

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Case No. 2018-CP-26-00120

Appellate Case No. 2021-000078

RECEIVED
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SC Court of Appeals

East Cherry Grove Realty Co., LLC and Ray & Nixon, LLC. Respondents

vs.

State of South Carolina; South Carolina Department of Health
and Environmental Control; and Matt Leonhard, Defendants

Of Whom:

The State of South Carolina is the..... Appellant

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT PROPERLY APPLY THE LAW OF THE CASE DOCTRINE?
- II. DID THE CIRCUIT COURT USE THE PROPER STANDARD OF PROOF IN A TIDELANDS CASE?
- III. DID THE CIRCUIT COURT PROPERLY FIND BASED ON ALL THE EVIDENCE THAT THE RESPONDENT OWNED THE ENTIRETY OF TMS #1450001001?
- IV. DID THE CIRCUIT COURT PROPERLY HOLD THAT THE WATERWAYS IN TMS #1450001001 WERE OWNED BY THE STATE?
- V. DID THE CIRCUIT COURT PROPERLY HOLD THAT THE TITLE OPINION OF WILLIAM DESCHAMPS WAS APPROPRIATE AND SUFFICIENT EVIDENCE IN THIS CASE?

STATEMENT OF THE CASE

Plaintiffs East Cherry Grove Realty Co., LLC and Ray & Nixon, LLC are long time landowners in Cherry Grove Beach, South Carolina. Plaintiffs brought this lawsuit pursuant to S.C. Code Ann. § 48-39-220 after the Office of Coastal Resource Management advised them that Matt Leonhard (another adjoining property owner) had applied for a dock permit on its property. Plaintiff East Cherry Grove Realty Co. also brought an additional cause of action in regard to TMS #1450001001 in order to have the Court fully and finally determine the legal ownership of that tract of land. The case involves two separate tracts. A tract owned by Plaintiff Ray & Nixon, LLC known as TMS #1450225004, and the second tract being owned by East Cherry Grove Realty Co., LLC as TMS #1450001001. Plaintiffs in their lawsuit requested that the Court issue a declaratory judgment ruling that the Court find they were the fee simple owners of the above tracts based on sovereign grants/Kings Grants and a settlement reached in 1969 between the State of South Carolina and East Cherry Grove Realty Company.

The Defendant Leonhard did not file an answer in the action and did not participate at all in the trial although he was properly served. The Circuit Court issued an Order of Default against Leonhard on October 15, 2018. Plaintiffs also named the Department of Health and Environmental Control as a Defendant but later dismissed DHEC by consent of all counsel. (R. ___).

This matter was tried before the Honorable Markley Dennis via WebEx due to the coronavirus pandemic on August 25, 2020. The parties believe it is the first case tried by WebEx in South Carolina which has been appealed to this Court. The trial court issued an Order on October 28, 2020 granting judgment for the Plaintiffs finding they owned both property tracts except for the bottom of any navigable waters on the properties which are public highways subject to Defendant's control. The State moved to alter or amend the ruling on November 6, 2020 which was denied by the trial court on December 21, 2020 when it issued an Amended Order that was the same as the original except that it changed the reference to waters being subject to "the Defendant's control".

STANDARD OF REVIEW

The parties agree on the standard of review but disagree on the proper burden of proof in a tidelands case. The standard of review in a tidelands case has been decided in *Hoyler v. State*, 428 S.C. 279, 290, 833 S.E.2d 845, 851 (Ct. App. 2019), rehearing denied (Oct. 17, 2019), cert dismissed (Jan. 29, 2020). In *Hoyler*, the Court noted:

When the complaint's main purpose "concerns the determination of title to real property, it is an action at law."

"In an action at law '[the appellate court] will affirm the master's factual findings if there is any evidence in the record that reasonably supports them.'" Id. (quoting *Low Country Open Land Tr. v. State*, 347 S.C. 96, 101-02, 552 S.E.2d 778, 770, 781 (Ct. App. 2001). Further, "[the appellate] court reviews all questions of law de novo." *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009); see also *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527 (530 Ct. App. 2009) ("Questions of law may be decided with no particular deference to the trial court." quoting *S.C. Dept. Trans. v. M&T Enters of Mt. Pleasant, LLC*, 379 S.C. 645, 654, 667 S.E.2d 7, 12 (Ct. App. 2008).

