

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Appeal From York County
Court of Common Pleas
S. Jackson Kimball, Special Circuit Court Judge

SC Court of Appeals

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 the State of South Carolina is the Respondent.

APPENDIX TO RECORD ON APPEAL

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INDEX

Deposition Transcript of James Gwin Bagley, Jr., ... 1
pp. 19-20, 54-57

Examination of Bagley - Direct by Cameron Halford

Deposition Transcript of Nadine Catalfano Brantley, ... 7
pp. 36-41

Examination of Brantley - Direct by W. Mark White

Deposition Transcript of Ronald E. Wright, P.E. 13
pp. 60-61

Examination of Brantley - Direct by W. Mark White

Deposition of James Gwin Bagley, Jr.

19

1 A. I am.

2 Q. Can you tell me what it is?

3 A. It's a letter from Mr. Costner to a Ms. Renwick.

4 Q. Just briefly, what's the substance of the letter?

5 What does Mr. Costner tell Ms. Renwick?

6 A. He's asking permission to get on her property to
7 look at, I'm assuming, a complaint that she may have
8 had regarding some flooding in her driveway.

9 Q. And as we saw a form a couple pages earlier in this
10 exhibit, it appeared to be a right of way or right
11 of entry form, is that the typical procedure that
12 the city employs?

13 A. It is, particularly when we have a situation on the
14 property that we don't own the system or own the
15 structures. Obviously if we have an electrical
16 easement to do work, we already have permission to
17 get on the property to do what we need to do or to
18 at least address the issue that the customer may
19 have. When you get the storm water, most of the
20 systems are private or owned by a third party if
21 it's an apartment complex or individuals. Again,
22 water is a little different. Nobody really owns the
23 water, and in most cases, the waterway. They could
24 have piping, could have open ditches, so before we
25 can access property, since we don't have permission

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1 through some kind of recorded easement or conveyance
2 saying that we own the structures or own the
3 systems, then we would need to have access to their
4 property to see even what they're talking about. A
5 lot of the systems may be owned by the DOT as well,
6 but we try to look into those situations if a
7 customer has concerns.

8 Q. Fair enough answer, but it appears that the City of
9 Rock Hill asked for right of entry into
10 Ms. Renwick's property.

11 A. Correct.

12 Q. This would be the same 1020 Willowbrook address that
13 my client now owns?

14 A. That's correct.

15 Q. Okay. What was the purpose for wanting to go there?

16 A. I'm not sure. Based on that correspondence, again,
17 it appears that she had asked for someone to look at
18 flooding on a driveway. Again, not knowing maybe
19 what caused the flooding, it appears that our
20 department in the stormwater area asked for
21 permission to get on the property to try to look
22 into the situation that she may have had with her
23 system.

24 Q. The inlet that we testified to earlier, is that on
25 my client's property?

1 a slab so it's low to the ground." And he indicated
2 that it was non-preventable on the City's behalf.
3 So I'm assuming the fact that it was something --

4 Q. I probably have a copy --

5 A. That's okay. That's fine.

6 Q. I don't mean to be passing it back and forth. Page
7 two says, "See attached photos." Can you read the
8 comment in the box? Who would have made that
9 comment?

10 A. Chris Costner signed it, so he would have made it.

11 Q. So Chris Costner was employed by the City of Rock
12 Hill?

13 A. Yes.

14 Q. Can you read the comment for me?

15 A. "See attached photos, see attached building
16 inspection record. It appears footings were never
17 approved."

18 Q. And going back to Exhibit Number 8, which is
19 highlighted for you, that would be consistent with
20 that business record; would it not?

21 A. I'm not sure if that's what he's talking about or
22 not.

23 Q. It says it appears that the footings were never
24 approved. Was there in fact --

25 A. This says the footings were approved. So I'm not

1 sure why he said that.

2 Q. What date does it state?

3 A. 3/13.

4 Q. 3/13 of what year?

5 A. 2000, the slab and footing were poured is okay.

6 Q. And that indicates that the slab and the pour was
7 okay but that comes after the -- if I'm reading it
8 right, July 7th, 1999, notation; does it not?

9 A. It does.

10 Q. And what does the July 7th, 1999, notation read?

11 A. Disapproved damp near branch and filling with water,
12 need engineer to okay.

13 Q. Do you have personal knowledge of when a disapproval
14 is written on there, can the City stop the permit or
15 stop the construction? Does the City have the power
16 to do so?

17 A. We do. Typically if it's one that's associated with
18 something out of the ordinary, like water, that the
19 builder typically may not have had a report. If
20 they fill like it needs additional information, they
21 would say you need to go get additional information
22 before we'll allow you to go on.

23 Q. In fact this was notated that we needed an engineer
24 to okay?

25 A. That's correct.

1 Q. The City today can't produce a document where an
2 engineer okayed it?

3 A. That's correct. We can't produce a lot of documents
4 from 15 years ago or 13 years ago.

5 Q. Okay. I understand your position. I'm not asking
6 for a lot of documents, can the City produce a
7 record which says an engineer okayed this?

