

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**SC Court of Appeals**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2020-001188

Richard Joseph Rogozinski.....Respondent,

v.

County of Greenville and City of Simpsonville ..... Appellants

**INITIAL BRIEF OF APPELLANT, CITY OF SIMPSONVILLE**

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## **STATEMENT OF ISSUES ON APPEAL**

1. The trial court erred in finding that the approval by the county's planning commission of a "final plat" for recording, the approval by the county attorney as to the form of the Statement of Ownership and Consent to Dedicate Streets and Roads, the incidental use of Maple Court by law enforcement for traffic enforcement and the non-assessment of property taxes constituted public acceptance of Maple Court

## STATEMENT OF THE CASE

Respondent filed suit on October 9, 2018. Appellant (“Simpsonville”) filed a Motion to Dismiss pursuant to Rule 12(b)(1) & (6) SCRPC on December 14, 2018. (Motion to Dismiss, R. \_\_\_\_ ) Respondent filed an Amended Complaint on January 9, 2019. (Amended Complaint, R. \_\_\_\_ ) A hearing was held on Simpsonville’s Motion to Dismiss on January 10, 2019 and the Court issued an order denying the motion on January 14, 2019. (Order, R. at \_\_\_\_ ) Simpsonville timely filed and served its Answer to the Amended Complaint on January 24, 2019. (Answer, R. at \_\_\_\_ )

On December 10, 2019, the parties consented to have this matter tried before the Hon. Charles B. Simmons, Jr., Master in Equity for Greenville County. The case came on for trial before the Master in Equity on June 2, 2020. The Master issued his order July 7, 2020. (Master’s Order, R. \_\_\_\_\_ )

Simpsonville filed its Motion to Amend pursuant to Rules 52 and 59, SCRPC on July 15, 2020. (Motion to Amend, Order, R. \_\_\_\_ )

Greenville County filed a Motion to Amend on July 7, 2020 (Motion to Amend, R. \_\_\_\_ )

The Master issued an order on August 14, 2020 denying both Motions to Alter/Amend. (Master’s Order Denying Motions, R. at \_\_\_\_ ) Simpsonville timely filed and served its Notice of Intent to Appeal on August 26, 2020. (Notice of Appeal, R. at \_\_\_\_ )

Respondent alleged that he owns real property in Greenville County and that his only public access to his property is via Maple Court. (Amended Complaint ¶¶4 & 7, R. \_\_\_\_\_ ) Respondent alleged that Maple Court was dedicated as a public road in 1974. (Amended Complaint ¶8, R. \_\_\_\_\_ ).

Respondent alleged that Maple Court “is in a serious state of disrepair.” (Amended Complaint ¶8; R. \_\_\_\_\_) Respondent alleged that Greenville County and Simpsonville had “refused to maintain or repair Maple Court.” (Complaint ¶17, R. at \_\_\_\_\_)

Respondent sought the following declaratory relief:

1. That Maple Court is a public road;
2. That the City of Simpsonville has the obligation to maintain and repair it; and
3. That the City of Simpsonville “must immediately make repairs to Maple Court.”

Simpsonville denied that Maple Court is a public road or that it ever accepted its dedication.

Simpsonville raised a number of defenses, including:

- That Respondent lacked standing;
- That Respondent had failed to state a claim;
- That the relief sought violated the Separation of Powers Doctrine under the South Carolina Constitution, S.C. Const. Art. I, § 8; and,
- Violation of Home Rule under the South Carolina Constitution, S.C. Const. Art. VIII, and the Home Rule Act, S.C. Code Ann. § 5-7-10, et seq..

### **FACTS**

The apartment complex Respondent owns is known as Maple Court. (Respondent’s Ex. 2; R. \_\_\_\_\_) At the time Maple Court was being reviewed by Greenville County in late 1974, the property was outside of the city limits of Simpsonville. Sometime in the 1990’s, Respondent’s property was annexed into Simpsonville. (Transcript P. 20, L 5 – 8; Amended Complaint ¶14; R. \_\_\_\_\_) At the time the subdivision plat and the statement of dedication were recorded, no construction had taken place on Respondent’s property. (Transcript, P 31, L 18 – P 32, l. 2; P. 81, L3 -12; R. \_\_\_\_\_)

Respondent's property abuts a public road named N. Maple Street.<sup>1</sup> Maple Court intersects with N. Maple Street. (Respondent's Exhibit 1; R. \_\_\_\_\_). According to the Final Plat, Maple Court ends entirely on Respondent's property. It does not connect to any street other than N. Maple Street and it serves no property other than the property owned by Respondent. (Transcript P 46, L 8 – 24, R. \_\_\_\_\_)

The name, Maple Court, appears only on the Final Plat. (Respondent's Exhibit 1, R. \_\_\_\_\_) The name does not appear on the Greenville County tax map (Respondent's Exhibit 6; R. \_\_\_\_\_; Defendant's Exhibit 30, R. \_\_\_\_\_) though other public roads immediately adjacent to Respondent's property are identified on the tax map.

