

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Susan Trotti,)	
)	Docket No. 17-ALJ-30-0472-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 Susan Trotti’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 SCGS provided her with deficient notice of the impact the re-established line boundary line would have on her property.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 at the hearing, 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:

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.

Petitioner has legal title to a track of land, the majority of which is currently located in Dorchester County, South Carolina, but which also borders or is partly within Berkeley County, South Carolina. Petitioner has entered into a contract to sell the tract of land to Hodge Road, LLC. Hodge Road, LLC plans build a residential development on the land after the purchase is completed.

Respondent SCGS has recently re-established the boundary line between Dorchester County and Berkeley County. SCGS re-established the boundary line 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.

On July 25, 2017, Petitioner received a letter from the South Carolina Revenue and Fiscal Affairs Office on behalf of SCGS notifying Petitioner that SCGS was clarifying and re-establishing the boundary line between Dorchester and Berkeley Counties.³ The letter informed Petitioner that the clarification and re-establishment of the boundary line did not appear to significantly impact her property, and it informed Petitioner how to get further information or otherwise stay informed and involved in the process of re-establishing the boundary line.

As a result of the re-establishment of the boundary line, Petitioner's tract of land will change from being primarily located in Dorchester County to being primarily located in Berkeley County. Any changes in the zoning associated with the property are unclear at this time. 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 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 (SCRCP) “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), SCRCP, a defendant can move for involuntary nonsuit when the plaintiff fails to prosecute his claim. Rule 41(b), SCRCP. 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), SCRCP. Rule 41(b), SCRCP.

Here, Petitioner contends its due process rights were violated because SCGS did not provide her with notice of the re-establishment of the boundary line that correctly identified the impact of the re-established line on Petitioner’s property. 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 Petitioner received sufficient notice of the boundary 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), SCRPC.

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).

The thrust of Petitioner’s argument is that the notice she received of the re-establishment of the boundary line was deficient because the letter stated the tract would not be significantly impacted by the re-establishment of the boundary line when Petitioner alleges the tract of land will be significantly impacted. Even if the impact on Petitioner’s tract of land was improperly quantified, the important facts for establishing compliance with the principles of due process is

that Petitioner received actual notice of the re-establishment of the boundary line and exercised her right to be heard at the hearing before this Court. *See Spence v. Spence*, 368 S.C. 106, 118, 628 S.E.2d 869, 875 (2006) (“Notice is regarded as actual where the person sought to be charged therewith either knows of the existence of the particular facts in question or is conscious of having the means of knowing it, even though such means may not be employed by him.”); *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 she did not receive due process.

Further, Petitioner’s requested relief is that this Court order SCGS to re-issue notices to her 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 she 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 showing SCGS’s re-established boundary line between Dorchester and Berkeley Counties was incorrect. Therefore, Petitioner failed to prosecute her case.

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 her case or show she 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), SCRCF.

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

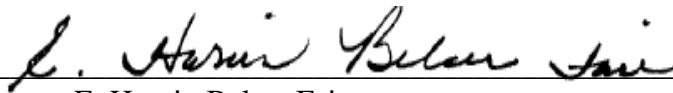
AND IT IS SO ORDERED.

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