

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Hon. Marvin H. Dukes, III, Master in Equity

**RECEIVED**

DEC - 8 2011

**S.C. Supreme Court**

Opinion No. 4838 (S.C. Ct. App. Re-filed October 10, 2011)

Johnnie Major, Personal  
Representative of Ed  
Major a/k/a Edward Major. . . . .Appellant,

v.

Penn Community  
Services, Inc., a South  
Carolina Not-For-Profit  
Corporation. . . . . Respondent.

AMENDED APPENDIX TO  
PETITION FOR A WRIT OF CERTIORARI

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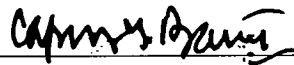
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Respectfully submitted,

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December 6, 2011

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**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

Johnnie Major, Personal  
Representative of the Estate of  
Ed Major a/k/a Edward Major  
a/k/a Edward Major, Sr., Appellant,

v.

Penn Community Services,  
Inc., a South Carolina Not-For-  
Profit Corporation, Respondent.

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Appeal From Beaufort County  
The Hon. Marvin H. Dukes, III, Master-in-Equity

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Opinion No. 4838  
Submitted March 1, 2011 – Filed June 8, 2011  
Withdrawn, Substituted and Refiled October 10, 2011

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**AFFIRMED**

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Ray A. Lord, of Irmo, for Appellant.

Louis O. Dore, of Beaufort, for Respondent.

**WILLIAMS, J.:** On appeal, Johnnie Major, as personal representative for the estate of Edward Major (the Estate), contests the master-in-equity's finding that Penn Community Services, Inc. (Penn) is the fee simple owner of 6.2 acres of real estate in Beaufort County (the Property). The Estate first claims the master lacked subject matter jurisdiction because the master's decision to quiet title to the Property required a determination of intestate heirs, which is exclusively within the probate court's jurisdiction. The Estate also argues the master erred in concluding a certain deed conveyed the Property to Penn because the master's decision was based upon an erroneous determination of intestate succession. We affirm.

### **FACTS/PROCEDURAL HISTORY**

Sub Lot 8,<sup>1</sup> bordered in part by Johnson River, is located on Saint Helena's Island in Beaufort County, South Carolina. Sub Lot 8 comprises 14.13 acres of real estate, and of the 14.13 acres, the Estate undisputedly owns 7.93 acres. At issue in this appeal is whether the Estate or Penn possesses title to an additional 6.2 acres located in the southern portion of Sub Lot 8 (the Property).

In 1866, Edward Philbrick deeded "[ ] Lot No. (8) . . . containing eighteen acres more or less" to Scipio Josiah. Scipio Josiah later died intestate, leaving his only child, William Josiah, as his sole heir. On January 5, 1932, William Josiah conveyed Lot 8 to F.R. Ford for payment of delinquent taxes. The 1932 deed described Lot 8 as "eighteen acres, more or less, being bounded . . . on the North by the marshes of Johnson River, East by lands of Penn School, South by lands of Penn School, [and on the] West by [m]arshes of Johnson River." On June 17, 1936, F.R. Ford conveyed the same parcel to brothers Edward and James Major. The 1936 deed described Lot 8 with the identical language stated in the 1932 deed.

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<sup>1</sup> For ease of reference, this court refers to "Lot 8" as the original eighteen acres, "Sub Lot 8" as the 14.13 acres, and "the Property" as the disputed 6.2 acres that is in the southern portion of Sub Lot 8.

On September 23, 1950, the brothers partitioned the eighteen acres in Lot 8, with the northern ten acres deeded to James Major and the southern eight<sup>2</sup> acres deeded to Edward Major. After Edward Major passed away in 1997, the Estate brought an action to quiet and confirm title to Sub Lot 8 as well as to confirm the southern boundary line of Sub Lot 8. In its complaint, the Estate asserted it was the rightful owner of "the southern portion of Sub Lot 8," which, in addition to its ownership of 7.93 acres, totaled 14.13 acres. The Estate averred it never conveyed away any portion of Sub Lot 8, and Penn's only rightful claim of ownership was to 3.11 acres undisputedly owned by Penn. In response, Penn asserted it had obtained lawful title of the Property from R.R. Legare in 1916,<sup>3</sup> which was duly recorded at the Beaufort County Register of Deeds office. Penn claimed it immediately entered into possession of the Property after this conveyance.

The parties introduced various plats at trial in an attempt to accurately document the master chain of title. Penn first submitted the Simons-Myrant Plat, which was prepared and recorded in 1905 before Penn purportedly purchased the Property. The Simons-Myrant plat illustrated Penn's northernmost boundary including land only up to the disputed 6.2 acres. Penn also submitted the Palmer and Malone Plat, which was prepared and recorded in 1967. This plat included the disputed 6.2 acres, which was consistent with Penn's claim that it acquired the Property in 1916. Last, the Estate submitted the Gasque plat, which was prepared by a local surveyor, David Gasque, for trial and was not recorded. The Gasque plat depicted Sub Lot 8 as consisting of 14.13 acres, which included the disputed 6.2 acres and the 7.93 acres originally deeded to Edward Major in 1950. Besides the Gasque plat, the Estate presented no other evidence to show it ever surveyed, platted, or recorded Sub Lot 8.

In support of its claim that the Estate was the rightful owner of the Property, several family members testified they used the Property to graze

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<sup>2</sup> The record reflects the Estate owns exactly 7.93 acres.

<sup>3</sup> Penn initially asserted in its Answer and Counterclaim that it obtained title from Jane Chisolm in 1959. Penn orally amended its Answer and Counterclaim, without objection, at trial to allege a conveyance from R.R. Legare to Penn by deed dated October 12, 1916.

animals for a number of years and had, at some point in time, planted a small garden on the Property. The Major family also stated they, along with other citizens in the community, frequently used the "Penn dock" on the eastern end of the Property for swimming, boating, and crabbing.

In support of its claim of ownership, Penn's acting executive director and two past executive directors testified Penn had been in possession of the Property for thirty-five years without any claims of adverse ownership by the Major family. The directors noted various Major family members lived adjacent to the Property; however, they claimed none of the Major heirs ever questioned Penn's ownership, despite Penn's establishment of a nature trail and construction of a dock on the eastern end of the Property.

Additionally, Penn presented, without objection, the 1916 deed from R.R. Legare to Penn, which was duly recorded. The 1916 deed stated R.R. Legare was conveying "the same land inherited by Florence Major from her grandfather, Scipio Josiah, containing 6 acres, and portion described as being bounded by Penn School lands, by the 'Corner' by land of Rachel Simmons and by land of William Josiah." Penn also presented, without objection, a property record card prepared by Arthur Christensen, a surveyor in Beaufort County during the relevant time period. The property record card for William Josiah stated, "left daughter, Florence, who married Tom Major . . . Lot 8 Corner from [William's] father, Scipio Josiah." The card subsequently noted a conveyance from William Josiah to F.R. Ford on January 5, 1932.

Because the R.R. Legare deed to Penn did not contain a metes and bounds description but was only defined by adjacent landowners' property lines, the master resorted to the various plats and deeds as well as witnesses' testimony to determine whether the Property was located in Sub Lot 8. In his final order, the master found Penn was the fee simple owner of the Property, free and clear of any claims of ownership by the Estate. This appeal followed.

### STANDARD OF REVIEW

Generally, an action to quiet title is one in equity. Fox v. Moultrie, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008). However, when the defendant's

answer raises an issue of paramount title to land, such as would, if established, defeat plaintiff's action, the issue of title is legal. Dargan v. Tankersley, 380 S.C. 480, 483, 671 S.E.2d 73, 74 (2008). Therefore, in a case tried without a jury, the factual findings of a judge regarding title will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Assoc., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). This scope of review is equally applicable to the factual determinations of a master when, as in the present case, he enters final judgment. May v. Hopkinson, 289 S.C. 549, 554-55, 347 S.E.2d 508, 511 (Ct. App. 1986).

### LAW/ANALYSIS

The Estate first claims the master did not have subject matter jurisdiction to quiet title to the Property because his ruling necessarily involved a determination of intestate heirs, which can only be decided by the probate court. We disagree.

The Estate filed an action in circuit court "for the purposes of quieting and confirming title to the [P]roperty . . . and confirming the southern boundary line thereto . . . ." <sup>4</sup> An action to quiet title is governed by section 15-67-10 of the South Carolina Code (2005). Pursuant to section 15-67-10,

Any person in possession of real property . . . or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively.

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<sup>4</sup> A review of the Estate's complaint and the parties' briefs establish the main purpose of this suit was to determine title to the disputed 6.2 acres. We find the boundary line question is incident to the action to quiet title. See Knox v. Bogan, 322 S.C. 64, 67, 472 S.E.2d 43, 45 (Ct. App. 1996) (finding disputed boundary lines may either be directly or indirectly judicially settled in actions to quiet title).

Once the Estate filed this action, the circuit court was required to refer the action to a master-in-equity to first determine rightful ownership of the Property and then to enter final judgment. See S.C. Code Ann. § 15-67-60 (2005) ("In all actions brought under this article the court, or a judge thereof, shall refer the action to a master or special referee to take the testimony as to the plaintiff's claim or title and as to all the facts and circumstances unless the testimony shall be taken in open court and carefully inquire as to the existence of claim by and residence of all nonresidents."); see also S.C. Code Ann. § 14-11-85 (Supp. 2010) ("When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals . . . .").

While the Estate claims the master improperly asserted subject matter jurisdiction in contravention of section 62-1-302(a)(1) of the South Carolina Code (2009)<sup>5</sup> when the master found "Florence Major acquired an intestate share in the Scipio Josiah estate," we find this argument unpersuasive.

The master was not required to make a determination of heirs to establish rightful ownership of the Property. In order to identify the subject matter of the grant, and as such, whether Penn had paramount title to the disputed land, the master had to determine whether the R.R. Legare deed was in the chain of title and constituted a conveyance out of Sub Lot 8. See Powers v. Rawles, 119 S.C. 134, 156, 112 S.E. 78, 86 (1922) ("The sole purpose of a description of land as contained in a deed is to identify the subject-matter of the grant."). Accordingly, the master recited certain lineage that was already documented in the R.R. Legare deed and the property record card in an effort to identify the exact location of the Property. See Richardson v. Register, 227 S.C. 81, 88, 87 S.E.2d 40, 43 (1955) (parol evidence is admissible to elucidate latent ambiguities in written instruments).

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<sup>5</sup> Section 62-1-302(a)(1) grants "the probate court . . . exclusive original jurisdiction over all subject matter related to . . . [the] determination of heirs and successors of decedents . . . ."

Specifically, the R.R. Legare deed conveyed roughly six acres to Penn, described as "the same land inherited by Florence Major from her grandfather, Scipio Josiah . . . and . . . bounded by Penn School lands, by the 'Corner' by land of Rachel Simmons and by land of William Josiah." The property record card for William Josiah stated, "left daughter, Florence, who married Tom Major . . . Lot 8 Corner from [William's] father, Scipio Josiah" and later noted a conveyance "to F.R. Ford on January 5, 1932." While the deed and property record card appear to conflict on whether Florence acquired her share of the estate directly from her grandfather, Scipio, or directly from her father, William, this discrepancy is immaterial for purposes of determining whether Penn or the Estate possessed paramount title. Moreover, we note the Estate never contested the validity, accuracy, or recordation of the 1916 deed at trial. The Estate's attempt to bootstrap its subject matter jurisdiction claim to evidence that it never contested prior to this appeal is unpersuasive, particularly when the deed and the property record card establish Florence Major had ownership rights to approximately six acres that were described in both documents as the "Corner" of Lot 8. Because the R.R. Legare deed expressly conveyed six acres in Lot 8 owned by Florence Major to Penn, it was reasonable for the master to conclude the disputed 6.2 acres is the same six acres conveyed to Penn in 1916.

Other evidence supports this conclusion as well. Each deed in the Estate's chain of title conveyed a total of eighteen acres. The partition deed between Edward and James Major divided eighteen acres, which indicates the 6.2 acres of disputed land was not a part of the Estate's chain of title. If F.R. Ford had received title to the Property, which he then conveyed to Edward and James Major, we conclude it would be reasonable for the specified acreage in the deed to be greater than eighteen acres. See Von Elbrecht v. Jacobs, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct. App. 1985). ("[A] grantor of real property generally can transfer no greater interest than he himself has in the property."). Moreover, both the 1932 and 1936 deeds expressly described the eighteen acres as being bound on both the east and the south by "the lands of Penn School." This description is consistent with the master's finding that R.R. Legare conveyed these southern six acres in Sub Lot 8 to Penn in 1916, prior to the 1932 and 1936 deeds to the Majors. In addition, Penn's recorded plats all support the master's conclusions. The 1905 plat illustrated Penn's northernmost boundary as land bordering, but not

including, the disputed 6.2 acres. The 1967 plat, on the other hand, included the disputed 6.2 acres, which is consistent with Penn's claim that it acquired the Property in 1916. See King v. Hawkins, 282 S.C. 508, 510, 319 S.E.2d 361, 362 (Ct. App. 1984) (finding party was record owner of property when deed matched recorded plats indicating disputed property was owned by the party and party's predecessors in interest). Last, Penn had been in possession of this land for over thirty-five years without any adverse claims of ownership by the Estate, which lends support for the master's conclusion that Penn was the rightful owner of the Property. Because the foregoing evidence reasonably supports the master's finding that Penn possessed fee simple title to the Property, we affirm the master's decision.

### **CONCLUSION**

Based on the foregoing, the master-in-equity's order is

**AFFIRMED.**

**GEATHERS and LOCKEMY, JJ., concur.**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

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Case No. 2007-CP-07-1323

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SC Court of Appeals

Johnnie Major, Personal  
Representative of Ed  
Major a/k/a Edward Major.....Appellant,

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PETITION FOR REHEARING  
AND  
SUGGESTION FOR REHEARING *EN BANC*

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Appellant Johnnie Major petitions for a rehearing pursuant to SCACR Rule 221(a) and suggests the desirability of a rehearing, *en banc* pursuant to SCACR Rule 221(b).

**Introduction.** In its opinion filed June 8, 2011, this Court affirmed the trial court's judgment that Respondent Penn Community Services, Inc. ("Penn") holds valid title to a disputed 6.2 acres on Saint Helena's Island. The basis for Penn's title consists of the trial court's finding that Florence Major had conveyed the disputed 6 acres to R. R. Legare prior to 1916 and that R. R. Legare conveyed the same 6 acres to Penn in 1916. (R. p. 69; Deed from Legare to Penn).

**Statement of the Issue for Reconsideration:** Because this Court did not address Appellant's argument that there was no evidence to reasonably support a finding that Florence Major ever owned the six acres, in the first place, Appellant seeks a reconsideration by this Court in accordance with Rule 221(a), SCACR.

**Argument:**

1.     **Florence Major's title was not proved by the deed from Legare to Penn.** In its opinion, this Court first cites as supporting evidence for Florence Major's ownership of the disputed 6.2 acres the description in the deed from Legare to Penn, describing the conveyance as "the same land inherited by Florence Major from her grandfather Scipio Josiah". (R. p. 69; Deed from Legare to Penn.) Appellant argued in his principal brief that Penn's title fails, in part, because a granddaughter cannot inherit from a grandfather by intestate succession under the Statute of Descent and Distribution.

The Court concludes in its decision, however, that Florence could have inherited from her father William Josiah, rather than from her grandfather; the inference being that the reference in the deed from Legare to Penn, that Florence had inherited from her grandfather, was a scrivener's error. The difficulty presented by such a conclusion is that there is no evidence in the record of the date of William Josiah's death, nor is there evidence of the descent and distribution of his estate. To the contrary, the evidence supports the conclusion that in 1916, when Legare conveyed to Penn, William Josiah was then living. Accordingly, Florence could not have inherited from him prior to that date. The 1916 deed from Legare to Penn recites abutting property as owned by "William Josiah," suggesting that he was alive on the date of that conveyance. (R. p. 69.) Accordingly, the better inference to be drawn from the evidence is that at the time of the Legare conveyance to Penn in 1916, William Josiah was then alive.

Appellant respectfully suggests that before the conclusion can be reached that the 6 acres purportedly conveyed to Penn is the same 6 acres here in dispute, a valid source of Penn's title must be confirmed.

A further lack of evidence arises from the fact that no deed from Florence Major to R. R. Legare is in existence. None appears in the Record on Appeal; and neither does it appear that such a deed was offered as evidence at trial. (See R. p. 32-33 for a descriptive index of trial exhibits.)

2. Florence Major's title was not proved by the property record card. Secondly, this Court and the trial court placed substantial evidentiary

reliance upon the "property record card" that was introduced into evidence. (R. p. 68; property record card.) It seems undisputed that the property record card is not an official public record, but instead was a part of a collection of notes prepared by the late Arthur O. Christiansen, a Beaufort surveyor, whose family donated his historical records to Beaufort County. (R. p. 56, lines 3-19.)

At the very least the property record card is ambiguous. This Court and the trial court appear to conclude that the property record card documents more than the facts that William Josiah died leaving a daughter Florence who married Tom Major, and that he left a widow Rachael who married Henry Simmons. Rather, the Court concludes that the property record card also supports a finding that at his death William Josiah left to his daughter, Florence Major "Lot 8 corner fr. father Scipio J."

Respectfully, the finding stretches reason. First, the format of the property record card suggests that Mr. Christiansen made notes from the far left margin of simply what lands were owned by William Josiah. "Lot 8 corner fr. father Scipio J" is noted in line with other notes above it, beginning with "Sct 60, Sec 30, ISIE, \_\_\_\_\_ acres #730", and "(indecipherable)...292 S of corner fr. Geo. Frost 12/31/66" and "1/5 int. in Lots 44B and 45B, sec 20 ISIE fr. Sarg. Parker \_\_\_/10/81..." (R. p. 68).

On the other hand, the indented notes appear to note different things, other than William Josiah's holdings. Two of them suggest out conveyances: "to Daredena Brown..." and "to F.R. Ford 1/5/32..." Moreover, the reference on the

card to "Corner" is most probably not to a corner of anything, as the Court seems to find. Rather, the entirety of the lands in the vicinity were at one time known as the "Corner Farm or Mosseville", of which the 18 acres conveyed to Scipio Josiah in 1866 was only a portion. (See R. p. 62, the deed description from Edward Philbrick to Scipio Josiah.)

This Court finds on page 6 of its opinion that "Both the deed and the property record card establish Florence Major had ownership rights to approximately six acres that were described in both documents as the "Corner" of Lot 8. Because the R.R. Legare deed expressly conveyed six acres in Lot 8 owned by Florence Major to Penn, it was reasonable for the master to conclude the disputed 6.2 acres is the same six acres conveyed to Penn in 1916." Respectfully, the conclusion is not supported by any evidence. The deed from Legare to Penn makes no reference to either the "Corner Farm" or to "Lot 8". The property record card, as before argued, cannot reasonably support the inference that Florence Major had ownership rights in anything. Rather, it shows only that William Josiah, for whom the property record card was obviously created, left a daughter named Florence, and that it was William Josiah – and not Florence Major – who owned Lot 8 of the Corner Farm, which he had inherited from his father, Scipio Josiah. (Notably, the Trial Court also made an obviously erroneous finding that Rachel Simmons was Scipio Josiah's widow, [R.p. 8], where the property record card denotes that Rachel was the widow of William Josiah. [R.p. 68.]

Accordingly, Appellant respectfully suggests that the trial court and this Court assigned inferences and weight to the Legare deed and to the property record card that cannot be reasonably supported. The finding that Florence Major ever held title to the disputed 6.2 acres, much less that she ever conveyed it to Legare is not supported by any evidence. Therefore, the conclusion that Penn's deed was in the chain of title is not supported by evidence that reasonably justifies that conclusion.

3. Appellant's chain of title conveyed eighteen acres, "more or less". On the other hand this Court also cites, as additional evidence for its finding that the 6.2 disputed acres was not part of the Edward Major estate's chain of title, that the partition deeds between Edward and James Major divided a total of 18 acres. Therefore, the Court reasons, if the grant by F.R. Ford to the Majors were intended to convey greater than 18 acres, "it would be reasonable for the specified acreage in the deed to be greater than 18 acres." (Court of Appeals Opinion # 4838 at page 53, Sherouse Advance Sheets.)

The derivation of Appellant's title begins with the 1866 deed from Philbrick to Scipio Josiah, that conveyed, "Sublot No. (8) eight, Sections Nineteen and twenty, Township One South, Range one east, According to the plot of the U. S. Direct Tax Commissioners for South Carolina, Containing eighteen acres of land, more or less. Being a portion of the tract of land formerly known as the Corner Farm or Mosseville..." (R. p. 62)(Emphasis added). Succeeding deeds also conveyed 18 acres, "more or less": The Estate of William Josiah to F. R.

