

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Hodge Road, LLC,)	
)	Docket No. 17-ALJ-30-0473-CC
Petitioner,)	
)	
v.)	FINAL ORDER
)	
South Carolina Geodetic Survey,)	
)	
Respondent.)	
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APPEARANCES: For the Petitioner: Ellis R. Lesemann, Esquire
For the Respondent: Michael H. Montgomery, Esquire

This matter comes before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to Hodge Road, LLC’s (Petitioner) request for a contested case challenging the South Carolina Geodetic Survey’s (Respondent or SCGS) re-establishment of the boundary line between Dorchester County and Berkeley County in South Carolina. Petitioner contends its due process rights were violated because the notice it received of the re-established boundary line was deficient.¹ Additionally, Petitioner argues SCGS must prove its re-established boundary line is correct. On July 24, 2018, a contested case hearing was held before this Court in Columbia, South Carolina. After the close of Petitioner’s case, Respondent moved for an involuntary non-suit.² The Court granted Respondent’s motion for the reasons stated herein.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

In April 2016 Petitioner bought a tract of land for the purpose of building a residential development. The tract was near the border between Dorchester and Berkeley Counties. At the

¹ Petitioner also asserted other third-party property owners, who are not parties to this case, suffered similar due process violations and asked this Court to order SCGS to remedy the violation for all affected parties by re-issuing corrected notices.

² Respondent also moved for dismissal on the ground of lack of standing. Because this Court concluded the motion for voluntary nonsuit should be granted, the Court did not address Respondent’s motion to dismiss for lack of standing.

time the land was purchased, it was located in Dorchester County, South Carolina and was zoned for R4 residential development. Also, at the time of the purchase, the deed to the land referenced a plat. The plat showed the tract of land, identified as tract A1, and it showed the approximate location of the Dorchester and Berkeley County boundary line as re-established by SCGS. The approximate location of the boundary line reflected SCGS's effort to clarify a thirteen-mile length of the boundary between Dorchester and Berkeley Counties that was previously unclear and was causing confusion as to which county had jurisdiction over certain areas. In addition, the plat also showed the boundary line that was currently utilized by Dorchester and Berkeley Counties. The plat showed that even with the re-establishment of the boundary line, Petitioner's tract of land would remain in Dorchester County.

On July 25, 2017, an adjacent landowner, with whom Petitioner is under contract with to purchase the adjacent tract of land, received a letter from the South Carolina Revenue and Fiscal Affairs Office on behalf of SCGS notifying the landowner that SCGS was clarifying and re-establishing the boundary line between Dorchester and Berkeley Counties.³ The letter informed the adjacent landowner of the re-established boundary line and that the re-establishment did not appear to significantly impact that property. The letter further informed the adjacent landowner how to get further information or otherwise stay informed and involved in the process of re-establishing the boundary line.

Petitioner offered no evidence from surveys or other sources to show that SCGS's re-established boundary line between Dorchester and Berkeley Counties is incorrect.

DISCUSSION

This Court has jurisdiction to hear this contested case pursuant to section 27-2-105(B) of the South Carolina Code (Supp. 2017). The burden of proof in a contested case hearing is by a

³ SCGS's job in this was not to create a new boundary line, but rather re-establish and clarify the correct boundary line between the counties. Section 27-2-105(A)(1) further explains SCGS's role and provides:

Where county boundaries are ill-defined, unmarked, or poorly marked, the South Carolina Geodetic Survey on a cooperative basis shall assist counties in defining and monumenting the locations of county boundaries and positioning the monuments using geodetic surveys. The South Carolina Geodetic Survey (SCGS) shall seek to clarify the county boundaries as defined in Chapter 3, Title 4. The SCGS shall analyze archival and other evidence and perform field surveys geographically to position all county boundaries in accordance with statutory descriptions. Physical and descriptive points defining boundaries must be referenced using South Carolina State Plane Coordinates.

S.C. Code Ann. § 27-2-105(A)(1).

preponderance of the evidence. *Nat'l Health Corp. v. S.C. Dep't of Health & Envtl. Control*, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989). “In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof.” *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017), *reh'g denied* (Jan. 11, 2018). Therefore, Petitioner has the burden of proof to show by a preponderance of the evidence that the boundary line re-established by SCGS is incorrect.

Rule 68 of the Rules of Procedure of the South Carolina Administrative Law Court (SCALC Rules) provides that the South Carolina Rules of Civil Procedure (SCRPC) “may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.” SCALC Rule 68. Pursuant to Rule 41(b), SCRPC, a defendant can move for involuntary nonsuit when the plaintiff fails to prosecute his claim. Rule 41(b), SCRPC. More specifically,

[a]fter the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that the plaintiff has shown no right to relief.

Id.

“When the defendant makes a motion for an involuntary nonsuit, it is incumbent upon the trial judge . . . to view the evidence and all inferences arising therefrom in the light most favorable to the plaintiff.” *Fielding Home for Funerals v. Pub. Sav. Life Ins. Co.*, 271 S.C. 117, 119, 245 S.E.2d 238, 239 (1978). “[I]f the evidence permits only the inference that the plaintiff has failed to prove the material allegations of the complaint, a duty arises for the trial court to grant the motion [for nonsuit].” *Ellison v. Heritage Dodge, Inc.*, 283 S.C. 21, 23–24, 320 S.E.2d 716, 717 (Ct. App. 1984). If a court determines it is appropriate to grant involuntary nonsuit and renders judgment on the merits against the plaintiff, the Court shall make findings of fact as provided in Rule 52(a), SCRPC. Rule 41(b), SCRPC.