At the outset, Plaintiffs note that this case involves questions of fact which must be affirmed if there is any evidence in the record that supports them. Questions of fact in this case deal with opinions of experts (Bill DesChamps, title expert; Joel Floyd, surveying expert; Will Fairey, surveying expert, and Russ Courtney, land surveying expert.). Plaintiffs will show that the testimony of the above cited experts clearly meets the any evidence rule as the record clearly supports the findings of the lower court.

Respondents believe this case meets the any evidence in the record rule and rely on *Hobonny Club, Inc. v. McEachern*, 272 S.C. 392, 396, 252 S.E.2d 133, 135 (1979) in which the Supreme Court upheld the circuit court’s conclusion that the plaintiff had valid title based on the evidence presented at trial. See also *Brownlee v. Miller*, 208 S.C 252, 37 S.E.2d 658, 662 (1946) (there must be sufficiency of the property description “to enable a person of ordinary prudence acting in good faith in making inquiries suggested by the description to enable him to identify the land”). (37 S.E.2d at 661) (“boundaries govern acreage and inaccuracies relating to the area of a tract are generally immaterial”)

ARGUMENT

I. THE TRIAL JUDGE PROPERLY FOUND PLAINTIFFS OWNED THE REAL PROPERTY UNDER THE ANY EVIDENCE RULE.

The trial was commenced on August 25, 2020 by WebEx. Each of the witnesses testified by video due to the coronavirus pandemic. The Court Reporter and Judge Markley Dennis appeared remotely. Judge Dennis presided from his home in the Charleston area. The Court Reporter appeared from her home. The Plaintiff East Cherry Grove Realty also appeared with its witnesses by WebEx. The Defendant’s expert, Courtney, also testified remotely and Emory Smith of the Attorney General’s Office appeared from his office in Columbia.

A. Testimony of William DesChamps. William DesChamps is a licensed attorney in South Carolina and has performed thousands of searches. (Tr. p. 12, lines 16-18). He has also written title insurance policies and sells it. (Tr. p. 12, lines 19-21). He has testified up to twenty times as an expert witness. (Tr. p. 13, lines 12-13). He has been qualified as an expert witness in real estate cases in the Court of Common Pleas of the Fifteenth Circuit and in Charleston County courts. (Tr. p. 13, lines 17-20). He has testified about Kings Grants, lis pendens, title claims, and vesting of title in the past. (Tr. p. 14, lines 2-9). He has had extensive experience with Kings Grants including title searches and has testified in court about those grants. (Tr. p. 14, lines 12-16). He has performed title work on Kings Grants in areas such as Sandy Island and the National Wildlife Refuge. (Tr. pp. 14-25). He has visited the State Archives in Columbia which safeguards the oldest grants in South Carolina for research purposes. (Tr. pp. 15-17). He spent over two days in Columbia to look at the claims of title and review the old deeds in this case. (Tr. p. 15, lines 21-24). He located Kings Grants and sovereign state grants and testified they had the same effect. (Tr. p. 16, lines 8-9).

He also performed title searches on this property and found an established unbroken chain of title. (Tr. p. 18, lines 6-10). He went back to the Nixons who previously owned the property and took it all the way back to the Morell deed and then went back to the Archives and Grants from King George II and King George III. (Tr. p. 18, lines 10-17). He used the C.B. Berry compilation map (Tr. p. 18, lines 17-19) and he independently checked Berry's compilation (Tr. p. 19, lines 7-8). Plaintiff's Exhibit 11 is the Berry Title Chain that compiles all the old maps and that assisted him. (Tr. p. 20, lines 2-6). The Berry title compilation map was very helpful. (Tr. p. 20, lines 10-11). The Berry title chain was very accurate and he independently checked and verified it. (Tr. p. 20, lines 17-19). Exhibit 6 which was offered is a grant from the State of South Carolina to Morell of 200 acres dated 2-25 of 1785; and Plaintiff's Exhibit 7 is the second grant from George II and is identified as a

