

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, III, Master-In-Equity

Appellate Case No. 2016-002102

RECEIVED

JUN 14 2017

SC Court of Appeals

Canadian River Farms, Ltd., Colt Farms, Inc., B C Farms, Inc. n/k/a B C
Farms of South Carolina Inc., and Outback Farms, Ltd.,Respondents/Appellants,

v.

Becky J. Gonshorowski, The South Carolina Department of Transportation,
and Aiken County South Carolina, a body politic and political subdivision
of the State of South Carolina, Respondents,

Ex Parte: Carolyn Barrett, Robert Barrett, and Save Windsor SC,
Proposed IntervenorsAppellants/Respondents.

FINAL REPLY BRIEF OF RESPONDENTS/APPELLANTS AS APPELLANTS

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ARGUMENT

The master's order denying the motion to intervene should be affirmed for the reasons stated by the master as well as for the reasons set forth in the Farms' Final Brief as Appellants. Proposed Intervenors received notice of the lawsuit and the hearing, and failed to attach a pleading to the motion as required by Rule 24(c), SCRCPP. For these reasons as well as those cited by the master, the order denying the motion to intervene should be affirmed.

I. Proposed Intervenors received notice of the lawsuit and had the opportunity to be heard.

Although the newspaper notice and the notice posted along the dirt roads did not provide the date and time of the road closure hearing, the notices complied with the statute and provided Proposed Intervenors with notice of the lawsuit and the opportunity to be heard.

First, the newspaper notice and the notice posted along the dirt roads alerted Proposed Intervenors to the existence of the lawsuit and gave them the opportunity to object to the relief requested. Indeed, five days after the lawsuit was filed, Proposed Intervenors Carolyn and Robert Barrett wrote a letter to the court referencing the case number and stating that approximately 50 other people objected to the closure. (R. p. 288). Additionally, the letter requested that the court provide the Barretts with notice of the trial (or hearing) date. *Id.* The following week, a petition containing 25 signatures objecting to the road closure was filed with the court. (R. pp. 289-92). These two filings alone show that Proposed Intervenors were aware of the lawsuit and had the opportunity to discover the date and time of the hearing.

Second, Proposed Intervenor incorrectly state that no one received written notice of the hearing. As requested by the Barretts, counsel for the Farms provided direct written notice of the date and time of the hearing to the Barretts. (R. pp. 57-59, 77). Any other interested party could have made the same request, but they chose not to do so. Additionally, the Barretts could have and should have alerted the other Proposed Intervenor of the hearing date and time. Counsel for the Farms was under no obligation to do so.

Third, the notice was effective. Multiple people attended the hearing and three testified. (R. p. 12). As the judge explained, the courtroom “was pretty much filled up on the two benches.” (R. p. 231, lines 14-15). The master invited any person who was interested to testify. (R. p. 107, line 24 – p. 108, line 2).

Finally, the notice complied with the statute. The statute does not require the notice to set forth the date and time of the final hearing. Instead, the statute requires as follows:

Prior to filing the petition, *notice of intention to file* shall be published once a week for three consecutive weeks in a newspaper published in the county where such street, road or highway is situated. Notice also shall be . . . posted by the petitioning party along the street, road, or highway

S.C. Code Ann. § 57-9-10 (Supp. 2016) (emphasis added). The Farms fully complied with each of these requirements. The newspaper notice stated that the Farms intended to file a summons and complaint for the abandonment and closure of certain roads and provided a description of the roads. (R. p. 42). The notice posted along the roads stated that there was a pending road closure pursuant to S.C. Code Ann. 57-9-10. (R. pp. 45-50). Additionally, both notices contained the contact information for the Farms’ attorney. (R. pp. 42, 45-50).

Because the Farms complied with the statute and Proposed Intervenors received notice of the hearing as evidenced by the fact that several people, including the Barretts, attended, the issues related to notice do not provide a basis for reversing the master's order. The order denying the motion to intervene should be affirmed.

II. Proposed Intervenors' failure to attach a pleading to the motion to intervene is an additional ground for denying the motion.

Proposed Intervenors' argument that it is "common and customary practice" to accept a motion to intervene without a pleading is not supported by the law. Although Proposed Intervenors may have found circuit court orders in which a motion to intervene was granted without a proposed pleading attached, the cases do not establish a common or customary practice. Indeed, the Farms have identified at least one case that states to the contrary. *See Anderson Cnty. v. Preston*, No. 2009-CP-04-4482, 2013 WL 10154806, at *4 (S.C. Com. Pl. Nov. 8, 2013) (finding that "[w]ithout a proposed pleading, [the intervening party] procedurally failed to interpose a proper motion under which intervention could be granted").

