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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GORDON G. COOPER
CASE NO. 2020-CP-42-02447
APPELLATE CASE NO.: 2021-000516

Larry Bright,

Appellant,

versus

Heather D. Davis and Midfirst Bank,

Respondents

RECORD ON APPEAL

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Greer, SC 29650

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Attorney for Midfirst Bank

Attorneys for Heather D. Davis

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C.A. NO.: 2020-CP-42-02447
Larry Bright,)	
)	
Petitioner,)	
vs	)	ORDER DENYING PETITIONER'S RULE
	)	59(e) MOTION TO ALTER OR AMEND
Heather D. Davis and Midfirst Bank,	)	THE COURT'S ORDER DISMISSING THE
	)	CASE
Respondents.)	
)	
)	
)	

THIS MATTER COMES before me pursuant to Petitioner's Rule 59(e), *SCRCP* Motion to Alter or Amend the Court's Order filed April 12, 2021 dismissing Petitioner's Complaint pursuant to Rule 12(c), *SCRCP*. Petitioner timely filed his Motion for Reconsideration on April 21, 2021 along with several Affidavits in support of the Motion.

Based upon the Order of the Supreme Court (2020-03-004-01), I have elected not to hold a hearing for the Respondent's Motion because the Motion may be readily decided without further input from the lawyers.

A Rule 59(e) motion is necessary when the trial court overlooks an issue raised and presented, and fails to rule upon it. *See Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993).

Based upon a thorough review of Petitioner's Motion, the Affidavits submitted therewith, the Court's Order filed April 12, 2021, and the entire record herein, the Court denies Plaintiff's Motion to Alter or Amend pursuant to Rules 59(e), *SCRCP*.

A judgment on the pleadings shall be granted “where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff’s favor.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). *Home Builders Ass’n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

Plaintiff’s Motion to Alter or Amend pursuant to Rule 59(e), *SCRCP* fails to raise any issues overlooked by the Court that would cause the Court to reconsider its prior ruling to dismiss Petitioner’s case pursuant to Rule 12(c), *SCRCP*.

Therefore, it is ordered that Plaintiff’s Rule 59(e) Motion is hereby DENIED.

IT IS SO ORDERED.

[JUDGE’S SIGNATURE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Larry Bright VS Heather D Davis

Case Number: 2020CP4202447

Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2021-04-27 11:06:41 page 3 of 3

PETITIONER'S ALLEGATIONS

Petitioner seeks to reform the legal description to a deed recorded in the Spartanburg County Register of Deeds Office on December 11, 2001 in Deed Book 74-X at Page 343 (hereinafter "Deed") based upon a clerical error such that the legal description is amended to convey only "Part Lot 11/0.33 acres" as shown on a plat of a survey recorded in the Spartanburg County Register of Deeds Office on March 7, 2005 in Plat Book 157 at Page 582. Said deed was executed by the Petitioner at a closing that occurred on December 6, 2001 (Petition, ¶ 3, 5, 7; Petitioner's Motion for Dec. Judgment, 5, 7).

STANDARD OF REVIEW

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Rule 12(c), *SCRCP*. A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). *Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

LAW

South Carolina Ann. § 15-3-340 states that "[n]o action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the

plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.”

Furthermore, “[l]aches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” *Mid-State Trust, II v. Wright*, 323 S.C. 303, 474 S.E.2d 421 (1996); *Hallums v. Hallums*, 296 S.C. 195, 371 S.E.2d 525 (1988); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (Ct.App.1999). Laches is an equitable doctrine, which arises upon the failure to assert a known right. *All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C.*, 358 S.C. 209, 235, 595 S.E.2d 253, 267 (Ct.App.2004). Under the doctrine of laches, if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. *Muir* at 296, 519 S.E.2d at 599. The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums* at 199, 371 S.E.2d 525, 371 S.E.2d at 528; *All Saints* at 235, 595 S.E.2d at 267. *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004)

CONCLUSIONS OF LAW

Respondent’s Answer asserts the ten (10) year Statute of Limitations set forth in S. C. Code §15-3-340 (1976) and the equitable doctrine of laches as an absolute bar to Petitioner’s claim to amend the legal description of the Deed. The closing of the transaction which is the subject of the Petitioner’s Complaint took place on or about December 6, 2001. The Deed and the mortgage in favor of Respondent MidFirst Bank were recorded on or about December 11, 2001. The Petitioner institute this action on July 7, 2020, nearly nineteen (19) years after the closing. Therefore,

pursuant to the ten (10) year Statute of Limitations set forth in S. C. Code Ann. §15-3-340 (1976),
Petitioner's complaint is untimely and procedurally barred.

The equitable defense of laches also bars the claim given the Petitioner's delay in the enforcement of his rights. The Court finds that the Petitioner has failed to timely assert a known right or one that should have been discovered; that the delay in filing the Petition was unreasonable; and, that the Respondent would sustain prejudice if relief was granted since, *inter alia*, she has been paying ad valorem taxes for the property claimed by Petitioner since 2001.

Based upon the foregoing, IT IS HEREBY ORDERED, ADJUGED, and DECREED that the Plaintiff's Petition be dismissed with prejudice.

IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Spartanburg Common Pleas

Case Caption: Larry Bright VS Heather D Davis

Case Number: 2020CP4202447

Type: Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2021-04-12 14:58:59 page 5 of 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Larry Bright)
)
)
Plaintiff,)
)
vs.)
)
Heather D. Davis, Midfirst Bank)
)
)
Defendant)
)
_____)

**IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT**

CASE NO.: 2020-CP-42-02447

ORDER OF REFERENCE

Pursuant to Rule 53, this Court has been requested to direct a reference of all issues in this case to the Master-in-Equity, with the Master to make final decisions as to all issues. Any appeal from the decision of the Master-in-Equity would be to the South Carolina Supreme Court.

