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.

FINAL BRIEF OF APPELLANTS

WOMBLE BOND DICKINSON (US) LLP

s/Matthew Tillman
Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398
Attorneys for the Appellants

Charleston, South Carolina
July 20, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. **DID THE MASTER IN EQUITY COMMIT AN ERROR OF LAW BY FAILING TO ASCERTAIN THE INTENT OF THE ORIGINAL GRANTOR OF THE DEED TO LOT 1?**

II. **DID THE MASTER IN EQUITY BASE HIS RULING THAT THE PROPERTY LINE FOLLOWED A NOW-COVERED DITCH ON EVIDENCE NOT IN THE RECORD?**

III. **DID THE MASTER IN EQUITY COMMIT REVERSIBLE ERROR BY FAILING TO ADMIT EVIDENCE OF A PROPERTY LISTING BY KEVIN EDWARDS PRIOR TO THE SALE OF LOT 1 TO APPELLANT ALICE SOTO?**

IV. **DID THE MASTER IN EQUITY ERR BY ORDERING THE APPELLANTS TO REMOVE THE WIRE AND FENCE POSTS FROM THE DISPUTED PARCEL AND IN ISSUING AN INJUNCTION FROM ENTERING THE DISPUTED PARCEL WHERE THERE WAS NO BASIS TO FIND THAT RESPONDENTS OWN THE DISPUTED PARCEL?**

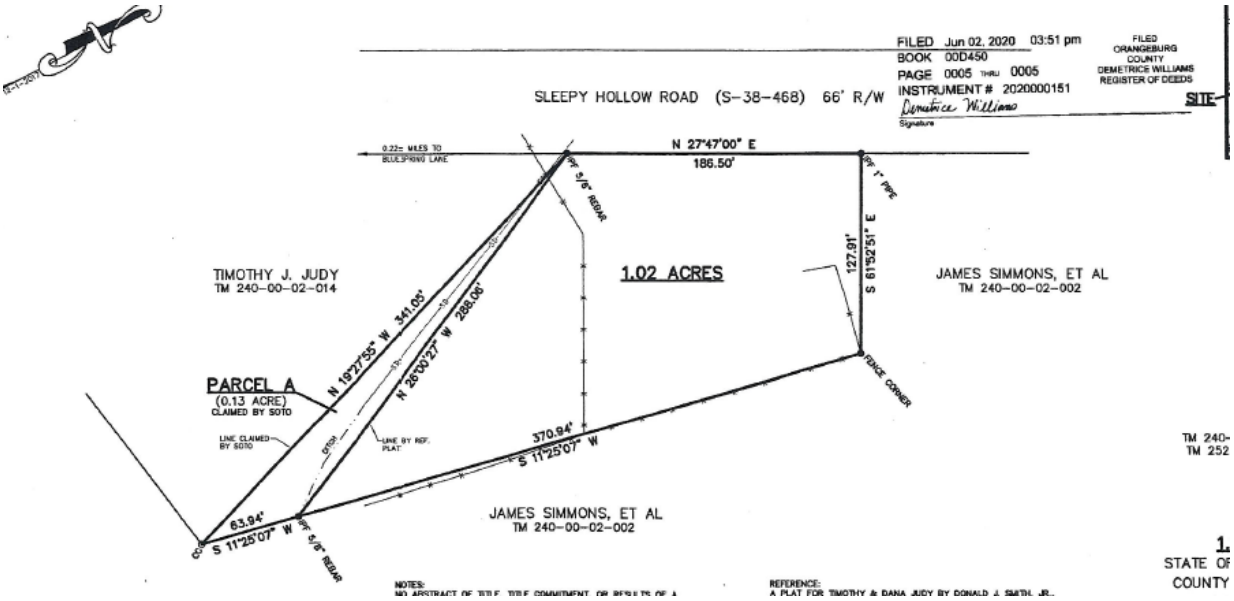
V. **DID THE MASTER IN EQUITY VIOLATE THE APPELLANTS' CONSTITUTIONAL RIGHTS BY ESTABLISHING A PROSPECTIVE CRIMINAL SANCTION FOR VIOLATION OF AN IMPROPER INJUNCTION?**

