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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1242 (Sub-No. 1)

THE GREAT WALTON RAILROAD COMPANY, INC. – PETITION FOR DECLARATORY ORDER

HARTWELL FIRST METHODIST CHURCH REQUEST TO REMOVE PROCEEDING FROM ABEYANCE AND CONSIDERATION OF REMAINING ISSUES

(*color images included*)

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Dated: September 26, 2024

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SURFACE TRANSPORTATION BOARD

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REQUEST TO REMOVE PROCEEDING FROM ABEYANCE AND
CONSIDERATION OF REMAINING ISSUES**

In the June 23, 2020 corrected decision (the "June 2020 Decision") in this Sub-docket No. 1, the Board found the former "north spur" to be ancillary track, but deferred consideration of the question of whether it remains part of the interstate rail system. The Board placed the Sub-docket in abeyance until the State Court litigation[1] was resolved.

The State Court litigation has in fact now been resolved. Accordingly, as permitted by the June 2020 Decision, Hartwell First Methodist Church, Inc. ("Hartwell First" or "Church") files this Request (the "Church Request") asking that (1) the proceeding be removed from abeyance, and (2) the Board issue a decision addressing the remaining issue of whether The Great Walton Railroad Company, Inc. ("GWRC") exhibited or failed to exhibit a continuing intent to provide common carrier service to the public over the "north spur" or "runaround track" for an extended period of time. If, as Hartwell First believes it establishes herein, GWRC did not, then the Board

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[1] The "State Court litigation" refers to the two state court proceedings involving the ownership and title to the property underlying the former north spur portion of the "runaround track." One case was the trespass and injunction action filed by the Church against GWRC in Hart County Superior Court seeking to halt and prevent GWRC's attempt to construct a new spur track where the former north spur track was located. Second, GWRC filed an eminent domain petition for the property underlying the former north spur track before the Georgia Public Service Commission ("PSC"). The appeals of the PSC's denial of the GWRC petition were also handled in the Georgia state courts. *See* June 2020 Decision at 2-3, fn 3.

should find that: (1) GWRC abandoned any residual rights that it had to the former north spur or runaround track; (2) the STB no longer has any jurisdiction over the former spur track and property; and (3) GWRC has no right, authority or ability to construct a new north spur on property that the Georgia state courts have now determined is owned in fee by the Church and to which GWRC has no title or claim.

I. Procedural Background

A. STB Proceedings

On November 20, 2019, GWRC filed a Petition for Declaratory Order in Sub-docket No. 1 (the "Spur Petition") that sought a finding from the Board that the former runaround track, including the so-called north spur, was part of GWRC's adjacent main line that was the subject to the adverse abandonment proceeding in the primary docket. However, the Board found, as the Church had argued in response, that the adverse abandonment proceeding only applied to the main line track (the subject "Line") and did not apply to the north spur or runaround track which the Board determined were nothing more than ancillary track under 49 USC §10906.

The Board, in the June 2020 Decision, confirmed in its earlier findings denying the adverse abandonment of the main line that that it did not find that GWRC had any rights to use, or to rebuild, the former north spur or runaround track. The Board specifically held:

> Contrary to GWRC's claim, the Board in Hartwell First **did *no*t hold** that the railroad was entitled to reconstruct the runaround track.... Although the decision discussed the runaround track in connection with GWRC's explanation of its potential locomotive repositioning operations, that discussion was in support of the denial of the adverse abandonment request concerning the line identified by Hartwell First; **it was *not* a finding** with respect to whether GWRC was entitled to reconstruct the track…. **The Board did *not*, as GWRC argues, implicitly find** that the runaround track was part of the interstate system as § 10901 mainline track."

June 2020 Decision at 6 (emphasis added).

After applying the requisite analysis, the Board went on to find that the runaround track (including the former north spur) was ancillary track that never became part of GWRC's regulated rail line. *See* June 2020 Decision at 8-11. However, the Board deferred a determination of whether the former north spur had been removed from the interstate rail network, required GWRC to include updates on the State Court litigation in its status updates, and held this proceeding in abeyance until the conclusion of the State Court litigation. *Id.*, at 11-12.

The Board subsequently served on July 20, 2022, a decision in the primary docket (the "July 2022 Decision") that relieved GWRC of the then-existing requirement to file status reports every six months, and instead directed GWRC to provide status reports of significant developments in the State Court litigation. GWRC has not filed any status reports since the July 2022 Decision was issued despite the significant developments in the State Court litigation discussed below.

B. State Court Litigation

GWRC's July 2021 Status Report filed on July 27, 2021, in the primary docket advised the Board that GWRC was not able to establish or obtain title to the property underlying the former north spur through condemnation having lost at the Georgia Public Service Commission, the Superior Court of Fulton County, the Georgia Court of Appeals and the Georgia Supreme Court. *See* July 2021 Status Report, p. 2.

As noted in the July 2021 Status Report, the parties were then returning to the ongoing litigation in Superior Court in Hart County, Georgia which involved GWRC's lack of any title to the property on which the former north spur was located, the Church's title to the property, and GWRC's improper attempt to construct a new spur track on the Church's property to which GWRC had no title or claim.

The only status report that GWRC filed thereafter was on January 31, 2022 (the "January 2022 Status Report"), in which it reported that the original State Court litigation was heading for a hearing. Since GWRC has not provided the Board with any further updates of the State Court litigation as required under the July 2022 Decision, the Church hereby notifies the Board of the following significant developments and the conclusion of the State Court litigation on the title issues[2]:

(1) The matter was argued in the Superior Court on August 17, 2022, on petition, motion and cross motion for declaratory judgment and for permanent injunction. The Superior Court issued a detailed Order on October 17, 2022 (the "Trial Court Order"), finding the Church to be the fee simple owner of the property where the north spur had been located, free and clear of all claims by GWRC, and finding further that GWRC never had fee simple or any other title to the property underlying the spur track. Trial Court Order at 4-5, 10. The Superior Court also found that the Church exclusively controlled and occupied the subject property from 2008 until GWRC forcibly reentered the property in 2016. Trial Court Order at 8-9. As such, the Superior Court found that the Church was entitled to an injunction preventing further trespass by GWRC and ordered removal of the partially constructed spur track and restoration of the Church's property. A copy of the Trial Court Order is attached hereto as Exhibit A.

(2) GWRC appealed the Trial Court Order to the Court of Appeals of Georgia. The Court of Appeals, in a decision issued October 27, 2023 (the "Appellate Decision"), affirmed

[2] Based on the Appellate Decision (as hereinafter defined), there remains an open issue in Superior Court of the Court's injunction requiring GWRC to halt its wrongful construction, to remove what has been installed, and to restore the Church's property to its previous condition, pending the Board's decision on this Request.

the Superior Court's grant of declaratory judgment on the title issues in favor of the Church and against GWRC reiterating and upholding the findings that the Church holds fee title to the land on which the former spur track sat and that GWRC never had any interest in that land. Appellate Decision at 11.[3] However, the Court of Appeals vacated the permanent injunction given the Board's decision that it may need to determine whether the spur / runaround track remains part of the interstate rail system. A copy of the Appellate Decision is attached hereto as Exhibit B.

(3) The Court of Appeals denied GWRC's motion for reconsideration in an order issued November 16, 2023, a copy of which is attached hereto as Exhibit C.

(4) On May 14, 2024, the Supreme Court of Georgia denied GWRC's petition for certiorari, a copy of which is attached hereto as Exhibit D.

Given that GWRC has now exhausted its appeals of the denial of its attempt to acquire the property by condemnation, and its appeals of the Superior Court decision that declared that the Church was the fee owner of the property and that GWRC had no title or claim to the property, the Church files this Request to have the Board remove the proceeding from abeyance and determine the issue of "abandonment" of the former north spur previously deferred by the Board in the June 2020 Decision.

II. Legal Standards

As the Board noted in the June 2020 Decision, slip op. at 8, because the former north spur track was ancillary, GWRC "could have, and might have, removed it from the interstate rail system

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[3] The Court of Appeals also affirmed the Superior Court's finding that the Church exclusively controlled and occupied the subject property from 2008 until GWRC forcibly reentered the property in 2016. Appellate Decision at 12.

by its conduct and intent without needing to seek Board authority to so." In recent decisions, the Board has explained that the proper vehicle for removing the Board's jurisdiction over industrial sidetracks or other Section 10906 ancillary tracks, or for determining if ancillary tracks have in fact been abandoned, is through a declaratory order proceeding, and not through the adverse abandonment application process. *See NewVista Property Holdings, LLC – Petition for Declaratory Order*, STB Docket No. FD 36040 (served June 24, 2016) ("*NewVista*"), slip op. at 2; *Pinelawn Cemetery – Petition for Declaratory Order,* STB Docket No. FD 35468 (served April 21, 2015) ("*Pinelawn*"), slip op. at 11 n.31. *See also* the discussion of the Board in the June 2020 Decision, slip op. at 11-12. In situations where the Board is considering whether track (including ancillary track) which does not require Board authority for abandonment remains part of the interstate rail network, the Board will look at all of the facts and circumstances and make its determination based on the "totality of the circumstances." *NewVista*, slip op. at 2, fn. 3.

