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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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

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FINAL REPLY BRIEF OF APPELLANT, CITY OF SIMPSONVILLE

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I. MAPLE COURT NOT ACCEPTED

A. The Issue is Not Dedication

Appellant, City of Simpsonville" ("Simpsonville") does not deny that the original owner of the tract that Respondent now owns expressed the intention to dedicate Maple Court for the use of the public. (Appellant's Brief, Page 6) Rather, the sole issue is whether or not Appellants accepted the dedication after it was made.

"Perfecting a dedication of property to public use involves two steps. First, an owner must express an intention to dedicate his property to public use in a positive and unmistakable manner. *Boyd v. Hyatt*, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct.App.1988). Second, there must be a public acceptance of the property offered for dedication. *Id*. at 365, 364 S.E.2d at 481." *Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 27; 413 S.E.2d 821, 823 (S.C. 1991)

Respondent conflates the concept of "dedication" with "public acceptance." Indeed, some of the cases that discuss dedication and public acceptance appear to discuss them in similar terms. However, a close reading of the cases shows that what the Court is wrestling with are separate and distinct concepts.

B. Public Use Evidence to Determine Intent to Dedicate

While it is true that the public use of a road can be evidence of public acceptance, what is in view is usually whether or not there was an implied intent to dedicate the road for public use. For example, in *Cleland v. Westvaco Corp*., 314 S.C. 508, 431 S.E.2d 264 (Ct.App.1993), there had been no express intent to dedicate the road. The was evidence that for a period of over fifty years, members of the public had used the road to reach the Coosawachie River. The Court

determined, however, that the road had not been accepted by the public. "Nevertheless, dedication is an exceptional mode of passing an interest in land, and proof of dedication must be strict, cogent and convincing. [Citation omitted.] The acts proved must not be consistent with any construction other than that of a dedication. [Citation omitted.] Dedication is not implied from the permissive, sporadic and recreational use of the property, even though some of it has been used extensively. *State v. Beach Co.*, 271 S.C. 425, 248 S.E.2d 115 (1978)." *Cleland v. Westvaco Corp*., 314 S.C. 508, 431 S.E.2d 264, 266 (S.C. App. 1994)

"South Carolina law recognizes two types of implied dedication-one where the question of implied dedication arises from the sale of land with reference to maps or plats; the other when the dedication arises ... from an abandonment to or acquiescence in public use.... A dedication need not be made by deed or other writing, but may be effectually made by acts or declarations. Intent to dedicate may also be implied from long public use of the land to which the owner acquiesces." *Town of Kingstree v. Gary W. Chapman, Jr., Terilyn J. Mcclary, Waccamaw Hous., Inc*., 405 S.C. 282, 302 747 S.E.2d 494, 504 (S.C. App. 2013)

C. There was no Public Acceptance

(i) There was no Express Acceptance

Respondent offered no evidence that either Greenville County or Simpsonville signed any document on which public acceptance of Maple Court was acknowledged. Respondent attempts to circumvent this by claiming that Greenville County's approval for recording of the Final Plat and the Statement of Ownership evidenced its acceptance. Simpsonville has fully briefed this issue. (Appellant's Brief, p. 9) Respondent's brief does not address the law cited in Simpsonville's brief to the effect that the recording of the Final Plat or the Certificate of Ownership is not evidence of public acceptance.

Both Greenville County and Simpsonville denied accepting Maple Court. That was the expressed reason Respondent filed this case.

The evidence at trial was that Greenville County would not have accepted Maple Court until after it had been constructed, inspected and a formal acceptance made. That did not occur and Respondent did not present any evidence to the contrary.

(ii) There was no Implied Acceptance.

"It is true that generally, when an owner of land has it subdivided and platted into lots and streets and sells and conveys lots with reference to the plat, he thereby dedicates the streets to the use of the owners of such lots and to the public. *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975). However, to have a completed dedication, there must be some form of acceptance of the offer to dedicate." *Baugus v. Wessinger*, 303 S.C. 412, 416; 401 S.E.2d 169, 172 (S.C. 1991) [Emphasis added.]

Due to the unique facts of this case, Simpsonville contends that to the extent that public use can be considered to determine whether or not there was public acceptance, Plaintiff produced no such evidence. The only evidence Respondent presented was that police occasionally issue traffic tickets for offenses occurring on an adjacent public road. At trial, Respondent also claimed that he had never excluded the public from using Maple Court. (R. p. 9, lines 10-12).

Maple Court leads nowhere. It is short and dead ends in a cul de sac. The use of the property is solely multifamily residential buildings owned by Respondent. There are no shops, religious institutions, or recreational areas that the travelling public may wish to visit. Simpsonville believes that it is a fair representation of the facts that Maple Court is nothing more

than a private drive that leads into Respondent's apartment complex. Respondent admits that he posted a no trespassing sign at its entrance. (R. p. 150, lines 16-22; p. 221; p. 234).

In its Brief, Simpsonville has set forth its argument why police activity should not be considered public use of the property, primarily because the General Assembly has given police jurisdiction on private property. (Appellant's Brief, p. 11) In his brief, Respondent does not address the issue of statutory police jurisdiction on private property nor does he cite any statutory or caselaw to support the claim that police activity constitutes public acceptance.

