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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

R. Ferrell Cothran, Jr., Circuit Court Judge
C/A No. 2008-CP-43-02112

Appellate Case No. 2021-001293

The Estate of Fannie M. Champion, by
Evelyn Champion Ludd, Personal
Representative, Samuel Champion,
Evelyn C. Ludd, Sarah C. Evans,
Rachel C. Brown, Henry Champion, Jr.,
Janie M. Champion, Mary Johnson and
John L. Champion,

Appellants,

v.

Ronald L. Hallman, Marjorie J. Hallman,
Elton J. Hallman, Conswalla E. Hallman,
Oron J. Hallman, Hazelee C. Hallman,
Edward G. Hamilton, Helen D. Hamilton,
Edward E. Hamilton, Raymond Forbes
Davenport, II, and Mary Ellen Davenport,

Respondents.

REPLY BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

1. Does the plain and unambiguous language of the Settlement Order dated January 4, 2019, require specific performance on the part of the Appellants within the two (2) year Construction Period by stating that the “[d]efendants shall, within a time period not to exceed two (2) years from the date of this agreement, take all necessary action to clear and construct a private exclusive roadway for the purpose of ingress and egress to their real property along Parcel B”?
2. Did the Circuit Court Judge commit error in issuing his Order dated July 10, 2020, Granting a Temporary Injunction Regarding Shingle Mill Road?
3. Did the Circuit Court Judge commit error in his Order filed September 15, 2021, granting Defendants’ Motion for Specific Acts and Vesting Title Under Rule 70, SCRCF?
4. Did the Circuit Court Judge commit error in setting the amount and type of bond required to be posted by the Plaintiffs?

STATEMENT OF THE CASE

This case was commenced by Appellants Fannie M. Champion, Samuel Champion, Evelyn C. Ludd, Sarah C. Evans, Rachel C. Brown, Henry Champion, Jr., Janie M. Champion, Mary Johnson and John L. Champion with the filing of a Summons and Complaint in the Court of Common Pleas for Sumter County on September 17, 2008. The Complaint alleged the continuing willful, wanton, reckless and negligent trespass by the Respondents Ronald L. Hallman, Marjorie J. Hallman, Elton J. Hallman, Conswalla E. Hallman, Oron J. Hallman, Hazelee C. Hallman, and their guests upon land owned by the Appellants and, particularly, Respondents’ entry upon and wrongful use of a private roadway granted exclusively to Respondents by a Right-of-Way Easement (“Easement”) dated February 19, 1993, and recorded February 19, 1993, in the office of the Register of Deeds for Sumter County in Volume 564 at Page 1850.

Contemporaneous with the filing of their Summons and Complaint on September 17, 2008, the Respondents filed a Motion for a Temporary Injunction citing as grounds for the

motion the same allegations in their Complaint. Appellants sought to have the Respondents estopped, restrained, and enjoined from trespassing upon the property of the Appellants, and from harassing or annoying the Appellants or any of Appellants' family members pending a disposition of the case on the merits.

Defendants' Answer and Counterclaim was filed on December 31, 2008. Jack W. Erter, Jr., Counsel for the Defendants, filed an Affidavit of Title on December 31, 2008, asserting that the Defendants have a meritorious defense to Plaintiffs' claims and that Defendants will suffer irreparable harm if enjoined from access to their real property.

On February 12, 2009, a Consent Order of Reference was filed referring the case to the Honorable Richard L. Booth, Master-in-Equity for Sumter County ("Master"). The case was set for hearing and Notice of Hearing filed March 1, 2009. An Amended Notice of Hearing before the Master was filed March 26, 2009, for the purpose of making Findings of Fact and Conclusions of Law with full and complete authority to make a final decision without further order of the Court.

On March 30, 2009, Defendants filed a Motion for Summary Judgment.

On August 27, 2010, Plaintiffs filed the Affidavit of Denise C. Pavkov, Professional Real Estate Title Abstractor, concerning the Champion Easement.