In this Sub-docket, the Board invited either party to remove the proceeding from abeyance if GWRC were not able to demonstrate that it possesses a property interest in the land underlying the former north spur track, for the consideration of any of the remaining abandonment issues in the context of the current declaratory order Sub-docket. The Board has discretionary authority under 5. U.S.C. §554(e) and 49 U.S.C. §1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. The Church is hereby asking the Board to remove the proceeding from abeyance and to resolve the controversy regarding whether GWRC, having no title to the property underlying the former north spur, has abandoned any interest that it might have had in the former north spur, or in the alternative, whether the former north spur has been removed from the Board's jurisdiction.

III. Argument

1. Background

In 1998, all freight service east of Athens Street ended, and the Church believes so did the use of the main line and the runaround track (including the former north spur). The Church acquired the parcel north of the main line (including the property where the former north spur was located) in 2002. Since the Church's acquisition, it has seen no evidence of use of the main line or the former north spur by GWRC for common carrier freight service.[4] By October 2008, the north spur was completely overgrown from years of non-use and lack of maintenance (as was the adjacent main line.) *See* photo attached here as Exhibit E (showing the condition in October 2008). At that time, following years of discussions between the Church and GWRC about the Church's desire to make full use of its property on both sides of the main line, GWRC voluntarily removed and salvaged for its re-use or sale all of the rails (and some crossties) that had comprised the north spur.[5] After the removal of the rails, the Church graded the area by heavy equipment, landscaped the area and made hardscape improvements all to the exclusion of GWRC. Trial Court Order at 9; Appellate Decision at 5-6. GWRC did not give any indication that it intended to use the north spur or runaround track in the future and allowed the Church to fully occupy and control the property underlying the former north spur without objection (until GWRC suddenly and forcibly

[4] The only "use" by GWRC has been the spiteful storage of three old box cars on the main line track between the two parcels of property owned by the Church.

[5] GWRC's claim made at various times throughout the State Court litigation as well as in the previous litigation before the Board, that it left the ties in place to be reused to rebuild the north spur does not ring true. All that GWRC left behind was unwanted broken ties and debris for the Church to deal with in its landscaping and use of the area. Clearly there were no usable ties on the Church's property at the time GWRC began construction in 2016. *See* the photo attached hereto as Exhibit F (showing the "excavated" former north spur rail bed in photo submitted by GWRC in the State Court litigation). When it started to build a new north spur (before being stopped by the state court injunction), GWRC was using all new ties and ballast. *See* the photo attached hereto as Exhibit G (photo submitted by GWRC in the State Court litigation).

attempted to build a new spur track on the Church's property in 2016). There are no documents or instruments that conveyed or reserved to GWRC any rights to the former north spur or to use the Church's underlying property. Thus, the Superior Court found that following the removal of the former north spur tracks in 2008, the Church exclusively controlled and occupied the subject property. Trial Court Order at 9; Appellate Decision at 12.

GWRC has repeatedly pointed to the 2007 and 2008 license agreements as "evidence" supporting its rights to the former north spur property. The license agreements provided the Church with the right to install two pipelines under, and sidewalks across, both the main line and the north spur track (which still remained in place at the time the license agreements were signed[6]). However, as was specifically found in the State Court litigation, the license agreements did not create any real property rights in GWRC, did not divest the Church of any real property rights, nor did they act to forcibly admit ownership of real property in or to GWRC where no ownership existed. Trial Court Order at 7-8; Appellate Decision at 18-19. They merely provided licenses for the Church to cross the then-existing north spur and main line tracks (personal property). *Id.* Once GWRC voluntarily removed the north spur track, the licenses continued to be effective to allow crossings of the remaining main line track. Following the removal of the track and materials by GWRC in 2008, the Church removed the remnants of the former north spur, filled in the void with soil, graded the area by heavy equipment, landscaped and made hardscape improvements, all to the complete exclusion of GWRC. From that point on, the Church exclusively controlled and occupied the real property underlying the former north spur until GWRC wrongfully attempted to construct a new spur track. Trial Court Oder at 8-9. There are no documents or instruments indicating that GWRC reserved any rights to the former north spur or the underlying property, and

[6] The north spur track had been removed before the sidewalk was constructed.

GWRC gave no indication that it intended in the future to use the former north spur. The Trial Court found GWRC's claim of a "failure of intent" to abandon (under state law) the real property unconvincing given the removal of the rails and the Church's occupation of the property. *See* Trial Court Order at 10-11.[7]

2. Based on the totality of the circumstances, GWRC has not shown a fixed and continuing intent to use the former north spur or runaround track to provide common carrier service to the public.

As set out by the Board in the June 2020 Decision, the Board will look at whether the carrier had a "fixed and continuing intent" to use the ancillary track to "provide common carrier service to the public." June 2020 Decision, at 11 (citing Pinelawn at 10-11). As the Board has explained, the Board will examine all the facts and circumstances (the totality of the circumstances) on a case-by-case basis in making the determination about the carrier's intent. *NewVista*, slip op. at 2 and fn 3 (citing *Pinelawn* and *Beaufort R.R. – Modified Rail Certificate*, Docket No. FD 34943, slip op. at 6-8 (served March 19, 2008) ("*Beaufort R.R.*"). When considering a railroad's intent, it looks at the railroad's actions in their entirety,

> assessing both the [railroad's] stated intentions and the various physical acts taken that might carry out that intent, such as cessation of operations, cancellation of tariffs, the length of time there had been no rail services, efforts taken to maintain the line, salvage of the track and track materials, and relinquishment of control over the right of way.

[7] Further supporting the finding of GWRC's lack of intent to use the former north spur – and the adjacent main line, was GWRC's entry into a 99-year lease/purchase agreement in 2015 with TORCH that allowed TORCH to use GWRC's main line right of way property from the terminus of the line on South Forest Avenue in Hartwell westward through the Church's campus to Athens Street for use as a public park, children's playground, and farmer's market, and which as originally drafted and signed did not preserve rights for GWRC to use the tracks to provide rail service. The Trial Court found that the former north spur was appurtenant to the main line and could not be used without the main line, and that because the original TORCH lease was indicative of GWRC's intent to give up its main line, and thus clearly indicative of GWRC's intention to cease any further rail traffic over the land and to effectively abandon any rights to the property underlying the former north spur. *See* Trial Court Order at 10; Appellate Decision at 12.

Maryland Transit Administration - Abandonment Exemption – In Somerset County, MD, Docket No. AB 590 (Sub-No.1X) (served May 14, 2015) ("*Maryland Transit*"), slip op. at 3 (citing *Beaufort R.R.* and other decisions). In particular, the Board looks for a physical act (such as removal of the track, or the provision of long-term leases to adjacent landowners) which shows a clear intention on the part of the railroad to remove the track from the national rail system and relinquish the property interest. *Beaufort R.R.*, slip op. at 6-7. In this case, the railroad has not used former north spur since at least 2002 when the Church acquired the property north of the main line (and probably for several years before that given the lack of customers at the Hartwell end of the adjacent main line). Further, as shown by the condition of the former north spur by 2008, GWRC made no efforts to maintain the track in a condition of readiness for use. Then, in October 2008, GWRC voluntarily removed the former north spur track making any possible use impossible.[8] Thereafter, the Church exercised completed control over the now vacant property, installing and maintaining landscaping and sidewalks. GWRC did not reserve any rights to use the property where the former north spur was located, and clearly made no attempt to use what was the former north spur between 2008 and 2016 when it forcibly started to construct a new spur track on property to which it had no claim of title or interest.

This is not a situation like *Beaufort R.R.* where the railroad had kept its tracks and ties in place and maintained them in a state of readiness for rail service for a period of 10 years. Or like in *Pinelawn* where the tracks continued to be actively used in connection with the railroad's

[8] Even if GWRC had an easement for the former north spur (which it did not), under Georgia state law the removal of tracks in and of itself would constitute abandonment. Trial Court Order at 10-11. Although not binding on the Board, that removal is enough to show abandonment under state law is just another factor for consideration.

provision of interstate commerce, and the railroad only inadvertently failed to renew a 99-year lease. Or like in *NewVista* where a portion of the track was in active use. *NewVista*, at 4.