tract of 453 acres dated January 23, 1734 (Tr. p. 23, lines 3-25). Exhibit 8 is a Kings Grant of 20 acres dated January 19, 1786. (Tr. p. 24, lines 12-13). Exhibit 9 is a Kings Grant to John Alston dated August 1767. (Tr. p. 25, lines 4-10). Exhibit 6 contains a portion of the area that we are calling reverse Oklahoma. (Tr. p. 23, line 18). Deschamps looked at the surveys provided by the surveyors in this case, Joel Floyd and Will Fairey, and found those surveys are over the subject property. (Tr. p. 25, lines 15-17). That the surveys were locatable based on the original deeds. (T. p. 25, lines 19-22). That the defense expert, Russ Courtney's, map shows Ray & Nixon land and its ownership with a chain of title that goes back to the Kings Grants. (Tr. p. 26, lines 3-10). That the reverse Oklahoma depiction on the map drawn by Courtney shows a Kings Grant over the property. (Tr. p. 26, lines 11-14). That it was his opinion to a reasonable degree of certainty in his field that there are Kings Grants over the East Cherry Grove property and the Ray & Nixon property. (Tr. p. 26, lines 24-25). That Plaintiff's 4 is a map of Floyd, Powers and Culler, the three surveyors who got together and reviewed the Kings Grants. (Tr. p. 27, lines 11-12). That there is no doubt Ray & Nixon and East Cherry Grove Realty property are subject to Kings Grants. (Tr. p. 27, lines 16-21). That it is clear to me (Tr. p. 28, lines 5-7). That it's amazing that they are very close and is what the three surveyors were talking about in their investigation (Tr. p. 28, lines 22-24). That the Kings Grants have plats (Tr. p. 29, lines 10-11). That the testimony of the surveyors is consistent with the case of East Cherry Grove Realty v. Teague (Tr. p. 30, lines 11-12). That the Circuit Court certifying the title in the *Teague* case has significance (T. p. 36, lines 18-19).

B. Testimony of Joel Floyd. The second witness called by the Plaintiff was Joel Floyd, a licensed surveyor with thirty-two years of experience. (T. p. 38, lines 15-16). Floyd testified that he worked for C.B. Berry starting in 1971. (Tr. p. 38, lines 23-25; p. 39, line 6). That his experience in the Cherry Grove area goes back thirty-three years. (Tr. p. 39, lines 18-19). That he had experience

with the marshes in Cherry Grove and the property line that was run between the State's property and Cherry Grove's property. (Tr. p. 40, lines 7-9). That he has testified thirty to forty times. (Tr. p. 40, line 25; p. 41, lines 1-2). That he determined Kings Grants existed over the Plaintiff's property. (Tr. p. 41, line 4). That he used a plat from 1929 which located all the creeks which were in the correct places to do this. (T. p. 41, lines 9-12). That he obtained the services of two other experienced surveyors and they sat down to draw the line and got a baseline where the Tilghman and Nixon property joined together using minor survey techniques. (Tr. p. 41, lines 18-19). That he also used the old creek and how it relates to the Tilghman Estates (Tr. p. 42, lines 4-5). That the three surveyors had over a hundred years of experience in surveying. (Tr. p. 42, lines 7-8). That the three surveyors looked at all the grants and plats. (Tr. p. 42, lines 23-24). That Plaintiff's Exhibit 1 is a compiled map of everything that he looked at. (Tr. p. 43, lines 16-17). That Plaintiff's Exhibit 1 is an accurate survey of all four Kings Grants together. (Tr. p. 44, lines 5-7). That the plot described as reverse Oklahoma and the Ray & Nixon, LLC property are all within the Kings Grants. (Tr. p. 44, lines 11-12). That Exhibits 2 and 3 are the property boundaries which are subject to the Kings Grants and show our properties. (Tr. p. 45, lines 1-4). That Exhibit 4 is a smaller version of the big map Exhibit 1. (Tr. p. 45, lines 8-9). That he had done most of the surveying in Cherry Grove over the years. (Tr. p. 45, lines 21-22).

