STATE OF SOUTH CAROLINA
COURT OF APPEALS



Appeal from Abbeville County Common Pleas
R. Scott Sprouse, Circuit Court Judge

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Appellate Case No. 2020-000578
Lower Case Nos. 2018-CP-01-00094 and 2018-CP-01-00250

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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, 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

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# FINAL BRIEF OF RESPONDENTS

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## Index

## Table of Authorities

**Cases:** **Page:**

**Statutes**:



**Other**:

## Statement of Issues Presented

Question I: Does the federal government possess exclusive and plenary jurisdiction over the matter raised in this case and did the trial court err when it exercised subject matter jurisdiction over this matter and failed to dismiss the case for lack of jurisdiction?

Question II: Is there a specificity requirement to show prejudice for laches so that the trial court did not err as a matter of law when it concluded that the appellants failed to prove prejudice in other than "vague and general" terms?

Question 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?

A. Did the trial court err as a matter of law by failing to recognize the Respondents' burden of proof and shifting the burden of proof to the appellants?

B. Is there evidence to support the trial court's finding that Respondents have title to the subject property?

C. Did the trial court err in its finding that all of the subject property was affected under the representative example right of way, err in its reading of the representative right-of-way or erred in concluding abandonment of the right of way?

Question IV: Were Eldridge v. City of Greenwood, 300 S.C. 369, 388 S.E.2d 247 and Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (1998) not limited to the specific facts of those cases and therefore the trial court did not err in extending the holdings of Eldridge to this case and did not err in finding the railroad had abandoned the subject property?

## Statement of the Case

The Respondents agree with the general Statement of the Case provided by the Appellant. The Respondents do not agree that the Appellants had title ownership to any of the property in question or that they had a claim under color of law.

## Standard of Review

"In an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law." *Okatie River, L.L.C. v. Se. Site Prep, L.L.C.*, 353 S.C. 327, 334, 577 S.E.2d 468, 472 (Ct. App. 2003)

## Argument

### Question I

**Does the federal government possess exclusive and plenary jurisdiction over the matter raised in this case and did the trial court err when it exercised subject matter jurisdiction over this matter and failed to dismiss the case for lack of jurisdiction?**

The argument by the Appellants on this issue is somewhat confusing. If they contend that no state court has any jurisdiction over any aspect of the issue of the abandonment of a railroad, this certainly has not been recognized by any court. At the hearing below, the Appellant argued, "Interstate Commerce Commission is the governing body which at the time had exclusive and plenary jurisdiction to determine abandonment." Rec on App. at 51, ll 23-25. This is not exactly correct. The Interstate Commerce Commission, now the Surface Transportation Board, can only give permission for a railroad to abandon a railroad. Whether the railroad actually elects to abandon the railroad is a question of the intent of the railroad and state law.

The Interstate Commerce Commission has ruled that its jurisdiction over a railroad right-of- way ceases upon abandonment. "Our jurisdiction over a line typically ends when a line is fully abandoned. . . . Whether a line is fully abandoned is a question of the carrier's intent. In determining intent, we look at certain indicia: a line is fully abandoned when a certificate of public convenience and necessity (or an exemption notice as pertinent) is issued and has become effective, tariffs have been cancelled and operations have ceased . . . . Abandonment is considered consummated when a line is fully abandoned." *Illinois Cent. Gulf R.R. Co.-Abandonment-in Dewitt & Piatt Ctys.*, Il, 5 I.C.C.2d 1054, 1061 (I.C.C. Dec. 19, 1988)(internal citations omitted). In the present case, there is no question that the railroad right-

of-way was fully abandoned by the time Seaboard formally issued its letter of February 25, 1980. Exhibit 6.

