

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)
Gloria Coleman,)
)
)
Plaintiff,)
)
vs.)
)
Edisto Electric Cooperative, Inc.,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2016-CP-06-00224

ORDER
RECEIVED
FEB 17 2021
SC Court of Appeals

PRESIDING JUDGE: The Honorable James B. Jackson, Jr.,
Special Referee

PLAINTIFF'S ATTORNEY: Drake H. Kaiser, Esq.

DEFENDANT'S ATTORNEYS: Pope D. Johnson, III, Esq.
Richard B. Ness, Esq.
R. Aaron Ness, Esq.

COURT REPORTER Suesan L. Richardson

HEARING DATE: October 27, 2020

The Plaintiff commenced this action by the filing of a Summons and Complaint on May 16, 2016. In her Complaint the Plaintiff alleged a cause of action of negligence, violation of the Plaintiff's due process rights, failure to follow the proper procedures in obtaining a right of way easement, trespass, and wrongful interference with Plaintiff's property. The Defendant filed and served a timely Answer to the Complaint asserting the Statute of Limitations among other defenses. The action was referred to me as Special Referee for a non-jury trial which trial was held on October 27, 2020. Upon consideration of the evidence presented at the trial, I find that the Plaintiff has failed to prove that she is

entitled to relief and judgment should be entered in favor of the Defendant, for reasons set forth below.

I find that the Plaintiff has failed to prove that she suffered any damages as a result of any act or omission on the part of the Defendant. The Plaintiff called John O. Wright to testify regarding her damages. Mr. Wright is a qualified real estate appraiser and the Defendant stipulated to his qualifications as an expert. However, Mr. Wright testified as to the value as of December 17, 2019, which was the date he issued his report. Mr. Wright admitted that he had not determined the damages as of the date of the taking of the easements. Although he testified to a method that could be followed in valuing the easements as of their taking, Mr. Wright admitted that it would be mere speculation to utilize those methods. Mr. Wright candidly admitted that he had not utilized any method to come up with a value of the easements as of the date of the taking, which is required under S.C. Code § 28-2-440.

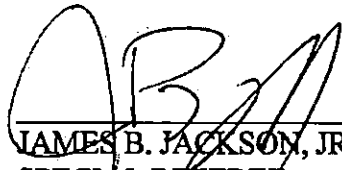
Even if the Plaintiff had offered proof of damages, I find that she still would not be entitled to recover against the Defendant. The Defendant offered evidence that all easements were taken in and before 1984. The Defendant also offered a plat into evidence which unequivocally showed the easements on the property as of 1997. Although the Plaintiff maintained that she learned of the easements in 2008, she did not commence this action until eight (8) years thereafter, in 2016. In other words, Plaintiff was on notice she had causes of action against Defendant as early as 2008, but she did not commence her action within the three (3) year Statute of Limitations. Therefore, her claims are barred by the three (3) year Statute of Limitations.

Finally, I find Defendant has satisfied by clear and convincing evidence that it is entitled to a prescriptive easement on Plaintiff's property.¹ Defendant called three different Co-Op witnesses who testified the poles and lines had been on the property for decades, and the Co-Op had continuously, openly, notoriously, and without interruption provided power directly to Plaintiff. Defendant put forth into evidence numerous plats, pictures, or other exhibits clearly and convincingly bolstering this testimony.

I further find that Defendant's use of Plaintiff's property was indeed adverse, hostile, and contrary to the rights of Plaintiff for more than the required twenty (20) year time period since Plaintiff emphatically testified Defendant never had the right to place poles and lines on her property. Importantly, Defendant's belief regarding the permissiveness of its use is irrelevant for determining the existence of a prescriptive easement, as clearly stated by the Supreme Court of South Carolina.² Therefore, Defendant is entitled to a prescriptive easement on Plaintiff's property.

ACCORDINGLY, IT IS ORDERED that judgment must be entered in favor of the Defendant.

AND IT IS SO ORDERED!



JAMES B. JACKSON, JR.
SPECIAL REFEREE

Orangeburg, South Carolina

Dated: January 13, 2021

¹ The requirements for a prescriptive easement in South Carolina are fully stated in *Simmons v. Berkeley Electric Cooperative, Inc.*, 419 S.C. 223 (2016).

² *Berkeley Electric* at 232.