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SC Court of Appeals

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

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**Appeal from Oconee County**
**Court of Common Pleas**
**Steven C. Kirven, Master-in-Equity**

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**Appellate Case No. 2023-000918**
**Trial Court Case No. 2021-CP-37-00093**

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

v.

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

Of Whom Rodney Halsell and Barbara Halsell are the..................................................Appellants.

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# INITIAL BRIEF OF RESPONDENTS

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John S. Nichols, SC Bar # 4210
Bluestein Thompson Sullivan, LLC
1614 Taylor Street
Columbia, SC 29201
Phone: (803) 779-7599
john@bluesteinattorneys.com

## TABLE OF CONTENTS

Table of Contents ..... ii

Table of Authorities ..... iii

Statement of Issues on Appeal ..... 1

Statement of the Case ..... 1

a) Factual Background ..... 2

Standard of Review ..... 8

Argument ..... 11

I. The Master-In-Equity Correctly Ruled that the Halsells are Entitled to Use their Property Subject to the Terms of the Easement as Owners of the Servient Estate. ..... 11

a) The Dominant Estate's Limited Interest in the Easement ..... 13

b) The Servient Estate's Fee Interest in the Easement and All Rights Remaining ..... 15

c) The Master-In-Equity Correctly Determined the Scope and Extent of the Easement 19

d) The Master-In-Equity Correctly Ruled that the Easement was not Abandoned and Balanced the Purpose of the Easement Against the Halsells' Actions ..... 25

II. The Master-In-Equity Correctly Ruled that the Halsells' Destruction of Property Constituted a Trespass or Nuisance ..... 28

Conclusion ..... 31

## TABLE OF AUTHORITIES

**Cases**

*Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 558 S.E.2d 902 (Ct. App. 2001) ........ 8, 13, 28, 30

*Brown v. Hendricks*, 211 S.C. 395, 45 S.E.2d 603 (1947) ........ 30, 31

*Bundy v. Shirley*, 412 S.C. 292, 772 S.E.2d 163 (2015) ........ 11, 12

*Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975) ........ 30

*Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950) ........ 26

*Goodwin v. Johnson*, 357 S.C. 49, 591 S.E.2d 34 (Ct. App. 2003) ........ 11

*Hamilton v. CCM, Inc.*, 274 S.C. 152, 263 S.E.2d 378 (1980) ........ 20, 21

*Hammond v. Lindsay*, 277 S.C. 182, 284 S.E.2d 581 (1981) ........ 8, 9

*Hardin v. S.C. Dept. of Transportation*, 371 S.C. 598, 641 S.E.2d 437 (2007) ........ 30

*Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (2006) ........ 8

*Haselden v. Schein*, 167 S.C. 534, 166 S.E. 634 (1932) ........ 21

*Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 28 S.E.2d 545 (1943). ........ 12

*Morrow v. Dyches*, 328 C.S. 522, 492 S.E.2d 420 (Ct. App. 1997). ........ 19

*Plott v. Justin Enters.*, 374 S.C. 504, 649 S.E.2d 92 (Ct. App. 2007) ........ 8, 13, 19

*Proctor v. Steedley*, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012) ........ 12

*Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.*, 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006) ........ 13

*Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012) ........ 12

*S.C. DOT v. Horry Cty.*, 391 S.C. 76, 705 S.E.2d 21 (2011) ........ 8

*S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.*, 275 S.C. 552, 273 S.E.2d 773 (1981) ........ 9

*Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965)................................ 12, 19

*Seabrook Island Prop. Owners Ass'n. v. Marshlan Tr., Inc.*, 358 S.C. 655, 596 S.E.2d 380 (Ct. App. 2004) ........................................................................................................... 21

*Simmons v. Berkeley Elec. Coop., Inc.*, 404 S.C. 172, 744 S.E.2d 580 (Ct. App. 2013) ............ 19

*Simmons v. Berkely Elec. Coop. Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016).............................. 19

*Snow v. Smith ex rel. Stoudenmire*, 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016).............. passim

*Taylor v. Lindsey*, 332 S.C. 1, 498 S.E.2d 862 (1998) ......................................................... 19, 20

*Williams v. Tamsberg*, 425 S.C. 249, 821 S.E.2d 494 (Ct. App. 2018)....................................... 12

*Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009)......................................................... 21

*Witt v. Poole*, 182 S.C. 110, 188 S.E. 496 (1946)................................................................ 25, 26

*Xanadu Horizontal Property Regime v. Ocean Walk Horizontal Property Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991)........................................................................... 22, 23

## <u>STATEMENT OF ISSUES ON APPEAL</u>

1. **The Master-in-Equity correctly balanced the interests of the Halsells as owners of the servient estate with that of the dominant estate when ruling the driveway unreasonably interfered with the use and enjoyment of the landscape easement.**
2. **The Master-in-Equity correctly found that the driveway was an unreasonable interference with the POA's use and enjoyment of the landscape easement, which constituted a nuisance.**

## <u>STATEMENT OF THE CASE</u>

This action stems from a straightforward dispute between Rodney and Barbara Halsell (the "Halsells" or "Appellants") and the Mountain View Pointe Owner's Association (the "POA" or "Respondent").[1]

Distilled to its undisputed facts, the Halsells purchased property subject to a non-exclusive Landscape Easement, and the Halsells sought to build a driveway through that landscape easement. The POA denied the Halsells' request to build the driveway across the landscape easement because the essential purpose of the easement would have been necessarily frustrated as a concrete driveway and landscaped berms are mutually exclusive uses of the disputed property. The Halsells poured the concrete and built the driveway anyways. The POA brought suit to protect the community's rights through enforcement of the Landscape Easement per its by-laws and related governing documents.