The Board should find that GWRC's rights to the former north spur were "abandoned" or had terminated due to a lack of a fixed and continuing intent to use the former north spur no later than 2002 when rail use had already ended for several years, or no later than 2008 when the tracks were voluntarily removed, and certainly well before GWRC attempted construction of a new spur track in October 2016.[9] Such a finding is justified because GWRC voluntarily removed the track following approximately 10 years of non-use. This removal and non-use allowed the Church undisturbed and complete control, use and maintenance of the subject property. Further, GWRC did not reserve rights to rebuild, and provided no indication of any intent to use the track. Additionally, GWRC originally executed a 99-year lease/purchase agreement to fully lease the adjacent main line for non-rail purposes. The Board should thus find that GWRC demonstrated no continuing intent to use the former north spur as part of GWRC's interstate rail system – and confirm that GWRC had voluntarily abandoned its rights to the former north spur as permitted under 49 U.S.C. §10906. Indeed, as the Board observed in its January 2018 Decision in the primary docket denying adverse abandonment, "It appears that GWRC only began making a serious effort to redevelop the track several months after Hartwell First began the process of seeking adverse authority." January 2018 Decision, slip op. at 5. The Superior Court also took

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[9] It is well established that once an entity exercises "abandonment" authority, the track is removed from the national transportation system and is beyond the Board's jurisdiction. *See Maryland Transit*, slip op. at 3 (citing *Hayfield N.R.R. v. Chi. & N.W. Transp. Co.*, 467 U.S. 622, 633 (1984)); *Beaufort R.R.*, at 5-6. Once GWRC demonstrated that it had no continuing intent to use the former north spur as part of the rail network, it was no longer subject to the Board's jurisdiction, and the Board no longer has authority to allow a new spur track to be constructed.

notice of the timing of GWRC's sudden attempt to build a new spur track. Trial Court Order at 12. *See also* Appellate Decision at 12-13, n. 10.

As such, the "totality of the circumstances" clearly demonstrates that GWRC had no continuing intent to preserve the north spur as part of the interstate rail network. Throughout the litigation, GWRC has failed to show any circumstances that would suggest that it had any such continuing intent beginning no later than at least 2002, and certainly no later than 2008.

IV. Conclusion

For all of the foregoing reasons, Hartwell First Methodist Church requests that the Board remove this proceeding from abeyance, and determine that the former north spur was removed from the national transportation system and GWRC has no right to construct a new spur track on Church property to which GWRC has no title or interest.

Respectfully submitted,

/s/ Eric M. Hocky

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Attorneys for
Hartwell First Methodist Church, Inc.

Dated: September 26, 2024

VERIFICATION

I, Joe M. Whittemore, verify under penalty of perjury that the facts in the foregoing Request are true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on September 26, 2024.

Joe M. Whittemore

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September 2024, I served a copy of the foregoing Request on the following person by email:

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/s/ Eric M. Hocky

Eric M. Hocky

EXHIBIT A

EFILED IN OFFICE
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Frankie Gray, Clerk
Hart County, Georgia

IN THE SUPERIOR COURT OF HART COUNTY

STATE OF GEORGIA

HARTWELL FIRST UNITED METHODIST CHURCH, INC.

Plaintiff,

v. **CIVIL ACTION NO. 16HV00611**

HARTWELL RAILROAD COMPANY, F/K/A HARTWELL RAILWAY, AND GREAT WALTON RAILROAD COMPANY,

Defendants.

ORDER ON PETITION, MOTION AND CROSS MOTION FOR DECLARATORY JUDGMENT AND FOR PERMANENT INJUNCTION

This matter came before the Court on August 17, 2022 for oral argument following significant briefing by both parties on Plaintiff's Motion for Declaratory Judgment and for Permanent Injunction and Defendants' Cross Motion for Declaratory Judgment. Plaintiff was represented by attorneys Walter J. Gordon, Sr. and Kimberly W. Higginbotham. Defendants were represented by attorneys Mark E. Toth and Marc S. Kaufmann. After reviewing the evidence, pleadings, briefs and hearing argument of counsel, the Court makes the following:

FINDINGS OF FACT

Plaintiff, Hartwell First United Methodist Church, Inc. took title to 0.564 of an acre by deed dated June 6, 2002 from Springs Industries, Inc. which incorporated a plat of survey of the subject property by Dean H. Teasley, Georgia Registered Surveyor dated August 24, 1990 and

recorded August 29, 1990 at Plat Book 2D, Page 236, and recorded again May 13, 2002 at Plat Book 2H, Page 260, Hart County, Georgia deed records (Exhibit 2, Plaintiff's March '22 Motion). Lying upon the property and along a portion of the southernmost property line was several feet of Defendants' railroad track (referred to by the parties as "the North Spur track" or "the industrial spur"). The exact length and width of the track upon the subject parcel was not established before the Court, nor is the former spur track's exact location delineated by survey, but the parties agree generally that when Plaintiff obtained the deed in 2002, a spur track had been in place since the early 1900's until its removal by Defendants in 2008.

After entering the property at issue from the railroad's main line, the North Spur track ran roughly parallel with Defendants' main line railroad track located upon a twenty-foot right of way to Webb Street in the City of Hartwell. Defendants aver that they are owners' of the property beneath the spur track by an unrecorded unknown instrument or by adverse possession/prescriptive title, or that they acquired a prescriptive easement where the former spur track lay. Defendants further aver that due to variations in the footage along Webb Street in the legal descriptions of the Plaintiff's parcel over the last 100+ years, that Plaintiff does not have fee simple title to ten feet on the southernmost portion of the property and that the former North Spur track fell within that ten feet. Defendants further unfoundedly aver that, by the execution of License Crossing Agreements, Plaintiff acquiesced in Defendants' title to the property contrary to law as more fully discussed below.

Originally upon Plaintiff's Emergency Motion, Defendants claimed a forty-foot easement which encompassed both the main line and the former North Spur track. The Railroad Valuation Map of 1916 (Exhibit B, Plaintiff's Petition) shows that the Defendants have only a twenty foot right of way (ten feet on either side of the centerline) for the main line track, and nothing more

to the north where the former North Spur track had been, and oddly shows the former North Spur track as being tucked within that twenty foot right of way of the main line. It is undisputed that the former North Spur track and the new 2016 partial track do not lie within the main line's twenty foot right of way.

Defendants have never had fee simple title to the subject property, have never had a recorded easement, and Plaintiff avers that Defendants never acquired prescriptive title to the property, or that if Defendants did acquire prescriptive title that Plaintiff then reacquired the property by adverse possession for more than seven years under color of title, that Defendants did not acquire a prescriptive easement but that if Defendants did acquire a prescriptive easement, that Defendants abandoned the easement when Defendant removed the North Spur track in 2008 from Plaintiff's property, and that Plaintiff retained all rights of ownership to the underlying property. The analysis of prescriptive title issues is set forth below.

In 2015, Defendant signed a 99 year lease/lease purchase agreement with the non-profit group Transformation Opportunities in Revitalizing Communities of Hartwell, Inc. (TORCH) which aimed to convert the Railroad Depot, ancillary buildings, and the main rail lines from the terminus on South Forest Avenue in Hartwell back westward to Athens Street (through Plaintiff's campus) for use as a public park, a children's playground, a farmer's market and a walking trail.

The parties hereto engaged in litigation before the Surface Transportation Board when Plaintiff filed for adverse abandonment of the main line east of Athens Street in the City of Hartwell. On November 10, 2016, Plaintiff published notice of its intent to file proceedings before the Surface Transportation Board seeking authority from the Board for the adverse abandonment and discontinuation of a section of the railroad tracks and right of way which included the main line adjacent to the 0.564 of an acres. On Wednesday, November 23, 2016,

the Plaintiff caused to be published in the *Hartwell Sun* the final Notice of Adverse Abandonment. On that day, Defendants forcibly reentered the subject property and began reconstructing the former North Spur track and causing damage to the landscaping and hardscape belonging to Plaintiff. The instant case came before the Court on Plaintiff's Petition for Declaratory Judgment and For Injunctive Relief on the next available business day, November 28, 2016, wherein this Court granted a Preliminary Injunction on further track construction.

On December 23, 2016, Defendants filed a Notice of Removal of the subject case to the U.S. District Court of the Middle District of Georgia, docketed as Case No. 3:16-CV-169. On February 9, 2017 the case was remanded back to this Court as exclusively a matter for adjudication in the Superior Court of Hart County as the situs of the land at issue for a determination of ownership rights of the subject property based upon state law.

Then, the land beneath the entirety of the former North Spur track became the subject of an October 27, 2017 condemnation action filed by Defendants before the Georgia Public Service Commission. Upon an unfavorable PSC decision, Defendants filed for reconsideration. The reconsideration was denied and the decision denying the condemnation was upheld through appeals in Fulton County Superior Court (docketed as The Great Walton Railroad Company, Inc. v. Georgia Public Service Commission Case No. 2019CV316156), the Georgia Court of Appeals (Case No. A20A1065) and the Georgia Supreme Court which denied Certiorari on May 17, 2021 (Case No. S21 C047). Following remittitur, the matter now rests with this Court for a final decision.

