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**Dec 20 2022**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MIKEL R. SCARBOROUGH, Master in Equity

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Appellate Case No. 2019-001289

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Raven's Run Homeowners Association, Inc., Appellant-Respondent,

v.

Crown Point Association, Inc., Lois K. Novak as Trustee of the Lois K. Novak Living Trust dated 10/14/2013; Laurie T. Herron and Mark D. Herron; James B. Kubu and Melissa F. Kubu; Leila June Johnson; Danny Ta and Anita McCauley; Robert E. Luby, Jr., and Barbara Luby; Joshua D. Coonce; Lucius Roy Junevicius; Katherine Kinlaw; Thomas K. Kuyk and Melissa Ward; Roland Franklin Wooten, III, and Teresa Key Wooten; Michael P. Horvath; Timothy E. Moylan and Karen G. Moylan; Carl A. Counasse and Maureen Counasse; David A. Frielinghaus and Holly C. Frielinghaus; Christopher S. Finley and Holly M. Finley; Shirley D. Springer a/k/a Shirly Deanna Springer; Deirdre C. Knight; Robert Shane Johnson; Eric R. Sigman; Lamar R. Graves, Jr. and Terry W. Graves; Mary Elizabeth Gladdedn; Philip Wallace and Naomi Grad; Thomas Edwin Davis and Luis Miguel Gonzalez Melchor; John R. Funkhouser and Jennifer L. Funkhouser; Gregory S. Cooper and Jane B. Cooper; Frank C. Jones, Jr. and Elise Ubele Jones; William P. Topping and Kris B. Topping; LaRhonda S. Ptichko; Kenneth L. Tully and Anna J. Tully, Defendants,

Of Whom James B. Kubu and Melissa F. Kubu and Leila June Johnson are the Respondents.

And Katherine Kinlaw is the Respondent-Appellant.

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**RETURN TO PETITION FOR REHEARING OF APPELLANT/RESPONDENT BY  
KATHERINE KINLAW RESPONDENT/APPELLANT**

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## ARGUMENT

This matter has been briefed and argued on the trial level. This matter has been briefed and argued on the appellate level. All those arguments and facts will not be repeated here. However, this return shall demonstrate that this court has not “overlooked or misapprehended” any points. Rule 221(a), SCACR.

### **I. Kinlaw Has Demonstrated that Raven’s Run Has No Right to Dictate to Her What She Can Do with the Disputed Strip**

Respondent/Appellant Katherine Kinlaw (Kinlaw) throughout this process has argued Appellant/Respondent Raven’s Run Homeowners Association, Inc., (Raven’s Run) does not have a sufficient property interest in the disputed strip such that they can exclude her from using or maintaining it. This court’s decision reflects that. Kinlaw has the right to such a determination. The disputed strip is dedicated to the use of Crown Pointe (the homeowners association of which Kinlaw is a member) or the public. It is deeded to Crown Pointe. Raven’s Run asserted ownership of the strip, (R. p. 103, paragraph C), and Kinlaw disputed this (R. p. 104, paragraph 5, p. 105 paragraph 11). She specifically asks for the property rights to be determined (R. p. 106).

Kinlaw has property that abuts the disputed strips of land. Kinlaw is a member of Crown Pointe Subdivision with voting rights in that property owners association. Kinlaw has no voting rights in Raven’s Run. Raven’s Run seeks to exclude Kinlaw from the disputed strip. Crown Pointe does not. Raven’s Run seeks to deny Kinlaw a personal or property right: the use of the strip. Raven’s Run brought this lawsuit to exclude Kinlaw from using the strip. Kinlaw has standing. Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct.App. 2001).

The settlement agreement between Crown Point and Raven's Run is clear that the ownership rights of the respective parties were to be determined by the ongoing lawsuit:

WHEREAS, Crown Pointe denies any and all liability arising out of the allegations of the Complaint and Amended Complaint filed by Releasor in the above-referenced action, and in particular part does not make any admission as to Releasor's ownership of, rights to, or control over any property behind and abutting Lots 37E through 66E of Crown Pointe and strictly denies any liability of Crown Pointe arising out of the alleged conduct or actions of its individual homeowners;

(R. p. 354)

Crown Pointe keeps open the issue of ownership. The agreement further states:

It is the intent and agreement of the Parties that RELEASOR'S use of any public rights-of-way and access easements of Crown Pointe is contingent on a final court Order determining that Raven's Run holds an ownership interest in the property behind Lots 37E through 66E of Crown Pointe and abutting the drainage lake. A "final" court Order is an unappealed Order of a Court of South Carolina definitively determining and describing the existence and extent of any Raven's Run ownership rights or property interests in the area behind Lots 37E through 66E of Crown Pointe.

(R. p. 355)

Additionally, Raven's Run has never raised this argument previously, and thus it cannot be considered in this motion.

## **II. The 1985 Deed Does Not Convey The Disputed Strip**

### **A. The Disputed Strip is not Within the Deed Description**

Raven's Run asserted for the first time in their motion for reconsideration at the trial level that a deed at Book E150, page 875 (R. pp. 268-271) should be taken into account and was not considered in the Masters original ruling. At the appellate level, they now make this argument for the first time again in the form of a motion for reconsideration. Raven's Run did not argue on appeal

that the 1985 deed conveyed the disputed strip. This issue is not preserved, but, as Kinlaw did in her initial briefs, Kinlaw will address that claim out of caution.