Greenville County's property tax information indicates that Respondent's property is located at 712 N. Maple Street (not Maple Court). (Transcript P 43, L 6 – 11; R. \_\_\_\_\_; Respondent's Exhibit 7, R. \_\_\_\_\_; Simpsonville Ex. 7, R. \_\_\_\_\_) All of Respondent's tenants receive mail at a N. Maple Street address (and not Maple Court) (Transcript P 43, L 16 - 20; R. \_\_\_\_\_)

### **STANDARD OF REVIEW**

"The determination of whether a road has been dedicated to public use is one in equity. *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct.App.1995). Therefore, this court may find facts in accordance with its own view of the preponderance of the evidence. *Id.*" *Vick v. South Carolina Dept. of Transportation*, 347 S.C. 470, 556 S.E.2d 693 (S.C. App. 2001)

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<sup>1</sup> N. Maple Street is owned and maintained by the South Carolina Department of Transportation (Transcript P 78, L 5-10, , R. \_\_\_\_\_)

## ARGUMENTS

### **I. The Dedication of Maple Court was not Perfected.**

“Two elements are required to perfect dedication. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be acceptance of such property by the public. [Citation omitted.] To have a completed dedication, there must be some form of acceptance of the offer to dedicate. [Citations omitted.] The use, repair, and working of the streets by public authorities is a mode of acceptance. [Citation omitted.]” *Tupper v. Dorchester County*, 326 S.C. 318, 325; 487 S.E.2d 187, 191 (S.C. 1997)

The issue in this appeal is whether or not Greenville County or Simpsonville ever accepted Maple Court as a public road. The sole evidence relied upon by the Master was the “Final Plat” and the “Statement of Ownership” both of which were approved for recording by Greenville County and recorded in the Office of the Register of Deeds. No evidence was produced at trial that Simpsonville approved of the construction of Maple Court or that it approved of the recording of the Final Plat or the Statement of Ownership.<sup>2</sup>

The Final Plat was recorded on December 5, 1974 in the Office of the Register of Deeds for Greenville County in Plat Book 4-X at Page 17 [Respondent’s Exhibit 1, R. \_\_\_\_\_]. The certificate stated:

#### CERTIFICATE OF APPROVAL FOR RECORDING

I hereby certify that the subdivision plat shown hereon has been found to comply with the Subdivision Regulations for Greenville County, with the exception of such variances, if any, as are noted in the minutes of the Greenville County Planning Commission of Greenville County, South

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<sup>2</sup> Respondent testified that police officers had stopped traffic violators and parked on Maple Court contending that this conduct proved acceptance of Maple Court. It does not.

Carolina and that it has been approved for recording in the office of Register of Mesne Conveyances.

The Statement of Ownership was also recorded on December 5, 1974. [Respondent's Exhibit 2, R. \_\_\_\_\_] The Master, in a question by the Court directed to Hesha Gambell, Greenville County Engineer,<sup>3</sup> about the Statement of Ownership commented: "And it's signed by John Owens, who at that point was a well respected member of the Greenville County staff." (Transcript P 98, L 24-25, R. \_\_\_\_\_) It was "also [signed] by the loved and beloved E.P. Riley, the County Attorney." (Transcript P 99, L 2-3, R. \_\_\_\_\_) The Master clearly gave weight to the fact that the Final Plat and the Statement of Ownership had the signatures of people of some reputation in Greenville County. "I find that the reference of the Plat to itself as a 'Final Plat,' together with the Certificate of Approval for Recording on the Plat signed by J. Coleman Shouse as Director of Planning for the Greenville County Planning Commission, and the approval as to form by the County Attorney, E. P. Riley, all serve as clear indicia of the *acceptance* of Maple Court as a public road by the County." [Emphasis added.] (Master's Order, P 5, R. \_\_\_\_\_)

Simpsonville contends that the approval of the Final Plat and the filing and approval "as to form" of the Statement of Ownership proves nothing more than the owner intended to dedicate Maple Court; not that Greenville County accepted it. "The mere fact the County approved the plat does not constitute an acceptance of the proposed public dedication. ... See also *Salzer v. Green*, 48 Mich.App. 34, 209 N.W.2d 849 (1973)(approval of plat, standing alone, does not amount to formal acceptance of land in plat dedicated to public)." *Tupper v. Dorchester County*, 326 S.C. 318, 326; 487 S.E.2d 187, 191 (S.C. 1997).