STATEMENT OF THE CASE

This is an appeal from the trial order of the Orangeburg County Master in Equity filed on February 27, 2023 ("***MIE Order***"), in which the Master in Equity determined a property boundary and quieted title to a disputed parcel of property which forms the border between Appellant Alice Soto's property and Respondents' property, ordered the removal of a fence and granted a permanent injunction (with prospective penalties for contempt) against the Respondents precluding them from entering the Respondent's property as determined by the Court. (R. pp. 1-10). The Master in Equity conducted the trial pursuant to the Consent Order to Refer Portion of Case to Master in Equity filed on November 1, 2022, by which Respondents' permanent injunction cause of action against all Appellants and Appellant Alice Soto's quiet title cause of action were referred. (R. pp. 11-13). The remaining claims brought by the Respondents for trespass remained on Orangeburg County trial docket remained on the jury trial docket and are stayed pending this appeal.

STATEMENT OF FACTS

This is a lawsuit that concerns a dispute parcel of property totaling .13 acres ("***Disputed Parcel***") on the border of property owned by Alice Soto and designated as TMS# 0240-00-02-001.000 ("***Lot 1***"), and TMS # 0240-00-02-014.000, now owned by the Respondents ("***Lot 14***"). The Disputed Parcel is denoted as "Parcel A" below.



(R. p. 166). Lot 1, now owned by Appellant Alice Soto, is denoted on the right. Lot 14, now owned by the Respondents, is on the left. The Appellants claim the property line is the one denoted as 341.05' (on the left).and the Respondents claim the property line is the one denoted as 288.06' (on the right).

A. **History of Lot 1.**

Prior to 1951, the Lot 1 and Lot 14 were part of a larger tract of land owned by Lawrence Stroman. Mr. Stroman deeded 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. (R. p. 160-161). The property description from the 1951 Deed 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).

At the time of conveyance, Lawrence Stroman retained substantial acreage bordering Lot 1. Dewey Edwards solely owned Lot 1 through the year 2000. Through a series of deeds recorded

between 2000 and 2009, life estates and remainder interests in Lot 1 were transferred between Dewey Edwards, his wife, Betty Edwards, and their daughter, Janet Gaillard. (R. pp. 171-176). 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 Lot 1 in fee simple. (R. pp. 169-170). Subsequently, Dewey Edwards and Betty Edwards pledged Lot 1 as security for a loan. Dewey and Betty Edwards then conveyed Lot 1 to Champion Mortgage Company by deed in lieu of foreclosure recorded in the Orangeburg County Register of Deeds on May 9, 2016 at Book 1675, Page 285. (R. pp. 151-157). Champion Mortgage Company conveyed Lot 1 to Ms. Soto by deed recorded in the Orangeburg County Register of Deeds on May 27, 2016 at Book 01678, Page 0316. (R. pp. 158-159).

The property description in the deed chain for Lot 1 did not meaningfully change from the date Dewey Edwards took title in 1951 to the date Appellant Alice Soto took title in 2016. Further, Lot 1 was never surveyed prior to the date on which Appellant Alice Soto took title to Lot 1. Lot 1 was only described by the reference to the neighboring property owners in the 1951 Deed.

B. Indications of Property Boundary Prior to Appellant Alice Soto Taking Title to Lot 1.

There were no surveys of the boundary between Lot 14 and Lot 1 between the time Lot 1 was divided from the larger Stroman property and deeded to Dewey Edwards in 1951 and May 27, 2016 – the date on which Appellant Alice Soto took title to Lot 1. However, as confirmed by title abstractor Eve Nester, there were two historical tax maps – one from 1977 and one from the 1960s – that depicted Lot 14 as a pure triangle:

(R. p. 177) (R. p. 95, line 16-p. 95, line 25) (Lot 1 denoted with a "6", Lot 14 to the lower left).

(R. p. 178) (R. p. 97, lines 1-25) (Lot 14 highlighted).

