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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

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

Opinion No. 2023-UP-062 (S.C. Ct. App. filed February 15, 2023)

Raglins Creek Farms, LLC, ...Petitioner,

v.

Nancy Dunn Martin, ... Respondent.

PETITIONER'S REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT IN REPLY

Petitioner, Raglins Creek Farms, LLC (hereinafter "Raglins Creek"), submits this Reply (hereinafter "Reply") to the Return (hereinafter "Return) of Respondent, Nancy Dunn Martin (hereinafter, "Martin"), to Raglins Creek's Petition for a Writ of Certiorari (hereinafter "Petition") to review the Court of Appeals' Opinion in Raglins Creek Farms, LLC v. Nancy Dunn Martin, 2023-UP-062 (filed February 15, 2023).

I. THIS COURT SHOULD EXERCISE ITS DISCRETION AND GRANT RAGLINS CREEK'S PETITION BECAUSE THE COURT OF APPEALS EXCEEDED ITS SCOPE OF REVIEW IN REVERSING THE TRIAL COURT.

As Martin mentions in her Return, Rule 242(b), SCACR sets out non-controlling factors, indicative of the "character of reasons," that this Court considers when reviewing petitions for writ certiorari. (Ret. to Pet. pp. 2-3). However, Rule 242(b), SCACR, also expressly states that those factors do not fully measure this Court's discretion or power to grant review in general. Indeed, this Court has wide discretion to review decisions of the courts below it. As discussed more fully in Raglins Creek's Petition, the Court of Appeals' decision completely ignores the any evidence standard, which this Court has consistently instructed be applied to actions to determine the existence of an easement. Slear v. Hanna, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998); Pittman v. Lowther, 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005); Hardy v. Aiken, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006). The Court of Appeals' decision thus conflicts with this Court's directive. Raglins Creek would submit such an error is an "important reason" envisioned by Rule 242, which renders review of the decision a sound exercise of this Court's discretion.

II. MARTIN INCORRECTLY ARGUES THAT RAGLINS CREEK WAS CONSTRAINED TO ESTABLISH THE ELEMENTS OF PRESCRIPTIVE EASEMENT WITHIN THE TWENTY YEARS IMMEDIATELY PRECEDING THIS SUIT.

Martin argues that Raglins Creek failed to establish the elements of a prescriptive easement from 1994 through 2014, or the twenty years immediately preceding the filing of this case. (Ret. to Pet. pp. 17-19). Notably, Martin does not cite any authority for this position. Therefore, this issue should not be considered on appeal. Miller v. Dillon, 432 S.C. 197, 207, 851 S.E.2d 462, 468 (Ct. App. 2020). Furthermore, no such burden has ever been imposed in a case like this. Instead, the case law is clear that "once a right of way by prescription has been established by twenty years of continuous use, a later diminishment in the frequency of that use does not necessarily nullify the established right by prescription." Jones v. Daley, 363 S.C. 310, 318, 609 S.E.2d 597, 600 (Ct. App. 2005) (overruled on other grounds).

There is ample evidence in the record, as cited in Raglins Creek's Petition, that Raglins Creek's predecessors in title established a prescriptive easement long before 1994. The evidence also supports the trial court's ruling that such use was uninterrupted until Martin's actions, which prompted Raglins Creek's predecessor to file the instant action.

III. MARTIN INCORRECTLY ARGUES THAT MARTIN'S ACTIONS INTERRUPTING RAGLINS CREEK'S PREDECESSOR'S ACCESS TO THE EASEMENT DEFEATS RAGLINS CREEK'S PRESCRIPTIVE EASEMENT CLAIM.

Martin argues that Raglins Creek's claim for a prescriptive easement fails because Raglins Creek's predecessor had to file the underlying suit after Martin blocked its access to the disputed road. (Ret to Pet. pp. 19-20). Citing to Pittman, Martin argues that her action of blocking access to the existing easement interrupted the prescriptive period required to obtain an easement by prescription. (Ret. to Pet. pp. 19-20). However, Martin's argument is flawed and her reliance on Pittman is misplaced. Pittman does not stand for the proposition that erecting a physical barrier terminates an easement that has already been obtained by prescription. If the Court were to accept Martin's argument, then the owner of a servient estate seeking to eliminate a properly established

prescriptive easement would only need to erect a physical barrier to unilaterally and immediately defeat a dominant estate owner's easement. Thereafter, the dominant estate owner's suit to rectify the servient estate owner's wrongful conduct would be barred under the theory the prescriptive use was interrupted. Following this circular reasoning, a prescriptive easement could be unilaterally terminated at any time by the servient estate owner. Such a proposition is not only wholly without support in our jurisprudence, but illogical.