On October 29, 2014, an Order Striking the Case from the Active Roster was filed. Upon Motion of Plaintiffs' Counsel filed December 5, 2014, the case was restored to the active roster by Order of the Master filed January 12, 2015.

On December 17, 2015, the Master entered an Order transferring the case back to the Court of Common Pleas for final resolution due to the Master's disclosure that he had certain personal and professional contacts with the parties and their representatives such that

disqualification was appropriate under Canon 3E(1), Rule 501, SCACR, Code of Judicial Conduct.

By written Order filed August 17, 2016, Circuit Court Judge George C. James, Jr., denied Defendants' Motion for Summary Judgment.

A Status Conference was held on October 14, 2016, to discuss two primary issues with the Court; (1) the fact that Plaintiff Fannie M. Champion had passed away; and (2), the Plaintiffs' Motion to amend their Complaint to add additional defendants. On October 24, 2016, Judge James issued his Order in which he, *inter alia*, granted Plaintiffs' Motion to substitute the Personal Representative of the Estate of Fannie M. Champion as a Plaintiff and to amend their Complaint to add additional defendants

On October 24, 2016, Plaintiffs' Counsel filed an Amended Summons and Complaint substituting The Estate of Fannie M. Champion, by Evelyn Champion Ludd, Personal Representative, as Plaintiff for Fannie M. Champion, deceased Plaintiff. Oron J. Hallman, Hazelee C. Hallman, Edward G. Hamilton, Helen D. Hamilton, Edward E. Hamilton, Raymond Forbes Davenport, II, and Mary Ellen Davenport were added to the case as Defendants.

Defendants Ron(sic) Hallman, Marjorie J. Hallman, Elton J. Hallman, Conswalla E. Hallman, Oron J. Hallman, and Hazelee C. Hallman ("Hallman Defendants") filed an Amended Answer and Counterclaim on November 4, 2016.

Plaintiffs' Reply to the Hallman Defendants' Amended Answer and Counterclaim was filed on November 14, 2016.

Defendants Raymond Forbes Davenport, II, and Mary Ellen Davenport ("Davenport Defendants") filed an Answer and Counterclaim to the Amended Complaint on November 22, 2016.

Defendants Edward G. Hamilton, Helen D. Hamilton, and Edward E. Hamilton filed an Answer and Counterclaim to the Amended Complaint on November 24, 2016.

Plaintiffs' Reply to the Davenport Defendants' Answer and Counterclaim was filed on December 2, 2016.

Plaintiffs' Reply to the Hamilton Defendants' Answer and Counterclaim was filed on December 2, 2016.

The Settlement Order of Circuit Court Judge R. Ferrell Cothran, Jr., which incorporated the Settlement Agreement of the parties, was filed January 4, 2019.

Defendants' Motion for Specific Acts and Vesting Title Under Rule 70, SCRCP, was filed June 2, 2020, and the following additional filings ensued:

Order of Judge R. Ferrell Cothran, Jr., Granting Temporary Injunction regarding Shingle Mill Road filed July 10, 2020;

Plaintiffs' Memorandum in Opposition to Defendants' Motion for Specific Acts and Vesting Title Under Rule 70, SCRCP, filed July 10, 2020;

Plaintiffs' Motion to Implead Owner(s) of Adjoining Land filed July 10, 2020;

Plaintiffs' Motion to Dissolve Order Granting Temporary Injunction Regarding Shingle Mill Road filed July 20, 2020;

Plaintiffs' Motion to Vacate Settlement Order filed July 21, 2020;

Plaintiffs' Amended Memorandum in Opposition to Defendants' Motion for Specific Acts and Vesting Title Under Rule 70, SCRCP, filed July 24, 2020;

Plaintiffs' Supplement to Motion to Vacate Settlement Order filed July 28, 2020;

Plaintiffs' Supplement to Motion to Implead Owners of Adjoining filed July 28, 2020;

Order of Judge R. Ferrell Cothran, Jr., dated and filed September 15, 2021;

Plaintiffs' Motion to Alter or Amend Judgment dated September 25, 2021, and filed September 27, 2021;

Form 4, Judgment in a Civil Case, filed by Judge R. Ferrell Cothran, Jr., on October 4, 2021;

Form 4, Amended Judgment in a Civil Case, filed by Judge R. Ferrell Cothran, Jr., on October 6, 2021.