Apparently, the Appellant takes the position that the lower court did not have jurisdiction to rule upon any aspect of the easement as Seaboard has not fully complied with the ICC order of March 2, 1979. Rec on App at 118-119. By asserting this position, the Appellant is attacking the validity of the final order of the Interstate Commerce Commission. To attack the validity of an existing order of the ICC, the Appellant is required to file an action in the original jurisdiction of the United States Fourth Circuit Court of Appeals. "Pursuant to the *Hobbs* Act, circuit courts (other than the Federal Circuit) have exclusive jurisdiction over any action to enjoin, suspend, or determine the validity of an ICC order. 28 U.S.C. § 2342(5)." *Grantwood Vill. v. Missouri Pac. R. Co.*, 95 F.3d 654, 657–58 (8th Cir. 1996); "Under 28 U.S.C. § 2342, the federal circuit courts of appeal, and not the federal district courts, have exclusive jurisdiction to 'determine the validity of ... all rules, regulations, or final orders of the [ICC] made reviewable by [28 U.S.C. § 2321].' *Glosemeyer v. Missouri-Kansas-Texas R.R.*, 879 F.2d 316, 320 (8th Cir. 1989).

In *Dave v. Rails-to-Trails Conservancy*, 79 F.3d 940 (9th Cir. 1996), the property owners, the plaintiffs, attempted to attempt to hold the transferees of the railroad right of way liable for compensation for a taking of their property. The Ninth Circuit referred to this request for compensation as "throwing a money wrench" into an ICC order. The Court then concluded "Although not in form a request for review of an ICC order, the practical effect is to seek such a review. Consequently, the district court lacked jurisdiction." *Id.* at 942. Here the Appellant is trying to throw a monkey wrench into a facially valid ICC order. To do so, they must file in the Fourth Circuit Court of Appeals.

The Appellant contends that because a document from 40 years ago that appears today not to be in the file, undoes the grant of permission to abandon the railroad given to Seaboard Coastline in 1979. Seaboard by its letter of February 25, 1980, acknowledged it had abandoned the railroad right-of-way. Rec on App at 120. The decision as to whether the order is valid today is for the Surface Transportation Board to decide and not a circuit court for South Carolina or this Court. All a circuit court in any state can do is accept the order as valid on its face until the Surface Transportation Board rules otherwise. The fact that 40 years after the fact, when the Seaboard Coastline, the Surface Transportation Board and the property owners have all acted in keeping with a valid order, should not be overturned on a claim a document that at best can be described as ministerial, is not in a file today. The order of the ICC does not order the railroad abandoned. The act of abandonment was left to Seaboard. Seaboard clearly and unequivocally by its actions and its letter elected to abandon the railroad. The order itself makes the order void if Seaboard does not elect to abandon the railroad. Rec on App at 119. Also missing from the original record is the original petition. The missing petition does not impact the validity of the order.

*Fritsch v. Interstate Commerce Commission*, 59 F.3d 248 (D.C. Cir. 1995)[1] supports the position of the Respondents, even for a case that arose after the passage of the rails-to-trails act. In that case, the Interstate Commerce Commission by order dated March 18, 1993 permitted CSX to abandon the railroad. The commission, however, did impose a public use condition which

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[1] As this case was contesting the validity of an order of the Interstate Commerce Commission (ICC), the action was filed in the District of Columbia Court of Appeals. Respondents have never contested the validity of the ICC order. Only the Appellants are contesting the validity of the order. The Respondents accept the order.

required that CSX not dispose of the easement for a period of 180 days. Notwithstanding this provision, CSX formerly abandoned the railroad right-of-way by letter dated March 23, 1993 stating the railroad was abandoned effective March 19, 1993. The purpose of the 180 extension was to permit CSX and Monroe County Parks and Recreation Department to reach an agreement concerning the right of way under the Nationals Trails System Act. (16 U.S.C. § 1241).

The Court concluded that the letter from CSX formerly abandoning the railroad right-of-way extinguished any property interest of CSX in the railroad right of way. The Court said:

> [O]nce a railroad consummates abandonment of a bare easement, the railroad no longer possesses any property interests to transfer. Such is the case here, where CSX only possessed an easement on property belonging to private landowners. Once CSX consummated abandonment, CSX's property interests reverted to the landowners. These interests were thus extinguished as a matter of law. Certainly neither section 10906 nor the Trails Act can create a new property interest if abandonment has already occurred.
> *Id.* at 252–53

