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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas
Marvin H. Dukes, III, Master-in-Equity

Order, of the S.C. Court of Appeals, filed, August 22, 2019
(Rehearing Denied, October 17, 2019)

H. Marshall Hoyler.....Petitioner,

v.

The State of South Carolina, Merry Land Properties, LLC, Sherbert Living Trust, Supan Living Trust, Elizabeth R. Levin, Edward McCray Wise Revoc. Living Trust, Carol Ann DeVries Wise Revoc. Living Trust, Amelie Cromer, Philip Cromer, Robert Chiavello, Tocharoen Living Trust, Helen M. Olesak, Lesley Anne Glick a/k/a Lesley Ann Glick, Shirley G. Lackey, Patricia Banfield, Bertrand Cooper, Jr., NHP SH South Carolina I, LLC n/k/a CCP Bayview 7176 LLC, Oyster Cove Homeowners Ass., Shirley Anne Moyer, Barry D. Malphrus, Garry D. Malphrus, Donnie Malphrus, Rita Brown, Houston Family Partnership, Joan Taylor Trustee, Michael Bull, Nancy Bull, Marny H. VonHarten, Dianne M. Donaldson, Brian R. Evans, Stephen Durbin, Valerie Durbin, Phillip Marti, Jane Marti, Michael Woodworth, Georgiana M. Cooke, Daniel B. Walsh Janet E. Walsh.....Defendants,

Of Which, The State of South Carolina and Merry Land Properties, LLC are the.....Respondents.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing in this matter was made and finally ruled on by the South Carolina Court of Appeals on October 17, 2019 and received by counsel for Petitioner on October 24, 2019.

INTRODUCTION

The decision of the Court of Appeals in this matter is in direct conflict with prior decisions of the South Carolina Supreme Court.

QUESTIONS PRESENTED FOR REVIEW

I. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO THE STATE OF SOUTH CAROLINA HAVING PRESUMPTIVE TITLE TO THE MARSHLAND IN QUESTION UNDER THE FACTS OF THIS CASE.

II. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO THIS COURT'S ABILITY TO INTERPRET A DEED ACCORDING TO ITS' OWN REVIEW OF THE EVIDENCE

III. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO EFFECTUATING THE INTENT OF THE GRANTOR WHEN INTERPRETING A DEED.

IV. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO RESOLVING LATENT AMBIGUITIES IN A DEED ONCE THE GRANTOR'S INTENT HAS BEEN DETERMINED.

V. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO FAILING TO FOLLOW THIS COURT'S DECISIONS WITH REGARD TO HOW TO LOCATE REAL PROPERTY BOUNDARIES.

VI. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO FAILING TO REJECT AN ERRONEOUS PLAT IN FAVOR OF A DEED WHERE THE INTENTION OF THE GRANTOR IS CLEAR.

STATEMENT OF THE CASE

Petitioner is putative owner of fee simple title to ninety-five acres, more or less, lying between the mean high and low water marks along the Beaufort River in Beaufort County, South Carolina and the property includes marshlands, (hereinafter as, "The Property").

The Respondent, State of South Carolina can acquire, encumber, transfer and lease real property in the name of the Respondent, State of South Carolina.

The Property is the identical conveyance of real property to J.M. Crofut, Petitioner/Landowner Hoyler's predecessor in title, from the Honorable Benjamin R. Tillman, then Governor of South Carolina, dated July 27, 1891, and was for approximately ninety-five acres of marshland described as being located on the Beaufort River, (hereinafter as, "Deed"), *(Appendix, (Vol. Three) p. 549 – p. 557))*.

The Deed is accompanied by a plat which depicts a tract of land containing approximately ninety-five acres. At trial, Petitioner/Landowner's witnesses demonstrated an unbroken chain of title to the Property at the trial, which is identical to the Property encompassed in the Deed, allowing for erosion and accretion over the period of time the Petitioner/Landowner's predecessors in interest have held the Property, (R. pp. 536-537, *(Appendix (Vol. Three) p. 546 – p. 547))*. Petitioner/Landowner demonstrated alienation of the Property from the State of South Carolina, based on the Deed. The Petitioner/Landowner argued at Trial and the Trial Court found, that title to these tidelands has not reverted back into the State of South Carolina, (R. p. 47, Numbered Paragraph 1), *(Appendix (Vol One) p. 051))*.

