THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC 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-01-00250

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.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

Respondents from McCormick County filed a declaratory judgment action against Appellant Savannah Valley Trails, Inc. ("SVT") in 2016, alleging a claim to a portion of the property at issue in this case, which are strips of land in McCormick County, South Carolina owned by SVT and its predecessors under color of title since 1983. In 2018, the remaining Respondents, who are from Abbeville County, filed a parallel case against the Town of Calhoun Falls ("Calhoun Falls"), staking a claim to the property at issue in the case lying in Abbeville County, South Carolina. Calhoun Falls and its predecessors in title had ownership of the segment of property lying in Abbeville County under color of title since 1983. All Respondents alleged that the property at issue was abandoned by Seaboard Coast Line Railroad Company ("Seaboard Railroad") on or prior to February 25, 1980, and that it reverted to Respondents or their predecessors in title, purportedly as owners of property adjoining some segments of the property at issue. (A. R. pp. 27-36). Appellants refuted Respondents' claims to the property. (A. R. pp. 37-42). The cases were consolidated for hearing and disposition. The parties submitted Joint

Stipulated Facts to the trial court and made oral arguments to the trial court. (A. R. pp. 95-97; A. R. pp. 43-94). After a hearing, the trial court requested post-hearing briefs which were submitted by each party in support of testimony and argument. (A. R. pp. 276-285). The trial court issued an order declaring that Respondents are the owners in fee simple of the subject property. (A. R. p. 12). Appellants have appealed the trial court's order and ruling.

STANDARD OF REVIEW

"When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal." Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 270, 705 S.E.2d 73, 75 (Ct. App. 2010) (quoting Corley v. Ott, 326 S.C. 89, 92 n.1, 485 S.E.2d 97, 99 n.1 (1997)). A declaratory judgment action is legal or equitable in nature based upon the underlying issue. Lowcountry Open Land Trust v. State, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001). A determination of title is legal in nature. A determination of the scope or extent of an easement is a question of equity. The existence of an easement is a factual question in an action at law. Slear v. Hanna, 329 S.C. 407, 496 S.E.2d 633 (1998); Smith v. Comm. of Public Works, 312 S.C. 460, 441 S.E.2d 331 (Ct. App. 1994). The termination of an easement by abandonment is a factual question in an action at law. Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (1998) ("Eldridge II") (citing Southern Ry. V. Howell, 89 S.C. 391, 71 S.E. 972 (1911)). The issues before the Court are in the nature of an action to determine title or quiet title, while certain defenses are equitable in nature.

"In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law." Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc., 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). In an action at law, "[t]he trial [court's] findings of fact will not be disturbed upon appeal unless found to be

without evidence which reasonably supports the judge's findings." Id. "In an action at equity, tried by a judge alone, an appellate court may find facts in accordance with its own view of the preponderance of the evidence." Inlet Harbour v. S.C. Dep't of Parks, Rec. & Tourism, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008).

FACTS

The property at issue in this case includes segments of an approximately twenty two mile corridor of real property running from just outside the Town of McCormick in McCormick County, South Carolina to the Town of Calhoun Falls in Abbeville County, South Carolina. Appellant SVT 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 property for interim use as a recreational trail, subject to the revitalization of the corridor for future rail use. (A. R. p. 2; A. R. p. 56, lines 10-16). Calhoun Falls is a municipality of the County of Abbeville and State of South Carolina. Calhoun Falls accepted title to a portion of the real property at issue to groom, maintain and improve the same for interim use as a recreational trail, subject to the revitalization of the corridor for future rail use. (A. R. p. 2; A. R. p. 56, lines 17-22).

