

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO. 2020-CP-38-00699

Timothy J. Judy and Dana A. Judy,
Plaintiff,

v.

Alice Soto, Joseph B. Rodriguez, Matthew
Rodriguez, Gwen Rodriguez and Stephanie B.
Wells,

Defendants.

ORDER

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Mar 14 2023

SC Court of Appeals

This matter came before the Honorable James B. Jackson, Jr., Master-in-Equity for Orangeburg County on December 7, 2022. Present and appearing were the Plaintiffs, Timothy J. Judy and Dana A. Judy, and their attorney, Michael P. Horger; and the Defendants Alice Soto and Gwen Rodriguez, and their attorney, Matthew Tillman.

PROCEDURAL HISTORY

This case was commenced with the filing of a Summons and Complaint on June 30, 2020 stating Causes of Action for Slander of Title, Conversion, Intentional Infliction of Emotional Distress, and for a Permanent Injunction ordering the Defendants not to enter into the Plaintiffs' Property. The Defendant Alice Soto filed her Answer and Counterclaim for Trespass by the Plaintiffs on a triangular shaped parcel of land denoted as "Parcel A", which is 0.13 acre claimed by the Defendant Soto as shown on a plat recorded at Plat Book D450, at page 0005, and conversion of T-poles on the Triangular shaped parcel claimed by the Defendant Soto. The Plaintiffs filed their Reply to the Counterclaim on September 9, 2020. Upon the identities of the John Does 1 and 2 and Jane Does 1 and 2 being determined, the Plaintiffs filed an Amended

Complaint on February 16, 2022, which specifically named the Defendants. On April 20, 2022, substituted counsel for the Defendant Soto, and as counsel for the other Defendants, filed an Amended Answer and Counterclaim in which it was asserted that the title to the property acquired by the Defendant Soto from Champion Mortgage and by subsequent deed (presumably the Quitclaim deed) should be quieted and she be declared the owner. The Plaintiffs filed their Reply to the Amended Answer and Counterclaim on September 9, 2020. A Consent Order for Substitution of Counsel and Continuance of Motions Hearing was filed July 15, 2022. By Consent Order to Refer a Portion of the Case to the Master in Equity filed November 1, 2022, the Plaintiffs' permanent injunction cause of action and the Defendant Soto's quiet title cause of action, were referred to the Honorable James B. Jackson, Jr. as Master-In Equity for Orangeburg County, to direct entry of final judgment as to those causes of action pursuant to the South Carolina Rules of Civil Procedure.

TITLE HISTORY

A.) The 1.02 acres shown on a plat of 1.15 acres prepared for Alice Soto by J. J.

Jowers, R.L.S. dated May 26, 2020.

1. Prior to 1951, Lawrence Stroman owned the property now owned by the Defendant Soto and Plaintiffs.

2. Lawrence Stroman deeded the property (Lot 1) to Dewey Edwards by deed recorded in the Orangeburg County Register of Deeds Office on August 11, 1951, at Deed Book 170, Page 74. The property description is as follows:

All that certain piece, parcel or lot of land, with any and all improvements thereon, situate, lying and being in the County of Orangeburg, State of South Carolina, containing one (1) acre, more or less, located near the Calhoun-Orangeburg County line, on a highway which connects State Highway No. 176 and U.S. Highway 301 and being bounded as follows: On the North and East by lands now or formerly of Kennerly's Estate; on the South by other lands of the

grantor herein, Lawrence E. Stroman, and on the West by said highway (Sleepy Hollow Road).

3. Through a series of deeds recorded between 2000 and 2009, life estates and remainder interests in the property were transferred between Dewey Edwards, his wife, Betty Edwards, and their daughter, Janet Gaillard. By deed recorded in the Orangeburg County Register of Deeds Office on August 31, 2009 at Book 1328, Page 296, Dewey Edwards and Betty Edwards became owners of the property in fee simple.

4. Subsequently, Dewey Edwards and Betty Edwards pledged the property as security for a loan. Dewey and Betty Edwards later conveyed the property to Champion Mortgage Company by deed recorded in the Orangeburg County Register of Deeds on May 9, 2016, at Deed Book 1675, Page 285.

5. Champion Mortgage Company conveyed the property to Alice Soto by deed recorded in the Orangeburg County Register of Deeds on May 27, 2016, at Deed Book 01678, at Page 0316.