STATEMENT OF THE CASE (Cont.)

On November 8, 2007, Petitioner/Landowner filed a legal action against the State of South Carolina to determine whether Petitioner/Landowner's title was superior to that of the State of South Carolina's title, pursuant to the statutorily mandated obligations contained in Section 48-39-220, SC Code, Ann., (1976, as amended), *(Appendix (Vol. One) p. 057 – p. 060))*.

In order to determine the ownership of tideland, as between the State of South Carolina and an individual or corporate claimant, the State of South Carolina has established a specific statutory procedure which is set forth in Section 48-39-220 S.C. Code Ann., (1976, as amended).

The Trial Court issued its written Order denying the relief sought by the Petitioner on May 27, 2016, *(Appendix (Vol. One) p. 019 – p. 051))* and Petitioner sought Reconsideration, which was denied by the Trial Court, by its Order of October 26, 2016 *(Appendix (Vol. One) p. 052))*.

The Court of Appeals affirmed the judgment of the lower court, H. Marshall Hoyler v. The State of South Carolina, *et al.* Op. No. 5676, (Ct. of App. 2019), *(Appendix (Vol. Four) p. 857 – p. 881))*. Thereafter, Petitioner's Petition for Rehearing was denied on October 17, 2019, *(Appendix (Vol. Four) p. 940 – p. 942))*. Petitioner seeks a Writ of Certiorari and his Petition follows.

ARGUMENT

I. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO THE STATE OF SOUTH CAROLINA HAVING PRESUMPTIVE TITLE TO THE MARSHLAND IN QUESTION UNDER THE FACTS OF THIS CASE.

The Court of Appeals misconstrued the law that the State of South Carolina comes into Court with a presumption of title under the facts presented in this case.

"Of course where, as in the cases cited, the state claims by virtue of its sovereignty as the common source of title, its bare assertion is prima facie sufficient; but where, as is true in the facts of this case and in the case of *State v. Stark*, 3 Brev. 101, it appears that the state has, by its own grant, divested itself of the paramount title, and conveyed it to another, then the state, like any other plaintiff, is bound to show that it has regained the title, either by purchase or escheat, or in some other way. State v. Evans, 33 S.C. 184, 11 S.E. 697 (1890), (Emphasis Added).

In the case at bar, Petitioner/Landowner, Hoyler's predecessor in title, Crofut, was conveyed property by the State by deed, for valuable consideration[1] adequately described in the body of the deed and the attached plat. There is **no** evidence that the State was ever re-conveyed the property in question, and as such the Court of Appeals erred in its finding that the State was entitled to a presumption of ownership. Neither of the Respondents argued at Trial or proved that the State had "regained title" in any way and so Petitioner is the title holder to the property.

II. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO THIS COURT'S ABILITY TO INTERPRET A DEED ACCORDING TO ITS' OWN REVIEW OF THE EVIDENCE.

This action began as one to determine title to real estate which is a legal matter. The Respondent Merry Land filed counterclaims which raised the issue of interpreting a plat attached to a deed[2] which raises the issue of interpreting the deed itself.[3] The trial court then had to resolve the issue of title, an action at law and the interpretation of a deed, a matter of law.

The law of this case is that Mr. Hoyler proved his chain of title from the State of South Carolina to himself and that the State of South Carolina intended to convey marshland to him which is sufficient to convey title to the property in question.[4] This "action at law", to determine title, is resolved as it is the law of the case leaving nothing for an Appellate Court to review. However, as to the interpretation of a deed, that determination is a "matter of law" which the Court of Appeals correctly points out are "... reviewed de novo..." and "...may be decided with no particular deference to the trial court." Hoyler v. The State of South Carolina et. al. Order Denying Petition for Rehearing, page 2, filed October 17, 2019, *(Appendix (Vol. Four), p. 941))*.