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[1] The trial court action was brought by the Mountain View Pointe Owner's Association as well as the title holders to 21 of the 29 lots comprising the POA subdivision. The individual plaintiffs and the POA share interests in common and proceeded with singular causes of action against Appellants. Cumulatively, these individual plaintiffs and the POA are referred to herein as "Respondents" or the "POA."

## a) Factual Background

In 2002, Crescent Communities S.C., LLC. ("Crescent"), recorded a Declaration of Covenants, Conditions, and Restrictions for Mountain View Pointe ("MVP" or "the Subdivision"). (Jt. Ex. 1A, 6). Crescent designated and assigned the powers and duties under the Declaration to Mountain View Pointe Owners Association, a South Carolina non-profit corporation. (Jt. Ex. 1A, 6). Crescent had prepared and filed the Plat setting forth the lots, easements, and boundaries for the POA on November 12, 2002, in Plat Book A910. (Jt. Ex. 2).

The Declaration recorded at the Office of the Register of Deeds for Oconee County contained the Articles of Incorporation for the POA and the Bylaws of Mountain View Pointe Owners Association, Inc. (Jt. Ex. 1A, 48, 51). Crescent had a designated representative sign the Declaration in the presence of two witnesses, which contained the acknowledgment of a Notary Public of the State of North Carolina. (Jt. Ex. 1A, pp. 1, 42). The POA formally came into existence in September 2002. (Jt. Ex. 1A, p. 48).

The design of the subdivision and the areas around it are outlined in the 2002 Plat. (Jt. Ex. 2). Of salient import, the MVP subdivision has an entrance at the juncture of Doug Hollow Road and Mountain View Pointe Drive. (Jt. Ex. 2). This area contains an easement for the "Entrance Monument" into the subdivision. (Jt. Ex. 2; Order, pp. 5-6). Additionally, Crescent designed the landscape easement so the POA would retain a landscaped area on either side of Mountain View Pointe Drive leading into the subdivision, designated as the 25' "non-exclusive landscape easement" running on either side of the road. (Jt. Ex. 2). The Plat identified the metes, bounds, and measurements of the easement. (Jt. Ex. 2). These easements burden the two parcels of land, Parcels A and B, on either side of Mountain View Pointe Drive. (Jt. Ex. 2). The Halsells, as owners of

Parcel A, contest only the landscape easement running along Mountain View Pointe Drive. (Order, p. 5).

The POA has maintained the landscape easement from the association's inception in 2002, nineteen (19) years at the time of trial. (Order, p. 6). The landscape easement contains areas where it is maintained in a natural state and places where it is maintained in a curated fashion with planted flowers and shrubs. (Order, pp. 6-7). The POA has irrigated large portions and installed sod where necessary to maintain the landscape in the manner selected by the POA. (Order, p. 6). The landscape easement runs from the entrance monument easement along the length of Mountain View Pointe Drive until it abuts the numbered lots of the POA. (Jt. Ex. 2).

Crescent sold the two parcels bordered by MVP Drive to Christine and Graham Piper in August of 2013, subject to the easements, covenants, restrictions, and conditions of record. (Jt. Ex. 6, p. 2).

In early September 2020, the Halsells approached the Pipers with a $200,000.00 offer to purchase Parcel A. (Pla. Ex. 5; Pla. Post-Trial Brief, p. 3; Tr. 32:2-33:17). The Halsells anticipated the purpose of the landscape easement in their inquiry to the Pipers, stating: "As I expect you want to preserve the view along this street." (Pla. Ex. 1; Tr. 32:16-25). The Halsells informed the Pipers of their concern related to the landscape easement running the length of Mountain View Pointe Drive because the Halsells wished to build a driveway through the landscape easement. (Pla. Post-Trial Brief, 3-4). The Halsells notified the POA by letter of their desire to remove a portion of the landscape easement for their proposed driveway. (Pla. Ex. 2). The Halsells also leveraged the Pipers to advocate on their behalf to the POA, who did so on September 7, 2020, outlining the "Halsell Proposal." (Pla. Ex. 3). The Pipers testified that the landscape easement existed on the

tract being sold to the Halsells and that they communicated this to the Halsells. (Tr. 35:7-25; Tr. 36:1-3).

On September 28, 2020, the Pipers wrote to the Oconee County Planning Director regarding the Halsells' desire for assurance "that a driveway on Mountain View Pointe Drive will be allowed by Oconee County." (Pla. Ex. 7). Ultimately, on October 26, 2020, counsel for the POA notified the Pipers of the POA's position there was not a unanimous decision of the homeowners to grant the Halsells' the exception they sought. (Pla. Ex. 4).

As a result of the anticipated denial of permission to build the driveway and increased costs to build a driveway off of Doug Hollow Road, the Halsells lowered their contract offer for Parcel A from $200,000.00 to $150,000.00. (Pla. Exs. 5, 6, 8; Tr. 36:12-37:1; Tr. 40:13-41:1; Tr. 53:19-54:6).

