the required engineer approval. There is reasonable

question as to whether the engineer approval was ever provided by the

Builder to the department requiring the inspection.

CONCLUSIONS

The Court erred in granting Summary Judgment to the Defendant, The City of Rock Hill, SC, in that there is far more than "a mere scintilla" of evidence supporting the Plaintiff, Nadine Brantley's claims of

1. INVERSE CONDEMNATION

2. GROSS NEGLIGENCE

There are existing issues of genuine questions of fact that entitle the Plaintiff to a jury trial to determine those issues of fact. The Plaintiff respectfully asks the Court Of Appeals to reverse the Order Summary of Judgement in favor of the Defendant, the City of Rock Hill, and uphold the Plaintiff's right to a trial by jury.

TABLE OF AUTHORITIES

CASES

Hawkins v. The City of Greenville South Carolina

STATUTES South Carolina Tort Claims Act

OTHER AUTHORITIES

Being that Nadine Brantley is ProSe she is unable to comment
on the authorities at this time.

CERTIFICATE OF COUNSEL

I, Nadine Brantley, ProSe, certify that the record on appeal
contains material proposed to be included by any of the parties
and not other materials.

Nadine Brantley

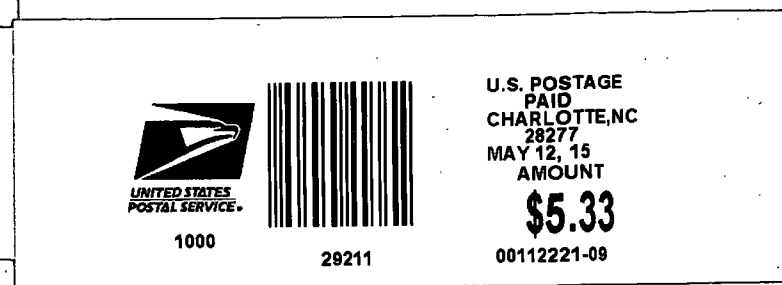
Nadine Brantley, ProSe

RECEIVED

MAY 15 2015

SC Court of Appeals

Nadine Brantley
9501 Greyson Ridge Dr
Charlotte NC
28277



The Honorable Jenny Abbott Kitchings
The Clerk, Superior Court of Appeals
P.O. Box 11629
Columbia, South Carolina
29211

5/14