This is a non-jury action. Pursuant to Rule 53(b), SCRCF, this Court, upon application of any party or on its own motion, may direct a reference of all or any of the issues in the case whether of fact or law. I find that this case should be referred to the Master-in-Equity to make final decisions in this action, with any appeal from the Master's decision to be directly to the South Carolina Supreme Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this action is herewith referred to the Master-in-Equity. The Master-in-Equity shall make final decisions with respect to all matters in this action, and any appeal from the decision of the Master-in-Equity shall be directly to the South Carolina Supreme Court.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Spartanburg Common Pleas

Case Caption: Larry Bright VS Heather D Davis
Case Number: 2020CP4202447
Type: Order/Referred to Master or Special Referee

IT IS SO ORDERED

s/Amy W Cox, Spartanburg County Clerk of
Court by Maribel M Martinez

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010

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	C.A. NO.: 2020-CP-42-02447
Larry Bright,)	
	)	ORDER DENYING PLAINTIFF'S MOTION
Petitioner,	)	FOR DECLARATORY JUDGMENT AND
vs	)	ORDER DENYING DEFENDANT'S MOTION
	)	FOR JUDGMENT ON THE PLEADINGS
Heather D. Davis, Midfirst Bank,	)	AND/OR MOTION TO DISMISS AND
	)	MOTION TO DISQUALIFY COUNSEL
Respondents.)	
)	

This matter came before the Court on January 20, 2021 at a regularly scheduled term of Non-Jury Motions pursuant to the Plaintiff's Motion for Declaratory Judgment and the Motions of the Defendant, Heather D. Davis, for (1) Judgment on the Pleadings/Motion to Dismiss and (2) Motion to Disqualify Plaintiff's counsel. Present before the Court was Ronald Bruce, Attorney for the Plaintiff; Daniel R. Hughes, Attorney for the Defendant, Heather D. Davis, and Magalie A. Creech, Attorney for Midfirst Bank.

Based upon the pleadings and arguments of counsel, the Court denies Plaintiff's Motion for Declaratory Judgment and Defendant's Motion for Judgment on the Pleadings/Motion to Dismiss because discovery is incomplete and further inquiry into the facts is necessary to clarify application of the law.

As to Defendant's Motion to Disqualify Plaintiff's counsel, while the Court notes that Plaintiff's counsel may have to withdraw as counsel pursuant to the South Carolina Rules of Professional Conduct, the motion is denied as premature because discovery is ongoing.

Therefore, IT IS ORDERED that Plaintiff's Motion for Declaratory Judgment is DENIED, and the Motion of the Defendant, Heather D. Davis, for (1) Judgment on the Pleadings/Motion to Dismiss and (2) Motion to Disqualify Plaintiff's counsel, are hereby DENIED.

IT IS SO ORDERED.

Judge's Electronic Signature to Follow



Spartanburg Common Pleas

Case Caption: Larry Bright VS Heather D Davis

Case Number: 2020CP4202447

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2021-02-01 09:58:08 page 3 of 3

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Larry Bright)
)
)
Petitioner,)
)
vs.)
)
Heather D. Davis, Midfirst Bank)
)
)
Respondents)
)
_____)

IN THE COURT OF COMMON
PLEAS

CASE NO.: 2020-CP-42-02447

MOTION FOR
DECLARATORY JUDGEMENT
Non-Jury

Pursuant to Section 15-53-10 SCRPC, Rule 57, the Petitioner requests the Court to issue a Declaratory Judgement regarding the following:

THE PETITIONER, complaining of the Respondent above named, alleges that:

1. The Petitioner is a citizen and resident of Spartanburg County, South Carolina.
2. The Respondent is a citizen and resident of Spartanburg County, South Carolina.
3. The Respondent Midfirst Bank is federally chartered savings association doing business in the State of South Carolina.
4. The Respondent Midfirst Bank holds a first mortgage on the property.
5. On September 28, 2001, the Petitioner ordered a survey for Lot 11 J Allen Smith Property from Chapman Surveying Co. Inc., dividing said lot to retain a portion for his garden and another portion which was to be added to Lot 10. The remaining portion consisted of 0.33 acres, as shown on said survey, which was recorded March 7, 2005, in the Office of the Register of Deeds for Spartanburg County in Plat Book 157 at Page 582, a copy of which is attached hereto and made a part hereof and is referred to as Exhibit "A".
6. The plat was shown to the Respondent and fully reviewed by all parties
7. A closing was held in the office of the Petitioner's attorney on December 6, 2001. However, as a

I hereby certify that this Motion is meritorious and not intended merely for delay

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes

DANIEL R. HUGHES (SC Bar #72547)

457-B Pennsylvania Avenue

P. O. Box 449

Greer, SC 29652-0449

Telephone: (864) 334-2500

Facsimile: (864) 879-0149

ATTORNEYS FOR DEFENDANT

Dated: December 11, 2020

Greer, South Carolina

I hereby certify that this Motion is meritorious and not intended merely for delay

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes

DANIEL R. HUGHES (SC Bar #72547)

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Telephone: (864) 334-2500

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ATTORNEYS FOR DEFENDANT

Dated: December 11, 2020
Greer, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

Larry Bright,)
)
Petitioner,)
)
vs.)
)
Heather D. Davis, Midfirst Bank,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

AFFIDAVIT OF LARRY BRIGHT
2020-CP-42-02447

PERSONALLY appeared before me, **LARRY BRIGHT**, who after being duly sworn states the following:

HISTORY - At one point, I owned Lots 10, 11 and 12 fronting on Pine Ridge Road. I also owned several acres which connected to the said property on the northside. I purchased Lot 11 to use as a rental house. At the time of purchasing Lot 11, there was already a small garden in existence. The garden was later expanded onto part of my land to the north and on part of Lot 12 to the east. [See aerial photograph attached as Exhibit I.]

SALE TO HEATHER D. DAVIS - In 2001, Heather D. Davis asked if I would sell her the house on Lot 11. She was young and pregnant with her first child. I agreed to sell her the front portion of the lot with the home, but told her that I would keep the back portion which was our garden. I also told her that I would take a portion of the front part to allow better access for my daughter who lived on the west side of the lot. I had a plat prepared which outlined my agreement. She agreed to this. [Said plat is attached as Exhibit II.]

SALE - I sold 0.33 acres to Heather D. Davis, but learned in the year 2020 that an error had been made in the deed and that the entire lot had been inadvertently conveyed.

USE OF LAND - When the deed was conveyed to Heather D. Davis in 2001, I planted a row of Leyland Cypress Trees on the property line which separated the 0.33 acres from the back part of the lot. After planting the Leyland Cypress Trees, my son-in-law helped me build a

privacy fence which can be seen in the photograph. [See pictures attached as Exhibit III.] The Leyland Cypress trees can also be seen in the aerial photograph attached as Exhibit I.

PATHWAY FOR MY DAUGHTER – At the time the deed to Ms. Davis was signed, my daughter and her husband erected a privacy fence on the west side of the 0.33 acres of land and used the triangular piece as access to the garden. (This was done because the back part of the lot had unusual terrain and this entrance way was necessary to make gardening ventures easier and safer. [Pictures of the privacy fence and gates which were erected by my daughter are attached as Exhibit IV.]

