

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

)
) 2018-CP-23-05191
)

Richard Joseph Rogozinski,

)
)
) Plaintiff,

)
) vs.

)
) **ORDER DECLARING MAPLE
) COURT A PUBLIC ROAD**

)
) County of Greenville and City of Simpsonville,

)
)
) Defendants.
)
)
)
)
)
)

RECEIVED

Sep 02 2020

SC Court of Appeals

This matter came before me for trial on June 2, 2020. The plaintiff herein, Richard Joseph Rogozinski (the “Plaintiff”), seeks a determination that the road providing access to land and apartments owned by him is a public road to be maintained by either the County of Greenville or the City of Simpsonville. The defendants, County of Greenville (also herein the “County”) and City of Simpsonville (also herein the “City”) (hereinafter referred to collectively as the “Defendants”), deny that the road known as Maple Court is a public road because the road was never dedicated by the private owner or accepted by the public. The Defendants have also challenged the standing of the Plaintiff to bring this action, and they argue that the judiciary has no authority to order repair of a public road.

At the trial of the case, the Plaintiff testified that he was the owner of real property with an apartment complex located in the County of Greenville and City of Simpsonville, said property being located along a road named Maple Court, bearing Greenville County Tax Map Number 0300000100106 and further described and shown as Lots Nos. 1, 2, 3, 4 and 5 on a plat prepared by R.B. Bruce, RLS, recorded in the Office of the Register of Deeds for Greenville

County in Plat Book 4-X at Page 17 (the “Property”). The Plaintiff entered into evidence the plat prepared by R.B. Bruce, RLS, recorded December 5, 1974 in the Office of the Register of Deeds for Greenville County in Plat Book 4-X at Page 17 (the “Plat”), which shows a road identified as Maple Court providing access to each of the five (5) lots shown on the Property. The Plaintiff also entered into evidence a Statement of Ownership and Consent to Dedicate Streets and Roads to Greenville County for Public Use, which was dated December 5, 1974, recorded in the Office of the Register of Deeds in Dedication Book 1 at Page 193 (the “Statement of Dedication”).

The Plaintiff testified that he moved to Greenville County in January 1990 to assist his parents with the management of the apartments on the Property and to perform manual labor related to the Property. The Plaintiff received an interest in title to the Property in 1990 by deed from his parents recorded in Deed Book 1387 at Page 73, aforesaid records, and later received all right, title, and interest to the Property by deed recorded in Deed Book 1887 at Page 370, aforesaid records. Since moving to Greenville in January 1990, the Plaintiff testified that neither he nor his parents restricted access to the road shown as Maple Court on the Plat, and he testified that Maple Court had been considered a public road for as long as he had been familiar with the Property, that is, since January 1990.

The Plaintiff further testified that deputies of the Greenville County Sheriff’s Office had continuously used Maple Court since at least 1990 to park their vehicles for the purpose of surveying traffic on the adjoining road known as North Maple Street, and to pull over drivers to issue traffic citations on Maple Court. In addition, the Plaintiff testified that neither he nor his parents had ever paid ad valorem property taxes for the road known as Maple Court. Instead, the road known as Maple Court shown on the Plat was excluded from his property tax bill issued by the County of Greenville. The Plaintiff entered photographs showing an area of potholes and

disrepair at or near the intersection of Maple Court and North Maple Street. I find the testimony of the Plaintiff to be credible.

On cross examination, the Plaintiff acknowledged that he placed no trespassing signs some distance down Maple Street to discourage persons who did not reside in his apartment complex from dumping or trespassing on the Property. Although the Defendants argued that such signs were on what the Plaintiff alleged to be the public road of Maple Court, the Defendants did not present a survey showing the location of the signs. On cross-examination, the Plaintiff also acknowledged that there was no street sign identifying Maple Court as a road and that he had no actual knowledge of either the City or the County repairing or maintaining Maple Court.

Following testimony from the Plaintiff, the Plaintiff took testimony from Debbie H. Adkins, who serves as a manager and assessor for Greenville Property Real Property Services. Upon reviewing the tax assessor's record presented by the Plaintiff, Debbie H. Adkins stated that the road known as Maple Court was not taxed by the County of Greenville. Ms. Adkins also testified that property was within the City's territorial boundaries.

The Plaintiff then rested his case, at which time the Defendants renewed their Motions to Dismiss and moved for a directed verdict. The Court denied their motions.

The County called Heshia Gamble to testify. Ms. Gamble has been the County Engineer for thirteen years, and in that position she is over the County's Roads and Bridges Maintenance Department. She testified that part of her job is to know which roads are in the County's inventory. Ms. Gamble testified regarding the process by which the County accepts a road for public dedication, and she also testified concerning the search she had made of County records to determine whether Maple Court was or had ever been in the County's road inventory. She also

indicated that the speed bumps along Maple Court were most likely installed by a private party because the County only installs the larger and rounder items known as speed humps. She also testified that the type of back-on parking that was occurring on Maple Court was not allowed on County roads. Ms. Gamble testified that there was no record that the County had never accepted Maple Court into its inventory of public roads and that there was no evidence the County had ever performed any maintenance. Ms. Gamble testified it was her opinion that Maple Court was not a public road. Ms. Gamble also testified that property was within the City's territorial boundaries, and that the County did not maintain roads within the boundaries of municipalities.