Ford (R. p. 64); F. R. Ford to Edward and James Major (R. p 65). Finally, the partition deeds exchanged between Edward and James Major conveyed 10 acres and 8 acres, respectively, "more or less". (R. p. 66). It is clear that every conveyance in Appellant's chain of title has sold the property for a gross sum for the entire tract, and not at a specified price per acre.

"As a general rule, where the sale is of a particular tract for a gross sum to be paid for the whole tract, and not at a specified price per acre, though the tract is also described as containing a certain quantity, it is considered a sale of the actual quantity within the designated boundaries, without reference to the quantity or measure of the premises mentioned in the contract or conveyance, and, where there has been no fraud or misrepresentation, the purchaser is neither liable for a surplus nor entitled to a deduction in the price on account of any deficiency in the quantity or measure in mention." *Jamison vs. Thackston*. 118 S.C. 254, 110 S.E. 389 (1922).

"Inasmuch as this court has heretofore refused relief in like cases, unless a gross deficiency in acreage is shown, the first exception raises the main question to be determined, viz: does the 7.60 acres shortage out of 20 acres (which equals 38%) show a gross deficiency?...In the case of *Erskine v. Wilson*, 41 S.C. 198, 19 S.E. 489 (1894), it was held that where a tract of land is sold for a sum in gross, by metes and bounds, said to contain 253 acres, more or less, with general warranty of the premises, and a plat calling for this number of acres is delivered with the deed, the vendee is not entitled to recover under the covenant of warranty

upon it being made to appear that, while the plat was correct in its courses and distances, it was erroneous in its calculation of acres; the tract, in fact, containing but 120 acres, there having been no fraudulent representation...the reasoning assigned in (*Erskine vs. Wilson*) for refusing relief shows conclusively that the exception raising the questions under consideration cannot be sustained.” *Patterson vs. Walker, et. al.*, 98 S.C. 286, 82 S.E. 432 (1914).

“When a person purchases lands by metes and bounds, said to contain a certain number of acres, more or less, he is entitled to all the land within the limits, whatever the number of acres may be.” *Bratton vs. Clawson*, 34 S.C.L. 127, 3 Strob. 127 (1848).

The original conveyance to Scipio Josiah was of a specific lot, “Sublot No. (8) eight, Sections Nineteen and twenty, Township one South, Range one east, according to the plot of the U.S. Direct Tax Commissioners for the State of South Carolina...”, said to contain “eighteen acres more or less”. That it contained 23 acres rather than eighteen is of no consequence under the authorities above cited. Scipio Josiah and his successors in title are entitled to all of the lands contained within the boundaries of the lot to which reference is made. Surveyor Gasque testified that he utilized the Tax Commissioners plat to conclude that the southern boundary of Lot 8 was located approximately at the barbed wire fence. (R.p.38 line 6 to p.13 line 15.) The clear conclusion from this evidence is that the southern boundary of “Sublot 8” was the barbed wire fence. Accordingly the lands of Scipio Joisah, conveyed to Appellant’s predecessors in title and ultimately to

Appellant, extended to the southern boundary identified by Gasque. That would be so, whether the acreage was eighteen , twenty three, or even a lesser amount.

4. **Uses of the property.** The evidence in the record of the within case supports the conclusion that Respondent Penn and Appellant Major and his family utilized the disputed property in virtually equal fashion. The Major family had historically used the property for grazing of livestock. A barbed wire fence had defined the southern boundary of the disputed 6.2 acres, whereas no fence existed along the north line of the disputed 6.2 acres. Depicted on the Gasque plat at R. p. 21 is an access road to the .5 acre tract held by Josephus Major, located in the undisputed portion of Appellant's land. Manifestly, the access road crosses the disputed 6.2 acres. Surveyor Gasque describes the access road as "Suzy Lane". (R.p.47, line13 to p.48, line 4; p. 49 line 11 to p.50 line14.) Notably, Mr. Gasque also observed that the disputed land is wooded, with no sign of activity other than Suzy Lane, used by the Majors, and the access to the dock, claimed by Penn. (R.p. 49 line 11 to p.50 line 20.)

5. **Conclusion.** In the final analysis, and on the one hand, Appellant's title is based upon a documented and recorded, uninterrupted succession of conveyances from 1866 to the present of 18 acres, more or less. On the other hand, Respondent Penn's title is based upon a 1916 conveyance from Legare, containing an ambiguous deed description, making indirect reference to a source of title from Florence Major, whose ownership of the disputed 6.2 acres is not established by the evidence.

Although neither pled nor argued heretofore, this Court's decision in *Bodiford vs. Spanish Oak Farms*, 317 S.C. 539, 455 S.E.2d 194 (Ct. App. 1995), is helpful in evaluating whether the evidence in this case can reasonably support the trial court's findings. In a case of trespass to try title, if the plaintiff can show an earlier deed deriving from a common source, he may dispossess a defendant in possession. Here, Appellant's title can be traced back to the 1866 deed to Scipio Josiah; whereas Penn's title can only be traced to the 1916 deed from Legare.

For the foregoing reasons, Appellant respectfully urges that this Court reconsider its conclusion that the Master in Equity's judgment is supported by evidence which reasonably supports the trial court's findings, and will issue its order and opinion reversing the order of the Master in Equity, or remanding the case to the Master for further findings or for a new trial.

Respectfully Submitted,

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July 7, 2011

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2007-CP-07-1323

JUL 11 2011  
SC Court of Appeals

Johnnie Major, Personal  
Representative of Ed  
Major a/k/a Edward Major. .... Appellant,

v.

Penn Community  
Services, Inc., a South  
Carolina Not-For-Profit  
Corporation. .... Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Petition for Rehearing and Suggestion for Rehearing *En Banc* on Respondent Penn Community Services, Inc., a South Carolina Not-For-Profit Corporation, by depositing a copy of same in the United States Mail, postage prepaid, on July 7th, 2011, addressed to its attorney of record Louis O. Dore, Esquire, Dore Law Firm, P. O. Box 2478, Beaufort, South Carolina, 29901.

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Attorneys for Appellant

Charleston, South Carolina  
July 7, 2011

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

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Case No. 2007-CP-07-1323

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Johnnie Major, Personal  
Representative of Ed  
Major a/k/a Edward Major.....Appellant,

v.

Penn Community  
Services, Inc., A South  
Carolina Not-For-Profit  
Corporation.....Respondent.

---

RETURN TO PETITION FOR  
REHEARING AND  
SUGGESTION FOR REHEARING *EN BANC*

---

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## INTRODUCTION

The Petitioner's Petition for a rehearing should be denied.

This court affirmed the trial court's judgment in its opinion filed June 8, 2011. The basis for its decision was not, as asserted by Petitioner that Florence Major had conveyed the disputed property to R. R. Legare prior to 1916. Rather, the basis of this court's decision was that the language in the description "being the same land inherited by Florence Major from her grandfather, Scipio Josiah" assisted in determining the grant. This, along with other language such as; containing 6 acres, and being bounded by Penn School lands assisted the court in defining or determining the grant. This court further based its decision upon its conclusion that the R. R. Legare deed to Penn conveyed the disputed property out of the original sub-lot 8 tract; a deed which had been left out of the Petitioner's chain of title. The decision of this court was further based upon an enumeration of findings by the trial court which supported its decision. This enumeration included the deed into Penn, Penn's recorded 1905 plat, Penn's recorded 1967 plat, the A. O. Christensen property record cards, the testimony of various witnesses, Penn's proof of interrupted possession, and Penn's valuable improvements made to the disputed property.

## ARGUMENT

The question of whether Florence Major ever owned the 6.2 acres in the first place was raised for the very first time on appeal. The deed from R. R. Legare to Penn was offered and admitted without objection. (R., p. 61, lines 21-25; p. 62, lines 1-19). Once admitted, the Petitioner never attacked the validity, accuracy, recordation or any aspects of the deed whatsoever. Petitioner did not raise any issues or questions regarding the identity of Florence

Major nor any questions or issues regarding intestate succession.

Petitioner pled its chain of title **and at trial relied solely and exclusively upon its chain of title to prove ownership.** Petitioner's chain of title failed by reason of it overlooking and leaving out of its chain the R. R. Legare deed to Penn. The trial court found that the R.R. Legare deed to Penn was an out conveyance which Petitioner did not include in its chain of title, and also used the description in the R. R. Legare deed to Penn to assist in the determination of the exact location of the property conveyed therein, and whether it described the disputed property. The issue Petitioner now wants this Court to consider was not presented to the Court at the trial of the case. The Court reviewed the description in the R. R. Legare deed as to the surrounding landowners, plats of record, dates of recordation of deeds, and plats, physical possession of this property and credible testimony with regard to possession and ownership, and concluded that the R. R. Legare deed to Penn was a conveyance out of the Scipio Josiah sub-lot 8 tract, and that it did, in fact, convey the disputed 6.2 acres of property.

Interestingly, Petitioner never attacked Penn's ownership of the 3.11 acres which came out of sub-lot 8 as well. Petitioner laid out its chain of title beginning with the conveyance from Edward S. Philbrick to Scipio Josiah, dated February 10, 1866. The only other out conveyances in Petitioner's chain of title was the tax deed to F. R. Ford and the conveyance from F. R. Ford to Edward and James Major, followed by partition deeds between Edward and James in 1952. This was Petitioner's established chain of title. It did not include a deed into Penn for 3.11 acres which went uncontested nor the R. R. Legare deed to Penn. The Trial Court concluded that the property described in the R. R. Legare deed to Penn was a conveyance out of the Scipio Josiah chain of title, and that deed did, in fact, convey the "disputed" property.

Petitioner did argue in it's principle brief that Penn's title failed in part because a granddaughter cannot inherit from a grandfather by intestate possession. Petitioner did not make this argument at trial, nor did Petitioner ever establish when Scipio Josiah nor William Josiah died. To date it has not been established who preceded the other in death. Petitioner could not reasonably have made an argument at trial regarding intestate succession without establishing dates of death, or establishing who pre-deceased the other.

The 1916 deed from Legare to Penn recites as one abutting property owner "property owned by William Josiah". This does not suggest that William Josiah was alive at the date of the conveyance rather, it suggest any number of things, all of which would speculative:

- 1) William Josiah was deceased and his estate was not probated or administered on the date of the conveyance, and he was therefore the record owner of the abutting or adjoining property on the date of the conveyance;
- 2) William Josiah was deceased and no affirmative steps had been taken to show the same on the public record. For example, none of the remainder of the property following Penn's deed had been deeded out nor had there been any action to quiet or clear the title to the remainder of the property;
- 3) William Josiah was deceased and lived on the property abutting the 6.2 acres, paying taxes during his lifetime on the house separately from the land as was common practice in Beaufort County prior to 1954 when the district, map and parcel system was first introduced;
- 4) someone paid the property taxes on the remainder of the property owned by William Josiah after his death until 1932 when the remainder of the estate was

sold for delinquent taxes to F. R. Ford, irrespective of date of death;

- 5) other speculative conclusions too numerous to recite.

The conclusion reached by the Court was reasonable in view of all of the credible evidence presented, one of which was Penn's recorded plats, a recognized factor or element in proving title. King v. Hawkins, 282 S.C. 508, 510, 319 S.E. 2d 361, 362 (ct. App. 1984). It must be remembered that the Petitioner had not one single recorded plat. Petitioner presented at trial a map prepared by the U. S. Direct Tax Commissioners and a plat prepared for trial only, in 2005.

Petitioner goes on to claim that no deed from Florence Major to R. R. Legare is in existence. That is a claim not established of record and never raised at trial.

Petitioner next complains that the Court placed substantial evidentiary reliance upon the property record card of Arthur O. Christensen. The A.O. Christensen property record cards are "historical records" heavily relied upon daily for their accuracy by the Bench, Bar and all county officials and officers responsible for maintaining county property records. The A. O. Christensen property record cards are not self authenticating public records; however, they are, in fact, public records kept in the record offices of the Beaufort County Courthouse. Petitioner's assertion that they are not official public records is without any basis in fact. Moreover, the A. O. Christensen property record card was admitted into evidence without objection.

Petitioner skillfully attacks the A. O. Christensen property record cards as ambiguous while avoiding all of the other findings of the Court based upon credible corroborated evidence. Petitioner, for example, avoids any reference to the various plats of record of Penn dating back as early as 1905; all of which are indicia of possession and ownership. Petitioner also avoids the credible testimony of various witnesses and physical evidence such as the dock which was

constructed by Penn on the disputed property. In other words, Petitioner avoids all of the “**other credible evidence**” which the Court recited in its specific findings of fact.

Respondent agrees with the Petitioner’s assertion regarding the principle established in Jamison v. Thakston, 1185.C.254, 110 S.E. 389 (1922), and Eskin v. Wilson, 41 S.C. 198, 19 S.E. 489 (1894). Respondent respectfully disagrees with their applicability and relevance to the facts of this case. Petitioner, again, raises an issue not heretofore presented at the trial level.

Petitioner avoids the fact that when the 3.11 acres owned by Penn and not contested and the 6.2 acres, both of which lie in sub-lot 8, are deducted, eighteen (18) acres are left. The eighteen acres left is the precise acreage called for in the Major deeds. There seems to Respondent no compelling reason for the Court to overlook this fact. Petitioner apparently believes it unimportant and should be overlooked by the Court that the Petitioner get exactly and precisely what their deeds call for with the award of the disputed property to Penn along with the deduction of 3.11 acres.

Respondent would, again, assert as it did in its principal brief that the “bottom line” is that Petitioner “missed” the R. R. Legare deed to Penn in the performance of its title examination.

Respondent disagrees with Petitioner’s assertion that the parties’ use of the disputed property was virtually equal. Petitioner points to evidence of the Major’s use of the property for grazing animals. The evidence of record is that the animals which grazed the disputed property “ran freely” as the mustang upon western public lands: without rope, chain or fence. On the other hand, the record supports Penn’s valuable improvements to the land. Some of Penn’s improvements included a well maintained dock extending into Wallace or Johnson Creek, and a

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Marvin H. Dukes, III, Master in Equity

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Case No. 2007-CP-07-1323

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Johnnie Major, Personal  
Representative of Ed  
Major a/k/a Edward Major.....Appellant,

v

Penn Community  
Services, Inc., A South  
Carolina Not-For-Profit  
Corporation.....Respondent.

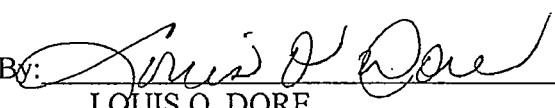
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**PROOF OF SERVICE**

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I certify that I have served a copy of the Return to Petition for Rehearing and Suggestion for Rehearing *En Banc* on Appellant Johnnie Major, Personal Representative of Ed Major a/k/a Edward Major, by depositing in the United States Mail, postage prepaid on July 29, 2011, addressed to his attorney of record Capers G. Barr, III, Esquire, Barr, Unger & McIntosh, LLC, Post Office Box 1037, Charleston, SC 29402-1037.

Dore Law Firm, P. A.

By: 

LOUIS O. DORE

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Attorney for Respondent

# The South Carolina Court of Appeals

Johnnie Major, Personal Representative  
of the Estate of Ed Major a/k/a Edward  
Major a/k/a Edward Major, Sr.,

Appellant,

v.

Penn Community Services, Inc., a  
South Carolina Not-For-Profit  
Corporation,

Respondent.

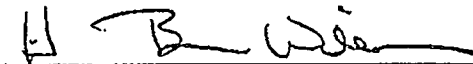
The Hon. Marvin H. Dukes, III  
Beaufort County  
Trial Court Case No. 2007-CP-07-1323

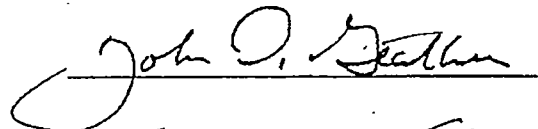
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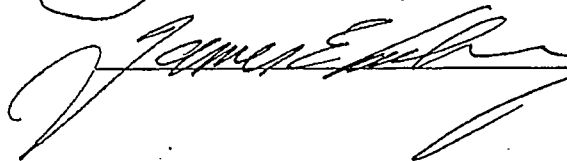
## ORDER DENYING PETITION FOR REHEARING AND SUBSTITUTING OPINION

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PER CURIAM: After a careful consideration of the Petition for Panel Rehearing, the Court decided to issue a substituted opinion. It is, therefore, ordered that the Petition for Panel Rehearing be denied and the earlier opinion, Op. No. 4838, be withdrawn and substituted with the attached opinion.

 J. Williams

 J. Geathers

 J. Lockemy

Columbia, South Carolina

cc: Capers G. Barr, III, Esquire  
Ray A. Lord, Esquire  
Louis O. Dore, Esquire

**FILED**

**OCT 10 2011**

180831

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

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2007-CP-07-1323

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Johnnie Major, Personal  
Representative of the Ed  
Major a/k/a Edward Major  
a/k/a Edward Major, Sr.,

Appellant,

v.

Penn Community  
Services, Inc., A South  
Carolina Not-For-Profit,

Respondent.

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RECORD ON APPEAL

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Note: The official page numbers for the record are located on the bottom, right hand corner of each page. Also, several large plats have been filed separately, and are duly noted in this index.



STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF BEAUFORT         )     IN THE COURT OF COMMON PLEAS  
                                          )  
                                          )     CASE NO. 2007-CP-07-1323

JOHNNIE MAJOR, PERSONAL     )  
REPRESENTATIVE OF THE ESTATE     )  
OF ED MAJOR a/k/a EDWARD MAJOR     )  
a/k/a EDWARD MAJOR, SR.,     )

Plaintiff,     )

-versus-     )

PENN COMMUNITY SERVICES, INC.,     )  
A SOUTH CAROLINA NOT-FOR-PROFIT     )  
CORPORATION,     )

Defendant.     )

FINAL ORDER

FILED  
CLERK OF COURT  
JUN 16 2008  
BEAUFORT COUNTY, SC

2008 JUN 16 AM 10:26 PM  
(cc)

This is an action to quiet and confirm title to real estate which was brought by Johnnie Major in his capacity as Personal Representative of the Estate of Ed Major, a/k/a Edward Major, a/k/a Edward Major, Sr., hereinafter referred to as "Major". The matter comes before me as Special Circuit Court Judge for Beaufort County, South Carolina with finality, any appeal being directly to the South Carolina Supreme Court.

The Complaint was filed on May 23, 2007, and the Defendant filed an Answer and Counterclaim, followed by a Reply on behalf of the Plaintiff. The major allegations of the Plaintiff's Complaint were as follows:

1. The Plaintiff is the duly appointed Personal Representative of the Estate of Major, who died testate in Beaufort County, South Carolina, survived by the named children, and the children of a pre-deceased child with their respective

ownership interests in Major's Estate.

2. Major was vested with fee simple title to certain real estate located on St. Helena Island, Beaufort County, South Carolina, being eight (8) acres, more or less, as described at Deed Book 71, Page 351, and also, a second parcel consisting of .5 acre, more or less, which was a portion of the eight (8) acre tract.
3. The sole asset of the estate consisted of the real estate, which is the subject of this action.
4. That as a result of the title examination and subsequent plat, the Plaintiff believes that the property titled in the name of the Decedent consists of 14.13 acres, as depicted on said plat.
5. That the conclusion as to acreage (14.13) was based upon certain conclusions, to-wit:
  - a) the property consisted of the southern portion of "Sub Lot 8", save and except a 3.11 acre parcel which is owned by and has been occupied by Penn Community Services for a period in excess of 100 years;
  - b) Sub Lot 8 was acquired by Scipio Josiah by deed of Edward S. Philbrick, dated February 10, 1866, and recorded in the office of the RMC for Beaufort County at Deed Book B, Page 222;
  - c) the property acquired by the said Scipio Josiah consisted of all of "Sub-Lot 8", Section 19 and 20, 1S1E, according to the plat of the U. S. Direct Tax Commissioners for South Carolina.;
  - d) Scipio Josiah died intestate leaving as his sole heir at law William Josiah,

who took possession of the referenced Sub Lot 8, which was later sold for delinquent taxes to F.R. Ford, at Deed Book 46, Page 383;

- e) F. R. Ford thereafter conveyed the property to Edward Major and James Major;
- f) Edward Major and James Major partitioned the property with James Major acquiring title to the northern portion thereof, and Edward Major acquiring title to the southern portion thereof. The Deed into Edward Major is recorded at Deed Book 71, Page 351;
- g) the description of the property acquired by Edward Major in the deed from James Major described the property as the southern portion of Sub Lot 8;
- h) the Decedent nor his predecessors in title ever conveyed any portion of Sub Lot 8, 1S1E, save and except the 3.11 acre parcel referenced above, and the Defendant had no further interest in Sub Lot 8. Plaintiff further alleged that the action was brought for the purpose of quieting and confirming title to the property which is the subject of the action, and confirming the southern boundary line thereto in accordance with the plat which was attached to the Complaint, (hereinafter referred to as the Gasque Plat).