CONCLUSIONS OF LAW

A. Fee Simple Title: The Court concludes that Plaintiff is the fee simple title owner of the entirety of the 0.564 of an acre as acquired by deed dated June 6, 2002 from Springs

Industries, Inc. (subject to any outstanding liens or interests of record other than the claims of the Defendants herein) which incorporated a plat of survey of the subject property by Dean H. Teasley, Georgia Registered Surveyor dated August 24, 1990 and recorded August 29, 1990 and recorded again May 13, 2002 in the Hart County, Georgia deed records. It is undisputed that Defendants do not have a deed or any other written instrument which grants any interest in or to any portion of the subject property. Defendants argue that Plaintiff only took title to 90 feet along Webb Street, Plaintiff's easternmost line, thus creating a gap.

In analyzing the title chain for the subject parcel, this Court utilized the instruction from Atlanta Development Authority v. Clark Atlanta University, Inc., 298 Ga. 575 (2016), in which the Georgia Supreme Court said,

> In construing a deed, the paramount consideration and overriding goal is to ascertain and give effect to the intent of the parties. *Second Refuge Church of Our Lord Jesus Christ, Inc. v. Lollar,* 282 Ga. 721, 724–725(2), 653 S.E.2d 462 (2007); *Moore v. Wells,* 212 Ga. 446, 449(1), 93 S.E.2d 731 (1956). And, in general, the parties' intent is to be determined from the deed's text alone, and extrinsic evidence will be used to interpret the deed only when its text is so ambiguous that its meaning cannot be determined through application of the ordinary rules of textual construction. *Second Refuge Church of Our Lord Jesus Christ, Inc. v. Lollar,* supra at 724–725(2). Furthermore, the deed must be examined in its entirety in order to determine the parties' intent and to be given a construction which is consistent with reason and common sense. *Woodbery v. Atlas Realty Co.,* 148 Ga. 712, 98 S.E. 472 (1919). Each provision of the Deed is to be given effect and interpreted so as to harmonize with the others. *Horwitz v. Weil,* 275 Ga. 467, 569 S.E.2d 515 (2002). So too, the circumstances and purpose of the Deed must be given due weight. Id. at 468, 569 S.E.2d 515.

There is no evidence within the title chain that the whole of the parcel north of the Defendants' twenty foot right of way and running along Webb Street on the east was not intended to be conveyed, ultimately being surveyed as the 0.564 of an acre. Furthermore, regarding the differing footage along Webb Street within the title chain, this Court applies the long-established

principles set forth by Justice Lumpkin in 1854 in Riley v. Griffin, 16 Ga. 141 in which the Court set out fourteen rules in the construction and application of legal descriptions which remain good law today. These cases and principles ultimately give courses and distances in a legal description low priority when there are monuments or surveys to utilize. There is no competent evidence before the Court to conclude that there is a gap in the property conveyed to Plaintiff by deed and plat of survey, and there is no evidence before the Court to support that if a gap existed the gap would be found along the southern property line (as argued by Defendants) versus the northern property line of the parcel, and there is no evidence to support that if a gap existed the location of the former North Spur track was within such a gap. The Defendants' Affidavits, while making the ultimate conclusion, do not account for this legal analysis or proffer any differing valid legal analysis. The only survey of record, completed in 1990 by Dean H. Teasley and filed twice in the public records of Hart County, Georgia, sat uncontroverted for twenty-six years until this action. Mr. Teasley, the county surveyor with sixty-five years of local Hartwell surveying experience, certified by Affidavit that he utilized the Rules and Regulations of the State of Georgia, Chapter 180-7 entitled "Technical Standards For Property" in conducting the survey of the 0.564 of an acres, and that in his professional opinion by using the Technical Standards his plat of survey is true and correct regarding the lines, corners and dimensions of the subject tract of this action. The Court agrees that the 1990 Dean H. Teasley survey of 0.564 of an acre does accurately reflect the property granted to the Plaintiff in 2002.

Because Defendant does have the main line's twenty foot right of way to the south of Plaintiff's parcel, also important to the analysis is O.G.G.A. § 44-5-167 entitled "Possession under deed extends to what bounds" which states

> Possession under a duly recorded deed shall be construed to extend to all the contiguous property embraced in such deed. To the extent that any such property is

> bounded on one or more sides by a railroad, and the description of the property contained in such deed makes reference to the railroad or the railroad right of way as a boundary for such property, such reference shall be construed to mean that the boundary line is located at the edge of the tract depicted on the official map of the railroad filed with the Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat. 701, as amended, and such depictions contained on such official railroad map shall be conclusive as to the location of the boundary line between the property of the railroad and any adjoining property owner as of the date of such railroad map; provided, however, that each railroad corporation and railroad company shall file and record such official map of the railroad with the superior court for the county in which such land depicted on such official railroad map is situated. Any court of this state shall take judicial notice of the information set forth in any such official map properly filed and recorded by such railroad corporation or railroad company.

Defendants' claims that Plaintiff's signing of Defendants' license/crossing agreements in 2008 (Exhibits to the Affidavit of Bennie Ray Anderson) admitted that Defendants held title to the subject property are without merit. The crossing agreements, or licenses, must be construed by Georgia's rules of contract interpretation set forth in O.C.G.A. §13-2-2 wherein words are given their usual and common meaning, that narrow focus must not be given to language instead of construing the intent of the contract as a whole, more importantly that estates and grants by implication are not favored, and when in doubt the contract must be construed against the drafter (the drafter of the license agreements here is Defendants). See also Langley v. MP Spring Lake, LLC, 307 Ga. 321 (2019).

The purpose of the licenses/crossing agreements was to cross the North Spur track and the main line. In their brief and before Court, the Defendants argued "the terms of the license agreements executed by Plaintiff provide the church 'shall not at any time own or claim any right, title or interest in or to the railroad's property occupied by licensee's crossing, nor shall the exercise of this agreement for any length of time give rise to any title to said property or right of interest in licensee other than by license created hereby.'" The Defendants' "property" at the

time of the signing of the agreements consisted of the main track (rails and appurtenances), the twenty foot right of way, and the former north spur track (rails and appurtenances). The Defendant railroad did not own the real property, and therefore the licenses should be interpreted for their purpose – to cross the railroad tracks. The licenses should not be interpreted to convey ownership in real property, to divest ownership in real property, or to forcibly admit ownership of the real property in and to the Defendants when no ownership existed. The "property" within the agreements refers to the personal property of the rail lines. To interpret the crossing agreements for any other purposes other than as a license is against both codified and Georgia case law.

Lastly Defendant's survey by Brewer (Exhibit 1 to the Affidavit of John F. Brewer) fails to delineate Plaintiff's easternmost line on Webb Street by courses, and list the footage thereon as "90+ feet." Argument at court established that the relevant portion of the survey was drawn from legal descriptions of newspaper notices of proposed sales of parcels within the 0.564 of an acre and not from legal descriptions found within the real property records of Hart County. The methodology of the survey in its creation and lack of courses and distances is not persuasive to the Court that the survey is correct or valid, and the Court finds that the survey is uncertain and lacking the requisite definitiveness for this Court to rely upon as being true and accurate – especially regarding the Plaintiff's easternmost property line on Webb Street which is central to this analysis.

B: Defendants' Prescriptive Title Claims: The analysis of Defendants' claim of ownership by prescriptive title is moot due to the undisputed fact that the Defendants removed the former North Spur track (rails and appurtenances) in 2008. Then, as established by testimony in the Affidavit of Joe M. Whittemore, Plaintiff removed the remnants of the former North Spur

track (decaying cross ties and the gravel of the ballast), filled in the void with soil, graded the area by heavy equipment, landscaped, and made hardscape improvements thereto, all to the complete exclusion of Defendants as a railroad. Plaintiff thereby exclusively controlled and occupied the subject property under all of the requirements of O.C.G.A. §§ 44-5-161 and 164 for prescriptive title by adverse possession as established by the Whittemore Affidavit from 2008 until Defendants reentered the property in 2016 – more than the requisite seven years under color of title. Plaintiff's prescriptive title of the subject property would also take precedence over Defendant's assertions that Plaintiff did not hold fee simple title under its 2002 deed.