The City called Dianna Gracely as its witness. She testified that she was the City Administrator for the City and was familiar with the Property. Ms. Gracely indicated that she believed Maple Court was a private road and that even if it were a public road, she believed that the County, rather than the City, would be responsible for its maintenance and repair.

Following the close of testimony the City and the County renewed their respective motions to dismiss and for a directed verdict, which the Court denied.

After careful review of the pleadings, the arguments of counsel, and the testimony and evidence presented, I find and conclude as follows:

1. "Perfecting a dedication of property to public use involves two steps. First, an owner must express an intention to dedicate his property to public use in a positive and unmistakable manner. *Boyd v. Hyatt*, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct.App.1988). Second, there must be a public acceptance of the property offered for dedication. *Id.* at 365, 364 S.E.2d at 481. *Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 413 S.E.2d 821 (S.C. 1991)." *Helsel v. City of Myrtle Beach*, 307 S.C. 24, 26-27, 413 S.E.2d 821, 824. In this case, I find under either a clear and convincing standard or preponderance of the evidence standard, that the

Property was dedicated for public use. Critical to note is that the 1974 recorded Plat clearly states that it was a “Final Plat” and provides clear language in its Certificate of Ownership and Dedication that the then owner of the Property was dedicating the road shown as Maple Court for public use. The Plat also contains a Certificate of Approval for Recording signed by J. Coleman Shouse as Director of Planning for the Greenville County Planning Commission. Even without the Certificate of Ownership and Dedication on the Plat and signed by the then owner of the Property, “[w]here land is divided into lots according to a plat, showing streets, and lots are sold and conveyed with reference to said plat, the owner thereby dedicates the streets to the use of the lot owners, their successors in title, and the public. *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 925 (1965).” *Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 413 S.E.2d 821 (S.C. 1991). Because the Plat divided the Property into lots and showed Maple Court as a street, I conclude that the owner dedicated Maple Court to the use of the lot owners, their successors in title, and the public. The fact that the Statement of Ownership recorded in 1974 and signed by the owner of the Property was approved as to form by the County Attorney at the time, E. P. Riley, further mandates the conclusion that the prior owner of the Property dedicated Maple Court for public use and the same was accepted by Greenville County. In sum, there is no doubt that Maple Court was dedicated for public use in a positive and unmistakable manner. To hold otherwise would be to ignore the plain language contained in both recorded documents.

2. The Defendants instead focus their argument on whether the public ever accepted Maple Court as a public road. I find that the reference of the Plat to itself as a “Final Plat”, together with the Certificate of Approval for Recording on the Plat signed by J. Coleman Shouse as Director of Planning for the Greenville County Planning Commission, and the approval as to

form by the County Attorney, E. P. Riley, all serve as clear indicia of the acceptance of Maple Court as a public road by the County. Even were this not the case, South Carolina law provides that, “. . . no formal acceptance by a public authority is necessary to show public acceptance. Acceptance may be implied by the public or a public authority continuously using or repairing the property. Also, acceptance and dedication may be demonstrated by a governmental authority not assessing taxes on the land.” *Mack v. Edens*, 320 S.C. 236, 464 S.E.2d 124 (S.C. App. 1995), citing *Cleland v. Westvaco Corp.*, 314 S.C. 508 (Ct. App. 1993). In this case, the Plaintiff has proved that the County does not assess taxes for the road known as Maple Court and the absence of taxes assessed on Maple Court provides additional proof that the public accepted Maple Court as a public road. And, the fact that law enforcement has used Maple Court is a further indication of it being a public road. Considering all of the above-referenced factors, and considering the old age of the Plat and Statement of Dedication which were never refuted by the County or the City, the Plaintiff has provided strict, cogent, and convincing evidence and proof of dedication and acceptance. *See Tupper v. Dorchester Cnty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 187 (1997).¹

3. The testimony and evidence reflect that the Property and Maple Court are now, as a result of annexation, located within the City. Although the City argues that the County should be responsible for its maintenance because the City never accepted the road into its inventory, I find that the City appears responsible for the maintenance and repair of Maple Court. S.C. Code Ann. 5-27-120 provides:

The city or town council of any city or town of over one thousand inhabitants shall keep in good repair all the streets, ways and bridges within the limits of the city or town and for such purpose it is invested with all the powers, rights and

¹ The Court notes that, as a result of this finding and conclusion, the entire area shown as Maple Court becomes a public road. The Court does not address the implications of this based upon the location of certain items on Maple Court that now may or may not be on public property.

privileges within the limits of such city or town that are given to the governing bodies of the several counties of this State as to the public roads.