The Defendant in its Answer and Counterclaim denied all of the material allegations of the Plaintiff's Complaint and alleged that it had acquired 6.2 acres of the southern portion of "Sub Lot 8" by deed from Jane Chisolm, dated September 11, 1959, and recorded in the office of the RMC for Beaufort County at Deed Book 98, Page 231. At the trial the Defendant moved to

amend its Counterclaim to substitute the conveyance from Jane Chisolm to the Defendant by deed from R. R. Legare to Penn School, a/k/a Penn Community Services, Inc. by deed dated October 12, 1916, and recorded in the office of the RMC for Beaufort County at Deed Book 36, Page 115. The Motion was granted without objection. Defendant further alleged that immediately upon acquiring the 6.2 acres it went immediately into possession, and that it has since been in exclusive, open, notorious, hostile and continuous possession since October 12, 1916.

The Defendant further alleged that the 6.2 acres is depicted on a plat entitled "Penn Center Lines Surveyed by Palmer and Malone, Inc.", recorded at Plat Book 17, Page 14, and that the Defendant's southernmost boundary of the said 6.2 acres is the line separating Sub Lot 8 from Sub Lot 7, and asked that the Court award title to the 6.2 acres to the Defendant.

The Plaintiff's Reply denied all of the essential allegations of the Defendant's Counterclaim, and demanded strict proof thereof.

The resolution of this case depends almost entirely upon the question of whether the 6.2 acres of "disputed property" was ever conveyed out of the original Scipio Josiah "Sub Lot 8" tract, and whether the deed from R. R. Legare to Penn School is such an out conveyance from the original Scipio Josiah "Sub Lot 8" tract. Plaintiff also relies upon testimony of occupation, possession and use of the disputed property.

Kenneth Major testified that he and his family members planted pine trees at the behest of Courtney Siceloff on a portion of the disputed tract. The area lies near the cemetery (cemetery shown on the Gasque plat). Courtney Siceloff is a former Executive Director of Penn who preceded John Gadson. John Gadson served in that capacity beginning in the early 1970's.

Johnny Major, Kenneth Major and Francis Major all testified that the Major family used the property to graze animals for a number of years. The area used for grazing was not fenced nor otherwise enclosed. Joseph McDomick, a witness for the Defendant, also testified that the Majors used the property for grazing animals. His testimony was, however, that the animals were "staked out" and there was never an enclosed area for grazing.

There was also testimony that the Majors, at some point in time, planted a small garden on the property. There was no specific or precise identification of the garden area.

Francis Major testified that he and his family used the dock at the eastern end of the property frequently for swimming, boating and crabbing activities. He did not testify that his family built the dock, nor that they ever claimed ownership of it. He also testified that the dock and landing were used frequently by the community without interference from Penn. His further testimony revealed that the dock was known as the "Penn Dock". This testimony was consistent with the testimony of Walter Mack, Acting Executive Director of Penn, who also lived in the community, and had used the dock and landing facilities over the years. Walter Mack also testified that such use was consistent with Penn's charitable services and goals and objectives as a community based services organization.

There is also designated on the Gasque plat an "old fence line". The Majors testified that they all believed that the "old fence line" was the southern boundary line of their property. Joseph McDomick, an employee of Penn beginning in 1964 until his recent retirement, testified that the "old fence line" was placed in its location to keep the animals out of Penn's vegetable farming area.

Now having heard all of the testimony, and having reviewed all of the exhibits in the

case, I find the following as matters of fact:

1. Sub Lot 8 was never surveyed, platted or recorded by the Plaintiff. Plaintiff relied upon an unrecorded plat of the U. S. Direct Tax Commissioners, dated July, 1866 for its description of Sub Lot 8. From the U. S. Direct Tax Commissioners' plat of Sub Lot 8, Plaintiff commissioned a survey which depicted Sub Lot 8 as 3.11 acres, which Plaintiff does not dispute as being owned by Penn Center, the southern portion of Sub Lot 8, the 6.2 acres of "disputed property", along with the remainder of certain other properties owned by Penn Center. The "Gasque Plat" was an unrecorded plat which was prepared for trial only.
2. The deed from R. R. Legare to Penn School contains an imprecise description, and there was no plat made of the property at the time of the conveyance. There is, however, a plat which was prepared for Penn Center, a/k/a Penn School, a/k/a Penn Community Services, Inc., hereinafter referred to as "Penn" by Palmer and Malone which includes the 6.2 acres or "disputed property" which is the subject of this action. This plat was prepared on July, 1967 and recorded at Plat Book 17, Page 15. The R. R. Legare deed to Penn does not contain metes, bounds, courses and distances, but simply describes the property as being bounded by certain adjacent landowners. A Deed should not fail because the description is imprecise or ambiguous. It is the intention of the parties which governs, and when it is not expressed accurately or precisely in a deed parol evidence may be admitted to supply or explain it. Mary Lawrence Gaddie Smith vs. William M. DuRant, 236 S.C. 80, 113 S.E. 2d 349 (1960), Hazard Richardson vs. Johnnie Register, 227

S.C. 81, 87, S.E. 2d 40 (1955). The sole purpose of a description of land as contained in a deed is to identify the subject matter of the grant. All of the parts of a description contained in a deed should be taken together. Parol evidence is admissible to elucidate latent ambiguities in written instruments generally 9 S.C. Dig., Evidence, Key 452, Page 205.

3. The description and derivation in the R. R. Legare deed, along with the recorded plats and the testimony of the Defendant's witnesses convince me overwhelmingly that the R. R. Legare deed referenced above to Penn is a conveyance out of the original Scipio Josiah Sub Lot 8 tract, and that deed is a conveyance of the "disputed property" which is the subject of this lawsuit, and I so find.
4. I further find other compelling and convincing evidence which supports the above finding that the R. R. Legare deed is an out conveyance of the original Scipio Josiah Sub Lot 8 tract. They are as follows:
  - a) The description of the land or subject matter of the grant in the Legare Deed is:

*"All my right, title and interest in and to all that piece, parcel or tract of land situated, lying and being near Frogmore on St. Helena Island, in the County of Beaufort and State of South Carolina, being the same land inherited by Florence Major from her grandfather, Scipio Josiah, containing 6 acres portion described as being bounded by Penn School lands, by the "Corner" by land of Rachel Simmons, and by land of William Josiah".*
  - b) The property lies on St. Helena Island, near Frogmore, and is described as being the land inherited by Florence Major from her grandfather, Scipio

Josiah. The testimony as well as the pleadings indicate that Scipio Josiah died intestate leaving his son, William Josiah as his sole heir. The Arthur O. Christensen property record card, prepared for William Josiah's lands, which I take to be extremely reliable, indicates that William Josiah "left daughter, Florence, who married Tom Major" "Lot 8 Corner from father, Scipio Josiah". It becomes clear that Florence Major acquired an intestate share in the Scipio Josiah Estate, which she could have transferred.

The property record card also makes reference to Sub Lot 8 in connection with Florence Major being Scipio Josiah's granddaughter. It indicates that Scipio Josiah left a widow, Rachel, who married Henry Simmons. The description in the R. R. Legare deed indicates that the property conveyed is bounded by Rachel Simmons and William Josiah. Rachel being Scipio Josiah's widow, obviously became Rachel Simmons upon Scipio Josiah's death, and her subsequent remarriage to Henry Simmons, thus becoming Rachel Simmons rather than Rachel Josiah. The R.R. Legare deed recites William Josiah and Rachel Simmons as adjoining landowners, both of whom would be intestate heirs of Scipio Josiah, and adjoining landowners north of the property conveyed out. The property is further described in the R. R. Legare deed as being bounded by Penn School lands. The disputed property is bounded by Penn on the east (3.11 acres) and on the south by other lands of Penn School. The deed accurately describes the adjoining landowners on the north, south and east at the time of the

conveyance. The property is bounded on the west by a creek. The R.R. Legare deed is dated October 12, 1916 preceding the tax deed to F. R. Ford. The description contained in the deed would have been accurate at the time of the conveyance.

The Arthur O. Christensen property record card indicates that William Josiah's property was transferred to F. R. Ford on January 5, 1932 at Deed Book 46, Page 383, and recorded on January 11, 1932. This is one of the deeds from the Major chain of title. The Arthur O Christensen property record card, read together, with the description in the R. R. Legare deed convinces me that the property described in the R. R. Legare deed is the "disputed property", and is an out conveyance of the original "Sub Lot 8" tract to Penn School.

- c) The recorded plat prepared for Penn by Palmer & Malone, dated July, 1967 coincides with the "Gasque Plat", and would include the "disputed property" as being owned by Penn.
- d) The Simons Myrant Plat was prepared in 1905, prior to the R. R. Legare deed of 1916. It takes Penn's northernmost boundary up to the "disputed tract". The Palmer & Malone plat made after the R. R. Legare deed included the disputed tract. The Simons Myrant plat has been recorded for 43 years. In summary, the Simons Myrant Plat, the Palmer & Malone Plat, the Gasque Plat, and the R. R. Legare deed all taken together do not conflict and overwhelmingly show that the R. R. Legare deed is an out

conveyance of the original Scipio Josiah "Sub Lot 8" tract.

- e) Based upon the testimony of the Acting Executive Director of Penn, Walter Mack, along with the testimony of past Executive Directors of Penn, Bernie L. Wright, and John Gadson, all of whom I find to be very credible witnesses, Penn has been in possession of the "disputed property" for a period of at least 35 years without any adverse claim of ownership. Various heirs of James Major and Edward Major have lived adjacent to the property at various times, and continue to live there. They have never questioned Penn's ownership despite Penn's use of the property. The uncontradicted testimony is that Penn has established a Nature Trail on the "disputed property" and has owned a dock at the eastern end of the property for a period in excess of 35 years.
- f) An unrecorded plat prepared by Zyad Khalil for Kenneth Major coincides with the R. R. Legare deed and the other various plats above mentioned, and leaves the Majors owning at least 18 acres excluding the "disputed property". The partition deeds of Edward and James Major call for a total of 18 acres of property.
- g) The Major's claim of ownership rests upon the "Gasque Plat" prepared for trial, but not recorded, and the faulty conclusion that there were no out conveyances of the original Scipio Josiah Sub Lot 8 tract except for the 3.11 acres owned by Penn. I do find that the R. R. Legare deed is an out conveyance.

5. Having found that the 1916 R.R. Legare deed to Penn is an out conveyance of the "disputed property", Major's claim of occupation and possession would be in derogation of such conveyance. Their claim of ownership would then involve the question of adverse possession, which was neither pled nor proven.

The Majors never fenced nor posted the disputed area, but did claim planting of timber, grazing of animals and gardening.

I find that the grazing of animals would have been occasional at best. Such occasional use did not constitute adverse possession as required by a long history of authorities. Adverse possession must be open, notorious, hostile, exclusive and continuous for a period of twenty years. *Lusk v. Callahan*, 297 S.C. 459, 339 S.E. 2d 156 (Ct. App. 1986), *All Saints Parish, Waccama v. Protestant Episcopal Church Diocese of S.C.*, 358 S.C. 209, 595 S.E. 2d 253 (Ct. App. 2004), *Mullis v. Winchester*, 237 S.C. 487, 118 S.E. 2d 66 (1961), *Lynch v. Lynch*, 236 S.C. 612, 115 S.E. 2d 301 (1960). Major's occasional use of the disputed area for grazing was insufficient to put Penn on inquiry as to the nature and extent of the invasion of Penn's rights, and the Majors made no hostile entry. The occasional use for grazing was insufficient to indicate an intent to dispossess Penn of ownership.

6. Kenneth Major testified that the Majors planted pine seedlings during the Courtney Siceloff administration which ended in 1969. He did not cite any continuous activity of planting and cutting of timber on the disputed tract sufficient to place Penn on notice of any intent to dispossess Penn of ownership. I

find that there was no continuous activity of timber farming on the disputed tract.

7. I find that there was no specific or precise area of gardening, and that whatever area may have been gardened in the past is now wooded, hence insufficient proof of gardening over a continuous period of 20 years.
8. I further find that the use of the dock and landing by the Major Family was not exclusive, and was not under a claim of ownership.
9. Finally, adverse possession cannot be based upon a mistaken belief of ownership. The Majors cannot claim occupation, possession and ownership under a title and at the same time, a hostile entry in recognition of Penn's title. The Majors claim is fundamentally based upon a survey and title examination following Johnny Major's appointment as Personal Representative of his father's estate. Here, they essentially chose to rely upon title as their basis of ownership. Their claim of ownership under title fails.

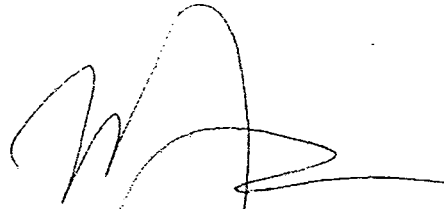
**Based upon my findings of fact, I now conclude as a matter of law that:**

1. Penn Community Services, Inc., a/k/a Penn School, a/k/a Penn Center is the fee simple owner of the property which is the subject of this action consisting of 6.2 acres, and is designated on the "Gasque Plat" as the "disputed property" or "disputed area".

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Penn School, a/k/a Penn Community Services, Inc., a/k/a Penn Center is hereby awarded the 6.2 acres of "disputed property" or "disputed area" as shown on the "Gasque Plat", free and clear of any claims of ownership by the Estate of Ed Major, a/k/a Edward Major, a/k/a Edward Major, Sr. It

is further ordered that the "Gasque Plat" becomes a final recordable plat, and is recorded in the office of the RMC for Beaufort County.

AND IT IS SO ORDERED.



---

MARVIN DUKES, III, SPECIAL CIRCUIT  
COURT JUDGE FOR BEAUFORT COUNTY

MIE

Beaufort, South Carolina

June 10, 2008

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

Major, et al.,

Plaintiffs,

vs.

Penn Community Services, Inc., et al.,

Defendants.

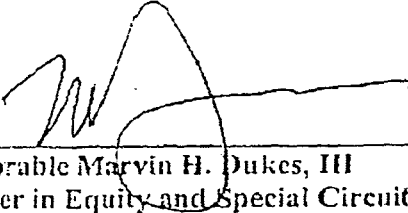
IN THE COURT OF COMMON PLEAS

CASE NO: 2007-CP-07-01323

ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION

This matter came before me December 12, 2008, on Plaintiff's Motion for Reconsideration of the Final Order dated June 16, 2008. After hearing all the evidence, I find that the motion is denied.

AND IT IS SO ORDERED:

  
\_\_\_\_\_  
Honorable Marvin H. Dukes, III  
Master in Equity and Special Circuit Court Judge  
for Beaufort County

April 30, 2009  
Beaufort, South Carolina

2009 MAY -1 PM 3:27  
CLERK OF COURT  
BEAUFORT CO.

) IN THE COURT OF COMMON PLEAS  
) CIVIL ACTION NO. 2007-CP-07- 1323

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$$\left( \begin{array}{c} \vdots \\ \vdots \\ \vdots \\ \vdots \\ \vdots \end{array} \right)$$

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2007 MAY 23 PM 1:23  
BEAUFORT COUNTY  
CLERK OF COURT  
BEAUFORT, S.C.

BY:

May 18, 2007

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS  
) CIVIL ACTION NO. 2007-CP-07- 1323  
)

JOHNNIE MAJOR, PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
ED MAJOR a/k/a EDWARD MAJOR a/k/a  
EDWARD MAJOR, SR.

Plaintiff,

vs.

PENN COMMUNITY SERVICES, INC., A  
SOUTH CAROLINA NOT-FOR-PROFIT  
CORPORATION,

Defendant.

COMPLAINT  
(JURY TRIAL DEMAND)

2007 MAY 23 PM 1:23  
BEAUFORT COUNTY  
CLERK OF COURT  
BEAUFORT, S.C.

The Plaintiff respectfully alleges as follows:

1. That he is the duly-appointed Personal Representative of the Estate of Ed Major, a/k/a Edward Major, a/k/a Edward Major, Sr., who died testate on July 26, 1997, in Beaufort County, South Carolina. Edward Major (a/k/a Edward Major, a/k/a Edward Major, Sr.) was survived by the following children:

| <u>NAME</u>                          | <u>% INTEREST</u> |
|--------------------------------------|-------------------|
| Marion Major                         | 7.143             |
| Julia B. Hammond                     | 7.143             |
| Wilhelmina Major a/k/a Viola Major   | 7.143             |
| Lucille Pryor                        | 7.143             |
| Mary L. Bagwell                      | 7.143             |
| Lillian Freeman a/k/a Lillian Major  | 7.143             |
| Thomas Major                         | 7.143             |
| Benjamin Major                       | 7.143             |
| Virginia Koti a/k/a Virginia Major   | 7.143             |
| Florence Smalls                      | 7.143             |
| Johnnie Major                        | 7.143             |
| Josephus Major                       | 7.143             |
| Rosa Lee Blount a/k/a Rosa Lee Major | 7.143             |

and the heirs of a pre-deceased child, Edward Major, Jr:

|                         |              |
|-------------------------|--------------|
| Gertrude Major (Spouse) | 3.571        |
| Erica Major             | 1.785        |
| Edward Major, III       | <u>1.785</u> |

Total: 100%

2. That at the time of his death, Edward Major (hereinafter "Decedent") was vested with fee simple title to certain real property located on St. Helena Island, Beaufort County, South Carolina, described as follows:

**PARCEL 1 - R300 016 000 0079 0000:**

ALL that certain piece, parcel or tract of land, situate, lying and being on St. Helena Island, State of South Carolina, County of Beaufort, containing seven and one-half acres, more or less, described in Deed Book 71 at page 351 as eight (8) acres, more or less, and being bounded and described as follows, to-wit: on the North by lands formerly of Edward Major and James Major, and now of James Major; on the East by lands of Penn School; on the South by lands of Penn School; and on the West by marshes of Johnson River, and being the Southern portion of that tract of land conveyed to James Major by F. R. Ford by deed dated June 17, 1936, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 52 at page 407. For a more accurate description reference is made to a boundary survey prepared for Johnny Major by David E. Gasque, RLS, dated August 18, 2005.

This being a portion of the property conveyed to Edward Major (a/k/a Ed Major, Sr. a/k/a Edward Major, Sr.), the decedent herein, by deed of James Major dated September 16, 1950, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 71 at page 351.

**PARCEL 2 - R300 016 000 0371 0000:**

ALL that certain piece, parcel or tract of land, situate, lying and being on St. Helena Island, Beaufort County, South Carolina, containing 0.5 acre, more or less, being a portion of eight (8) acres, more or less, and being bounded and described as follows, to-wit: on the North by lands formerly of Edward Major; on the East by lands of Penn School; on the South by lands of Penn School; and on the

West by marshes of Johnson River, and being the Southern portion of that tract of land conveyed to James Major by F.R. Ford by deed dated June 17, 1936, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 52 at page 407. For a more accurate description reference is made to a boundary survey prepared for Johnny Major by David E. Gasque, RLS, dated August 18, 2005.

This being a portion of the property conveyed to Edward Major (a/k/a Ed Major, Sr. a/k/a Edward Major, Sr.), the decedent herein, by deed of James Major dated September 16, 1950, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 71 at page 351.

3. That upon the death of Decedent, Johnnie Major, the Decedent's oldest son, petitioned the Beaufort County Probate Court for Letters Testamentary to be issued. Thereafter, by Order of the Beaufort County Probate Judge dated February 20, 2004, Johnnie Major was appointed as Personal Representative of the Estate of the Decedent.

4. That the sole asset of the Estate consists of the real property which is the subject of this action. Accordingly, the Plaintiff, in performing his duties, commissioned a title examination of the subject property and had same surveyed and platted.

5. That as a result of the title examination and subsequent plat, the Plaintiff is informed and believes that the property titled in the name of the Decedent consists of Fourteen and thirteen one-hundredths (14.13) Acres, as depicted on said plat, a copy of which is attached hereto as Exhibit "A", which is the subject property of this action.

