THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
No. 2014-001472

Appeal from Newberry County
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge
Civil Action No. 2009-CP-36-415

Appellate Case No. 2014-001472
South Carolina Court of Appeals Unpublished Opinion No. 2016-UP-069

John S. Frick,

Petitioner,

v.

Keith Fulmer, Eleanor F. Bush,
Benny A. Bush, Joseph R. Childers,
Justin Chadwick, Victoria Chadwick,
S.C. Electric & Gas, and Newberry County

Respondents.

PETITION FOR WRIT OF CERTIORARI

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May 23, 2016

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on April 21, 2016.

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May 23, 2016

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QUESTIONS PRESENTED

1. When the facts show that the roadway in question was a public road, historically appearing on county maps, and that part of said road is still open and county maintained, did the Court of Appeals incorrectly construe S.C. Code Ann. §57-9-10 *et. seq.* and applicable case law concerning same in finding that the roadway in question had been abandoned and therefore the statue requiring specific governmental action to close a public roadway did not apply?

2. Where the evidence shows that any demonstrable need or use for a closed and locked gate across a roadway has long passed and that no current need exists, did the Court of Appeals err in affirming the Trial Court's finding that landowners may continue utilizing same to the detriment of Petitioner's free and unfettered access to his property?

3. Where the evidence shows the road in question was at least twenty feet wide when the Petitioner purchased his property, did the Court of Appeals err in affirming the Trial Court's finding that the roadway in question is fourteen feet wide?

STATEMENT OF THE CASE

The South Carolina Court of Appeals issued Unpublished Opinion No. 2016-UP-069, filed April 21, 2016 (hereinafter "Opinion") in which the Court affirmed the lower court's denial of Plaintiff-Petitioner's (herein after "Petitioner" or "Frick") Motion for Reconsideration and/or Motion to Alter & Amend. Petitioner had sought reconsideration of the trial court's Order of Final Judgment issued after a bench trial.

The case centers around a roadway leading from Wheeland School Road in Newberry County and traversing across or along the defendants' properties until it reached Petitioner's property along the shores of Lake Murray (identified as Newberry County TMS 645-8 and hereinafter referred to as "Frick Property"). Petitioner filed a Declaratory Judgment action which also sought injunctive relief. Via consent and via Order of the Honorable Eugene C. Griffith dated September 1, 2010, the injunctive relief was granted whereby any obstructions in the roadway, including the locked gate, would be removed during the pendency of this action.

A bench trial was held before the Honorable Frank R. Addy, Jr. in Laurens County on November 1, 2013. The Court issued its decision via way of Form Order on November 18, 2013 and requested a more formal order to be prepared by defense counsel. The Court issued its Order of Final Judgment dated February 20, 2014 and filed with the Newberry County Clerk of Court on February 24, 2014 (hereinafter Order of Final Judgment). The Order of Final Judgment found that the roadway was not a public road and that it was a simple private easement for the necessary property owners. The Order was based primarily upon the contention that the roadway in question was

abandoned prior to the enactment of S.C. Code Ann. § 57-9-10 *et. seq.* and that the formalities required by said statute did not apply. The Order further allowed the defendants to utilize a locked gate across the roadway and found that the appellant has a 10 to 12 foot wide easement for egress and ingress to his property.

Appellant timely filed his Motion for Reconsideration and/or Motion to Alter and Amend on March 3, 2014. After further argument, the trial court issued its decision dated June 9, 2014 amending its Order to reflect that the Appellant has a fourteen-foot easement in the roadway in question but denying all other relief sought in the Motion for Reconsideration.

Appellant timely filed his Notice of Intent to Appeal and oral arguments were heard in the Court of Appeals on February 1, 2016. The Court of Appeals issued Unpublished Opinion Number 2016-UP-069 on February 17, 2016. Petitioner timely filed his Petition for Rehearing which was denied via Order filed April 21, 2016. This Petition for Certiorari follows.

STATEMENT OF FACTS

Appellant purchased the Frick property, an approximately 84 acre parcel of land located in the Little Mountain area of Newberry County, S.C. in 2003. (R. p. 50, lines 3-7). Appellant visited the Frick property prior to the purchase and accessed it by driving in his vehicle from Wheeland School Road to the property. (R. p. 51, line 2 – p. 52, line 1). The road was unimpeded and the only gate was unnoticed due to it being open and overgrown with weeds to the point that it was easily overlooked. (R. p. 53, lines 2-15). This road, which traverses through or on the border of each defendant's land until it also crosses the Frick property, is the subject of this lawsuit and appeal. (R. p. 52, line 16 – p. 53, line 1).

