

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Hon. Eugene Griffith

Case No. 2018-CP-10-851
Appeal No. 2019-000728

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JUN 20 2019

SC Court of Appeals

National Trust for Historic Preservation
In the United States and The City of Charleston, Appellants

v.

City of North Charleston, Cross-Appellant / Respondent.

Initial Brief of Cross-Appellant, City of North Charleston

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Statement of Issues on Cross-Appeal

Should the lower court's standing decision be upheld in the main appeal neither issue presented herein need be decided.

- 1) The Trial Court erred by adding an unwritten contiguity requirement to annexations under SC Code Ann. Section 5-3-100
- 2) The land annexed here is statutorily "adjacent" and thus appropriate for annexation under SC Code Ann. 5-3-100.

Statement of the Case

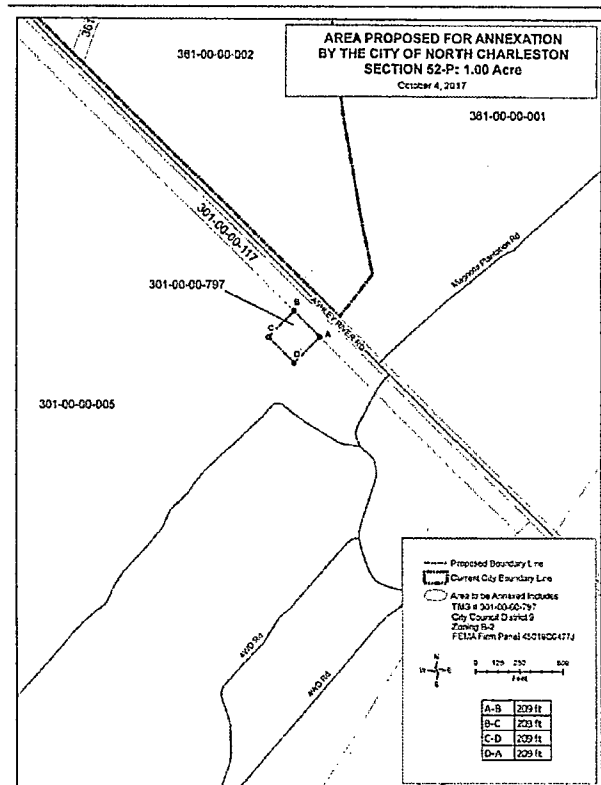
North Charleston, in late 2017, engaged in annexation activity west of the Ashley River. This began when North Charleston annexed the 113 acre Runneymede Plantation parcel (TMS 361-00-00-002) (hereinafter, "Runneymede") on or about October 27, 2017. ROA ____, Order, pg. 3, Para 7. No annexation challenge was filed. Id.

North Charleston later obtained title to a one-acre parcel (TMS# 301-00-00-797) (hereinafter, "the Acre") that lies about one hundred (100') feet to the Southwest of Runneymede. ROA ____, Order, pg. 4. Runneymede and the one-acre parcel do not share a common boundary. As shown on the map below¹, they are separated by Ashley River Road and a slender 100' wide x 11,000' long shoestring parcel known at TMS 301-00-00-017 (hereinafter, the "100' strip.")² ROA

¹ This map may be found on page 3 of Judge Griffith's Order.

² All references to 100' are approximate.

____, Order, pg. 3-4. On December 21, 2017 the City of North Charleston annexed the one-acre parcel that North Charleston owns. ROA _____, Order, pg. 4, Para. 12.



On February 16, 2018, the City of Charleston filed an annexation objection regarding The Acre. The City of Charleston later filed an annexation challenge lawsuit on March 20, 2018. The National Trust also timely filed an objection and subsequent challenge action.

The City of North Charleston filed motions³ on October 19, 2018 seeking determinations that Charleston and others lacked standing to object to the annexation, and that under S.C. Code Ann. 5-3-100 (a) annexation of the Acre did not require contiguity and (b) the Acre was “adjacent” to pre-existing North Charleston limits for purposes of Section 5-3-100.

³ These were a Motion to Dismiss (Lack of Standing) and a Motion for Partial Summary Judgment (Adjacent / Contiguous).

On December 10, 2018, Judge Griffith heard oral argument on the City's motions and on March 1, 2019 issued a written order. The main portion of that order resolved the case in North Charleston's favor but the order also contained various "back-up" rulings which are the subject of North Charleston's cross-appeal here.⁴

On March 14, 2019, the City of Charleston and National Trust filed Motions for Reconsideration for the March 1, 2019 Order.