6. That Plaintiff has reached such conclusion based upon the following:

a. The property which is the subject of this action consists of the southern portion of "Sub Lot 8", save and except a 3.11 acre parcel which is owned or has been occupied by Penn Community Services for a period in excess of one hundred (100) years. Said 3.11 acre parcel is identified on the attached plat as "3 Acre Parcel per 1869 Plat".

b. That said "Sub Lot 8" was acquired by Scipio Josiah by deed of Edward S. Philbrick dated February 10, 1866, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book B at Page 222.

c. That the property acquired by the said Scipio Josiah consisted of all of "Sub Lot 8", Sections Nineteen and Twenty, 1S1E according to the plat of the US Direct Tax Commissioner for South Carolina.

d. Thereafter, upon information and belief, Scipio Josiah died intestate, leaving as his sole heir William Josiah, who took title and possession of the referenced Sub Lot 8. This property was sold for delinquent taxes and non-payment thereof to F. R. Ford. The tax deed conveying the said property to F. R. Ford is recorded in the Office of the Register of Deeds for Beaufort County in Deed Book 46 at Page 383.

e. Thereafter, F. R. Ford by deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 52 at Page 407, conveyed said property to Edward Major and James Major.

f. Thereafter, Edward Major and James Major partitioned said property with James Major acquiring title to the northern portion thereof and Edward Major acquiring title to the southern portion thereof. The deed into Edward Major is recorded in the Office of the Register of Deeds for Beaufort County in Deed Book 71 at Page 351, and, as platted, is the property which is the subject of this action.

g. That the description of the property acquired by Edward Major in the deed referenced hereinabove, to-wit: the southern portion of "Sub Lot 8", conforms to the plat commissioned by the Plaintiff, which is attached hereto.

h. That, on information and belief, the Defendant has never been conveyed title to any portion of "Sub Lot 8", 1S1E, and, save and except the 3.11 acre parcel referenced in Paragraph 6.a. above, has no interest in any portion of "Sub Lot 8", 1S1E.

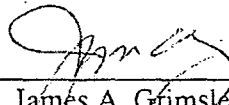
7. That this action is brought for the purpose of quieting and confirming title to the property which is the subject of this action, and confirming the southern boundary line thereto in accordance with the plat which is attached hereto.

8. For reasons as set forth herein, Plaintiff is informed and believes that he, as Personal Representative of the Estate of Edward Major, is entitled to a Final Order and Decree of this Court confirming title to the property which is the subject of this action in the names of the persons who are the heirs of Edward Major, to-wit: those persons set forth in Paragraph 1 herein.

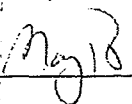
WHEREFORE, Plaintiffs pray that:

- a. This Court consider the matters herein alleged and quiet and confirm title to the subject property described herein in the name of those persons entitled thereto, and establishing the southern boundary thereof;
- b. That this Court grant such other and further relief as may be just and proper.

TUPPER, GRIMSLEY & DEAN, P.A.

BY:   
James A. Grimsley, III  
Attorneys for the Plaintiff  
Post Office Box 2055  
Beaufort, SC 29901-2055  
843-524-1116

Beaufort, South Carolina

, 2007



STATE OF SOUTH CAROLINA     )     IN THE COURT OF COMMON PLEAS  
                                          )  
COUNTY OF BEAUFORT         )     CASE NO. 2007-CP-07-1323

JOHNNIE MAJOR, PERSONAL )  
REPRESENTATIVE OF THE ESTATE )  
OF ED MAJOR a/k/a EDWARD MAJOR )  
a/k/a EDWARD MAJOR, SR., )

Plaintiff,

-versus-

## ANSWER AND COUNTERCLAIM

PENN COMMUNITY SERVICES, INC., )  
A SOUTH CAROLINA NOT-FOR-PROFIT )  
CORPORATION, )

Defendant.

The Defendant, answering the Plaintiff's Complaint, alleges and says:

## 1

That each and every allegation not hereinafter specifically admitted or qualified is denied.

## II

That the Defendant lacks sufficient information to either admit or deny paragraph one of the Plaintiff's Complaint.

## III

That paragraph two is denied.

## IV

That paragraph three is admitted.

## V

That the Defendant lacks sufficient information to either admit or deny paragraph four.

VI

That paragraph five is denied.

VII

That paragraph 6a,b,c,d and e are admitted and 6f,g and h are denied, except as to that portion of paragraph 6h which alleges that the Plaintiff has no interest in 3.11 acres of the southern portion of sub-lot 8.

VIII

That paragraph seven is admitted.

IX

That paragraph eight is denied.

**FOR A SECOND DEFENSE**

**AND BY WAY OF COUNTERCLAIM**

X

That each and every paragraph of the Defendant's First Defense is realleged verbatim and incorporated into this, the Defendant's Second Defense and Counterclaim.

XI

That the Defendant acquired approximately 6.2 acres of the southern portion of "Sub-Lot 8" by deed from Jane Chisolm, dated September 11, 1959 and recorded in the office of the RMC for Beaufort County at Deed Book 98, Page 231.

XII

That immediately upon acquiring the subject approximately 6.2 acres, the Defendant went into possession of the subject property and has used the property for purposes consistent with its non-profit status, and has been in exclusive, open, notorious, hostile and continuous possession

of the same since September 11, 1959; a period in excess of 47 years.

XIII

That the property which was acquired by the Defendant from Jane Chisolm was acquired by Jane Chisolm by deed from Louis C. and Hager Johnson. Their deed is dated February 18, 1952 and recorded in the office of the RMC for Beaufort County at Deed Book 70, Page 530.

XIV

That the Defendant and its predecessors in title have been in exclusive possession of, and have claimed and the northern boundary line of the said approximately 6.2 acres is as depicted on Plaintiff's plat as "Penn Center Line Surveyed by Palmer and Malone, Inc. per plat recorded in Plat Book 17, Page 14". The Defendant claims as its southern most boundary line, the boundary line separating Sub-Lot 8 from Sub-Lot 7 as depicted on the Plaintiff's plat.

XV

That Defendant is informed and believes that it is entitled to an Order of this Court quieting and clearing title to the approximately 6.2 acres which is acquired by deed from Jane Chisolm as referenced in paragraph XI, in and to the Defendant, and denying any and all claims of any ownership interest which the Plaintiff may claim in the said property.

WHEREFORE, Defendant prays that this Court will inquire into the matters as alleged herein and issue its Order as follows:

- a) quieting and clearing title to the Defendant for that portion of Sub-Lot 8 as depicted on the Plaintiff's plat as the northern boundary line as surveyed by Palmer and Malone, Inc., and the southern boundary line being the boundary line between Lots 7 and 8 as depicted on the Plaintiff's plat;
- b) for an Order dismissing that portion of the Plaintiff's Complaint as would award

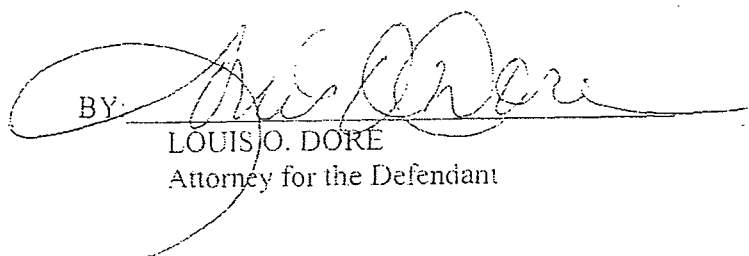
any ownership interest in the approximately 6.2 acres to the Plaintiff, and

c) for such other and further relief as this Court deems just and appropriate.

DORE LAW FIRM, P.A.

Beaufort, SC  
June 12, 2007

BY:

  
LOUIS O. DORE

Attorney for the Defendant

**CERTIFICATE OF SERVICE**

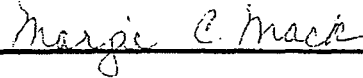
This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- ☐ handing counsel a copy thereof
- ☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 13<sup>th</sup> day of June 20 07

DORE LAW FIRM, P.A.

BY



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JOHNNIE MAJOR, PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
ED MAJOR a/k/a EDWARD MAJOR a/k/a  
EDWARD MAJOR, SR.

Plaintiff,

vs.

PENN COMMUNITY SERVICES, INC., A  
SOUTH CAROLINA NOT-FOR-PROFIT  
CORPORATION,

Defendant.

) IN THE COURT OF COMMON PLEAS  
) CIVIL ACTION NO. 2007-CP-07-1323  
)

REPLY

BEAUFORT COUNTY  
CLERK OF COURT  
BEAUFORT, S.C.

2007 JUL 11 PM 1:18

The Plaintiff, in reply to the Answer and Counterclaim of the Defendant, alleges as follows:

1. Paragraphs I through IX require no response.

#### AS TO DEFENDANT'S SECOND DEFENSE

#### AND COUNTERCLAIM

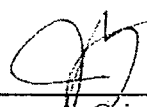
2. Paragraph X requires no response.
3. As to Paragraph XI, the referenced instrument of record speaks for itself. The remaining allegations contained therein are denied and strict proof thereof demanded.
4. Paragraph XII is denied and strict proof thereof demanded.
5. As to Paragraph XIII, the referenced instrument speaks for itself. The remaining allegations therein are denied and strict proof thereof demanded.
6. Paragraphs XIV and XV are denied and strict proof thereof demanded.

WHEREFORE, Plaintiff prays as follows:

a. That Defendant's counterclaim herein be dismissed and that this Court issue its Order and Final Decree quieting and confirming title to the subject property as described in the Complaint herein in the name of the Plaintiff;

b. That this Court grant such other and further relief as may be just and proper.

TUPPER, GRIMSLEY & DEAN, P.A.

BY: 

James A. Grimsley, III  
Attorneys for the Plaintiff  
Post Office Box 2055  
Beaufort, SC 29901-2055  
843-524-1116

Beaufort, South Carolina

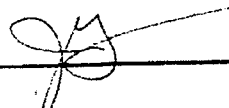
July 11, 2007

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon  
☐ handing counsel a copy thereof  
☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 11<sup>th</sup> day of July, 2007

BY: 

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IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

JOHNNIE MAJOR, as Personal Representative of the  
Estate of Ed Major, a/k/a Edward Major, a/k/a Edward  
Major, Sr.,  
Plaintiff,

vs. CIVIL ACTION NUMBER  
07-CP-07-1323

PENN COMMUNITY SERVICES, INC., A South Carolina  
Not-For-Profit Corporation,  
Defendant.

COPY

-----  
The hearing of the above titled cause  
before Judge Marvin H. Dukes, III, taken  
pursuant to Notice and agreement, before Sandra  
Campoli, Court Reporter and Notary Public, at  
the Masters of Equity Court Room, Beaufort,  
South Carolina, on the 18th day of February,  
2008, commencing at or about the hour of  
10:00 a.m.

COASTAL COURT REPORTING & VIDEO SERVICES  
POST OFFICE BOX 7349 HILTON HEAD, SC 29938  
BEAUFORT - HILTON HEAD - SAVANNAH  
843-525-9600 - FAX 843-785-5837 - 800-791-1100

1  
2 APPEARANCES OF COUNSEL

3 FOR THE PLAINTIFF:

4 JAMES A. GRIMSLEY, ESQUIRE  
5 Tupper, Grimsley & Dean, L.L.P.  
6 611 Bay Street  
7 Post Office Box 2055  
8 Beaufort, South Carolina 2990

9 FOR THE DEFENDANT:

10 LOUIS DORE, ESQUIRE  
11 6 Cole Drive  
12 Beaufort, South Carolina

13 ALSO PRESENT:

14 David Gasque  
15 Cathryn Aughtman  
16 Johnnie Major  
17 Josephus Major  
18 James Major  
19 Kenneth Major  
20 Sam Khalil  
21 John Gadson  
22 Cathryn Aughtman  
23 Mr. Mcdomick  
24 Mr. Wright  
25 Walter Mack  
Robert Johnson

- - -

COASTAL COURT REPORTING & VIDEO SERVICES  
POST OFFICE BOX 7349 HILTON HEAD, SC 29938  
BEAUFORT - HILTON HEAD - SAVANNAH  
843-525-9600 - FAX 843-785-5837 - 800-791-1100

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THE COURT: We are gathered here in the case of Johnnie Major, Personal Representative of the Estate of Ed Major also known as Edward Major also known as Edward Major, Sr., versus Penn Community Services, Inc., a South Carolina not-for-profit corporation in Case Number 07-CP-07-1323.

Here for the plaintiff is Mr. Jim Grimsley. For the defendant is Mr. Louis Dore.

I am told this is a title clearance that is primarily a boundary line dispute. Mr. Grimsley, if you want to begin your opening.

MR. GRIMSLEY: Yes, sir. Just very briefly opening. I do represent Johnnie Major, who is the duly appointed representative of the estate of his father, who is Edward Major. Several members of the Major family are here: The James Major family, the David Major family, and, of course, the Edward Major family.

1  
2           At issue primarily in this case is  
3 the boundary line between the Major  
4 family and Penn Center. It would be the  
5 northern boundary line on the western  
6 side of Martin Luther King Boulevard, or  
7 Penn Center, and the southern boundary  
8 line of the Major family, obviously,  
9 just directly due north of the Penn  
10 Center property. Just as a point of  
11 reference the property is located just  
12 south of what's known as the corners of  
13 the Frogmore Intersection on the eastern  
14 side of Martin Luther King Boulevard.  
15 Directly opposite the subject property  
16 is the brick Baptist church, due north  
17 of the Major property is a marshy area  
18 known as Johnson Creek, due west of the  
19 property is also Johnson Creek. So that  
20 kind of sets the parameters of what we  
21 are really talking about. And, again,  
22 the dispute centers around the boundary  
23 line between the Penn Center property to  
24 the south and the Major property to the  
25 north.

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 And as my first witness I call David  
3 Gasque.

4 DAVID GASQUE,  
5 having been produced and first duly sworn as a  
6 witness, testified as follows:

7 MR. GRIMSLEY: Your Honor, just  
8 before we get started, Mr. Dore and I  
9 have stipulated as to the  
10 qualifications of Mr. Gasque as to his  
11 status as a registered land surveyor so  
12 we don't have to go through the  
13 qualification process.

14 THE COURT: Thank you.

15 MR. GRIMSLEY: And I think that's  
16 going to be true of all the experts,  
17 Mr. Khalil who will also testify as  
18 well as Ms. Aughtman.

19 EXAMINATION

20 BY MR. GRIMSLEY:

21 Q Mr. Gasque, at some point in time over  
22 the past two or three years you were hired by  
23 the Major family to perform some survey work on  
24 their property in the vicinity of the Frogmore  
25 Intersection and St. Helena's Island?

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 A Yes, sir, I was.

3 Q Okay. Was that basically to determine  
4 the parameters of the Major family and more  
5 specifically the southern boundary of the Major  
6 family property?

7 A Yes, sir, it was.

8 Q In connection with that work did you  
9 ultimately produce a plat that is still a draft  
10 plat as opposed to a final plat?

11 A I have produced a final plat and it was  
12 signed, it was actually your order, I believe.

13 Q Do you have that with your records?

14 A I don't know if I have the signed copy,  
15 but I do have a copy of the plat.

16 Q It's the same plat?

17 A Yeah.

18 Q (Looking at plat.) I'm going to show  
19 you this plat and it's dated May 7 of 2005. Is  
20 this the plat that you have developed in the  
21 course of the work that you were commissioned to  
22 do?

23 A Yes, it is.

24 MR. GRIMSLEY: I would like you to  
25 look at that. (Hands plat to Mr. Dore.)

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 (Whereupon, Plaintiff's Exhibit

3 Number 1 was marked for

4 identification.)

5 BY MR. GRIMSLEY:

6 Q Mr. Gasque, what I would like you to do  
7 is go through the process with which you  
8 determined the southern boundary line of what  
9 has been marked as Lot 8 on this plat?

10 A What we had to do in order to establish  
11 the northern line of Lot 7, we went due south  
12 til we found the old line dam that intersects  
13 Lands End Road.

14 THE COURT: I'm going to come  
15 around here. (Judge Dukes came to  
16 witness stand to better see the  
17 exhibit.)

18 THE WITNESS MR. GASQUE: The old line  
19 dam being down here. This line dam and  
20 the 7 Lot subdivision, 8 Lot, appears on  
21 the Direct Tax Commission Survey for  
22 South Carolina plat that the U.S.  
23 government did. We were able to use  
24 that plat in 1869 to recreate Lots 1, 2,  
25 3, 4, 5, 6, 7 and so on. When we

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## 1 GRIMSLEY - GASQUE (EXAMINATION)

2 established the line dam, if you notice  
3 on my plat, we have the first dimension  
4 was 1056.5R 1869. That is what's of  
5 record on the plat. And then the  
6 dimension below it is what we actually  
7 measured. And as we came up the line,  
8 we were able to establish each lot 3, 4,  
9 5, 6 and 7. And we were able to find  
10 corners at some of these markers. More  
11 importantly we found a lot of back  
12 corners along the river away from the  
13 road that coincided with these markers.  
14 So Lot 7 was established by using the  
15 U.S. Direct Tax Commission Survey done  
16 for South Carolina in 1869. One other  
17 thing we relied upon is we were able to  
18 take this and overlay it to an aerial  
19 photograph that Beaufort County now has.  
20 We were able to superimpose this on top  
21 of the aerial photographs and it lined  
22 up with the fields, the lines of  
23 occupation, and all the other physical  
24 characteristics of the property.

25 So I am confident as to where Lot 7

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 and 8 were, the common line, and that  
3 was supported by, we found some barbed  
4 wire fence back there, and it appears to  
5 be a dirt road running just north of  
6 that property.

7 BY MR. GRIMSLEY:

8 Q Do you have a copy of the Direct Tax  
9 Commissioners plat from 1869?

10 A Yes, sir.

11 Q This is actually a portion of that,  
12 isn't it?

13 A Yes, sir. I actually put this on my  
14 Xerox machine and blew it up so you could make  
15 out the numbers.

16 Q Okay?

17 MR. GRIMSLEY: I would like to  
18 introduce this, please.

19 MR. DORE: No objection.

20 (Whereupon, Plaintiff's Exhibit  
21 Number 2 was marked for  
22 identification.)

23 THE COURT: That would be  
24 Plaintiff's 2.

25 BY MR. GRIMSLEY:

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 Q Tell the judge what we are looking at?

3 A What we are looking at, I used the blow  
4 up copy so I can see it better.

5 You can see on the Mossville, right  
6 in the center of the plat, you can see Lot  
7 1, 2, 3, 4, 5, 6 and 7. So here is your old  
8 line dam that runs above the letters  
9 A,D,B,and I believe that's a G or a C.  
10 We were able to go down and find that line  
11 dam through here. And then we were able to  
12 take these dimensions that are on this plat  
13 for, the easiest one to see for clarity,  
14 just if you look at Lot Number 3, that's  
15 181.5. And we found it to be 181.6. And if  
16 you add up these dimensions, and that's how  
17 we established it, we came from here and we  
18 found corners and just added up the  
19 dimensions til we got to Lot 7.

20 Q And that's the northern boundary of Lot  
21 7?

22 A That is correct.

23 Q Is Lot 8 above Lot 7?

24 A According to this map, yes, sir.

25 Q I say above, to the north of Lot 7?

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 A Yes, sir, it is.

3 Q Okay. And this is known as what, you  
4 said Mossville?

5 A Yes, sir, in the center of the map it's  
6 labeled Mossville.

7 Q Okay. And on the right, the right  
8 boundary if you would, the hard line, perhaps  
9 over here somewhere, is that what is now Martin  
10 Luther King Boulevard or what some call Lands  
11 End Road?

12 A Pretty much, yes, sir.

13 Q Okay. What comprises Lot 8, if you  
14 will?

15 A Lot 8 is kind of nondescript above Lot  
16 7. It doesn't give us any dimensions beyond Lot  
17 7.

18 There is a cut-out of what appears  
19 to be three acres and it shows up on this  
20 map.

21 Q Okay. And did you note that cut-out on  
22 the plat that you prepared about three years  
23 ago?

24 A Yes, sir, I did.

25 Q Okay. If you would show the judge

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 where that is?

3 A It's a three acre parcel per 1869 plat.

4 Q Okay. And do you know what's located  
5 physically on that property right now?

6 A A building.

7 Q To your knowledge is that a Penn Center  
8 building?

9 A I believe so, yes, sir.

10 THE COURT: Excuse me just a  
11 second. Just point to it on the 1869  
12 plat, the one across the line. I see,  
13 so the left line is not Martin Luther  
14 King. The line to the right is Martin  
15 Luther King, okay.

16 BY MR. GRIMSLEY:

17 Q Okay. Now you mentioned aerial photo.  
18 Do you have a copy of the aerial photo?

19 A Yes, sir, I believe so.

20 Q If you don't, I do. And I'm going to  
21 have this introduced, if I can?

22 (Whereupon, Plaintiff's Exhibit  
23 Number 3 was marked for  
24 identification.)

25 BY MR. GRIMSLEY:

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 Q This has been marked as Plaintiff's  
3 exhibit for identification only at this point,  
4 Number 3, can you tell us what we are looking  
5 at?

6 A This is an aerial photo off the county  
7 GIS system.

8 Q Okay. And what property is it  
9 applicable to?

10 A It is applicable to the Johnny Major  
11 property and the Penn Center property.

12 Q Is that depicted on your plat, which is  
13 Plaintiff's Exhibit Number 1?

14 A Yes, it is.

15 Q And in connection with that what did  
16 you do as far as marking up this aerial photo?

17 A Well with the ability of C.A.D. and  
18 computers we were able to superimpose our  
19 physical survey to scale on top of an aerial  
20 photo.