SVT is the record titleholder of all of the real property at issue in the County of McCormick, being approximately seventeen miles of corridor. Calhoun Falls is the record titleholder of all of the real property at issue in the County of Abbeville, being approximately five miles of corridor. The chain of title for SVT and Calhoun Falls derived from the following conveyances as more fully explained herein. On June 16, 1983, Seaboard System Railroad, Inc. ("System") conveyed by quitclaim deed its interests in the subject property to the State Authority Clarks Hill-Russell Authority of South Carolina ("State Authority"). (A. R. pp. 145-148). In order to effectuate the

transfer, State Authority paid Chemical Bank $58,290.00 to release its interests as a mortgage holder in the subject property. (A. R. pp. 137-144).

The South Carolina Department of Commerce, Division of Savannah ("SDC") is the successor in interest to State Authority, and SDC claimed title to the subject property for twenty-nine years. (A. R. p. 96, #13). On April 12, 2012, SDC conveyed its interest in the subject property located in McCormick County to the Ninety-Six District Resource Conservation and Development Council, Inc. (A. R. pp. 149-178). The Ninety-Six District Resource Conservation and Development Council subsequently transferred its interest to Appellant SVT by deed dated June 28, 2012. (A. R. pp. 179-208). On April 12, 2012, SDC conveyed its interest in the portions of the subject property located in Abbeville County to Appellant Calhoun Falls. (A. R. pp. 209-222).

Prior to being held by the State Authority, the subject property had a long history of use as an active railroad line, dating back to the nineteenth century, and was originally known as the Savannah Valley Railroad. The Savannah Valley Railroad Company was chartered by the State of South Carolina on March 12, 1878. (A. R. pp. 98-104). Some landowners granted the railroad a right of way on their respective properties so that the railroad could be constructed and operated, but some segments were transferred to the railroad in fee simple. (A. R. p. 96, #4). The Savannah Valley Railroad Company was succeeded by Seaboard Railroad. (A. R. p. 96, #3).

On April 30, 1971, Seaboard Railroad obtained a mortgage secured in part by its interests in the subject property from Chemical Bank. (A. R. pp. 137-144). Subsequently, in 1978 Seaboard Railroad applied to the Interstate Commerce Commission ("ICC") for approval to abandon the railroad between the Town of McCormick and Calhoun Falls, and the ICC issued a decision on November 21, 1978. (A. R. pp. 130-133). 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 if Seaboard Railroad met certain conditions. (A. R. pp. 130-133). The ruling also required Seaboard Railroad to wait at least one hundred twenty days before taking any action regarding the underlying right of way to allow "state or local government or other responsible person to negotiate the acquisition of all or any part of the property for public use." (A. R. pp. 130-133).

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 and specifically restricting Seaboard Railroad from disposing of the underlying right of way for at least one hundred twenty days to avoid any possible reversionary interest (hereinafter the "1979 Order"). (A R. pp. 134-135). The abandonment process included a public hearing, and none of Respondents' predecessors in interest appeared at the hearing to support the abandonment; representatives of the Town of McCormick appeared and were opposed to the abandonment. (A. R. pp. 134-135). The abandonment process also required Seaboard Railroad to complete and file journal entries in order to achieve abandonment. (A. R. pp. 134-135). The parties obtained all available records from the historical archives of the ICC. There is no evidence that Seaboard Railroad ever completed the journal entries. The 1979 Order further stated that if Seaboard Railroad failed to exercise the authority granted by the decision to abandon the railway within one year, and complete all requirements of the 1979 Order, that authority to abandon would expire and be revoked. (A. R. pp. 134-135). On February 25, 1980, Seaboard Railroad sent a letter to the ICC claiming that the "track" had been abandoned, but Seaboard Railroad did not mention or provide the necessary journal entries or state any action with regard to the underlying right of way. (A. R. p. 136).

Seaboard Railroad was succeeded by the System, which held the subject property until conveyance thereof to the State Authority (A. R. p. 96, #9).

Appellants SVT and Calhoun Falls have extensively refurbished a railway trestle, a permanent structure, which is situated on the subject property. (A. R. p. 5). Appellants have also performed maintenance and grooming of the rail corridor and constructed segments of a hiking trail which will run along the subject property. (A. R. p.5). Appellants have additionally obtained funds specifically designated for further improving an interim hiking and biking trail on a railway bed. (A. R. p. 11). Notably, the tax maps in both Abbeville and McCormick Counties have identified and assessed the railroad bed separately from the Respondents' properties for 44 years. (A. R. pp. 224-258; A. R. pp. 259-275; A. R. p. 97, #18).