C: Defendants' Prescriptive Easement Claims: The analysis of Defendants' claim of prescriptive easement of the land underlying the former North Spur is also moot due to the fact that the Court finds that Defendants abandoned any easement rights to the property pursuant to O.C.G.A. § 44-9-6. Entitled "Forfeiture or abandonment of easement" O.C.G.A. § 44-9-6 states that "[a]n easement may be lost by abandonment or forfeited by nonuse if the abandonment or nonuse continues for a term sufficient to raise the presumption of release or abandonment." While there are heightened requirements to abandon an express easement or an easement obtained by grant (which Defendants do not have), there are no such requirements for a prescriptive easement. "While an easement acquired by user or prescription may be lost by abandonment or nonuse, a different rule applies when an easement has been acquired by a grant. As was said in Teintjen v. Meldrim, 169 Ga. 678 (1930): 'Where an easement of way is acquired by mere user, the doctrine of extinction by mere nonuser may in reason apply...'" Westbrook et al. v. Comer et al., 197 Ga. 433 (1944). When, however, such nonuser is accompanied by acts manifesting a clear intent to abandon, and which destroy the object for which the easements were created or the means of their enjoyment, an abandonment will take place. 19 C. J. 943, § 153 (4).

There is no dispute that Defendants removed the rails in 2008, that Plaintiff graded and planted the area, and that Defendant had no further use of the parcel until the attempted partial reconstruction in 2016. While not necessary to analyze, Defendants claim a failure of intent to abandon any easement rights. However, Defendants leased their rights in and to the main line in the 99 year lease to TORCH. Since the North Spur line is appurtenant to the main line, the main line would be necessary for the utilization of the spur line, but the lease included language that is indicative of Defendants' intent to abandon its main line rail use and is instructive and clearly indicative of the Defendants' intention to cease any further rail traffic over the land and to effectively abandon the property and potential easement rights of the North Spur. The Defendants' intention to abandon its use is abundantly clear as shown by the lease terms which acknowledge that the property "has not been regularly maintained for several years and are [sic] in a state of disrepair." Lease Sec 8.1 (see relevant Lease portions as Exhibit C to Plaintiff's Petition of 11/28/2016). The Lease relieves the Defendants of any duty to maintain or insure the property (Lease Sec 8.2 and 9.1) and requires TORCH to accept liability for injuries and all responsibility for maintenance and insurance (Lease Sec 8.1, and Sec 9.1 through 9.5), and all utilities and all taxes, (Lease Sec 3.2 and 3.3). In Lease Section 7.2, Defendants agreed that they would not interfere with TORCH's use of the leased property as a public park, playground and walking trail. Likewise in Lease Sec 7.3, the Railroad guarantees that TORCH "shall peaceably and quietly have, hold and enjoy the premises, without hindrance or molestation from Lessor..." The subsequent Amendment of the Lease does not change the facts adverse to Defendant in the original lease.

More importantly, in title questions, the Georgia Courts have consistently held that removal of railroad tracks was abandonment of any easement rights, even when those rights were

granted by written easements. See Atlanta Consul. St. Ry. Co. v. Jackson et al., 108 Ga. 634 (1899), where the Court found that abandonment of a specific easement grant expired the minute the tracks were removed in stating,

> "[h]ad its successor, the purchaser at the judicial sale, continued to use the right of way as stipulated in the deed, the fee would have remained in it. The moment it tore up its track and removed it to another locality, abandoning this right of way, the estate granted its predecessor was lost, and the land reverted immediately to the grantor or to his heirs; he having died before the abandonment of the right of way."

See also in 1936 where in dicta the parties agreed that railroad abandonment had occurred because the rails and ties had been removed and railroad operations ceased, as follows

> ... that the railroad and its successors have permanently abandoned the use of the said property for railroad purposes, and that the railroad property has been sold under a decree of the United States District Court, with the right to the purchaser to dismember it and discontinue to operate the railroad; that the rails and ties have been taken up and moved and the property permanently abandoned as railroad property..." in Rogers v. Pitchford, 181 Ga. 845 (1936).

Lastly see Atlanta, B. & A. Ry. Co. v. Coffee County, 152 Ga. 432 (1921), where the railroad sued the county for an injunction after Coffee County paved a road over the previous location of the railway bed, and the Court stated,

> ... [t]he uncontroverted evidence discloses that the track was thereafter removed from the land in question, and that said right of way has not since been used or occupied by the railroad company. It is true that a part of the strip was never abandoned, but was at the time of the filing of the petition in the present case used by the plaintiff for certain of its industrial and spur tracks. The judge was authorized to find, however, that the county had not constructed the public highway over or upon any part of the strip so used by the plaintiff in error. In these circumstances the judge did not abuse his discretion in denying the interlocutory injunction.

Ordinarily, it is the Surface Transportation Board (hereinafter "STB," formerly the Interstate Commerce Commission) that must authorize the abandonment of a "line of railroad." However, the STB has specifically determined that the North Spur is not part of the Defendants'

line of railroad, and thus, no STB authority was required before the Defendant abandoned the North Spur. The cases herein demonstrate how the Georgia courts have determined under state law the loss of property rights by a railroad when railroad tracks have been removed. In the subject case, though unnecessary for the Court's conclusion, Defendants met the heightened requirements of the abandonment of a granted easement (a grant of which Defendants did not have or were unable to produce) by clear, unequivocal, and decisive evidence of an intent to abandon any easement rights to the underlying real estate beneath the former North Spur through the removal of the rails and usable pieces of the appurtenances for more than eight years. Further, it is undisputed that Defendants failed to object to the Plaintiff's work upon the subject property including the removal of the remnants of the North Spur tracks and to Plaintiff's occupation of the subject property to the exclusion of the Defendants use as a railroad for a period of more than seven (7) years, thus prescriptively terminating any easement rights. It is apparent that Defendants' interest in the North Spur and intent to claim title to the property underneath the former spur only arose when the TORCH lease income may have been threatened by the Plaintiff's adverse abandonment claims of the main line before the STB in 2016.

A Declaratory Judgment is proper when the facts, even if disputed can lead to only one judgment. This is such a case. In cases of actual controversy, the respective superior courts of this state shall have power to declare rights and other legal relations of any interested party petitioning for such a declaration, and, in addition thereto, the superior courts likewise have powers upon petition therefor to declare rights and other legal relations of any interested party in any civil case in which it appears that the ends of justice require that such a declaration should be made. O.C.G.A. §9-4-2. In cases of this nature, the Court may grant ancillary relief as may be necessary such as injunctions or other plenary relief including damages. O.C.G.A. § 9-4-3.

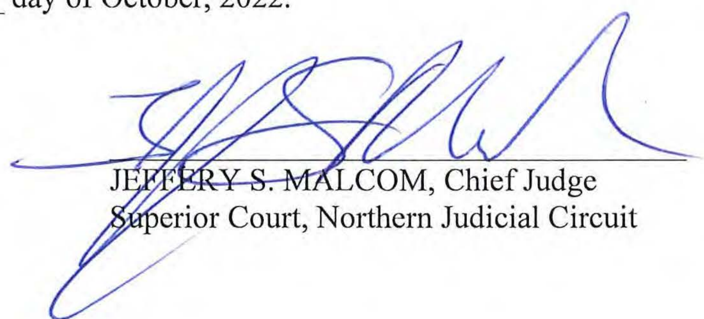
IT IS THEREFORE ORDERED THAT Plaintiff is entitled to a judgment declaring Plaintiff the fee simple title owner of 0.564 of an acre, described by deed dated June 6, 2002 recorded in Deed Book 449, Pages 488-490, Hart County, Georgia deeds records and delineated by the 1990 Teasley survey dated and recorded August of 1990 in Plat Book 2D, Page 236 in the Hart County, Georgia deed records, subject to any outstanding interests of record but free and clear of all claims by Defendants. Defendants' continued occupation of the subject property of the Plaintiff is an unlawful trespass, and Plaintiff is also entitled to an injunction enjoining the Defendants from said trespass. Defendants shall remove the rail lines and appurtenances to the reconstructed spur track which lie upon Plaintiff's property and shall restore Plaintiff's property to its original condition as it existed before its 2016 destruction by Defendant no later than sixty (60) days subsequent to the date of this Order.

Defendants' Cross Motion and all relief requested therein is denied in its entirety.

An award of attorneys' fees is reserved.

A copy of this Order is being sent via email to counsel for the Plaintiff and for the Defendants.

SO ORDERED this 17 day of October, 2022.



JEFFERY S. MALCOM, Chief Judge
Superior Court, Northern Judicial Circuit

EXHIBIT B

FIFTH DIVISION
MCFADDEN, P. J.,
BROWN and MARKLE, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
https://www.gaappeals.us/rules

October 27, 2023

In the Court of Appeals of Georgia

A23A1021. HARTWELL RAILROAD COMPANY et al. v. HARTWELL FIRST UNITED METHODIST CHURCH, INC.

BROWN, Judge.

