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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph M. Strickland, Master-in-Equity

Op. No. 2013-UP-062
Appellate Case No.: 2017-001795

Raglins Creek Farms, LLC, ……...Respondent,

v.

Nancy Dunn Martin,……..Appellant.

APPELLANT'S RETURN IN OPPOSITION TO RESPONDENT'S PETITION FOR REHEARING

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RETURN ARGUMENT

Appellant, Nancy Dunn Martin ("Appellant") offers the following rebuttal argument in response to the Petition for Rehearing filed by Raglins Creek Farms, LLC ("Respondent").[1] Respondent's arguments on rehearing were either already considered by the Court and correctly decided or are being brought forth in the petition for rehearing for the first time. The Court correctly found that there is no easement or public road across Appellant's land. Therefore, the Court should deny the petition for rehearing.

I. Respondent introduces new arguments in its petition for rehearing not previously argued to this Court.

Respondent makes certain arguments in its petition that are wholly new to this case. Respondent argues, for instance, that deeds for Partition Tracts C and D should be read together so as to lengthen an easement to a place it never went. (Pet. at 3.) Respondent also attempts to introduce a reasonable title abstractor standard for notice despite never arguing such before. (Pet. at 4–6.) These arguments are not only contradicted by the record, but also wholly new. For this reason, they should not be considered.

New arguments are not permitted in petitions for rehearing. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (quoting Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999) (internal punctuation omitted)). When arguments have never been raised to the Court before, the Court cannot have overlooked or misapprehended them, which is the standard

[1] For purposes of this filing Respondent may refer both to Raglins Creek Farms, LLC, the current owner of the plaintiff chain of title in this case, or to Country Properties, LLC, the owner of the plaintiff chain of title for all relevant parts of this suit through early 2022.

under Rule 221, SCACR. Given that Respondent is making new arguments now despite having had a chance to fully brief and argue this case prior to the Court's decision, those arguments should not be entertained by the Court at this stage in the case. Nonetheless, even if the Court does consider these new arguments, they are meritless and should not change the Court's decision.

II. The Court correctly applied the any evidence standard.

Respondent begins its petition by restating the "any evidence" standard of review. However, this Court already properly applied that standard in its order. (*See* Opinion at p. 2 ("Even under our any evidence standard of review . . .").) Respondent's recapitulation of the standard is largely irrelevant when the Court already acknowledged that the any evidence rule applies. However, Respondent's argument ignores key components of the any evidence standard. That is, the question is not whether there is any testimony or other evidence in the record as a whole. The question is whether any of that evidence actually supports the lower court's rulings, point by point. For instance, Respondent quotes, "In an action at law tried without a jury, the judge's finding of fact will not be disturbed unless there is no evidence to support the judge's finding." *Jowers v. Hornsby*, 292 S.C. 549, 552, 357 S.E.2d 710, 711 (1987) (*Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976) (abrogated by *Matter of Estate of Kay*, 423 S.C. 476 (2018))). Respondent emphasizes, the portion that says the court will not be reversed unless there is "*no evidence*." (Pet. at p. 1.) However, that portion of the statement is not the key point—the standard requires there to be evidence that "support[s] the judge's finding." The any evidence standard requires evidence that reasonably supports the court's findings. When a claim or cause of action has elements, a plaintiff could put in three weeks of testimony about element one, but if there is no evidence to support element two, then the plaintiff would still fail the any evidence standard. A similar scenario occurred in this case.

Respondent then goes on to argue that there is "copious evidence" to meet the any evidence standard. (Pet. at p. 2.) However, Respondent provides not a single record citation under this argument heading for the copious evidence. This failure to include any citations to the record requires both Appellant and the Court to guess at what the copious evidence might be. In that situation, Appellant contends the argument could be deemed abandoned. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (citations omitted) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

III. The Record unequivocally lacks any evidence that there is an express easement over all of Appellant's land.

Respondent next argues that there is "substantial evidence" to support the finding of an easement across Partition Tracts C, D, and E. However, the Court correctly found that the "master erred in finding an easement by grant because nothing in the chain of title for C and E indicates an easement by grant in favor of Respondent's predecessors in title." (Opinion at p. 4.) To try and escape the indisputable fact that there is "literally no easement language in the chain of title for C," Respondent argues that the easement language potentially applicable to Tract D mysteriously extended to tract C by virtue of a deed that gives the legal descriptions for both tracts. (*See* Opinion at p. 4; Pet. at p. 3.) In the first instance, this argument has never been previously made to the Court and should therefore be disregarded. Nonetheless, Respondent's argument is still incorrect.

