

ORIGINAL

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

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Appeal from Newberry County  
Court of Common Pleas

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

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John S. Frick,

Appellant,

v.

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

Respondents.

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**APPELLANT'S FINAL REPLY BRIEF**

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December 22, 2014

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**SC Court of Appeals**

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## ARGUMENT

### I. CONTRARY TO RESPONDENT FULMER'S CONTENTIONS IN HIS INITIAL BRIEF, THE ROAD IN QUESTION HAS NOT BEEN CLOSED PURSUANT TO STATUTORY PROCEDURES OR VIA WAY OR ABANDONMENT

In his Initial Brief, Respondent Fulmer basically concedes that Newberry County, nor any other governmental agency, followed any of the statutory procedures for the closing of a road as presented in South Carolina Code §57-9-10 *et seq.* Therefore, the questions left to determine are whether or not a prior alleged abandonment of the road would negate the requirements of South Carolina Code §57-9-10 *et seq.* and, if so, had the road been previously abandoned? The answer to both questions is no.

When Appellant Frick purchased this land to which the roadway travels, the road was unimpeded and easily traveled. (R. p. 51, line 2 – p. 52, line 15). The road has historically been shown on general highway maps and continues to be shown on more recent road maps, including a 2006 road atlas. (R. pp. 148 – 151; Pl. Ex. 2 Not capable of Reduction for Inclusion in the Record). The road has been utilized by boy scouts, land owners and others to access the lake and homes which were previously located along the roadway. (R. p. 59, line 25 – p. 61, line 8). Furthermore, Newberry County still maintains a portion of this road, now named Seibert Road. (R. p. 83, line 1 – p. 84, line 20; R. p. 157). It is clear that the roadway has not been abandoned to this very day.

The discontinuance of a road does not equal abandonment. *Wilson v. Greenville County*, 110 S.C. 321, 96 S.E. 301 (1918). Abandonment must be shown by clear and unequivocal evidence. *Carolina Land Company v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975).

Respondent argues that *K & A Acquisition Group v. Island Pointe, LLC*, 383 S.C. 563, 682 S.E.2d 252 (2009) supports their position. However, a close reading of this case indicates that the South Carolina Supreme Court found an old road was abandoned only after the Department of Transportation had built a new replacement road and actually deeded portions of the road to private landowners. In this case, the roadway was the only access to at least two homes that were formerly located along the roadway and continues to be the only vehicle access to game management lands, the Appellant's property, and any future potential landowners along the roadway. Furthermore, the road still exists in part and there has been no affirmative action taken by the South Carolina Department of Transportation, Newberry County, or any other governmental entity to close any portion of this road.

The roadway has not been abandoned. Even assuming *arguendo* that it was abandoned pursuant to common law, the county must still follow the statutory procedure as outlined in South Carolina Code §57-9-10 *et seq.* Whether the roadway is open or closed, the fact that it was a county road requires the statutory procedures to be followed.

**II. THERE IS NO EVIDENCE TO SUPPORT RESPONDENT FULMER'S CONTENTIONS THAT THE GATE ACROSS THE ROADWAY IS NECESSARY AND THE GATE IS AN UNDUE BURDEN UPON APPELLANT AND ANY SUCCESSOR LANDOWNERS**

Respondent Fulmer is correct in his assertion that whether or not a locked gate across a roadway is reasonable or justified must be determined by the particular facts and circumstances of each case. *Judy v. Kennedy*, 398 S.C. 471, 728 S.E.2d 484 (2012). However, in this instance there is no evidence that the gate was needed given Respondent Fulmer's clear assertions that any incidents or trespassing or littering were "a thing of the

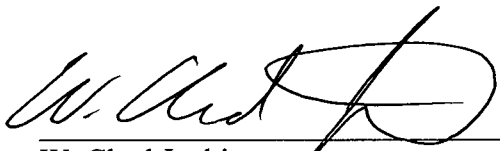
past” (R. p. 132, line 25 – p. 133, line 18). Testimony that trespassing and vandalism may occur on other SCE&G properties is simply irrelevant. Van Hoffman even testified the gate was always open. (R. p. 101, lines 11-16). Furthermore, Appellant Frick and Van Hoffman both testified about difficulties which have arisen with the gate and any locking mechanism which has been utilized. The most telling point is that at the beginning of this litigation, in 2009, the gate was opened and remained opened through the time of the trial in 2013. For four years, there were no incidences of trespassing or vandalism. (R. p. 132, line 25 – p. 133, line 18). There is simply no need for the gate and it is an undue burden upon the Appellant.

### CONCLUSION

This Court should reverse the Circuit Court’s Order and find that the roadway in question was and remains a County road. Furthermore, any impediments, including any gates, should be removed from the roadway in question. Appellant relies upon and incorporates all arguments contained in his Initial Brief on these issues and all other issues.

Respectfully Submitted

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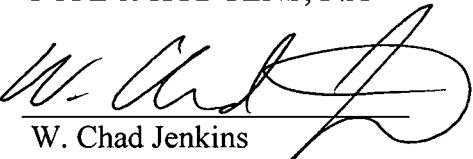
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**CERTIFICATE OF COUNSEL**

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I, W. Chad Jenkins, Esquire, do hereby certify that the Appellant's  
Final Reply Brief complies with Rule 211(b).

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