The issue of jurisdiction was resolved in *Eldridge v. City of Greenwood*, 331 S.C. 398, 414, 503 S.E.2d 191, 199 (Ct. App. 1998) when this Court held, "The ICC's jurisdiction therefore terminated upon issuance of the certificate of abandonment, and resolution of what interests the agreements and conveyances transferred is a matter for state law." Other states have also concluded that once a railroad is abandoned, the Surface Transportation Board does not have exclusive jurisdiction. *N. Carolina R. Co. v. City of Charlotte*, 112 N.C. App. 762, 437 S.E.2d 393 (1993); *Chatham v. Blount Cty.*, 789 So. 2d 235, 241 (Ala. 2001)( "After reviewing the evidence in this case, we conclude that Cheney had abandoned the easements that had composed the railroad corridor. By selling the rails, crossties, and track material, Cheney rendered impossible the use of the easements as a railroad right-of-way or for railroad purposes.

This action, together with Cheney's attempt to sell its interest in the easements and its eventual unconditional conveyance of the vast majority of the railroad corridor to the County and the City, convince us that Cheney, before it made that conveyance, had intended to abandon, and did abandon, the easements, which initially had been acquired for railroad purposes." )

If the position of the Appellant is correct, and jurisdiction can be raised at any time, the decision of this Court in *Eldridge* is not valid as jurisdiction could be raised today. The Appellants seem to say of the opinion, "It is a tale told by an idiot, full of sound and fury, signifying nothing." Macbeth, Act 5, Scene 5. The lower court had the jurisdiction to rule on the issue of whether Seaboard had in fact abandoned the railroad.

**Question II**

**Is there a specificity requirement to show prejudice for laches so that the trial court did not err as a matter of law when it concluded that the appellants failed to prove prejudice in other than "vague and general" terms?**

To establish laches, prejudice is required. As said by this Court, "The determination of whether laches has been established is largely within the discretion of the trial court. Delay alone is not enough to constitute laches; it must be unreasonable, and the party asserting laches must show prejudice." *Brown v. Butler*, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001). The claim by the Appellant is that no respondent "disputed title ownership of the State of South Carolina or the Appellants." Br. of App. at 8. This is not correct. This suit is evidence that the Respondents contested the claims of the Appellants. The suit was filed when the Respondents first attempted to trespass on the property of the Respondents and interfere with the property rights of the Respondents.

Appellants made much of the fact that the Counties of Abbeville and McCormick segregated the subject property from their parcels beginning in 1976. Br. of App. at 9. This fact is meaningless. No segregation was done pursuant to a court order. It was a decision by a local official. Nothing in this record even suggests that any Respondent went and looked at the tax map before this litigation began. Such segregation could not change the nature of the railroad property interest in the real estate from an easement to a fee simple title. Even if the Respondents were negligent in not checking the tax records, that does not work to the prejudice of the Appellants.

The title to the abandoned railroad right-of-way reverted to the Respondents upon the formal abandonment of the railroad by Seaboard. This was done by operation of law. No respondent was required to take any action to have title to the old railroad vested in them. No respondent had knowledge that they were required to take any action. "Rather, so long as there is no knowledge of the wrong committed and no refusal to embrace opportunity to ascertain facts, there can be no laches." *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 296, 519 S.E.2d 583, 599 (Ct. App. 1999). "The equitable 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.'" *Robinson v. Estate of Harris*, 388 S.C. 630, 642, 698 S.E.2d 222, 228 (2010). No case in our state has ever required a property owner to go to court to re-established their title ownership of their property when an easement is abandoned. As the Respondent's predecessors in title gave an easement, the title to the property was never lost by the Respondents. They remained, even while the railroad was in use, the legal title holders of the property over which the railroad ran.

Appellants argue the Respondents had notice on June 16, 1983 that Seaboard issued a quitclaim deed to Clarks Hill-Russell Authority. This spurious deed, issued over three years after the property was abandoned and the easement abandoned, does not put Respondents on any notice. Not until someone actually tried to cross or use their property were the Respondents required to take any action to stop the use of their property by the Appellants or anyone else. Few people check the title to their property on a regular basis to determine if a spurious deed has been issued. The Appellant seems to argue that if a person were to place a spurious deed on the record and the true owner took no action to attack the spurious deed, then, over time, the true owner loses the right to claim ownership of the property. This has never been the law.