Respondent centers its arguments regarding the purported easement on the concept of notice, arguing that in some form or fashion Appellant could have had constructive notice of an easement. However, Respondent completely fails to establish the existence of an easement—without an easement across Tract C, notice of the purported easement across Tract D is immaterial. In order for there to be notice of an easement by grant, that easement must exist and be appurtenant,

such that it runs with the land. *See Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 419–20, 143 S.E.2d 803, 806 (1965) (citing 17A *Am.Jur.* Easements §§ 18, 31) ("One of the ways of creating an easement is by an express written grant. A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the easement by the grantee of the lands."); *Windham v. Riddle*, 370 S.C. 415, 419, 635 S.E.2d 558, 560 (Ct. App. 2006), aff'd, 381 S.C. 192, 672 S.E.2d 578 (2009) ("'An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer.'"). In order to meet an "any evidence" standard, there must be some evidence to support a finding of an easement existing over Tract C as a condition precedent to any notice issues. Respondent has not even attempted to establish the existence of an easement over Tract C and merely jumped straight to notice of the purported easement of Tract D (which remains disputed by Appellant).[2]

Respondent argues that the owner of Tract C ultimately was put on notice of the purported easement over Tract D because the two tracts were ultimately transferred by combined deeds. (Pet. at p. 3.) Respondent argues that this combination started with the deed wherein the Martin family obtained the land back from the tax assessor in 1936.[3] However, the deed does not combine the legal descriptions of Tracts C and D, even though the deed transferred both parcels. (R. p. 705.) The deed first describes the land that Cordero Martin conveyed to Ossie Martin, Tract C, without mentioning any easement, and then proceeds to separately describe Tract D, which Ossie purchased herself. (*Id.*) Importantly, the easement language in the second description—of Tract D only—says "with the exception of a permanent right of way of twenty (20') feet from a certain

[2] Of note, Respondent's own title abstractor unequivocally stated there is no easement over Tract D. (R. p. 180, ll. 10–16.)

[3] For reasons that are unclear, Respondent repeatedly referrs to the deed from the tax assessor to Florence Martin Van Horten as being from 1923. The deed states, "WITNESS my hand and seal this 9th day of September, A.D. 1936, and in the one hundred sixtieth year of the Sovereignty and Independent of the United States of America." (R. p. 705 (emphasis added).)

road passing **by** the lands of C.M. Martin . . . ." (*Id.*) If anything, this language shows that there was no easement passing **through** the lands of C.M. Martin, Tract C.[4] No reasonable reader could review the 1936 document and conclude that there is any easement running through Tract C. Indeed, the next deed, passing the land from Florence to her brother in 1939, also maintains separate legal descriptions of the two tracts. (R. p. 704.) No deeds after 1939 mention any easement. Respondent has pointed to no language showing an easement through Tract C, but merely implied that if the two separate parcels were transferred in the same document the purported easement over Tract D somehow mysteriously extended to also cross Tract C. Indeed, a later mutation of an easement by grant would ignore the fundamental concept of an easement by grant—that it be expressly stated.[5] *See Sandy Island*, at 420, 143 S.E.2d at 806 (citations omitted) ("In construing a deed it is elementary that the cardinal rule of construction is to ascertain and effectuate the intention of the parties, unless that intention contravenes some well settled rule of law or public policy. The intention of the parties here must be determined by a fair [interpretation] of the grant or reserve creating the easement."). Both factually and legally, there is no feasible way that any purported easement over Tract D would have mutated to cover Tract C in transactions that occurred

[4] Respondent suggests that mentions of twenty feet are "no coincidence." (Pet. at p. 4.) Appellant would submit that twenty feet is a standard easement width used for roads and it is by no means indicative of any correlation that more than one document mentions twenty feet. *See* 12 *S.C. Jur.* Easements § 22 (noting a South Carolina case where a 20-foot-wide road was found to be sufficient to accommodate two-way traffic); *see also Proctor v. Steedley*, 398 S.C. 561, 570, 730 S.E.2d 357, 362 (Ct. App. 2012) (special referee set easement at twenty feet in width).