Martin also asserts that Raglins Creek's argument that the disputed road had been used continuously and uninterrupted by its predecessors for more than twenty years is "novel." (Ret. to Pet. p. 18). Not only has this argument been made at every stage of this case, but one of the primary objectives of the trial in this case was to provide evidence proving this fact. (Resp't. Br. 16; Pet. for Reh'g. pp. 7-8). As more fully detailed in Raglins Creek's Petition, Raglins Creek provided evidence of the use of the road beginning in the 1940s and continuing for twenty years and beyond. From the evidence presented, the trial court specifically found Raglins Creek "and its predecessors in title used the disputed portion of the road in question for a period exceeding twenty (20) years" and that such use was "continuous and uninterrupted for the full twenty (20) year period." (R. p. 20). This argument is not novel.

IV. MARTIN INCORRECTLY ARGUES THAT THE WOODLANDS ISSUE WAS PROPERLY BEFORE THE COURT OF APPEALS.

Martin argues that Raglins Creek failed to complain that Martin's land was not fenced in. (Ret. to Pet. p. 20-21, fn. 9). However, Martin ignores the fact that Raglins Creek had no reason to contest this fact because Martin failed to argue the theory of unenclosed woodlands to the trial court. Raglins Creek cannot be expected to anticipate every argument its opponent may have, but fails to make, in order to survive appeal. Ultimately, Raglins Creek does not object to the Court

of Appeals applying case law on prescriptive easements to a prescriptive easement case, but it does object to the Court of Appeals characterizing a fact never before litigated as "undisputed."

V. MARTIN'S ARGUMENT REGARDING RAGLINS CREEK'S ACCESS TO PARTITION TRACT C IS IRRELEVANT.

In her Return, for the first time, Martin argues Raglins Creek's claimed easement over Partition Tracts C, D and E is "of no consequence" because Raglins Creek lacks access to the portion of the road to the left of Partition Tract C. (Ret. to Pet. p. 6, fn. 5). This issue was never raised to the trial court or the Court of Appeals and is therefore improper for inclusion in Martin's Return. Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 315 594 S.E.2d 867, 876 (Ct. App. 2004) (Appellate courts cannot address issues not raised to the trial court). Additionally, the record is clear that the underlying action was initiated because Martin attempted to block Raglins Creek's predecessor's access to the disputed road, over which it had an easement, by locking a gate located on Partition Tract C. (R. p. 54.; R. p. 118, ll. 10-14; R. p. 555, ll. 10-14; R. pp. 752, 758, 761). If Martin attempts to block a different portion of the Raglins Creek's easement, then a new lawsuit may be necessary. However, that issue is not before this Court and our appellate courts do not answer questions they are not asked. State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991).

VI. RAGLINS CREEK IS NOT CLAIMING EASEMENT BY NECESSITY OR "COMMON OWNERSHIP DOCTRINE."

Martin spends a significant portion of her Return arguing that Raglins Creek cannot establish an easement by necessity and rebutting a "common ownership doctrine." (Ret. To Pet. pp. 10-12). However, Raglins Creek's Petition does not contain such arguments and Raglins Creek does not ask this court to provide relief under either doctrine.

VII. MARTIN INCORRECTLY ARGUES THAT MARTIN DID NOT HAVE NOTICE OF THE CLAIMED EASEMENT THROUGH PARTITION TRACTS C AND E.

Martin incorrectly argues that Raglins Creek had failed to establish an express easement through Partition Tracts C and E because Martin could not be said to have actual or constructive notice of the various instruments creating the easements. (Ret. to Pet. pp. 13-17). However, Martin ignores the fact that the very existence of the continuous road through her property to Raglins Creek's property and beyond to other easterly properties would put a normally prudent person on notice that the more easternly property owners could have an easement through Martin's lands. Additionally, as more fully explained in Raglins Creek's Petition, the record contains evidence that there are publicly recorded instruments applicable to Partition Tracts C, D and E, that would put her on notice of such easement, particularly when coupled with knowledge of the existence of the road itself. Martin continuously argues in error, that such documents must be included in Martin's "chain of title" in order to charge her with notice of them. (Ret. to Pet. pp. 15-16). If this were to be the law in this State, then restrictive covenants included in those commonly found in declarations of covenants for residential developments[1], utility easements, and other grants of property interests not included in a deed conveying *title*, would be unenforceable since not included in the "chain of title." However, these documents are routinely found in title searches while searching the grantor index during the grantor's period of ownership.

CONCLUSION

The record contains more than sufficient evidence of both express easements and prescriptive easements to meet the any evidence standard necessary to affirm the trial court's decision, had the Court of Appeals applied the correct standard of review. For all of the foregoing

[1] Rather than in the deeds conveying ownership of lots themselves.

reasons, Raglins Creek respectfully asks the Court to grant its Petition, reverse the opinion of the Court of Appeals, and reinstate the trial court's order.

Respectfully submitted,

s/ Valerie Garcia Giovanoli

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