21 Q Does it show the line dam on there?

22 A Yes, sir, it's to the south.

23 Q I notice various dotted lines or hash  
24 lines. What do they represent?

25 A They represent the lines on the

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 Mossville track lines between 4, 5, 6 and 7. Now  
3 you get back to that southern line, that is a  
4 broken line, the actual line dam would have been  
5 off the page. We just didn't have enough room.

6 Q Certainly?

7 A But what I put on this, is that it  
8 matched the fields, it matched where they have  
9 been cultivated, it matched what they had been  
10 occupied on.

11 Q Now the hash lines represent the same  
12 lot lines between the various lots that you had  
13 depicted on your plat?

14 A Yes, sir.

15 Q And the north-south distances are the  
16 same on here?

17 A Yes, sir.

18 Q Okay. And does it also depict and mark  
19 out the 3-acre parcel we have already talked  
20 about?

21 A Yes, sir, it does.

22 Q And does it denote any fields and other  
23 improvements, if you will, on the properties?

24 A Yes, sir, it shows open fields.

25 Q And those fields are located in what

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 lots?

3 A You have one in Lot 7 and 6.

4 Q Mm-mm?

5 A One also in 5 and one also in 4.

6 Q Okay. And is there any fields, if you  
7 will, to the north of Lot 7?

8 A No, sir, except for the clearing area  
9 where I think there is a residence now.

10 Q Okay. So if I will, you're confident  
11 that this aerial photo matches up with  
12 Plaintiff's Exhibit Number 1, which is your plat  
13 you developed in connection with this process?

14 A Yes, sir.

15 MR. GRIMSLEY: Your Honor, I would  
16 like to have this introduced as  
17 evidence.

18 MR. DORE: No objection.

19 THE COURT: Mark that as marked for  
20 identification.

21 BY MR. GRIMSLEY:

22 Q Now let's see here. Let's go back to  
23 Plaintiff's Exhibit Number 1, if you would. Now  
24 in connection with the line that you had  
25 depicted as the northern boundary of Lot 7 and

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 the southern boundary of Lot 8, is there any  
3 evidence of a fence or prior fence along that  
4 line?

5 A Yes, sir, there was remnants of a fence  
6 meandering along Lot 7.

7 Q Was there a newer fence that was  
8 located there?

9 A Yes, we located a newer fence a little  
10 bit to the north of it, and we had found  
11 evidence of barbed wire fence as we depicted on  
12 this plat, the third end choke(sic) tree.

13 Q Okay. Are you familiar with a little  
14 lane called Suzy Lane, which is a dirt lane?

15 A Somewhat, yes.

16 Q Okay. And you depicted that on this  
17 plat here?

18 A Yes, sir.

19 Q Okay. Is it located to the north of  
20 Lot 7 or to the south of Lot 7?

21 A To the north.

22 Q And so it's in what's known as Lot 8?

23 A Correct, yes, sir.

24 Q And it also goes through a little bit  
25 of, there's a three acre plot over here, and

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 also to some extent access to land and road  
3 known as Martin Luther King is Lot Number 7?

4 A Yes.

5 Q Now the rest of Lot Number 8 is  
6 actually to the north, which is off this page,  
7 am I correct?

8 A Yes, sir.

9 Q And that's, if you will, the pump  
10 that's shown on the old Agent 69 Plot?

11 A Yes, sir, the void going out.

12 Q Okay. Now you have also depicted on  
13 here some hash lines in various places along  
14 here and if you could identify for the judge  
15 these various hash lines and tell him what those  
16 are?

17 A There is a hash line that's Penn Center  
18 Line Survey dated Plat Book 17 at 14, and you  
19 can see it going through and up and out this  
20 way. And there is some other ones, a monument  
21 set by AOC.

22 Q Who is AOC?

23 A Arthur O. Christianson.

24 Q Okay?

25 A And it was set, this is supposed to be

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 in Lot 7. These dash lines up in this area just  
3 shows where the different surveys were done over  
4 the time period.

5 Q This Palmer and Long plat, do you know  
6 when that was done actually?

7 A It was Plat Book 17. I can pull the  
8 plat and see.

9 Q Okay?

10 A It was done 1968.

11 Q Okay. All right. When you were doing  
12 your survey work out here, other than the mobile  
13 home that you have noted on there, and the  
14 mobile home that you have noted up here, were  
15 there any other improvements of a permanent  
16 nature on Lot Number 8?

17 A I mean, you had a dock coming off the  
18 end, you had Penn Center building real close to  
19 the property line, but other than that, no, sir.

20 Q But the Penn Center building you just  
21 pointed to is Lot 7, is that correct?

22 A Yes, and the cemetery in the center.

23 Q But no other houses, buildings,  
24 improvements like that?

25 A No, sir.

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 Q Could you describe the nature of the  
3 property that's located, if you will, south of  
4 these two mobile homes? In other words the  
5 property between the Palmer and Malone line and  
6 the area that you have depicted as the southern  
7 boundary of Lot 8, what is it?

8 A Just wooded property.

9 Q Any sign of activity at all?

10 A Just typical wooded property, not  
11 really.

12 Q And you did note that Suzy Lane runs  
13 through it?

14 A Yes, sir.

15 Q I will refer you back to the aerial  
16 photo. And if you would, just to refresh your  
17 memory, any sign of any improvements whatsoever  
18 north of the northern boundary of Lot 7 except  
19 for the mobile homes?

20 A No, sir, just wooded property.

21 Q Okay. And this 3-acre parcel that is  
22 in the name of Penn Center, you have actually  
23 denoted that on your plat and that's based on  
24 the 1869 plat, is that right?

25 A Yes, sir.

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1 GRIMSLEY - GASQUE (EXAMINATION)

2 Q All right. And based on all of your  
3 work that you have done in connection with this,  
4 do you have an opinion as to where the southern  
5 boundary of Lot Number 8 is?

6 A Yes, sir, where I show it on my plat is  
7 definitely where Lot 8 and 7 come together.

8 Q All right. And that's on Plaintiff's  
9 Exhibit Number 1?

10 A Yes, sir.

11 Q And that excludes this 3-acre parcel?

12 A Yes, sir.

13 Q Okay. So we are not even talking about  
14 that?

15 A That is correct.

16 Q Would you answer any questions of Mr.  
17 Dore now, please?

18 A Yes, sir.

19 EXAMINATION

20 BY MR. DORE:

21 Q Let's go back to the aerial. Where on  
22 your map is the southern boundary line of the  
23 Penn property?

24 A The southern boundary line? I didn't  
25 survey to the southern boundary line. I

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1 DORE - GASQUE (EXAMINATION)

2 surveyed the lot lines to establish the  
3 northern, I was charged with surveying the lot  
4 between 7 and 8, to establish that line.

5 Q But didn't you establish the lot line  
6 between 7 and 8 property going back to Lot 3?

7 A Yes, sir, but as far as, I don't know  
8 what Penn Center owns by deed. I just know  
9 where these lines are as per plat.

10 Q Can you show where the southern lot  
11 line of Lot 3 is?

12 A Yes, sir, the southern lot line of Lot  
13 3 is this as per my plat.

14 Q I'm talking about on the aerial?

15 A On the aerial, yes, sir, I can. The  
16 southern lot line 3 is where my finger is.

17 Q Okay. And a good bit of that Lot 3 is  
18 also wooded, right?

19 A Yes, sir.

20 Q Does that tell you anything at all  
21 about ownership or occupation?

22 A It just tells me whoever owns it hasn't  
23 started working on it or what have you.

24 Q And the same thing applies to the area  
25 in Lot 8 that's wooded and unoccupied and not in

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1 DORE - AUGTMAN (EXAMINATION)

2 he got it from Florence Major in 1915.

3 Q Okay?

4 A Okay. That deed also gives vague  
5 boundary descriptions and leaves little slashes  
6 like they didn't know what to put there. So I  
7 couldn't make any conclusions other than she was  
8 conveying as an heir of Sipeo Josiah, her  
9 grandfather.

10 Q So we've got Florence Major as heir of  
11 Sipeo Josiah, her grandfather, to R.R. Legree,  
12 is that correct?

13 A That's correct.

14 Q And that's 1915?

15 A 1915.

16 Q And then in what?

17 A 1917 it's recorded.

18 Q 1917 recorded. And in 1916 R.R. Legree  
19 deeded that same property to Penn School, is  
20 that right?

21 A Yes, he does.

22 Q Based on your examination of these  
23 various titles have you found any reason to  
24 believe that this property that was deeded from  
25 R.R. Legree to Penn School and from Florence

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1 GRIMSLEY - AUGHTMAN (EXAMINATION)

2 A 5A.

3 Q 5A, okay?

4 A Containing 6.382 acres; 13 at 64 in  
5 1882 he took title to, again, Fraction 8 because  
6 it went out and came back in again to him.

7 Q Okay?

8 A And also a deed for Lot 6C in 1900 for  
9 3.91 acres in the Corner Farm, the northern  
10 portion.

11 Q Okay. And I'm going to ask you once  
12 again, referring to Defendant's Number 2, which  
13 is the deed, at least thus far by which Penn  
14 School is claiming this case at issue, that  
15 talks about being a portion of the Corner Farm  
16 or at least bounded by the Corner Farm, am I  
17 correct?

18 A Yes, it does.

19 Q But we don't know what direction?

20 A No, it gives me no direction. That's  
21 why I couldn't.

22 Q Bounded by Penn School but we don't  
23 know what direction?

24 A Penn School is all over the place out  
25 there.

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1 GRIMSLEY - MAJOR (EXAMINATION)

2 Q And that was back in about 1950 or  
3 thereabouts?

4 A Yeah.

5 Q Now did your brother, excuse me, your  
6 father, Edward, and your uncle, James, were  
7 there any other brothers?

8 A Yes there were other brothers.

9 Q Was one of those by the name of David?

10 A Dave.

11 Q Dave, okay, yes. Did David have a  
12 daughter by the name of Suzy?

13 A That's right.

14 Q Now I'm going to show you the plat  
15 Mr. Gasque put together. Then, by the way,  
16 where do you actually live now?

17 A I don't live anywhere here.

18 Q Where do you live?

19 A Saxonville.

20 Q Saxonville, which is a little bit of a  
21 distance from there?

22 A Yeah, modest.

23 Q Were you raised on this property at  
24 all?

25 A No, I wasn't raised there.

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1 DORE - KHALIL (EXAMINATION)

2 A That's correct.

3 Q That was created by Arthur  
4 Christianson?

5 A Yes.

6 Q Okay. And he is familiarly referred to  
7 as AOC or Arthur O. Christianson?

8 A Yes.

9 Q And did the Arthur O. Christianson  
10 family donate to Beaufort County certain  
11 historical records that were prepared and made  
12 by Arthur O. Christianson?

13 A That's right.

14 Q And do you still have some of those  
15 historical records today?

16 A Yes.

17 Q Do you use them regularly in your  
18 surveying?

19 A A lot.

20 Q Do you have records, for example, that  
21 Arthur O. Christianson created that Beaufort  
22 County doesn't have access to or is privy to?

23 A Yeah.

24 Q So would it be reasonable to say that  
25 between the records you still have and the ones

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1 DORE - KHALIL (EXAMINATION)

2 the Christianson family donated to the Beaufort  
3 County, you have some other historic and ancient  
4 records that nobody else has possession of?

5 A That's right.

6 Q And you use them regularly in your  
7 surveying?

8 A Yes.

9 Q I'm going to show you some AOC notes  
10 that have previously been marked. Are you  
11 familiar with that?

12 A Yes.

13 Q That's an AOC card, isn't it?

14 A Yes.

15 Q I had Ms. Aughtman this morning to read  
16 from that card and I neglected, for some reason,  
17 to have her to read all of it, but I want you to  
18 reread for the record that portion in the bottom  
19 that Mrs. Aughtman has already read into the  
20 record?

21 A "The left daughter, Florence, who  
22 married Tom Major, Lot 8, corner of", I can't  
23 make that one, "Sipeo, left daughter Rachel, who  
24 is married to Henry Simmons."

25 Q Now look at the far right bottom corner

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1 DORE - GADSON (EXAMINATION)

2 BY MR: DORE:

3 Q State your full name, please?

4 A John W. Gadson, Sr.

5 Q Where do you live?

6 A I live at 1907 Green Street here in  
7 Beaufort.

8 Q How long have you been a resident of  
9 Beaufort?

10 A Since 1960.

11 Q 1960?

12 A Right.

13 Q And have you ever worked for Penn  
14 Center?

15 A Yes.

16 Q In what capacity?

17 A I served as the Executive Director of  
18 Penn Center from 1969 to 1975.

19 Q Okay. In your capacity as executive  
20 director did you become familiar, or did you  
21 familiarize yourself with the property, various  
22 properties, of Penn Center, Penn Community  
23 Services at that time owned?

24 A Yes, sir I have had occasion to, of  
25 course, to have to look at the various plats and

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1 DORE - GADSON (EXAMINATION)

2 deeds from time to time depending on what was  
3 going on. So I did, yes.

4 Q Okay. Did you during your directorship  
5 have any of the Penn property designated by the  
6 Department of Interior as a national historic  
7 district?

8 A Yes, I was the principal person at Penn  
9 Center when Penn was designated a historic  
10 district.

11 Q Okay. And when you say Penn, are you  
12 referring to the campus area?

13 A Yes, there is about a 50-acre swatch of  
14 land that encompassed the campus of Penn Center.

15 Q Okay?

16 A Designated by the Department of  
17 Interior as a national historic district.

18 Q Penn owned other lands, for example, in  
19 Land's End?

20 A Yes, on toward Land's End.

21 Q That's not a historic district?

22 A No.

23 Q So the property designated as a  
24 historic district is basically shown on the  
25 Gasque, let me show you the Gasque plat. That

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1 DORE - McDOMICK (EXAMINATION)

2 Q Was it on the Major's land?

3 A It was on the Major's land.

4 Q Since 1964 has that disputed property  
5 been farmed or used for raising or pasture land  
6 for horses, cows or any other kind of animals?

7 A No.

8 Q Has it grown up into timber?

9 A Oh, it's grown up into timber,  
10 certainly.

11 Q All right. Has anybody in the Major  
12 family, and as I understand it, your position  
13 was pretty near the top of, executive director  
14 position, right?

15 A A couple of times.

16 Q In fact, you served as interim  
17 executive director on at least two occasions?

18 A On two occasions.

19 Q To your knowledge from 1964 until this  
20 lawsuit was started has anybody in the Major  
21 family ever claimed that Penn was taking  
22 property from the Majors or claiming Majors'  
23 property over in this disputed area?

24 A Not to my knowledge. That certainly  
25 wouldn't be a part of our DNA. I mean, we were

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1 DORE - K. MAJOR (EXAMINATION)

2 testimony, was that correct?

3 A No, I haven't seen no deeds or plats.

4 Q Okay. And when you planted pine trees,  
5 did you observe any corner markers or any  
6 monuments at the time?

7 A No place we planted.

8 Q I'm sorry?

9 A No place we planted, I noticed that.

10 Q Okay?

11 MR. DORE: That's all I have.

12 MR. GRIMSLEY: I have nothing  
13 further, your Honor. I believe that's  
14 it.

15 THE COURT: You as well, Mr. Doer?

16 MR. DORE: That's all I have.

17 THE COURT: Well then.

18 MR. DORE: I have a motion.

19 THE COURT: All right. Happy to  
20 hear it.

21 MR. DORE: I am looking for my  
22 Answer in counterclaim. There is a  
23 scrivener's error. I'm not sure why  
24 it's in there, but there is a reference  
25 to the deed from James Chisholm in

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1 DORE - K. MAJOR (EXAMINATION)

2 Paragraph 8, Paragraph 13, from Hager  
3 and Louise Lewis and Hager Johnson as  
4 the deed upon which the defendants rely.  
5 I need to amend the Pleadings to conform  
6 to what I believe has been the proof,  
7 and that is that that deed reference  
8 should be to the deed from R.R. Legree  
9 to Penn in 1916, which has been entered  
10 into evidence as the deed upon which we  
11 rely for ownership of the disputed  
12 property and I will find the deed book  
13 reference.

14 THE COURT: While you are looking,  
15 Mr. Grimsley, any objection to that?

16 MR. GRIMSLEY: I have none, no.

17 MR. DORE: That is Deed Book 36,  
18 Page 115.

19 THE COURT: Grand.

20 MR. DORE: And I don't have anything  
21 further at this time.

22 THE COURT: All right. Thank you  
23 all very much.

24 (Whereupon, this hearing was  
25 concluded at approximately

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and his assigns, that I have not made, done or Committed, executed, or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof the above mentioned and described premises, or any part or parcel thereof now are, or at any time hereafter shall or may be impeached, charge, or encumbered in any manner or way whatsoever. In Witness whereof I, the said Edward S. Philbrick, and a J. Helen M. Philbrick wife of said Edward S. Philbrick, in token of my release of all right and title of or to dower in the granted premises, have hereunto set our hands and seals, this first day of February, in the year of our Lord eighteen hundred and sixty six, signed, sealed, and delivered in presence of John York, Myra H. Allen, Edward S. Philbrick, by his Attorney, Charles F. Williams, L. S. Helen M. Philbrick, by her Attorney, Charles F. Williams, L. S. - State of South Carolina District of Beaufort, February 10th 1866. Then personally appeared the above named Charles F. Williams, duly qualified as Attorney for the said Edward S. and Helen M. Philbrick, as appears by the instrument recorded herewith and acknowledged the foregoing instrument to be their free act and deed, before me, D. L. Thomson, Magistrate, U. S. inter-revenue five cents. Agreement C. F. W. February 1. 66. Recorded at the request of C. F. Williams Feb 10 1866 at 1 O'clock. P. M. Examined by Nathan Patten, Deputy Register

PLAINTIFF'S  
EXHIBIT

# 4  
2-18-08

Know All Men by these Presents, That I, Edward S. Philbrick of Boston, in the County of Suffolk, and State of Massachusetts, in consideration of Ninety dollars (\$90) paid by Seipio Josiah, of St Helena Island in the District of Beaufort, and State of South Carolina, the receipt whereof is hereby acknowledged, do hereby grant, remise, release, and forever quit claims, unto the said Seipio Josiah, a certain piece or parcel of land situated on the said St Helena Island bounded and described as follows; to wit; Sub Lot No (8) eight, Sections Nineteen and twenty, Township one South, Range one east, according to the plot of the U. S. Direct Tax Commissioners for South Carolina, containing eighteen acres of land more or less. Being a portion of the tract of land formerly known as the Corner Farm or Mossville, and sold to the said Grantor by A. D. Smith, W. E. Mording, and Wm Henry Brisbane, U. S. Tax Commissioners for the State of South Carolina, as per Tax Sale Certificate No. 19, dated March 9th 1863, to which reference may be had on the records of said Commissioners. To have and to hold the above released premises, with all the privileges and appurtenances to the same belonging, to the said Seipio Josiah, his heirs and assigns, to his and their use and behoof forever. And I, the said

CERTIFIED TRUE COPY

of the document recorded in the Office of the

Register of Deeds for Beaufort County S.C., on

(date) Feb. 10, 1866

In Book 13 Page 222

This document contains 1 page.

Register of Deeds - Beaufort County, SC

1-31-08

Eduarda S. Philbrick, for myself and for my heirs, Executors, and Administrators do covenant, promise, and agree to and with the said Grantee above named, and his assigns, that I have not made, done or committed, executed or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof the above-mentioned and described promises, or any part or parcel thereof now are, or at any time hereafter shall or may be impeached, charged, or encumbered in any manner or way whatsoever. In Witness Whereof, I, the said Eduarda S. Philbrick, and I, Helen M. Philbrick, wife of said Eduarda S. Philbrick, in token of my release of all right and title of or to do over in the grantee's promises, have hereunto set our hands, and seals, this fifth day of February, in the year of our Lord eighteen hundred and Sixty Six. Signed, Sealed, and delivered in presence of John York, - Myra F. Allen - Eduarda S. Philbrick. By her Attorney, Charles F. Williams, L. S. - Helen M. Philbrick. By her Attorney Charles F. Williams, L. S. - State of South Carolina, District of Beaufort, February 10th 1866. Then personally appeared the above named Charles F. Williams, duly qualified as Attorney for the said Eduarda S. and Helen M. Philbrick, as appears by the instrument recorded herewith and acknowledged the foregoing instrument to be their free act and deed before me G. L. Thomson, Magistrate, U. S. intervened Agreement five Cents C. F. W. Feb. 5. 66 Recorded at the request of C. F. Williams, Feb. 10. 1866 at 1 O'clock P. M. Examined by Nathan Potter, Deputy Register.

