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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPELLATE CASE NO. 2020-000578

APPEAL FROM THE SOUTH CAROLINA COURT OF COMMON PLEAS

CIVIL ACTION NOS.: 2018-CP-01-00094 AND 2018-CP-00250

Annie L. Myers, Billy R. Nobles, M. Elaine Nobles, James Lewis Willis, James and Lucille Mason, Joann Atkinson, Willie Clyde Smith, Clyde H. Broadwell, Jr., and Stephen Pettigrew of Sawney Creek Farm, LLC, James Tuberville, Dean Burton, Robert W. and Minnie O. New, Walter L. Anders and Mary and Homer Martin……...Respondents,

v.

Town of Calhoun Falls and Savannah Valley Trails, Inc. ……. Appellants.

APPELLANT'S REPLY BRIEF

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ARGUMENT I.

BECAUSE THE FEDERAL GOVERNMENT POSSESSES EXCLUSIVE AND PLENARY JURISDICTION OVER THE MATTER RAISED IN THIS CASE, DID THE TRIAL COURT ERR WHEN IT EXERCISED SUBJECT MATTER JURISDICTION OVER THIS MATTER AND FAILED TO DISMISS THE CASE FOR LACK OF SUBJECT MATTER JURISDICTION?

The trial court lacked subject matter jurisdiction over this dispute, and the lower court order should be vacated. (Order p. 8). The Supreme Court of the United States has explained that the Interstate Commerce Commission ("ICC"), which is now known as the Surface Transportation Board ("STB"), has "exclusive and plenary" jurisdiction to regulate railroad abandonments. Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 321 (1981); see also 49 U.S.C. § 1050(1)(b) ("The jurisdiction of the [STB] over . . . [t]he . . . abandonment of . . . tracks . . . , even if the tracks are located, or intended to be located, entirely in one State, is exclusive."); Eldridge v. City of Greenwood, 331 S.C. 398, 406-07, 503 S.E.2D 191, 195 (1998) ("Eldridge II") (recognizing that the STB has exclusive jurisdiction over the abandonment of railroads). On November 21, 1978, the ICC issued a decision concerning Seaboard Railroad's application for approval to abandon the railroad between the Town of McCormick and Calhoun Falls. (JSF Ex. 4). That decision allowed Seaboard Railroad to discontinue operations and remove tracks along the segment of railroad and released the ICC's exclusive and plenary jurisdiction only in the event that Seaboard Railroad met certain conditions. (JSF Ex. 4). On March 2, 1979, the ICC conducted a review of its November 21, 1978, decision and affirmed that decision, explaining that the same conditions detailed in the November 1978 decision applied in order for Seaboard Railroad to discontinue operations (hereinafter the "1979 Order"). (JSF Ex. 5). There is no evidence in the Record that supports a finding that Seaboard Railroad complied with the conditions in the ICC's 1979 Order. Therefore, the ICC's (now the STB's) exclusive and plenary jurisdiction

over the matter was not released, and subject matter jurisdiction is properly before the federal courts and not the state courts. See 49 U.S.C. § 1050(1)(b); see generally Lucas v. Township of Bethel, 319 F.3d 595, 602-03 (3rd Cir. 2003) (holding that application from a regulatory agency itself is a factor but in and of itself is not abandonment).

Respondents in their Brief state that Appellants are challenging the 1979 Order. Respondents have plainly and simply pointed that the Appellants, who were not the moving party below, failed to present any evidence of record of full compliance with the 1979 Order. As such, it is Respondents in their Brief that appear to be challenging the 1979 Order, bypassing the same for state court jurisdiction, and if Respondents desire to raise such a challenge, this should be done in the federal courts. Seaboard Railroad failed to comply with the ICC's 1979 Order, which results in the ICC's retained jurisdiction over this matter. Also, Respondents have misconstrued the application of Eldridge II to Appellants' argument. The facts of Eldridge II are different than the facts of this case. Here, there was never a final certificate of abandonment. Eldridge II dealt with a final certificate of abandonment, not a railroad in non-compliance with specific terms required to confer permission for abandonment. For the reasons stated above and in Appellants' Brief, the trial court's order should be vacated for lack of subject matter jurisdiction.

ARGUMENT II.

BECAUSE THERE IS NO SPECIFICITY REQUIREMENT TO SHOW PREJUDICE FOR LACHES, DID THE TRIAL COURT ERR AS A MATTER OF LAW WHEN IT CONCLUDED THAT THE APPELLANTS FAILED TO PROVE PREJUDICE IN OTHER THAN "VAGUE AND GENERAL" TERMS?