GARDEN – The northern part of Lot 11 has been used as a garden continuously since 2001. In the spring, we planted squash, green beans, corn, okra, potatoes, tomatoes, and spring onions. In the summer, we harvested blackberries. In the fall, we planted crowder peas, turnips and collard greens. The harvest of the garden was shared with neighbors and friends.

MAINTAINING GARDEN – To maintain the garden, I purchased a John Deere Tractor with attachments which assisted with plowing. [See Exhibit V.] I also installed an irrigation system which helped with the watering during periods of drought.

NOTICE – Heather D. Davis was always aware that we used the garden. She even received part of the produce. It was not until we learned of the error and sought to get a corrective deed that the problems arose. At that time, Heather D. Davis posted No Trespassing signs for the first time. [See Letter attached as Exhibit VI.]



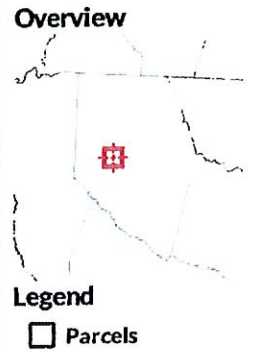
LARRY BRIGHT

SWORN to before me this 10
day of April, 2021


Notary Public for South Carolina

My Commission Expires: _____





Parcel ID	9-04-13-037.00	Alternate ID	164111	Owner Address	WORTKOETTER BRYAN B & WORTKOETTER JONI B
Sec/Twp/Rng	n/a	Class	Qualified Owner Occupied Residential		123 PINE RIDGE DR
Property Address	123 PINE RIDGE DR	Improved	Improved		GREER, SC 29651
	GREER	Acreage	n/a		

District n/a
Brief Tax Description LOT 10 J ALLEN SMITH PROP PLAT 2 & PARCEL A BRYAN WORTKOETTER SURVEY PB 56-652 PB 157-583 DB 119B-37

(Note: Not to be used on legal documents)

Date created: 4/20/2021
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Developed by  Schneider GEOSPATIAL

PLAT-157PG582

LARRY BRIGHT
40B - 339

S 81°32'34" E
24.83'

S 81°17'09" E

IPO
1" OT

IPO
1" OT 75.81'

IPO
1" OT

PART LOT 11

THIS PART IS TO BE COMBINED
WITH AND MADE A PART OF
TAX MAP 9-04-13-39



LOT 10
TAX MAP 9-04-13-37
BRYAN WORTKOETTER
70S - 648

THIS PART IS TO BE COMBINED
WITH AND MADE A PART OF
TAX MAP 9-04-13-37

TAX
LARRY
70S

PART LOT 11
0.33 AC.

PLT-2005-11193
Recorded 1 Pages on 3/12
Recording Fee: \$10.00 Doc
Office of Register of Deeds
Stephen Ford, Register



777' +/-
TO LOCUST

N 75°35'59" W
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N 13°32'30" E

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N 75°50'15" W

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N 79°48'42" W
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PINE RIDGE ROAD