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<sup>3</sup> Ms. Gamble's name is incorrectly indicated in the Record as "Kisha" Gamble. (Transcript P 72, L 12, R. \_\_\_\_\_)

The Master, contrary to *Tupper*, imposed an affirmative duty on Appellants to repudiate the owner's dedication of streets shown on a recorded plat at some indefinite time in the future. The Master's Order held that "considering the old age of the Plat and Statement of Dedication *which were never refuted by the County or the City*, the Plaintiff has provided strict, cogent, and convincing evidence and proof of dedication and acceptance." [Master's Order, P. 6; R. \_\_\_\_]

There is no law that the undersigned has been able to find that places the duty on the government to "refute" a plat after it has been approved for recording. There is no statutory authority to do that. Once the government gives approval for a plat to be recorded, and the property has been subdivided and sold, how could the government withdraw its approval?

The evidence at trial was that both documents were recorded before any construction on the site had occurred. (Transcript P 87, L 3 – 16, R. \_\_\_\_\_) It is against the weight of the evidence to conclude that Greenville County or Simpsonville would accept a road into its road system for maintenance and repair before it was built.

Simpsonville does not deny that there is evidence in the record that the original owner of the property intended to subdivide the property into 5 lots and to construct a road that was to be known as Maple Court nor that the owner intended to dedicate the road to the county for the use of the public. The issue is whether Greenville County or Simpsonville accepted the dedication of Maple Court for the purposes of ownership and maintenance.

The law in South Carolina is very clear that the government must accept an owner's dedication of a street before it becomes the government's responsibility to own and maintain it. That means that the government must take some action with regard to the street that will indicate either an express or implied acceptance. This is important because the government's acceptance of a street not only means that the government must levy taxes to fund its maintenance and

repair, but the government accepts the potential for liability for accidents or injuries that occur on the street based upon its design, maintenance, or repair.

The cases make it clear that there is a distinction between the making and recording of a subdivision plat and the government's acceptance of the streets shown on the plat. In *Outlaw v. Moise*, 222 S.C. 24, 71 S.E.2d 509 (S.C. 1952), the plaintiff claimed that he owned a lot of land in a subdivision according to a recorded plat that indicated the existence of streets. The defendant claimed that the streets shown on the plat amounted to no more than a private easement and that the easement had been lost through adverse possession. While the Court's decision was to overrule the grant of a demurrer, the opinion discusses the effect of the recordation of a plat that subdivides property into lots and shows streets providing access to the lots. The Court repeated the rule that "that where land is divided into lots according to a plat thereof, showing streets, and lots are sold and conveyed with reference to said plat, the owner thereby dedicates the streets to the public." *Outlaw v. Moise*, 222 S.C. 24, 28; 71 S.E.2d 509, 511 (S.C. 1952).

The Court explained the reason for this rule is to assure future lot owners that, even if the government never accepts the street, future lots owners have acquired a legal right to use the platted streets. The issue was important in the case because the defendant claimed adverse possession and adverse possession will not lie against the government. The Court held:

However, "as between the owner, who has conveyed lots according to a plat, and his grantee or grantees, the dedication is complete when the conveyance is made, even though the street is not accepted by the public authorities." 16 Am.Jur., Dedication, Section 31. In the recent case of *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58, the court held, quoting syllabus: "Where Respondent purchased a corner lot with reference to recorded subdivision map which showed lot to front on certain street and thereafter defendants separately purchased lots which contained a portion of street which bounded Respondent's lot, Respondent had such a special property interest in street as to entitle him to maintain suit for preservation of street even though dedication had never been accepted by municipal authorities."

*Outlaw v. Moise*, 222 S.C. 24, 28; 71 S.E.2d 509, 511 (S.C. 1952).

The Court also explained that "[o]rdinarily there must be an express or implied acceptance before the dedication is complete, 16 Am.Jur., Dedication, Section 31, and such acceptance must be made within a reasonable time. *Chafee v. City of Aiken*, 57 S.C. 507, 35 S.E. 800." *Id.*

## **II. No Express Acceptance of Maple Court**

Greenville County's engineer testified that there is a process for the development of vacant property. Before any construction takes place, the developer/owner must present for approval the development it plans to build. The Final Plat was that plan. It indicated that there would be five lots, where those lots would be and it indicated a road that would provide access to those lots. The Certificate of Approval on the Final Plat says that the planned development of the property met Greenville County's subdivision regulations.

