

Mar 23 2021

SC Court of Appeals

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF CHARLESTON ) COURT OF COMMON PLEAS NONJURY

3  
 4 SARAH SHARPER, ET AL ) TRANSCRIPT  
 5 PLAINTIFF, ) OF  
 6 vs. ) RECORD  
 7 THE STATE OF SOUTH CAROLINA, ET AL, )  
 8 DEFENDANT. ) 2017-CP-10-4820

9  
 10 September 21<sup>st</sup>, 2020  
 11 Charleston, South Carolina

12 B E F O R E:

13 THE HONORABLE BENTLEY PRICE, JUDGE.

14 A P P E A R A N C E S:

15 JARREL L. WIGGER  
 16 ESQ.  
 17 Attorney for the Plaintiff

18 W. COLEMAN LAWRYMORE  
 19 ESQ.  
 20 Attorney for the Defendant SCDOT

21 KRISTA N. CARNEY  
 22 Circuit Court Reporter

23  
 24 Transcribed by Pamela E. Green, Circuit Court Reporter  
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I N D E X   O F   W I T N E S S E S

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

1 P R O C E E D I N G S

2  
3 THE COURT: All right. So, my understanding is that  
4 this is a damages hearing.

5 Is that correct?

6 MR. LAWRIMORE: No, sir.

7 THE COURT: All right. well, it's all on the -- on  
8 the -- it's on there.

9 All right. What is it then?

10 MR. LAWRIMORE: Judge, Cole Lawrimore here on behalf of  
11 SCDOT. This is DOT's motion for summary judgment.

12 THE COURT: Oh, this---

13 MR. LAWRIMORE: There may be a damages hearing on it  
14 but --.

15 THE COURT: Oh, okay.

16 All right. I'll be happy to hear from you.

17 MR. LAWRIMORE: Thank you, Your Honor.

18 Again, Cole Lawrimore and J.J. Anderson here for SCDOT  
19 here before the Court on our motion for summary judgment.

20 Your Honor knows the summary judgment standards. So,  
21 I'm not gonna give you a string cite to belabor that issue.

22 The project at issue is the Palmetto Commerce Parkway,  
23 which is not a DOT owned and maintained road. It runs  
24 in-between Blaston Road and Ashley Phosphate around the City  
25 of North Charleston. We've submitted Arnold Blanding's

1 affidavit in support of our motion. Arnold Blanding's a  
2 resident maintenance engineer for Charleston County.

3 That affidavit boiled down -- it just says this isn't  
4 DOT's road. We don't own it. We don't maintain it. We've  
5 never owned it, and we've never maintained it. DOT's  
6 responsibility is, as to that road, extend to the portions  
7 of the Commerce Parkway that are within DOT's right of way.

8 As to this intersection with Blaston Road, that's about  
9 50 feet. As to intersecting with Ashley Phosphate Road,  
10 it's about 80 feet. Both of those distances measures from  
11 the center line of Ashley Phosphate and Blaston Road. All  
12 together that accounts for about 140 feet of a five and a  
13 half mile long road. By my extremely suspect math, that's  
14 about half of 1 percent.

15 There have been no allegations or evidence submitted in  
16 this case thus far tending to indicate that that 140 feet of  
17 road is in any way contributing to the flooding that serves  
18 as the basis of the Plaintiff's Complaint.

19 We've received an affidavit from Alan Obata about two  
20 and a half hours ago. We would contend that that affidavit  
21 is untimely per the two day requirement set forth in Rule  
22 56(c) to the Rules of Procedure. Don't believe that  
23 affidavit is timely, don't believe it should be considered  
24 by the Court today, and it just further emphasized the point  
25 that there have been no allegations as to DOT's 140 feet of

1 right of way contributing to any of the problems that the  
2 Plaintiffs are experiencing.

3 We just believe that, quite frankly, there's no  
4 evidence whatsoever, after about a year and a half of  
5 litigation, that DOT has any responsibilities whatsoever to  
6 the Palmetto Commerce Parkway. On those grounds, we believe  
7 that they're not a proper party to this action and should be  
8 dismissed.

9 THE COURT: All right. Who's gonna be arguing for the  
10 Plaintiff?

11 MR. WIGGER: Jarrel Wigger.

12 THE COURT: All right. Be happy to hear from you.

13 MR. WIGGER: May it please the Court.

14 We've talked a little bit about the history of the  
15 case. Basically the Palmetto Parkway was designed and it  
16 was, it was put up literally via Boeing and Knights Road to  
17 have a shortcut to trade on board their, their goods, and  
18 there were hearings before the road was put up. And the  
19 sub -- the people that lived in that separate little  
20 subdivision presented at those hearings and indicated that,  
21 if this roadway went through, then they knew it was gonna  
22 flood their neighborhood, and the hearings were on the  
23 record, and we've submitted those documents that, that  
24 indicate that.