On cross examination by the State's attorney, Floyd stated he had recreated the property lines by using existing landmarks and adjoining property. (Tr. p. 47, lines 15-16). That some of his research was confirmed by using a photograph. (Tr. p. 47, line 23). That the pig's ears (described on the plat because they look like ears) fall under another Kings Grant. (Tr. p. 50, line2 22-23).

On redirect Floyd testified that Plaintiff's Exhibit 8 has specific markings of a surveyor which were 33 degrees 20 minutes and 16.13 chains, and that Exhibit 7 is the baseline that we established

between the Tilghman and the Nixon properties. (Tr. p. 54, lines 3-4). Further, Exhibit 7 shows specific mathematical reference of 36 degrees south 6 degrees and 30 minutes and that the pig's ears which are described by the Attorney General's argument is actually part of the Teague case. (Tr. p. 54, lines 10-20).

It was at that point in the trial that the Court commented that the Teague's property is actually at the base of the pig's ear. (Tr. p. 55, lines 3-4)²

C. Testimony of Will Fairey. The Plaintiff also offered the testimony of Will Fairey who is a licensed surveyor since 2009. (Tr. p. 56, lines 23-25). That he has an associate's degree in civil engineering. (Tr. p. 57, line 4). That he has worked for ETS and the Brigman Company and currently has his own surveying office, Spartina Surveying. (Tr. 57, lines 23-25). That the Ray & Nixon land was surveyed by him. (Tr. p. 59, lines 10-18). That Exhibit 15 is plotted lots as they exist now as placed on the C.B. Berry map with Cherry Grove. (Tr. p. 60, lines 14-17). That the Teague lot traverses the Cherry Grove property. (T. p. 60, lines 21-22). That the Leonhard dock extends to the Ray & Nixon property. (Tr. p. 61, lines 13-15). That the basis of his opinions are the maps reviewed including the C.B. Berry plat, the Powers, Culler and Floyd map, the Kings Grants, and the quit claim deeds. (Tr. p. 61, lines 16-23. That Exhibit 13 is the Leonhard property shown on the Kings Grant. (p. 62, lines 9). That Courtney and I agree the Leonhard property is in the Kings Grant. (Tr. p. 62, line 14). That the Teague property traverses onto property know as reverse Oklahoma and is subject to a Kings Grant. (Tr. p. 63, lines 1-2). That the proposed Teague dock as shown on Exhibit 15 traverses the Ray & Nixon property. (Tr. p. 63, lines 21-25).

² The trial court was referring to another tidelands case heard by Judge Hyman regarding the same property. See Order of Judge Hyman filed 6/25/2015, *East Cherry Grove Realty Co., LLC v. State of South Carolina and South Carolina Department of Health and Environmental Control*; C/A No. 2014-CP-26-1412) (Ex. 18) (R. ____).

D. Testimony of Russ Courtney. Russ Courtney testified that he is a surveyor and has been licensed since 1992. (Tr. p. 66, line 20). That he has testified as an expert six to seven times. (Tr. p. 68). That he has reviewed the Kings Grants. (Tr. p. 68, line 4). That Exhibit 25 is a Kings Grant and is the map he made. (Tr. p. 68, lines 7-9). That the Leonhard dock traverses the Nixon property. (Tr. p. 68, lines 20-25). That Ray & Nixon's property falls within the Kings Grant. (Tr. p. 69, lines 13-16). That he has no knowledge about the Teague dock. (Tr. p. 70, line 19). That I am 70% sure that the East Cherry Grove Realty property is in the Kings Grant. (Tr. p. 71, lines 10-12). That I am 100% sure that the property within the red lines as shown on my map is within the Kings Grant. (Tr. 71, lines 23). That my opinion on the grants in question is found on Exhibit 25. (Tr. p. 72, lines 17). That the 70% opinion is based on the old deeds in regard to the pig's ears. (Tr. p. 85, lines 4-5).

On cross-examination Courtney indicated that he had not reviewed the 1969 settlement nor the quit claim deed and that it was not his charge to do so. (Tr. p. 106, lines 3-4). That Exhibits 17, 18, 19 were not his charge and he offered no opinion about them. (Tr. p. 106, line 17).