As a lifelong resident of the community, Petitioner was familiar with the property prior to purchasing same. (R. p. 49, line 20 – p. 50, line 2). The road was originally a part of Seibert Road, which continues on the other side of what is now Lake Murray as shown on a 1938 General Highway Map. (R. pp. 148-150). Other maps, including a Lake Murray map and 2006 road atlas, show the road as continuing to and hooking up with what is still Seibert Road on the opposite side of Lake Murray. (R. p. 151; Pl. Ex. 2 Not capable of Reduction for Inclusion in the Record). It is clear that historically this road was in fact the same as Seibert Road which travelled from Wheeland School Road and across what is now Lake Murray to Macedonia Church Road.

In addition to its historic use as a road traversing between two other public roads, the part of the road which connects Wheeland School Road to the Appellant's property has been used well after the construction of Lake Murray. The road was utilized by at least two home owners, one of which resided on the Appellant's property and the road

was utilized by mail carriers and other services providers for these homes. (R. p. 60, line 20 – p. 61, line 8). Furthermore, the road was utilized by Boy Scouts and others as access to the lake and camping sites. (R. p. 59, line 25 – p. 61, line 8). The road was able to be accessed with regular automobiles and was actually wider than some other county dirt roads. (R. p. 61, line 13 – p. 62, line 3). Although there were no documents indicating that the County had recently maintained the road, this is not unusual as the County has not retained any maintenance records prior to the late 1980's. (R. p. 62, lines 4-8).

The Appellant's property, when it was previously owned by Champion and the SCE&G property have also been a part of the South Carolina Wildlife Management Area program. (R. p. 47, lines 6-16). Without utilizing this road, these WMA lands would have been landlocked and unusable by the public unless they were able to access it via water and this was also impossible at times due to low water levels. (R. p. 66, lines 4-17).

After the Appellant purchased the property, Defendant Fulmer's father, his predecessor in title, approached the Appellant about closing and reutilizing a gate along the roadway. (R. p. 63, lines 17 - 23). Appellant protested against same but the gate was cleaned up and closed and locked over his protests. Although the Appellant was given a key, in the beginning the key would often not work and when some the defendants suggested the use of separate locks for each landowner, the Appellant would often find his lock out of sequence or arranged in such a manner that he was not able to access his property. (R. p. 63, line 20 – p. 64, line 20). The gate blocking Appellant's unfettered and uninterrupted access to his property was erected only after he purchased the land to the chagrin of Defendant Fulmer's family. (R. p. 52, lines 12-15). Van Hoffman, a

recently retired employee from Defendant SCE&G agreed that the gate would sometimes be locked incorrectly and that people would get locked out. (R. p. 98, line 14 – p. 99, line 5). Defendant Fulmer, who now spearheads the campaign to keep the gate closed and locked, argues that the gate is necessary to keep out trespassers and poachers. However, Defendant Fulmer testified that he was only able to remember one instance where he actually encountered a trespasser and one other incident via hearsay where Defendant Childers spotted a car near the gate. (R. p. 116, line 15 – p. 117, line 19). Defendant Fulmer further testified that between the institution of this litigation in 2009 and the time of the trial, over four years later, there were zero incidents of trespassing, littering or any other problems. (R. p. 132, line 25 – p. 133, line 18). In Defendant Fulmer's own words, "that's a thing of the past..." (R. p. 133, lines 16-18).

The Defendants further argued that the roadway was only 10 to 12 feet wide. It is clear from the testimony that the roadway was at least 20 feet wide, and wider in other spots, and that it ran 25 feet or more from "ditch to ditch." (R. p. 68, lines 11-20). Even Defendant Fulmer's testimony on direct examination by his own attorney shows the true width of the road:

> Question: How wide is the road as it now goes through your property?
>
> Answer: "...it's nothing under 20 feet wide, except where the gate and stuff is..." (R. p. 123, lines 11-18).