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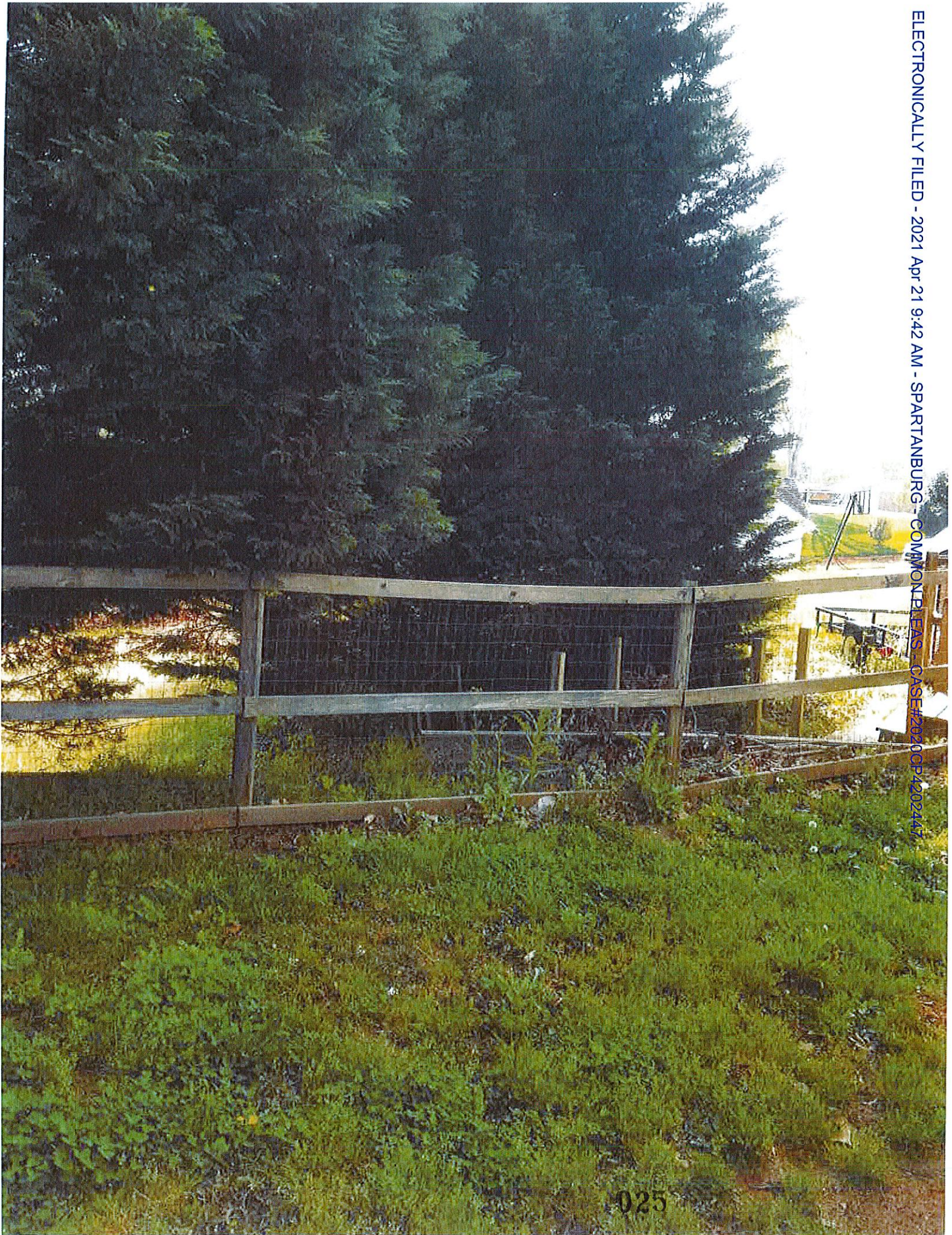
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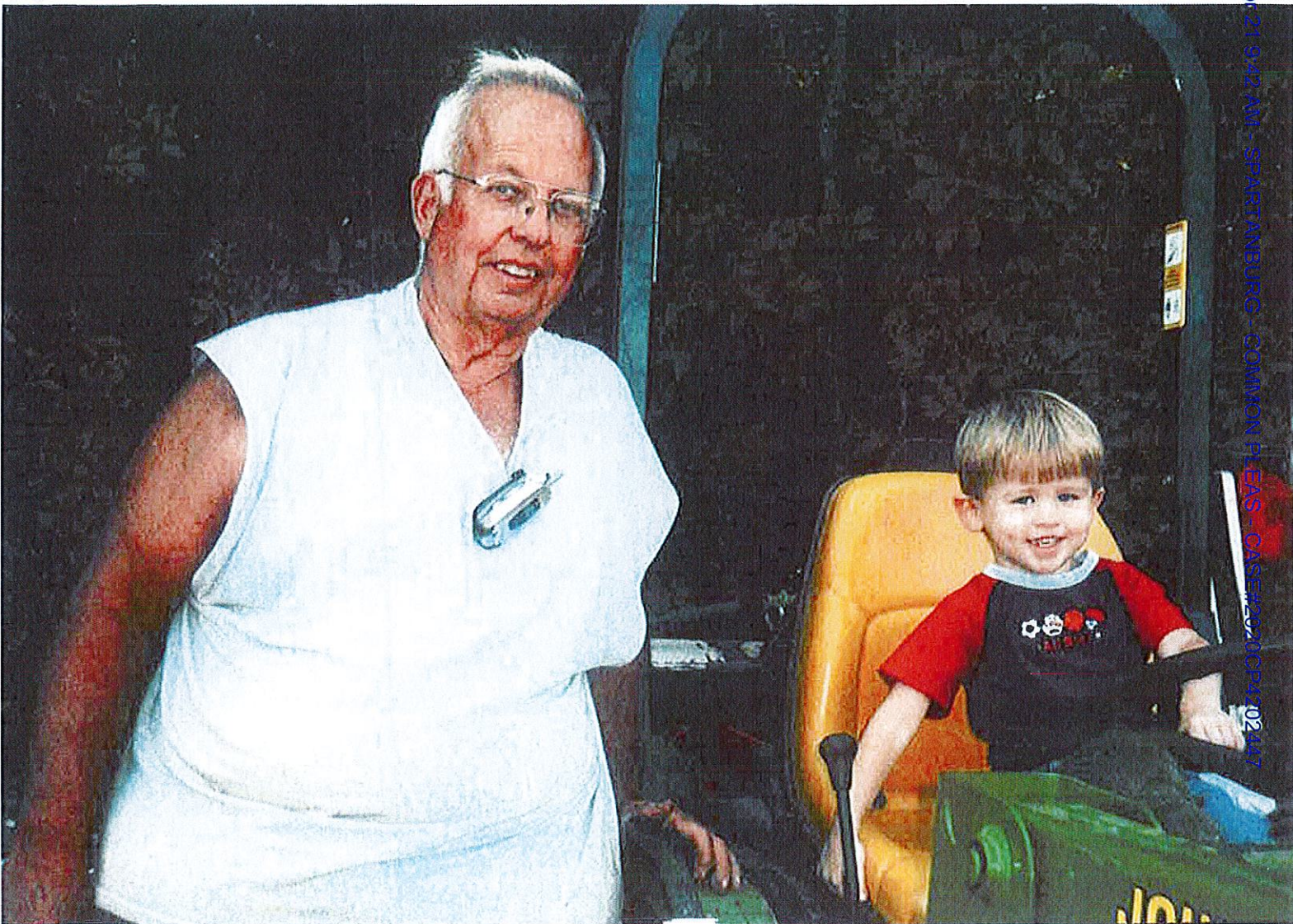
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ELECTRONICALLY FILED - 2021 Apr 21 9:42 AM - SPARTANBURG - COMMON PLEAS - CASE# 2020CP4202447



Janine Riding

From: Ronald Bruce <rbruce@rbrucelaw.com> on behalf of Ronald Bruce
Sent: Friday, June 26, 2020 7:25 AM
To: Janine Riding
Subject: Fwd: Lot 11

Sent from my iPhone

Begin forwarded message:

From: Ronald Bruce <rbruce@rbrucelaw.com>
Date: June 26, 2020 at 5:25:22 AM EDT
To: heatherpacheco25@charter.net
Subject: Re: Lot 11

Please have your attorney contact me

Sent from my iPhone

On Jun 25, 2020, at 7:59 PM, heatherpacheco25@charter.net wrote:

Mr. Bruce,

Please inform your client Larry Bright and family to stay off of my property on 125 Pine Ridge Drive. They were on the property tonight 6/25/20 at 7:45 pm with a tractor. I am now placing a no trespassing sign on the property.

I am giving you a formal notice before I take action.

My attorney suggest I speak with you on this matter before I get local police involved.

This is my land and they are fully aware as I have refused to sign it over to them. This does not give them the right to be on my tax paying property.

Please call me to discuss if needed. 864-444-0938

Heather Davis

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
 Larry Bright,)
)
 Petitioner,)
)
 vs.) AFFIDAVIT OF JONI BRIGHT WORTKOETTER
) 2020-CP-42-02447
)
 Heather D. Davis, Midfirst Bank,)
)
 Respondents.)
)

PERSONALLY appeared before me, **JONI BRIGHT WORTKOETTER**, who after being duly sworn states the following:

My husband and I own the house and lot on the west side of Heather D. Davis. My father, Larry Bright, conveyed the land to use in May 1997. We have lived their continuously.

GARDEN – In 1999, my father, and all members of my family, began the garden venture. The vast majority of our garden is located on the rear of Lot 11 (behind Ms. Davis’ house), part is on Lot 12 which is owned by my son, and part is on my father’s land located to the north. [Reference is made to aerial photograph attached as Exhibit I.]

SALE TO HEATHER D. DAVIS – Ms. Davis wanted to buy the house and lot from my dad. My dad agreed to sell it to her, but it was on the condition that she only got the front portion and we would keep the back portion for our garden. It was also explained that a portion of Ms. Davis’ lot would be carved out and given to us so that we would have easier access to the garden. A plat was prepared and the triangular portion reserved for us for the pathway is shown on the plat. [See plat attached as Exhibit II.]

PRIVACY FENCE – After the sale to Ms. Davis, my husband and I erected a privacy fence and gate on the triangular portion reserved by my dad. [See pictures attached as Exhibit III.]

