

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

COURT OF COMMON PLEAS

Mountain View Pointe Owners Association,)
Inc., Jane P. Hale, L. Shepard Hamrick, Jr.,)
Martha Hamrick, Matthew Williams, Sue)
Williams, Barry Noffze, Ruth Noffze,)
Michael Dorsey, Monica Dorsey, Jack)
James Dorsey, Jr. and Lucinda Dorsey, as)
Co-Trustees of the Dorsey Joint Revocable)
Trust, Kai Evensen, Lynn Elliot Amos, as)
Trustee of the Lynn Elliot Amos Qualified)
Personal Residence Trust, Lynn Keith)
Amos, as Trustee of the Lynn Keith Amos)
Qualified Personal Residence Trust,)
Charlene Finucan, John Prescott, Jr.,)
Elizabeth Prescott, Steven Trojan, Dottie)
Trojan, Leonard J. Stoecklein, Patricia)
Stoecklein, Dale Hill, Rebecca Hill, Larry)
Kuykendall, as Trustee of the Larry)
Kuykendall Revocable Trust, Larry)
Kuykendall, as Trustee of the Elke)
Kuykendall Revocable Trust, Thomas)
McCaw, Roberta McCaw, Robert)
Albergotti, Elaine Albergotti, Frank)
Patterson, Frances Patterson, Brian A. Fox,)
And Jennifer Fox,)

Plaintiffs,)

vs.)

Rodney Halsell, Barbara Halsell, Graham)
R. Piper, Christine A. Piper, Michael)
Newton, Angela Newton, Gary Hutchinson,)
Daniel Horner, Lonnie Harper, Elianor)
Harper, Christopher Tam, Amie Kerley,)
Karan Sandhu, and Gloria Sandhu.)

Defendants.)

**SUPPLEMENTAL AND
AMENDED ORDER**

RECEIVED

JUN 07 2023

SC Court of Appeals

Case #2021CP3700093

This matter came before the Court on April 13, 2023, upon the Motion of Defendants Halsell seeking modification and clarification of the Court's Order filed on March 13, 2023, pursuant to *Rule 52 and Rule 59 SCRPC*.

Present at the hearing were William C. Hood, Attorney for the Defendants, Rodney Halsell and Barbara Halsell; Defendants, Graham R. Piper and Christine A. Piper, along with their Attorney of Record, Richard H. McDuff; Larry C. Brandt, Attorney for the Plaintiffs; Roberta McCaw and Jim Dorsey of the Mountain View Pointe Property Owners Association Board of Directors; and several other individually named Plaintiffs of Mountain View Pointe Property Owners Association.

Upon commencement of the hearing, Mr. McDuff advised the Court that he had been dismissed as Attorney for the Pipers and asked to be relieved as their Attorney of Record going forward. He further advised that he had been asked by Defendants Halsell to represent them going forward with the consent of the Pipers. The Pipers then stated to the Court, on the record, that they had no objection to Mr. McDuff representing Mr. and Mrs. Halsell; therefore, the Motion of Mr. McDuff to be relieved as counsel for the Pipers is granted.

Mr. Hood then stated and argued the particulars of his Motion as set out in the Motion filed with the Court, after which Mr. Brandt responded on behalf of the Plaintiffs.

Mr. Hood noted that the Order did not indicate whether it was final and that there were provisions in the Order for the Master to resolve disputes between the parties in connection with the implementation of the Order. He therefore requested clarification as to whether the Court intended the Order to be final. Mr. Brandt pointed out that the Form 4 that was filed with the Order specifically indicated that the Order was intended to end the case, making it clear that the provisions in the Order cited by Mr. Hood were evidence that the Judge intended to retain

jurisdiction over the case only for purposes of implementing and enforcing the Order. The Court confirms that that is the case.