When Appellant SVT used grant funds to further improve the trail on the subject property from the Town of McCormick towards the Abbeville County line and Calhoun Falls, McCormick County Respondents filed suit. (A. R. p. 5). When Appellant Calhoun Falls used grant funds to further improve the other end of the hiking trail from Calhoun Falls towards the McCormick County line, Abbeville County Respondents filed suit. (A. R. p. 6). Even though Appellants are in fact the record title holders of the subject property, Appellants agreed that they would not erect any permanent improvements until the resolution of this quiet title action. (A. R. p. 6).

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 erred when it exercised subject matter jurisdiction over this dispute. (A. R. p. 8). The Supreme Court of the United States has explained that the 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 II, 331 S.C. at 406-07, 503 S.E.2d at 195(recognizing that the STB has exclusive jurisdiction over the abandonment of railroads). Respondents presented no evidence that Seaboard Railroad complied with the ICC's 1979 Order, in that there are no records on file with the ICC evidencing submission of journal entries showing the retirement of the line from service. Further, contrary to the trial court's erroneous reading of the record, there is no "final" order of the ICC recognizing Seaboard Railroad's compliance with its 1979 Order or acknowledging the railroad's compliance in accordance with the letter sent by Seaboard Railroad to the ICC. (A. R. p. 4). Even if an application to abandon was made, there are no facts in the record establishing compliance with the ICC's decision to allow abandonment; therefore, 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).

As such, the presumption must follow that the ICC's 1979 Order expired upon its own terms, and the ICC's (now the STB's) exclusive and plenary jurisdiction over the matter was not released. Therefore, subject matter jurisdiction is improperly before the state courts of the State of South Carolina and only properly before the federal courts. 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. 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). Under the doctrine, if a party knowing his rights does not seasonably assert them, and by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. See Robinson et al. v. Estate of Harris, 388 S.C. 630, 698 S.E. 2d 222 (2010). In the Robinson case, the court held that claimants of real property in an action to quiet title thirty nine years after a conveyance was barred by the doctrine of laches. The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Hallums, 296 S.C. at 198, 371 S.E. 2d at 527.

The stipulated facts evidence that the Appellants and their predecessor in title, the State of South Carolina through the State Authority and SDC, have held record title through a deed recorded in the public records of Abbeville County and McCormick County in 1983. (A. R. pp. 179-222). For over thirty six years, Appellants and their predecessors have held title. No evidence was presented to the trial court that any among Respondents disputed the title ownership of the State of South Carolina or the Appellants.

Respondents have had record notice that the subject property has been segregated from their respective parcels beginning in 1976. (A. R. pp. 224-258; A. R. pp. 259-275). According to the stipulated facts, the railroad corridor has been segregated on the tax maps and separately assessed continuously since 1976. (A. R. pp. 224-258; A. R. pp. 259-275). When the State of South Carolina obtained the rail corridor by quitclaim conveyance in 1983, the subject property continued to be separately accounted for by the respective county assessors, but no tax was assessed by virtue of ownership of the public body. (A. R. pp. 145-148). No evidence was presented to the trial court that any Respondent refuted the tax records or sought inclusion of any portion of the subject property as a part of their respective taxable parcels.

As in Robinson, the Respondents in the instant case had actual notice that the tracks had been removed since February 25, 1980. (A. R. p. 136). The record before the Court has no evidence that any Respondent took action to assert any possessory ownership claim adversarial to Seaboard Railroad, the State of South Carolina, Calhoun Falls, or SVT until this action. 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. (A. R. p. 97 #17; A R. 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. (A. R. p. 136; A. R. pp. 145-148).