The Halsells purchased the lot to build a garage for their used car collection with a driveway to MVP Drive. (Pla. Exs. 3, 5; Order ¶ 17; Tr. 33:6-34:5). The purchase was made subject to the April 3, 2013, plat, which indicated the existence of the landscape easement. (Jt. Ex. 7; Tr. 37:17-38:14). The Pipers testified that each plat considered during the sale of Parcel A to the Halsells contained a reference to the non-exclusive landscape easement. (Tr. 39:25-40:2).

On December 2, 2020, the Halsells acknowledged in the presence of two witnesses they had notice of "any and all restrictions, protective covenants, [and] easements . . . imposed upon this property." (Pla. Ex. 9). The Halsells recorded their title on December 7, 2020, in the Office of the Register of Deeds for Oconee County, Deed Book 2632, at pages 210-11. (Jt. Ex. 9, p. 1).

The Halsells' title to Parcel A identifies the property as being a portion of the property conveyed to the Pipers on July 16, 2013, and recorded August 26, 2013, in Deed Book 1982, at page 91, records of Oconee County, South Carolina. (Jt. Ex. 9, p. 1). The referenced deed is the

Special Warranty Deed conveying Parcels A and B to the Pipers from Crescent, which subjected the property conveyance to the easements, restrictions, and covenants of record, as may be apparent from an inspection of the property. (Jt. Ex. 6, pp. 1-2). The Pipers attached to the Special Warranty Deed an exhibit, Exhibit A, identifying the specific tracts of land conveyed by the deed. (Jt. Ex. 6, p. 3). Exhibit A identifies the conveyed land as being a portion or all of that land conveyed to Crescent Communities S.C., LLC, recorded September 9, 2002, in Deed Book 1239, at page 155. (Jt. Ex. 6) (See also, Pla. Ex. 19). The Special Warranty Deed sets forth the property derivation from 1965. (Jt. Ex. 6; Pla. Post-Trial Brief, p. 25).

The Halsells recorded a prepared Plat for Parcel A on December 4, 2020, in Plat Book 754, at page 5. (Jt. Ex. 10). The Halsell Plat explicitly references "Parcel A Mountain View Pointe," Deed Book 1982, pages 91-96. (Jt. Ex. 10). In 2013, Crescent recorded a prepared Plat for Parcels A and B before sale to the Pipers, Plat Book 443, at page 2. (Jt. Ex. 7). The 2013 Crescent Plat references Deed Book 1982, pages 91-96. (Jt. Ex. 7). This appeal centers around Parcel A, identified as S-Tract 7149.02, containing 4.715 acres, as set forth in the 2020 chain of title. (Jt. Ex. 6).

Mr. Halsell applied for an encroachment permit on December 2, 2020, to build a "[p]ersonal driveway on 4.7 acre property . . . where it meets Doug Hollow[ Road]." (Pla. Ex. 10). The entrance would be "on the right/north side of Doug Hollow [Road]." (Pla. Ex. 10, p. 1). The permit contained pictures illustrating that the driveway would attach to Doug Hollow Road, not Mountain View Pointe Drive. (Pla. Ex. 10, pp. 4, 10). The permit contained an illustration indicating the driveway would intersect with only Doug Hollow Road. (Pla. Ex. 10, p. 4). This illustrated the sole purpose of the permit as permitting a driveway from Doug Hollow Road with references to Doug Hollow Road's "Posted Speed Limit" and the designation of State Road S45.

(*Id.*). The roadway was marked with "small white lines . . . to make it easy to see." (Pla. Ex. 10, p. 1). The permit contained pictures indicating the driveway site as being located on Doug Hollow Road and not on Mountain View Pointe. (Pla. Ex. 10, p. 8). The permit further contained a Google Maps picture of the permitted site located on Doug Hollow Road, State Road S-37-15. (Pla. Ex. 10, p. 9). The plat attached to the permit contains two black lines indicating the driveway site to intersect with "Doug Hallow (*sic*) Road." (Pla. Ex. 10, p. 10). Mr. Halsell applied for the permit on the day of closing. (Tr. 42:14-25).

The S.C. Department of Transportation issued Permit No. 240790 on January 7, 2021, allowing the construction of a driveway on "the right/north side of Doug Hollow" Road. (Pla. Ex. 11). The roadway was marked with "small white lines . . . to make it easy to see." (Pla. Ex. 11, p. 1).

The Halsells did not construct a driveway on the right side or north side of Doug Hollow Road. Instead, the Halsells constructed a dirt and gravel driveway running directly across the landscape easement. (Pla. Exs. 10, 12-B, 12-C, 12-D, 12-E, 12-F). This driveway tore through the landscaping of the POA. (Pla. Exs. 14-15). In the three months prior to trial, the Halsells widened the driveway, poured concrete curbing, and paved the driveway. (Order, pp. 9-10). The Halsells constructed their garage complex at the end of the driveway, connected to MVP Drive. (Pla. Exs. 16-18). Though argued in their brief, the only evidence in the record that the Halsells ever obtained an encroachment permit to connect to MVP Drive came from the Halsells. (App. Br. 7; Pla. Ex. 11). Rodney Halsell testified his builder obtained a permit (Tr. 262:7); however, this is not corroborated by the record. Rodney Halsell testified there was a white stake the county had placed in the landscape easement (Tr. 261:24-262:3); however, this is not corroborated by the record.

