

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Annie L. Myers, Billy R. Nobles, M.)
Elaine Nobles, James Lewis Willis,)
James and Lucille Mason, Joann)
Atkinson, Willie Clyde Smith, Clyde)
B. Broadwell, Jr., and Stephen)
Pettigrew of Sawney Creek Farm,)
LLC,)

Case No.: 2018-CP-01-00094
2018-CP-01-000250

Plaintiffs)

v.)

Town of Calhoun Falls,)

Defendant.)

ORDER

James Tuberville, Dean Burton,)
Robert W. and Minnie O. New,)
Walter L. Anders, and Mary and)
Homer Martin.)

RECEIVED

MAR 31 2020

SC Court of Appeals

v.)
Savannah Valley Trails, Inc.,)
Defendant.)

PRESIDING JUDGE:
DATE OF HEARING:
PLAINTIFFS' ATTORNEY:
DEFENDANTS' ATTORNEYS:

R. SCOTT SPROUSE
NOVEMBER 19, 2019
C. RAUCH WISE
ROY R. HEMPHILL
DOUGLAS L. BELL
LISA SCOTT

COURT REPORTER:

This matter came before the Court for a bench trial in a dispute over real property. The case involves rights-of-way granted over a century ago to a now defunct railroad and the desire of the Defendants to utilize said rights-of-way for the construction of a public hiking trail. The Plaintiffs argue that each right of way was extinguished and automatically reverted to each landowner once the railroad tracks were removed and abandoned. The Defendants argue that each right of way was properly transferred to successors and that, even if the Plaintiff's claims as to each right of way is correct, the Plaintiff's claims are barred by the doctrine of laches. The McCormick County cases were consolidated with the Abbeville County cases by consent.

The Court heard arguments from counsel at the hearing. The parties submitted Joint Stipulated Facts (JSF) along with exhibits. There are no disputed facts nor was there any testimony presented at the hearing. The Court allowed the parties to brief the issues. Extensions were granted for the submissions of the briefs. After considering the JSF and exhibits, the Court makes the following findings of fact:

FINDINGS OF FACT

The Plaintiffs are the owners of real property situated in Abbeville County, South Carolina and McCormick County, South Carolina.

The Defendant Savannah Valley Trails, Inc. is a non-profit corporation organized and existing under the laws of the State of South Carolina, the sole purpose of which is to hold title to the real property conveyed to it to groom, maintain and improve the former railroad bed for interim use as a recreational trail, subject to the revitalization of the railroad bed for future rail use.

The Defendant Town of Calhoun Falls is a political subdivision of the State of South Carolina and County of Abbeville.

This Court has jurisdiction over the parties and subject matter. Venue is proper in Abbeville County, South Carolina.

The subject property was part of a railroad that ran once between the Town of McCormick and the Town of Calhoun Falls. The Savannah Valley Railroad Company was chartered by the State of South Carolina on March 12, 1878 (Exhibit 1). Many landowners granted a railroad right of way on their respective properties so that the railroad in question could be constructed and operated. The parties did not submit each original right of way as an exhibit, but presented one as a representative example (Exhibit 3). Exhibit 3 states that "...upon condition and it is expressly understood that said Railroad contemplated as aforesaid be not erected and established on and along said strip, tract, or parcel of land described in the above and foregoing indenture, then the indenture is to be wholly null and void and of no effect." There is no evidence presented that any right of way granted to said railroad by the landowners contained alternative language in the rights granted. The Court finds that the rights conveyed to the Savannah Valley Railroad Company by each landowner were identical as it applied to each particular piece of property. Each right of way was issued for the express purpose of "running and erecting and establishing thereon a Railroad." Each Plaintiff, in subsequent deeds, was deeded parcels of real property subject to the right of way given by their predecessor in title (JSF 5).