Respondents are barred from recovery based upon the equitable doctrine of laches. Respondents attacked title to the Appellants' property without submitting any evidence disputing Appellants' title ownership during the last thirty-six years of record ownership, an unreasonable

length of time, to the clear detriment of Appellants' ownership and use of its real property. The doctrine of laches 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. Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E. 2d 525, 527(1988). Further, a defendant who has been "slightly prejudiced" by expenditures and improvements to subject property has been sufficiently prejudiced for the purpose of laches. Mid-State Trust, II v. Wright, 323 S.C. 303, 307-08, 474 S.E.2d 421, 424 (1996). In an action for recovery of real property or to quiet title, which Respondents advanced in the lower court, there is no greater loss than the loss of title to and use of real property after thirty six years as is the inability to use the entirety of the twenty two miles of trail. The stipulated facts evidence that the Appellants and their predecessor in title, the State of South Carolina through the State Authority and South Carolina Department of Commerce, Division of Savannah, have held record title through a deed recorded in the public records of Abbeville County and McCormick County in 1983. (Ex. 10, 11). Respondents argue that once the railroad was abandoned the property reverted to them as a matter of law, but Respondents do not cite any case law to support this contention. Furthermore, the railroad was not abandoned because Seaboard Railroad did not fully comply with the 1979 Order's conditions for abandonment. Seaboard Railroad did comply with the 1979 Order in that Seaboard Railroad held the underlying right of way until it was able to convey the same to the State of South Carolina. Nevertheless, the Respondents in the instant case had actual notice that the tracks had been removed since February 25, 1980, and no Respondent took action to assert any possessory ownership claim adversarial to Seaboard Railroad, the State of South Carolina, Calhoun Falls, or Savannah Valley Trails, Inc. ("SVT") until this action. (JSF Ex. 6). As stipulated, the State of South Carolina, Calhoun Falls, and SVT obtained funds and expended grant funds to groom, maintain and improve the railroad

corridor. (JSF 17; Order p. 11). The delay in Respondents' action was unreasonable, being thirty-three years from the recording of title from Seaboard Railroad and thirty-six years from the purported acts through which Respondents now claim abandonment of the right of way. (JSF Ex. 6; JSF Ex. 8). The trial court's order should be reversed as to the ruling on the prejudice element of laches, and this Court should apply laches to find that Appellants own the subject property.

ARGUMENT III.

BECAUSE THE BURDEN OF PROOF SHOULD HAVE BEEN ON THE RESPONDENTS TO SHOW THEIR RIGHT TO OWNERSHIP, DID THE TRIAL COURT ERR AS A MATTER OF LAW IN FAILING TO APPLY THE APPROPRIATE BURDEN OF PROOF TO THE APPROPRIATE PARTY?

Imagine that you paid for your home, lived in your home, and enjoyed the warmth and comfort of your home for over thirty years. Then your neighbors, the Canihaveits, decide that they want to take your home. Your neighbors take you to Court. You take your title to Court and the tax bills showing ownership of the property and you wait for your neighbors to prove how in the world they could possibly own your home. The neighbors present no evidence to attack your title ownership and possession of the property. The neighbors never claim to have built a home or a fence or buried their family pet on your property. They cannot because it has not occurred. The neighbors do not present a title or any instrument attacking the validity of our title. They cannot because it does not exist. The neighbors get up and argue that you do not exist in their reality because the property belonged to others a long time ago before you paid for it, lived in it, possessed it, and enjoyed it; and the Canihaveits live closest to your property, so they get it, and the last thirty years do not matter. In fact, the Canihaveits are so incredulous they do not bother to show evidence that they own their own property. It is not necessary in their reality.

However, the rules of presumption of title and evidence protect you from the position of

the Canihaveits. How can a plaintiff prosecute a case by arguing a negative, with no evidence? Well, it is next to impossible, but if you ignore the burden of proof, rules of evidence, causes of action and elements thereof, ignore history, and alter reality, it might just happen to you.

The cardinal rule of an action to quiet title is that the moving party must establish its claim based upon the strength of its own claim, and not the weakness of the other party's claim. Hoogenboom v. City of Beaufort, 315 S.C. 306, 313, 433 S.E.2d 875, 880 (Ct. App. 1992) ("In an action to quiet title, the plaintiff must recover on the strength of his own title, not on the alleged weakness of the defendant's title."). Respondents, as Plaintiffs at trial, have the burden of proof to establish unencumbered title to real property, which is the subject of this action. Respondents in its quiet title action submitted no evidence at all on the issue of title.