On April 29, 2019, the City of North Charleston filed a *limited* Notice of Conditional Cross Appeal with this court. Judge Griffith's main ruling was that North Charleston prevailed because Charleston and the National Trust had no standing to challenge.⁵ However, as a fallback, Judge Griffith went on to say that *if* standing had existed, then he would have ruled in the challengers' favor because he disagreed with North Charleston's interpretation of Section 5-3-100. North Charleston requested review only of this "fallback" portion of Judge Griffith's Order if, and only if, the City of Charleston and/or National Trust filed a primary appeal.

Judge Griffith denied Charleston's Motion for Reconsideration by order filed May 1, 2019.

The City of Charleston subsequently filed its own primary appeal May 24, 2019, thus satisfying the condition for the North Charleston's cross-appeal to become effective with respect to it. The National Trust similarly filed a Notice of Appeal dated May 31, 2019.

⁴ This March 4th Order was subsequently re-filed on March 5, 2019.

⁵ North Charleston in this *cross-appeal*, anticipates that its opponent will present standing arguments in the main-appeal Brief of the Appellant. North Charleston respectfully reserves the right to address those arguments by way of a separate Brief of the Respondent North Charleston.

Standard of Review

Statutory interpretation is a “question of law” reviewed under a de novo standard. See State v. Massey, 426 SC 90, 94, 825 S.E.2d 717, 719 (SC App 2019)(“However, ‘[q]uestions of statutory interpretation are questions of law, which are subject to de novo review and which we are free to decide without any deference to the court below.’ State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012)”); See Univ. of S. Cal. v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (“An issue regarding statutory interpretation is a question of law.”); See Town of Summerville v. City of North Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (“[T]his [c]ourt reviews questions of law de novo.”);

Argument

Both issues presented below become relevant only should the lower court’s primary ruling regarding standing be reversed. If the lower court’s standing ruling is affirmed then no further consideration of these cross-appeal issues is necessary.

1) The Trial Court Erred By Adding An Unwritten Contiguity Requirement To Annexations Under SC Code Ann. 5-3-100.

The City of North Charleston’s cross-appeal is based solely on a narrow question of law. North Charleston does not challenge the vast majority of Judge Griffith’s Order. North Charleston agrees:

- That it annexed The Acre pursuant to S.C. Code Ann. 5-3-100, which deals with the very limited situation of a local government holding title to property being annexed;
- The Acre is not contiguous to pre-existing North Charleston City limits lines, but rather is separated by a tiny sliver of property outside of North Charleston’s jurisdiction;

- That until year 2000, Glaze v. Grooms, 324 S.C. 249, 253 n.4, 478 S.E.2d 841, 843 (1996) might have suggested⁶ that contiguity would have been required here even though Section 5-3-100 clearly uses the word “adjacent” and not “contiguous.”

North Charleston’s disagreement is concise – the enactment of S.C. Code 5-3-305 in year 2000 defined contiguity in such a way that “contiguous” could thereafter no longer be used synonymously with “adjacent.” After the Legislature passed Section 5-3-305 “adjacent” and “contiguous” became distinct and contiguity could no longer be argued for annexations pursuant to S.C. Code 5-3-100.

S.C. Code 5-3-100, dealing with the unusual instance in which government already holds title to the land being annexed, specifically requires annexed land to be “adjacent” rather than “contiguous.” As stated by the South Carolina Legislature:

“If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality. When the territory proposed to be annexed to the municipality belongs entirely to the county in which the municipality is located and is adjacent thereto, it may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.” S.C. Code Ann 5-3-100. (emphasis added.)

⁶ Both Judge Griffith and the Glaze court point to Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961) for the proposition that our Supreme Court previously recognized “a contiguity requirement even in the absence of a statutory mandate to that effect.” However, North Charleston notes (a) that in Tovey the Court recounts that the parties did not argue against a contiguity requirement, thus making any comments technically dicta (See Tovey, 237 SC at 484, 117 SE2d at 876), and (b) more dispositively, that both Tovey and Glaze predate the passage of S.C. Code Ann. 5-3-305. To the extent Tovey, can be read as relied on by the court below, North Charleston respectfully asserts that Section 5-3-305 has effectively superseded Tovey in that particular regard.

Section 5-3-100 does not mention contiguity. Compare Section 5-3-100's "and is adjacent thereto" language with the explicit contiguity requirement in Section 5-3-150, almost universally used because it deals with typical privately owned property: ("(1) Any area or property *which is contiguous to a municipality* may be annexed to the municipality...")(emphasis added.) Such a difference might be readily explained by the fact that Section 5-3-100 deals with a very limited universe of properties, ones actually owned by the government.