6. The property description in the deed chain to the property did not change from the time Dewey Edwards took title in 1951 to the date Ms. Soto took title in 2016.

7. Kevin Edwards, the son of Dewey E. Edwards and Betty S. Edwards, grew up in the house built on this property by his parents. He testified that the historical natural boundary of the property was a ditch which later was piped with a culvert near the highway. He furthered testified that this natural boundary was the property line between the property conveyed by Lawrence Stroman to Dewey Edwards in 1951 and the property later conveyed to Betty S. Edwards by deed dated March 1, 1974 and recorded in the office of the Register of Deeds for Orangeburg County in Deed Book 393 at Page 391.

8. When other property on the east side of Sleepy Hollow Road was to be conveyed

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to Timothy J. Judy and Dana A. Judy, a plat of 1.32 acres was prepared for Timothy Judy and Dana Judy by Donald J. Smith, R.L. S., dated December 1, 2017. The testimony of Kevin Edwards, who has experience surveying, was that the line bearing S 26 degrees 00 minutes 27 seconds E, a distance of 288.04 feet depicts the historical natural boundary of the property which was the ditch that had later been piped with a culvert near the highway.

9. Also, the survey prepared for Alice Soto by J. J. Jowers, R.L.S. dated May 26, 2020, notes that the property line on the southwest is N 26 degree 00 minutes 27 seconds W 288.06 feet..

9. The Quitclaim deed from Betty S. Edwards, dated January 19, 2018, describes property being more particularly shown and delineated as property "N/F ALICE HUTTO"¹ on a plat prepared for Timothy Judy and Dana Judy by Donald J Smith, Inc., approved by Donald J. Smith, Jr., RLS dated December 1, 2017, and recorded in the office of the Register of Deeds for Orangeburg County in Plat book 80S, page 612. The testimony of Jack Bryant, the attorney that prepared this deed, showed that no property southwest of the common property line determined and shown by both surveyors as the line bearing S 26 degrees 00 minutes 27 seconds E a distance of 288.04 feet and correspondingly N 26 degree 00 minutes 27 seconds W a distance of 288.06 feet was conveyed to Alice Soto in this deed.

B). The 1.32 acres shown on a plat of Survey for Timothy Judy & Dana Judy by Donald J. Smith, R.L.S. dated December 1, 2017.

1. Prior to 1951, Lawrence Stroman owned the property now owned by the Plaintiffs and the Defendant Soto.

¹ It appears that this may have been a typographical error. The Smith Survey describes the 1.02 acres titled in the name of Alice Soto as "N/F Alice Soto."

2. Lawrence Stroman deeded approximately 61 acres to Betty Edwards by deed recorded in the office of the Orangeburg County Register of Deeds on March 1, 1974, at Book 393, Page 391. The 1.32 acres shown on plat of Survey for Timothy Judy & Dana Judy by Donald J. Smith, R.L.S. dated December 1, 2017, was the remaining portion of the 61 acres.

LEGAL ANALYSIS

1) Because the Court cannot ascertain the intent of Lawrence Stroman when he conveyed property to Dewey Edwards by deed recorded in the Orangeburg County Register of Deeds Office on August 11, 1951, in Deed Book 170, Page 74, or when he later conveyed property to Betty S. Edwards by deed dated March 1, 1974, and recorded in the office of the Register of Deeds for Orangeburg County in Deed Book 393, at Page 391, the Court must look to extrinsic evidence to determine the boundary line. In locating land, resort first to natural boundaries, next to artificial monuments, then to adjacent boundaries, and last to courses and distances. *Fulwood v. Graham*, 30 S.C.L. (1 Rich.)491 (1845) as cited by the Court of Appeals in *Garrett v. Locke* 309 S.C. 94, 419 S.E.2d 842, (Ct. Appeals 1992).

2) The Orangeburg County aerial depiction from 2007 and the old tax maps do not establish legal title to property. They are solely for the purpose of identifying property on which the county asserts a lien for taxes. Nowhere in the record is there any legal document from which it can be construed that the Defendant Soto acquired title to any real estate southwest of the common property line determined and shown by both surveyors as the line bearing S 26 degrees 00 minutes 27 seconds E a distance of 288.04 feet and correspondingly N 26 degree 00 minutes 27seconds W 288.06 feet.