[5] Additionally, had the easement mutated at the time of the 1936 deed, as Respondent seems to suggest, such an easement would violate two precepts of easement common law—that an easement cannot be granted to a third party, or "stranger to the deed," and that a property owner cannot give themselves an easement. *See Windham v. Riddle*, 381 S.C. 192, 202–03 n.1, 672 S.E.2d 578, 583–84 n.1 (2009) (declining to overrule existing common law, including doctrine of stranger to the deed); *Windham v. Riddle*, 370 S.C. 415, 419, 635 S.E.2d 558, 560 (Ct. App. 2006), aff'd, 381 S.C. 192, 672 S.E.2d 578 (2009) (citing Haselden v. Schein, 167 S.C. 534, 539, 166 S.E. 634, 635 (1932)) ("An easement cannot exist where both the purported servient and dominant estates are owned by the exact same person.").

years after the land left the Black family—likely the reason this argument has not been made until now.

Respondent next turns to the same argument made about Tract E and already rejected by this Court. Respondent does not contend that there is easement language anywhere in the actual chain of title for Tract E, or the "Lewis Tract," but rather suggests that an easement was granted over Tract E in the chain of title for entirely different property now owned by Respondent. Based on the deed in Respondent's chain of title, it argues that the owner of Tract E would be on notice of an easement. This argument is absurd and has already been correctly rejected by the Court. (Opinion at p. 4.)

Respondent tries to now bolster this argument with a new premise that could be described as a "reasonable abstractor" theory. (Pet. at pp. 4–5.) This argument—that an abstractor should find the other chain of title when tracing the chain for Tract E—is wholly unsupported by the law or the record. This is demonstrated by the fact that there is not a single citation to the law or the record contained in Respondent's argument. (Pet. at pp. 4–5.) There is genuinely no evidence of any kind contained in the record to support the argument. There is however substantial evidence that no reasonable title tracer would have found an easement over Tract E. This is demonstrated by the testimony of Respondent's abstractor; the testimony of Respondent's expert surveyor; and the lower court's own order, which addresses the time span for a normal title search.

Specifically, Ms. Williams, Respondent's title abstractor, testified about the document from which Respondent argues the easement came from, as part of "Plaintiff's Chain," as contrasted with "Defendant's Chain" or the "Lewis Chain." (*Compare* Pl. Ex. 1 at R. 630 *with* Pl. Ex. 20, at R. 684 *and* P. Ex. 30 at R. 707.) Respondent asserts that the easement language is in the deed entered as Plaintiff's Exhibit 17. (R. p. 667.) That same deed is found at entry number 13 of Ms. Williams' notes on the Plaintiff's Chain. (R. pp. 630–31.) The deed is nowhere to be found

in Ms. Williams' notes for the chain of title for the "Lewis Tract" or Tract E. (*See* R. pp. 707–08.) Ms. Williams testified for Respondents that she copied "all of the deeds in the chain of title leading from now back to the beginning of time when it was issued by a decree of the Fairfield County Court in a partition deed." (R. p. 123, l. 24–p. 124, l. 3.) Nonetheless, she did not find the deed Respondent relies on in her search of the Tract E chain. (*See* R. pp. 707–08.)

Respondent's surveyor also testified. Mr. Mills was qualified as an expert in surveying land. (R. p. 373, ll8–13.) Upon questioning by the lower court during the trial, Mr. Mills stated, "We didn't find any recorded easement involving the entirety of the road." (R. p. 418, ll. 19–20.) Mr. Mills clarified that the lack of recorded easement was why he was in court testifying about usage of the road based on surveys or maps. (R. p. 417, ll. 13–18 ("But if they're unrecorded that's why we're here today . . . .").) In final order after trial, the lower court was confronted by the problem of how to explain Mr. Mills not finding any recorded easements. To address the issue, the lower court found that a normal title search only extends back forty or sixty years.[6] None of Respondent's witnesses, nor even the lower court's order, support the idea that any reasonable title search would have found a deed in Plaintiff's convoluted chain of title and deduced from that document that there was an easement across Tract E. Respondent's arguments regarding what a title search should have found are wholly unsupported by the record and indeed are wholly contradicted by the testimony of Respondent's own witnesses and trial court's order.