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[1] *Appendix (Vol. Three) p. 549 – p. 553*; *Appendix (Vol. Three) p. 554 – p. 555* and *Appendix (Vol. Three) p. 555 – p. 556.*

[2] *Appendix (Vol. One) p. 066- p. 067.*

[3] Where a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. Hobonny Club v. McEachern, 272 S.C. 392, 397, 252 S.E.2d 133 (1979).

[4] In order to resolve this dispute between the State and Holston concerning title to Drum Island and its adjacent tidelands, we need only consider two questions: (1) whether Holston's predecessors in title possessed a valid grant,; and (2) whether the language of the grant is sufficient to convey land lying below the high water mark State v. Holston Land Co., Inc., 248 S.E.2d 922,923, 272 S.C. 65 (S.C., 1978)(Internal Citations Omitted) See also the Trial Court's Order with regard to intent to convey tideland. R. 47 Numbered Paragraph 1. *(Appendix*

As to the interpretation of the deed from the State to Mr. Crofut, Mr. Hoyler's predecessor in interest to the tidelands, this Court is not bound by the Master's findings of fact but is free to find from the evidence its' own interpretation of the deed. "The construction of a clear and unambiguous deed is a question of law for the court." Gardner v. Mozingo, 293 S.C. 23, 358 S.E. 2d 390, 392 (1987).

III. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO EFFECTUATING THE INTENT OF THE GRANTOR WHEN INTERPRETING A DEED.

In construing a deed, "...the intention of the grantor must be ascertained and effectuated unless that intention contravenes some well-settled rule of law or public policy." Wayburn v. Smith, 270 S.C. 38, 41, 239 S.E.2d 890, 892 (1977). In determining the grantor's intent, "... the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. Wayburn, *supra*, 42.[5] The intention of the grantor must be found within the four corners of the deed."[6] Sims v. Clayton, 193 S.C. 98, 7 S.E. 2d 724 (1940). Gardner v. Mozingo, 293 S.C. 23, 358 S.E. 2d 390,391-392 (1987) This Court does not have to struggle to find the intent of the Grantor, the State of South Carolina. As set out by the Master in his Order, the State's grant to Petitioner's predecessor in title, Crofut "... was legally permissible and, although was an alienation of the public trust land, was allowed because the intent to grant tidelands between high water and low water was clearly expressed." (Emphasis Added), *(Appendix (Vol. One) p. 051))*.

(Vol. One) p. 051)).

[5] The sort of law that cannot be contravened by Grantor's intent is set forth in Wayburn v. Smith, *supra*. In that case the Grantor had a deed drawn that clearly intended to convey a life estate, but due to failing to change the wording in the habendum clause, the Grantor was deemed to have conveyed a fee simple title.

In order for the deed to be interpreted without extraneous evidence it must be unambiguous. "Ambiguities are, however, patent or latent. ...Thus, where there is conflict in words or clauses of a will or other instrument, the ambiguity is patent. Where, however, there is no defect upon the face of the paper, but, when attempting to put it into effect, it appears that there is uncertainty, as for instance where there are two legatees of the same name or two pieces of property which the description fits equally well, the ambiguity is latent. In the former case the construction and intention must be derived solely from the words contained in the instrument. In the latter case parol testimony may be received to enable the reaching of a correct conclusion." Jennings v. Talbert, 77 S.C. 454, 58 S.E. 420, 421 (1907).

Petitioner takes the position that the deed is unambiguous and that the attached plat, which is an integral part of the deed, is unambiguous.[7] This Court can read the deed, interpret the Grantor's intent, (which was decided by the trial court and is the law of this case, *(Appendix (Vol. One) p. 051))*, was to convey marshland to Crofut, Petitioner's predecessor in title), and come to the conclusion that the State granted the property described in the deed and plat to the Petitioner's predecessor in title. "The construction of a clear and unambiguous deed in respect to the property conveyed is a question of law for the Court." Hammond v. Lindsay, 284 S.E.2d 581,582, 277 S.C. 182 (1981).