Reading "adjacent" to mean "contiguous" would ignore the words chosen by the Legislature. That is not permissible statutory construction. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (SC 2000)("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, courts are bound to give effect to the expressed intent of the legislature.")(internal citations omitted.) Interpreting "adjacent" to mean "contiguous" would directly contradict S.C. Code Ann. 5-3-305. There the Legislature in year 2000 told us, among other things, that "[f]or purposes of this chapter, 'contiguous' means property which is adjacent to a municipality and shares a continuous border." This definition sets forth a two-part test. Contiguity requires a property to be (1) "adjacent" **AND** (2) "share a continuous border." Thus, the term "adjacent" *in isolation*, as presented in S.C. Code 5-3-100, cannot require that the annexed parcel and pre-existing town limits touch along a common border. Should such a change be desired the Legislature would have to amend the statute. See, generally, Storm M.H. v. Charleston County Board of Trustees, 400 S.C. 478, 492, 735 S.E.2d 492, 500 (SC 2012)(Court noting that it was constrained to interpret unambiguous language as written and if the Legislature intended a different outcome the Legislature must amend the statute's words.)

2) The Land Annexed Here Is Statutorily “Adjacent” And Thus Appropriate For Annexation Under SC Code Ann. 5-3-100.

The one-acre parcel at issue in this case is “adjacent” to the pre-existing North Charleston City limit line. Given that Sections 5-3-100 and 5-3-305 collectively mean that an actual “touching” of the two parcels is not required, “adjacent” is left to mean that the properties must be in close proximity. The one-acre parcel here and the pre-existing North Charleston city limits are about as close as possible without actually touching. The roadway itself is invisible in terms of normal annexation analysis. See S.C. Code Ann. 5-3-305. Thus, the relevant separation for purposes of our annexation separation analysis is a single parcel roughly 100’ wide.

“Adjacent”, at the very least, must allow for separation by a single parcel. Adjacency, under Section 5-3-305, does not require a common boundary. The only way to avoid a common boundary is for at least one other parcel to intervene. Thus, separation of the annexed property and city limits by at least a single parcel, as here, is inherent in the statutory language and cannot destroy adjacency.

There are several factors that make the adjacency of the one-acre parcel even more compelling in this particular case. *First*, the 100’ width of the intervening parcel is just about the smallest imaginable. *Second*, the 100’ parcel at issue is the classic disfavored “shoestring”, measuring over 11,000 feet long⁷, despite being only 100’ wide. *Third*, North Charleston possesses a recorded easement allowing it to cross over the 100’ strip. Thus, North Charleston does not even need to “jump over” the 100’ strip. The City has a legal right to drive across it to access the one-acre parcel. See Charleston County RMC Deed Records, Book S17, Page 224 (Plat showing access easement) and Book 0-121, Page 206 (Actual Access Easement). Thus, the normal

⁷ See Complaint, para. 17.

“right to exclude” that the 100’ strip owner might have does not even apply with respect to the City. In this regard the easement means that crossing over the 100’ strip is rather analogous to crossing a waterway (invisible for annexation purposes under S.C. Code 5-3-305) in that no trespass is required for North Charleston to go from the pre-existing city limit line to reach the annexed parcel.

Conclusion

The conditional, “backup” portion of the Trial Court’s opinion below erred in concluding that The Acre was not appropriate for annexation by way of SC Code Ann. 5-3-100. The Trial Court mistakenly added a non-existent “contiguity” requirement. All parties agree that the Acre is not contiguous. It is, however, “adjacent” and adjacency is all that is required for annexation under Section 5-3-100. That standard is satisfied here.

Respectfully submitted,



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This 18th day of June, 2019

Certificate of Service

The undersigned certifies that on this 18th day of June, 2019, a copy of the foregoing was served on opposing counsel by depositing said copy in the U.S. Mail, with sufficient postage, on the following counsel of record at the address listed below:

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SC Court of Appeals

June 18, 2019

Hon. Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
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SC Court of Appeals

Re: National Trust and City of Charleston v. City of North Charleston
Case No. 2018-CP-10-851 (1 Acre Case)
Appeal No. 2019-000728

Initial Brief and Designation of Matter package

Dear Ms. Kitchings:

Please find enclosed for filing a copy of the City of North Charleston's Initial Brief and Designation of Matter regarding the above-referenced cross-appeal. Your assistance in filing this and returning appropriate copies to me would be greatly appreciated. For your convenience I am enclosing an appropriate self-addressed, stamped envelope. By copy of this letter I am simultaneously serving counsel for all related parties.

Sincerely,



Derk Van Raalte

Enclosures: North Charleston Initial Brief of Appellant (Cross Appeal)
North Charleston Designation of Matter for Record on Appeal (Cross Appeal)
Certificate of Compliance regarding Designation of Matter
Certificate of Service
SASE

cc: Bruce Miller
Trenholm Walker
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