In its order, the trial court concluded that the Respondents did delay their claim to the subject property and that the delay was unreasonable. The trial court in its findings of fact found that "[t]he [Appellants] 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 within the corridor. (A. R. p. 5). The trial court noted that in addition to delay,

laches is determined as to whether the delay has worked injury, prejudice, or disadvantage to the other party. Appellants would be prejudiced in that each has obtained grant funds to improve the railroad corridor for which each could be liable, and the State of South Carolina obtained funds from the Federal Rail Bank for the acquisition of the railroad corridor, which funding is limited to the acquisition of rights of way out of service to preserve such corridors for future rail use. (A. R. p. 97). The very purpose for which Appellant SVT was organized and obtained tax exempt status would be frustrated if an adverse ruling to Appellants were obtained by Respondents after the unreasonable delay in assertion of rights.

Notwithstanding the trial court's factual findings, the trial court erred as a matter of law when it held that any prejudice to Appellants was too "vague and general" to prevail on the issue of laches. (A. R. pp. 11-12). South Carolina precedent on the doctrine of laches is devoid of any language requiring specificity with regard to prejudice necessary to establish the laches defense; the prejudice must only be material. See Robinson, 388 S.C. at 628, 698 S.E.2d at 221; Mid-State Trust, II v. Wright, 323 S.C. 303, 307-8, 474 S.E.2d 421, 424 (1996); Hallums, 296 S.C. at 199-200, 371 S.E.2d at 528; Jones v. Leagan, 384 S.C. 1, 19-20, 681 S.E.2d 6, 16 (Ct. App. 2009); Emery v. Smith, 361 S.C. 207, 216, 603 S.E.2d 598, 602 (Ct. App. 2004); Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431 (Ct. App. 2001); Provident Life & Acc. Ins. Co. v. Driver, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (Ct. App. 1994). Having "purchased property for significant consideration" is sufficient to establish prejudice for laches. Robinson, 388 S.C. at 628, 698 S.E.2d at 221. 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, 323 S.C. at 307-8, 474 S.E.2d at 424. Neither of the previous two cited cases refer to any specific amount as to prejudice, and both cases' summary of the prejudice to defendants are

nearly identical to the language used by the trial court to summarize the prejudice to Appellants. The loss of title after thirty six years is significant prejudice. The inability to use the entirety of the twenty two miles of trail is prejudicial to the Appellants.

The trial court having made a finding of prejudice, but failing to quantify such prejudice, ignored the fact that the improvements made were the only ones necessary for the use of the subject property as a trail. Based on the above, the trial court erred in holding that any prejudice to Appellants was too vague or general to constitute prejudice because any material prejudice, which is clearly present here and which was recognized by the trial court, is sufficient to support a laches defense as a matter of law. 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?

Respondents, as Plaintiffs at trial, bore and bear the burden of proof to establish unencumbered title to real property, which is the subject of this action. Through stipulated facts and exhibits, the only evidence presented to the trial court established a chain of record title to the subject property vested in Appellants and their predecessors' in interest for a period of thirty-six years. (A. R. pp. 145-208; A. R. p. 96 #11; A. R. pp. 96-97 #13-16). Respondents did not submit any evidence to the trial court establishing a claim of title to the subject property in the form of record title such as a deed. The Respondents further did not collaterally attack Appellants' chain of title through possessory claims such as adverse possession. Respondents in its quiet title action

submitted no evidence at all on the issue of title.

The trial court erred as a matter of law when it declared that Respondents were the legal owners of the subject property because Respondent's abandonment claim is insufficient to challenge Appellants' vested legal title absent evidence of a possessory claim such as adverse title or legal claim by way of deed or recorded instruments. (A. R. pp. 1-13). The Joint Stipulated Facts submitted to the trial court provide that Appellants SVT and Calhoun Falls are the record owners of the real property which is the subject of this action, having obtained the real property under color of title originating from the deed acquired by State Authority. (A. R. pp. 209-222). Appellants and their predecessors in title have been the record owners of the real property which is the subject of this action for more than thirty six years. By Joint Stipulated Facts, legal title is vested in Appellants. (A. R. pp. 96-97, #11-18).