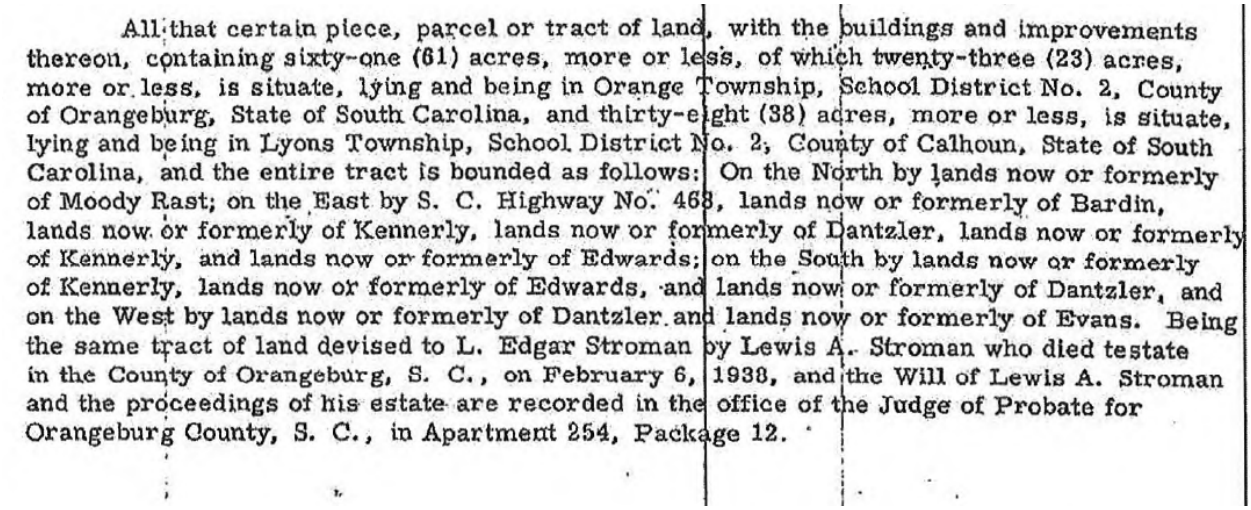
In addition, there exists an aerial depiction from 2007, also depicting Lot 14 as a triangle:

(R. pp. 164-165).

C. **History of Lot 14.**

Lawrence Stroman deeded approximately 61 acres, a portion of which abutted Lot 1 and became Lot 14, to Betty Edwards by deed recorded in the Orangeburg County Register of Deeds Office on March 1, 1974 at Book 393, Page 391. (R. pp. 180-181). The property was in

Orangeburg and Calhoun counties, and the deed description contained only a reference to neighboring property owners:



All that certain piece, parcel or tract of land, with the buildings and improvements thereon, containing sixty-one (61) acres, more or less, of which twenty-three (23) acres, more or less, is situate, lying and being in Orange Township, School District No. 2, County of Orangeburg, State of South Carolina, and thirty-eight (38) acres, more or less, is situate, lying and being in Lyons Township, School District No. 2, County of Calhoun, State of South Carolina, and the entire tract is bounded as follows: On the North by lands now or formerly of Moody Rast; on the East by S. C. Highway No. 463, lands now or formerly of Bardin, lands now or formerly of Kennerly, lands now or formerly of Dantzler, lands now or formerly of Kennerly, and lands now or formerly of Edwards; on the South by lands now or formerly of Kennerly, lands now or formerly of Edwards, and lands now or formerly of Dantzler, and on the West by lands now or formerly of Dantzler and lands now or formerly of Evans. Being the same tract of land devised to L. Edgar Stroman by Lewis A. Stroman who died testate in the County of Orangeburg, S. C., on February 6, 1938, and the Will of Lewis A. Stroman and the proceedings of his estate are recorded in the office of the Judge of Probate for Orangeburg County, S. C., in Apartment 254, Package 12.

Like Lot 1, neither the 61 acres nor the portion that became Lot 14 were surveyed or platted prior to Appellant Alice Soto taking title to Lot 1 in 2016.

Respondent Timothy Judy testified that Kevin Edwards, the son of Dewey and Betty Edwards, handled the sale of Lot 14 to the Respondents. (R. p. 35, line 16-p. 36, line 8). Respondents were friends with Mr. Edwards and effectively traded Lot 14 for some construction work performed by Respondent Timothy Judy. (R. p. 36, line 17-p. 38, line 3). As part of the transaction, Kevin Edwards obtained a survey from Donald Smith ("***Smith Survey***"), dated December 1, 2017. (R. p. 64, lines 1-19) (R. p. 149). Donald Smith was deceased at the time of the trial. (R. p. 49, lines 13-16). Mr. Edwards testified that he did not accompany Donald Smith when he did the survey and did not provide instructions to him. (R. p. 71, lines 11-21). The Smith Survey cites no prior boundary markers, notes that it is not based on a previous plat, and notes that it was a survey based on boundary lines claimed by Kevin Edwards:

> 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.

