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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
James B. Jackson, Jr., Master in Equity

Case No.: 2020-CP-38-00699

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

v.

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

INITIAL REPLY BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

Appellants incorporate the Statement of the Case in their brief. However, Respondents incorrectly state, by footnote, that the Appellants do not contest the injunctive relief set forth in the Master in Equity's February 27, 2023 ("***MIE Order***"). As set forth in Appellants' brief, they do contest that injunctive relief. In addition, the Respondents' argument concerning the impact of prior tax maps is improperly included in the Respondents' Statement of the Case. Appellants do not concede that point, and the arguments are addressed herein and in Appellants' initial brief.

STATEMENT OF FACTS

Appellants incorporate the Statement of the Facts in their brief, but must counter certain inaccuracies in the Respondents' Statement of Facts.

The Respondents have incorrectly characterized the timeline of factual occurrences relevant to this action. As set forth in the Appellants' brief, Lot 1 (identified as the "House Property" by the Respondents), now owned by Appellant Alice Soto, was originally transferred from a larger parcel owned by Lawrence Stroman to Dewey Edwards in 1951. (1951 Deed). That deed references no surveys, meets and bounds, or other boundary line identifiers other than reference to neighboring property owners. Through a series of subsequent transfers, Lot 1 was transferred to Appellant Alice Soto by deed recorded on May 27, 2016 at Book 01678, Page 0316. (Soto Deed). Lot 1 was never formally surveyed, and the deed description for Lot 1 remained functionally identical from the original deed in 1951 to the 2016 deed to Appellant Alice Soto. When the Respondents refer to Lot 1 as the "one (1) acre House Property," that characterization is based on the Smith Survey dated December 1, 2017 and recorded March 16, 2018 – both dates being after Appellant Alice Soto acquired Lot 1. (Smith Survey). Further, the Smith Survey explicitly notes:

> THE SAME BEING A SURVEY OF BOUNDARY LINES AS CLAIMED BY KEVIN EDWARDS AND IS NOT A RETRACEMENT OF A PREVIOUSLY PLATTED PARCEL[] BOUNDARIES MAY BE IN QUESTION. . . .
>
> THIS SURVEY SUBJECT TO ANY FACTS THAT MAY BE REVEALED BY A FULL AND ACCURATE TITLE SEARCH. NO ABSTRACT OF TITLE, NOR TITLE COMMITMENT, NOR RESULTS OF TITLE SEARCHES WERE FURNISHED THE SURVEYOR. THERE MAY EXIST DOCUMENTS OR RECORD THAT WOULD AFFECT THIS PARCEL.

(Smith Survey). It was this survey completed after Lot 1 was deeded to Appellant Alice Soto that was used as the property description for the property now owned by the Respondents – Lot 14 (described by the Respondents as the "Acreage Property"). (Judy Deed). Therefore, the references to the Smith Survey, the "one acre" property, the Jowers Survey and other material must be placed in context – all of those surveys and events occurred after Appellant Alice Soto took title to Lot 1 in 2016.

In addition, the Respondents repeatedly state that the Jowers Survey, compiled for Appellant Alice Soto, notes that the property line has a bearing of the line bearing N 26 degrees 00 minutes 27 seconds W 288.06 feet. This is inaccurate. As the Jowers Survey plainly indicates, it was drafted in May 2020 and the line referenced by the Respondent simply notes the prior Smith Survey as a reference plat. (Jowers Survey). The Jowers Survey in no way evidences an agreement that the line bearing N 26 degrees 00 minutes 27 seconds W 288.06 feet is the property line between Lot 1 and Lot 14.

STANDARD OF REVIEW

The Appellants adopt the Standard of Review from their brief. However, the Respondents cite case law concerning construction of an unambiguous deed as being a question of law for the court. While that is a correct citation, it is immaterial in this case. The Master in Equity clearly held that neither the deed to Appellant Alice Soto nor the deed to the Respondents were unambiguous, as he specifically analyzed evidence concerning the (incorrect) grantors'

intent. (MIE Order). Therefore, any argument that the standard of review is governed by findings that either deed was unambiguous should be rejected.

ARGUMENT

I. THE MASTER IN EQUITY ASCERTAINED THE INTENT OF THE WRONG GRANTOR AND HIS CONCLUSIONS ARE NOT BASED ON EVIDENCE IN THE RECORD.

As set forth in the Appellant's brief, the Master ruled that the boundary line reflected in the Smith Survey – which was completed over one year after Appellant Alice Soto took title to Lot 1 – established the intent of Betty Edwards with respect to the boundary line between the properties. (MIE Order at 7). Betty Edwards was not the original grantor of Lot 1 in 1951, and the property description for Lot 1 did not change between the 1951 deed from Lawrence Stroman and the 2016 deed to Alice Soto. (1951 Deed) (Soto Deed). Therefore, it is only the intent of Lawrence Stroman that is relevant, and there was no evidence of that intent on which the Master in Equity could have ruled. Indeed, the Smith Survey was compiled for Betty Edwards after Appellant Alice Soto had taken title to Lot 1.[1] It is simply not relevant.