The Savannah Valley Railroad Company was succeeded by the Seaboard Coastline Railroad Company, which operated the railroad for many years. In the late 1970s, the railroad decided to close and abandon this stretch of railroad. The exact date that operations on the line ceased is unknown. The company applied to the Interstate Commerce Commission (ICC) for approval of abandonment of the railroad between McCormick and the Town of Calhoun Falls. A committee of the ICC issued a decision on November 21, 1978 allowing the abandonment with

conditions (Exhibit 4). The ruling set a one hundred twenty (120) day period to "permit and state or local government agency or other responsible person to negotiate the acquisition of all or any part of the property for public use." No government agency or other responsible person attempted to purchase or use the abandoned railroad bed within said time period. The ICC conducted a review of the committee decision and issued a final decision on March 2, 1979, allowing abandonment of the railroad line in question. The abandonment process included a public hearing. It appears as though McCormick County was opposed to the abandonment of the railroad line in question due to concerns about its effect on the economy of the county. Nevertheless, it appears as though the requirements for abandonment as set by the ICC were fulfilled and that the process was completed. No evidence was presented regarding journal entries by the railroad regarding the retirement of the line. Seaboard Coastline Railroad Company notified the ICC by letter on February 25, 1980 that the "track" had been abandoned as of February 15, 1980 (Exhibit 6). The company removed the track sometime prior to the issuance of the letter. The parties were unable to give the specific dates on which the track was removed, but stipulate that it was completely gone in the disputed area by the time of the February 25, 1980 letter. There is no railroad track in the disputed area today. No evidence was presented of any further communication with concerned parties by the ICC. While the Court is limited to what was submitted in evidence, it appears that the ICC had no further involvement with the subject railroad bed after the receipt of the March 25, 1980 letter.

There was no further activity regarding the railroad line in question until June 16, 1983, when the Seaboard System Railroad, Inc., the successor to the Seaboard Coastline Railroad Company (JSF 9), conveyed by quitclaim deed its interests in the subject property to the Clarks Hill-Russell Authority of South Carolina (Exhibit 8). In order to effectuate the transfer, a release had to be obtained from the Chemical Bank, which held a mortgage on lines owned by the

Seaboard Coastline Railroad Company and its successor Seaboard System Railroad, Inc. (Exhibit 7). Chemical Bank received the sum of \$58,290.00 from Clarks Hill-Russell Authority in exchange for the release. The Court has no information regarding how many lines were covered in the larger mortgage or what percentage of which the subject properly constituted.

The South Carolina Department of Commerce, Division of Savannah Valley Development (SDC) is the successor in interest to the Clarks Hill-Russell Authority of South Carolina and it claimed title to the railroad bed from June 16, 1983 to April 12, 2012 (JSF 13). The SDC then conveyed its interest in the railway bed located in McCormick County to the Ninety-Six District Resource Conservation and Development Council, Inc. on April 12, 2012 (Exhibit 9), which in turn transferred its interest to Savannah Valley Trails, Inc. by deed dated June 28, 2012 (Exhibit 10). The SDC conveyed its interest in the portions of the railway bed located in Abbeville County to the Town of Calhoun Falls by deed dated April 12, 2012 (Exhibit 11).

The Plaintiffs made no permanent structural improvements to the railway bed from February 25, 1980 until the present, with the possible exception of a structure located on the subject property in Abbeville County titled in the name of Plaintiff Willie Clyde Smith (Exhibit 12, JSF 17). There is no evidence that the Defendants took any action to prevent each Plaintiff from using the subject property attached to his or her tract. The Defendants have made no permanent structural improvements to the railway bed, but have performed maintenance and grooming of the rail corridor, and extensive refurbishments of a railway trestle with the corridor. Tax maps in both Abbeville and McCormick Counties have identified and assessed the railroad bed separately from the Plaintiffs' properties since 1976 (Exhibit 13A, Exhibit 13B, JSF 18).

The McCormick County Plaintiffs filed suit when the Defendant Savannah Valley Trails, Inc. constructed a hiking trail from the Town of McCormick toward the Abbeville County line that

reached the Plaintiffs' property lines. The Abbeville County Plaintiffs filed suit when the Town of Calhoun Falls began the construction process of a hiking trail toward the McCormick County line and reached those Plaintiffs' property. An agreement was reached between the parties to allow some clearing of the railroad bed but for no permanent improvements to be erected pending resolution of this lawsuit.

Applicable Law

The first issue is whether or not the actions of Seaboard Coastline Railroad Company constitute an abandonment of the railroad right of way, thereby removing the case from the jurisdiction of the ICC. The case of Eldridge v. City of Greenwood, 331 S.C. 398, 388 S.E.2d 247 (1998) has similar facts to our present case. In Eldridge, railroad tracks were relocated by the railroad company, then the strip of land where the old tracks had been was conveyed to the City and County of Greenwood by quitclaim deed, which in turn conveyed their interests to the S.C. Highway Department. Eldridge sets forth the standard that the Court must consider on several issues in our present case. The Defendants allege that this Court lacks subject matter jurisdiction to determine the rights of the parties in this case because of federal law, particularly the lack of documentary evidence showing each requirement set by the ICC in its November 21, 1978 letter was fulfilled by Seaboard Coastal Railroad prior to abandoning the line. Eldridge held that:

"Federal law provides that an interstate rail carrier cannot "abandon any part of its railroad lines" unless the carrier applies to and obtains approval from the STB, which must determine whether the abandonment is consistent with "present or future public convenience and necessity." These statutes expressly state that the STB has exclusive jurisdiction over the abandonment of railroad tracks."