It was based on all the above evidence that the circuit court correctly found Plaintiffs to have ownership of TMS #1450001001 and TMS #1450225004. It is notable that Appellant's Brief only challenges a small section of the ownership interest claimed by East Cherry Grove Realty and in fact the State makes no claim of ownership as to the property owned by Ray & Nixon, LLC. The government's appeal only attacks the pig's ear section of the plat and nothing else. Under established case law the above evidence reasonably supports the circuit court's finding in this case that East Cherry Grove owns the subject property.

II. THE CLEAR AND CONVINCING STANDARD IS NOT APPLICABLE TO THIS CASE AND IF IT IS, PLAINTIFFS MET THAT STANDARD.

The State, without any citation to any tidelands cases, argues that the clear and convincing standard of proof is required in these types of cases. The State seizes on the word “convince” in the opinion of *Hoyler v. State*, 428 S.C. 279, 290, 833 S.E.2d 845, 851 (Ct. App. 2019), rehearing denied (Oct. 17, 2019), cert dismissed (Jan. 29, 2020). The word “convince” in *Hoyler* does not mean that the plaintiff in a tidelands case must prove its case by clear and convincing evidence. As this Court is aware, clear and convincing evidence is the standard in many types of cases in South Carolina including proof of fraud, punitive damages and the like. Not one tidelands case has ever adopted the clear and convincing standard which the State now argues in this case. In fact, *Low Country Open Land Tr. v. State*, 347 S.C. 96, 552 S.E. 2d 778, 781 (Ct. App. 2001) is instructive because it holds in a tidelands case any evidence in the record that reasonably supports the lower court must be affirmed. This suggests a preponderance of the evidence standard of proof.

It should also be noted that if the Court finds the clear and convincing standard is the standard in tidelands cases, then Plaintiffs have easily met that standard. In fact, Defendant’s own expert Russ Courtney referring to Exhibit 25 in his testimony stated that he was “70%” sure this property was in the Kings Grant (Tr. p. 71, line 10) and that he was 100% certain that the area within the red lines is within a Kings Grant. (Tr. p. 71, lines 23-24). The State’s own expert, along with the testimony of the Plaintiffs’ experts, thus clearly and convincingly establish ownership by the Plaintiffs of the subject property standard. Further, the State’s argument seems to pick around the edges of certain parts of the ownership of land by the Plaintiff, specifically those areas on the plat which look like reverse Oklahoma or a pig’s ear. However, the State’s own expert witness, Russ Courtney, undercuts those arguments by his expert opinion that East Cherry Grove owns that property.

Thus, while the clear and convincing evidence standard is not required in a tidelands case, the evidence presented was clear and convincing and the State's argument has no merit. Indeed, the State concedes most of the property is owned by East Cherry Grove pursuant to a Kings Grant.

III. THE CIRCUIT COURT PROPERLY RELIED ON THE LAW OF THE CASE DOCTRINE.

The State argues that Judge Hyman's ruling in *East Cherry Grove Realty Co., LLC v. State of South Carolina and South Carolina Department of Health and Environmental Control*; C/A No. 2014-CP-26-1412 (the "Teague" case) is not instructive nor helpful. The State argues that any finding by Judge Dennis that Judge Hyman's ruling was the law of the case is erroneous. It is clear to Respondents that Judge Hyman's Order applies to the same areas of Cherry Grove and made a specific determination that a Kings Grant existed underneath the proposed Teague dock. Judge Dennis in his ruling paid homage to Judge Hyman's ruling that a Kings Grant exists underneath the Teague's dock. Judge Dennis in his Order also held that the law of the case doctrine applied to a small portion of the property in this case. (See Judge Dennis's comments found at page 54 lines 15-20 – "the Teague property is at the base of one of the "pig's ears.""). The challenged Order by the State in this case simply holds:

I also hold Judge Hyman's ruling in *East Cherry Grove Realty Co., LLC v. State of South Carolina and South Carolina Department of Health and Environmental Control*; C/A No. 2014-CP-26-1412 is not only instructive but is the law of the case.