The Respondents further note that Kevin Edwards testified that a ditch that had been covered prior to 2016 formed the boundary line between Lot 1 and Lot 14, and that this was extrinsic evidence of the property line upon with the Master in Equity could rely. Kevin Edwards did testify that the ditch formed a natural boundary, but there is no evidence in the record that line at N 26 degrees 00 minutes 27 seconds W 288.06 reflects the location of the ditch. As set forth in Appellants' brief, there is no evidence that Donald Smith knew where that

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[1] At page 9 of their brief, the Respondents also argue that the Jowers Survey – compiled in 2020 – also somehow demonstrated Lawrence Stroman's intent that the property line at N 26 degrees 00 minutes 27 seconds W 288.06 feet is the boundary between the two properties. (Jowers Survey). As noted herein, the Jowers Survey merely references the Smith Survey as a reference plat to note the actual lined claimed by Appellant Alice Soto.

ditch was located at the time he performed the Smith Survey and Kevin Edwards testified that he did not walk with Donald Smith when he performed the on-site work and did not show him the property lines. (Tr. at 44). Kevin Edwards actually did not even testify that he instructed Donald Smith to place the property line along the former ditch. Instead, he testified that he asked Donald Smith to survey Lot 14 to conform to what Kevin Edwards understood Ms. Soto wanted as it related to the boundary, and not to follow a now-invisible ditch line:

> Q. I'm gonna refer you back to Plaintiffs' Exhibit No. 2, and I'm gonna show -- it's the northeast line between the 1.32 acres and now and formally Alice Soto. Is that line -- how was that line determined or how was it run by Don Smith?
>
> A. When I talked to Ms. Soto and she, you know, wanted it done the way the tax map showed it and everything. So when I went to Don and told him what I was in the process of doing, we needed a survey. I told Don that, you know, she's supposed to get an acre of property with the house, and we need to get it surveyed and she wants to make it look like the tax map. So I said try to get it surveyed and look like the tax map, which is what Ms. Soto wanted at the time. So he went in and did that. And it ended up being a little bit more than 1 acre. But that put it to where I thought that would be good for everybody. You know, that was as close as we could get to the tax map like it was supposed to be.
>
> Q. And did that establish the line between the old home place and the 1.32 acres your mother still owned?
>
> A. Yes. Because I don't think there was ever an actual survey done since they owned everything around it.

(Tr. at 37).

Therefore, Kevin Edwards' testimony is extrinsic evidence that a ditch once existed, but not that it is reflected in the Smith Survey and, by reference, the Judy Deed. Respondents' query regarding how surveyors Smith and Jowers could reflect the location of a now covered ditch if there was nobody there to show them where it was is a red herring. There is no evidence that the Smith Survey follows the location of the now-covered ditch, and the Jowers Survey simply references the Smith Survey. The only evidence is that Kevin Edwards asked Mr. Smith to "put

it to where I thought that would be good for everybody." (Tr. at 37). That is hardly evidence that that Smith Survey reflects the location of a long-ago covered ditch.

Finally, the Respondents repeatedly argue that the historical tax maps and 2007 aerial survey depicting Lot 1 and Lot 14 – which consistently show that Lot 14 is a triangle as depicted in the Jowers Survey – are not proper evidence and were "corrected" by the 2017 aerial. (Tax Maps) (2007 Aerial) (2017 Aerial). This is also a red herring. First, the 2017 aerial notes only that the overhead picture was taken (or "flown") in 2017, and there is no evidence of when then property lines were drawn on that depiction. Further, the alleged "correction" of decades of tax maps and aerials only occurred after Lot 1 was deeded to Appellant Alice Soto and after the self-serving Smith Survey was drafted. Therefore, the "correction" reflects only the Respondents' wishes as to location of the boundary line and nothing more.

II. THE ZILLOW LISTING BY KEVIN EDWARDS PRIOR TO THE SALE OF LOT 1 TO APPELLANT ALICE SOTO IS ABSOLUTELY RELEVANT, AND EXCLUSION OF THAT EVIDENCE WAS NOT HARMLESS ERROR.

The Respondents argue that the Zillow listing for a two-acre parcel posted by Kevin Edwards during the time when Dewey and Betty Edwards owned Lot 1 is irrelevant because, at the time, Dewey Edwards and Betty Edwards owned Lot 1 and Betty Edwards owned Lot 14. The Respondents imply that Kevin Edwards was listing both Lot 1 and Lot 14 as one parcel. This is exactly why the Zillow listing is relevant, as it does not specify what is being listed. It states only:

> For sale by owner is a lovely, well-kept ranch on two acres which includes a pasture, great for keeping horses, as it did previously over the years.