In this dispute over a ten-foot wide strip of land on which sits a railroad spur track constructed in 1913, Hartwell Railroad Company, F/K/A Hartwell Railway, and The Great Walton Railroad Company (collectively "Walton") appeal from the superior court's order entering declaratory judgment and a permanent injunction in favor of The Hartwell First United Methodist Church, Inc. ("the Church") and denying Walton's cross-motion for declaratory judgment. For the reasons set forth below, we affirm the superior court's grant of declaratory judgment in favor of the Church but vacate the permanent injunction.

“A trial court’s findings of fact after a declaratory judgment hearing are analogous to a jury verdict and will not be interfered with if there is any evidence to support them. However, we review the trial court’s conclusions of law de novo.” (Citation and punctuation omitted.) *Brown v. Brown*, 359 Ga. App. 511, 517 (857 SE2d 505) (2021). Additionally,

> [w]e review a trial court’s grant of a permanent injunction for a manifest abuse of discretion. We review issues of law de novo, applying the plain legal error standard of review. With respect to factual issues we construe the evidence in favor of the trial court’s findings and affirm if there is any evidence to support them, regardless of whether the evidence would also support opposite findings.

(Citations and punctuation omitted.) *Doxey v. Crissey*, 355 Ga. App. 891 (846 SE2d 166) (2020).

Viewed in this light, the record shows that the property at issue is a roughly ten-foot-wide strip of land which runs parallel to the railroad mainline just west of Webb Street in Hartwell, Georgia. On this strip of land sits a railroad spur. Both the spur and mainline sit adjacent to the Church’s campus, but the Church owns the land to the north and south of the mainline. The parties generally agree that a predecessor of Walton obtained a 20-foot-wide right of way (10 feet on either side of the

centerline) for the mainline through an 1880 condemnation award and that the mainline, along with the spur track,[1] are depicted on the valuation map[2] for the Hartwell Railroad dated June 30, 1916 ("the 1916 Map"). However, as the trial court found, the spur track is depicted *within* the 20-foot-wide right of way of the mainline although it is undisputed that the spur track at issue has never resided in the mainline's 20-foot right of way. In 1919, the spur was extended across Webb Street and was later linked back to the mainline at a point located between Webb and Jackson Streets, making it a runaround track.[3] The runaround track was still in use in 1990 when the railroad was acquired by Walton through a quit claim deed. The quit claim deed includes the following description:

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[1] According to the affidavit of Walton's owner, the spur track was constructed in 1913 by the Hartwell Railway Company.

[2] According to the National Archives, railroad valuation maps originally were created between 1915 and 1920, pursuant to the Valuation Act of 1913. The Interstate Commerce Commission used these maps, which detailed the rail lines, railroad facilities, and land adjacent to the railroad, to determine rates. https://www.archives.gov/files/citizen-archivist/images/03-21-2019-railroad-valuation-maps.pdf.

[3] Only the portion of the runaround track west of Webb Street — the original spur track — is at issue. In its order, the trial court refers to this portion as the "North Spur track."

> A right of way and associated property between Bowersville and Hartwell, Georgia, being approximately 9 and 6/10th miles in length, and which is approximately as shown on the drawing below.

The drawing depicts the mainline, a portion of which is circled and labeled "Hartwell." It does not depict a spur or runaround track. Walton continued to use the runaround track for the next ten to twelve years.

In 2002, the Church acquired the roughly half-acre parcel of land immediately north of the mainline pursuant to a quit claim deed with Springs Industries, Inc. The parcel was acquired in 1907 by Farmers Union Warehouse Company. The recorded deed pertinently describes the parcel as "lying on the north side of The Hartwell Railroad at the crossing of Webb Street and running north with said street . . . about (100) one hundred feet, to the corner[.]" After a break in the chain of title, The Perfect Pea Picker Company acquired the parcel by deed in 1920, with the description "[b]eginning at a stake corner on the Hartwell Railroad, and running along Webb Street in a northerly direction about 100 feet[.]" The deed does not mention the spur, which the parties agree had been built at this point. A 1922 deed conveying a "certain manufacturing plant consisting of a building and grounds upon which it rests" describes a "building . . . facing 90 feet on Webb Street" and "being bounded on the

East side by Webb Street; South by Southern Railway right-of-way[.]” Thereafter, deeds in the chain of title describe the relevant portion of the property as fronting Webb Street 90 feet and being bound on the south by the railroad right of way. In 1990, a plat survey was prepared in connection with a conveyance to the Hart County Industrial Building Authority. Both the deed and plat reflect that the parcel contains 0.564 of an acre with 97.74 feet fronting on Webb Street beginning at the centerline of the railroad mainline right of way. Thus, this plat survey shows the spur track as being within the boundaries of the parcel acquired by the Church.

The License Agreements

In 2007 and 2008, Walton and the Church entered into three license agreements, allowing for the installation of underground pipes under the spur and mainline tracks and for pedestrian and vehicular traffic crossing. The two agreements allowing for crossings contain a provision providing that the Church would not “at any time own or claim any right, title or interest in or to railroad’s property occupied by [the Church’s] crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right or interest.” The third agreement, allowing for underground pipes, does not include this language. In 2008, Walton removed the rail from the spur track, but not the underlying crossties. After

removal of the rails, the Church graded, filled, and installed a concrete sidewalk and landscaping.

A Dispute Arises

In 2015, Walton entered into a 99-year Lease/Purchase Agreement with Transformation Opportunities in Revitalizing Communities of Hartwell,Inc./TORCH of Hartwell, Inc. ("TORCH") for the entirety of Walton's holdings in the area, including the mainline adjacent to the Church property.[4] TORCH is a non-profit group working to convert portions of the mainline railroad and ancillary buildings in downtown Hartwell for use as a public park, playground, farmer's market, and walking trail.

In 2016, the Church filed an adverse abandonment action with the Surface Transportation Board ("STB"), requesting that the STB authorize adverse abandonment and discontinuance of 0.25 miles of Walton's rail line in Hartwell in order to quiet title to the property underlying the rail line.[5] In August and October

[4] Walton's owner testified that Walton did not lease the railroad tracks to TORCH, that the track behind the Church is no longer part of the lease, and that this was clarified in an "amended lease." But this "amended lease" does not appear to be part of the appellate record.

[5] According to the STB, the parties dispute whether the spur/runaround track was included in the STB's decision. In the Church's original filing before the STB,

2016, Walton notified the Church that it intended to "rehabilitate its tracks." On November 10, 2016, the Church published notice of its intent to file proceedings before the STB seeking authority for the adverse abandonment and discontinuation of a section of the railroad tracks and right of way, which included the mainline adjacent to the Church's 0.564-acre parcel. The final Notice of Adverse Abandonment was published on November 23, 2016, in the *Hartwell Sun*.[6] On the same day, Walton removed the Church's landscaping and sidewalk and began reconstructing the spur track.[7] The Church filed a Petition for Declaratory Judgment and for Injunctive Relief in the Superior Court of Hart County on November 28, 2016, and the trial court granted a preliminary injunction halting further construction of the spur track outside of the 20-foot right of way.

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it asserted that the spur/runaround track was no longer in existence and thus was not included as the target of its adverse abandonment application. Accordingly, the STB's denial of the application was limited to the track identified, which did not include the spur/runaround track. The STB was silent on the regulatory status of the spur/runaround track.

[6] The Church's adverse abandonment application was denied by the STB on January 31, 2018.

[7] Walton asserts that it began rehabilitating the track and replacing the rail because it was necessary to resume using the runaround track as a safer alternative to "push[ing]" or "shoving" railroad cars.

In December 2016, Walton filed a notice of removal of the case to federal district court, but the district court found that "federal law does not completely preempt a determination of the parties' relative state law property rights" and remanded the case to the Superior Court of Hart County in 2017 to make that determination.

The Condemnation Proceedings

After the attempted removal to federal court, Walton filed a condemnation action pursuant to OCGA § 46-8-120 before the Georgia Public Service Commission in October 2017.[8] The Church intervened in the proceedings pursuant to OCGA §§ 46-2-59 and 50-13-14. A hearing was held before a hearing officer who rendered a decision in favor of Walton. Upon full Commission review of the hearing officer's decision, the Commission reversed the hearing officer's decision and denied Walton's petition. Walton filed a motion for reconsideration which also was denied. The Commission's decision denying the condemnation was subsequently upheld on appeal in the Superior Court of Fulton County. In an unpublished opinion, this Court

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[8] According to the Commission's order, "[t]he real estate parcel at issue [in the condemnation proceedings] is a certain strip of land, measuring twenty (20) feet by two hundred sixty (260) feet, abutting the southern portion of the original property of [the Church] . . . beside the Hartwell Railroad main line."

affirmed the superior court, finding that there was ample evidence to support the Commission's finding that condemnation of the subject property would serve no public purpose.[9] *Great Walton R. Co. v. Ga. Public Svc. Comm.*, 356 Ga. App. XXVIII (Sept. 30, 2020) (unpublished). The Supreme Court denied certiorari, and following remittitur, the case was returned to the Superior Court of Hart County for a final decision on the Church's petition.