Mr. Fulmer further testified that log trucks can easily traverse the road and that the road was between 14 and 20 foot wide. (R. p. 123, lines 11-21). Also, Defendant Fulmer indicated that the 14 foot wide gate does not cover the whole road bed and that the gate is

at the most narrow part of the road. (R. p. 130, line 18 – p. 131, line 10; R. p. 174).

Photographs offered in evidence show a roadway, not including ditches, that is 20 feet or more wide as evidenced by the 20 foot wide pipes running underneath the roadway. (R. p. 68, lines 15-20; R. pp. 173-174)).

Appellant purchased a piece of property that had clear, unimpeded access from Wheland Road on a public roadway that is no less than 20 feet wide. Only after the Defendants attempted to continually deny him access did he initiate a Declaratory Judgment action to protect his rights.

ARGUMENTS

I. THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT THE ROADWAY IN QUESTION IS NO LONGER A COUNTY ROAD DESPITE THE FACT THAT THE GOVERNMENTAL AUTHORITY TOOK NO AFFIRMATIVE STEPS TO CLOSE IT AND PART OF SAID ROAD REMAINS OPEN AND COUNTY MAINTAINED.

When considering appeals arising from a declaratory judgment action, the underlying issues determine the standard of review. Actions regarding easements and roadways are actions of law and are reviewed for errors of law. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008). In actions at law tried without a jury, factual findings are reviewed utilizing the "any evidence" standard. *Id.* at 454. This Court should grant the Petition for Writ of Certiorari to correct said errors of law and misapplication of facts.

The Unpublished Opinion concentrated and focused on the common law tenants of abandonment. While those issues are relevant, the Opinion misconstrued or ignored

the "elephant in the room" by failing to consider the fact that the roadway was a public roadway, part of which is still utilized and county maintained today. When considering the status of a public roadway, S.C. Code Ann. § 57-9-10 et. seq. applies, especially when a portion of the roadway continues in use to this day. The Court of Appeals and the trial court committed reversible error, improperly considering only the common law tenants of abandonment in arriving at their final conclusion.

S.C. Code Ann. §57-9-10 *et seq*. lays out the procedures which must be followed for the State, or any of its political subdivisions, to abandon or close any street, road or highway "whether opened or not." (emphasis added). Newberry County did not petition the court, publish their notice of intention to file in the newspaper, send certified mail to all abutting property owners, or post signage along the roadway in question as required by S.C. Code Ann. §57-9-10 (2012). If, and only if, the County followed proper procedures could the property be reverted back to the private landowners. S.C. Code Ann. §57-9-20 (2012).

The one-page Unpublished Opinion fails to properly consider S.C. Code Ann. §57-9-10 *et seq*. While the common law tenants of abandonment may not have been completely abrogated by the statute, those tenants either do not apply in this matter or were misapplied to reach a conclusion. Once a road is a public road, and a portion of that road continues in use as such, the statute controls all issues related to use and abandonment. It is uncontested that the road in question was once a part of Seibert Road, a road which connected Wheeland School Road and Macedonia Church Road prior to the flooding which created Lake Murray. (R. pp. 148-150; p. 151; R. p. 151; Pl. Ex. 2 Not capable of Reduction for Inclusion in the Record). Part of Seibert Road still exists and is

still maintained by Newberry County. (R. p. 82, line 24 – p. 84, line 22; R. p. 157). It is important to note that Newberry County has failed to take any action to close the portion of Seibert Road in question in this matter. Accordingly, the road remains a county road to this very day.

The South Carolina Supreme Court and Court of Appeals have stated that "by creating a formal judicial procedure for terminating a public right of way over land, Section 57-9-10 removes the uncertainty attending the common law of dedication and abandonment." *South Carolina Dept. of Transportation v. Hinson Family Holdings, LLC*, 361 S.C. 649, 606 S.E. 2d 781 (2004); *See also Hoogenboom v. City of Beaufort*, 315 S.C. 306, 433 S.E.2d 875 (Ct. App. 1992). In the *Hinson* case, the road in question had actually been rerouted and the portion subject to the lawsuit was no longer being utilized by the general public or maintained by the County. Even with those facts, the Court found that the South Carolina Department of Transportation and/or Horry County were required to follow the statutory scheme for abandoning or closing a road. *South Carolina Dept. of Transportation v. Hinson Family Holdings, LLC*, 361 S.C. 649, 606 S.E. 2d 781 (2004). Here, the roadway was essentially "split" by the creation of Lake Murray, but both pieces of the road continued in use for some time, including the portion of Seibert Road which adjoins Macedonia Church Road which continues to be maintained and controlled by Newberry County.