Now All Men by these Presents, That I Eduarda S. Philbrick, of Boston, in the County of Suffolk, and State of Massachusetts, in consideration of Forty dollars paid by Anthony Watkins of St. Helena Island, in the District of Beaufort, and a State of South Carolina, the receipt whereof is hereby acknowledged, do hereby grant, remise, release, and forever quit claim unto the said Anthony Watkins a certain piece or parcel of land situated on the said St. Helena Island, bounded and described as follows, to wit: Sub Lot No (3) Third Section (19 & 20) Tenth and twenty Township 2 Range 2 according to the plot of the U. S. Direct Tax Commissioners, for South Carolina, containing eight acres of land more or less. Being a portion of the tract of land formerly known as the Corner place or Mosswille, and sold to the said Grantor by A. D. Smith, W. C. Waring and Wm Henry Brisbane, U. S. Tax Commissioners for the State of South Carolina, as per Tax Sale Certificate No. 19, dated March 9th 1863, to which reference may be had on the records of said Commissioners. To have and to hold the above released premises, with all the privileges and appurtenances to the

THE STATE OF SOUTH CAROLINA,

COUNTY OF BEAUFORT.

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, by an Act of the General Assembly of the State of South Carolina, entitled "An Act in Relation to Forfeiture Lands, Delinquent Lands, and Collection of Taxes," approved December 24th, 1867, and Acts amendatory thereof, it is provided that hereafter, immediately upon the expiration of the time allowed by law for the payment of taxes in any year, the County Treasurer of each County shall, and is hereby authorized and directed, to issue in the name of the State a warrant or execution, in duplicate, against each defaulting taxpayer in the County, signed by him or his official capacity, directed to the Sheriff of his County or his lawful Deputy, requiring and commanding him to levy the same by distress and sale of so much of the delinquent taxpayer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, State, County, and Special, or such defaulters, specifying therein the aggregate amount of all his taxes, as well as the amount to each road, and

WHEREAS, it is further provided by said Act and Amendatory Acts that under and by virtue of said warrant or execution, the Sheriff or his deputy and take possession of so much of the delinquent taxpayer's estate, real or personal, or both, as may be necessary, to raise a sum of money named therein, and the charges thereon, and after due advertisement sell the same before the Court of Sessions of the County, on a regular sales day, and within the usual hours for public sale, for cash, give to the purchaser, against his complying with the terms of said receipt for the purchase money, but not make title to the purchaser until the expiration of twelve months from the day of said sale, if the property sold be not redeemed as therein provided and attests and receipt with the duplicate warrant with the endorsement thereon of his action thereon, and

WHEREAS, R.L. Varn, the County Treasurer of Beaufort County, has issued his warrant, directed to me, by authority of said Act, against Est. William Josiah, a delinquent taxpayer of said County, strictly charging and commanding me, as Sheriff of said County, to levy by distress and sale of the personal property, and of whatever personal property cannot be found, then by distress and sale of the land in the said

Seven and 37/100 Dollars, together with the charges thereon, and

Real November 15th 1930, at the County Court House, Beaufort, South Carolina, at the year 1930, and take possession of the property hereinafter described, and on the same day of the month of November, 1930, at the year 1930, during the usual hours of sale, after due advertisement, and the value to the purchaser, and the highest bidder at such sale, for the sum of Sixteen Dollars, and gave a receipt for said purchase money to him; and

WHEREAS, three months have elapsed since the date of said sale, and the delinquent taxpayer or other party interested has failed to redeem said land or pay the taxes thereon, (HEREFORE, I

County of said County, do certify that of the premises, and the sum of Sixteen Dollars, to me paid by the said F.R. Ford.

F.R. Ford; have granted, bargained, sold and released, and by his premises do grant, bargain, sell and release unto the said

All that certain piece, parcel or tract of land, situate, lying and being on St. Helena Island, State and County aforesaid, containing Eighteen (18) acres, more or less, being bounded and described as follows, to-wit: On the North by the Marshes of Johnson River, East by lands of Penn School, South by lands of Penn School and West by the Marshes of Johnson River, and and being the same lands as were sold November 3rd, 1930 for delinquent State and County taxes due for the year 1929.

TO HAVE, AND TO HOLD all and singular the premises hereby granted, with the appurtenances, unto the said

F.R. Ford, his heirs, assigns and assigns forever, to him and to his heirs and assigns forever, in full and complete satisfaction of the taxes and charges on the State of South Carolina in such cases made and provided in the year of our Lord one thousand nine hundred and thirty-two, and on the one hundred and fifty-sixth year of the Independence of the United States of America.

Witness my hand and seal this 5th day of January, 1932.

George McTeer S.H. Rodgers J.E. McTeer (SEAL) Sheriff Beaufort County.

THE STATE OF SOUTH CAROLINA, Beaufort County

George McTeer J.E. McTeer

Beaufort County J.E. McTeer

S.H. Rodgers

SWORN before me this 5th day of January, 1932

(Seal) S.H. Rodgers. George McTeer

Notary Public for S.C.

11th day of January

Deputy

PLAINTIFF'S EXHIBIT

#5 2/18/08

CERTIFIED TRUE COPY of the document recorded in the Office of the Register of Deeds for Beaufort County S.C. on Jan 5 1932 Book 46 Page 383 This document contains 1 page. Register of Deeds Beaufort County SC

Book 52

THE STATE OF SOUTH CAROLINA,  
COUNTY OF BEAUFORT

KNOW ALL MEN BY THESE PRESENTS, That **I, F.R. Ford**

CERTIFIED TRUE COPY  
of the document recorded in the Office  
Register of Deeds for Beaufort County S.C.  
(date) 6-25-36  
In Book 52 Page 407  
This document contains 1 page.  
Mary J. Lane 6-11-08  
Register of Deeds - Beaufort County, SC

in consideration of the sum of **seventy one** DOLLARS, to me in hand paid by **Edward Major and James Major**, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, confirmed, released, and by these presents do grant, bargain, sell and release unto the said **Edward Major and James Major**, all that certain piece, parcel or tract of land, situate, lying and being on St. Helena Island, State and County aforesaid, containing **eighteen (18) acres** more or less, being bounded and described as follows, to-wit: On the North by the marshes of Johnson River, East by lands of Penn School, South by lands of Penn School, West by Marshes of Johnson River and being the same land conveyed to me by **J.E. McTeer**, then Sheriff of Beaufort County, for delinquent tax for the year of 1929 and recorded in Book 46 at Page 383.

PLAINTIFF'S  
EXHIBIT

#6

2-18-08

TO HAVE AND TO HOLD, with singular, the said premises before mentioned unto the said **Edward Major and James Major**, their heirs and assigns forever.

**Edward Major and James Major, their**

AND I, **myself and my** **Edward Major and James Major, their** **Heirs, Executors and Administrators**, to warrant and defend the title of and one day of the said premises unto the said **Edward Major and James Major, their** **Heirs and Assigns** against **me** **and my** **Heirs** and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my hand and Seal this **17th** day of **June** in the year of our Lord one thousand **nine** hundred and **thirty six** and in the one hundred and **sixtieth** year of the

Signed, Sealed and Delivered in the Presence of

**L. Walpole**  
**J.B. Thomas**

**F.R. Ford**

(H. S.)

(H. S.)

THE STATE OF SOUTH CAROLINA,  
Beaufort

Personally appeared before me **J.B. Thomas** and made

oath that **he** **knows** the within named **F.R. Ford** **he** **and** **he** **with** **Beroy Walpole** witness the execution thereof

SWORN to before me this **22d** day of **June** A.D. 19 **36**

**J.B. Thomas**

(Seal) **M.D. Batchelder** (L.S.)  
Notary Public of S.C.

THE STATE OF SOUTH CAROLINA,  
Beaufort

RENEWAL OF POWER

**M.D. Batchelder**  
I do hereby certify unto all whom

it may concern that Mrs. **Florence D. Ford** **F.R. Ford**

did this day appear before me, and upon being personally examined by me did declare that she does freely, knowingly and without any compulsion, threat or fear of any person in person, who is not, husband, relative, and under no obligation under the within named **Edward Major and James Major**

Hereby assign, all her interest and estate, and also all her right, title and claim in this real, or, to be sold and conveyed the premises within mentioned and referred to

Given under my hand and seal, this **22d** day of **June** A.D. 19 **36**

**Florence D. Ford**

(Seal) **M.D. Batchelder** (L.S.)  
Notary Public of S.C.

Recorded and certified, this **25** day of **June**

**Christa G. Rodgers**  
Deputy

The State of South Carolina,  
COUNTY OF BEAUFORT.

KNOW ALL MEN BY THESE PRESENTS, That 1. EDWARD MAJOR, of St. Helena Island,

in consideration of the sum of THIRTY-FIVE (\$25.00) Dollars, to me in the State aforesaid for and in full payment of the sum of THIRTY-FIVE (\$25.00) Dollars, by JAMES MAJOR, in the State aforesaid, who is hereby acknowledged, have granted, conveyed and released, and by these presents do grant, convey and release unto the said JAMES MAJOR, his heirs and assigns;

All that certain piece, parcel or tract of land, with the building thereon, situate, lying and being on St. Helena Island, State and County aforesaid, containing ten (10) acres more or less, being bounded and described as follows, to-wit: On the North by the marshes of Johnson River, on the East by lands of Penn School, on the South by lands this day being conveyed to me by James Major, and on the West by marshes of Johnson River, and being the northern ten acres of that tract of land conveyed to the grantor, and grantee herein by F.R. Ford, by his deed dated June 17th, 1936, and recorded in the office of the Clerk of Court for Beaufort County in Book 52, Page 407.

CERTIFIED TRUE COPY

of the document recorded in the Offices of the  
Register of Deeds for Beaufort County S.C., on

(date): Sept 23, 1950  
in OR Book 71 Page 352

This document contains 1 pages.

Pamela B. Rodgers  
Register of Deeds - Beaufort County, SC  
2-28-2008

TOGETHER with all and singular, the rights, tenures, hereditaments and appurtenances to the said premises in law and in equity, TO HAVE AND TO HOLD, all and singular, the said premises, before mentioned unto the said JAMES MAJOR, his

Heirs and assigns forever

AND I, the said JAMES MAJOR, his defend, all and singular, the said premises unto the said JAMES MAJOR, his Heirs and assigns against me and my Heirs and against every person whatsoever lawfully claiming or to claim the same or any part thereof.

WITNESS me the said Edward Major this 16th day of September in the year of our Lord one thousand nine hundred and fifty and in the year hundred and seventy-fourth of the said State of South Carolina.

Signed, Sealed and Delivered in the presence of EDWARD MAJOR J. K. CAPPELLMAN J. K. ELLIOTT

THE STATE OF SOUTH CAROLINA  
Beaufort County  
I, J. K. ELLIOTT, Clerk of Court, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears from the records of the said County of Beaufort.  
In testimony whereof, I have hereunto set my hand and the seal of the said County at Beaufort, South Carolina, this 15th day of September, A.D. 1950.

(SEAL) J. K. ELLIOTT (L.S.)  
Notary Public of S.C.  
THE STATE OF SOUTH CAROLINA  
Beaufort County  
I, J. P. KING, a Notary Public for S.C., do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears from the records of the said County of Beaufort.  
In testimony whereof, I have hereunto set my hand and the seal of the said County at Beaufort, South Carolina, this 22nd day of SEPTEMBER, A.D. 1950.  
(SEAL) J. P. KING (L.S.)  
Notary Public of S.C.  
Signed at Beaufort, S.C. this 23rd day of September, A.D. 1950.

PLAINTIFF'S  
EXHIBIT

#8 2-18-08

Anna B. Rodgers  
Register of Deeds

7-18-08

# AOC Notes

Wm Jorish

Set 60, Sec 30, 151 E, 10 acres & 730

Set 60, Sec 30, 151 E, 10 acres & 730

Set 60, Sec 30, 151 E, 10 acres & 730

To Rueda Brown D-24-456, 1/4 A

Left daughter, Florence, who married Tom Major  
 Set 8 Corner for father, Scripps  
 Left widow, Rachel, who married Henry Simmons  
 To F. P. Ford 1/5/32 D-46, 323, Red 1/11/32, 124

Possible in convergences For Penn see PB 36p 115 attached  
 drives From Florence Major

& DB 98p 231 N-By Tom Major

DEFENDANT'S  
EXHIBIT

#1  
2-18-08

DB 36 p115

315

The State of South Carolina. } KNOW ALL MEN BY THESE PRESENTS,

I, P. R. Legare, Merchant, of the Town of Beaufort, in the County of Beaufort,

in the State aforesaid, in consideration of the sum of Eighty six and 5/100 Dollars, to me in hand paid and before the sealing of these presents, by the Beaufort School of Beaufort, in the State aforesaid, (the receipt whereof is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Beaufort School,

All my right, title and interest in and to all that piece or tract of land, situated, lying and being near Beaufort, on St. Helena Island, in the County of Beaufort and State of South Carolina, being the same land, in respect by Florence Mayne done and granted prior to the date of the said Beaufort School, by the "Beaufort" by title of Beaufort, and known and by deed of William J. Smith,

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to it, said premises, belonging or in anywise incident or appertaining, TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Beaufort School, its heirs and assigns forever.

AND I do hereby bind myself, my heirs, executors and Administrators, to warrant and forever defend, all and singular, the said premises unto the said Beaufort School, its heirs and assigns forever.

Witness my hand and seal, this 3d day of October, in the year of our Lord one thousand eight hundred and six, and in the one hundred and sixtieth year of the Independence of the United States of America.

Signed, Sealed and Delivered in the presence of M. H. McBride, P. R. Legare, J. H. Rogers, and J. H. Rogers, all of the County of Beaufort, State of South Carolina.

THE STATE OF SOUTH CAROLINA, Beaufort County, PERSONALLY appeared before me M. H. McBride, and made oath that he knew the within named P. R. Legare, signs, seal, and do his act and deed, deliver the within written deed; and that he with J. H. Rogers, witnessed the execution thereof. SWORN to before me, this 12 day of October, Anno Domini 1866. J. H. Rogers, J. H. Rogers, J. H. Rogers, J. H. Rogers.

THE STATE OF SOUTH CAROLINA, Beaufort County, do hereby certify unto all whom it may concern, that Mrs. J. H. Rogers, wife of the within named P. R. Legare, did this day appear before me, and upon being separately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, fraud or fear of any person or persons whatsoever, renounce, release and forever relinquish unto the within named Beaufort School, her, and assigns, all her interest and estate, and also all her right and claim in, dower, or, in, or to, all and singular the premises within mentioned and released.

GIVEN under my hand and seal this 12 day of October, Anno Domini 1866. J. H. Rogers, J. H. Rogers, J. H. Rogers, J. H. Rogers. Recorded and certified, this 12 day of January, 1867. J. H. Rogers, J. H. Rogers, J. H. Rogers, J. H. Rogers.

Certificate of Counsel

---

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 28, 2009

  
/s/ Ray A. Lord

Ray A. Lord  
Lord Law Firm, LLC  
Post Office Box 2735  
Irmo, South Carolina 29063  
(803) 407-4140  
Attorney for Appellant

18083

THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

---

Case No. 2007-CP-07-1323

Johnnie Major, Personal  
Representative of the Estate of  
Ed Major a/k/a Edward Major  
a/k/a Edward Major, Sr.,

Appellant,

v.

Penn Community Services,  
Inc., a South Carolina Not-For-  
Profit Corporation,

Respondent.

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APPENDIX TO RECORD ON APPEAL

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Louis O. Dore  
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Beaufort, South Carolina 29901  
Telephone (843) 522-9112  
Attorney for Respondent

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Attorney for Appellant

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Direct Examination by Louis O. Dore, Esquire.....1

1 DORE - GADSON (EXAMINATION)

2 A I know it was, supposedly it was north  
3 of the road.

4 Q Again, what road are you referring to?

5 A The little dirt road that goes down  
6 from the main campus to the dock.

7 Q Okay. And was that dock there when you  
8 became executive director?

9 A Yes.

10 Q Do you know who built the dock?

11 A I don't know who built it, but I know  
12 it was recently upgraded when I got there and  
13 that was done by Penn.

14 Q By Penn?

15 A Right.

16 Q And has Penn always claimed to own that  
17 dock and the property that it's on since you  
18 were there?

19 A Yes.

20 Q Okay. Again, using the dirt road  
21 that's shown on this plat?

22 A Mm-mm.

23 Q You are very familiar with this?

24 A Right, yes.

25 Q Was Penn's property line north of that

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

---

Case No. 2007-CP-07-1323

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Johnnie Major, Personal  
Representative of the  
Estate of Ed Major a/k/a  
Edward Major

Appellant,

v.

Penn Community  
Services, Inc., A South  
Carolina Not-For-Profit

Respondent.

---

FINAL BRIEF OF APPELLANT

---

Ray A. Lord  
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Post Office Box 2735  
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Attorney for Appellant

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER HAVE SUBJECT MATTER JURISDICTION TO DETERMINE THAT FLORENCE MAJOR WAS AN INTESTATE HEIR OF SCIPIO JOSIAH?
2. DID THE MASTER ERR IN FINDING THAT FLORENCE MAJOR WAS AN INTESTATE HEIR OF HER GRANDFATHER, SCIPIO JOSIAH, WHEN NO EVIDENCE ON THE RECORD SHOWS THAT FLORENCE'S FATHER, WILLIAM JOSIAH, EITHER PREDECEASED SCIPIO OR DISCLAIMED HIS INTESTATE SHARE?

## STATEMENT OF THE CASE

Johnnie Major, in his capacity as Personal Representative of the Estate of Ed Major, a/k/a Edward Major, a/k/a Edward Major, Sr., hereinafter "Appellant," brought this action to quiet title. (R. p.1). Appellant filed his Complaint on May 23, 2007. (R. p.1). The Complaint alleged that as a result of a title examination and subsequent plat, Appellant believed that property titled in the name of the decedent consisted of the southern portion of "Sub Lot 8." (R. p.2) Appellant reconstructed his chain of title to "Sub Lot 8" by deed of Edward S. Philbrick to Scipio Josiah, dated February 10, 1866 and recorded in the office of the RMC for Beaufort County at Deed Book B, page 222. (R. p.2) Scipio Josiah died intestate, leaving his son, William Josiah, as an heir, who took possession of "Sub Lot 8," which was later sold for delinquent taxes to F.R. Ford, at Deed Book 46, Page 383. (R. pp.2-3). F.R. Ford then conveyed the property to Edward Major and James Major, who partitioned the property with James Major acquiring title to the northern portion, and Edward Major acquiring title to the southern portion, the deed to Edward Major being recorded at Deed Book 71, page 351. (R. p.3). Appellant further claimed that the decedent nor his predecessors in title ever conveyed any portion of "Sub

Lot 8,” save and except 3.11 acres which undisputedly is owned by Respondent.(R. p.3).

In its Answer and Counterclaim, Respondent denied all material allegations and alleged that it had acquired 6.2 acres of the southern portion of “Sub Lot 8,” hereinafter referred to as the “disputed property,” by deed from Jane Chisholm, dated September 11, 1959 and recorded in the office of the RMC for Beaufort County at Deed Book 98, Page231. (R. p.3). Respondent further alleged that immediately upon acquiring the 6.2 acres it went into exclusive, open, notorious, hostile, and continuous possession since October 12, 1916. (R. p.4).

Appellant’s Reply denied all of the essential allegations of Respondent’s Counterclaim, and demanded strict proof thereof. (R. p.4).

On February 18, 2008, the trial commenced at the Masters of Equity Court Room in Beaufort before the Honorable Judge Marvin H. Dukes, III. (R. p.28, lines 18-24). During the trial, the Respondent presented evidence that Florence Major conveyed the disputed property to R.R. Legare by deed in 1915.(R. p.53, line 2). Toward the end of trial, after all the witnesses had been examined, Respondent moved to amend its Counterclaim and substitute the conveyance from Jane Chisholm to Respondent by deed from R.R. Legare to Respondent, dated October 12, 1916, and recorded in the office of the RMC for Beaufort County at Deed Book 36, Page 115. (R. pp.3-4, 62, lines 4-13). The master granted the motion without objection. (R. p.4, 62, lines 14-18).

In his final order, the master found the R.R. Legare deed to Respondent contained an imprecise description in the land grant, but found “compelling and convincing evidence . . . that the R.R. Legare deed is an out conveyance of the original Scipio Josiah

Sub Lot 8 tract.” (R. pp.6-7). The master then listed the supporting evidence, finding “Florence Major acquired an intestate share in the Scipio Josiah Estate, which she could have transferred,” and that certain recorded plats and testimony clarified that the ambiguous grant attempted to convey the disputed property. (R. pp.7-10). The master found Appellant’s claim rested his claim of ownership on an unrecorded plat, and “the faulty conclusion that there were no out conveyances of the original Scipio Josiah Sub Lot 8 tract.” (R. p.10). Although Appellants did not claim adverse possession, the master found that “adverse possession cannot be based upon a mistaken belief of ownership,” and that “[t]he Majors cannot claim occupation, possession and ownership under a title and at the same time, a hostile entry in recognition of Penn’s title.”(R. pp.11-12). The master concluded that “Penn Center is the fee simple owner of the property which is the subject of this action consisting of 6.2 acres.” (R. p.12).