Another issue raised by Mr. Hood was that Plaintiffs had dismissed their request for an injunction at the trial. Mr. Brandt stated that to the extent the Plaintiffs waived their right to the prohibitive injunction at trial requested in the Second Cause of Action As To Halsells of the Amended Complaint, their request in their prayer for relief for a mandatory injunction requiring removal of Defendants Halsells' driveway and restoration of the premises disturbed thereby was not dismissed or, at least, was not intended to be dismissed. He, therefore, requested leave to file a motion to amend the pleadings pursuant to **Rule 15(b) SCRCP** to conform to the evidence to seek a mandatory injunction requiring Defendants Halsell, at their expense, to remove their driveway and reasonably restore the premises disturbed in connection therewith to their condition prior to the construction of the driveway. In this regard, the Court notes that the case was clearly tried by all parties upon the premise that if the Court ruled against Defendants Halsells' claim for use of the easement area for their driveway, Defendants Halsell would be required to remove the driveway and restore the premises disturbed. Mr. Halsell, in fact, testified that he was willing to do just that. Furthermore, based upon those considerations, the equities of the matter and to bring finality to the dispute between the parties, Plaintiffs' request for leave to Amend the Pleadings to conform to the evidence for the purpose of specifically asking for a mandatory injunction is proper and should be granted.

Next, Mr. Hood asserted that the Court had not properly considered their claim that the Plaintiffs, as successors to Crescent, were estopped from denying Defendants Halsells' right to access their property from Mountain View Pointe Drive. In fact, the Defendants Halsell did not present any evidence that the Plaintiffs were successors to Crescent or had otherwise assumed any

liability of Crescent. The Plaintiffs' interest in the Defendants Halsells' property is limited to their rights under the easements. In fact, it is the Defendants Halsell that are successors to Crescent and they acquired their property subject to those easements. Also, as Mr. Brandt pointed out, under South Carolina law, a critical element of an estoppel claim is that the party seeking the estoppel must lack knowledge of the facts. Here, the Defendants had full knowledge of the Plaintiffs' easement rights at the time they purchased their property. Such knowledge is fatal to an estoppel claim. *See, e.g., Boyd v. Bellsouth Telephone*, 633 S.E.2d. 136, 142, 369 S.C. 410 (S.C 2006).

Mr. Hood further raised the issue of his clients' rights, as abutting owners, to access their property from Mountain View Pointe Drive, which is a public roadway. That very issue, however, was raised in Defendants Halsells' Summary Judgment Motion, which the Court previously denied and again hereby denies. All of the cases cited by Defendants Halsell, in the Court's opinion, are inapposite to this case as they are factually distinguishable because of the intervening landscape easement which vests Plaintiffs with rights in and to the easement area that cannot be reconciled with Defendants Halsells' claims and use of a portion of the landscape easement area for a driveway. Mr. Hood likened this case to a line of cases that permit a servient estate owner to put a gate across an easement used for ingress and egress when there are valid reasons to do so (such as keeping out vandals or other trespassers). The Court finds those cases to be distinguishable from this case because, although a gate may make the dominant owners' use of the easement less convenient, so long as they are provided with a key to the gate, it does not totally prevent them from using any part of the easement area for the purpose for which it was intended. Defendants Halsells' driveway makes it impossible for the Plaintiffs to landscape the area paved over by concrete. Clearly, the landscape easement exists on Defendants Halsells' land, which they own in fee simple subject to the landscape easement, but to allow the use of a portion of the easement area

for a driveway requires the Court to reconcile the parties' respective uses with the established South Carolina case law pertaining to dominant and servient estates, which the Court finds it impossible to do. Specifically, the law requires that the Court strictly construe the unambiguous language in the easement that grants the Plaintiffs the right to landscape the entire easement area. *See, e.g., Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (Sup. Ct. 1998). As well, the law requires the Court to ascertain and effectuate the Grantor's intent in granting the easement. *See, e.g., Snow v. Smith*, 416 S.C. 72, 89, 784 S.E.2d 242, 251 (Ct. App. 2016). Here, the Court determined that the Grantor intended that the Plaintiffs would have the right to landscape the entire easement area. In that regard, considering the respective rights of the parties, the law clearly requires that any claimed rights of the servient estate owners (Halsells), such as the right to put a driveway across the easement area, cannot be reconciled with the right of the Plaintiffs, as the dominant estate owners, to use of the entire landscape easement area for landscaping. In the absence of any reasonable reconciliation of the respective parties' uses having been put forward for the Court's consideration by Defendants Halsell and with the Court's total inability to think of any way those uses may be reconciled, the property rights of the Defendants Halsell, whatever they may be, must give way to the rights of the Plaintiffs to landscape the entire easement area.