Respondent's claim that neither he nor his parents prohibited public use is no evidence of public acceptance.

Finally, there is no evidence that Simpsonville has ever done any work on Maple Court or done any other act upon which it can be claimed that Simpsonville accepted Maple Court.[1] Respondent does not dispute that fact.

II. NO ISSUE PRESERVATION ISSUE

In his brief Respondent contends: "Furthermore, Appellant Simpsonville failed to object to the admission of the Plat and Statement of Dedication [*sic*] into evidence at trial, and it failed to raise any argument related to consideration of the Plat and Statement of Dedication [*sic*] in their Motion to Amend. Therefore, Appellant failed to preserve this issue for appeal." (Brief of Respondent, p. 9)

Here again, Respondent conflates the issue of dedication with the issue of public acceptance. It is true that Simpsonville did not object to the introduction of the Final Plat or the

[1] The Master's Order states that "Although the City argues that the County should be responsible for its maintenance because the City never accepted the road into its inventory, I find that the City appears responsible for the maintenance and repair of Maple Court" pursuant to S.C. Code Ann. §5-27-120 as a result of annexation. (R. p. 12). This portion of the Master's Order finds that Simpsonville did not accept Maple Court. Respondent has not appealed this finding.

Statement of Ownership. Respondent had the burden of proving by clear, cogent and convincing evidence that there had been a dedication of Maple Court as a public road. Both the Final Plat and Statement of Ownership are relevant to that issue. In addition, Simpsonville did not (and does not) contend that the original owner did not intend to dedicate Maple Court. Therefore, Simpsonville did not object to the introduction of either document.

Simpsonville does argue, however, that neither the Final Plat nor the Statement of Ownership are to be considered on the issue of whether Greenville County ever accepted its dedication. As stated in its brief:

> 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).
>
> (Appellant's Brief, p. 6)

Again, Respondent cites this Court to no law contrary to *Tupper*. In fact, Respondent completely ignores Simpsonville's contention that Greenville County's consent to the filing of the documents, or their "approval as to form" prove anything other than that the owner intended to dedicate Maple Court. Respondent's problem is that neither Greenville County nor Simpsonville ever accepted the owner's offer of dedication. *Baugus v. Wessinger*, 303 S.C. 412, 416; 401 S.E.2d 169, 172 (S.C. 1991)

Respondent acknowledges that S.C. Code Ann. §6-29-1170 (1994) provides that: "The approval of the land development plan or subdivision plat may not be deemed to automatically constitute or effect an acceptance by the municipality or the county or the public of the

dedication of any street, easement, or other ground shown upon the plat. Public acceptance of the lands must be by action of the governing body customary to these transactions."

Simpsonville contends that §6-29-1170 is consistent with *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (S.C. 1975) that held: "We also held 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." In *Carolina Land Co*. (Greenville County) a plat was recorded in 1945 that indicated a 30 foot street. The street, though platted, was never paved. The Court held that owners of the lots conveyed as shown on the plat had acquired an easement for the use of the street even though it had not been accepted by Greenville County public authorities. The point is that even in 1975 when the Final Plat and the Statement of Ownership was filed for record, something other than the mere recordation of these documents is required to show that Greenville County had accepted the dedication of Maple Court.

In contrast, in *Darlington County v Perkins*, 269 SC 572, 239 SE2d 69 (1977), there were witnesses to the fact that an unimproved road had been used for over 75 years as a public road. The county manager for Darlington County testified that the county had maintained the road as a part of its road system. The county had "installed a drainage system adjacent to the road, ditched the road on numerous occasions, cleaned the ditches and plowed the road from time to time, all at the request of various members of the public, and without any assistance from the Landowners. The Landowners have made no objection to the continued use of the road by the general public, or to the maintenance performed by the County on the road." *Id*. at 269 S.C. 572, 575; 239 S.E.2d 69, 70 (1977)

While *Darlington County* addressed these facts in terms of whether or not the owner had intended the dedication of the road to the public, the Court held: “Thus, 'where acts of the owner justify the public authorities in believing the intention exists and they act on such belief, a dedication may be found to have occurred . . . .'..." *Id.*

CONCLUSION

The issues in this case are important to the taxpayers of the City of Simpsonville. Because of the requirement of S.C. Code Ann. §5-27-120, Simpsonville has a responsibility to maintain public roads. Simpsonville assumes the potential for liability that may arise from its non-performance of needed maintenance. Taxes are levied to pay for the maintenance program.

This is the reason there has always been a protocol for roads to be accepted into the city’s road system. The road must be built to its standards and an engineer must certify that the road was built to those standards and was built where it was supposed to be. That protocol was not followed with regard to Maple Court.

There is no evidence in the record about who built Maple Court or when it was built. No plat has been recorded to indicate that Maple Court was built in the place that it was to be built as shown on the pre-construction Final Plat.

Simpsonville contends that the Master In Equity erred in finding that Maple Court was accepted by Appellants as a public road. The finding that the approval and recording of the Final Plat and the Statement of Ownership was evidence that Maple Court had been accepted by Appellants is an error of law. Therefore, 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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CERTIFICATE OF COUNSEL

I certify that Simpsonville's Final Appellant's Brief and Final Reply Brief complies with Rule 211(b), SCACR.

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