(R. p. 149). The Smith Survey portrays Lot 14 as a 4-sided parcel. (R. p. 149).

Kevin Edwards then hired attorney Jack Bryant to prepare a deed transferring Lot 14 from Betty Edwards to the Respondents. (R. p. 81, line 21-p. 82, line 9). Mr. Bryant confirmed that Kevin Edwards provided the Smith Survey to him, and that Mr. Bryant drafted the deed. (R. p. 83, lines 3-19). The property description for the Judy Parcel referenced only the Smith Survey. (R. pp. 146-148). Mr. Bryant confirmed that he simply drafted a deed – he did not search or certify title for Lot 14, did not issue a title policy, and has no opinion regarding whether the Smith Survey and the deed to the Respondents depict the actual boundary between Lot 1 and Lot 14. (R. p. 83, lines 3-19). The deed to the Respondents was recorded on March 16, 2018 in the Orangeburg County Register of Deeds Office at Book 1795, Page 42. (R. pp. 146-148). Interestingly, the Affidavit of Consideration for the deed notes that "No Money is Being Passed" despite the fact that Kevin Edwards arranged the transfer in exchange for construction work being performed by Respondent Timothy Judy. (R. pp. 146-148) (R. p. 35, line 16-p. 36, line 8).

D. **The Quitclaim Deed and Subsequent Events.**

There also exists a quitclaim deed, the origins of which are mysterious. The deed quitclaims all of the property delineated as "N/F Alice Hutto" in the Smith Survey to Appellant Alice Soto and was recorded one minute after the deed to the Respondents. (R. pp. 167-168). Mr. Bryant appears to have prepared the deed but does not recall who asked him to prepare it. (R. p. 83, line 20-p. 84, line 6). Kevin Edwards did not know that the quitclaim deed existed prior to the commencement of this lawsuit. (R. p. 73, lines 10-23). Despite the mysterious

circumstances behind the preparation of the Quitclaim Deed, it was recorded in the Orangeburg County Register of Deeds Office on March 16, 2018 at Page 1795, Page 46. (R. pp. 167-168).

Subsequent to discovering the Smith Survey, Ms. Soto obtained her own survey. The survey was prepared by J. Jowers and is dated June 2, 2020. (R. p. 166). The Jowers Survey depicts the property line as claimed by Appellant Alice Soto. It plainly shows Lot 14 as a triangle, not a four-sided parcel. (R. p. 166).

STANDARD OF REVIEW

A. Quiet Title Standard.

A boundary dispute is an action at law. *Bodiford v. Spanish Oak Farms*, Inc., 317 S.C. 539, 544, 455 S.E.2d 194, 197 (Ct. App. 1995). "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

B. Injunctive Relief Standard.

Actions for injunctive relief are equitable in nature. *See Miller v. Borg-Warner Acceptance Corp.*, 279 S.C. 90, 92, 302 S.E.2d 340, 341 (1983); *Godfrey v. Heller*, 311 S.C. 516, 517, 429 S.E.2d 859, 860 (Ct. App. 1993). *See also* Jean Hoefer Toal, et al., *Appellate Practice in South Carolina* 193 (1999). In equitable actions, the appellate court may review the record and make findings of fact in accordance with its own view of a preponderance of the evidence. *See Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 290-91 (2000); *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 85, 221 S.E.2d 773, 776 (1976).

ARGUMENT

I. THE MASTER IN EQUITY FAILED TO ASCERTAIN THE INTENT OF THE ORIGINAL GRANTOR OF THE DEED TO LOT 1 AND THEREFORE COMMITTED AN ERROR OF LAW.