However, there are other steps involved before Maple Court would have been accepted as a public road. The county's engineer testified that the design engineer or the developer would "have to present documents that indicate that the road was built to county standards and then [the road] would be accepted for maintenance." (Transcript P 88, L17 – P 89, L 3, R. \_\_\_\_\_)

This process never took place. Ms. Gamble testified that she searched the county's "hard system of files" and "[t]here's no record of this road." Transcript P 75, L 3-7. R. \_\_\_\_\_) Greenville County maintains a Graphical Information System ("GIS"). The County's GIS system has information that goes back to the 1950's. (Transcript P 66, L10 -11, R. \_\_\_\_\_). For many features indicated on the GIS map, there is the ability to click on the feature and the GIS system provides information about that feature.

There are publicly maintained roads near Respondent's property. The evidence in the record is that with regard to those roads, the road name appears in the GIS system and when the road is clicked the GIS system gives the road number, its length, etc. (See Defendant's Exhibit 31. R.

\_\_\_) The GIS map shows N. Maple St, Benson St and Cornerstone Ct. However, what Respondent claims as Maple Court is not identified by street name. (Defendant's Exhibit 32, R. \_\_\_)<sup>4</sup>

The county's engineer testified that she searched the records of Greenville County and there is no record in the county's inventory of a road named Maple Court. Neither Simpsonville nor Greenville County has performed any maintenance work on Maple Court. Respondent admitted that he was not aware of any repair work done on Maple Court by either Appellant. (Transcript P 22, L9 – 21, \_\_\_\_\_, R. \_\_\_\_\_)

The county engineer also testified that Greenville County would not have agreed to accept Maple Court for maintenance. (Transcript P 89, L8 – 11, R. \_\_\_\_\_) There is evidence in the record that bears this out.

Respondent did not secure an engineer to provide the Court with a plat that indicated whether or not Maple Court today is located as it is shown on the Final Plat or whether its length, width and the cul de sac at the end met the requirements of the Final Plat. The testimony at trial, however, is that what is constructed on the property is not consistent with the County's standards nor consistent with the government's acceptance of Maple Court:

- Respondent posted a no trespassing sign posted near the entrance to Maple Court. (Transcript P. 75, L 21 – P 78 L 2, Defendant's Exhibit 6 & 18, R. \_\_\_\_\_)
- The stop sign on Maple Court was not placed by a governmental entity. (Transcript P. 76, L 8-16, R. \_\_\_\_\_)
- There is no street sign indicating that the street at issue is named Maple Court. (Transcript P. 37, L. 1 -5; P 44, L 19-21; R. \_\_\_\_\_);

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<sup>4</sup> Defendant's Exhibit 32, R. \_\_\_ indicates: "No features found."

- There are parking lots on Respondent's property constructed in a way that parked cars must back into Maple Court. (Transcript P. 77, L 8-10, R. \_\_\_\_\_)
- There are speed bumps installed along Maple Court. (Transcript P. 77, L 11 – P. 78, L 4, R. \_\_\_\_\_) Speed bumps are of the type normally installed in parking lots or on private property and are not appropriate for public roads. (Transcript P 77, L 18-25 r. \_\_\_\_\_)
- There is a mailing kiosk and a dumpster area constructed within the area Respondent claims to be a public road. (Transcript P 87, L24 – P88, L 3, R. \_\_\_\_\_)
- The cul de sac area has within it a curbed island and a landscaped area. (Defendant's Exhibit 21; Defendant's Exhibit 30, R. \_\_\_\_\_)<sup>5</sup>

### **III. No Implied Acceptance of Maple Court**

"Acceptance of an offer of dedication also may be recognized through a public authority's using, repairing, or working the streets. *Chaffee v. City of Aiken*, 57 S.C. 507, 513, 35 S.E. 800, 802 (1900)." *Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 27; 413 S.E.2d 821, 823 (S.C. 1991) There is no evidence that either Appellant used, repaired or worked on Maple Court. To the contrary, there is evidence that neither Appellant has ever performed any repair work on Maple Court. Respondent has even posted a no trespassing sign at the entrance to Maple Court.

#### **A. Incidental Use by Law Enforcement.**

Respondent made the claim that city police, when conducting traffic stops for driving on N. Maple Street, had parked on Maple Court to write the citations. (Transcript P 16, L11 – 23;

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<sup>5</sup> Respondent did not produce a recent survey. Simpsonville refers to Defendant's Exhibit 30 not as an actual representation concerning where Maple Court should have been constructed according to the Final Plat. Defendant's Exhibit 30 has a disclaimer that it is not a land survey and is for reference purposes only. However, it is the only record introduced by Respondent to indicate what has actually been constructed on the property. See Respondent's Exhibit 6, R. \_\_\_\_\_.