[6] Specifically, the lower court found, "That at the time of the research of Shady Grove Road performed by Michael Mills in 2014, both easement deeds cited above were greater than sixty years old and therefore outside the scope of a sixty year title search, which is the standard of practice for title searches in South Carolina, although many real estate attorneys now use a forty year standard." (R. pp. 19–20, ¶ 39.) Appellant would submit that this time frame is based upon the statute of limitations that sets a forty-year timeframe for a real property claim and that bars Respondent's claims in this case. *See* S.C. Code Ann. § 15-3-380.

Respondent finally attempts to bolster its arguments about an easement by grant and the knowledge of a hypothetical title abstractor with an unsustainable interpretation of constructive notice. Respondent's arguments are upside down again, in that they assume without evidence that an easement by grant exists. Lack of notice is a reason to invalidate an existing easement. Constructive notice is not a reason to find an easement where one does not exist. Respondent has not demonstrated the existence of an easement by grant that crosses Tracts C, D, and E. Moreover, even in a world where Appellant was aware of the vague language in the two deeds relied upon by Respondent, there is still no language applying to Tract C. To make constructive notice an issue, there first has to be an easement. Nonetheless, Appellant makes two final points on this issue.

First, the existence of a road on someone's property is not constructive notice of an easement by grant. Many people have such roads or extended driveways and use them for the purposes outlined in the testimony for this case, including logging and hunting. Second, Respondent cites to a case for the proposition that the law will charge someone with information that "an investigation by a reasonably cautious and prudent purchaser would have revealed." (Pet. at p. 5.) The case in question goes on to explain further.

> If there are circumstances sufficient to put a party upon the inquiry, he is held to have notice of everything which that inquiry, properly conducted, would certainly disclose; but constructive notice goes no further. It stands upon the principle that the party is bound to the exercise of due diligence, and is assumed to have the knowledge to which that diligence would lead him; but <u>he is not held to have notice of matter which lies beyond the range of that inquiry and which that diligence might not disclose</u>. There must appear to be, in the nature of the case, such a connection between the facts disclosed and the further facts to be discovered, that the former could justly be viewed as furnishing a clue to the latter.

Spence v. Spence, 368 S.C. 106, 120–21, 628 S.E.2d 869, 876 (2006) (quoting *Black v. Childs*, 14 S.C. 312, 321–22 (1880)) (emphasis added).

Understanding the chains of title in this case is a masterclass on convoluted real property transactions. The chains date back to the late 1800s and acreage sometimes disappears without

reason. Marriages and inheritances are not always explained or recorded. Some deeds are from Richland County and some are from Kershaw County. While attorneys who have dedicated years to this case now have a reasonable understanding of the geographic, familial, and transactional events that created the chains of title for Appellant and Respondent, it is sincerely inconceivable that a layperson purchasing property in this state would be required to do the level of "due diligence" indicated by Respondent's constructive notice argument. A purchaser would have to find a deed from 1926 in someone else's chain of title that vaguely references some form of right-of-way for carts and wagons, and somehow decide that deed indicated an easement over Tract E, which has a separate chain of title. Then the purchaser would have to somehow connect that vague language to other, completely separate, vague language related to Tract D. Next, the purchaser would have to somehow decide that those two documents somehow mysteriously created an easement over Tract C, despite there being no document anywhere, in anyone's chain of title or elsewhere, that could potentially create an easement over Tract C. Only then could that person purchase land free and clear of unknown constructive notice claims. A holding suggesting that level of due diligence would set a standard genuinely impossible for any title abstractor, loan company, or real estate attorney in this state to meet. Further, it would be a risk no title insurance company and no legal malpractice insurance company would wish to insure. Respondent's desperate attempt to find an easement by grant where none exists is unsustainable.

IV. The Record unequivocally lacks sufficient evidence to meet all the elements for a prescriptive easement.

Respondent next moves to its argument about a prescriptive easement. Here, Respondent simply recapitulates arguments already made. Respondent argues that there is substantial evidence in the record to support a prescriptive easement. (Pet. at p. 7.) This is categorically inaccurate. The vast majority of the testimony cited by Respondent is inapposite to the elements of a

prescriptive easement—either because the use falls outside the prescriptive period or the use was not by Respondent or a predecessor in title of Respondent's. At best, the testimony would potentially apply to a public road argument, but Respondent has entirely abandoned that theory and does not address is in its Petition. There may be pages and pages of testimony in this case, but none of fills the gap in the prescriptive period and almost none of it was by actual title holders in Respondent's chain. Thus, Respondent's prescriptive easement evidence fails to meet all the requirements under the law and a prescriptive easement cannot be sustained even on an "any evidence" standard of review.[7]