The party establishing legal title is presumed to be in possession thereof and any other party's occupation of the property is subordinate unless adverse possession is established by that other party by clear and convincing evidence. S.C. Code Ann. § 15-67-210 (2005); Taylor v. Heirs of William Taylor, 419 S.C. 639, 650-51, 799 S.E.2d 919, 924-25 (Ct. App. 2017). Moreover, color of title can derive from a defective deed or a quitclaim deed even though the grantor was without interest in or title to the property conveyed. See Graniteville Co. v. Williams, 209 S.C. 112, 39 S.E.2d 202 (1946). Respondents have submitted no evidence of adverse possession to overcome the statutory presumption of superiority of legal title to the subject property in Appellants. See S.C. Code Ann. § 15-67-210 ("In every action for the recovery of real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law. The occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title unless

it appear that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action.").

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."). The Respondents failed to introduce evidence of any kind on this issue, and the trial court, based upon the lack of evidence used a strained analysis to find that Respondents had title to the subject property. Based on the above and as more fully argued below, it was error as a matter of law for the trial court to grant Respondents title to the subject property on the theory of abandonment because Respondents provided absolutely no evidence to rebut the presumption provided by Appellants holding record title for more than thirty six years.

A. THE TRIAL COURT ERRED AS A MATTER OF LAW BY FAILING TO RECOGNIZE THE RESPONDENTS' BURDEN OF PROOF AND SHIFTING THE BURDEN OF PROOF TO THE APPELLANTS.

The cause of action raised before the trial court was an action to quiet title to the subject property. The trial court made three fatal errors in its ruling on the status of title to the subject property. The trial court, first, erred as a matter of law in failing to apply the requisite burden of proof upon the Respondents, as the Plaintiffs, to prove ownership of the subject property. Appellants, as Defendants, and record title holders to the subject property, had no burden in the trial court. Notwithstanding, 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. (A. R. p. 96 #11 & 14; A. R. p. 97 #15 & 16; A. R. pp. 145-222). 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 (1) proving an interest in the subject property and (2) overcoming the presumption of Appellants' ownership by proving its invalidity.

Despite demand therefor through discovery, Respondents did not provide any evidence of title to any portion of the subject property for submission to the trial court through joint stipulated facts or through the introduction of evidence at trial. There were no deeds, no plats, nor any evidence of claim to title by adverse possession or otherwise. Respondents failed to provide any evidence to support their claim to the subject property.

B. THERE IS NO REASONABLE EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING THAT RESPONDENTS HAVE TITLE TO THE SUBJECT PROPERTY.

Further, there is no reasonable evidence to support the trial court's finding that Respondents have title to the subject property. The only evidence of record title supports Appellants' ownership of the subject property. The Respondents introduced no deeds to support a claim of ownership by record title. The Respondents solely argued ownership by virtue of abandonment of the former railroad right of way within the subject property, purportedly arguing Respondents were adjoining landowners to the former right of way, without any evidence to support such claims. The Respondents claim ignored thirty six years of ownership by Appellants and their predecessors in interest under color of title. Absent record title, Respondents had to collaterally attack Appellants' record title. The only argument raised being abandonment, the Respondents would have to introduce evidence of adverse possession to support a claim for abandonment by Appellants as the record title holders. The Respondents introduced no evidence to support a claim of adverse possession. The trial court's first finding of fact in its Order is "[t]he