Lastly, the Court addressed Defendants Halsells' concerns about the potential of having to remove his driveway before his alternative driveway was complete and that the forty-five (45) day period set forth in the Order for obtaining proposals for the restoration was insufficient because (i) spring is a busy time for landscapers and (ii) if they are given adequate time to construct their replacement driveway before demolition of the current driveway, it may be difficult to secure proposals for work that might not start for some time. The Court agreed to amend the Order to extend the forty-five (45) day period for delivering a proposal to Plaintiffs to sixty (60) days and

to increase the Plaintiffs' time to respond to the proposal from ten (10) days to thirty (30) days. Additionally, by agreement of the parties, the amendment to the Order will reflect that Defendants Halsell will have up to eight (8) months from the date of the Order to construct their new driveway before being required to undertake the ordered restoration.

The Court believes that the Order is amply supported by the law and the facts and that no other explanations or amendments are required.

Based upon the above, **IT IS, THEREFORE, ORDERED** as follows:

1. Mr. McDuff is hereby relieved as counsel of record for Defendants Piper.
2. Plaintiffs' request for leave to file a Motion to Amend the Pleadings to conform to the proof in order specifically to seek a mandatory injunction is hereby granted.
3. The prior Order of the Court requiring the Defendants Halsell to remove their driveway and bear the cost of restoring the premises disturbed to their former state or condition shall hereby be amended to read as follows:

The Defendants Halsell shall restore all areas disturbed in connection with the construction of their driveway or related thereto, up to the westernmost border of the Landscape Easement Area, to the condition existing prior to their disturbance. Such restoration shall include, without limitation, removal of all concrete and other existing structures, and restoring the contour of the land and replacement of the trees removed with trees or plants comparable to those destroyed. The Defendants Halsell shall, within sixty (60) days of this Order, submit to the POA a written proposal as to by whom, and within what time frame, and precisely how they propose to comply with this Order for the restoration as ordered above. The proposal shall also disclose the price quoted for the required work and landscaping

materials. The POA shall within thirty (30) days thereafter respond to Defendants Halsell in writing either that they agree with the proposal or propose changes thereto. If the POA and the Defendants Halsell have not reached an agreement within twenty (20) days thereafter, they shall so notify this Court. Upon receipt of such notice this Court shall schedule a hearing to resolve the matter and/or order such money damages against Defendants Halsells as will allow the POA to undertake such restoration itself. Similarly, if they do reach an agreement, they shall provide such agreement to this Court by notice from parties' counsel and that agreement shall then be embodied in a Supplemental Order and Judgment. The restoration ordered above is to commence on the earlier of (i) the completion of Defendants Halsells' replacement driveway off of Doug Hollow Road or (ii) eight (8) months from the date of this Order. Defendants Halsell shall proceed with diligence to complete their replacement driveway off Doug Hollow Road. The parties will proceed with diligence to complete all required demolition and restoration.

4. All other injunctive relief and/or relief sought by Defendants Halsells' Motion is denied.

AND IT IS SO ORDERED!

_____, 2023

The Honorable Steven C. Kirven
Master-In-Equity, Oconee County Court
of Common Pleas, Tenth Judicial Circuit

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021 CP-37-00093

Mountain View Pointe Owners Association, Inc., et al.

Rodney Halsell, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

 Larry C. Brandt
 PO Box 738
 Walhalla, SC 29691
ATTORNEY(S) FOR THE PLAINTIFF(S)

_____ William C. Hood	_____ Richard McDuff
_____ 1219 Dunlap Road	_____ 119 Professional Park Dr. #B
_____ Anderson, SC 29621	_____ Seneca, SC 29678
ATTORNEY(S) FOR THE DEFENDANT(S)	

CLERK OF COURT

Court Reporter: Virginia Hall Campbell

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Oconee Common Pleas

Case Caption: Mountain View Pointe Owners Association Inc , plaintiff, et al VS
Rodney Halsell , defendant, et al
Case Number: 2021CP3700093
Type: Master/Order/Form 4

And it is so ordered

s/ Steven C. Kirven, Master in Equity, #3081