The Court correctly held, based on existing case law, that private country roads are often used by locals for recreation or related purposes and that mere use is in no way proof positive of hostile or adverse action.[8] The case law espousing that principle spans many decades in South Carolina state law. *See, e.g.*, *Cleland v. Westvaco Corp.*, 314 S.C. 508, 511–12, 431 S.E.2d 264, 266–67 (Ct. App. 1993) (citing *Tyler v. Guerry*, 251 S.C. 120, 160 S.E.2d 889 (1968); *Savannah River Lumber Corp. v. Bray*, 189 S.C. 237, 200 S.E. 760 (1939); *Rowland v. Wolfe*, 17 S.C.L. (1 Bailey) 56 (1828)) ("We also agree that Cleland failed to establish any public right to use by prescription. The long-term use by the public of a road through unenclosed and unimproved woodland does not give rise to a right-of-way by prescription."). However, even setting aside the

[7] Notably, Respondent's burden in the lower court was "clear and convincing evidence." *See Carolina Ctr. Bldg. Corp. v. Enmark Stations, Inc.*, 433 S.C. 144, 154, 857 S.E.2d 16, 22 (Ct. App. 2021) (citation omitted).

[8] Respondent takes issue with the use of case law related to woodlands in the Court's order. (Pet. at p. 10.) Respondent has heretofore never taken issue with the fact that, other than a gate, Appellant's land is not fenced in, but had an opportunity to do so in its Respondent's Brief and at oral argument. (*See* R. pp. 753–59 (photos showing no fence, just Appellant's gate); *see also* R. p. 11, ¶ 8; p. 118, ll. 19–23; p. 193, ll. 14–16; 231, ll. 17–19; p. 255, l. 22–p. 256, l. 3; p. 326, ll. 14–16 (showing land use as recreation, hunting, and timber farming).) Thus, Appellant would assert that it is improper to object now. Respondent also cannot reasonably object to the Court applying the case law on prescriptive easements to a prescriptive easement case.

nature of the use, the fact is, Respondent cannot prove any qualifying use of the road for the full prescriptive period required by law and thus fails the any evidence standard.

Prescriptive easements have established elements that must be met to find an encumbrance encroaching on a property owner's rights. Specifically, to prove a "prescriptive easement, the party asserting the right must show: (1) continued and uninterrupted use of the right for twenty years; (2) the identity of the thing enjoyed; and (3) use which is either adverse or under a claim of right." *Kelley v. Snyder*, 396 S.C. 564, 572, 722 S.E.2d 813, 817 (Ct. App. 2012) (citing *Horry Cnty. v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993)) (emphasis added). Respondent failed to provide any evidence that shows adverse or hostile use for the period of twenty years preceding this suit. (*See* App. Final Br., pp. 20–24.) Twenty years from the date of this suit would be from approximately 1994 until 2014. The testimony of any witness who spoke about use before that time period is irrelevant to the prescriptive easement inquiry.[9] This is most particularly true when the witness was not speaking about use by a predecessor in Respondent's title. Thus, Mr. Kirkland's testimony about his childhood in the 1950s is irrelevant. Mr. Brazell's testimony is somewhat relevant, in that it related to his brother's ownership between 2005 until 2009 under the name Pine Ridge Investments, LLC. (R. p. 189, l. 22–p. 190, l. 2; R. p. 630, ¶¶ 1–2.) However, Mr. Brazell used a key, and did not act adversely to Appellant's rights, so his testimony is not particularly probative. (R. p. 193, l. 23–p. 194, l. 19.) Similarly, Mr. Pickrel's testimony may also be within the right time frame, but at that point he was not part of the chain of title and was using

[9] This would include any reference to Edwin Guy, who sold his interest in the land in 1969. (R. 654.) Additionally, the testimony of Jamie Guy, Edwin's son, is equally immaterial as he never owned Respondent's property and his father owned the property outside the relevant time window. (*See*. Pet. at p. 8 (referencing use by Edwin Guy and use during the 1980s).)