A two-day hearing on the merits was held October 26 through 27, 2022. (Order, p. 3). At the commencement of the hearing, the Halsells moved to be heard on an additional claim of an easement by necessity, which was unopposed. (Order, p. 3; Tr. 17:7-10). After the hearing, the court conducted a site visit of the Subdivision, Parcel A, and Parcel B. (Order, p. 3; Tr. 363-64).

The parties were given leave to file post-trial briefs, which were submitted to the master. (Order, p. 3). The master issued a Supplemental and Amended Order, filed May 31, 2023, pursuant to the Halsells' motions for "modification and clarification" pursuant to Rules 52 and 59, S.C.R.C.P., and pursuant to the POA's motion to amend the pleadings to conform to the evidence pursuant to Rule 15(b), S.C.R.C.P. for a mandatory injunction. (Amended Order, pp. 2-3).

The Master-in-Equity ruled for the POA by finding the Halsells unreasonably violated the rights held by the POA in the non-exclusive Landscape Easement when the Halsells reduced the easement by constructing a driveway. (Order, §§ III.2-3). The master further held the Halsells damaged the POA's limited interest in the easement by constructing the driveway and this violation of the POA's right constituted a trespass. (Order, §§ III.4, 7). The master ordered the Halsells to restore the areas disturbed within the easement within forty-five (45) days (Order, § III.8); however, this was modified to sixty (60) days by supplemental order. (Supp. Order, § 3).

This appeal followed.

Pursuant to Rules 62(c), SCRCP, and 241(c), SCACR, the Halsells moved for Supersedeas and/or to Stay Injunctive Relief Pending Appeal. The Master-in-Equity granted the request and issued an order August 4, 2023, establishing a cash bond pending the outcome of the appeal.

## STANDARD OF REVIEW

"Declaratory judgment actions are neither legal nor equitable; therefore, the standard of review depends upon the nature of the underlying issues." *S.C. DOT v. Horry Cty.*, 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011) (citing *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009)).

"A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001) (internal citations omitted). "Although the existence of an easement is a question of fact in a law action, the determination of the extent of an easement is an equitable matter." *Plott v. Justin Enters.*, 374 S.C. 504, 510, 649 S.E.2d 92, 95 (Ct. App. 2007) (citing *Jowers v. Hornsby*, 292 S.C. 549, 551, 357 S.E.2d 710, 711 (1987); *Tupper v. Dorchester Cty.*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997)); *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) (citing *Tupper*, 326 S.C. at 323, 487 S.E.2d at 190). *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 67, 558 S.E.2d 902, 906 (Ct. App. 2001) ("The scope of an easement is an equitable matter in which a reviewing court may take its own view of a preponderance of the evidence."). "The language of an easement determines its extent." *Binkley*, 348 S.C. at 67, 558 S.E.2d at 906-07.

Construction of an easement therefore, as applied to deeds and other instruments, "of a clear and unambiguous deed in respect to the property conveyed is a question of law for the Court." *Hammond v. Lindsay*, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981) (citing 26 C.J.S. *Deeds* § 108 (1956)). "As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance, they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of land."

*Hammond v. Lindsay*, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981) (citing *Hobonny Club, Inc. v. McEachern*, 272 S.C. 392, 252 S.E. (2d) 133 (1979); *Holly Hill Lumber Co. v. Grooms*, 198 S.C. 118, 16 S.E. (2d) 816 (1941); 11 C.J.S. Boundaries § 24 (1938)). "[D]etermination of whether language in a deed is ambiguous is a question of law." *Snow v. Smith ex rel. Stoudenmire*, 416 S.C. 72, 88, 784 S.E.2d 242, 250 (Ct. App. 2016) (citing *Proctor v. Steedley*, 398 S.C. 561, 573 n.8, 730 S.E.2d 356, 363-64 n.8 (Ct. App. 2012)). "[D]etermination of the grantor's intent when reviewing a clear and unambiguous deed is also a question of law for the court." *Snow*, 416 S.C. at 88, 784 S.E.2d at 250 (citing *Proctor*, 398 S.C. at 573, 730 S.E.2d at 363)).

"Clear and unambiguous language in grants of easement must be construed according to terms which parties have used, taken, and understood in plain, ordinary, and popular sense." *S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981) (citing *Patterson v. Duke Power Company*, 256 S.C. 479, 183 S.E.2d 122 (1971)). "When language in a plat reflecting an easement is capable of more than one construction, the construction that least restricts the property will be adopted." *Snow*, 416 S.C. at 84, 784 S.E.2d at 249 (citing *Tupper v. Dorchester Cty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 191 (1997)).

"On appeal in an action in equity tried by the master, 'the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence.'" *Snow*, 416 S.C. at 88, 784 S.E.2d at 250 (citing *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004)). The appellant still bears the burden of "of convincing [the appellate] court the master committed error in its findings." *Snow*, 416 S.C. at 84, 784 S.E.2d at 249 (citing *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001)). The appellant bears the burden of persuading the appellate court a master's factual finding "is against the greater weight of the

evidence" to warrant reversal of that finding. *Id.* (citing *Campbell*, 361 S.C at 263, 603 S.E.2d at 627).