CONTINUOUS USE OF GARDEN – Since the sale to Ms. Davis, our family has continuously used the back portion of the lot for our garden. We always had a spring garden, a summer garden, and a fall garden. The harvest from the garden was shared with our neighbors and friends, and some was even given to Ms. Davis.

FAMILY VENTURE – The family used the garden together. My children assisted and enjoyed riding on my dad’s tractor. Particularly when the land was being prepared for the next planting. [See picture attached as Exhibit IV.]

LEARNING OF ERROR – In the spring of 2020, my dad learned that the legal description on the deed had inadvertently conveyed the entire tract and not the part shown on the survey which had been prepared. An effort was made to get a corrective deed, and at that time, Heather D. Davis refused to sign the corrective deed, she told us she owned it all and she put up No Trespassing signs. [See copy of letter attached as Exhibit V.]

Joni Bright Wortkoetter
JONI BRIGHT WORTKOETTER

SWORN to before me this 20
day of April, 2021

[Signature]
Notary Public for South Carolina

My Commission Expires: _____





Overview



Legend

 Parcels

Parcel ID	9-04-13-037.00	Alternate ID	164111	Owner Address	WORTKOETTER BRYAN B & WORTKOETTER JONI B 123 PINE RIDGE DR GREER, SC 29651
Sec/Twp/Rng	n/a	Class	Qualified Owner Occupied Residential		
Property Address	123 PINE RIDGE DR GREER	Improved	Improved		
District	n/a	Acreage	n/a		
Brief Tax Description	LOT 10 J ALLEN SMITH PROP PLAT 2 & PARCEL A BRYAN WORTKOETTER SURVEY PB 56-652 PB 157-583 DB 119B-37				
	(Note: Not to be used on legal documents)				

Date created: 4/20/2021
Last Data Uploaded: 4/20/2021 7:09:55 AM

Developed by  **Schneider**
GEO SPATIAL

PLAT-157PG582

LARRY BRIGHT
40B - 339

S 81°32'34" E
24.83'

S 81°17'09" E

IPO
1" OT

IPO
1" OT

75.81'

IPO
1" OT

PART LOT 11

168.89'

W 15°22'08" S
65.47'

THIS PART IS TO BE COMBINED
WITH AND MADE A PART OF
TAX MAP 9-04-13-39



LOT 10
TAX MAP 9-04-13-37
BRYAN WORTKOETTER
705 - 648

N 8°12'57" E

IPP
14.50'

S 76°23'12" E

86.07'

IPP

PART LOT 11
0.33 AC.

155.50'

96.36'

THIS PART IS TO BE COMBINED
WITH AND MADE A PART OF
TAX MAP 9-04-13-37

PLT-2005-11193
Recorded 1 Pages on 3/27/2005
Recording Fee: \$10.00
Office of Register of Deeds
Stephen Ford, Register



156.20'

18.8'

27.4'

47.9'

CAR-PORT

CONC. DRIVE

HOUSE

14.4'

13.6'

19.9'

N 13°32'30" E

70.3'

72.0'

W 15°22'51" S

96.36'

777' +/-
TO LOCUST

N 75°35'59" W
100.63'

IPO
1" OT

100.05'

N 75°50'15" W

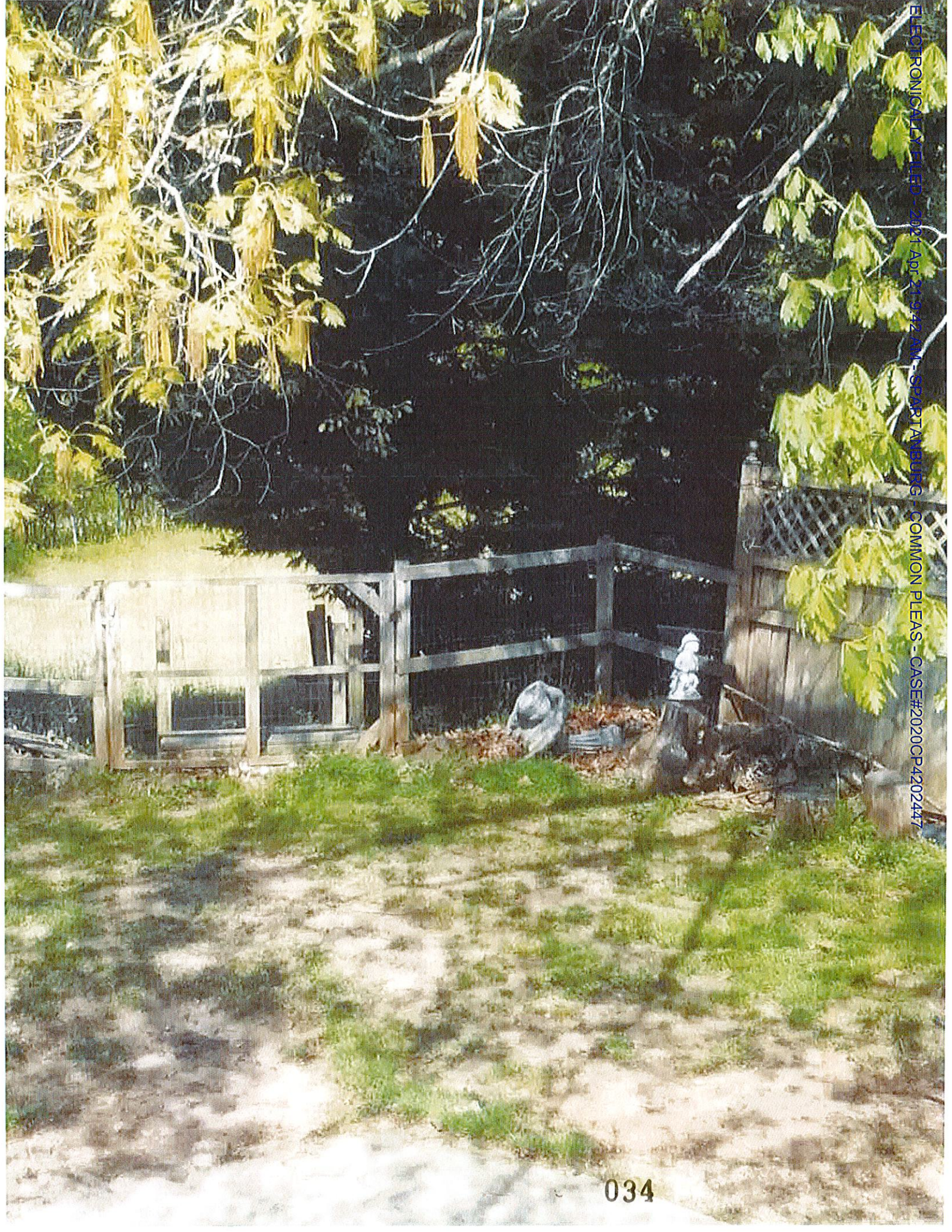
IPO
1" OT

N 79°48'42" W
99.96'