Further Proceedings Before the STB

In November 2019, Walton filed a petition for declaratory order with the STB, asserting that the STB has exclusive jurisdiction over the spur/runaround track and therefore efforts to block Walton's restoration of the track are preempted. In a June 23, 2020 order, the STB concluded that the spur/runaround track is ancillary track

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[9] See OCGA § 46-8-121, which provides:

> Authority and power are granted to railroad companies to acquire by purchase or gift and to hold such real estate as may be necessary for all of the purposes mentioned in Code Section 46-8-120. If the real estate cannot be acquired by purchase or gift, then it may be acquired by condemnation in the manner provided in Title 22, provided that the right of condemnation under this Code section shall not be exercised until the commission, under such rules of procedure as it may provide, first approves the taking of the property.

"If the Commission ultimately determines such condemnation to serve a public purpose, it shall issue a final order approving any condemnation petition by a railroad company." Ga. Comp. R. & Regs. R. 515-16-16-.03.

that never became part of Walton's regulated rail line. According to the STB's order, a regulated rail line is within the STB's exclusive jurisdiction and can only be abandoned upon receiving abandonment authority from the STB. Ancillary track is also within the STB's exclusive jurisdiction, but STB authorization is not required for the abandonment or discontinuance of ancillary track. However, the STB deferred ruling on whether the track was removed from the interstate rail system (such that it was no longer within the STB's exclusive jurisdiction) pending the state court proceedings. The STB noted that if Walton established a property interest in the land underlying the spur/runaround track in the state court proceedings, it would be free to reconstruct the track regardless of whether it had previously been removed from the interstate rail system. If Walton was unsuccessful in establishing such an interest, the STB concluded it "may need to determine whether the runaround track remains part of the interstate rail system." The STB held the matter in abeyance pending the state court proceedings.

The Final Decision in Superior Court

When the case was returned to the superior court, the Church moved for a decision on its petition. Walton subsequently put forth a new survey of the subject property prepared by a land surveyor retained by Walton. The surveyor averred that

"the southern property line of the [Church] does not extend to the railroad's mainline right of way" and that the spur track at issue "is not located on the Church's property . . . based upon my review of the property deeds and the survey that I conducted." A final hearing was held in August 2022.

After the hearing, the superior court issued a detailed 13-page order finding that Walton has never had fee simple title to the property underlying the spur track, and that the Church is the fee simple title owner of the 0.564-acre parcel delineated in the recorded 1990 survey, including the property underlying the spur track. The court rejected Walton's argument regarding the variation in footage fronting Webb Street, finding as follows:

> There is no competent evidence before the Court to conclude that there is a gap in the property conveyed to [the Church] by deed and plat of survey, and there is no evidence before the Court to support that if a gap existed the gap would be found along the southern property line (as argued by [Walton]) versus the northern property line of the parcel, and there is no evidence to support that if a gap existed the location of the former North spur track was within such a gap.

The superior court further found that the 1990 survey accurately reflects the property granted to the Church. As to the survey proferred by Walton, the court found that "the methodology of the survey in its creation and lack of courses . . . is not persuasive"

and further "that the survey is uncertain and lacking the requisite definitiveness for this Court to rely upon as being true and accurate — especially regarding the [Church's] easternmost property line on Webb Street[.]"

As to the parties' adverse possession claims, the court concluded that Walton's claim of ownership by prescriptive title was "moot due to the undisputed fact that [Walton] removed the former North Spur track (rails and appurtenances) in 2008." Conversely, the court found that the Church "exclusively controlled and occupied the subject property under all of the requirements . . . for prescriptive title by adverse possession . . . from 2008 until [Walton] reentered the property in 2016 — more than the requisite seven years under color of title." The superior court further concluded that if Walton ever acquired a prescriptive easement of the land underlying the spur track, Walton abandoned any easement rights to the property pursuant to OCGA § 44-9-6, by removing the rails in 2008 and ceasing all use until the attempted reconstruction in 2016. The court also noted the 99-year lease Walton signed with TORCH was indicative of Walton's intent to abandon its main line rail use and cease any further rail traffic over the land.[10]

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[10] The superior court found that Walton's "interest in the North Spur and intent to claim title to the property underneath the former spur only arose when the TORCH lease income may have been threatened by the [Church's] adverse abandonment

In sum, the superior court declared the Church the fee simple title owner of the 0.564-acre parcel delineated in the recorded 1990 survey, including the property underlying the spur track, free and clear of all claims by Walton. Finding Walton's continued occupation of the Church's property an unlawful trespass and that the Church was entitled to an injunction enjoining Walton from said trespass, the court ordered Walton to remove the rail lines and appurtenances to the reconstructed spur track on the Church's property and restore it to its condition as it existed before Walton reentered the property in 2016. The court denied Walton's cross-motion.

Walton's Appeal

Walton now appeals from the superior court's order. Walton contends that the superior court disregarded the unambiguous language in the subject deeds showing that the Church did not own the property and disregarded the three license agreements between Walton and the Church expressly providing that the Church did not own and would not assert title to the property. It also contends that the court erred in alternatively concluding that the Church acquired title to the property by adverse possession. Finally, Walton asserts that the trial court erred in entering a permanent

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claims of the main line before the STB in 2016."

injunction requiring it to remove the spur track because the Surface Transportation Board has exclusive jurisdiction of matters related to the removal of railroad tracks.

Walton does not enumerate as error the superior court's rulings that Walton does not have a real property interest in the land via adverse possession or prescriptive easement. As such, those rulings are not before us. See *Russell v. Barnett Banks*, 241 Ga. App. 672, 673 (527 SE2d 25) (1999).

1. *Title by deed*. Walton contends that the superior court erred in concluding that the Church acquired fee simple title to the property underlying the spur track by deed. Specifically, Walton points out that every deed in the chain of title from 1922 until 1990 described the Church's lot north of the mainline as fronting 90 feet on Webb Street, and because the lot extended only 90 feet, it did not reach the railroad's mainline right of way and a gap of 10 feet results from the southernmost point of the lot and the northernmost point of the mainline right of way. According to Walton, the spur track fits entirely within this gap. Walton asserts that the plat survey prepared in 1990 by Teasley, and relied on by the superior court, erroneously shows a total of 97.4 feet fronting on Webb Street, which conflicts with the deeds in the chain of title.

Walton's theory disregards the plain language of the deeds in the chain of title, which all reference the Hartwell Railroad as the southern boundary line, as well as

well-established principles for determining property boundaries based on deed descriptions.

> Where the calls of a deed are for natural as well as known artificial objects, both courses and distances, when inconsistent, must be disregarded. . . . Artificial boundaries as applied to this case include fences, roads, streets, and land lot lines. They are evidence of the points which land owners, past and present, had in mind in their contractual dealings with one another. . . . What is most material and most certain in a description shall prevail over that which is less material and less certain. Thus courses and distances yield to natural, visible, and ascertained objects.

(Citations and punctuation omitted.) *Martin v. Patton*, 225 Ga. App. 157, 162-163 (2) (483 SE2d 614) (1997) (physical precedent only). See also *Riley v. Griffin*, 16 Ga. 141, 147 (1854).[11] "[C]ourses and distances occupy the lowest, instead of the highest grade, in the scale of evidence, as to identification of land." *Riley*, 16 Ga. at 148.

To the extent that the 1922 deed's description of a 90-foot frontage on Webb Street conflicted with its description of being bound on the "South by Southern Railway right-of-way," the artificial boundary controls. See *Kobryn v. McGee*, 232

[11] As stated by Pindar's Ga. Real Estate Law & Procedure § 19:165 (7th ed.), the 14 principles espoused by Justice Lumpkin in *Riley*, supra, for determining actual boundaries based on descriptions in deeds, are still good law.

Ga. App. 754, 755 (1) (503 SE2d 630) (1998) (where deed's metes and bounds description of property line conflicted with deed provisions setting the western property line as the "'center line of a ditch,'" natural boundary prevailed). See also *Lyons v. Bassford*, 242 Ga. 466, 470 (1) (249 SE2d 255) (1978) (boundary fence referred to in deed prevailed over distances called for in the deed). And, it is undisputed that the spur track has never been in the railroad's 20-foot right of way. Indeed, every deed in the chain of title for the Church's lot has described the southern boundary line as the railroad right of way — even prior to the spur track's existence. It follows that the deed descriptions embrace the property underlying the spur track. This description of the lot has been consistent in spite of the varying metes and bounds descriptions. To hold that this change or variation from 100-foot to 90-foot frontage on Webb Street controls over the artificial boundary described in the deeds would conflict with our well-established rules of interpreting descriptions in deeds. As our Supreme Court explained in *Morgan v. Godbee*, where a deed description calls for the railroad right of way as the boundary line, the railroad right of way is fixed as the boundary line, "wherever it may be."[12] 146 Ga. 352, 354 (2) (91 SE 117) (1917).