The Unpublished Opinion incorrectly focuses solely on themes of common law abandonment. S.C. Code Ann. § 57-9-10 *et. seq.* is not even mentioned in said Opinion. Regardless, the cases relied upon by the Opinion support Appellant's stance. In *K & A Acquisition Group v. Island Pointe, LLC*, the Court found that the South Carolina

Department of Transportation actually sold the tract of land that was formerly a toll road pursuant to the statutory scheme for abandoning former roads. Here, the County took no action to abandon Seibert Road, a road that provided unencumbered access to Appellant's property and WMA lands. "The mere act of relocating the toll road did not have the effect of abolishing the public easement created in the original route." *K & A Acquisition Group v. Island Pointe, LLC,* 383 S.C. 563, 682 S.E.2d 252 (2009). Here, the fact that the original route was interrupted by the introduction of water to create Lake Murray does not equal a knowing abandonment of the road by Newberry County.

Although not cited in the Unpublished Opinion, the trial court's Order also misapprehended *City of Myrtle Beach v. Parker*, 260 S.C. 475, 197 S.E.2d 290 (1973). In that case, a road which was made unusable for its original purpose due to a bridge being destroyed was declared to still be dedicated to public use because there was no evidence the City ever considered the matter, "let alone having concluded in the exercise of sound official discretion that any portion of Spivey Beach Road was no longer required for public use or convenience." *Id.* at 296. In the present matter, there is no evidence of Newberry County officials discussing or utilizing any discretion in making a decision to close Seibert Road and abandon it, and certainly no evidence they followed the statutorily required procedures. *City of Myrtle Beach v. Parker* also supports Appellant's contention that Seibert Road is still a public road. A distinct difference was drawn between the abandonment of a public easement and a private easement. Mere non-use of a dedicated street for twenty years would not amount to abandonment as would destroy the right of the public to the street. *Id.* at 296.

The evidence presented also supports Petitioner's argument that even if common law abandonment comes into play, the road was not abandoned. Testimony shows that the portion of the road accessing the Appellant's property was utilized as late as the 1950's for mail delivery and access to two homes. (R. p. 60, line 20 – p. 61, line 8). Furthermore, the road was more recently used by the public via the Boy Scouts and other groups utilizing it to access camping areas. The road, which still appears on current maps, is also the only land route to access Wildlife Management Area lands held by the South Carolina Department of Natural Resources for public use. Seibert Road was, and remains, a public, county maintained road.

The Court of Appeals erred in finding that the portion of Seibert Road providing access to the Frick property was abandoned and therefore no longer a public road. The Court of Appeals failed to discern that while S.C. Code Ann. §57-9-10 *et. seq.* may not have completely abrogated common law abandonment, it did so in this case. The County, as well as the adjoining landowners, continued to allow general public access via way of mail delivery, use by scout troops and at least potential use by hunters engaging in hunts on Wildlife Management Area lands. (R. p. 59, line 25 – p. 61, line 8). Seibert Road was, at the time of Petitioner's purchase of the Frick property, a public road which traversed, unimpeded, from Wheeland School Road to Petitioner's property and should remain as such.

II. THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT LANDOWNERS SURROUNDING SAID ROADWAY WERE ENTITLED TO MAINTAIN A CLOSED AND LOCKED GATE WHEN THE EVIDENCE SHOWS THAT THERE IS NO CURRENT NEED FOR THE GATE OTHER THAN TO HINDER PETITIONER FRICK'S ACCESS.

The Court of Appeals based it's affirmation of the lower court's Order on Judy v. Kennedy, 398 S.C. 471, 476, 728 S.E.2d 484 (Ct. App. 2012), indicating that the justification for and legality of a locked gate must be decided on a case by case basis – and Petitioner agrees with this assertion. However, in this matter, there is no need for the gate in question and maintaining same is an improper impediment to Petitioner's free and unfettered use of his property. The Court of Appeals finding to the contrary is in error and should be reversed.