25 So, when we -- when the bad storm happened in 2016, a

1 lot of the people got flooded out. Bad storm happened again  
2 in 2017. People got reflooded, flooded out again. Whenever  
3 bad rains were happening, they would get flooded out.

4 So, following that, we brought a lawsuit and initially  
5 there were 46 plaintiffs that were involved in the lawsuit.  
6 Not long after we brought the lawsuit we found out that one  
7 of the Plaintiffs actually lived over the line in Dorchester  
8 County, and that case was removed to Dorchester County.  
9 That was the Storts case.

10 Literally everybody kind of focused on that case for a  
11 bit, and there were motions and appeals and things happened  
12 in that case. That case settled not too long ago.

13 After we settled that case, then everybody's attention  
14 refocused back on this case, and it was our understanding  
15 that the Defendants were going to take our experts  
16 deposition, Alan Obata, who's a construction engineer  
17 expert, and then we were gonna sit down and, and try to  
18 resolve this case and mediate it.

19 So, his deposition was set, canceled, set, canceled,  
20 set, canceled. The last time it was set was gonna be  
21 August 26<sup>th</sup> and 27<sup>th</sup> or 27<sup>th</sup> and 28<sup>th</sup>, somewhere  
22 around in there, and basically, when that happened, we said  
23 look, we're coming up on the docket. We, we can't rely on  
24 y'all doing this deposition and setting a mediation. We're  
25 gonna get the case moving.

1           There are a number of people that have not submitted  
2 discovery including the DOT. We do not have their  
3 discovery. We've sent a Rule 11 letter that says we're  
4 gonna come in and say that litigation's been going on all  
5 this time. They haven't participated in, in the -- in  
6 discovery at all. No depositions have been taken.

7           We have set a bunch of 30(b)(6) depositions because,  
8 frankly, since it never -- their plan is gonna work, we're  
9 gonna have to get moving and getting our case set and ready.  
10 But our allegation is that the entire Palmetto Parkway  
11 construction project, the (indiscernible), the drainage  
12 system, all that is contributing to the flooding in our  
13 neighborhood.

14           For the DOT to say there've been no allegations, that's  
15 just not accurate. Our Complaint, our Complaint indicates  
16 that the entire Palmetto Commerce Parkway is contributing to  
17 the flooding.

18           There isn't a way to set out and say some parts of it  
19 are exempt because it's movement and water. Even if it is  
20 only half of one percent, that movement of water is part of  
21 the flooding that is going right in our neighborhood and  
22 right in our client's houses. So, it isn't accurate to say  
23 that we haven't made those allegations. We have.

24           As far as Mr. Obata's affidavit, that's -- we got  
25 Mr. Blanding's affidavit, and frankly Mr. Blanding admits

1 that the DOT is responsible for a portion of the Palmetto  
2 Parkway. So even on their exhibit it indicates they are in  
3 trouble by certain portions, and you can't tell water where  
4 to go. Water just flows and it flows across the areas that  
5 they have maintained and control.

6 It also -- I would point out that Mr. Obata says that  
7 the permitting was very shortened and all the permitting was  
8 waived. There were a lot of things that happened with the  
9 permitting for this project, and the DOT is one of the  
10 groups that controls that permitting.

11 So, it's not just the construction. It was the  
12 permitting that was also a problem, and all of that has  
13 contributed to the math regarding this (indiscernible) and  
14 the situation. A lot of our people are not even able to --  
15 have not been able to return to their homes after all this  
16 time.

17 So, we would argue that discovery is -- its emphases,  
18 despite the age of the case, that we're moving and getting  
19 discovery done, and it would be premature at this point to  
20 make a ruling because we don't even have DOT's answers to  
21 our interrogatories or request to produce. So, without  
22 that, it would be improper to dismiss them from the case  
23 based on affidavits where they admit they are in charge of  
24 part of the roadway that has caused the flooding, and part  
25 of the project that's caused the flooding.

1           So, that would be our position. We'd ask the Judge to  
2 deny the motion at this time. If the Defendants want to  
3 complete discovery and come back, obviously they would have  
4 that option. But, at this point, it's not -- they shouldn't  
5 be able to not participate in discovery and then come back  
6 and try to get dismissed based on their lack of cooperation  
7 and not participating in discovery.

8           THE COURT: All right. Mr. Lawrimore.

9           MR. LAWRIMORE: Your Honor, to that end, no amount of  
10 discovery is gonna change the fact that this isn't a DOT  
11 owned roadway. The only portion they would have any  
12 maintenance responsibility are the portions of the Parkway  
13 that fall in SCDOT's right of way or they're integrated into  
14 SCDOT on the roads.