PINE RIDGE ROAD

033

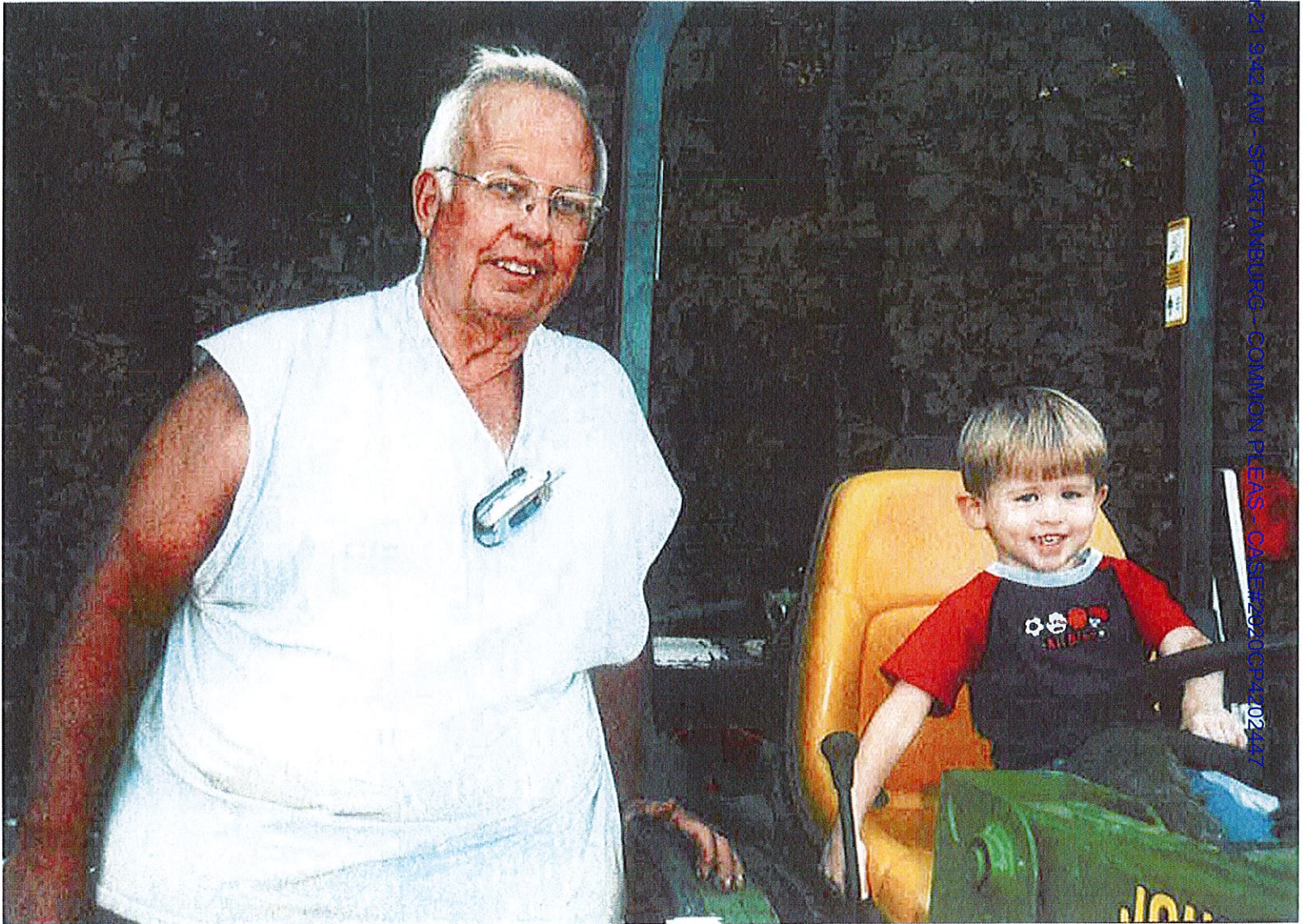
ELECTRONICALLY FILED 2/25/2021 AT 9:42 AM - SPARTANBURG - COMMON PLEAS
TAX MAP 705-648 CASE#2020CP42057





035





Janine Riding

From: Ronald Bruce <rbruce@rbrucelaw.com> on behalf of Ronald Bruce
Sent: Friday, June 26, 2020 7:25 AM
To: Janine Riding
Subject: Fwd: Lot 11

Sent from my iPhone

Begin forwarded message:

From: Ronald Bruce <rbruce@rbrucelaw.com>
Date: June 26, 2020 at 5:25:22 AM EDT
To: heatherpacheco25@charter.net
Subject: Re: Lot 11

Please have your attorney contact me

Sent from my iPhone

On Jun 25, 2020, at 7:59 PM, heatherpacheco25@charter.net wrote:

Mr. Bruce,

Please inform your client Larry Bright and family to stay off of my property on 125 Pine Ridge Drive. They were on the property tonight 6/25/20 at 7:45 pm with a tractor. I am now placing a no trespassing sign on the property.

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My attorney suggest I speak with you on this matter before I get local police involved.

This is my land and they are fully aware as I have refused to sign it over to them. This does not give them the right to be on my tax paying property.

Please call me to discuss if needed. 864-444-0938

Heather Davis

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Larry Bright,)
Petitioner,)
vs.) AFFIDAVIT OF BRYAN ETHAN WORTKOETTER
2020-CP-42-02447
Heather D. Davis, Midfirst Bank,)
Respondents.)

PERSONALLY appeared before me, **BRYAN ETHAN WORTKOETTER**, who after being duly sworn states the following:

HISTORY - My grandfather is Larry Bright. My mother is Joni Wortkoetter.

GARDEN – As a young child, I participated in the family garden which was located behind the house of Heather D. Davis. One of the first jobs that I remember was “picking potatoes”. Our family worked as a group and we had many fond memories.

SHARING HARVEST – A lot of the produce that we got from the garden was shared with family, neighbors and friends. We also canned a lot of the produce. Even at a young age, we participated in canning tomatoes.

ADJOINING LOT – I was deeded Lot 12 which is on the east side of the house and lot of Ms. Davis. The vast majority of our garden is located on the rear of Lot 11 (behind Ms. Davis’ house), part is on Lot 12 which I own and part is on my grandfather’s land located to the north.