The trial court based its initial finding on Respondents' arguments that a gate was necessary for preservation of their property and protecting it from trespassers and vandals. However, there was no credible evidence to support this finding. The only evidence of any past history of trespassing was antidotal and occurred long ago. No proof whatsoever of vandalism was offered. There is no necessity or even slight need for the gate for the "preservation of the servient estate." *Brown v. Gaskins*, 284 S.C. 30, 324 S.E.2d 639 (Ct. App. 1984). If a gate or blockade is erected that is not necessary to protect the land, it is merely to restrict human traffic and is improper. *Id.* at 34.

A gate may be erected across an easement if they "(1) are so located, constructed, and maintained as not to unreasonably interfere with the right of passage of the dominant estate, (2) are necessary for the preservation of the servient estate, and (3) are necessary for use of the servient estate." *Brown v. Gaskins,* 284 S.C. 30, 33, 324 S.E.2d 639, 640 (Ct.App.1984). None of these factors are present. The gate was erected and/or re-erected

for the sole purpose of interfering with the Appellant's use of his property. Defendant Fulmer testified that the only two instances of trespassing and/or vandalism were a thing of the past. (R. p. 133, lines 4-18). The gate was not in use when Petitioner purchased the Frick property and was only resurrected when some defendant's learned of the purchase. This, coupled with the fact that the gate was opened when this case was filed in 2009 and left open for over 4 years without incident of vandalism or trespassing shows that the gate is not needed for the preservation of the defendants' properties. (R. p. 132, line 25 – p. 133, line 18).

Appellant's uncontroverted testimony shows that when Appellant purchased the property in question, he travelled unfettered between Wheeland School Road and his property, via his personal vehicle, and that any gate was open and seemingly permanently disabled via weeds and other growth. (R. p. 51, line 2 – p. 52, line 15). Even Van Hoffman, a former land manager for Defendant SCE&G who was responsible for the affected SCE&G tract, indicated the "...gate was always open...." (R. p. 101, lines 11-16). The testimony that gates have been erected in the past shows no current need for the gate in question and is irrelevant. Appellant purchased his property with an open road between said property and the nearest public road - i.e Wheeland School Road.

Appellant further testified that after his purchase, the gate and locking mechanisms were utilized by Defendant Fulmer or his predecessor in title to intentionally deny him access. (R. p. 63, line 17 – p. 64, line 20). SCE&G employee Van Hoffman indicated that the gate was always open when he visited the property. (R. p. 101, lines 11-16). The use of the gate and locks, both in reality and in theory, unreasonably interferes with Appellant's use of his property and his rite of passage to his property. It

would also be unreasonable, if at some point in the future, subsequent purchasers (which could number 40+ landowners) all have to depart their vehicles each day to access their homes or land. It would be extremely unreasonable and a burden of immense proportions if emergency vehicles could not reach a homeowner suffering from a stroke or heart attack, or if the gate locks were found to be improperly locked such that the landowner could not open them to take an injured child to the emergency room.

While landowners may protect their property, they may not do so when it creates an undue burden on other landowners. Landowners may not unreasonably burden other landowners with an interest in the property and the reasonableness of the impediment is to be determined on a case by case basis. *Judy v. Kennedy*, 398 S.C. 471, 728 S.E.2d 484 (2012); *Thomas v. Mitchell,* 287 S.C. 35, 336 S.E.2d 154 (1985). In *Judy*, as cited by the Court of Appeals, the court found that offering one "key card" to the dominant landowner was not sufficient and that the key code and several cards must be provided. This was on land utilized for timber and hunting only and allowed the dominant landowner and guests to enter without exiting their vehicle. Here, the gate was re-erected or re-established after Appellant purchased his property in an effort to prohibit John Frick from utilizing and/or developing his property. It was clear from the evidence that Defendant Fulmer, and his father before him, were not happy that Appellant was able to purchase the property in question and their plan was to limit Appellant's access, use and enjoyment of the property. (R. p. 94, line 15 – p. 95, line 8; R. p. 122, line 11 – p. 123, line 2; R. p. 135, lines 1-12). The gate and the locks were part of that plan and are an unreasonable burden that should not be allowed. This Court should grant Certiorari to review the Court of

Appeals' ruling and reverse the lower court's finding that the Respondents may maintain the unnecessary gate across the road in question.

III. THE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT'S ERRONEOUS FINDING THAT THE ROADWAY IN QUESTION WAS ONLY FOURTEEN FEET WIDE WHEN THE EVIDENCE CLEARLY SHOWS THE ROAD-WAY IS TWENTY FEET WIDE OR MORE.

