THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Case No. 2018-CP-23-05191
Appellate Case No. 2020-001188

Richard Joseph Rogozinski,.....Respondent,

v.

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

REPLY BRIEF OF APPELLANT COUNTY OF GREENVILLE

HAYNSWORTH SINKLER BOYD, P.A.

Boyd B. Nicholson, Jr., S.C. Bar No. 65387
Sarah P. Spruill, S.C. Bar No. 68337
Jonathan D. Klett, S.C. Bar No. 103208
P.O. Box 2048
Greenville, South Carolina 29602-2048
(864) 240-3200
nnicholson@hsblawfirm.com
sspruill@hsblawfirm.com
jklett@hsblawfirm.com

Attorneys for Appellant
County of Greenville

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Richard J. Rogozinski ("Rogozinski" or "Respondent") correctly asserts that this appeal likely "turns on the issue of whether the public accepted Maple Court." Furthermore, Respondent apparently concedes that Maple Court was not expressly accepted by the County of Greenville (the "County"). Therefore, this appeal surrounds whether the Master-in-Equity (the "Master") erred in finding the public impliedly accepted Maple Court. In the Master's acceptance analysis, the Master erred in finding use by law enforcement and the non-assessment of taxes as dispositive evidence of implied acceptance because these factors are not conclusive for proving implied acceptance of a public road. Use by law enforcement is an improper determinant to demonstrate implied acceptance because it is contrary to South Carolina law, and non-assessment of taxes, standing alone, fails to suffice as strict, cogent, and convincing evidence of implied acceptance. Based on the foregoing, the Master's Order should be reversed in favor of the County, finding that Maple Court was not dedicated and accepted as a public road.

I. Maple Court is a private road.

As an initial matter, South Carolina precedent establishes that Maple Court is a private road. South Carolina roads are classified into three categories: public highways, neighborhood roads, and private ways. *Kirby v. S. Ry.*, 63 S.C. 494, 41 S.E. 765, 767-68 (1902). A public highway is "a principal road leading to market, town, or some place of general resort, and is commonly traveled by all kinds of people." *State v. Harden,* 11 S.C. 360, 368-69 (1879). A neighborhood road is a road which runs between public roads or places. *Kirby*, 63 S.C. 494, 41 S.E. at 767. For a road to be classified as a neighborhood road, both termini must be on a public highway or other public place. *Fanning v. Stroman,* 113 S.C. 495, 101 S.E. 861, 862 (1920) (finding that a road which ends on the edge of a swamp, several hundred yards from a landing is

not public); *see also State v. Washington*, 80 S.C. 376, 61 S.E. 896, 897 (1908) (noting that a church or mill constitutes a public place).

In specific circumstances, a road can become a neighborhood road by prescription. The test to determine the existence of a neighborhood road by prescription is "general use by all persons, for public purposes, for an uninterrupted period of twenty years or more." *State v. Sartor*, 33 S.C.L. 60, 66 (Ct. App. 1847). A private way is a road through privately owned property and is not used by the public, though individuals may develop rights to use private ways (*i.e.*, by prescription). *See Kirby*, 63 S.C. 494, 41 S.E. at 767.

The Master erred in finding that Maple Court was a public road. First, the road is not a public highway because it is not a "principal road leading to a market, town, or some place of general resort." *See Harden*, 11 S.C. at 368-69. The evidence is undisputed that Maple Court dead-ends in the middle of Respondent's property. Respondent offered no evidence to suggest otherwise. Nor is the Road "commonly traveled by all kinds of people." *Id.* The evidence is undisputed that property surrounding Maple Court consists of apartments owned by Respondent. (R. p. 83, lines 17-19; p. 121, line 14-p. 122, line 6). Other members of the public do not use Maple Court for any other purpose.

Second, Maple Court cannot constitute a neighborhood road because both termini are not on a public highway or other public place. *See Kirby*, 63 S.C. 494, 41 S.E. at 767; *see also Fanning*, 101 S.E. at 862. Maple Court starts from North Maple Street and ends in a cul-de-sac in Respondent's property. (R. p. 99, lines 20-25; p. 224; p. 232). Under this line of authority Maple Court is a private road.