Plaintiffs are the owners of real property situated in Abbeville County, South Carolina and McCormick County, South Carolina." (A. R. p. 1). The Order does not recite what deed, instrument of public record or evidence supported the finding, or what specific parcels of property are owned by Respondents, because there is no evidence of record. The trial court's first finding of fact is an error of law because there is no evidence to support it. The trial court also did not make any findings that could support a claim of adverse possession by Respondents. Specifically, the trial court found that the Respondents made no improvements to the subject property other than possibly one structure that could encroach upon the subject property. The sole finding the trial court made as to possession is "[t]here is no evidence that the Defendants took any action to prevent each Plaintiff from using the subject property attached to his or her tract." (A. R. pp. 1-13). The cardinal rule in an action to quiet title is that the plaintiff must rely on the strength of its own claim to title and not the weakness of the defendant's claim. The trial court did not find that Respondents in fact possessed the subject property, because no evidence was presented to support such finding; so the trail court inversely found that possession was not prohibited. Again, no reasonable evidence was presented by Respondents to support the trial court's finding that title vested in Respondents, and the trial court's ruling must be reversed.

C. THE TRIAL COURT ERRED IN ITS FINDING THAT ALL OF THE SUBJECT PROPERTY WAS AFFECTED UNDER THE REPRESENTATIVE EXAMPLE RIGHT OF WAY, ERRED IN ITS READING OF THE EXAMPLE RIGHT OF WAY, AND ERRED IN CONCLUDING ABANDONMENT OF THE RIGHT OF WAY.

The stipulated facts recognized that Savannah Valley Railroad was established by charter, and that real property was obtained by right of way grants from individuals and in other cases by fee deed. The parties provided a representative example of a right of way obtained by Savannah

Valley Railroad. The Respondents as Plaintiffs did not provide evidence of any record ownership of any portion of the subject property nor establish whether Savannah Valley Railroad obtained a right of way, fee interest, or claim by eminent domain across any particular property to which a Respondent purportedly claimed. Notwithstanding, the trial court found ". . . the rights conveyed to the Savannah Valley Railroad Company by each landowner were identical as it applied to each particular piece of property." (A. R. pp. 1-13). This finding assumed facts not in evidence before the trial court, and because it is wholly unsupported by the evidence in the record, this Court must overrule that finding.

The trial court then misconstrued the language of the example right of way by pointing to language that stated that if the railroad was not erected then it would become wholly null and void and of no effect." (A. R. pp. 1-13). The trial court drew further conclusions without evidence by stating "there is no evidence presented that any right of way granted to said railroad by the landowners contained alternative language in the rights granted." (A. R. pp. 1-13). First, the trial court erred as a matter of law by construing a condition precedent to be a continuing condition. There was no question the railroad was erected along the subject property and remained in operation until the ICC authorized the removal of tracks from the subject property in 1979. The trial court, however, concluded that the right of way was conditioned upon the continuing operation of a railroad. There is no reasonable evidence to support this conclusion from a plain reading of the right of way. Further, the language of the right of way states that the grant is made to Savannah Valley Railroad Company "and their successors and assigns the Right of Way over which to pass at all times by themselves Directors Officers Agents hirelings and Servants in any manner they may think proper and particularly (not exclusively) for the purpose of running erecting and establishing thereon a Railroad...." (A. R. pp. 127-129). Also, the grant is made

such that the grantor agrees for his successors and assigns to "... warrant and defend the Title thereof unto the Savannah Valley Railroad Company their Successors and assigns, against the claims of myself, my heirs and executors and assigns." (A. R. pp. 127-129). The grant was made to Savannah Valley Railroad Company their successors and assigns their own proper use, benefit, and behoof forever, in perpetuity..." (A. R. pp. 127-129). The grant once the condition of erection of the railroad was met was (1) perpetual (2) subject to assignment (3) over which to pass in any manner the grantee deemed proper and (4) warranted by the grantor and successors and assigns, purportedly to include the Respondents, had they proven their succeeding ownership from an original grantor, for the benefit of Appellants.

Therefore, even if the railway was abandoned, there is no evidence available to support a challenge to Appellants' record title. Respondents failed to meet their high burden of proof of clear and convincing evidence to rebut Appellants' record title, and 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?