8 A. I cannot. I have personally spoken with the two
9 people who were involved in it at the time who say
10 that Mr. Wherry may have a copy and we tried to
11 reach Mr. Wherry to get one, but he believes he has
12 a check where he paid him for it that he can produce
13 to show that a report was done for property.

14 Q. Need engineer to okay, that's what number 8 says.
15 When a notation like this occurs on the inspection
16 form, is it typically a private engineer that is
17 engaged or is it an engineer within the City of Rock
18 Hill that would do that?

19 A. Oh, it'd be private. It's not a City engineer.

20 Q. So would the typical procedure be to have Mr. Wherry
21 contact the private engineer?

22 A. Correct.

23 Q. So the City wouldn't undertake to do that?

24 A. That's correct. We'd just have to have an engineer
25 to call us to say that he had done it, something

1 that would identify he had looked at it. And again,
2 the inspection process is not one that's done out of
3 duty or obligation. It's one that's done, just
4 again, to try to better our community to make things
5 more structurally sound.

6 Q. Going back to Number 8, there's two highlighted
7 portions and my client was just kind enough to point
8 out that -- what does the -- if you can read it, the
9 highlighted portion read there at the bottom? Does
10 it say the slabs were already poured?

11 A. Yes. It says, "Slab and footing already poured."

12 Q. And the city okayed it?

13 A. Correct.

14 Q. And the entry that's dated April 10th, 2000, the
15 third yellow line, what does it state in full?

16 A. I'm not sure what that says. It says disapproved,
17 but I can't make out the latter part.

18 Q. It appears that Number 8, if I'm reading it right,
19 has two words on it that state disapproval twice.

20 A. I can't verify that at all.

21 Q. Well, let's refer to the top line.

22 A. Oh, you're asking me the entire document or that one
23 line? The one line I don't believe says disapproval
24 twice.

25 Q. I'm sorry if I'm misstated that. Let's look at the

Deposition of Nadine Catalfano Brantley

36

1 would show that that culvert belongs to the City of
2 Rock Hill?

3 A. Only that they've come out and cleaned it out.

4 Q. Well, is it your understanding that the City of Rock
5 Hill, in providing assistance to the synergy, would
6 only clean out its structures, or might clean out
7 anything that someone was complaining about?

8 A. I don't know.

9 Q. Okay. How many times have you viewed a City of Rock
10 Hill employee cleaning out that culvert?

11 A. Never.

12 Q. All right. What is your basis of your understanding
13 that the City of Rock Hill's employee has cleaned
14 out that culvert?

15 A. I made a request for the culvert to be cleaned out
16 after the June flood.

17 Q. June of?

18 A. 2013.

19 Q. Okay.

20 A. Are you not aware of that flood?

21 Q. You stated that the City of Rock Hill employee has
22 cleaned out the culvert.

23 A. Yes.

24 Q. I asked you what is your basis of knowledge, since
25 you didn't see it, that a City of Rock Hill employee

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1 cleaned out that culvert?

2 A. I -- I filed a request on the City's website, and
3 that request was completed by the city.

4 Q. All right. What makes you believe that that culvert
5 was cleaned out by City employees?

6 A. Because they completed the request.

7 Q. Are you aware of anyone who witnessed the culvert
8 being cleaned out?

9 A. No.

10 Q. If the culvert was cleaned out by a DOT employee,
11 would that change your response to the question of
12 has the City ever cleaned out the culvert?

13 A. No.

14 Q. Under the hypothetical that in June of 2013 the work
15 that was done to clean out the culvert was done by
16 DOT employees --

17 A. I don't know that.

18 Q. I'm asking you to assume that.

19 A. Okay.

20 Q. For purposes of this little deposition, for right
21 now, assume that the work that was performed in June
22 of 2013 was performed by DOT employees.

23 A. Uh-huh.

24 Q. Are you aware of any other occasion in which the
25 City of Rock Hill employees cleaned out the culvert?

Deposition of Nadine Catalfano Brantley

38

1 A. Yes.

2 Q. When?

3 A. I think they've done it in August of 2012. Because
4 the -- the culvert was completely blocked, and then
5 I went by -- without making a request to the City, I
6 went by, and the debris that had been in the culvert
7 was then placed on my lot next to the ditch.

8 Q. All right. Did you witness that work being
9 performed?

10 A. No, I did not.

11 Q. So you're assuming that since the material that was
12 blocking the culvert was moved, that the City did
13 it?

14 A. Yes, I am.

15 Q. All right. Do you have any information that would
16 indicate the City did that work, other than the fact
17 that it was done?

18 A. Yes. When I spoke to the State DOT official after
19 the June of 2013 flood, he informed me that he had
20 never been called to check out that culvert.