(Zillow Listing). There is no indication as to whether one or both parcels were being advertised, and Mr. Edwards should have been cross-examined on that issue. Indeed, the Master in Equity based his ruling entirely on the testimony of Kevin Edwards. (Order, Legal Analysis at ¶ 4).

The Zillow listing tends to establish that Mr. Edwards may have considered Lot 1 to be two acres in the years prior to when Appellant Alice Soto bought it. However, we cannot know because the Master in Equity excluded that evidence while allowing Kevin Edwards to testify regarding all of the other history of Lot 1 and Lot 14.

Further, this error was not harmless. "In determining harmless error regarding any issue of witness credibility, we will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case." *State v. Fossick*, 333 S.C. 66, 70, 508 S.E.2d 32, 34 (1998). Here, Kevin Edwards' testimony is not just important – it is the only testimony on which the Master relied. The Zillow listing was not cumulative, but rather contradicted the other evidence that the Master found persuasive.

III. THE MASTER ERRED IN ORDERING THE APPELLANTS TO REMOVE THE WIRE AND FENCE POSTS FROM THE DISPUTED PARCEL AND IN ISSUING AN INJUNCTION FROM ENTERING THE DISPUTED PARCEL.

The Respondents do not appear to argue that the Master in Equity properly enjoined the Appellants from entering onto Lot 14 (as erroneously defined) in the Master in Equity's order. Rather, they appear to parse out the language of the order without argument. The Appellants contend, correctly, that the Master in Equity erroneously established the boundary line between Lot 1 and Lot 14, and therefore his orders relating to removal of a fence and enjoining Appellants' entry onto Lot 14 are infected by that error. As such, the injunctive relief ordered by the Master in Equity must be reversed. *Boyleston v. Seaboard A. L. R. Co.*, 115 S.C. 530, 535, 106 S.E. 777, 778 (1921) (holding that an injunction must be based on some existing right and noting that the Court cannot issue an injunction to protect a right that does not exist).

IV. THE MASTER'S PROSPECTIVE CONTEMPT PENALTIES ARE UNNECESSARY AND VIOLATE THE APPELLANTS' CONSTITUTIONAL RIGHTS.

As set forth the Appellants' brief, it appears that the Master in Equity has issued a prospective sanction for violation of his erroneous injunction. The Respondents argue that the Master in Equity only stated that the Appellants "may" be subject 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", and therefore no rights have been violated. (MIE Order, Conclusions).

At best, the Master-in-Equity's prospective penalty for contempt is an improper advisory order. At worst, establishes the penalty for a contempt that has not yet occurred. Before a party may be found in contempt, the record must clearly and specifically show the contemptuous conduct. *State v. Bevilacqua*, 316 S.C. 122, 447 S.E.2d 213 (Ct. App. 1994). In a proceeding for contempt for violation of a court order, the moving party must show the existence of a court order and the facts establishing the respondent's noncompliance with the order. The burden then shifts to the nonmoving party to establish his defense and inability to comply with the court order. *Brasington v. Shannon*, 288 S.C. 183, 341 S.E.2d 130 (1986). Even though a party is found to have violated a court order, the question of whether or not to impose sanctions remains a matter for the court's discretion. *Sutton v. Sutton*, 291 S.C. 401, 409, 353 S.E.2d 884, 888 (Ct. App. 1994).

Under South Carolina law, the time for a contempt penalty is after the contemptuous conduct has occurred. It may not be issued in an advisory fashion. Therefore, the Master in

Equity's prospective penalty for violations of an erroneous order that have not yet occurred must be reversed.

CONCLUSION

For the reasons set forth above, Appellants respectfully request that this Court reverse the Master-in-Equity's February 27, 2023 Order and remand the case with instructions to quiet title to the Disputed Parcel in the name of Appellant Alice Soto.

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PROOF OF SERVICE OF

I, Matthew E. Tillman, certify that I have served the foregoing **INITIAL REPLY BRIEF OF APPELLANTS** on all other parties to this matter via electronic mail on June 1, 2023, addressed to their attorney of record as follows, as evidenced by Exhibit "A" attached hereto:

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June 1, 2023

EXHIBIT “A”

From: Casey, Carol
Sent: Thursday, June 1, 2023 3:41 PM
To: mhorger@horgerlaw.com
Cc: Tillman, Matthew
Subject: Judy v. Soto - Initial Reply Brief of Appellants
Attachments: Initial Reply Brief of Appellants.pdf

Attached for service, please find the Initial Reply Brief of Appellants in this matter, to be filed with the Court of Appeals today.

Thank you,
Carol Casey