either a key or a lock code, same as Mr. Brazell.[10] (R. p. 209, ll. 5–15.) Mr. Baker testified to his use while working for the Whitfield Company, which acquired the property in 1999, and then again for Prospect Hill of Edisto Island, LLC, which owned the property briefly around 2004–05. (R. p. 336, l. 23–339, l. 10; R. p. 630, ¶¶ 3–4.) Mr. LaFaye similarly worked for some of the owners in Respondent's chain, but testified that he did not use the road between 1969 and 2000. (R. p. 329, ll. 18–22.) Based on this testimony, there is a complete lack evidence showing use by anyone, much less a predecessor of Respondent's, between 1994 and 1999. This is fatal to a prescriptive easement claim. Moreover, even for those that did testify as to use, there is no evidence that the use was hostile or adverse.

Finally, even if Respondent had any evidence meeting the prescriptive use period for the whole twenty-year time frame, there still would be an interruption in the period of use sufficient to nullify a claim for a prescriptive easement, just as the Court noted. Under South Carolina law, "actions are sufficient to interrupt the prescriptive period when the servient landowner engages in overt acts, such as erecting physical barriers, which cause a discontinuance of the dominant landowner's use of the land, no matter how brief." *Pittman v. Lowther*, 363 S.C. 47, 52, 610 S.E.2d 479, 481 (2005). Mr. Podell, who owned Respondent's property at the time of trial, was the only witness who testified to adverse or hostile use of the road. Mr. Podell originally obtained permissive access to the gate. However, as part of the regular routine of Appellant and her predecessor in title, a "lock cleaning" was conducted to remove any locks that were added without permission for from which Appellant or her predecessor wished to withdraw access. (R. p. 484, l. 17–p. 485, l. 17; p. 486, ll. 4–16; p. 494, ll. 3–16; 895 (showing a sign posted in advance of lock

[10] Mr. Pickrel is the present owner by virtue of being a principal in the company that purchased Respondent's property during the pendency of this appeal; however, at the time of the trial in this matter, Mr. Pickrel had no ownership interest in the property whatsoever.

cleaning in 2005).) After such a lock cleaning, Mr. Podell lost access to the road. (R. p. 449, ll. 14–16 ("Because I was able to use the gate and all of a sudden I wasn't.") (emphasis added).) This was a clear interruption in the prescriptive period. Then Mr. Podell engaged in hostile behavior by cutting the chain on the gate and adding his own lock. (R. p. 449, ll. 17–23.) However, Appellant again removed the lock. (R. p. 449, l. 24–p. 450, l. 2.) During this exchange, Appellant unequivocally interrupted any prescriptive period Respondent could conceivably have had. Given Mr. Podell's own testimony, it would be an error of law not to find an interruption of the prescriptive period. Thus, on multiple bases, Respondent fails the any evidence standard and cannot prove a prescriptive easement.

[conclusion and signature page to follow]

CONCLUSION

Respondent has not raised any points misunderstood or misapprehended by the Court. Respondent has impermissibly raised new arguments, which still do not change the result of the Court's well-decided order. Respondent has entirely abandoned its public road argument but still has not provided the Court with any evidence that meets all the elements of a prescriptive easement or shows any actual easement by grant that covers all of Appellant's property. Appellant requests that the Court deny Respondent's Petition for Rehearing and maintain its opinion, which correctly removed from Appellant's land encumbrances not supported by fact or law.

Respectfully submitted,

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Raglins Creek Farms, LLC, ……...Respondent,

v.

Nancy Dunn Martin,……..Appellant.

PROOF OF SERVICE

The undersigned certifies that on March 17, 2023 she served **Appellant's Return in Opposition to Respondent's Petition for Rehearing** upon counsel for Respondent via email to their AIS-registered email address from her primary AIS-registered email address, pursuant to Order of the Supreme Court in re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules as follows:

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s/ Chelsea J. Clark (102211)

March 17, 2023
Columbia, South Carolina

From: Chelsea Clark
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Subject: Service of filing in Raglins Creek Farms, LLC v. Martin
Date: Friday, March 17, 2023 4:13:00 PM
Attachments: Reply to Pet for Rehearing.pdf

Good afternoon,

Please find attached our Return in Opposition to Respondent's Petition for Rehearing in the Raglins Creek Farms, LLC v. Nancy Dunn Martin appeal.

Thank you,

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