Assuming, *arguendo*, the finality of the ICC's 1979 Order, which would be based upon facts not in evidence, the question of abandonment would become a question of fact based upon the intent of the railroad as demonstrated through its actions. See Lorick & Lowrance, Inc. v. Southern Ry. Co., 87 S.C. 71, 68 S.E. 931 (1910). State law generally governs the disposition of reversionary interests, subject of course to the ICC's "exclusive and plenary" jurisdiction to

regulate abandonments and to impose conditions affecting post-abandonment use of the property. See Chicago & North Western Transp. Co., 450 U.S. at 321; Hayfield Northern R. Co. v. Chicago & North Western Transp. Co., 467 U.S. 622, 633 (1984). The burden of proving the abandonment of railroad rights of way rests upon the party claiming that abandonment has occurred. State Ex Rel Dept. Of Transp. V. Penn Central Corp., 445 A. 2d 939 (Del. Super. Ct. 1982). The abandonment of a railroad easement must be proven by clear and convincing evidence. Jordan v. Stallings, 911 S.W.2d 653 (Mo. Ct. App. S.D. 1995). The intent to abandon and the actions to evidence the intent must be proven by clear and convincing evidence. St. Louis –San Francisco R. Co. v. Relland, 43 S.W.2d 1034, 328 Mo. 1154. Mere nonuse of an easement created by express grant, does not amount to abandonment of the easement. Walker v. Guignard, 359 S.E.2d 528 (Ct. App. 1987). Application from a regulatory agency itself is a factor but in and of itself is not abandonment. Lucas, 319 F.3d at 602-03. The removal of tracks and the acquisition of an abandonment certificate from a regulatory board does not give rise to abandonment. Lacy v. East Broad Top R.R. & Coal Co., 77 A.2d 706 (PA. Sup. Ct. 1951).

In the case of Smith et al. v. Palmetto Conservation Foundation, CA No. 8:03-1587-20 (slip op., S.C. Dist. March 29, 2004) (A. R. pp. 286-292), the United States District Court District of South Carolina Anderson/Greenwood Division addressed a similar abandonment issue wherein the STB, which is the successor to ICC, similarly imposed a one hundred eighty day restriction on the disposition of the right of way while the railroad negotiated an interim use agreement. The District Court found that abandonment is not automatic at the end of the one hundred eighty day period, but rather the certificate of abandonment is automatic assuming compliance with the STB Certificate, which simply gives the railroad permission to abandon. Respondents cite that the case at hand is addressed under rulings held in Eldridge v. City of Greenwood, 300 S.C. 369, 388 S.E.2d

247 (1989) ("Eldridge I") and Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (1998) ("Eldridge II"). Eldridge I correctly recognized that the question of whether a right of way has been abandoned is a question of fact. The Court in Eldridge I also cited the case of Raleigh, C. & S. Ry. Co. v. McGuire, 171 N.C. 277, 280, 88 S.E. 337, 339 (1916) as establishing the doctrine of abandonment as it relates to railroads as follows:

> It includes both the intention to abandon and the external act by which such intention is carried into effect. There must be concurrence of the intention with the actual relinquishment of the property. It is well settled that to constitute an abandonment or renunciation of a claim to property there must be acts and conduct, positive, unequivocal and inconsistent with claims of title.

In Eldridge I, the Court remanded the case to be heard on the question of fact as to abandonment. It recited that an intent to abandon has been found in cases from other states from the removal of tracks and the conveyance of the right of way by the railroad to another for purposes other than a railroad. See generally 95 A.L.R. 2d 468, 498 (1964). The Court in Eldridge I could easily have determined that the removal of tracks was sufficient intent of abandonment, but it did not do so. Eldridge II was the appeal of the factual determination upon remand of the case from Eldridge I. In Eldridge II, the Court cited Birt v. STB, 90 F.3d 580, 586 (D.C. Cir. 1996) for the proposition that "The STB merely approves an abandonment as within the public convenience and necessity; but the STB's issuance of approval does not in and of itself consummate an abandonment."