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[7] "Where a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. Hobonny Club v. McEachern, 272 S.C. 392, 397, 252 S.E.2d 133 (1979).

IV. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO RESOLVING LATENT AMBIGUITIES IN A DEED ONCE THE GRANTOR'S INTENT HAS BEEN DETERMINED.

The trial court and the Court of Appeals' decision rests on the trial court's determination that there is a latent ambiguity in the documents conveying the property. Because the trial court found that there was a latent ambiguity, based on a perceived error in the plats attached to and made a part of the deed by reference, the trial court was put to the test of whether or not to allow extrinsic evidence to be presented or not. It is clear that it is only appropriate to allow extrinsic evidence to determine the grantor's intent. Here the trial court is caught in a trap of its own devising and one into which the Court of Appeals was drawn. In its Order, the lower court found that the intent of the grantor was to convey marshland below the high and low water marks. R. 47 Numbered Paragraph 1, *(Appendix (Vol. One) p. 051))*.

Having determined the grantor's intent, which was not appealed and which became the law of this case, the trial court and the Court of Appeals should have stopped the analysis of the deed and confirmed title in the Petitioner. Yet both abandoned the paramount guiding principle in interpreting a deed, effectuating the grantor's intent, and instead went out of their way to do the opposite of what the grantor intended, to convey the marshland to Mr. Crofut, Petitioner/Landowner's predecessor in title.

Furthermore, the trial court and the Court of Appeals erred when they failed to follow the rule that **extraneous evidence is allowed to resolve the ambiguity not to create one.** "Where the description on a deed can be related to the land, parole (*sic*) evidence is inadmissible since extrinsic evidence is to be admitted to resolve ambiguities, not create them." Kirven v Bartell, 266 SC 385,389, 223 SE 2d 597 (1976). The trial court allowed Respondent Merry Land's surveyors to testify as to their difficulty "closing" the plat attached to the original deed. *(Appendix (Vol. Two), p. 471 LL. 12-25; p. 472 LL. 1-17;* and *(Appendix (Vol. Three) p. 535 - Page 14 L. 1 – p. 536 Page 22 L. 9))*.[8] Allowing this testimony was in direct conflict with the law of this State. "'But a paramount rule is that parol testimony, whether of declarations, acts, or of the *res gestae*, is inadmissible to vary the terms of written instrument. When an instrument is ambiguous, parol testimony is admissible to remove the ambiguity; but, except in cases of fraud, accident *or mistake* (emphasis added) it is always admitted for the purpose, subject to the limitation that it must be consistent with the instrument, and therefore that it must not tend to contradict or vary its terms.'" Smith v. DuRant 236 S.C. 80, 88, 113 SE 2d 349 (1960). (Internal Citations Omitted).

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[8] Respondent, Merry Land's Witness Cook acknowledged in his testimony at trial, that he could possibly locate the general location of the tract even given what he contended were errors *(Appendix (Vol. Two) p. 474 LL. 3-9))*, and that one of the resources that he typically used were field instruments when doing field work. *(Appendix (Vol. Two) p. 466 L. 11- p. 467 L. 3))*. However, in this case that he had not used the unique Beaufort County grid system to work with the plats attached to the deed in question *(Appendix (Vol. Two) p. 467 L. 19 – p. 468 L. 13))* or tried to work out the errors in nor recreate a portion of the old plats, *(Appendix (Vol. Two) p. 475 L. 18 – p. 476 L. 16))*. Respondent's expert Gardner acknowledged that when he was unable to read something (on a plat) or it (the plat) wouldn't close on the CAD (Computer Aided Design) that he would do retracement surveying by doing field work which he was never asked to do in this case. *(Appendix (Vol. Three) p. 538, Page 27, LL. 1-11))* and that the poor description on the plat attached to the deed warranted "... more work, more work, more work, to get to try to prove something". *(Appendix (Vol. Three) p. 542 Page 43 LL. 2-22))*.