Conversely, the appellate court is not "required to ignore the fact the master, who saw and heard the witnesses,[ who] was in a better position to evaluate their credibility." *Id.* (citing *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000)).

## ARGUMENT

The Appellants frame this case as if the Halsells have been denied all use and enjoyment of their property. Simply put, that is not what this case is about. As the master rightly found, this case is about the careful balancing between the interests of the dominant and servient estates. The interests of the Halsells were balanced against those of the POA; however, a paved driveway is unavoidably a mutually exclusive use when compared to the POA's limited interest in the easement for landscaping.

The record supports the findings and conclusions of the Master-in-Equity as correct, both as a finding of law and of fact, whose ruling is founded upon the substantial weight of the evidence. The orders should be affirmed.

### I. The Master-In-Equity Correctly Ruled that, as Owners of the Servient Estate, the Halsells are Entitled to Use their Property Subject to the Terms of the Easement.

"An easement is a right given to a person to use the land of another for a specific purpose." *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015) (citing *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 232, 662 S.E.2d 452, 455 (Ct. App. 2008)). This is the core principle of an easement whereby a specific purpose is agreed upon between the two parties, which alters the rights and privileges each owes the other. *Goodwin v. Johnson*, 357 S.C. 49, 53, 591 S.E.2d 34, 36 (Ct. App. 2003) ("We recognize that it should be more difficult to relocate an express easement, as it is akin to a contract and is bargained for by the parties."). This principle undergirds the case law that requires balancing the rights of the easement owner against that of the landowner—neither absolute—but balanced against each other as "reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated." *Hill v. Carolina Power &*

*Light Co.*, 204 S.C. 83, 96, 28 S.E.2d 545, 549 (1943). The Master-in-Equity correctly applied this principle to the facts of this case in ruling the landscaping easement gave the POA only limited rights as it pertained to "vegetation, landscaping, and grading." (Order, §§I.17, I24-25, II.5).

At the time of the Halsells' purchase of Parcel A, the servient and dominant estates were burdened by certain obligations derived from the purpose of the easement, limited to benefiting the appurtenant and dominant estate, and only insofar a burden on the servient estate as necessary to achieve the purpose of the easement.

The balancing of interests between the dominant and servient estates cannot be achieved without reference to the purpose of the easement. This case concerns an easement by grant.[2] "A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the easement by the grantee of the lands." *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 419, 143 S.E.2d 803, 806 (1965).

"An . . . appurtenant easement must inhere in the land, concern the premises, have one terminus on the land of the party claiming it, and be essentially necessary to the enjoyment thereof. It attaches to, and passes with, the dominant tenement as an appurtenance thereof." *Sandy*, 246 S.C. at 420, 143 S.E.2d at 806. *See also*, *Proctor v. Steedley*, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012) (finding an appurtenant easement existed and distinguishing from easement in gross); *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012) (finding appurtenant easement existed when it may fairly be construed as appurtenant to the dominant estate); *Williams v. Tamsberg*, 425 S.C. 249, 821 S.E.2d 494 (Ct. App. 2018) (noting the elements required of an appurtenant easement

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[2] An easement can arise in three distinct fashions: "by grant, from necessity, and by prescription." *Bundy*, 412 S.C. at 304, 772 S.E.2d at 169 (quoting *Kelley v. Snyder*, 396 S.C. 564, 572, 722 S.E.2d 813, 817 (Ct. App. 2012)).

else a mere easement in gross will be found). The Master-In-Equity correctly observed these facts in finding that the MVP POA Declaration constituted "an unconditional deed of two non-exclusive perpetual easements" because the easement is appurtenant to the dominant estate of the POA, concerns the land for the benefit of the POA and is essential to the enjoyment of MVP Drive as intended. (Order, §I.10).

"'A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments.' Notice of a deed is notice of its whole contents . . . and *it is also notice of whatever matters one would have learned by any inquiry which the recitals of the instrument made it one's duty to pursue.*'" *Binkley*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (emphasis in original) (internal citations omitted).

**a) The Dominant Estate's Limited Interest in the Easement**

The POA, as the party benefiting from the easements, retains rights only incidental to or necessary for the use and enjoyment of the easement. The POA retains continuing rights in the property "such as easements" that relate to the POA's responsibilities under the covenants and by-laws assigned and delegated by Crescent. (Jt. Ex. 1A, p. 6; Jt. Ex. 1B, seq. 1, 6-7). *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.*, 368 S.C. 342, 364, 628 S.E.2d 902, 914-15 (Ct. App. 2006) (holding that the developer retained property rights even though the developer no longer had a "direct ownership interest in the property"). The extent of the POA's rights into Parcel A is limited to the easement's character, "determined by the nature of the right and the intention of the parties creating it." *Plott*, 374 S.C. at 513-14, 649 S.E.2d at 96. Usage of the easement for an *inconsistent purpose* by affirmative action could result in abandonment of the easement by the POA, which the master rightly concluded was inapplicable as the POA remained

in accord with the easement. (Order, §II.6 (citing *Carolina Land Company, Inc. v. Bland*, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975)).