Respondent's Exhibit 5, R. \_\_\_) Respondent admitted that the traffic stops were for driving that occurred on N. Maple Street. (Transcript P47, L5 – 16; R. \_\_\_) The Master's Order states that "the fact that law enforcement has used Maple Court is a further indication of it being a public road." (Master's Order P. 6, R. \_\_\_) Simpsonville respectfully submits that this is not evidence of tacit acceptance of Maple Court.

South Carolina Code Ann. § 5-7-110 provides that city police officers "shall exercise their powers on all private and public property within the corporate limits of the municipality...." City Police routinely issue parking tickets on private property and are authorized to do so. South Carolina Code Ann. §56-3-1971. City police officers have law enforcement jurisdiction on parking lots. S.C. Code Ann. § 23-1-15. Respondent admitted that he wanted the police to come to his property to check on it. (Transcript P46, L 24- P 47, L1, R. \_\_\_) Therefore, the periodic use of Maple Court to issue a traffic citation is a law enforcement action authorized by statute and should not be deemed to be any evidence of the government's acceptance of it.

**B. Non-payment of Taxes.**

The Master found that the non-payment of property taxes was evidence that Appellants had accepted the dedication of Maple Court. (Master's Order, P 6, R. \_\_\_) While the non-assessment of taxes may be considered, this fact should "be considered in conjunction with other facts to show there has been a dedication and acceptance. Cf. *Anderson v. Town of Hemingway*, 269 S.C. 351, 237 S.E.2d 489 (1977)." *Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 28; 413 S.E.2d 821, 824 (S.C. 1991)

The issue of the non-assessment of taxes has historically been viewed as evidence primarily of whether or not the owner intended the dedication of the street. "The fact that respondent paid taxes on the disputed property may thus be considered as evidence contrary to an intent to dedicate the street to the public." *Anderson v. Town of Hemingway*, , 269 S.C. 351, 355; 237

S.E.2d 489, 491 (S.C. 1977). “During all of the time that the public has been permitted to use this driveway now in dispute, the appellant and Mrs. Berry, under whom she claims, have paid the taxes thereon to the City of Florence; and while this of itself is not generally treated as very strong evidence, still it is some evidence that they did not intend to dedicate it to the public.” *Shia v. Pendergrass*, 222 S.C. 342, 350; 72 S.E.2d 699, 701 (S.C. 1952) "The payment of taxes on disputed property is evidence contrary to the intent to dedicate property to the public." *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (S.C. 1997)

Simpsonville does not dispute that taxes have not been paid on what is called Maple Court. However, Greenville County’s GIS system includes tax map numbers that result in the generation of a property tax notice. Respondent’s property tax notice (Defendant’s Exhibit 7, R. \_\_\_ ) indicates the map number, the same number that appears on the GIS map. (Respondent’s Exhibit 6, R. \_\_\_ ) The GIS map omits Maple Court. However, the GIS map has a disclaimer that the “data contained in this map ... are compiled from recorded deeds, plats and other public records.” (Respondent’s Exhibit 6, R. \_\_\_ ) It is clear that no tax notice was issued because the original owner had intended to dedicate the area identified on the recorded Final Plat as Maple Court as a public road, but the dedication was never perfected.

Nevertheless, at best, the failure to collect taxes is nothing more than inaction by Appellants, and not evidence of the acceptance of the dedication of Maple Court. "He claims there was implied acceptance by virtue of the fact that no taxes were charged on the property. Walker concedes the subject property has existed, unused and unclaimed for thirty years. However, this inaction by the City does not create an implied acceptance of the dedication." *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528 (S.C. App. 1987)

## CONCLUSION

The Master In Equity erred in finding that Maple Court was accepted by Appellants as a public road. The Master's Order clearly demonstrates the Court's finding that the mere approval and recording of the Final Plat and the Statement of Ownership was evidence that the dedication of Maple Court had been accepted by Appellants. This was an error of law. The incidental use of Maple Court by law enforcement to issue traffic citations was pursuant to statutory authority granted to law enforcement on private property; therefore, it is not evidence of governmental acceptance. Finally, the non-assessment of taxes is evidence only of whether or not the initial owner intended to dedicate the road, an issue not in dispute in this case. Nevertheless, the evidence of the non-payment of taxes is not "strong evidence" that Greenville County or Simpsonville accepted Maple Court. Respondent had the burden of proof in this case. Appellant, City of Simpsonville, asks this Court to reverse the judgment of the Master in Equity and enter judgment in its favor.

Respectfully submitted:

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