The trial court should not have admitted the testimony of Respondent, Merry Land's Witnesses Cook and Gardner, which tended to create an ambiguity and allowed that testimony to shape its determination that the plat was too vague and the deed failed for vagueness. R. 47 Numbered Paragraph 2, *(Appendix (Vol. One) p. 051))*. Based on the precedent cited above the testimony of Respondent, Merry Land's Witnesses Cook and Gardner should not have been admitted because their testimony tended to create an ambiguity where none existed or create an ambiguity rather than resolve one.

V. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO FAILING TO FOLLOW THIS COURT'S DECISIONS WITH REGARD TO HOW TO LOCATE REAL PROPERTY BOUNDARIES.

While Petitioner believes that the trial court erred in finding that the plat was inaccurate or unreadable[9], once the trial judge made that determination that the plat was inaccurate or unreadable, he should have looked for another source from which to derive the location of the property, namely the natural monuments of high and low water described in the deed itself. "The rules for determining disputed boundaries are not inflexible but are subject to modification depending upon the particular facts of each case. **The vital question is the intent of the grantor at the time the deed is executed.** Klapman v. Hook, 206 S.C. 51, 32 S.E. 2d 882, 883 (1945). "In locating lands the following rules are resorted to, and, generally, in the order stated: (1) Natural boundaries; (2) artificial marks; (3) adjacent

[9] The trial court and the Court of Appeals ignored the field work that was done by Petitioner's expert witness, Fanning, to recreate and determine the location of the plat attached to the Crofut deed, explain natural monumentation and how it affected his new plat, Exhibit 4 *(Appendix (Vol. Two) p. 286 L. 18 – p. 290 L. 23; p. 292 LL 2-25))* and went so far as to overlay the old plat over the new one that he had created Exhibit 5 *(Appendix (Vol. Two) p. 293 L. 21- p. 295 L. 13))* and noted that the two plats when overlaid "fit well" *(Appendix (Vol. Two) p. 295 L 10-13))*. Petitioner's expert witness Fanning also had no difficulty getting the old plat to "close" *(Appendix (Vol. Two) p. 343 LL. 16-24))*.

boundaries; and (4) courses and distances." But in every one of the cases recognizing these general rules which we have consulted the courts have invariably also recognized the doctrine that these general rules are not inflexible, but may be modified by the circumstances of the case. Connor v. Johnson, 59 S.C. 115, 37 S.E. 240, 248 (1900). According to the written portion of the deed from the State to Petitioner/Landowner, Hoyler's predecessor in title, Crofut, the east and west boundaries were the low and high water marks of the Beaufort River. Exhibit 2A *(Appendix (Vol. Three) p. 554))*.

In this case, once the trial court determined that the "inferior means of location" (courses and distances on the original plat) was inadequate, the trial judge should have looked for another means of carrying out the Grantor's intent to convey the property. Yet, he failed to use, and the Court of Appeals overlooked that the first means of determining boundaries (natural monuments; here high and low water) was available to locate the boundaries of the property being conveyed by the State.[10] The trial court erred when he failed to use the natural monuments of high and low water marks as described in the deed and as shown on the plat prepared by Petitioner's expert Fanning and introduced as Exhibits 4 and 5 *(Appendix (Vol. Three) p. 647-648))*, and instead chose to thwart the grantor's intent by taking the drastic step of voiding the deed.

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[10] "Accretion by natural alluvial action to lands on a navigable stream, such as ocean waters, become the property of the owner of the land accreted or increased. State v. Beach Co., 271 S.C. 425, 248 S.E.2d 115, 117 (1978)." Conversely, "(t)he extended marsh created by encroachment of the waters of Wappoo Creek also belongs to the State (or as in this case Petitioner Hoyler)" Coburg Dairy, Inc. v. Lesser, 318 S.C. 510, 458 S.E. 2d 547, 548 (S.C., 1995) See also Spigener v. Cooner, 42 S.C.L. (8 Rich.) 301, 64 Am.Dec. 755 [282 S.C. 370] (1855).