Here, Petitioner contends its due process rights were violated because the notice it received was deficient. Petitioner claims the notice was deficient because it did not correctly identify the level of impact the re-establishment of the boundary line would have on Petitioner’s property. Therefore, Petitioner does not seem to contest the fact that it received notice, but rather the sufficiency of the contents of the notice. Additionally, Petitioner argues SCGS must prove its re-established line is correct.

Initially, the Court finds Petitioner’s due process rights were not violated because, to the extent Petitioner was entitled to receive notice, Petitioner received sufficient notice of the boundary line re-establishment and had an opportunity to be heard. Accordingly, the Court finds Petitioner has not shown it is entitled to relief in this regard. *See* Rule 41(b), SCRCP.

The Due Process Clauses of the United States Constitution and the South Carolina Constitution provide that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. Additionally, article I, § 22 of the South Carolina Constitution provides that “[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard” S.C. Const. art. I, § 22. The South Carolina Supreme Court has interpreted article I, § 22 “as specifically guaranteeing persons the right to notice and an opportunity to be heard by an administrative agency, even when a contested case under the APA is not involved.” *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997).

Additionally, section 27-2-105(B) provides:

(1) An affected party disagreeing with a boundary certified by the SCGS may file a request for a contested case hearing with the South Carolina Administrative Law Court according to the court's rules of procedure. An affected party has sixty calendar days from the date of a **written notice sent to the affected party** to file an appeal with the Administrative Law Court.

(2) As used in this subsection an “affected party” means:

- (a) the governing body of an affected county;
- (b) the governing body of a political subdivision of this State, including a school district, located in whole or in part in the certification zone;
- (c) an elected official, other than a statewide elected official, whose electoral district is located in whole or in part in the certification zone;
- (d) **a property owner or an individual residing in the certification zone;**
- (e) a business entity located in the certification zone; or
- (f) a nonresident individual who owns or leases real property situated in the certification zone.

S.C. Code Ann. § 27-2-105(B) (Supp. 2017) (emphasis added).

Notably, it was unclear from the testimony whether Petitioner ever received its own letter from the South Carolina Revenue and Fiscal Affairs Office or SCGS notifying it in writing of the re-establishment of the boundary line. However, since Petitioner’s tract of land will be unaffected by the re-establishment of the boundary, it does not appear Petitioner is an “affected party”

pursuant to section 27-2-105(B) and thus entitled to written notice of the re-establishment of the line. S.C. Code ann. § 27-2-105(B) (Supp. 2017).

Moreover, Petitioner does not contest receiving notice, but rather the sufficiency of the contents of a notice—a notice that was directed to an adjacent landowner who owns a different parcel of property that appears be impacted differently than Petitioner’s property. Even if Petitioner did not receive the actual notice it was supposed to be given, any deficiency was cured when Petitioner exercised its rights and fully and meaningfully participated in the contested case before this Court. *See Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 67, 492 S.E.2d 62, 71 (1997) (holding that although the plaintiff was not afforded a pretermination hearing as due process required, the error was remedied with the plaintiff’s “full and meaningful participation in the post-termination hearing”).

Proceeding on the premise that Petitioner is not contesting actual notice, but rather the sufficiency of the contents of the notice, the evidence shows the re-establishment of the boundary line will not significantly impact Petitioner’s tract of land because this land will remain in Dorchester County, South Carolina. Moreover, even if the impact on Petitioner’s tract of land was somehow improperly quantified (and this is doubtful considering Petitioner appeared to be relying on the contents of a letter an adjacent landowner received), the important facts for establishing compliance with the principles of due process is that Petitioner had notice of the re-establishment of the boundary line and exercised its right to be heard at the hearing before this Court. *See S.C. Dep’t of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”). Accordingly, Petitioner cannot complain that it did not receive due process.

Further, Petitioner’s requested relief is that this Court order SCGS to re-issue notices to it and all other affected parties correctly stating the extent to which the parties’ lands will be impacted. Not only is this court without jurisdiction to order SCGS to issue corrected notices to third parties who are not a part of this action, but the remedy requested would simply allow Petitioner to file another contested case with this Court, which would be un-necessarily duplicative of the hearing already held before this Court. Therefore, Petitioner has failed to show it is entitled to any relief in this regard.

Next, Petitioner requested SCGS prove the boundary line it re-established is correct. However, Petitioner, not SCGS, has the burden of proof in this case. *DIRECTV, Inc.*, 421 S.C. at

78, 804 S.E.2d at 643 (“In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof.”). Therefore, the burden was on Petitioner to show by a preponderance of the evidence that SCGS’s re-establishment of the boundary line between Dorchester and Berkeley Counties was incorrect. *See* § 27-2-105(B)(1) (providing that an affected party who disagrees with a boundary certified by the SCGS can contest the boundary before this Court). Petitioner presented no evidence or even argument that SCGS’s re-established boundary line between Dorchester and Berkeley Counties was incorrect. Therefore, Petitioner failed to establish any evidence supporting its claim.

Reviewing the evidence and all inferences therefrom in a light most favorable to Petitioner, I conclude Respondent’s motion for involuntary nonsuit should be granted because Petitioner failed to prosecute its case or show it was entitled to the relief requested. *See Fielding Home for Funerals*, 271 S.C. at 119, 245 S.E.2d at 239; Rule 41(b), SCRPC.

IT IS THEREFORE ORDERED that Respondent’s motion for involuntary nonsuit is GRANTED and this case is DISMISSED with prejudice.

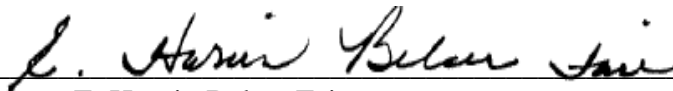
AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

August 28, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in black ink, reading "E. Harvin Belser Fair", written over a horizontal line.

E. Harvin Belser Fair
Judicial Law Clerk

August 28, 2018
Columbia, South Carolina