The Master-in-Equity considered the expressed purpose of the landscape easement as defined in the "Declaration of Covenants, Conditions, and Restrictions for Mountain View Pointe." (Order, ¶ I.1; Jt. Ex. 1A). The declaration was filed concurrently with a plat depicting the subdivision, Parcels A and B, and rights of way. (Order, §§ I.2, I.6; Jt. Ex. 2). The declaration and the plat both identified a non-exclusive Landscape Easement that ran on either side of Mountain View Pointe Drive, which had a width of twenty-five feet on either side and ran without interruption from Doug Hollow Road until it abutted the subdivision. (Order, §I.10). The master found the declaration to be clear and unambiguous in the purpose of the landscape easement as being to landscape and maintain the easement area. (Order, §I.10). This finding was supported by the language of the Declaration as being "for the purpose of landscaping and maintaining the property adjacent to the main entry road for the Subdivision." (Order, §I.11; Jt. Ex. 1A, art. VII, §7.9). The plat sets forth the boundaries of the landscape easement and aligns with the purpose set forth in the Declaration. (Order, §I.12; Jt. Ex. 2).

The POA is vested with the obligation to maintain the easement for its purpose so that "[e]ach [o]wner shall have the 'non-exclusive easement and right to enjoy'" the landscape easement as part of the POA's "Common Areas." (Order, §I.13; Jt. Ex. 1A, art. I, §3.2). The POA is vested with the authority to grant "all necessary easements and rights-of-way upon, over, under and across the Common Areas" when the POA determines "such action [is] necessary and appropriate." (Order, §I.19; Jt. Ex. 1B, art. 6, §6.1). The POA determined the necessary and appropriate course of action was to deny construction of the driveway through the landscape easement, viewing the course to be in the POA's best interests as owed to the "Owners" under the Declaration. (Order,

§I.22-24; Pl. Ex. 4; Halsell Ex. 11A). The POA is only able to determine the necessary and appropriate course of action in line with its purpose as set forth in the declaration.

Crescent's expressed purpose for the POA is "to ensure the attractiveness of the [POA], to prevent any future impairment thereof, to prevent nuisances and enhance the value of all properties within the [POA]." (Order, §I.41; Jt. Ex. 1, "Statement of Purpose"). The master further found the landscape easement "was to allow the POA to beautify the entrance road into the Subdivision and, if necessary, screen future development activity . . . from view and protect the Subdivision from increased noise, odors and other nuisances." (Order, §II.14). To achieve this purpose, the POA may reach beyond the boundaries of the subdivision and into Parcels A and B only insofar as the purpose of the easement provides. (Order, §I.42, 44).

The POA, as the dominant estate, is benefited by the control it retains over landscaping within the 25' easement, but it may not increase the burden on the servient estate beyond these expressed purposes. (Order, §I.53-54; Order, §II.17, defining "landscaping"). As the master correctly found, this necessarily "negate[s] curb cuts and driveways from Mountain View Pointe Drive to Parcels A and B" unless the POA consents to these actions. (Order, §I.44).

Summarily, the POA has "sole management and control of beautification, vegetation, landscaping, soil disturbance and grading in the [easement] which is necessary in order to insure the full use and enjoyment" of the easement by the POA. (Order, §III.4).

**b) The Servient Estate's Fee Interest in the Easement and All Rights Remaining**

The servient estate has all rights that ownership in a fee simple estate conveys to the property owner and "*may use the property for any purpose*" unless it interferes with the dominant estate's strictly demarcated use and enjoyment of the easement. (Order, §II.20) (emphasis added). *Snow*, 416 S.C. at 86, 784 S.E.2d at 249. "[T]he Court hereby declares that any alteration of the

natural landscape in the Landscape Easement Area that disrupts the natural screen provided thereby . . . without the express, written consent of the POA," is an unreasonable interference with the easement "for the purpose for which" it was granted by the servient estate to the dominant estate. (Order, §III.3).

The Halsells erroneously frame their rights in the property as if there was "*no use left to be had based on the master's rulings*." (App. Br. 11) (emphasis added). The Halsells further describe the master's ruling as to "*preclude any use* of the Landscape Easement by the Halsells." (App. Br. 10) (emphasis added). The Halsells equate their inability to build a driveway across the easement as if "no use [was ]left to be had based on the master's rulings" and that they "would have no rights to the Landscape Easement Area." (App. Br. 11). The evidence does not support this view, and the master correctly set forth the few limitations the Halsells are obligated to follow as the servient estate owners.

The Halsells have substantial rights as it pertains to the Landscape Easement insofar as it does not interfere with the express purpose. Their argument is a straw attack founded upon an erroneous description of the order prohibiting "removal of or damage to vegetation" to mean the Halsells "*may not fence, mow, plant, pasture, or even walk on the Landscape Easement.*" (App. Br. 11) (emphasis added). Rodney Halsell's trial testimony roundly confirms the propriety and correctness of the master's ruling:

> Q: So if [the POA] wanted to leave the trees in their landscaping easement as part of their landscape plan do they have, in your mind do they have the right to do that?

> A: They don't have the right to block me from accessing my property, no, sir. So if that means I have to take some trees, some trees came down."
>
> (Tr. 281:23-282:5).

As testified to by every witness except Mr. Halsell, there had been no indication he had been prevented from walking across the landscape easement or enjoying the landscaped area of the easement. Mr. Halsell arbitrarily limited his use of the property burdened by the easement through an erroneous conflation of "access" and by building an 80' paved driveway.