When Appellants purchased the property, they were the ones on notice that they were purchasing an abandoned railroad right-of-way. At the time they obtained the quit claim deed, they also knew that Seaboard had taken no action to reserve the abandoned line for a rails-to-trail project. This was obvious for the act had not been passed in 1980. Notwithstanding the numerous "red flags" as to their ownership, they accepted the deed. Interestingly, the initial purchaser of the property in 1983 did nothing with the property before they transferred their interest in April of 2012. For a period of 29 years, the Respondents had no one claiming the abandoned right-of-way that ran through their property. When the Appellants obtained the property in April and June of 2012, they also knew no action had been taken by their predecessors in title to interfere with the property rights of the Respondents.

The Appellants have not been prejudiced. While they have made improvements to land not belonging to any of the Respondents, no improvements were made to the property of Respondents. As to those property owners, none of which are Respondents here, the Appellants

may be able to show prejudice. One possible exception may be that some clearing of the land was done on the property of the Annie Myers case. But that improvement was done after this suit was filed and cannot be the type of prejudice the court contemplate.

**Question 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?**

This case was tried on stipulated facts. Among the stipulated facts is a representative deed of all the respondents. Rec. on App. at 111- 113. This exhibit was stipulated that all the predecessors in title gave a right-of-way. Rec. on App. at 3; 31, ll 6-7; 36, ll 15-18; 38, ll 13-20;49, ll 7-11; 50, ll 7-11. At no time did the Appellants argue that the easement submitted with the stipulate facts was not representative of all the easements. The Appellants did not argue to the lower court that no other easements were submitted for the other Respondents. Nor did the Appellants file a Rule 59 Motion calling this alleged error to the attention of the Court. If the basis of the argument of the Appellants on this issue is the Respondents only submitted one easement, this is not in keeping with the argument before the Court below nor is it preserved for review. "To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court." *Doe v. Doe*, 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct. App. 2006).

As noted above, when Seaboard abandoned the railroad, at that point title reverted to the Respondents as the successors in title to the people granting the original right of way. The Respondent has legal title to the property. The spurious deeds by which the Appellants trace

their title, cannot give them legal title if Seaboard did not have legal title at the time it issued the original deed. "It will not be questioned that no deed can operate so as to convey an interest which the grantor does not have in the land described in the deed or so as to convey a greater estate or interest than grantor has, even though by its terms it may propose to do so." *Griggs v. Griggs*, 199 S.C. 295, ___, 19 S.E.2d 477, 479 (1942). A deed that conveys no title does not improve simply because subsequent deeds are conveyed. The Appellants appear to suggest that it does. At the argument below, the Appellants appear to argue that if the case had been brought in 1985, this would have been a pure abandonment case. "If it were 1985, I think we'd be here for an abandonment case." Rec. on App. at 43, ll 19-23. Legal title to the abandoned railroad right-of-way remained with the Respondents both before and after the abandonment. The only event that has occurred is the railroad has been abandoned and therefore the easement has been abandoned.

**A. Did the trial court err as a matter of law by failing to recognize the Respondents' burden of proof and shifting the burden of proof to the appellants?**

The Respondents contend that this issue, if it is an issue, is not preserved for review by this Court. The trial court found, in keeping with the stipulation and arguments of counsel, title to the land was in the name of the various plaintiffs. The Court found, "Many landowners granted a railroad right-of-way on their respective properties so that the railroad 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." Rec. on App. at 3. The Appellants did not argue contrary to this finding at the hearing. The Appellants did not file a Rule 59 asking the court to correct this alleged error. Only now, for the first time on appeal, do Appellants argue

that the Respondents had not proven they owned the property in question. Had a timely objection been raised below, a recess of a few days could have been taken while the Respondents spent the time required to produce each prior easement that was granted. If the Appellants wish to raise this issue, they should have done so at the hearing. "Although limited exceptions exist, objections to the admission of evidence must be made when evidence is presented at trial to preserve error for appeal." *Parr v. Gaines*, 309 S.C. 477, 481, 424 S.E.2d 515, 518 (Ct. App. 1992)

**B. Is there evidence to support the trial court's finding that Respondents have title to the subject property?**

As noted above, both parties argued at the hearing that each Respondent's predecessor in title gave a right-of-way. The Appellants produced evidence that the abandoned railroad ran through the property of each Respondent. Rec. on App. 208-259. When the Appellants failed to object to the representation to the Court by defense counsel that Exhibit 3 was a representative sample of the easement granted by each Respondent, they cannot be heard on appeal to contend there is no proof to establish ownership.