II. Respondent has failed to demonstrate implied acceptance of Maple Court through the public's acts and continuous use.

The Master erred in finding that Respondent sufficiently demonstrated the public's implied acceptance of Maple Court. The South Carolina Supreme Court has held that implied acceptance is only found "by the public's **continuous** use of the property." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 24, 27, 413 S.E.2d 821, 823 (1992) (citing *Boyd v. Hyatt*, 294 S.C. 360, 365, 364 S.E.2d 478, 481 (Ct. App. 1988)) (emphasis added). South Carolina courts have long held that the only way to show implied acceptance is "through a public authority's using, repairing, or working the streets." *Id.*; *see also Tupper v. Dorchester Cnty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 192 (1997) ("The use, repair, and working of the streets by public authorities is a mode of acceptance."); *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995) ("Acceptance may be implied by the public or a public authority continuously using or repairing the property."); *Boyd*, 294 S.C. at 366, 364 S.E.2d at 481 ("[P]ublic use of the road for over thirteen years . . . is evidence of acceptance by the public of the dedication."). Respondent failed to satisfy his burden of establishing the County's implied acceptance of Maple Court. *See Town of Kingstree v. Chapman*, 405 S.C. 282, 302, 747 S.E.2d 494, 504 (Ct. App. 2013) (noting the burden of proof is upon the party claiming public dedication).

The County representatives testified unequivocally at trial that the County does not claim, maintain, or have any other involvement with Maple Court. (R. p. 140, line 21-p. 141, line 12; p. 149, line 19-p. 150, line 5). The South Carolina Supreme Court has made clear that dedications are "an exceptional and peculiar mode of passing title to interest in land," and the proof must be "strict, cogent, and convincing, and the acts proved must not be consistent with any other than that of a dedication." *Shia v. Pendergrass*, 222 S.C. 342, 348-49, 72 S.E.2d 699, 702 (1952) (citation

omitted). Respondent's acts and the County's involvement with Maple Court do not meet this exceptional mode to transfer Maple Court to the public.

Respondent failed to meet his burden to establish continuous public use of Maple Court. Acceptance is implied in limited circumstances where there is **long** public use of the land **to which the owner acquiesces**. *See Hoogenboom v. City of Beaufort*, 315 S.C. 306, 317, 433 S.E.2d 875, 883 (Ct. App. 1992) (emphasis added). Respondent manages an apartment complex surrounding Maple Court. (R. p. 83, lines 17-19). No other person owns property surrounding Maple Court. (R. pp. 192-203; p. 215). The entrance to Maple Court has a "No Trespassing" sign[1] indicating that the property is solely used for Respondent's apartment complex. (R. p. 216). Furthermore, the only reason this action is before the Court is because Respondent's tenants complained about Maple Court's condition. (R. pp. 26-30; pp. 35-40). It is clear that Maple Court has not been continuously used by the public, and is instead utilized by Respondent's tenants. Such limited use of Maple Court by Respondent's tenants is not the type of "long" public use to which acceptance can be implied. *See Hoogenboom*, 315 S.C. at 317, 433 S.E.2d at 883. Moreover, Respondent provided no evidence of owner acquiescence. In fact, the evidence demonstrates the opposite. Respondent's actions patently demonstrate that he sought to preclude the public from access to Maple Court.

The record is clear that Maple Court is used by Respondent and his tenants for the operation of Respondent's apartment complex. (R. p. 121, line 14-p. 122, line 6). Moreover, Respondent concedes in his brief that he placed signs on his property to discourage persons who were not residents in his apartment complex from trespassing and dumping trash. *See also* (R. p. 93, line

[1] The sign states: "*SECURITY NOTICE*[,] Residents & Their Guests ONLY. NO TRESPASSING. NO DUMPING!!!" (R. p. 233).

24-p. 94, line 3; p. 217; p. 221). Specifically, the signs deter the public and advise that the property is under surveillance. (R. p. 100, lines 21-25). There is also a privately owned and installed stop sign at the end of Maple Court. (R. p. 151, lines 3-16; p. 231). In addition, Maple Court includes a mail kiosk overhang for the residents of the apartment complex and privately installed speed bumps. (R. p. 110, lines 17-23; p. 244). The evidence distinctly establishes that Maple Court is for the exclusive use of Respondent's tenants. Therefore, the Master erred in finding that Respondent provided strict, cogent, and convincing proof that Maple Court was impliedly accepted as a public road.

III. The assessment of taxes on Maple Court should not be the sole determining factor for implied acceptance.

As set forth in the County's initial brief, the Master erred in finding use by law enforcement was a factor supporting implied acceptance. Respondent does not dispute that South Carolina law authorizes police jurisdiction on private roads and private property. Thus, after preclusion of law enforcement use as a factor, the only evidence presented to the Master for implied acceptance was the non-assessment of taxes for the property.