#### STANDARD OF REVIEW

Generally, an action to remove cloud on and quiet title is one in equity. See Van Every v. Chinquapin Hollow, Inc., 265 S.C. 474, 477, 219 S.E.2d 909, 910 (1975). However, as in the present case, where the defendant's answer raises an issue of paramount title to land, that would, if established, defeat the plaintiff's action, the issue of title is legal." Hilton Head Plantation Prop. Owners' Ass'n v Donald, 375 S.C. 220, 223, 651 S.E.2d 614, 616 (Ct. App. 2007) (citing Mountain Lake Colony v. McJunkin, 308 S.C. 202, 204, 417 S.E.2d 578, 579 (1992)). Since this case is an action at law that was referred to the master-in-equity with direct appeal to the supreme court, the appellate court will correct any errors of law, but it must affirm the master's factual findings unless

no evidence exists that reasonably supports those findings. Jefferies v. Phillips, 316 S.C. 523, 451 S.E.2d 21 (Ct.App.1994).

## ARGUMENTS

- I. THE MASTER LACKED SUBJECT MATTER JURISDICTION TO FIND FLORENCE MAJOR WAS AN INTESTATE HEIR OF SCIPIO JOSIAH, AND WITHOUT THIS LINK IN RESPONDENT'S CHAIN OF TITLE, NO EVIDENCE IN THE RECORD SUPPORTS THE MASTER'S FINDING THAT THE R.R. LEGARE DEED CONVEYED THE DISPUTED PROPERTY TO RESPONDENT .

Subject matter jurisdiction is the power of a court to hear and determine cases to which the proceedings in question belong. Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). South Carolina trial courts are vested with general original jurisdiction in civil cases, except in cases where exclusive jurisdiction is given to inferior courts. S.C. Const. art. V, §11. To determine whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute. See Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs. Info. Mgmt. Office, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001) (examining the statute's language to determine the legislative intent regarding exclusive jurisdiction).

In South Carolina, the legislature has vested the Probate court with exclusive jurisdiction to determine intestate heirs. South Carolina Code section 62-1-302(a)(1) of the probate code proves in pertinent part:

(a) [E]xcept as otherwise specifically provided hereinafter, the court has exclusive original jurisdiction *over all subject matter* related to:

(1) estates of decedents, including the contest of wills, construction of

wills, and *determinations of heirs and successors of decedents* and estates of protected persons.

(Supp. 2008), emphasis added. Although the statute provides that an action to try title filed in the probate court must be removed to the circuit court upon a motion of a party, or by the court on its own motion, the statute further states that “[t]he removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies *only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.*” S.C. CODE ANN. §§62-1-302(d)-(e) (Supp. 2008). Thus, the statute provides that only the action to try title is removed to the circuit court, but the probate court keeps its exclusive jurisdiction on other matters, such as determining intestate heirs.

Here, the master found that “Florence major acquired an intestate share in the Scipio Josiah estate, which she could have transferred.” (R. p.8). However, since the probate court has exclusive jurisdiction to determine intestate heirs, the master lacked subject matter jurisdiction to determine who Scipio Josiah’s heirs were when he died intestate. The master should have removed this issue to the probate court so that it could be decided by a court of competent jurisdiction.

Having a court of competent jurisdiction determine that Florence Major is an intestate heir of Scipio Josiah was crucial to the master’s conclusion that Respondent is the fee simple owner of the disputed property. In order for the Respondent to reconstruct its chain of title, Florence Major, the granddaughter of Scipio Josiah, must have acquired her grandfather’s interest in Sub Lot 8, which she could have transferred to R.R. Legare.

Without having a court of competent jurisdiction determine Scipio Josiah's intestate heirs, there is no evidence in the record that the master could use to reasonably find that "the R.R. Legare deed [to Respondent] is an out conveyance of the original Scipio Josiah Sub Lot 8 tract," and that "Penn Center is the fee simple owner of the disputed property." (R. pp.7, 12). Since the master did not have subject matter jurisdiction to find that Florence Major was an intestate heir of Scipio Josiah, his finding pertaining to this issue should be void *ab initio*, and the court should find that there is no evidence in the record to reasonably support the master's finding that Respondent owns the land in fee simple .

II. RESPONDENT FAILED TO PROVE ITS CHAIN OF TITLE SINCE IT DID NOT SATISFY THE ELEMENTS OF THE SOUTH CAROLINA INTESTACY STATUTE TO SHOW THAT FLORENCE MAJOR WAS AN INTESTATE HEIR OF SCIPIO JOSIAH, AND THEREFORE THE MASTER ERRED IN FINDING THAT THE R.R. LEGARE DEED CONVEYED THE DISPUTED PROPERTY TO RESPONDENT .

Respondent has the burden of proving its counterclaim. See Sunshine Et Al. v. Furtick, 114 S.C. 32, 37, 102 S.E. 784, 785 (1920) ("He sues (by counterclaim), and he must prove his case"). The party claiming title must show title in himself and recover, if at all, upon the strength of his own title and not the weakness of his adversary's title. Douglass v. Perry, 245 S.C. 486, 141 S.E.2d 348 (1965).

Since 1712, the South Carolina intestacy laws have provided that any part of the decedent's estate not effectively disposed of by his will passes to his heirs. S.C. CODE ANN §§62-2-101,102, 103 (Supp. 2008); 2 Statutes at Large of S.C. 523, 524 (1834)

(including a 1671 English Act “For The Better Settling of Intestate Estates,” which South Carolina enacted in 1712). If the decedent leaves a surviving spouse and surviving issue, a portion of the intestate estate goes to the surviving spouse, with the remaining portion distributed among the decedent’s surviving issue. *Id.* Issue of the same degree of kinship to the decedent take equally, but those of more remote degree only take by representation. *Id.*

The master erred in finding that Florence Major, the granddaughter of Scipio Josiah, acquired a portion of Sub Lot 8 tract as an intestate share in her grandfather’s estate, since there is no evidence in the record to reasonably support this finding.

First, the testimony as well as the pleadings indicate that Scipio Josiah died intestate. (R. p.8). South Carolina’s 1712 intestacy statute would have applied to Scipio Josiah’s estate. Although the record does not state what year Scipio Josiah died, the evidence in the record shows that Scipio Josiah was alive in 1866, since Edward Philbrick conveyed “Sub Lot 8” to Scipio Josiah in a deed dated February 10, 1866. (R. p.2)

Next, there is no dispute that Florence Major is the daughter of William Josiah. In his final order, the master finds that “[t]he Arthur O. Christensen property record card, prepared for William Josiah’s lands, which I take to be extremely reliable, indicates that William Josiah “left daughter Florence, who married Tom Major.” (R. p.8). All the evidence in the record also shows that William Josiah is Scipio Josiah’s son. (R. p.8). Thus, for the master to find that Florence Major, the granddaughter of Scipio Josiah, acquired an intestate share of her grandfather’s estate, by law, Florence could only take by representation if William Josiah either predeceased Scipio Josiah or disclaimed the

inheritance. S.C. CODE ANN §§62-2-101, 102, 103; 2 Statutes at Large of S.C. 523, 524 (1834).

The record is completely void of evidence that William Josiah either predeceased Scipio Josiah or disclaimed the intestate share. Since Respondent counterclaims through its chain of title through Florence Major, it would have the burden of showing that she was an intestate heir. See Sunshine Et Al. v. Furtick, 114 S.C. 32, 37, 102 S.E. 784, 785 (1920). Despite being void of this evidence, there is actually evidence on the record that would show William Josiah survived his father. The master concludes in his findings of fact that “The R.R. Legare deed recites William Josiah and Rachel Simmons (the widow of Scipio Josiah who remarried Henry Simmons) as adjoining landowners, both of whom would be intestate heirs of Scipio Josiah.” (R. p.8), emphasis added. Since the R.R. Legare deed states that William Josiah is an adjoining landowner, this shows that William Josiah was alive and owned land at the time R.R. Legare purported to convey title to “land inherited by Florence Major from her grandfather, Scipio Josiah,” therefore showing William Josiah did not predecease Scipio Josiah. (R. pp.7-8). There is also no evidence in the record that William Josiah ever disclaimed his father’s intestate share. Since there is no evidence in the record that William Josiah either predeceased Scipio Josiah or disclaimed his father’s intestate estate, the master erred in finding that “Florence Major acquired an intestate share in the Scipio Josiah Estate, which she could have transferred.” (R. p.8).

Finding Florence Major is an intestate heir of Scipio Josiah was crucial to the master’s conclusion that Respondent is the fee simple owner of the disputed property. In

order for the Respondent to reconstruct its chain of title, Florence Major, the granddaughter of Scipio Josiah, must have acquired her grandfather's interest in Sub Lot 8, which she could have transferred to R.R. Legare. Without evidence to support the finding that Florence Major was one of Scipio Josiah's intestate heirs, there is no evidence in the record that the master could use to reasonably find that "the R.R. Legare deed [to Respondent] is an out conveyance of the original Scipio Josiah Sub Lot 8 tract," and that "Penn Center is the fee simple owner of the disputed property." (R. pp.7, 12).

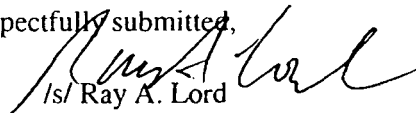
South Carolina intestacy law is well established. Applying the intestacy statute compels this court to overturn the master's finding that Florence Major was an intestate heir of Scipio Josiah. Since it was necessary for the Respondent to show this in order to reconstruct his chain of title, and since the master needed to use this as a basis to find that the R.R. Legare deed was an out conveyance of the disputed property, Appellant prays that this honorable court overturn the master's finding in favor of the Respondent.

#### CONCLUSION

For the reasons stated, Appellant respectfully requests that that this honorable court reverse the master's finding in favor of Respondent and remand the case for a new trial, or grant any further relief that this court finds to be just and proper.

October 9, 2009

Respectfully submitted,



/s/ Ray A. Lord

Ray A. Lord

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

2007 CP-07-1323

Johnnie Major, Personal  
Representative of Ed  
Major a/k/a Edward Major,  
a/k/a Edward Major, Sr.

Appellant

VS.

Penn Community  
Services, Inc., A South  
Carolina Not-For-Profit  
Corporation,

Respondent

FINAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUES ON APPEAL

- I. **DID THE ISSUE IN THE CASE REQUIRE A DETERMINATION OF THE HEIRS OF SCIPIO JOSIAH, AND DID THE MASTER IN EQUITY BASE HIS RULING UPON A DETERMINATION OF HEIRS?**
- II. **DID THE MASTER IN EQUITY HAVE SUBJECT MATTER JURISDICTION TO HEAR AND DECIDE THE CASE?**

## STATEMENT OF THE CASE

Johnny Major is the Personal Representative of the Estate of his father, Ed Major, a/k/a Edward Major, a/k/a Edward Major, Sr., hereinafter referred to as "Appellant". The action was commenced in the Court of Common Pleas for Beaufort County (Jury Trial Demanded) on May 23, 2007 (R., pp. 15 - 20). Appellant alleged that Edward Major, at the time of his death, was vested with title to eight (8) acres of real property; a one-half (0.5) acre parcel which was once a portion of, and came out of, an eight (8) acre tract, and the remaining 7-1/2 acre parcel. These parcels were described in the Complaint. Appellant further alleged that as a result of a title examination and plat, Appellant "believes that the Decedent actually owned 14.13 acres as shown on the plat attached to the Complaint as Exhibit 'A'". Appellant also alleged that this conclusion was reached based upon Edward Major acquiring all of the southern portion of "Sub Lot 8", save and except 3.11 acres which was owned by Penn Community Services, hereinafter referred to as "Penn". Appellant then outlines his chain of title beginning with a deed into Scipio Josiah from Edward S. Philbrick, dated February 10, 1866 (R., pp. 62-63). The deed into Scipio Josiah was for all of "Sub Lot 8". Scipio Josiah died intestate leaving as his sole surviving heir, his son, William Josiah, who took possession of Lot 8. Appellant further alleged that the

property was sold for delinquent taxes to F. R. Ford, at Deed Book 46, Page 383. ( R., p. 64).

F. R. Ford later conveyed the property to Edward and James Major, who later partitioned the property, with the northern portion being deeded to James Major, and the southern portion being deeded to Edward Major.

The allegation in the Complaint which creates the issue in the case is that the Defendant had never been conveyed title to any portion of Sub Lot 8, except the 3.11 acre parcel which Appellant conceded, was owned and possessed by Penn. (R., p. 20, ¶ 6(h)). Therefore, Appellant concluded, all of the remainder of the southern portion of Lot 8, (14.13 acres), belongs to Edward Major's Estate.

Respondent in its Answer and Counterclaim denied all material allegations, and alleged it acquired the 6.2 acres of the southern portion of "Sub Lot 8" from Jane Chisholm. Respondent's Counterclaim was later amended without objection to substitute for the conveyance from Jane Chisholm to Penn the deed from R. R. Legare to Penn. (R., p.61, lines 21-25; p.62, lines 1-19). Respondent also alleged that immediately upon acquiring the 6.2 acres it went into exclusive, open, hostile and continuous possession since October 12, 1916. (R., p. 4). (R., pp. 22-25).

Appellant's Reply denied all of the essential allegations of Respondent's Answer and Counterclaim. ( R., pp. 26-27).

By agreement of the parties, the matter was referred from the Court of Common Pleas to the Master In Equity for Beaufort County, the Honorable Marvin H. Dukes, III. ( R., p. 28). The final hearing on the merits was held on February 18, 2008.

The Master found and concluded that the R. R. Legare deed, along with Defendant's **recorded plats and the testimony of the Defendant's witnesses** convinced him,

“overwhelming that the R. R. Legare deed referenced above to Penn is a conveyance out of the original Scipio Josiah “Sub Lot 8” tract, and that deed is a conveyance of the ‘disputed property’ which is the subject of this lawsuit”. The Master awarded the 6.2 acres of “disputed property” to Respondent, Penn Center, free and clear of any claims of ownership by the Estate of Edward Major, from which this appeal was taken.

### **STANDARD OF REVIEW**

This case was brought in the Court of Common Pleas for Beaufort County. It was referred to the Master In Equity with direct appeal to the South Carolina Supreme Court. The action was one to quiet and clear title. The Respondent’s Answer and Counterclaim raised the issue of paramount title, and the issue of title is a legal issue. Eldridge v. City of Greenwood, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (Ct. of App. 1998). An adverse possession claim is also an action at law. Miller v. Leaird, 307 S.C. 56, 413 S.C.2d 441 (1992). In an action at law tried by a Judge without a jury, the Appellate Court must correct any error of law, but it must affirm the trial court’s factual findings unless no evidence reasonably supports those findings. Knight v. Hilton Head, 244 S.C. 452, 79 S.E.2d, 871 (1954). Because this case is an action at law that was referred to the Master In Equity with direct appeal to the South Carolina Supreme Court, the Appellate Court should correct any errors of law, but it must confirm the Master’s factual findings unless no evidence exists that reasonably supports those findings. Jeffrey v. Phillips, 316 S.C. 523, 451 S.E.2d 21 (Ct. App. 1994).

### **ARGUMENTS**

#### **I. THE ISSUE IN THE CASE DID NOT REQUIRE A DETERMINATION OF THE**

**HEIRS OF SCIPIO JOSIAH NOR DID THE MASTER BASE HIS RULING ON A DETERMINATION OF HEIRS.**

Appellant asserts that the Master found Florence Major to be an intestate heir of Scipio Josiah, and that this finding was crucial to the Master's conclusion that the R.R. Legare deed to Penn conveyed the disputed property. Appellant further asserts that there is no evidence in the record that the Master could use to reasonably support this finding without a court of competent jurisdiction determining the heirs of Scipio Josiah. For this proposition, Appellant relies upon the statement in the Master's Findings of Fact: [I]t becomes clear that Florence Major acquired an intestate share in the Scipio Josiah estate which she could have transferred".

Respondent contends that there is ample and persuasive **other** evidence in the record upon which the Master relied in concluding that the R.R. Legare deed to Penn conveyed the disputed property. Respondent further contends that the **other** evidence in the record is far more compelling and convincing than the finding that Florence Major acquired an intestate share in the Scipio Josiah estate which she could have transferred. Even more importantly, the Master could have reached the same conclusion independent of such finding, but based on other convincing and compelling evidence **in the record and included in his Final Order.**

In his final Order the Master stated: "The resolution of this case depends almost entirely upon the question of whether the 6.2 acres of 'disputed property' was ever conveyed out of the original Scipio Josiah 'Sub Lot 8' tract, and whether the deed from R.R. Legare to Penn School is such an out conveyance from the original Scipio Josiah 'Sub Lot 8' tract". (R., p.4, ¶ 3).

The Court further stated: "The **description and derivation** in the R.R. Legare deed, along with the **recorded plats**, and the **testimony of the Defendant's witnesses** convince me

overwhelmingly that the R.R. Legare deed referenced above to Penn is a conveyance out of the original Scipio Josiah Sub Lot 8 tract, and that deed is a conveyance of the 'disputed property' which is the subject of this lawsuit, and I so find". (R., p.7, ¶3). The Court then outlines the other compelling and convincing evidence supporting its findings. ( R., p.7-, ¶ 3).

The R.R. Legare deed is dated October 12, 1916 and recorded January 5, 1917. ( R., p. 67). The F. R. Ford deed to Edward Major and James Major is dated June 17, 1936, and recorded on June 22, 1936. ( R., p. 65). The R.R. Legare deed to Penn was not included in Appellant's chain of title; hence the basis for Appellant's claim. Respondent asserts Appellant simply "overlooked" or "missed" this deed in his title examination.

At the trial Appellant outlined what he purported to be a perfect chain of title beginning with a deed dated in 1866 from Edward Philbrick to Scipio Josiah. ( R., pp. 62 [sic]-63). The next deed in Appellant's chain was a deed to F. R. Ford from J. E. McTeer, then Sheriff of Beaufort County. This deed was against the Estate of William Josiah for past due, unpaid, and delinquent taxes. Appellant alleged in his Complaint that William Josiah was the sole heir of Scipio Josiah. ( R., p. 19, ¶ 6d). This deed called for **18 acres**, more or less. Appellant's next deed is from F. R. Ford to Edward Major and James Major, dated June 22, 1936, and recorded on June 26, 1936. (R., p.65). This deed calls for **18 acres**, more or less. Edward Major and James Major partitioned the property on September 16, 1950. Edward Major conveyed the northern 10 acres to James Major. (R., p. 56). James Major conveyed the southern 8 acres to Edward Major. (R., p. 56). Edward Major held title to the southern 8 acres until his death on July 26, 1997.

The deed from James Major to Edward Major describes the 8 acres as "bounded on the north by property this day being conveyed to me by Edward Major; on the East by lands of Penn

School. "Respondent asserts the land on the East to be the 3.11 acres admittedly owned by Penn". Respondent further asserts that the property described as "[o]n the South by lands of Penn School", to be the 6.2 acres of "disputed property" which had been previously acquired by Penn by deed from R. R. Legare in 1916. The 8 acres is further described as " bounded on the West by marshes of Johnson River, and being the **southern 8 acres** of that tract of land conveyed to the Grantor and Grantee herein by F. R. Ford, by his deed dated June 17, 1936, and recorded in the office of the Clerk of Court for Beaufort County at Deed Book 52, Page 407". This deed to Edward Major describing the southern 8 acres as bounded on the South by Penn School is one element of proof that Penn had previously acquired the southernmost 6.2 acres of Lot 8 by deed from R. R. Legare in 1916.

David Gasque, a local surveyor, prepared a plat for Johnnie Major. This plat was prepared for trial and is not recorded. (Plaintiff's Exhibit 1, filed separately). The plat shows the 6.2 acres and labels it "AREA OF CONFLICT 6.2 ACRES +- 270, 091 Sq. Ft. This is the property which was the subject of the lawsuit and was repeatedly referred to as the "disputed property". It lies in Lot 8. The Gasque plat shows the southern portion of Lot 8 as consisting of 14.13 acres. Respondent contended that the 14.13 acres consisted of the 6.2 acres conveyed to Penn by R.R. Legare, and the remaining 7.93 acres; almost precisely the 8 acres more or less called for in the partition deed from James Major to Edward Major. The Gasque plat, taken together with the description in Edward Major's deed, is another element of proof upon which the Court relied in making its ruling, **independent** of a determination of the heirs of Scipio Josiah.