The argument before the judge below clearly shows that counsel for the Respondents was under the impression that Exhibit 3 was a representative sample of the easement granted by all the Respondents. The Appellants in their brief apparently take the position that this was not the fact. If this Court concludes that the issue is a matter of confusion as to what was actually stipulated, the proper remedy is to remand the case to the lower court so that the record may be supplemented to show the easement granted by the predecessors in title of each Respondent. *Lackey v. Hamlet City Bd. of Ed.*, 257 N.C. 78, 125 S.E.2d 343 (1962)

**C. Did the trial court err in its finding that all of the subject property was affected under the representative example right of way, err in its reading of the representative right-of-way or erred in concluding abandonment of the right of way?**

As noted above, again the Respondents contend the issue of the representative easement being representative of all Respondents was not argued below and, therefore, cannot be argued on appeal. Again, if this Court finds that the parties were confused as to the impact of the stipulated facts, then this Court should remand the matter back to the lower court so that the record can be supplemented easements signed by the predecessors in title to each Respondent and the matter re-heard.

The Appellants have argued that no reasonable reading of the easement would lead to the legal conclusion that the easement was conditioned upon the operation of the railroad. The lower court did not err in so reading the easement in question. The easement in question provides that the Savannah Valley Rail Road Company is being given a right of way. The right of way is being given "for the purpose of running, erecting and establishing a Railroad." Rec. on App. 111-113. The purpose and use of the right-of-way is thus limited to the use as a railroad. This is the only logical reading of the easement. Later in the easement, the provision is made "that should the 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, said Indenture is to be wholly null and void and of no effect . . . ." Rec. on App. 111-113. The fact that the easement is lost if a railroad is not built cannot be construed to give the railroad an easement for what ever purpose if it is built. As noted, the earlier part of the easement clearly states the easement is for the purpose of operating a railroad. When that purpose ceases,

the easement ceases. Regardless, Seaboard stopped using the right-of-way for any purpose before formally abandoning it by letter of February 25, 1080. So, even if the railroad was not the exclusive use, when Seaboard stopped using the right-of-way for any purpose, it was abandoned.

On these issues the Appellant argues, "[E]ven if the railroad was abandoned, there is no evidence available to support a challenge to Appellant's record title." This is simply not correct. As Seaboard by it letter and action abandoned any use of the right of way, the right-of-way ceased to exist and the property of the Respondents became unencumbered by the right-of-way. The only interest the Appellants acquired through their quit claim deed was the interest in a long abandoned right-of-way. An interest in an abandoned right-of-way carries no rights with it. "When the Wyoming and Colorado Railroad abandoned the right-of-way in 2004, the easement referred to in the Brandt patent terminated. Brandt's land became unburdened of the easement, conferring on him the same full rights over the right of way as he enjoyed over the rest of the Fox Park parcel." *Marvin M. Brandt Revocable Tr. v. United States*, 572 U.S. 93, 106 (2014)

In addition, even assuming somehow Seaboard had an interest in the right-of-way to convey in 1983, the Clarks Hill-Russell Authority of South Carolina never used the right-of-way from 1983 until it conveyed its interest in the right-of-way. Thus, if there were no abandonment by Seaboard for its failure to use the right-of-way, there was certainly abandonment by the inaction of Clarks Hill-Russell Authority as it never even attempted to use the right-of-way it acquired for a railroad or any other purpose.