15           Looking at the portions of the roadway using the all  
16 mighty, all powerful Google street view, it actually appears  
17 as though the Palmetto Commerce Parkway, it flows downward  
18 towards the SCDOT owned roadways.

19           My understanding of water doing what it does is that it  
20 flows downhill. There'd be no way for water to flow uphill  
21 from DOT's road onto the Palmetto Commerce Parkway.

22           I'm gonna try to share my screen with everybody to give  
23 you a feed portion of the roadway we're talking about.

24           Can everybody see what I hope is the intersection of  
25 Blaston Road and the Palmetto Commerce Parkway?

1 THE COURT: Yes.

2 MR. LAWRIKORE: Okay. Your Honor, if you'll look at  
3 that line that I've drawn right there in the middle, that  
4 shows the area that SCDOT would have some maintenance  
5 responsibility for from the center line of Blaston Road onto  
6 the Palmetto Commerce Parkway. There's two dots there also  
7 for your reference that I'm trying to highlight those with  
8 my mouse. Notably absent from the satellite images is any  
9 wetlands for water whatsoever.

10 Now we're looking at -- now we're looking at the  
11 intersection of Ashley Phosphate Road where Ashley  
12 Phosphate, the Palmetto Commerce Parkway line right here  
13 that shows the 60 feet SCDOT would be responsible for  
14 maintaining. Looks like it goes to the stop line. Again,  
15 notably absent are any waterways. Again, it's kind of like  
16 the Parkway flows downhill towards DOT's roads.

17 THE COURT: All right.

18 MR. LAWRIKORE: Your Honor, the discovery issue, it  
19 appears to us that this case has somewhat of a tortured  
20 procedural history. There were multiple motions to dismiss  
21 as to our client based on improper service. Looks like the  
22 discovery responses were issued about a year for -- the  
23 request for that were issued about a year before with any  
24 ruling on that. Somewhat up in the air as to whether those  
25 responses or requests rather have been properly served on

1 DOT.

2 But, in any event, we did answer HLA's properly served  
3 discovery responses. Counsel for Plaintiffs were obviously  
4 served with a copy of that. DOT doesn't have any records  
5 cause nobody at DOT was involved.

6 THE COURT: All right.

7 MR. LAWIMORE: Again, this just isn't our road, and we  
8 don't think we're a proper party.

9 THE COURT: All right. Anything further?

10 MR. WIGGER: Yes, Your Honor.

11 I'll -- in response, I understand Mr. Lawrimore would  
12 like to testify. I would like to testify too.

13 I use to work at this intersection in regard to that  
14 that was up on the, the screen, and it got flooded every  
15 time it rained 30 years ago. So, I would say that if DOT is  
16 out, then, as the Court is probably aware, whenever you have  
17 a Tort Claims Act case, one of the things that the -- any  
18 government entity gets is an automatic instruction as to the  
19 responsibility and liability of anybody else that could be  
20 involved in the case whether they're a party or not.

21 This is a case where the other Defendants would  
22 definitely get the instruction against the DOT because, as  
23 they've admitted on the record today, they control half of  
24 one percent of the, of the area, and if they can get an  
25 instruction as to their liability, then they definitely

1 share the responsibility.

2 So, it would be extremely prejudicial for us not to be  
3 able to have them included, and yet they would be able to  
4 turn around and get an instruction from the Court as to  
5 their liability on this issue down the road.

6 So, again, for all these reasons, we don't agree  
7 that -- with Mr. Lawrimore that that portion would not  
8 contribute to the water.

9 The flooding then, you can actually go out to the area.  
10 There is a hill on one side of the road and looks to be half  
11 a mile up the road on the other side there's a hill where  
12 the floor plan is, and that whole tile basically transports  
13 water including the intersection they're talking about. You  
14 can stand and see it when you're at the site.

15 So, for them to say it doesn't contribute is just not  
16 accurate because all the water's flowing from both sides  
17 down into the sloped area and into the neighborhood.

18 So, if---

19 THE COURT: All right.

20 MR. WIGGER: It is a small percentage but it is a  
21 percentage.

22 THE COURT: All right. Anything further?

23 MR. WIGGER: Not from the Plaintiff.

24 MR. LAWRIMORE: No, sir.

25 THE COURT: All right. I'll take it under advisement,

1 but, as usual, you'll have my answer by the end of the day.

2 MR. WIGGER: Sir, thank you.

3 THE COURT: All right.

4 MR. LAWRIKORE: Thank you, Your Honor.

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7 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Charleston County, South Carolina, on the 21<sup>st</sup> day of September, 2020.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 12<sup>th</sup>, 2021

*Pamela E. Green*

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PAMELA E. GREEN, Court Reporter