VI. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT WITH REGARD TO FAILING TO REJECT AN ERRONEOUS PLAT IN FAVOR OF A DEED WHERE THE INTENTION OF THE GRANTOR IS CLEAR.

Even if the evidence had not been so completely overwhelming in favor of Petitioner, the trial court and the Court of Appeals failed to follow the law in South Carolina. This Court held that if a description by metes and bounds does not convey property that a grantor clearly intended to convey that the intention of the grantor will be carried out and that the incorrect description will be ignored. "...[W]here on the face of a deed, the intention to convey a particular tract of land, is clear, but the description by metes and bounds, is, upon a survey for the purpose of locating the tract, ascertained to be erroneous, the description by metes and bounds will be rejected as surplusage, and the land located so as to cover the tract clearly intended to be conveyed." Smith v. DuRant 236 S.C. 80. 87, 113 SE 2d 349 (1960), (Internal Citations Omitted).

In affirming the trial court's finding, the Court of Appeals had to find a way to void the deed. The Court of Appeals cited no South Carolina law for voiding a deed for vagueness but instead relied on a decision of the United States Supreme Court and courts in other States to find a reason to void the deed. Hoyler v State of South Carolina, et.al. Opinion No. 5676. p 12 (S.C. App. 2019), *(Appendix (Vol. Four) p. 868))*.

Ironically, the Court of Appeals cited the governing law in South Carolina for carrying out the intent of the Grantor for deeds that may be imperfect, "A deed is not void for uncertainty, because there may be errors or an inconsistency, in some of the particulars. . .Generally the rule may be stated to be, that the deed will be sustained, if it is possible from the whole description, to ascertain and identify the land intended to be conveyed." In a note

to that section it is said: "As that is certain which can be made certain, the description, if it will enable a person of ordinary prudence acting in good faith and making inquiries, which the description would suggest to him to identify the land, is sufficient." Brownlee, 208 S.C. at 261, 37 S.E. 2d at 662 (emphases added) (alteration in original) (quoting McNair v. Johnson, 95 S.C. 176, 179, 178 S.E. 892 (1913).[11]

The Court of Appeals cites Brownlee v. Miller, 208 S.C. 252, 260, 37 S.E.2d 658, 662 (1946), Hoyler, *supra,* p. 17, for the proposition that, ("…a deed will be sustained if "it is possible from the whole description, to ascertain and identify the land intended to be conveyed"); cf. id. (noting that the surveyors in that case had no trouble in locating the land)." (Emphasis added). In this case all of the experts testifying at trial could generally locate the property described in the deed, but Respondent Merry Land's witnesses were not asked to make the inquiries that a person of ordinary prudence acting in good faith to try to identify the land would have made. The only witness asked to make those inquiries, Petitioner's expert, Fanning was able to locate the land and close the old plat with little difficulty *(Appendix (Vol. Two) p. 343, LL. 12-24)).*

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[11] Hoyler v. State of South Carolina et al, Opinion No. 5676, P 12, (S.C. App.), *(Appendix (Vol. Four) p. 857 – p. 881)).*

CONCLUSION

Based on the foregoing, and for the reasons stated, Petitioner asks the Court to grant his Petition for Writ of Certiorari.

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November 14, 2019
Irmo, South Carolina

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Phillip Marti, Jane Marti, Michael Woodworth, Georgiana M. Cooke,
Daniel B. Walsh Janet E. Walsh, ...Defendants,
Of which The State of South Carolina and
Merry Land Properties, LLC are the,..... Respondents.

AFFIDAVIT OF SERVICE

I, Carrie A. Schurg, an employee of Whitt Law Firm, LLC, certify that I have served copies of the Petitioner's Petition for Writ of Certiorari and this Affidavit of Service, via, U.S. Mail on November 14, 2019, as indicated on the following page.

I also hereby certify that the Petitioner's Petition for Writ of Certiorari has also been filed with the Clerk of Court for the South Carolina Court of Appeals on November 14, 2019.

[Signature Page Follows]

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November 14, 2019
Irmo, South Carolina