If Respondents assert that the property at issue belongs to them, then Respondents must prove the same. The mere allegation that the property reverted to Respondents is insufficient to comply with Respondents' burden of proof. Respondents must demonstrate what the predecessor conveyances were, and, furthermore, the facts in this case do not support that Appellants agreed that all of their predecessors-in-interest held rights of way. Appellants submitted a jointly stipulated chain of title to the trial court to establish record legal title in Appellants and their predecessors for the period from 1983 through the date of trial. (JSF p. 2 #11 & 14, p.3 #15 & 16; JSF Ex. 8, 9, 10, & 11). Based on a thirty-six-year chain of title and legal presumption of ownership in favor of Appellants; the Respondents, as Plaintiffs, had to support a claim to ownership by proving an interest in the subject property and by also overcoming the presumption of Appellants' ownership by proving its invalidity. As more fully set forth in Appellants' Brief, there is no evidence to support a challenge to Appellants' record title, and Respondents failed to meet their burden of proof. Accordingly, the trial court's order should be reversed.

ARGUMENT IV.

BECAUSE ELDRIDGE V. CITY OF GREENWOOD, 300 S.C. 369, 388 S.E.2D 247 (1989) AND ELDRIDGE V. CITY OF GREENWOOD, 331 S.C. 398, 503 S.E.2D 191 (1998) WERE LIMITED TO THE SPECIFIC FACTS OF THOSE CASES, DID THE TRIAL COURT ERR IN EXTENDING THE HOLDINGS IN ELDRIDGE TO THIS CASE AND ERRONEOUSLY FINDING THE RAILROAD HAD ABANDONED THE SUBJECT PROPERTY?

The decision made by the Eldridge II Court was based upon the specific facts of that case, and although the Eldridge cases are instructive as to the application of the standard of review and the jurisdictional issues, the facts of the Eldridge cases do not align with the case at hand. If a standard could be interpreted from the Eldridge cases, the conveyance of a right of way for purposes clearly other than railroad purposes might be the standard. It was not removal of the tracks. It was not application to the regulatory agency. Respondents argue in their Brief that Eldridge never went that far and therefore could not be used to identify a bright line test, and then proceed to argue that these cases identify a bright line test in their favor.

In this case, Respondents have only submitted evidence of the February 25, 1980 letter citing removal of and abandonment of the "track" as evidence of abandonment. (JSF Ex. 6). Respondents ignore the very clear terms of the 1979 Order which require Seaboard Railroad to hold title to the underlying right of way. Respondents have not cited any evidence of action by Seaboard Railroad inconsistent with ownership of the right of way or consistent with abandonment. Respondents did not attack Seaboard Railroad and argue that the 1979 Order did not prevent abandonment under state law. Respondents did not attempt to have the portions of the subject property adjoining theirs added to their own tax parcels in order to pay property taxes on the subject property. Instead, the rail corridor remained separately assessed from the Respondents' tax parcels during this period. (JSF Ex. 13-A; JSF Ex. 13-B). Further from 1971

until 1983, the right of way for the rail corridor was under mortgage to Chemical Bank, and the transaction between Seaboard System Railroad, Inc. and the State of South Carolina, through State Authority, was consistent with Seaboard System Railroad, Inc.'s continued claim of ownership of the subject property. (JSF Ex. 7 & Ex. 8). The transaction was for significant consideration, and the sole purpose of which was to fund the acquisition of rail line upon which rail service had been discontinued to ensure its preservation for future rail use. (JSF p. 2 #11 & Ex. 8). The acquisition of the right of way for the rail corridor by the State of South Carolina with Federal Rail Bank funds was consistent with continued use thereof for railroad purposes. This is unlike the facts in the Eldridge cases, where the right of way was conveyed to a public entity for a completely different purpose. Also, in Eldridge, the court explicitly declined to hold that interim use as a walking trail is tantamount to abandonment. The stipulated facts in this case support that the Appellants and their predecessor state agencies have continued to maintain and groom the right of way for future railroad purposes, and interim trail use, both consistent with the right of way and inconsistent with abandonment. Therefore, the trial court erroneously extended and misapplied this Court's holding in Eldridge, and the trial court's order should be reversed.

CONCLUSION

For the reasons stated herein and in Appellants' Brief, this Court should vacate the trial court's order for lack of subject matter jurisdiction, or in the alternative reverse the judgment of the trial court.

Respectfully submitted,

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v.

Town of Calhoun Falls and Savannah Valley Trails, Inc., Appellants.

PROOF OF SERVICE

I, Douglas L. Bell, attorney for Appellants above-named, hereby certify that the Appellant's Reply Brief has been served upon the attorney for the Respondents, along with a copy of this Proof of Service, by electronic mail, on this 12th day of October, 2020 addressed as follows:

C. Rauch Wise, Esq.
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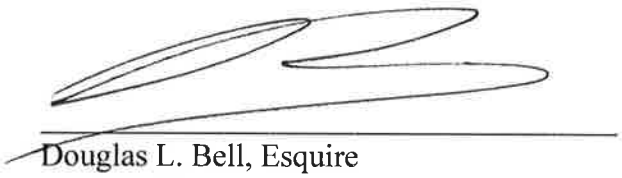
October 12, 2020



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