Where, as here, there is a dispute as to the boundary between two parcels, the "vital question is the intent of the grantor at the time the deed is executed." *Garrett v. Locke*, 309 S.C. 94, 98, 419 S.E.2d 842, 845 (Ct. App. 1992) *citing Klapman v. Hook*, 206 S.C. 51, 32 S.E.2d 882 (1945). The boundary line dispute in this case was created when the common grantor – Lawrence Stroman – deeded Lot 1 to Dewey Edwards in 1951. (R. pp. 160-161). At that time, the boundary, whatever it may be, was created, and Lawrence Stroman's intent is paramount. This is borne out by the *Garrett* decision cited by the Master, in which the Court looked to original 1953 deed to common property to determine the grantor's intent as to the property line. *Garrett*, 309 S.C. at 99, 419 S.E.2d at 845.

Here, the Master in Equity incorrectly held that the disputed boundary line between Lot 1 and Lot 14 should be set as depicted in the Smith Survey and, in so holding, relied exclusively on the testimony of Kevin Edwards that the boundary line between the parcels was historically an uncovered ditch that had been covered prior to the date on which the Appellant Alice Soto took title to Lot 1. (R. p. 6). The Master improperly held that this boundary line in the Smith Survey reflected the intent of Betty Edwards because of the later deed to the Respondents:

> I find that because Betty Edwards conveyed Lot 14 to the [Respondents], 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.

(R. p. 6).

The Master did not ascertain the intent of Lawrence Stroman in reaching his decision, instead curiously focusing on the intent of Dewey and Betty Edwards in mortgaging the Soto

Parcel to Champion Mortgage Company. (R. p. 6). This is wholly irrelevant to the intent of the original grantor, Lawrence Stroman. Dewey Edwards and Betty Edwards pledged Lot 1 to Champion Mortgage's predecessor using a property description functionally identical to the original 1951 deed, and the deed-in-lieu of foreclosure to Champion Mortgage Company reflects that fact. (R. pp. 160-161) (R. pp. 151-157). This same property was then deeded to Appellant Alice Soto on May 27, 2016. (R. pp. 158-159). The Master's statement that "because Betty Edwards conveyed Lot 14 to the [Respondents] … 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" is therefore nonsensical. The boundaries of Lot 1 did not change from 1951 to the date that property was deeded to Alice Soto in 2016. Any subsequent actions taken by Betty Edwards, who was not even the original grantor, is irrelevant to the original grantor's intent and is not a proper legal basis to support the ruling.

II. EVEN IF THE MASTER'S RULING IS NOT A LEGAL ERROR, IT IS NOT SUPPORTED BY ANY EVIDENCE IN THE RECORD.

Even if the Master had correctly determined the intent of the original grantor as required by South Carolina law, his ruling is not supported by evidence admitted at trial. The Master's ruling is based entirely on the testimony of Kevin Edwards 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 [from the Smith Survey] is the old ditch line." (R. p. 6). There is no evidence to support this statement.

First, there is no dispute that the former ditch was covered, and therefore not visible, at the time the Appellant Alice Soto took title to Lot 1 and at the time Donald Smith performed the Smith Survey. (R. p. 69, lines 7-15). There is also no evidence that Donald Smith knew where that ditch was located at the time he performed the Smith Survey. Indeed, 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. (R. p. 71, lines 11-21). 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:

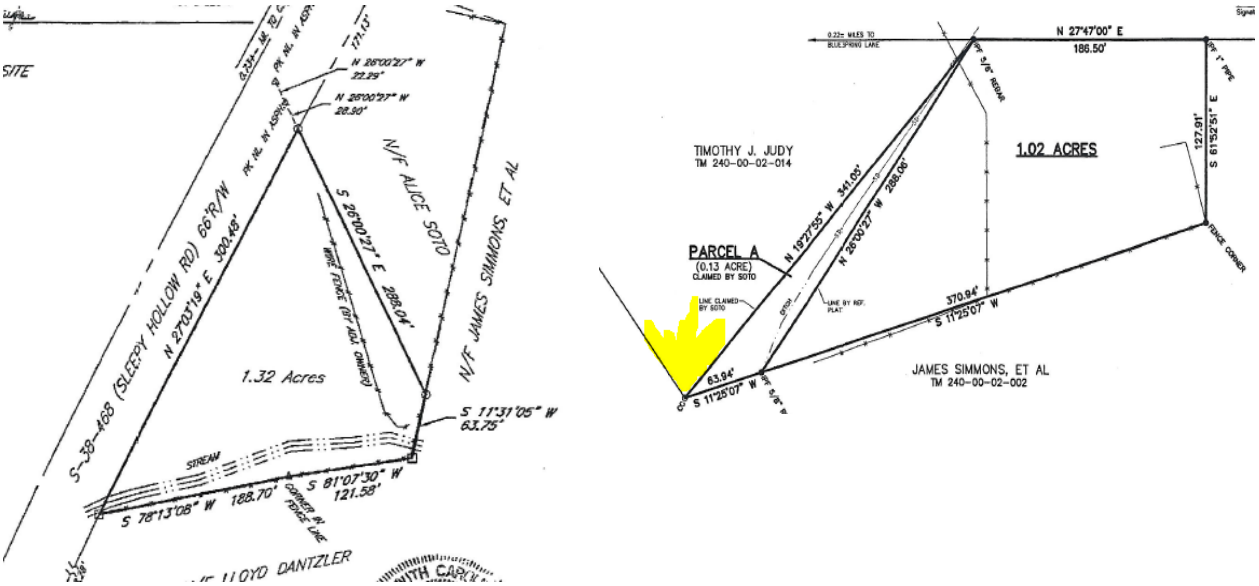
> Q. I'm gonna refer you back to Plaintiffs' Exhibit No. 2, and I'm gonna show -- it's the northeast line between the 1.32 acres and now and formally Alice Soto. Is that line -- how was that line determined or how was it run by Don Smith?
>
> A. When I talked to Ms. Soto and she, you know, wanted it 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.

(R. p. 64, lines 1-25). In so testifying, Kevin Edwards was referring to an unidentified tax map. However, as noted above, the only tax maps in evidence, from 1966 and 1977, show the Judy Parcel as a three-sided property. (R. pp. 177-178)(R. p. 95, line 16-p. 97, line 25). The Smith Survey depicts Lot 14 as a four-sided parcel rather than a triangle, and therefore is not consistent with any tax map in existence at the time that Appellant Alice Soto took title to Lot 1. (R. p. 100, lines 5-18).

Therefore, the Master's conclusion is based on no direct or circumstantial evidence in the record. He claims that the long-covered ditch formed the boundary line based on the testimony

of Kevin Edwards. However, there is no evidence that the surveyor denoted the boundary line on the location of an old ditch. The surveyor is deceased, and obviously could not testify. The survey itself makes no reference to an old ditch, despite noting a stream on the opposite side of the Judy Parcel. (R. p. 149). Mr. Edwards testified that he told Donald Smith to "make it look like the tax map" despite there being no tax maps in evidence that look like the Smith Survey. Mr. Edwards did not walk with Donald Smith or instruct him where the boundary line was located. One is therefore left to wonder how the Smith Survey could possibly reflect the location of a now-covered ditch if there was nobody to show him where it was and no evidence of its location? Even more important, there is no obvious basis for the Master to even infer that the Smith Survey so denotes this now covered ditch.

The Master did choose to address, and largely ignore, the tax maps that aerial photos that did pre-date the transfer of Lot 1 to Appellant Alice Soto. Those tax maps all depict Lot 14 as a triangle. (R. pp. 177-178) (R. p. 164). The 2007 aerial photo depicts the property line as 361'. On the other hand, the Smith Survey, which the Master adopts as establishing the correct property line, depicts Lot 14 as a four-sided parcel, with the boundary line being a mere 288', whereas the Jowers Survey correctly depicts Lot 14 as a triangle:



(R. p. 149) (R. p. 166 – tip of triangle on Lot 14 highlighted).

In sum, there is no evidence that Kevin Edwards instructed Donald Smith to survey the property line along the now-covered ditch line. There is no evidence where the ditch actually ran. The testimony from Mr. Edwards himself clearly established that he told Donald Smith to establish the boundary after a discussion with Appellant Alice Soto "the way the [unidentified] tax map showed it." (R. p. 64, line 7). This is not evidence upon which the Master could reasonably conclude that the boundary line follows an old ditch line, and certainly not evidence that the original grantor – Lawrence Stroman – intended that to be the boundary. In fact, the only evidence in the record that pre-dates the deed of Lot 1 to Ms. Soto – the event that establishes her ownership of the property – demonstrates that Lot 14 was a triangle with a boundary line of 361'. That is not depicted in the Smith Survey, but is depicted on the Jowers Survey, with only a slight variation in the boundary footage. Therefore, since the Master's order is based on no evidence, it must be reversed.