The South Carolina Supreme Court in *Faulkenberry v. Norfold Southern Railroad*, 349 S.C. 318, 563 S.E.2d 644 (2002) held the property interest of the railroad to be an easement

under wording that is much closer to the grant of a fee interest than is shown in this case. In the case, the statute creating the railroad authorized the railroad "to purchase, take and hold in fee simple or for years, to them and their successors any lands, tenements or hereditaments . . . ." *Id.* at 320, 563 S.E.2d at 645. The statute further provided, "Company shall have good right and title to same, (and shall have, hold and enjoy the same) unto them and their successors so long as the same may be used only for the purpose of said road and no longer . . . ." *Id.*

The Court noted that the General Assembly in 1868 passed a law as to the railroad which provided, "the right of way over said lands shall vest in [Railroad] . . . So long as the same shall be used for such highway, and no longer; bu the fee in such lands . . . shall remain in the owner thereof . . . ." *Id.* at 322, 563 S.E.2d at 646. The Court held the interest created was a right of way.

Similarly, in this case, the General Assembly created an Act charting The Savannah Valley Railroad. Rec. on App. at 82-88. This Act, in Sec. 12, gave power to acquire lands "and shall be subject to all the restrictions provided or imposed in Sections 75 to 86, both inclusive, of Chapter LXII of the of the General Statutes." Rec. on App. at 87. The General Statutes to which this refers is found in Exhibit 2. Rec. on App. at 89-110. This statute provides, in Sec. 81, "Upon payment of the compensation thus ascertained by a jury, the right of way over said lands, or the use of said lands for the purposes for which the same were required, shall vest in the person or corporation who shall hold the charter of such highway, so long as the same shall be used for such highway, and no longer; but the fee in such lands, subject to such special uses, shall remain in the owner thereof . . . ." Rec. on App. at 108. Thus, the easement crested in this case was strikingly similar to the Act involved in *Faulkenberry*. In

addition, here there is an actual written document that gave the railroad only a right-of-way.

**Question IV**

**Were *Eldridge v. City of Greenwood*, 300 S.C. 369, 388 S.E.2d 247 and *Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191 (1998) not limited to the specific facts of those cases and therefore the trial court did not err in extending the holdings of *Eldridge* to this case and did not err in finding the railroad had abandoned the subject property?**

The question to be resolved is whether there is sufficient evidence that Seaboard Coastline Railroad has in fact abandoned the railroad right of way the obtained through The Savannah Valley Railroad in 1881. The facts clearly support a finding that the right-of-way has been abandoned. Respondents agree that they have the burden to prove the right of way is abandoned.

The first act of Seaboard to abandon the right-of-way was when it actually applied to the ICC to abandon the right-of-way. This application reflects that the section involved had not generated any revenue since late 1972 and had not been used since that time. Rec. on App. at 115. Upon the ICC granting the permission to abandon the railroad, Seaboard by letter of February 25, 1980 officially notified the ICC they had abandoned the railroad right-of-way. By the date of abandonment, all tracks and railroad ties had been removed. Prior to formally abandoning the right-of-way, Seaboard took no action to sell or give the right-of-way to any other entity for the purpose of using it as a railroad or any related purpose. By the time of the formal letter, the right-of-way had been in at least seven years of non-use and neglect. Under these facts, no other conclusion can be reached other than Seaboard did in fact abandon the right-of-way and stopped using it for railroad purposes as required by the right-of-way they

obtained.

When non-use is coupled with a letter officially abandoning the right-of-way together with removal of the tracks upon which a train could continue to operate, an abandonment has to conclusively proven. And if those factors are not sufficient, when Seaboard attempts to transfer its right-of-way to a non-railroad entity, then there is the intent not to use the railroad for railroad purposes. At that moment, the right-of-way was also abandoned and the property reverted to the fee holder unencumbered.

The trial judge in this case did not expand *Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191 (1998) nor is the case limited to the facts of the case. First, the Appellant misreads *Eldridge v. City of Greenwood,* 300 S.C. 369, 388 S.E.2d 247 (1989) when they argue "The Court in *Eldridge I* could easily have determined that the removal of track was sufficient intent to abandonment, but it did not do so." Br. App. at 19. The case was before the Court on a summary judgment motion filed by the City of Greenwood. The City contended that as a matter of law, no abandonment had occurred. Thus, the Court was in no position to rule upon the merits of the case that it was remanding for a hearing. Simply put, the issue of whether the removal of the tracks alone would be sufficient to constitute was not before the Court. As former Chief Justice of the Court of Appeals, Alex Sanders, once said, "More simply put, appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), opinion quashed, 286 S.C. 85, 332 S.E.2d 100 (1985). In *Eldridge I* the Court was not asked if the abandonment of the railroad found by merely removing the tracks.