21 Q. What was his name?

22 A. Oh, gosh, he's the assistant maintenance supervisor.

23 Q. Down in Chester?

24 A. No, right here in Rock Hill.

25 Q. Okay.

Deposition of Nadine Catalfano Brantley

39

1 A. I think it's James, his last name starts with an H.

2 Q. All right, so your understanding that the City of
3 Rock Hill cleaned out the culvert in August 2012 is
4 based solely on the fact that materials that were
5 blocking were moved, and the DOT said it had never
6 done it --

7 A. Right.

8 Q. -- in 2013?

9 A. That's my assumption.

10 Q. Okay. You have no other information to show that
11 other than those factors?

12 A. Right.

13 Q. Okay. Are you aware that the City of Rock Hill
14 passed your complaint in June of 2013 onto the DOT?

15 A. No, I'm not.

16 Q. You're not aware that the DOT responded to that
17 forwarding of your complaint, and cleaned out the
18 culvert?

19 A. No.

20 Q. Okay.

21 A. I was told by DOT that they did not go out.

22 Q. Well, were you told by the DOT that they did not go
23 out in June of 2013 or they'd never been out there
24 before?

25 A. Both.

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1 Q. Okay. You don't remember the fella's name?

2 A. He's the assistant maintenance supervisor.

3 Q. You spoke to him when? What month?

4 A. Oh, probably August.

5 Q. Okay. The first flooding you encountered since
6 you've owned the property was in 2011?

7 A. Yes.

8 Q. Is that the only time the flood waters have got into
9 the structure since you've owned the property?

10 A. No.

11 Q. All right. Tell me about the 2011 flood.

12 A. Well, my husband and son-in-law went down to mow the
13 grass, and they saw that the water had been up on
14 the side of the structure about the height of a
15 Clorox bottle, probably about 12 inches; and that
16 the water had gone through the front door, the back
17 door, and the -- the vent holes for the dryer vent,
18 and completely inundated the house, except for like
19 maybe ten square feet in the middle of the living
20 room floor.

21 Q. The flood waters weren't at that height when they
22 got there, they just saw --

23 A. No, they had receded.

24 Q. They just saw evidence where there was water up --

25 A. Right.

Deposition of Nadine Catalfano Brantley

41

1 Q. -- against the structure?

2 A. Because the flood occurred around August 13th, and
3 they were there like August 23rd.

4 Q. When did you first contact the City about any
5 flooding?

6 A. That day, August -- around August 23rd -- 22nd or
7 23rd.

8 Q. Who did you speak --

9 A. Of 2013.

10 Q. Who did you speak to?

11 A. I spoke with Angela, and she referred me to Risk
12 Management and to Trudy Amick.

13 Q. What did Trudy tell you?

14 A. She told me that there was a history of flooding at
15 the house. That she had been out there, and spent
16 days in two -- in two Decembers watching the house
17 flood. That -- that Risk Management had an
18 extensive file on the flooding. That it had
19 flooded, in addition to those two floods that she
20 had witnessed, that it had flooded before that. I
21 asked her how the house would have ever gotten built
22 under those circumstances; and she told me that it
23 was built without a permit.

24 Q. Anything else?

25 A. She told me to go ahead and contact Judy Pavese at

Deposition of Ronald E. Wright, P.E.

60

1 the -- the coefficient; which, in my mind, may need
2 to go upwards, and not downwards, which would make
3 the situation worse.

4 Q. Okay. There's a sentence in your report that says,
5 "The City had responsibility to control water
6 directed onto and through the property, Spencer
7 Park, control and maintain the creek, and
8 surrounding area to keep it clean of debris and
9 ensure the volume and the flow of water." What do
10 you base that sentence on?

11 A. I believe that comes through the document I had seen
12 directly from the City's information from 1999. I
13 believe it was Exhibit 12 to our report.

14 Q. Is that the document you're referring to?

15 A. (Reviews document.) Yes, I believe this is the one.
16 But it's not from the 1999, but it talks about that
17 in the 1990s, it was recognized the need to address
18 stormwater systems.

19 Q. In the sentence that I just read, "The City had the
20 responsibility to control the water directed onto
21 and through the property, Spencer Park, control and
22 maintain the creek, and surrounding area to keep
23 clean of debris, and to ensure that the volume and
24 flow of water that are being generated could be
25 managed with no harm to adjoining properties such as

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1 1020 willowbrook," that sentence.

2 A. Yes.

3 Q. Do you base that sentence on anything other than
4 that document?

5 A. Well, the current regulations, they would still have
6 responsibility to make sure that flooding doesn't
7 occur currently through their stormwater main line,
8 which would have very similar types of meanings is
9 what this document shows in addition to saying that
10 the water flow needs to be controlled and not allow
11 flooding to occur to properties.

12 Q. All right. Other than those two sources, the old
13 source, and the contemporary source, if I can put it
14 that way, do you have any basis for that sentence of
15 your report?

16 A. I don't recall any other documents looked at, that
17 would be past what the City of Rock Hill had said.

18 Q. Okay. Does it change your opinion -- under the
19 hypothetical condition that that is an incorrect
20 statement, does that change your opinion as to the
21 City's responsibility to the damage to the
22 Plaintiff's home?

23 A. That what is an incorrect statement?

24 Q. That the City does not have the responsibility as
25 you've described in that sentence that I read. I'm