III. THE MASTER ERRED IN FAILING TO ADMIT EVIDENCE OF A PROPERTY LISTING BY KEVIN EDWARDS PRIOR TO THE SALE OF LOT 1 TO APPELLANT ALICE SOTO, AND THIS WAS NOT HARMLESS ERROR.

The Master sustained an objection to the introduction of a Zillow printout from the time period when Dewey and Betty Edwards still owned Lot 1. (R. pp. 182-190). The listing, posted by Kevin Edwards, describes Lot 1, in part, as containing two acres:

> 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.

This evidence was excluded on relevance grounds without the opportunity for argument because the Master concluded that he "[did not] care what he advertised." (R. p. 74, lines 20-22). This evidence was absolutely relevant to Mr. Edwards' credibility. The entire order is based on the finding that the "most persuasive extrinsic evidence is the testimony of Kevin Edwards." (R. p. 6). The Master specifically concluded that "Defendant Soto was conveyed one (1) acre, more or less, and . . . she has received 1.02 acres according to the Jowers plat." (R. p. 6). Yet, the Master excluded evidence that Kevin Edwards advertised Lot 1 as "two acres."

The Zillow listing tends to establish that Mr. Edwards considered Lot 1 to be two acres in the years prior to when Appellant Alice Soto bought it. 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.

Therefore, the erroneous exclusion of the evidence was not harmless, and the Master's ruling should be reversed.

IV. 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.

In his Order, the Master ordered the Appellants to remove the wire and fence posts from the Disputed Parcel and permanently enjoined the Appellants from entering the Disputed Parcel. (R. pp. 7-8). This order was based entirely on the Master's erroneous determination as to the property boundary, and his determination that the Respondent's property is 1.32 acres. As set forth herein, the Master's ruling on the quiet title claim was erroneous and should be reversed. For that reason, the injunctive relief ordered by the Master must be reversed as well. *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).

V. THE MASTER VIOLATED APPELLANTS' CONSTITUTIONAL RIGHTS BY ESTABLISHING A PROSPECTIVE CRIMINAL SANCTION FOR VIOLATION OF AN IMPROPER INJUNCTION.

The Master did not find that the Appellants had actually trespassed on Lot 14. Indeed, that was not even a matter referred to the Master for consideration. (R. pp. 11-12). Regardless, the Master issued a prospective contempt determination that provides that "[t]he 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." (R. pp. 7-8).

The procedure for a contempt citation is well-established. 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). Civil contempt must be shown by clear and convincing evidence. *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998). Criminal contempt must be shown beyond a reasonable doubt. *Id.* The difference between the two is substantial because the constitutional safeguards provided in the Sixth Amendment may be triggered in criminal contempt proceedings. A contemnor has a constitutional right to a jury trial before a criminal sentence of more than six months incarceration may be imposed. *Curlee v. Howle*, 277 S.C. 377, 385, 287 S.E.2d 915, 919 (1982).

Here, the Master issued a prospective contempt citation without a finding that any order had been violated, without specifying whether the contempt is civil or criminal, and without regard to the facts and circumstances of any violation of an order. This is an inappropriate ruling. The Appellants have the right to defend themselves, and to contest actual contempt charges. Indeed, "[p]rocedural due process requires notice and the opportunity to be heard." *Cameron & Barkley Co. v. S.C. Procurement Review Panel*, 317 S.C. 437, 440, 454 S.E.2d 892, 894 (1995). Further, to the extent the Appellants are subject to imprisonment of more than six months, as the MIE Order implies, they have a Sixth Amendment right to a trial by jury. For these reasons, the Master's prospective contempt citation should 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.

WOMBLE BOND DICKINSON (US) LLP

s/Matthew Tillman
Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398
Attorneys for the Appellants

Charleston, South Carolina
July 20, 2023

RECEIVED
Jul 20 2023
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

Appellate Case No. 2023-000439

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

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellants complies with Rule 211(b), SCACR.

WOMBLE BOND DICKINSON (US) LLP

s/Matthew Tillman
Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398
Attorneys for the Appellants

Charleston, South Carolina
July 20, 2023