Plaintiffs' Motion In Re Bond on Appeal filed October 18, 2021;

Plaintiffs' Filing of Executed Conveyances To Stay Judgment During Appeal filed November 2, 2021;

Plaintiffs/Appellants Notice of Appeal filed in the South Carolina Court of Appeals on November 4, 2021; and

Form 4, Judgment in a Civil Case, filed by Judge R. Ferrell Cothran, Jr., on March 10, 2022.

STANDARD OF REVIEW

“In South Carolina jurisprudence, settlement agreements are viewed as contracts.” *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 843, 845 (2001) (finding enforcement of the terms of a settlement agreement is a matter of contract law); *Ecclesiastes Prod. Ministries v. Outparcel Assocs.*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007) (stating a release agreement is a contract and contract principles of law should be used to determine what the parties intended); *Mattox v. Cassady*, 289 S.C. 57, 61 344 S.E.2d 620, 622 (Ct. App. 1986) (applying the general rules of contract construction to a settlement agreement). An action to construe a contract is an action at law. *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 541 (Ct. App. 2008). In an action at law, on appeal of a case tried without a

jury, the judge's findings will not be disturbed unless they are without evidentiary support. *Townes Assocs. V. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) However, this court is free to decide questions of law with no particular deference to the trial court. *Silver*, 376 S.C. at 590, 658 S.E.2d at 542.) *Byrd v. Livingston*, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012), *Reh'g Denied* June 22, 2012, *Cert. Denied* May 7, 2014.

FACTS

This case was commenced by the Appellants with the filing of a Summons and Complaint on September 17, 2008. The Complaint alleged the continuing willful, wanton, reckless and negligent trespass by the Respondents Ronald L. Hallman, Marjorie J. Hallman, Elton J. Hallman, Conswalla E. Hallman, Oron J. Hallman, Hazelee C. Hallman, and their guests upon land owned by the Appellants and, particularly, Respondents' entry upon and wrongful use of a private roadway granted exclusively to Appellants by a Right-of-Way Easement ("Easement") dated February 19, 1993, and recorded February 19, 1993, in the office of the Register of Deeds for Sumter County in Volume 564 at Page 1850. The Easement is for ingress and egress across, over, upon and through a tract of land now or formerly identified as the Barnett Tract, bearing Tax Map Number 194-00-01-037, which tract of land lies between Cannery Road and two tracts of land owned by Plaintiffs. The said Easement from H. C. Edens, Jr., and Sons, a Partnership, by H. C. Edens, Jr., grants to Henry Champion and Fannie Champion, their heirs and assigns forever, a perpetual easement and right-of-way twenty (20) feet in width for ingress and egress across the Barnett Tract land from Cannery Road to the two tracts owned by Appellants, to which it shall be appurtenant. The two tracts referenced in the Easement are owned by Appellants and are described as being situate, lying and being in Sumter County, South Carolina; to wit: 18.34 acres on Shingle Mill Road, Tax Map Number 197-00-01-

023, and 22.31 acres on Shingle Mill Road, Tax Map Number 197-00-01-019. The private roadway is now Shingle Mill Road and used by Appellants for ingress and egress to homes they have placed on the aforementioned two tracts of land.