Like our present case, the facts in Eldridge also involve a "public use restriction" in the ICC ruling. The Court expressly held that:

"Despite the mandatory sound of "public use condition," the term does not mean that the former rail line property must be sold and used for some stated public purpose. A public use condition normally refers to a "waiting period" in the form of a 180-day prohibition on the railroad's "disposal" of the property, which allows for a potential sale to an entity that will use the property for public purposes".

The Court traced the development of the case law on this issue in great detail. A "public use restriction" does not prohibit abandonment, but merely stays disposal during the time period set by the ICC. The railroad is not required to donate the property to some public entity if no purchaser seeking to use the property for a public use is found. The Court directly addresses the facts in our present case when it said "a public use condition does not affect real property issues if the railroad owned only an easement interest in the property, as such an interest would automatically terminate upon abandonment." No deed can operate so as to convey an interest which the grantor does not have in the land described in the deed. Griggs v. Griggs, 199 S.C. 295, 19 S.E.2d 477 (1942).

A central issue of this case is whether or not the railroad bed in question was actually abandoned. A termination of an easement by abandonment is a factual question in an action at law. There must be shown either a use separate and distinct from railroad purposes or nonuse for railroad purposes under such circumstances as to indicate an intention to abandon the right of way. Lorick & Lowrance, Inc. v. Southern Ry. Co., 87 S.C. 71, 88 S.E 337 (1916).

The defense also asserts the defense of laches. Laches is an equitable doctrine that is defined as neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Byars v. Cherokee County, 237

S.C. 548, 118 S.E. (2d) 324 (1961). Whether a claim is barred by laches is to be determined in light of [the] facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches. To establish the defense of laches, a party must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Hallums v. Hallums, 296 S.C. 195, 371 S.E.2d 525 (1988). The Defendants cite the case of Robinson et. al v. Estate of Harris et. al, 388 S.C. 616, 698 S.E.2d 214 (2010) in which the Court held that a real property claim was barred by laches due to a "flagrant and egregious" delay of thirty-nine years in asserting the claim. The Court found significant prejudice to the other party by the delay in the assertion of the claim.

Conclusions of Law

The Court has jurisdiction over the parties and subject matter of this litigation. Venue is proper.

The facts of this case clearly show an abandonment of the railroad by the Seaboard Coastline Railroad Company. The Court considered several established facts in coming to this conclusion. The railroad company initiated a formal abandonment process. The governmental bodies of Abbeville County and McCormick County had the opportunity to contest the abandonment of the railroad in the ICC process----which McCormick County in fact did. The initial ICC committee report approved the abandonment but gave a time window in which governmental bodies and other organizations had the opportunity to purchase the subject property for other public purposes. None did. The time period expired and the railroad proceeded with abandonment, physically removing the tracks. The ICC was notified by letter that the "tracks" had been abandoned as of February 15, 1980. The Court concludes that the use of the word "tracks" in the abandonment letter evidenced a clear intention of the railroad to

abandon the line. The letter is just one piece of evidence, but must be viewed in conjunction with the other evidence in the case. The Court considered the railroad ceasing operations on the line sometime in the 1970s, the initiation of a formal abandonment procedure through the ICC, the physical removal of the tracks and the subsequent conveyance of the subject property. All of these pieces of evidence, when taken together, show both clear intent on the part of the railroad to abandon the line and the actual accomplishment of the abandonment.

The original right of way to each landowner, as shown by Exhibit 3, conditioned the right-of-way on the existence of a railroad. It contains the explicit language that the conveyance is "wholly null and void" should a railroad not exist. The Defendants assert that the subject property rights could be reserved for future railroad use. Apparently, although its foundational documents are not in evidence, the Savannah Valley Trails Inc. has future railroad revitalization as one purpose of the non-profit corporation. In this case, there is no evidence of the disputed property ever being intended or contemplated by any party to be used for future railroad purposes. None of the deeds placed into evidence (Exhibit 8, Exhibit 9, Exhibit 10 and Exhibit 11) have any mention of future railroad use or construction of a new railroad. The construction of a hiking trail is an altogether different purpose.