Judge Dennis's ruling simply found that the Kings Grant underneath the Teague property was the same grant which was being litigated in this case. This trial court found that the same Teague case applied in this case. It was a judicial ruling by Judge Hyman which Judge Dennis was bound to pay homage to when he issued his ruling. It would be academically inappropriate and intellectually dishonest for Judge Dennis to not recognize that Judge Hyman had found a Kings Grant existed under the Teague proposed dock – the very same Kings Grant which was the subject of this litigation.

The law of the case doctrine can most easily be understood from the case of *Judy v. Martin*, 381 S.C. 455, 674 S.E. 2d 151 (S.C. 2009). In *Judy*, the Supreme Court noted: “Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been raised, or raised on appeal but expressly rejected by the appellate court.” In this case, Judge Dennis held that another circuit judge had interpreted the same Kings Grant to hold that the Teagues could not build a dock over East Cherry Grove Realty’s property because it was subject to a Kings Grant.

Further, as an additional sustaining ground, Judge Dennis in his Order could easily have found that the doctrine of collateral estoppel and res judicata precluded the State of South Carolina from relitigating the finding by one circuit court judge (Judge Hyman) that a Kings Grant existed on the proposed property that the Teagues intended to build their dock on. See *Nelson v. Coker*, 394 S. C. 290, 580 S.E.2d 171 (S.C. App. 2003) in which this Court held “Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrences that was the subject of a prior action between these parties.” See also *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999) (A final judgment on the merits in a prior action will preclude the parties and their privies under the doctrine of res judicata in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated.) See also *Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164 (1986) (Once a judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim.)

Accordingly, Judge Dennis correctly held that the State of South Carolina could not relitigate the Kings Grant underneath the proposed Teagues dock a second time. Finally, any oral statements

Judge Hyman might have made which are cited in the transcript are of no consequence as Judge Hyman's written Order trumps any oral statements in the record by him.

IV. THERE IS ABUNDANT EVIDENCE THAT RESPONDENTS OWN TMS #1450001001.

The government argues that there is no evidence that Respondents own the above cited real property. This position is erroneous and against the overwhelming weight of the evidence. In fact, the government's own expert witness said he was 70% sure that the East Cherry Grove Realty property was subject to a Kings Grant (see testimony of Russ Courtney, p. 71, lines 10-18) and that he was 100% sure anything within the red lines on Exhibit 25 was within the Kings Grant. Courtney's own map (Exhibit 25) coupled with the Plaintiff's Exhibit 1 (compiled map), Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7, Exhibit 8, Exhibit 9, Exhibit 10, Exhibit 11, Exhibit 13, Exhibit 15, Exhibit 16, Exhibit 17, Exhibit 18, Exhibit 19, Exhibit 20, Exhibit 21, Exhibit 23 all prove by clear and convincing evidence or the preponderance of the evidence that East Cherry Grove Realty owns TMS 1450001001. In sum, this is one of those rare cases where the government's expert witness and the landowner's expert witness actually agree that East Cherry Grove Realty is the fee simple owner of the property in question; and thus, the circuit court's Order must be affirmed.

V. THE EVIDENCE CLEARLY SUPPORTS THE CIRCUIT COURT'S ORDER AS TO THE PIG'S EAR AND THE DOME OF THE PIG'S HEAD.

As has been stated previously, the State's own expert witness has drawn a plat (Defendant's Exhibit 25) and has also in his testimony stated he is 70% sure that property outside those red lines are owned by East Cherry Grove Realty pursuant to a Kings Grant. Clearly, this testimony establishes without a doubt that the area described as the pig's ears and dome of the pig's head are owned by East Cherry Grove Realty. Further, Courtney's testimony is clearly bolstered by the testimony of Fairey, Floyd and DesChamps who have all testified that the area known as the pig's ear and dome of the pig's head are part of the Kings Grant and thus owned by East Cherry Grove Realty.

It must also be noted that the Horry County GIS is an accurate rendition of the outlines of the Plaintiff's property. The State argues that the outlines of the Plaintiff's property must be survey grade and not a close rendition. This is not the law. Plaintiff disagrees and has cited case law in this brief for the proposition that the property lines need not be survey grade to prove ownership.