Upon remand, the trial judge determined that the railroad abandoned the rail corridor through removal of its tracks and conveyance of its easement to the city, county and highway department for other purposes. Upon appeal in Eldridge II, the standard of review was noted to be a review for errors of law and factual findings only for evidence which reasonably supports the court's findings. The easement in question in that case had been conveyed by the railroad to the

city, county and highway department for usage as a roadway and related right of way. The court found that public railroads and public highways were insufficiently analogous to be considered essentially the same use for purposes of an easement and affirmed the lower court's ruling. Notably, the court in Eldridge II discussed interim trail use and the Federal Government's policy of establishing interim trail use as a mere discontinuance of rail service as opposed to abandonment, but the court pointed out that it could not reach any issue of interim use because those facts were not before the court. The Eldridge II Court was very clear that the decision should be based upon the individual facts of the case, and noted the standard of review in rendering its decision. However, if a standard could be interpreted from Eldridge I and II, 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. The Eldridge cases are instructive as to the application of the standard of review and the jurisdictional issues, but the facts of the Eldridge cases do not align with the case at hand.

In the case before the Court, Respondents have only submitted evidence of the February 25, 1980 letter citing removal of and abandonment of the "track" as evidence of abandonment. (A. R. p. 136). The question of fact to be determined is that assuming Seaboard Railroad did have authority to abandon under the 1979 Order of the ICC, which again assumes facts not in evidence, what actions did Seaboard Railroad take subsequent to the 1979 Order and were those actions consistent with continued ownership of the right of way or consistent with abandonment. The trial court erred as a matter of law in finding that the railroad had been abandon as Respondents did not provide clear and convincing evidence of same.

Instead, Respondents have cited no evidence of action by Seaboard Railroad inconsistent with ownership of the right of way or consistent with abandonment. The stipulated facts support

that the rail corridor remained separately assessed from the Respondents' tax parcels during this period. (A. R. pp. 224-258; A. R. pp. 259-275). There is no evidence that Seaboard Railroad contacted county offices to remove whatever rights of way existed from its tax roll or add such property to the property of adjoining landowners. There is no evidence that the Respondents sought to include the portions of the subject property adjoining theirs to their own tax parcels. There is no evidence that the railroad attempted to convey to any party for any other purpose the subject property, or to disclaim the property. Likewise, there is no evidence that the Respondents sought to claim the property from the railroad. The stipulated facts further show that the right of way for the rail corridor was under mortgage to Chemical Bank from 1971 until 1983. (A. R. pp.137-144). The transaction between System and the State of South Carolina, through State Authority, was consistent with System's continued claim of ownership of the subject property. (A. R. pp. 145-148). The transaction was for significant consideration as detailed in Joint Stipulated Fact 11. (A. R. p. 96, #11). The transaction was funded with funds obtained by the State of South Carolina from the Federal Rail Bank, 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. (A. R. pp. 145-148).

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 very distinct from the Eldridge cases, where the right of way was conveyed to a public entity for a completely different purpose. The stipulated facts support that the Appellants and 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. Interim

trail use has been recognized as not affecting abandonment under numerous cases, federal laws, regulations, and even in the Eldridge II decision cited by Respondents.

Based on the foregoing, the trial court erred by finding that the rights of way were abandoned because there was no evidence on which to base such a holding. The trial court also erred by finding that the dispositive legal issues of the present dispute are "identical" to the legal issues of Eldridge. (Order p. 9). In fact, the trial court erroneously extended Eldridge to a factual situation which this Court specifically declined to address and include in Eldridge itself. (Order p. 9). There is no support in Eldridge for the proposition that using a railbed for a walking trail as an interim use constitutes abandonment of the railway such that future rail use is not a reserved purpose, but that fact did not stop the trial court from opining that "[t]he construction of a hiking trail is an altogether different purpose" than interim use. (A. R. p. 9.) The Eldridge court explicitly declined to hold that interim use as a walking trail is tantamount to abandonment; thus, the trial court erroneously extended and misapplied this Court's holding in Eldridge I.

CONCLUSION

For the reasons stated, 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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