> A: They don't have the right to block me from accessing my property as a landowner of that property.
>
> Q: And nobody has ever tried to keep you off that property by accessing it by foot?
>
> A: I was told I was trespassing on February the 7th of 2021, yes, sir, by the board President.
>
> (Tr. 282:9-14).

As confirmed in follow-up, Mr. Halsell testified that the POA's claim of trespassing only arose after he had "destroy[ed] a big swatch of the easement." (Tr. 282:15-19). The POA's position in February of 2021 did not relate to "walking up through there and getting to your property; it merely had to do with the driveway, that was the interference that they were objecting to, wasn't it?" (Tr. 282:20-23). Mr. Halsell's response: "*Yes, sir*." (Tr. 282:24) (emphasis added).

The master rightly concluded that this is not a case about "access [to] an easement" but a case "about landscaping the easement." (Tr. 347:6-8). Mr. Halsell's testimony further illuminates

the specious argument raised at trial and repeated in this appeal that access to property burdened by an easement means, perforce, ability to construct a driveway:

> Q: But you have access even without the driveway. Nobody has ever tried to stop you from walking around on the easement or - - -
>
> A: Well, just for the record I think we can probably save ourselves some time, wh*en we say "access" we need to just to refer to it as a driveway* because I'm not going to just park my car on the street, which they don't like by the way, and I very rarely do it now I'm complete with construction. But *I'm not just going to park in the street and go walk across the landscape easement . . . so just access is a driveway*."
>
> (Tr. 285:8-20) (emphasis added).

Even the Appellant's own testimony contradicts this mischaracterization of "access" when he testified about the metes and bounds of the easement: "the width of landscape easement is 28,125 square feet *that the neighborhood has access to maintain in the landscape easement*." (Tr. 267:14-17) (emphasis added). Access is not a driveway, regardless of the mischaracterization raised at trial and re-asserted by Appellants now when stating there remain no uses to the property and simultaneously stating the neighborhood had the type of access to the easement as is commonly understood of the word "access."

Reasonably, the Appellant has all of those rights except to take those few actions defeating the purpose of the easement, and Mr. Halsell's own limitations concerning his property rights to the easement area are insufficient to overcome the substantial evidence of the purpose and use of the landscape easement. The order being challenged should be affirmed in spite of Appellants'

misplaced interpretation of "damage to vegetation" as being so egregious it gave the POA "complete control" tantamount to a fee interest without tax liability (App. Br. 10-11).

**c) The Master-In-Equity Correctly Determined the Scope and Extent of the Easement**

"In construing a deed[,] it is elementary that the cardinal rule of construction is to ascertain and effectuate the intention of the parties, unless that intention contravenes some well settled rule of law or public policy." *Sandy*, 246 S.C. at 420, 143 S.E.2d at 806 (citing *Davis v. Davis*, 223 S.C. 182, 75 S.E.2d 46 (1953); *Grainger v. Hamilton*, 228 S.C. 318, 90 S.E.2d 209 (1955); and *Byars v. Cherokee Cty.*, 237 S.C. 548, 118 S.E.2d 324 (1961)).

"The language of an easement determines its extent." *Simmons v. Berkeley Elec. Coop., Inc.*, 404 S.C. 172, 179, 744 S.E.2d 580, 584 (Ct. App. 2013), *aff'd in part, rev'd in part*, 419 S.C. 223, 797 S.E.2d 387 (2016) (citing *Plott v. Justin Enters.*, 374 S.C. 504, 513, 649 S.E.2d 92, 96 (Ct. App. 2007) (internal citations omitted). "The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it." *Plott* at 514, 649 S.E.2d at 96 (quoting *Smith v. Comm'rs of Pub. Works of Charleston*, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994)). Unambiguous language in the grant of an easement must be construed "according to the terms the parties have used." *Plott*, 374 S.C. at 513-14, 649 S.E.2d at 96 (citing *S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981)). "It is axiomatic that the language of an express easement strictly controls the permitted uses and purposes." *Morrow v. Dyches*, 328 C.S. 522, 492 S.E.2d 420 (Ct. App. 1997). "Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as

determined from the whole document." *Id.* at 4, 498 S.E.2d at 863-64 (quoting *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct. App. 1985)).

The Master-In-Equity correctly applied these rules of construction in finding that the Declaration was "sufficiently clear and [were] not ambiguous" because the Plat and Declaration do not require parol evidence to interpret the intent of the parties in creating a non-exclusive easement. The plat prepared for Crescent, and properly recorded, is not susceptible to more than one interpretation as it pertains to the existence and scope of the landscape easement because the language of the easement is not "equally capable of two or more constructions." *Hamilton v. CCM, Inc.*, 274 S.C. 152, 263 S.E.2d 378 (1980) (citing *Davey v. Artistic Builders, Inc.*, 263 S.C. 431, 211 S.E.2d 235 (1975)). The term "non-exclusive" as it pertains to an easement is not sufficiently ambiguous as to render the easement equally capable of two or more constructions because the interpretation offered by the Halsells is legally impossible and at direct odds with legal precedent.