[Reference is made to aerial photograph attached as Exhibit I.]

CORRECTIVE DEED – When we learned of the error in the deed to Ms. Davis, our family attempted to get a corrective deed signed by Ms. Davis, but she refused to sign. It was at that time she posted No Trespassing signs and this litigation ensued.


BRYAN ETHAN WORTKOETTER


SWORN to before me this 21 day of April, 2021
Notary Public for South Carolina
My Commission Expires: _____





Overview



Legend

- Parcels

Parcel ID	9-04-13-037.00	Alternate ID	164111	Owner Address	WORTKOETTER BRYAN B & WORTKOETTER JONI B 123 PINE RIDGE DR GREER, SC 29651
Sec/Twp/Rng	n/a	Class	Qualified Owner Occupied Residential Improved		
Property Address	123 PINE RIDGE DR GREER	Acreage	n/a		
District	n/a				
Brief Tax Description	LOT 10 J ALLEN SMITH PROP PLAT 2 & PARCEL A BRYAN WORTKOETTER SURVEY PB 56-652 PB 157-583 DB 119B-37				
	(Note: Not to be used on legal documents)				

Date created: 4/20/2021
Last Data Uploaded: 4/20/2021 7:09:55 AM

Developed by  **Schneider**
GEOSPATIAL

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This is my land and they are fully aware as I have refused to sign it over to them. This does not give them the right to be on my tax paying property.

Please call me to discuss if needed. 864-444-0938

Heather Davis

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON
PLEAS

CASE NO.: 2020-CP-42-

Larry Bright

Petitioner,

vs.

Heather D. Davis

Respondent

PETITION
Non-Jury

THE PETITIONER, complaining of the Respondent above named, alleges that:

1. The Petitioner is a citizen and resident of Spartanburg County, South Carolina.
2. The Respondent is a citizen and resident of Spartanburg County, South Carolina.
3. On September 28, 2001, the Petitioner ordered a survey for Lot 11 J Allen Smith Property from Chapman Surveying Co. Inc., dividing said lot to retain a portion for his garden and another portion which was to be added to Lot 10. The remaining portion consisted of 0.33 acres, as shown on said survey, which was recorded March 7, 2005, in the Office of the Register of Deeds for Spartanburg County in Plat Book 157 at Page 582, a copy of which is attached hereto and made a part hereof and is referred to as Exhibit "A".
4. The plat was shown to the Respondent and fully reviewed by all parties
5. A closing was held in the office of the Petitioner's attorney on December 6, 2001. However, as a result of clerical error, the entire lot was conveyed to the Respondent. A copy of the deed is attached hereto and made a part hereof and is shown as Exhibit "B". The TMS number on the deed is correct.

6. The erroneous description was not discovered until the Petitioner attempted to convey Lot 12 and the small portion of Lot 11 shown on the above-referenced plat.

7. For more than nineteen years, the Petitioner has farmed this small portion of property without any protest from the Respondent.

THEREFORE, the Petitioner asks this Court to reform said deed description to comply with the recorded survey.

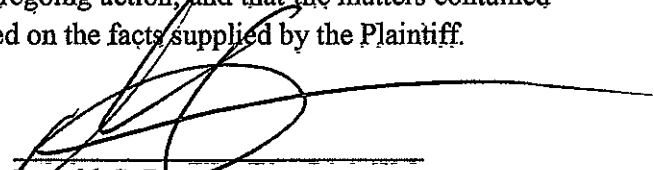
s/Ronald G. Bruce
Attorney for Plaintiff
P. O Box 450
Greer, SC 29652
(864) 877-0207
rbruce@rbrucelaw.com

Greer, South Carolina
July 22, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

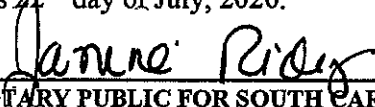
VERIFICATION

PERSONALLY appeared before me, Ronald G. Bruce, who being first duly sworn, deposes and says: That he is the attorney in the foregoing action; and that the matters contained therein are to the best of his knowledge true as based on the facts supplied by the Plaintiff.

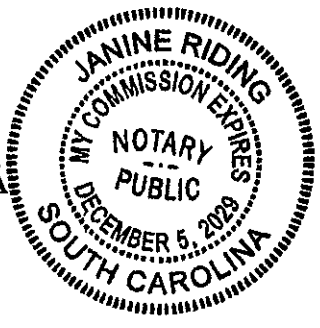


Ronald G. Bruce
ATTORNEY FOR PLAINTIFF
P. O. Box 450
Greer, SC 29652

SWORN TO and subscribed before me
this 22nd day of July, 2020.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 12/05/2019



STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Larry Bright

Petitioner,

vs.

Heather D. Davis, Midfirst Bank

Respondents

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-42-02447

AMENDED PETITION FOR DECLARATORY JUDGEMENT

Non-Jury

Amended per non-jury

Amended as to joining an essential party

Pursuant to Section 15-53-10 SCRPC, Rule 57, the Petitioner requests the Court to issue a Declaratory Judgement regarding the following:

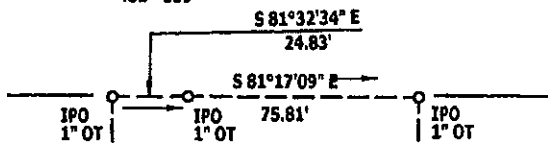
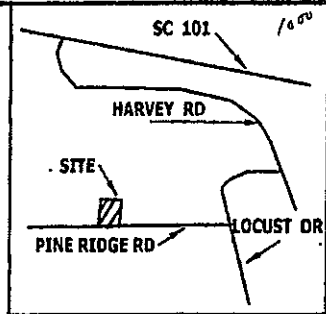
THE PETITIONER, complaining of the Respondent above named, alleges that:

1. The Petitioner is a citizen and resident of Spartanburg County, South Carolina.
2. The Respondent is a citizen and resident of Spartanburg County, South Carolina.
3. The Respondent Midfirst Bank is federally chartered savings association doing business in the State of South Carolina.
4. The Respondent Midfirst Bank holds a first mortgage on the property.
5. On September 28, 2001, the Petitioner ordered a survey for Lot 11 J Allen Smith Property from Chapman Surveying Co. Inc., dividing said lot to retain a portion for his garden and another portion which was to be added to Lot 10. The remaining portion consisted of 0.33 acres, as shown on said survey, which was recorded March 7, 2005, in the Office of the Register of Deeds for Spartanburg County in Plat Book 157 at Page 582, a copy of which is attached hereto and made a part hereof and is referred to as Exhibit "A".
6. The plat was shown to the Respondent and fully reviewed by all parties
7. A closing was held in the office of the Petitioner's attorney on December 6, 2001. However, as a