Further, William DesChamps, the Plaintiff's title opinion expert, reviewed the deeds and the survey and found as a fact that the deeds in the survey covered the area claimed by East Cherry Grove Realty. All the evidence and testimony by all the witnesses satisfies the rule that if there is any evidence in the record that reasonably supports the trial court it must be affirmed by this Court. See *Low Country Open Land Tr. v. State*, 347 S.C. 96, 101-02, 552 S.E.2d 778, 770, 781 (Ct. App. 2001).

VI. THE CIRCUIT COURT PROPERLY HELD THAT THE STATE CONTROLS NAVIGABLE WATERWAYS.

The State argues the Order of the trial court was not specific enough as to the creeks in this case being subject to State control. This concern is of no consequence. The trial court correctly held East Cherry Grove does not own any tidelands below the low water mark and Respondent accepts this ruling. Further, the trial court found that East Cherry Grove and Ray and Nixon do not own the bottoms of navigable waters on their properties. The circuit court's ruling is a correct statement of the law applicable to this case and no change is required or necessary for purposes of this case

CONCLUSION

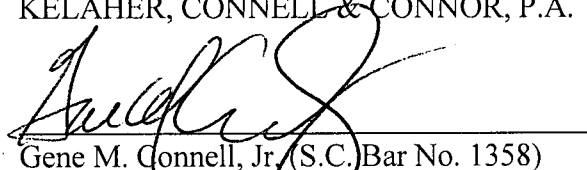
The Respondents submit that the only issue in this case that the State challenges in this appeal is East Cherry Grove Realty does not own the real property described as the "pig's ears" or "dome of the pig's head." The State is bound by its own expert, Courtney, who testified at trial he was 70% certain that this area in dispute was owned by East Cherry Grove Realty.³ This major concession

³ Courtney agreed 100% with the East Cherry Grove Realty experts as to all other aspects of the property dispute in this case.

without the any other evidence clearly satisfies the “any evidence” standard of review, and thus this Court should affirm the circuit court.

Respectfully submitted,

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June 25, 2021
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUN 28 2021
SC Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Case No. 2018-CP-26-00120

Appellate Case No. 2021-000078

East Cherry Grove Realty Co., LLC and Ray & Nixon, LLC. Respondents

vs.

State of South Carolina; South Carolina Department of Health
and Environmental Control; and Matt Leonhard, Defendants

Of Whom:

The State of South Carolina is the..... Appellant

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of the **Initial Brief of Respondents** on the Appellant on the 25th day of June, 2021, by depositing a copy of same in the United States Mail, postage prepaid, to:

J. Emory Smith, Jr., Deputy Solicitor General
Alan Wilson, Attorney General
Robert D. Cook, Solicitor General
Post Office Box 11549
Columbia, SC 29211

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 25th day of June, 2021.

Donna H. Hand
Notary Public for South Carolina
My Commission Expires: 3-28-26

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS
*OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

June 25, 2021

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JUN 28 2021
SC Court of Appeals

Re: Appellate Case No. 2021-000078
East Cherry Grove Realty Co., LLC; and Ray & Nixon, LLC v. State of South Carolina;
South Carolina Department of Health and Environmental Control; and Matt Leonhard
C/A No. 2018-CP-26-00120
Our File No. 2017-0321C

Dear Ms. Kitchings:


Enclosed please find the following for filing in the above-captioned matter:

- (1) Original and one copy of Initial Brief of Respondents, with Proof of Service;
- (2) Original and one copy of Respondents' Designation of Matter to be Included in Record on Appeal, with Proof of Service.

Please be so kind as to return a filed copy of the Proof of Service of each document in the self-addressed, stamped envelope provided for your convenience.

By copy of this letter, we hereby serve a copy of these documents on Appellant through counsel of record.

Sincerely yours,


Gene M. Connell, Jr.

GMCJr:sm
Enclosures

cc: J. Emory Smith, Jr., Esquire
Alan M. Wilson, Esquire
Robert D. Cook, Esquire

KELAHER, CONNELL & CONNOR, PC

Attorneys at Law
Post Office Drawer 14547
Surfside Beach, SC 29587



RECEIVED
JUN 28 2021
SC Court of Appeals

Kelahr, Connell & Connor, PC
1500 US HIGHWAY 17 NORTH, SUITE 209
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SURFSIDE BEACH, SC 29587

To
Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211