On reconsideration, Raven's Run relied on the following paragraph in the deed at Book E150, page 875:

2. "ALONG the southern right-of-way of Rifle Range Road two irregular strips of land situate to the east and west of the intersection of Omni Boulevard and Rifle Range Road." (R. p. 268)

This deed references Plat Book BG 52, 53 and 54 in the paragraph that precedes these two (R. p. 268).

Specifically, because this deed predates the other documents in the previous Order, Raven's Run argued that the strip of land in dispute in this litigation was conveyed to it by paragraph 2. The disputed strip of land was not conveyed by deed at Book E150, page 875 to Raven's Run.

The language "ALONG the southern right-of-way of Rifle Range Road two irregular strips of land situate to the east and west of the intersection of Omni Boulevard and Rifle Range Road" does not refer to the disputed strips of land. Rather, referring to Plat BG 52 (R. p. 342), on the southern boundary of Rifle Range Road there are in fact two irregular strips: One on the east 294.46 feet in length and one to the west 191+147.44. Those are contained along Rifle Range Road. They are irregular. They do not extend further inland. At most, this is the land conveyed by deed at Book E150, page 875.

This 1985 deed only conveys that what is described within the deed. It specifically deeds only what is "below described" and the disputed strip is not described. (R. p. 268.) There is a detailed description of what is conveyed within the deed.

**B. Raven's Run's Reliance on Tax Maps is Misplaced**

Any reference to a tax map number does not override the express description in the deeds and the plats. Generally, tax maps are derived from deeds and plats. Deeds and plats are not derived from tax maps. The Charleston County tax maps have a disclaimer that states:

The layers contained in the map service are for information purposes only. The Charleston County makes no warranty, express or implied, nor any guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the information provided. The County explicitly disclaims all representations and warranties. The reader agrees to hold harmless the Charleston County for any cause of action and costs associated with any causes of action which may arise as a consequence of the County providing this information. (R. p. 357)

This is not a case where there is no plat reference and where lots are specifically referred to by tax map number. Land on the Crown Pointe side of the water is not shown on BL-57 (R. p. 120), thus that land is not conveyed. There is no tax map in the record contemporaneous with the 1985 deed or the 1987 deed. There is only a passing reference to a tax map number which is not at all descriptive and does not show the intent of the parties. There are clear descriptions in the deeds and there are plats referenced. The deeds and the plats referenced on the deeds control. The 1985 deed describes exactly what it conveys. Therefore, this case is distinguishable from Millvale Plantation v. Carrison, 401 S.C. 166, 736 S.E.2d 286 (Ct. App. 2012) in this regard.

**III. The Court did not Err in Relying on the 2001 Quitclaim Deeds and Plat BK-2**

The subsequent quit claim deeds of 2001 shows that of RAC conveys everything on the plat pages of BK-2 (R. pp. 345-347) to Crown Pointe:

Abstractor's Note: It the intention of this deed to convey all property set forth plat pages, saving and excepting all platted lots and public rights of way depicted thereon." Deed H394, page 181 (R. pp. 8-85; R. P. 332)

This undoubtably includes the portion of the 60 foot easement that extends 40 feet into the lake. The language is clear, unmistakable and unambiguous. It is depicted on the Plat. The easements and green areas are specifically mentioned and dedicated by the language on the plat. The intent is clear and on the face of the deed. The quitclaim deeds reconfirms what is on the plat. This intent is further confirmed by Plat BP 160-161 (R. pp. 79-83; R. pp. 339-340), which follows BK-2 (R. pp. 345-347).

**IV. The Court Should Not Remand for Further Proceedings on the Trespass and Nuisance Claims**

Because Raven's Run cannot demonstrate they own the disputed strip, this court should not remand for further proceedings.

**CONCLUSION**

This Court did not misapprehend nor overlook any pertinent points hence its decision should not be reconsidered.

s/Harold A. Oberman  
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Of Whom James B. Kubu and Melissa F. Kubu and Leila June Johnson are the Respondents.

And Katherine Kinlaw is the Respondent-Appellant.

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PROOF OF SERVICE

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I certify that I have served the Return To Petition For Rehearing Of Appellant/Respondent by Katherine Kinlaw Respondent/Appellant, by Email and also by depositing one copy of it in the United States Mail, postage prepaid, on December 20, 2022, addressed to Appellant-Respondent's

attorneys of record, William W. Wilkins and Kirsten Elena Small , Nexsen Pruet, LLC, 55 E. Camperdown Way, Greenville, SC 29601 and George Hamlin O’Kelley, III, Buist, Byars & Taylor, LLC, 652 Coleman Boulevard, Suite 200, Mt. Pleasant, SC 29464 and Respondent, James B. Kubu and Melissa F. Kubu’s attorney of record and Respondent, Leila June’s attorney of record, as listed in the Attorney Information System, as shown below.

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December 20, 2022

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