Exhibit "A"

PLAT-157PG582

LARRY BRIGHT
40B - 339



166.89'
77.59'
152.89 S

THIS PART IS TO BE COMBINED WITH AND MADE A PART OF TAX MAP 9-04-13-39

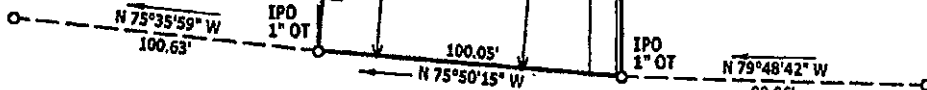
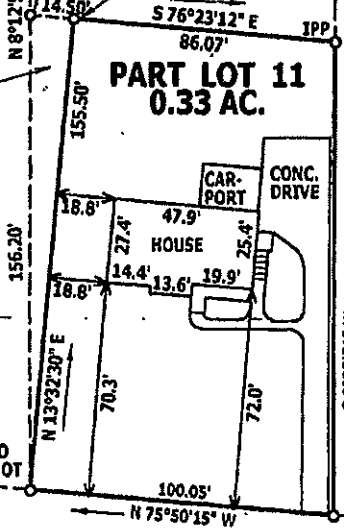
LOT 10
TAX MAP 9-04-13-37
BRYAN WORTKOETTER
70S - 648

LOT 12
TAX MAP 9-04-13-39
LARRY BRIGHT
70S - 644

THIS PART IS TO BE COMBINED WITH AND MADE A PART OF TAX MAP 9-04-13-37

PART LOT 11
0.33 AC.

PLT-2005-11193
Recorded 1 Pages on 3/7/2005 10:52:09 AM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



PINE RIDGE ROAD
50' R/W

To Whom It may Concern: Plat as shown is exempt from the Subdivision approval process. It does not guarantee the right of future permits or future subdivision. All other requirements of the Spartanburg County Unified Land Management Ordinance (especially Table 3) and requirements of the Storm Water Management and Sediment Reduction Regulations (7497) of date must be met.

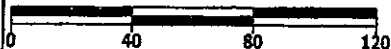
MAR 07 2005

REF:
PART TAX MAP 9-4-13-38
DEED 70S - 648
PLAT 56 - 652

NOTE:
1- ALL IPP ARE 1/2" REBARS
2- THIS PROPERTY IS ALSO KNOWN AS PART OF LOT 11 OF J. ALLEN SMITH PROPERTY PB 56 - 652

Ernest J. Price

SURVEY FOR
JONATHAN HANNA & HEATHER DAVIS
STATE OF SOUTH CAROLINA SPARTANBURG COUNTY
SEPTEMBER 28, 2001



SCALE 1" = 40'
CHAPMAN SURVEYING CO. INC.
P.O. BOX 104 TAYLORS S.C. 29687
(864) 322-7610

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

048

Mack L. Chapman Jr.
MACK L. CHAPMAN JR. PLS 10034

JOB NO. 6163A

5. The allegations of Paragraph 7 are incomplete, and therefore said allegations are denied. There are no further allegations made in the Amended Petition and there is no prayer for relief attached to the Petition.

FOR A SECOND DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

6. All allegations of the First Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

7. Pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*, Respondent asserts that the Petitioner has failed to state facts sufficient to constitute a cause of action under the laws of South Carolina and the United States of America, and therefore, request for this Court to dismiss this case in its entirety.

FOR A THIRD DEFENSE

(Statute of Limitations)

8. All allegations of the First Defense and Second Defense are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

9. Petitioner's action is untimely pursuant to the applicable statute of limitations.

10. Therefore, Petitioner's Complaint should be dismissed with prejudice.

FOR A FOURTH DEFENSE

(Laches, Unclean Hands, Estoppel, Waiver, and Release)

11. All allegations of the First Defense, Second, and Third Defenses are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

12. Petitioner's claims are barred, in whole or in part, by the doctrine of laches, unclean hands, estoppel, waiver, and release.

FOR A FIFTH DEFENSE

13. All allegations of the First Defense, Second, Third, and Fourth Defenses are incorporated herein and made a part hereof by reference where not inconsistent with this defense.

14. The Petitioner's attorney performed the real estate closing between the Petitioner and Respondent and he is a necessary witness to the facts alleged. Therefore, he is precluded from prosecuting this action on behalf of Petitioner.

15. Respondent reserves the right to supplement her Answer to the allegations and add any other defenses as they become known through discovery or investigation.

WHEREFORE, Respondent, having fully answered the Petition, prays as follows:

1. That this Court dismiss the Petition with prejudice;
2. That this Court award Respondent all expenses incurred by Respondent necessary to protect her interest in defending this claim; and,
3. For such and other further relief as this Court may deem just and equitable.

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes
DANIEL R. HUGHES (SC Bar #72547)
457-B Pennsylvania Avenue
P. O. Box 449
Greer, SC 29652-0449
Telephone: (864) 334-2500
Facsimile: (864) 879-0149
ATTORNEYS FOR RESPONDENT

Dated: November 19, 2020
Greer, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GORDON G. COOPER
CASE NO. 2020-CP-42-02447

RECEIVED

May 17 2021

SC Court of Appeals

Larry Bright,

versus


Appellant,

Heather D. Davis and Midfirst Bank,

Respondent

NOTICE OF INTENT TO APPEAL

The Appellant appeals from the Final Order of the Honorable Gordon G. Cooper dated April 12, 2021 and 59(e) Order dated April 27, 2021.


Richard H. Rhodes, Esquire
William H. Rhodes, Esquire
Burts, Turner & Rhodes
260 North Church Street
Spartanburg, SC 29306
(864) 585-8166

Ronald G. Bruce, Esquire
P.O. Box 450
Greer, SC 29650
(864) 877-0207

Attorneys for Appellant

May 12, 2021

Other Counsel of Record:

Daniel R. Hughes, Esquire
P.O. Box 449
Greer, SC 29652

Magalie A. Creech, Esquire
4000 Faber Place Drive, Suite 450
North Charleston SC 29405

Ms. Amy Cox
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg SC 29304

RECEIVED

Sep 24 2021

SC Court of Appeals

CERTIFICATE OF COUNSEL

This is to certify that the Record on Appeal contains all material proposed to be included by both parties and no other material has been added as required by Rule 210(G).



Richard H. Rhodes
William H. Rhodes
Ronald G. Bruce
Attorneys for Appellant

Date: September 24, 2021