3) Ms. Soto took title to her property by deed from Champion Mortgage Company recorded in the Orangeburg County Register of Deeds on May 27, 2016 at Deed Book 01678, Page 0316.

4) I find that the most persuasive extrinsic evidence is the testimony of Kevin Edwards. He grew up on this property in the house on Lot 1 and has been familiar with both properties for over 50 years. He testified that the historical boundary between Lot 1 and Lot 14 was a ditch line that is now covered and that the line bearing S 26 degrees 00 minutes 27 seconds E is the old ditch line.

5) I find that the Defendant Soto's reliance on the 1977 aerial photo and two tax maps is not persuasive. Tax maps and aerial photos do not establish property lines and, in this case, cannot overcome the testimony of Kevin Edwards.

6) I find that the Quitclaim Deed is of no value in determining the boundary because it came after Betty Edwards conveyed Lot 14 to the Plaintiffs. Therefore, it could not have conveyed the disputed area to the Defendant Soto.

7) I find that because Betty Edwards conveyed Lot 14 to the Plaintiffs, which included the disputed area, this showed that she and her husband Dewey Edwards did not intend to include the disputed area in the deed they gave to Champion Mortgage Company.

8) I find that the Defendant Soto was conveyed one (1) acre, more or less, and that she has received 1.02 acres according to the Jowers plat. Certainly, this is consistent with the deed description.

9) I find that the Defendant, who did testify, offered no evidence of what she understood was the boundary on the disputed side. Her greatest concern seemed to be the boundary on the roadway in front of the house.

10) As a result, I find that the boundary line should be set as the line bearing S 26 degrees 00 minutes 27 seconds E as shown on both plats.

CONCLUSION

The Defendant Alice Soto is vested with fee simple marketable title to 1.02 acres shown on the plat of 1.15 acres prepared for Alice Soto by J. J. Jowers, R.L.S., dated May 26, 2020, and recorded in the office of the Register of Deeds for Orangeburg County in Plat Book D450, at Page 5. This property is now referenced under Orangeburg County Tax Map Number 0240-00-02-014.000. This Order establishes the common property line determined and shown by both surveyors as the line bearing S 26 degrees 00 minutes 27 seconds E a distance of 288.04 feet and correspondingly N 26 degree 00 minutes 27 seconds W 288.06 feet as the boundary line between the respective parcels of property, and shall also be recorded in the Orangeburg County Register of Deeds Office removing any cloud of title on the 1.32 acres vested in the name of Timothy J. Judy and Dana A. Judy by the claim of Alice Soto to Parcel A (0.13 of an acre).

The Defendants are allowed thirty (30) days from the date of this Order to remove the wire and fence posts encroaching on the property of Timothy J. Judy and Dana Judy, shown on the plat prepared for Timothy Judy and Dana Judy by Donald J. Smith, Inc., approved by Donald J. Smith, Jr., RLS, dated December 1, 2017, and recorded in the office of the Register of Deeds for Orangeburg County in Plat book 80S, page 612. If not so removed within thirty (30) days, the wire and fence posts will be considered abandoned by the defendants and the Plaintiffs may remove and dispose of same.

After thirty (30) days from the date of this Order the Defendants, Alice Soto, Joseph B.

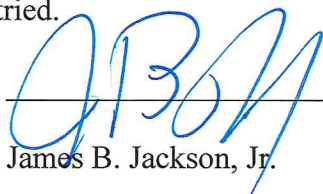
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Rodriguez, Matthew Rodriguez, Gwen Rodriguez, and Stephanie B. Wells shall be forever barred and enjoined from the entry onto the land of Timothy J. Judy and Dana A. Judy, comprised of 1.32 acres shown on the plat prepared for Timothy Judy and Dana Judy by Donald J. Smith, Inc., approved by Donald J. Smith, Jr., RLS, dated December 1, 2017, and recorded in the office of the Register of Deeds for Orangeburg County in Plat book 80S, page 612.

The failure to comply with the terms of this order by any party may subject the offending party to penalties for contempt of court including a term of imprisonment of not more than one (1) year, a fine of not more than One Thousand Five Hundred (\$1,500.00), or both.

This case may now be placed on the trial roster for the Orangeburg County Court of Common Pleas for the remaining tort claims to be tried.

IT IS SO ORDERED.



James B. Jackson, Jr.

Orangeburg County Master in Equity

January 26, 2023

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