Although Appellant asserts the roadway in question is a public road, if Appellant and any subsequent landowners are only entitled to an easement in the road as determined by the trial court and upheld by the Court of Appeals, the roadway is much wider than determined by the Court. "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assoc. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Rushing v. McKinney*, 370 S.C. 280, 633 S.E.2d 917 (Ct. App. 2006). In this instance, the lower courts ignored the competent evidence and this Court should review and reverse their erroneous rulings.

The Court of Appeals opined that easement owners "cannot increase the easement" in justifying its affirmation that the road is only fourteen feet wide. However, the Court of Appeals failed to consider that the road was in fact widened and improved on several occasions by SCE&G, another easement owner. The fact that the improvements by SCE&G occurred prior to Petitioner's purchase of the Frick property entitled Petitioner to the benefit of those improvements – i.e. he should be allowed to utilize what was present and expected when the sale occurred.

The trial court and Court of Appeals may be allowed to rely almost entirely upon the testimony of one witness, but it is improper and an abuse of discretion to ignore all other testimony, even further testimony by the same witness. Van Hoffman, a former employee of Defendant SCE&G who was relied upon heavily in the Order and the Opnion, testified the road had to be a minimum of 12 feet wide in the straightaways for log trucks and that the roadbed was widened in 1970 and again in 1990 by SCE&G. (R. p. 90, line 21 – p. 91, line 19; R. p. 92, lines 1-9; R. p. 103, lines 2-23). These widenings were all prior to Petitioner's purchase of his property. While the trier of fact is entitled to great deference in his or her findings, the lower court is not at liberty to simply ignore the clear, concise evidence presented.

Appellant testified that the road was 20 to 30 feet wide and Van Hoffman testified that the road was "much improved" in or around 1990. (R. p. 68, lines 11-20; R. p. 91, lines 14-19). Most telling is Defendant Joe Fulmer's testimony regarding the road width as follows:

A. On direct examination by his own attorney, Defendant Fulmer testified as follows:

> Q: How wide is the road now as it goes through your property?"
>
> A: "...it's nothing under 20 feet wide, except where the gate and stuff is..." (R. p. 123, lines 11-18).

B. Mr. Fulmer further testified that "Log trucks can get through there good" and that it was accurate to say the road was between 14 and 20 feet wide. (R. p. 123, lines 19-21).

C. Mr. Fulmer indicated the 14 foot wide gate does not cover the whole road bed and that the gate is at the most narrow part of the road. (R. p. 130, line 18 – p. 131, line 10).

Photographs offered into evidence show a roadway, not including ditches, that is 20 feet or more wide. (R. p. 173 - 174). Defendant Fulmer further testified that the road was wide enough for two cars to pass and that a fire truck could turn around. (R. p. 125, line 10 – p. 126, line 5). Evidence was also provided that 20 foot pipes run underneath the roadway, with the drivable surface extending the length of the pipes, and that SCE&G widened portions of the road when performing their logging operations. (R. p. 68, lines 11-20; R. p. 90, line 21 – p. 91, line 19; R. p. 92, lines 1-9; R. p. 103, lines 2-23).

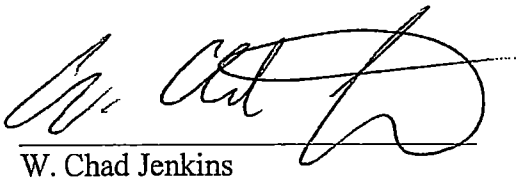
The Court of Appeals affirmation of the trial court's finding that the roadway is 14 feet wide is not based upon the evidence presented in the Record. One witness indicated that at some point, the roadway was 12 feet wide because that was the minimum needed for log trucks, but all other evidence indicates the roadway was much wider and substantially improved prior to the Petitioner's purchase of his property. Ignoring these facts is a reversible error.

CONCLUSION

The Unpublished Opinion is in error in affirming the trial court's erroneous rulings in this matter. The Court of Appeals failed to properly consider the statutory factors regarding the abandonment of a public road and erroneously affirmed the trial court's findings regarding the necessity and reasonableness of the locked gate and the width of the road. For the reasons set forth herein, this Court should grant the Petition for Writ of Certiorari to review and correct those errors.

Respectfully Submitted

POPE AND HUDGENS, P.A.

By: 

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