The Appellants allege that they have repeatedly demanded that the Respondents stay off their property. Appellants have posted "No Trespassing" signs and erected a fence to protect their property. Appellants contend that the Respondents have shown a willful, wanton, reckless and negligent disregard for Appellants' rights by continuing to trespass upon Appellants' private roadway. Respondents have cut trees located on Appellants' property in order to widen the private roadway, digging with a backhoe, and using other heavy equipment on Appellants' land over the objection of Appellants. Respondents removed the fence Appellants placed on their property to keep out trespassers. Respondents have come onto Appellants' property carrying guns, directing foul, profane and obscene language toward the Appellants when Appellants objected to Respondents' trespassing upon the lands owned by the Appellants. Respondents have come unto Appellants' property revving the engines of recreational vehicles being operated by Respondents, spinning the wheels, and driving at a reckless and high rate of speed. Appellants have small children who reside in the densely populated family community. Due to the reckless, willful and wanton conduct of the Respondents in putting them and their children at risk while trespassing, Appellants fear for the life and safety of themselves, their children and other family members. Respondents have repeatedly called law enforcement because of the dangerous conduct and harassment by the Respondents while they were trespassing upon Appellants' private property.

Contemporaneous with the filing of their Summons and Complaint on September 17, 2008, the Appellants' also filed a Motion for a Temporary Injunction citing the same allegations

in their Complaint as grounds for the motion. Appellants sought to have the Respondents estopped, restrained, and enjoined from trespassing upon the property of the Appellants, and from harassing or annoying the Appellants or any of Appellants' family members pending a disposition of the case on the merits.

Appellants' Initial Brief was filed on October 17, 2022. The Initial Brief of the Respondents Ronald L. Hallman, Marjorie J. Hallman, Elton J. Hallman, Conswalla E. Hallman, Oron J. Hallman and Hazelee C. Hallman, (hereinafter "Respondents Hallman") was filed on January 17, 2023. This filing constitutes Appellants' Reply Brief to the Initial Brief of Respondents Hallman. Appellants Reply does not speak to each and every questionable and unfounded assertion in Respondents Hallman's Initial Brief. However, Appellants' Reply does attempt to give at least a cursory response, and they urge the Court to inquire into allegations susceptible of being misconstrued.

Arguments

1. **Judge Cothran correctly denied relief where the Champions never asked for relief under Rule 60, and their untimely requests for relief were both well beyond the absolute one-year time limit to seek relief under Rule 60.**

The Champions never *timely* asked for *any* relief from the January 4, 2019, final order.
(Initial Brief of Respondents, Arguments, Item 1.)

The facts of this case do not lend themselves to adjudication pursuant to Rule 60, SCRCF, and the Appellants are not seeking judgment thereunder. The Appellants are asking the Court to vacate the Settlement Order because the Respondents' failed to comply with the provisions of the Settlement Order during the two-year construction period required of them. The text of the Settlement Order filed January 4, 2019, is set forth in the Initial Brief of the Appellants at Pages 20-22.

The Appellants, in good faith, entered into the Settlement Agreement with every intention to fully comply with the terms of the Settlement Order within the two-year construction period and expected that the Respondents would do likewise. Despite the failure of the Respondents to follow through with their obligations, the Appellants took no actions until served with Respondents' Rule 70, SCRCRCP, Motion. In light of Respondents Hallman's allegations in their Initial Brief, Appellants beg leave to restate the following excerpt from their Initial Brief:

Respondents allege in their Motion for Specific Acts that the parties have been unable to voluntarily effectuate the terms of the settlement resulting in the filing of their Motion and seek to enforce the terms of the settlement. Appellants would show that the Respondents have failed to comply with the terms of the Settlement Order and that Rule 70, SCRCRCP, amplifies the fault of the Respondents when it states: "If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act, and the party fails to comply within the time specified, ..." which means that there must be a time specified in the judgment. The Agreement was entered upon the record of this case on April 25, 2017. Judge Cothran's Order incorporated the terms of the Court-Approved Settlement Agreement and set a specified time for the Defendants to construct the agreed-upon road; to wit:

Defendants shall, within a time period not to exceed two (2) years [hereinafter "Construction Period"] from the date of this Agreement, take all necessary action to clear and construct a private exclusive roadway for the purpose of ingress and egress to their real property along Parcel B. Upon completion of the private exclusive roadway along Parcel B, and subject to the Fifty (50) foot non-exclusive easement in perpetuity of ingress and egress across certain real property as described in Parcel A and shown on the LAND SWAP plat. Defendants shall no longer use that portion of Shingle Mill Road (Shingle Mill current situs) that transverses through the center of Plaintiffs' real property.

(Order filed 01/04/2019, p. 4, ¶5)

Clearly, the Settlement Order requires that the Respondents shall, within a period not to exceed two years from the date of the Agreement, take all necessary action to clear and construct a private exclusive roadway, and the Settlement Order clearly describes the location where the said roadway was to have been constructed.

On the other hand, the Court summarily ordered that the parties execute documents to effectuate the settlement as set forth in the Settlement Order. **No specific date or time frame is mentioned with regard to execution of the**

documents to effectuate the settlement. (*Emphasis supplied*) However, there is no ambiguity in the terms of the Settlement Order, and there is no need to construe the plain and unambiguous language requiring the construction of the roadway “not to exceed two (2) years hereafter.” However, there is no contingency involved and no qualification attached to the mandate that the roadway shall be constructed within the two year period. In deciding the case of Willms Trucking Company, Inc. v. JW Construction Co., Inc., 314 S.C. 170,178, 442 S.E.2d 197,202 (Ct. App. 1994), the South Carolina Court of Appeals cited the following illuminating holdings which apply to a party who, as here, does not come to the court with clean hands: (1) “a party cannot take advantage of his own default in the performance of a contract,” and (2) “where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests. (Internal Cites Omitted) Willms Trucking, 314 S.C. at 178, 442 S.E.2d at 201.

The Settlement Order is silent as to the time within which the deeds were to be executed. Therefore, Rule 70, SCRCP, is not applicable to the Appellants in this case. Of concern to the Appellants is the fact that Respondents are attempting to force a transfer of the property when they have failed to comply with the Settlement Agreement to construct the roadway which they claimed to be of grave necessity.

2. An easement by necessity, created in 1872 by Wash James’ purchase of 500 acres, was the catalyst of the April 25, 2017, settlement agreement reached by the parties, and later as the basis of the final order entered January 4, 2019.

Appellants deny the allegations made in this Item 2. Furthermore, this contested issue is not appropriate for consideration at this time because it constitutes the gravamen of the case for trial on the merits.

With regard to the remainder of the assertions contained in the Initial Brief of the Respondents, the Appellants believe that the record of this case will support their claim for relief.

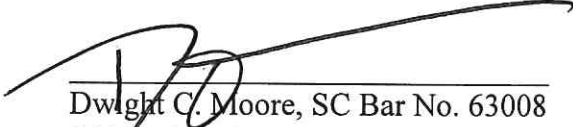
CONCLUSION

For the foregoing reasons, Appellants respectfully urge the Court to grant relief as appropriate to serve the ends of justice, promote judicial economy and facilitate a just, equitable and final resolution of this long-standing controversy. Appellants pray that this Court:

1. Vacate the Settlement Order and Remand the case to the Court of Common Pleas for actions consistent with the holdings and Opinion of this Court;
2. Provide guidance to the lower Court and Counsel by making specific rulings with regard to appealed Orders filed in this action subsequent to the date of the Settlement Order;
3. Dissolve the Order Granting a Temporary Injunction Regarding Shingle Mill Road; and
4. Dissolve, set aside, vacate, and/or nullify all actions required as a result of substantive errors in the written Orders and Judgments of the Court in relief granted which emanates from Respondents' Motion for Specific Acts and Vesting Title Under Rule 70, SCRPC.

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