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[12] In that case, the seller of the property represented to the purchaser "that he was selling to the plaintiff the land on the north side of the center line of the railroad up to within 50 feet thereof." 146 Ga. at 353-354. However, the actual railroad right

Here, because the deeds in the chain of title call for the railroad right of way as the boundary line, and the spur track resides outside the right of way, the Church's lot adjacent to the railroad necessarily includes the property underlying the spur track.

It also is noteworthy that the first deed describing a 90-foot frontage on Webb Street was the 1922 deed conveying a "certain manufacturing plant consisting of a building and grounds upon which it rests" and the description therein refers to a "*building* . . . facing 90 feet on Webb Street." (Emphasis supplied.) Thus, it is unclear whether this description was intended to alter the boundary line for the underlying property.

As to Walton's purported ownership of the property underlying the spur track, it is undisputed that Walton's predecessor only received a 20-foot right of way for its mainline, and that the spur track sits outside that 20-foot right of way. Simply put, there is nothing in the record showing that Walton ever had any interest in the land on which the spur track sits.[13] Accordingly, the superior court was correct in

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of way extended 100 feet from the center of the track. Id. The Court held that the plaintiff-purchaser was not entitled to "possession of that portion of the land which lies between lines drawn 50 feet and 100 feet from the center of the railroad track" because that portion was "not embraced in the description in the deed." Id. at 354.

[13] As already explained, whether Walton acquired prescriptive title to the property underlying the spur track is not before us because Walton has not

concluding that the Church acquired fee simple title to the property underlying the spur by deed.

2. *The License Agreements.* Walton next contends that the superior court erred in disregarding the language in the license agreements providing that the Church would not "at any time own or claim any right, title or interest in or to railroad's property occupied by [the Church's] crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right or interest." Without citation to law, Walton argues that the Church's petition claiming ownership of the at-issue property violates and directly contradicts the license agreements, which should govern the present dispute. There is no merit to this argument. The license agreements and attached renderings are immaterial if Walton never had any interest in the property underlying the spur track, as concluded above. As the superior court stated, the license agreements "should not be interpreted to convey ownership in real property, to divest ownership in real property, or to forcibly admit ownership of the real property in and to [Walton] when no ownership existed."

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enumerated the superior court's ruling on that issue.

3. *Adverse Possession by the Church.* Given our holding, supra, we need not address Walton's assertion that the superior court erred in concluding that the Church acquired prescriptive title to the property underlying the spur.

4. *Permanent Injunction.* Walton contends that the superior court erred in granting the Church's requested injunctive relief because the removal and abandonment of railroad tracks falls under the exclusive jurisdiction of the STB. Essentially, Walton argues that the remedy ordered by the superior court is preempted by the Interstate Commerce Commission Termination Act ("ICCTA") because it forces abandonment of the track and that the removal of railroad track falls under the exclusive jurisdiction of the STB. As explained below, Walton appears to be correct.

In its petition, the Church sought a permanent injunction preventing Walton "from any further occupation or use of the Church property north of the railroad track as it existed on November 23, 2016." The superior court agreed that the Church was entitled to an injunction enjoining Walton from trespassing on the Church's property and ordered Walton to remove the rail lines and appurtenances to the reconstructed spur track and restore it to its condition as it existed before Walton reentered the property in 2016. In its order, the court noted that the STB must authorize abandonment of a rail line, but "the STB has specifically determined that the North

Spur is not part of [Walton's] line of railroad, and thus, no STB authority was required before [Walton] abandoned the North spur."

As already recounted, the STB concluded that the spur/runaround track is ancillary track under 49 U.S.C. § 10906.[14] Because the spur track is ancillary, Walton "could have, and might have, removed it from the interstate rail system by its conduct and intent without needing to seek Board authority to do so." However, the STB deferred ruling on whether the track was removed from the interstate rail system such that it was no longer within the STB's exclusive jurisdiction pending the state court proceedings. If Walton was unsuccessful in establishing a property interest, the STB concluded it "may need to determine whether the runaround track remains part of the

[14] This Code section provides:

Notwithstanding section 10901 and subchapter II of chapter 113 of this title, and without the approval of the [STB], a rail carrier providing transportation subject to the jurisdiction of the [STB] under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks. The [STB] does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

interstate rail system." The STB held the matter in abeyance pending the state court proceedings.[15]

> Congress has placed the power to regulate railroads with the STB (formerly known as the Interstate Commerce Commission), and it has granted the STB broad jurisdiction over transportation by rail carriers. This power to regulate railroads derives from the Interstate Commerce Act, as modified by the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), which is among the most pervasive and comprehensive of federal regulatory schemes and has consequently presented recurring pre-emption questions from the time of its enactment.

(Citations and punctuation omitted.) *McCloud-Pue v. Atlanta Beltline Inc.*, 364 Ga. App. 789, 791-792 (874 SE2d 482) (2022).

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[15] [I]t is well settled that the interpretation of deeds and the determination of who owns good title to property are issues of state law that are outside of the expertise of the Board, [and] the most appropriate course of action at this point was to direct petitioners to state court to get the underlying property law issues resolved.

(Citations omitted.) *Central Kansas Railway, Ltd. Liability Co. — Abandonment Exemption — in Marion & Mcpherson Counties, Kansas*, No. AB-406 (SUB 6X), 2001 WL 489991, at *2 (May 8, 2001).

> [P]rior to the passage of ICCTA, state regulatory agencies had some authority over excepted [ancillary] track, [but] ICCTA added a new provision that specifically establishes the exclusivity of the Board's jurisdiction over "transportation by rail carriers." This jurisdiction includes exclusive jurisdiction over "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State." 49 U.S.C. 10501(b) (1) (2). When sections 10501 (b) and 10906 are read together, it is clear that Congress intended to occupy the field and preempt state jurisdiction over excepted track [under section 10906], even though Congress allowed rail carriers to construct, operate, and remove such facilities without [STB] approval. Therefore, Federal courts have uniformly held that state law tort claims . . . — which would interfere with rail carrier operations, including operations involving spur, industrial, team, switching, or side tracks — are preempted.

(Citation and footnote omitted.) *Joseph R. Fox — Petition for Declaratory Order*, No. FIN 35161, 2009 WL 1383503, at *3 (May 18, 2009).[16] In other words, "even a railroad track excepted under 49 U.S.C. § 10906 from the need to obtain [STB] authority for the construction, abandonment, or operation, is nevertheless subject to

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[16] "Recognizing that the STB is uniquely qualified to determine whether state law should be preempted by the ICCTA, courts have traditionally looked to STB decisions when analyzing a claim of preemption." (Citation and punctuation omitted.) *McCloud-Pue*, 364 Ga. App. at 792-793.

the Board's jurisdiction and is not subject to state or local regulation." (Citation and punctuation omitted.) *Wichita Terminal Assn. v. F.Y.G. Investments*, 305 P3d 13, 21 (Kan. Ct. App. May 31, 2013). Thus, while the STB has deemed the spur track at issue ancillary track excepted under § 10906 and thus STB approval is not required for abandonment, the track is still under the STB's jurisdiction. Moreover, given the STB's conclusion that it may need to determine whether the spur/runaround track remains part of the interstate rail system if Walton was unsuccessful in the superior court proceedings in establishing a property interest in the land underlying the track, a further determination by the STB may be necessary before Walton is required to permanently remove the track. At this juncture, we cannot say that the superior court's permanent injunction requiring removal of the track is appropriate, and we vacate that portion of the superior court's order.

Judgment affirmed in part and vacated in part. McFadden, P. J., and Markle, J., concur.

EXHIBIT C

Court of Appeals
of the State of Georgia

ATLANTA, November 16, 2023

The Court of Appeals hereby passes the following order

A23A1021. HARTWELL RAILROAD COMPANY et al v. HARTWELL FIRST UNITED METHODIST CHURCH, INC.

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.

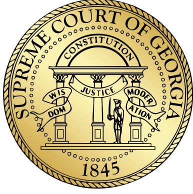
Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, November 16, 2023.

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen *, Clerk.*

EXHIBIT D



SUPREME COURT OF GEORGIA
Case No. S24C0436

May 14, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

HARTWELL RAILROAD COMPANY et al. v. HARTWELL FIRST UNITED METHODIST CHURCH, INC.

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Court of Appeals Case No. A23A1021

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

EXHIBIT E

GRADING CONTRACTORS
SC01

EXHIBIT F

EXHIBIT G