The Defendants attempt to distinguish the Eldridge facts, correctly pointing out that there are some different circumstances in that case. However, the Court must compare the pertinent right-of-way portions of that case with our present case. Parts of that case involved properties conveyed in fee simple which are distinguishable from the facts of our present case. However, the railroad right-of-way in that case creates identical legal issues as our present case. The law regarding the property rights owned by the railroad in our present case is clear---once each right of way was abandoned, it automatically terminated. The presence of the mortgage held by

Chemical Bank did not extend Seaboard Coastline Railroad's rights once the railroad had been abandoned. Accordingly, the Court concludes that the railroad right-of-way held by the Seaboard Coastline Railroad Company in regards to each Plaintiff in this case was abandoned as of February 25, 1980.

The question of laches is a more difficult question. It is undeniable that the Plaintiffs did nothing to assert their claims to the subject property for over thirty years, making the delay prong of the laches test clearly met by the Defendants. The next two prongs are closer questions. The Defendants argue that the delay was unreasonable. There had been a public hearing through the ICC procedures, wherein the Plaintiffs or their predecessors had the opportunity to attend and be heard. The removal of the tracks was open and visible. Each Plaintiff or their predecessor would have been able to see that the tracks had been removed by walking along their property line. The deed issued to the Clarks Hill-Russell Authority was in the public record. The tax maps reflected that the right of way through each Plaintiff's property was still separated. None of the Plaintiffs or their predecessors paid property taxes on the disputed property during this time period. There was no evidence of any use of the subject property by any Plaintiff except for the possible small building constructed on the property titled in Plaintiff Willie Clyde Smith's name. No survey was submitted which showed whether or not said structure was within the right-of-way. The photographic evidence submitted shows a strip of land that was open between trees. Some maintenance was performed on at least some of the subject property in that the railroad bed is still visible in the submitted photographs after over three decades of nonuse. The Court notes that neither the Defendants nor their predecessors did much during the time period to evidence any desire on their part to make use of the subject property. Although there was no testimony or evidence presented regarding use, it appears as though the railroad bed was just empty, unused

land for over three decades. However, the Plaintiffs or their predecessors had sufficient notice to know that they could assert their rights in 1980. Accordingly, the Court concludes that the Defendants' delay in filing suit was unreasonable.

The last prong of the laches test is prejudice. The Defendants assert that they have suffered prejudice as a result of the Plaintiffs' delay. The Defendants have constructed a portion of the trail project, erecting signs and restoring a bridge on a portion of the trail. The Defendants assert that they have secured grants and incurred indebtedness for the project, although those amounts are not in evidence. Nothing is in evidence to show specific amounts spent or set aside for work on the subject property. The Defendants also assert in their brief that they face potential liability if the trail is not completed. The specifics of said potential liability are not in evidence. The only amount of money in evidence is the amount paid to release the subject property from a larger mortgage held by Chemical Bank in 1983. No evidence was presented regarding the total number of lines affected by the larger mortgage. What was presented showed what the Defendants' predecessor in title paid to release the subject property. These particular Defendants were not parties to that transaction. The Court notes that a portion of the trail has been completed. There is no evidence of the funds required to complete the trail on the subject property or whether this money has been obtained or spent on the portions affected by this Order.

The Plaintiffs assert that the Defendants are not prejudiced because portions of the trail are completed and can be used, although they are not the completed trail as envisioned at the outset of the project.

The Court concludes that, despite a significant and unreasonable delay in the assertion of their rights, the Plaintiffs' inaction has not been proven to prejudice the Defendants in other than

vague and general terms. Accordingly, the Court declines to prevent the Plaintiffs from asserting their legal rights to the property under the doctrine of laches.

ACCORDINGLY, IT IS ORDERED, that each Plaintiff in these combined cases shall be declared to be the owner in fee simple of the property in the abandoned railroad bed to which their predecessors in title granted a right-of-way.

AND IT IS SO ORDERED.

R. Scott Sprouse, Judge
Tenth Judicial Circuit

Walhalla, South Carolina

February___, 2020



Abbeville Common Pleas

Case Caption: Annie L Myers , plaintiff, et al VS Town of Calhoun Falls

Case Number: 2018CP0100094

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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