The assessment or non-assessment of taxes on Maple Court is not conclusive on the issues of acceptance by the County. "The assessment of taxes is but a factor in determining the question of whether an offer of dedication has been accepted and is not controlling." *Van Blarcum v. City of N. Myrtle Beach*, 337 S.C. 446, 452, 523 S.E.2d 486, 489 (Ct. App. 1999) (citing *Helsel v. City of N. Myrtle Beach*, 307 S.C. 24, 28, 413 S.E.2d 821, 821 (1992)). It is clear that the nonassessment of taxes is to be considered "in conjunction with other facts" to demonstrate acceptance. *Helsel*, 307 S.C. at 28, 413 S.E.2d at 824.

Courts generally consider the assessment of taxes for the determination of dedication and acceptance when real property is removed from the tax roll. *See Laughlin v. Morauer*, 849 F.2d

122, 127 (4th Cir. 1988). This would provide evidence that the real property was no longer considered private. Respondent provided no evidence or testimony that Maple Court was previously assessed taxes and removed from any tax roll.

Moreover, Respondent argues: "Rogozinski testified that he has used the address of 33 Maple Court for years and received tax notices mailed to that address." However, Respondent's 2019 tax notice is clearly addressed to Respondent at 1 Turnbridge Trail, Simpsonville, South Carolina and indicates the tax notice was for property addressed at 710 North Maple Street. (R. p. 222); *see also* (R. p. 215) (indicating real property details at 710 North Maple Street). Accordingly, because there are no other facts demonstrating acceptance, the Master erred in finding the County accepted Maple Court as a public road.

III. The Plat and Statement of Dedication do not provide indicia of acceptance for Maple Court.

Respondent asserts, with zero legal authority, that the Plat and Statement of Dedication provide indicia of public acceptance. Respondent does not dispute that a plat is not evidence of public acceptance under South Carolina law. *See* S.C. Code Ann. § 6-29-1170; *see also Tupper*, 326 S.C. at 326-27, 487 S.E.2d at 192; *Chapman*, 405 S.C. at 303, 747 S.E.2d at 504; *Van Blarcum*, 337 S.C. at 450, 523 S.E.2d at 488. Furthermore, Respondent does not dispute that the Plat and Statement of Dedication were recorded prior to the subdivision of the property and paving of Maple Court. *See* (R. p. 178, line 21-p. 179, line 7). In addition, Respondent admits that the County's attorney at the time only approved the recording as to form. (R. p. 191). Respondent has failed to meet his burden and provided no testimony or evidence of when Maple Court was paved. The County, on the other hand, provided testimony to its procedures for acceptance and Respondent failed to provide any evidence that indicated Maple Court was built to County standards. (R. p. 163, lines 13-20); *see also* Greenville County Code § 18-26 (1976). These

documents provide no support in the determination of whether Maple Court was accepted as a public road. Accordingly, the Master erred in finding the Plat and Statement of Dedication provided any evidence of the County's acceptance of Maple Court.

It is undisputed that Maple Court is a cul-de-sac that ends in Respondent's apartment complex. (R. p. 99, lines 20-25; p. 224; p. 232). Maple Court is Respondent's private property, used by Respondent's tenants. Respondent testified that the entire real property had the address of 710 North Maple Street, but his apartment complex office used 33 Maple Court "once in a while." (R. p. 118, lines 14-19). The simple fact is Respondent used Maple Court for an apartment complex until Maple Court became damaged. Now, to appease his tenants, he is claiming that Maple Court is a public road to avoid responsibility for the repairs. Damage to Maple Court does not convert it to a public road. This change in circumstance fails to meet the exceptional requirements of passing interest in Maple Court to the public.

CONCLUSION

For the foregoing reasons and those previously presented in Appellant County of Greenville's brief, this Court should reverse the Master's Order in favor of the County of Greenville, finding that Maple Court was not dedicated and accepted as a public road.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Boyd B. Nicholson, Jr.
Boyd B. Nicholson, Jr., S.C. Bar No. 65387
Sarah P. Spruill, S.C. Bar No. 68337
Jonathan D. Klett, S.C. Bar No. 103208
P.O. Box 2048
Greenville, South Carolina 29602-2048
(864) 240-3200
nnicholson@hsblawfirm.com
sspruill@hsblawfirm.com
jklett@hsblawfirm.com

Attorneys for Appellant
County of Greenville

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the County of Greenville's Final Brief and Final Reply Brief comply with Rule 211(b), SCACR.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/Boyd B. Nicholson, Jr.
Boyd B. Nicholson, Jr., S.C. Bar No. 65387
Sarah P. Spruill, S.C. Bar No. 68337
Jonathan D. Klett, S.C. Bar No. 103208
P.O. Box 2048
Greenville, South Carolina 29602-2048
(864) 240-3200
nnicholson@hsblawfirm.com
sspruill@hsblawfirm.com
jklett@hsblawfirm.com

Attorneys for Additional Appellant
County of Greenville

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