The Simons-Myrant Plat of 1905 takes Penn's northernmost boundary up to and adjacent

to the southern boundary of Lot 8. (Defendant's Exhibit 1, filed separately). Penn had not yet acquired the 6.2 acres of disputed property when the Simons-Myrant plat was prepared. The Simons-Myrant Plat is recorded at Plat Book 14, Page 65 in the office of the RMC for Beaufort County. Penn's property was again surveyed and platted in 1968 by Palmer and Malone. This plat is recorded in the office of the RMC for Beaufort County at Plat Book 17, Page 15.

(Defendant's Exhibit 3, filed separately). This plat and survey follows the 1916 R.R. Legare deed to Penn and **includes the 6.2 acres** of disputed property. This is another element of proof that Penn acquired the 6.2 acres in the interim between 1905 and 1968 by the R.R. Legare deed. The property lines, according to the Palmer and Malone survey and plat are depicted on the Gasque plat (Plaintiff's Exhibit 1, filed separately) as "Penn Center line surveyed by Palmer and Malone, Inc., per plat recorded in Plat Book 17, Page 14".

The Simons-Myrant plat of 1905, the Palmer and Malone plat of 1968, the description in the Edward Major partition deed, and the 2005 Gasque plat each, taken independently, and especially when read together, are persuasive evidence that the R.R. Legare deed conveyed the 6.2 acres of "disputed property" to Penn. None of these documents require a determination of the heirs of Scipio Josiah.

**Appellant never surveyed nor platted Lot 8, nor the southern 8 acres of Lot 8.**

Appellant's only recorded plat was for the one-half (0.5) acre which was surveyed out of the southern 8 acres. All of Respondent's plats were **recorded**. Appellant never claimed ownership of the 6.2 acres prior to the 2005 Gasque survey and plat. (R., p. 60, lines 19-23).

The Court also relied upon the testimony of Respondent's witnesses in making its ruling. John Gadson was a previous Executive Director of Penn whose tenure began in 1969. Mr.

Gadson testified that in his capacity as Executive Director, he looked at Penn's various plats and deeds and familiarized himself with Penn's property. (R., p.58, lines 24, 25; p59, lines 1, 2). He testified that the dock at the western end of the disputed property was upgraded by Penn during his tenure. (Tr. p. 178, lines 11-13). The dock is shown on the Gasque plat. Gadson also testified that the disputed property was included in the 50 acre parcel which was designated, during his tenure, as a **National Historic District by the United States Department of Interior.** ( R., p. 59, lines 4-15).

The property description in the R.R. Legare deed to Penn was not based upon a survey. It read:

**ALL my right, title and interest in and to all that piece, parcel or tract of land situated, lying and being near Frogmore on St. Helena Island, in the County of Beaufort and State of South Carolina, being the same land inherited by Florence Major from her grandfather, Scipio Josiah, containing 6 acres portion described as being bounded by Penn School lands, by the "Corner" by land of Rachel Simmons, and by land of William Josiah".**

Presented with this description, the Court had to determine whether the property was located in Lot 8. Appellant would have the Court ignore the derivation clause in the description; "being the same land inherited by Florence Major from her grandfather, Scipio Josiah". He would label any consideration of this clause as a determination of heirs. The Court was attempting to accurately locate the grant, not determine heirs, in considering that language in the description. In other words, that language was an aid in the process in determining whether the 6.2 acres was located in Lot 8. The Court relied on Mary Lawrence Gaddie Smith v. William M. DuRant, 236 S.C. 80, 113 S.E. 2d 349 (1960), and Hazard Richardson vs. Johnnie Register, 227 S.C. 81, 87, S.E. 2d 40 (1955), for the proposition that the intent of the Grantor controls and

parole evidence may be considered to determine the Grantor's intent. The Court went on to consider the Arthur O. Christensen property record card in connection with the derivation in the R.R. Legare deed. Arthur O. Christensen was a surveyor in Beaufort County. He took precise notes when he surveyed property. Some of his notes contain information not otherwise available to title abstractors. The Arthur O. Christensen Family donated these historical records to Beaufort County. ( R., p.56, lines 9-25; p. 57, lines 1-14). They are commonly referred to by Title Abstractors in Beaufort County as the "AOC Property Record Cards". The Court noted that it took the Arthur O. Christensen Property Record Card prepared for William Josiah's lands to be extremely reliable. (R., p. 8, lines 2-6), ( R., p.68). The AOC Property Record Card for William Josiah states, "left daughter, Florence, who married Tom Major", "Lot 8 Corner from father, Scipio Josiah".

Appellant alleged in his Complaint that William Josiah was the sole heir of Scipio Josiah. The AOC Property Record Card tells us William Josiah "left daughter, Florence Major". The tax deed from J.E. McTeer to F. R. Ford was against the estate of William Josiah. ( R., p. 64). The property record card also places William Josiah's land in Lot 8. The R.R. Legare deed in its derivation states "same land inherited by Florence Major from her grandfather, Scipio Josiah". These documents, read together, constitute other evidence used by the Court in concluding that the R.R. Legare deed to Penn conveyed the "disputed property". While some of the information provided explained the family tree, they were not employed by the Court to determine the intestate heirs of Scipio Josiah. Rather, the information was used to determine the location of the grant.

Every deed in Appellant's chain of title beginning with the F.R. Ford deed, calls for or

makes reference to a total of eighteen (18) acres. The northern and southern portions of Lot 8, **still today, contain a minimum of eighteen (18) acres, excluding the disputed property.** The Simons-Myrant plat and the Palmer and Malone plat coincide perfectly with the Gasque plat prepared for Appellant. **All of Penn's plats are recorded.** Appellant has **no recorded plats** of Lot 8, the eighteen (18) acres called for in the deed into Edward and James Major, the southern eight (8) acres nor the northern ten (10) acres. All of these items of proof, taken together, make the R.R. Legare deed to Penn unintelligibly referable to the disputed property. No determination of heirs was necessary to support the court's ruling. The Court relied upon other persuasive, cogent, and convincing evidence. The above items of proof answered the one and singular issue joined by the pleadings and upon which resolution of the case turned: Whether the partition deed to Edward Major conveyed all of the southern portion of Lot 8 except 3.11 acres, or whether the R.R. Legare deed to Penn conveyed 6.2 acres in the southern portion of Lot 8.

Appellant also asserts that it was necessary to prove that Florence Major was an intestate heir of Scipio Josiah as a necessary link in Respondent's chain of title. Respondent denies this assertion and would submit that it was only necessary to prove the R.R. Legare deed was in the chain of title and constituted a conveyance out of the original tract, prior to the F.R. Ford deed to Edward and James Major. Florence Major could well have been Mary Brown or John Green and totally unrelated to Scipio Josiah. The matter of importance was the **link in the chain of title** and not intestacy. Following Appellant's line of reasoning, F.R. Ford, the Direct Tax Commissioner for Beaufort County, would need to have been an intestate heir of Scipio Josiah. F.R. Ford, a Direct Tax Commissioner for Beaufort County sold the property to the Majors for unpaid county taxes. This further buttresses Respondent's argument that no determination of

heirs was made by the Master nor necessary. The important question was the location of the property and the link in the chain of title provided by the R.R. Legare deed to Penn.

## II. THE MASTER IN EQUITY HAD SUBJECT MATTER JURISDICTION TO HEAR AND DECIDE THE CASE.

Assuming that a determination of the heirs of Scipio Josiah was necessary to support the Master's ruling, and that the Master did, in fact, make a determination of heirs, Respondent contends the Master had subject matter jurisdiction to do so. For this proposition, Respondent relies upon S.C. Code § 62-1-302(a)(1) which provides:

(a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

(1) estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estates of protected persons.

South Carolina Code § 62-1-302(6)(d)(3) provides:

(d) Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any **action or proceeding filed in the probate court** and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which **all responsive pleadings must be filed**, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter *de novo*:

(3) actions to try title.

Appellant overlooks the explicit language above: "any action or proceeding **filed in the probate court**" and the language on motion of either party, or by the court on its own motion, made not later than ten days following the date on which **all responsive pleadings must be filed**, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter *de novo*:".

Respondent contends that the above provisions apply to cases filed and commenced in the

probate court in its original exclusive jurisdiction. This is not such a case. This case was commenced in the Court of Common Pleas as an action to quiet title. It was brought in the court of common pleas pursuant to S.C. Code § 15-67-10 which provides for the recovery of real property as follows:

Any person in possession of real property, by himself or his tenant, or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively.

S.C. Code § 15-67-60 further provides in pertinent part:

In all actions brought under this article the court, or a judge thereof, shall refer the action to a master or special referee to take the testimony as to the plaintiff's claim or title and as to all the facts and circumstances unless the testimony shall be taken in open court and carefully inquired as to the existence of claim by and residence of all nonresidents.

In further support of the master's subject matter jurisdiction, Rule 53(b) of the S.C. Rules of Civil Procedure provides; in relevant part:

In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master of special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case.

(1) In all equitable actions and of equitable issues in actions at law.

By the provisions of Rule 53(b), of the S.C. Civil Rules of Civil Procedure the parties can be compelled to have this matter heard by the master.

Following Appellant's reasoning to its logical conclusion, the master would have been required to certify the issue of determination of heirs to the probate court. There is no such provision in the statute. Following the same line of reasoning, the circuit court would not be

granted the authority to try a case *de novo*. The provision for trying such cases *de novo* as provided by the statute, has no limitation on the court's authority. *De novo* implies trying the case as if it were filed in the circuit court with no limitation on the court's authority to hear and decide all issues in the case. *De novo* implies a new case. Notwithstanding the foregoing, Respondent asserts this is not a case which falls within the purview of the provisions of § 62-1-302 *Ibid*. Appellant misconstrues the statute. Again, following the Appellant's reasoning, the circuit court would have to certify a question to an inferior court: A court from which the same question could be appealed back to the circuit court.

S.C. Constitution Article V § 11 provides:

"The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law."

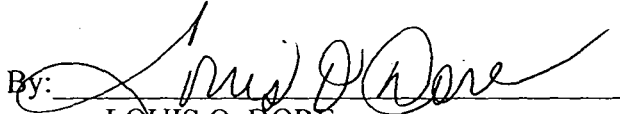
Any limitation on the circuit court's subject matter jurisdiction to decide a case would have to be expressly stated or stated by necessary implication in the constitution or statute conferring jurisdiction. There is no limitation expressed nor implied, on the circuit court's jurisdiction under S.C. Code § 15-67-10. The Court of Common Pleas, under the constitution, is a court of universal jurisdiction in civil cases, while the probate court is one of limited and inferior jurisdiction. To deprive the court of common pleas of jurisdiction in favor of the probate court would give rise to a palpable inconsistency between the probate code and the constitution as well as S.C. Code § 15-67-10 et. seq., which must, if possible, be avoided.

### CONCLUSION

For the foregoing reasons and authorities, Respondent asks that the court affirm the ruling

of the Master In Equity in every respect.

Respectfully submitted:

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October 21, 2009

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

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2007-CP-07-1323

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Johnnie Major, Personal  
Representative of the  
Estate of Ed Major a/k/a  
Edward Major

Appellant,

v.

Penn Community  
Services, Inc., A South  
Carolina Not-For-Profit

Respondent.

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FINAL REPLY BRIEF FOR APPELLANT

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## INTRODUCTION

Appellant respectfully submits this Reply to Respondent's Brief. Appellant asserts that Respondent's Brief fails to refute the legal arguments put forth by Appellant. In order to avoid redundancy, this Reply Brief will concentrate on Respondent's Brief, and the Court may refer to Appellant's original Brief for the substance of his argument, which remains untouched by anything in Respondent's Brief.

## ARGUMENTS

- I. IN ORDER FOR ANY OF THE EVIDENCE IN THE RECORD TO REASONABLY SUPPORT THE MASTER'S FINDING, THE MASTER NEEDED TO FIND THAT FLORENCE MAJOR WAS ONE OF SCIPIO JOSIAH'S HEIRS.

The parties do not dispute that this case is an action at law, and that following the standard of review, the appellate court will correct any errors of law, but it must affirm the master's factual findings unless no evidence exists that *reasonably* supports those findings. Jefferies v. Phillips, 316 S.C. 523, 451 S.E.2d 21 (Ct. App. 1994), emphasis added. Although Respondent argues the Master relied on *other* evidence than his finding that Florence Major acquired an intestate share in the Scipio Josiah estate, Appellant asserts that none of this evidence reasonably or independently supports the Master's finding that Respondent owned the disputed property. Further, any error concerning whether Florence Major is an heir is an error of law.

Many of Respondent's arguments rely on the R.R. Legare deed granting Respondent an valid interest in the disputed property. If R.R. Legare mistakenly believed he had an interest to transfer, but in fact had none, then the location of the grant, or any

evidence relying on the R.R. Legare deed, would be irrelevant. In order for the Master to *reasonably* find the R.R. Legare deed granted Respondent an interest in the disputed property, the Master *needed* to find that Florence Major was an intestate heir of Scipio Josiah. To understand why, it is important to understand the language in the R.R. Legare deed. The R.R. Legare deed states:

ALL my right, title and interest in and to all that piece, parcel or tract of land situated, lying and being near Frogmore on St. Helena Island in the County of Beaufort and State of South Carolina, being the same land inherited by Florence Major from her grandfather, Scipio Josiah, containing 6 acres portion described as being bounded by Penn School lands, by the "Corner" by land of Rachel Simmons, and by land of William Josiah.

In this deed, R.R. Legare purports to transfer his interest to Respondent in the "same land inherited by Florence Major." It logically follows that R.R. Legare believed that Florence Major once owned the disputed property, and that *her supposed interest* was somehow transferred to him. Thus, Florence Major needed to have an interest in the property that she could have transferred to R.R. Legare, which R.R. Legare could then transfer to Respondent. The Master attempted to resolve this by finding "Florence Major acquired an intestate share in the Scipio Josiah estate, which she could have transferred." (R. p.8).

However, since Florence Major was the granddaughter of Scipio Josiah, as even admitted in the R.R. Legare deed, then her father, William Josiah, must have predeceased Scipio Josiah or disclaimed his inheritance in order for Florence Major to have an intestate interest. The record is not only void of the evidence necessary to conclude Florence Major was an intestate heir of her grandfather, but actually has contradictory evidence that her father, William Josiah, was alive at her grandfather's death. Since there was no evidence in the record to support the Master's finding that Florence Major had an intestate interest

in the disputed property, there was no evidence the R.R. Legare deed actually transferred any interest, and any evidence that relies on the R.R. Legare deed does not reasonably support the Master's finding.

Turning to Respondent's Brief, Respondent first claims the "deed to Edward Major describing the southern 8 acres as bounded on the South by Penn School is one element of proof Penn had previously acquired the southernmost 6.2 acres of Lot 8 by deed *from R.R. Legare in 1916.*" (Respondent's Brief, p.6, emphasis added). Following the above discussion, this evidence relies on R.R. Legare transferring an interest to Respondent, and thus cannot reasonably support the Master's finding without a determination that Florence Major had an intestate share of her grandfather's estate. Further, Respondent claims this deed "conveyed the southern 8 acres to Edward Major," but fails to include that the deed actually conveyed "8 acres *more or less.*" (R. p.66). Although the land granted to Edward Major was bounded "[o]n the South by lands of Penn School [and] *Respondent asserts this to be the 6.2 acres of 'disputed property,'*" Respondent's assertion is not cited, and was not made to the Master. (Respondent's Brief, p.6). Thus, the Master could not have relied on the argument that the land bounded on the South by Penn School was the disputed property it to support his finding. Additionally, Respondent would have the Court ignore that Penn School owned land "all over the place out there." (R. p.54, lines 22-25).

Next, Respondent argues that "[t]he Gasque plat taken together with the description in Edward Major's deed is another element of proof upon which the Court relied in making its ruling, **independent** of a determination of the heirs of Scipio Josiah." (Respondent's Brief, p.6). Respondent uses the Gasque plat which shows the southern

portion of Lot 8 consists of 14.13 acres, and the Edward Major deed which granted Edward Major 8 acres *more or less*, to calculate the additional acres, and claims that any additional acres were “conveyed to Penn by R.R. Legare.” (Respondent’s Brief, page 6). This argument relies on the R.R. Legare deed granting Respondent an interest in the 6.2 acres, and thus is **not independent**, but actually relies on a determination of the intestate heirs of Scipio Josiah. Since no evidence in the record reasonably supports that R.R. Legare ever had any interest to transfer, this evidence is irrelevant, unpersuasive, and not reasonable to support the Master’s finding that Respondent owns the disputed property.

Respondent further argues that the Simons-Myrant plat of 1905, independently or when considered with other evidence, is “persuasive evidence that the R.R. Legare deed conveyed the 6.2 acres of ‘disputed property’ to Penn.” (Respondent’s Brief, p.7). Appellant denies this, since the Simons-Myrant plat of 1905 does nothing to remedy the problem described above with the R.R. Legare deed. “The Simons-Myrant Plat of 1905 takes Penn’s northernmost boundary up to and [sic] adjacent [sic] to the southern boundary of Lot 8.” (Respondent’s Brief, pp. 6-7; Defendant’s Exhibit No. 1; See R. p.ii (showing Defendant’s Exhibit No. 1 is filed separately)). Further, if Respondent claims that it owned the disputed property in 1905, there is no reasonable explanation for why Respondent would have paid R.R. Legare for the same exact property in 1916. Respondent’s argument is unreasonable and unpersuasive that the Simons-Myrant plat reasonably supports the Master’s finding.

Respondent then argues that certain evidence was used to determine the location of the grant in the R.R. Legare deed, and not the intestate heirs. Although Respondent correctly states that the court used this evidence, such as the R.R. Legare deed, to attempt

to accurately locate the grant of land, Respondent would have the Court ignore that the accurate location of the grant is irrelevant if R.R. Legare never had any right, title, or interest in the property.

Respondent finally argues that “[t]he matter of importance was the link in the chain of title and not intestacy.” Appellant agrees this would have been accurate if Respondent had relied on R.R. Legare’s interest deriving from some other source than through Florence Major’s intestate interest, and had presented evidence to support it (for example, a deed from Scipio Josiah to Florence Major, John Green, or Mary Brown). However, the above arguments show this is not the case.

**II. RESPONDENT PRESENTS NO PERSUASIVE AUTHORITY TO SUPPORT ITS ARGUMENT THAT THE MASTER-IN-EQUITY HAD SUBJECT MATTER JURISDICTION TO HEAR AND DECIDE THIS CASE.**

This section addresses the inadequacy of the arguments Respondent uses to refute Appellant’s assertion that the master-in-equity lacked subject matter jurisdiction to hear and decide this case. All of Respondent’s arguments in concerning this section assume “that a determination of the heirs of Scipio Josiah was necessary to support the Master’s ruling, and that the Master did, in fact, make a determination of heirs.” (Respondent’s Brief, p.11). The above section in this Reply Brief, as well as Appellant’s Initial Brief, all address why Appellant believes a determination of heirs was necessary, and that the Master determined “Florence Major acquired an intestate share in the Scipio Josiah Estate, which she could have transferred.” (R. p.8).

Appellant concedes that Section 62-1-302(6)(d)(3) of the South Carolina Code

only applies to actions commencing in the probate court, and deals with the circuit court's concurrent jurisdiction. (Respondent's Brief, p.11). However, this does not effect Appellant's argument that the Master-In-Equity did not have subject matter jurisdiction to determine intestate heirs. Appellant argued that section 62-1-302(a)(1) grants the probate court exclusive original jurisdiction over all subject matter related to the determination of heirs. (Appellant's Brief, p.4-5). Respondent further correctly states that section 15-67-60 allows the court of common pleas to "refer the action to a master or special referee to *take the testimony* as to the plaintiff's claim or title." Emphasis added. This section allows the master to "take the testimony," not to hear the case.

Further, determining intestacy is a legal issue. While section 15-31-20(1) provides that the court of common pleas may "upon application of either or its own motion, direct a reference in the following cases: (1) In all *equitable* actions and of *equitable issues* in actions at law," the code does not permit a Master-In-Equity to determine a legal issue, like one of intestacy.

Finally, Appellant is not trying to limit the circuit court's subject matter jurisdiction. Rather, Appellant only argues that the Master-In-Equity court, also an inferior court, does not have jurisdiction to determine intestate heirs. If the Court were to find that the Master-In-Equity could determine intestate heirs, such a finding would adversely effect the public policy interest in discouraging forum shopping, since a party could bypass the probate judge in favor of having a Master determine intestate heirs.

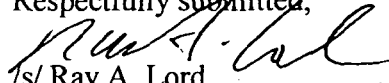
#### CONCLUSION

For the reasons stated, Appellant respectfully requests that this Honorable Court

reverse the master's finding, and either remand the case for a new trial or grant any further relief that this Honorable Court finds to be just and proper.

October 9, 2009

Respectfully submitted,

  
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