Moreover, the cases cited by Proposed Intervenors are distinguishable from the present case. In those cases, it does not appear that anyone challenged the lack of a pleading, and the motions to intervene were typically filed shortly after the complaint was filed and always prior to the resolution of the underlying claims. In this case, however, the Farms challenged the lack of a pleading and Proposed Intervenors did not file their motion to intervene until over a month after the master issued the final order closing the roads.

Further, Proposed Intervenors' argument that Rule 24(c) applies only in cases challenging the constitutionality of a statute is incorrect. Rule 24(c) provides:

(c) Procedure; Notice to State When Validity of Statute Questioned. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of this State gives a right to intervene. When the constitutionality of a statute is drawn in question in any action in which the State or an officer, agency or employee thereof is not a party, the party shall also serve the motion on the Attorney General.

Rule 24, SCRCF.

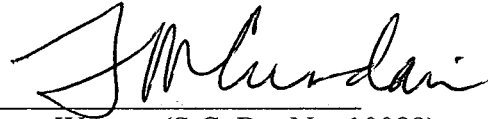
The rule has two parts. One addresses the general procedure for filing a motion to intervene, and the other addresses the special notice procedure required when the case involves the constitutionality of a statute. The inclusion of the phrase "Notice to State When Validity of Statute Questioned" in the title of the rule simply alerts the reader to the special exception contained in the final sentence and does not limit the scope of the rule to cases involving a constitutional issue. Because this case does not concern the constitutionality of a statute, the second part of the rule does not apply.

To the extent that there is any confusion about the meaning of the word "shall," the Court may wish to clarify the issue. Otherwise, the Farms respectfully suggest that the rule plainly states that the motion shall be accompanied by a pleading, and therefore the failure to attach a pleading provides an additional ground for denying the motion.

CONCLUSION

The master's order denying the motion to intervene should be affirmed.

Respectfully submitted,



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June 13, 2017

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v.

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Ex Parte: Carolyn Barrett, Robert Barrett, and Save Windsor SC, Proposed Intervenors Appellants/Respondents.

PROOF OF SERVICE

I, the undersigned, of the law offices of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for Respondents/Appellants, certify that I have served all counsel of record in this action with a copy of the Final Brief of Respondents/Appellants, the Final Respondents' Brief of Respondents/Appellants, and the Final Reply Brief of Respondents/Appellants by placing copies of same by U.S. Mail and electronic mail, on June 14, 2017, to:

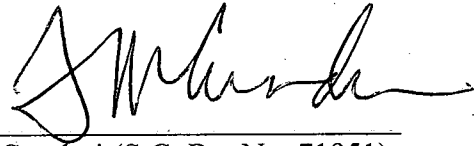
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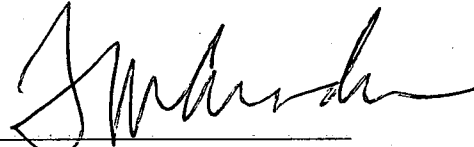
Becky J. Gonshorowski, The South Carolina Department of Transportation, and
Aiken County South Carolina, a body politic and political subdivision of the State of
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Ex Parte: Carolyn Barrett, Robert Barrett, and Save Windsor SC,
Proposed Intervenors.....Appellants/Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that Respondents/Appellants' Final Briefs comply with
Rule 211(b), SCACR.

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June 14, 2017

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SC Court of Appeals

Re: Canadian River Farms Ltd. et al. v. Becky J. Gonshorowski et al.
Appellate Case No. 2016-002102
Our File No. 6928/1500

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter are the originals and fifteen (15) copies of the following:

1. Final Brief of Respondents/Appellants
2. Final Respondents' Brief of Respondents/Appellants
3. Final Reply Brief of Respondents/Appellants as Appellants

Also enclosed are the Proof of Service and Certificate of Counsel.

Please file the originals and return the filed copies to me through our courier.

By copy of this letter and as evidenced by the Proof of Service, I am serving all counsel of record with a copy of same.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,

Tina Cundari

TMC:cls
Enclosures

cc: Ms. Becky J. Gonshorowski (by U.S. mail)
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