The South Carolina Supreme Court has held that S.C. Code Ann. 5-27-120 "clearly defines the duty to the general public of a municipality to maintain its streets." *Vaughan V. City of Lyman*, 370 S.C. 436, 443, 635 S.E.2d 631, at 635 (2006). "[C]ase law shows that, as a result of sections 5-27-120 and 5-27-10 (and their prior versions), municipal councils are in control of the roads within their municipal limits and they have the power to regulate and manage such roads." Op. S.C. Atty. Gen., 2016 WL 7031993, at *3 (S.C.A.G. Nov. 15, 2016).

Ordinarily, county authorities have no power to control streets within municipalities, except where the statute so provides. *Martin v. Saye*, 147 S.C. 433, 145 S.E. 186 [(1928)]. In this State, as in most States, there are statutes vesting such control in the corporate authorities of cities and incorporated towns. The usual effect of such statutes is to transfer from the county authorities to the municipality the power to regulate and control highways located therein. *Chapman v. Greenville Chamber of Commerce*, 127 S.C. 173, 120 S.E. 584, 587 [(1923)].

Leonard v. Talbert, 222 S.C. 79, 83-84, 71 S.E.2d 603, 604-05 (1952). Therefore, it would appear that the City, as the municipality, is responsible for the maintenance and repair of the roads located inside its corporate limits, not the County. See Op. S.C. Atty. Gen., 2016 WL 7031993, at *5 (S.C.A.G. Nov. 15, 2016) (determining "that the municipality, and not the county, is responsible for the maintenance and repair of the roads located inside its corporate limits.").

4. Nevertheless, this court will not order the repair of Maple Court as requested by the Plaintiff. First, the Plaintiff has not demonstrated whether the area of the road in disrepair is within the road known as Maple Court or within the area of the right of way known as North Maple Street which falls under the control of the South Carolina Department of Transportation. Even if the area of disrepair is within Maple Court, granting this remedy may very well violate

the separation of powers doctrine. South Carolina Constitution, art. I, 58 provides: "In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." Granting the Plaintiff the relief he seeks would violate this section of the South Carolina Constitution. S.C. Const. art. VIII, gives the General Assembly the power to provide for the structure, power and duties of cities. Pursuant to that authority, S.C. Code Ann. 5-7-30 provides, in part, that:

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property....

Likewise, and with respect to counties, S.C. Code Ann. 57-17-10 provides that:

All roads, highways and ferries that have been laid out or appointed by virtue of an act of the General Assembly, an order of court or an order of the governing body of any county are declared to be public roads and ferries, and the county supervisor and the governing body of the county shall have the control and supervision thereof. The county supervisor and governing body of the county may order the laying out and repairing of public roads where necessary, designate where bridges, ferries or fords shall be made, discontinue such roads, bridges and ferries as shall be found useless and alter roads so as to make them more useful.

The powers set forth in these statutes are clearly legislative in nature. These statutes confer on the City the authority to "enact regulations, resolutions, and ordinances in relation to roads [and] streets," S.C. Code Ann. 5-7-30, and they provide the County with the authority to "order the laying out and repairing of public roads where necessary, . . . discontinue such roads as shall be found useless and alter roads so as to make them more useful." *Id.* 57-17-10.

It is not a function, power or duty of the court to levy taxes, determine how those taxes are spent in relation to roads and streets, or to determine when and under what circumstances roads and streets are repaired or maintained. Plaintiff asks this court to order that the Defendants repair and maintain Maple Court. If Maple Court is a public road or street, the governing council of the applicable jurisdiction should determine when and how it will be repaired and maintained

"The legislative department makes the laws[,] the executive department carries the laws into effect, and the judicial department interprets and declares the laws." *State ex. rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982). This delineation of powers amongst the branches "prevents the concentration of power in the hands of too few, and provides a system of checks and balances." *Id.*; see also *S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 649, 744 S.E.2d 521 , 525 (2013) (noting that the "preservation of a separation of powers" is a "basic tenet of democratic societies").

5. Finally, this court has denied the motions of the Defendants to dismiss the action and for a directed verdict. The Plaintiff has standing because he owns the real property surrounding and abutting Maple Court, has a personal stake in this action, and is a real party in interest. See *Georgetown Cnty. League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 713 S.E.2d 287 (2011). The Defendants have each denied that Maple Court is a public road. The Plaintiff presented sufficient testimony and evidence to prove the elements required for dedication and acceptance of a public road, and therefore the court denied the motion of the Defendants for a directed verdict. The court also notes that the Circuit Court denied the motion to dismiss previously filed by the Defendants herein. An Order reflecting the same was entered on January 14, 2019.

Therefore, it is hereby **ORDERED, ADJUDGED, AND DECREED** that:

1. Maple Court is a public road with the dimensions, metes and bounds, and courses and distances shown on the Plat recorded in Plat Book 4-X at Page 17 in the Office of the Register of Deeds for Greenville County; and
2. The City of Simpsonville is responsible for the maintenance and repair of Maple Court, but this court declines to order the immediate repair of Maple Court based on the separation of powers doctrine.

AND IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW



Greenville Common Pleas

Case Caption: Richard Joseph Rogozinski vs. Greenville County Of , defendant, et al
Case Number: 2018CP2305191
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)