What the Court did hold is that another public use is not, as a matter of law, a continuation of the easement granted to the railroad. The Court first stated, "We think the trial judge recognized, we do, that the issue is not whether there has been a failure to use the right-of-way for public purposes, but whether or not the right-of-way is now being used for the purpose of the railroad." *Id.* at 374, 388 S.E.2d at 250. The Court then held, "A railroad company takes property for public us on condition that it be used for the purpose set forth in its charter." *Id.* at 375, 388 S.E.2d at 250. The basic holding, which supports the Respondents here, is that another public purpose is not, as a matter of law, sufficient to defeat a claim that the railroad has abandoned its right-of-way.

Much of the language in *Eldridge I* supports the position of the Respondents. For example, the Court cites with approval the language from *Lorick & Lowrance, Inc. v. Southern Ry.Co.,* 87 S.C. 71, 68 S.E. 931 (1910) which states, "[T]here 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." *Id.* at 74, 68 S.E. at 931. The Court in *Eldridge I* also said, "However, evidence of a railroad's intention to abandon a right-of-way 'has often been found in the deliberate removal of tracks whereby the running of trains is rendered impossible.'" *Eldridge* at 376, 388 S.E.2d at 251. Respondents agree that temporary non-use will not defeat a right of way. What will defeat the right-of-way is the intent of the holder of the right-of-way to use the property for other than railroad purposes.

Regardless of how the lower Court or this Court determines there is an abandonment, the actions of Seaboard establish a clear and unequivocal intent to abandon the railroad. Whether such action occurred when the formal letter was sent or when they attempted to transfer the

right-of-way to the Clarks Hill-Russell Authority. At that moment there was an intent to use the right-of-way for other than railroad purposes. And even without evidence in the record to establish it, if Clarks Hill-Russell Authority harbored some intent to build a railroad, they also abandoned the right-of-way when they transferred their interest to the present Appellants. The maintaining of a hiking trail is not maintaining the right-of-way for railroad purposes. As noted earlier, "It will not be questioned that no deed can operate so as to convey an interest which the grantor does not have in the land described in the deed or so as to convey a greater estate or interest than grantor has, even though by its terms it may propose to do so." *Griggs v. Griggs*, 199 S.C. 295, ___, 19 S.E.2d 477, 479 (1942). If Seaboard was obligated under its right-of-way to maintain the railroad for railroad purposes, they passed that same obligation on to its successors in title. They can pass on no greater interest than they had.

Contrary to the suggestion of the Appellants, *Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191 (Ct. App. 1998)(*Eldridge II)* does have application to this case. First the Court rejected the alternative public use doctrine and held the railroad was abandoned and the easement reverted by to the title holder of the land. The same principle applies here. A trails is not a continuation of the operation of a railroad. The Court further held, "Moreover, while the scope or extent of an easement is a question in equity, the existence of an easement is a factual question in an action at law." *Id.* at 416, 503 S.E.2d at 200. The evidence in this case supports the the finding of the trial judge as to an easement and the abandonment of the easement.

## CONCLUSION

For the foregoing reasons, this Court should hold the evidence supports the findings of fact that the actions of Seaboard Coastline Railroad Company constituted an abandonment of the right-of-way for railroad purposes and affirm the decision of the lower court.

November 30th, 2020

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STATE OF SOUTH CAROLINA
COURT OF APPEALS

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SC Court of Appeals

Appeal from Abbeville County Common Pleas
R. Scott Sprouse, Circuit Court Judge

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Lower Case Nos. 2018-CP-01-00094 and 2018-CP-01-00250

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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, 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

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## CERTIFICATE OF COUNSEL

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The undersigned certifies that this Final Brief of Respondents complies with Rule 211(b), SCACR.

November 30th, 2020

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