*Hamilton* arose from a question as to the existence of an "open space easement" because the "open space easement" moniker "d[id] not appear on the plat in the area where [the parcel] would be located or in proximity thereto." 274 S.C. at 156-57, 263 S.E.2d at 380. The court could not determine whether the developers intended to create an easement because the plat was, "as previously stated, obviously ambiguous." *Id.* There is no such question here where the plat and the Halsells all affirm the boundaries, length, width, extent, distance, and placement of the Landscape Easement across the Halsell property. These undisputed facts extinguished the need to consider parol evidence to interpret the scope of the landscape easement. (Order, ¶¶ 27-28; Tr. 283:3-23). Rodney Halsell testified that the easement was not something that he found ambiguous. (Tr. 283:3-23). Further, the case law answers the remaining question as to the interpretation of "non-exclusive" and supports the master's findings in the case at bar.

"Restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property, *although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenant.*" *Seabrook Island Prop. Owners Ass'n. v. Marshlan Tr., Inc.*, 358 S.C. 655, 662, 596 S.E.2d 380, 383 (Ct. App. 2004) (emphasis added). "This rule of strict construction is subject to the provision that it is not applicable so as to defeat the plain and obvious purpose of the instrument." *Hamilton*, 274 S.C. at 158-59, 263 S.E.2d at 381 (citing *Davey*). Appellants cannot now defeat the plain and obvious purpose of the instrument by overstating *Hamilton* and crafting doubt through mischaracterization of the master's order. (App. Br. 9).

An easement is a right to use the property of another for a specific purpose "and gives no title to the land on which the servitude is imposed." *Snow*, 416 S.C. at 85, 784 S.E.2d at 249. An owner of title to property cannot grant themselves an easement on property they also own as this would not, *perforce*, concern the property of another. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009) (holding no easement existed as title to the dominant and servient estates was held by the same individual under the doctrine of merger of title). The Halsells, as owners of the servient estates, could not grant themselves an easement nor could they grant rights they do not possess. *Haselden v. Schein*, 167 S.C. 534, 539, 166 S.E. 634, 635 (1932).

The other interpretation of "non-exclusive" offered by the Halsells would trammel any reasonable interpretation of the term to mean the servient estate could ignore the purpose and effect of the easement, if it was non-exclusive. (App. Br. 11). The argument the Halsells offered is that an exclusive easement would leave them with "no rights to the Landscape Easement Area" and the right conveyed to the POA is exclusive "with respect to 'beautification, vegetation, landscaping, soil disturbance and grading.'" (App. Br. 11). The master rightly concluded that the term "non-

exclusive" is not sufficiently ambiguous as to render the Landscape Easement difficult to determine because this interpretation of the easement would necessarily defeat the purpose of the easement. (Order, §II.18-19).

The term "non-exclusive easement" does not defeat the grant of the easement because the adjective "non-exclusive" prohibits the dominant estate from providing individuated privilege or access to the easement. For example, in *Snow v. Smith ex rel. Stoudenmire*, the Court of Appeals parsed the meaning in a deed of the term "non-exclusive access to the water . . . as shown on [the 1983 P]lat[,] which shall run with the land." 416 S.C. 72, 80, 784 S.E.2d 242, 245-46 (Ct. App. 2016) (modifications in original). The court determined the non-exclusive nature of the deed meant the license to benefit from the easement could be given by the dominant estate to more than one licensee. *Id.* at 86-87, 784 S.E.2d at 249 (holding multiple individuals could use the non-exclusive easement for ingress and egress concurrently under the plain meaning of the terms used by the parties).

The term "non-exclusive easement" was earlier considered by the Court of Appeals in relation to another easement for ingress and egress. *Xanadu Horizontal Property Regime v. Ocean Walk Horizontal Property Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991). Here, the court found that Xanadu had been given a non-exclusive easement over a portion of a parking lot. *Id.* 306 S.C. at 171, 410 S.E.2d at 581. Subsequently, the servient estate granted to a third-party a second and separate non-exclusive easement burdening the same physical property as that given to Xanadu. *Id.* This third-party sought to build a parking lot on the servitude property; Xanadu filed suit alleging interference with its earlier non-exclusive easement. *Id.* The *Xanadu* court found the narrowing of the paved passageway for ingress and egress unlawfully interfered with Xanadu's easement. *Id.* at 171-72, 410 S.E.2d at 581. Looking at the non-exclusive easement, the court held

that the easement "cannot be constricted to any degree" because Xanadu's easement "[wa]s specific in its terms as to the easement's width, length, and location." *Id.* The reasoning applied by the *Xanadu* court is applicable to this question; however, *Xanadu* also resolves the question concerning the balancing of interests between the Halsells and the POA.

The landscape easement is identified by metes and bounds. (Order, §II.). The physical extent of the easement is defined in a manner identical to the non-exclusive easement in *Xanadu* by specifically setting forth the "easement's width, length, and location." *Xanadu*, 306 S.C. at 172, 410 S.E.2d at 581. At trial, the parties developed a substantial record about the total square footage of the easement on each side of the road (Tr. 267:14-17), the total square footage of the driveway across the easement (Tr. 269:14-24), and the total square footage of the individual flower beds (Tr. 268:1-21). Mr. Halsell corroborated the definite and specific length, width, and distance of the easement as set forth on the plats, deeds, and ancillary written instruments. (Tr. 267-269). *Xanadu*'s holding mandates the servient estate cannot diminish the physical dimensions of the easement in any manner absent the consent of the dominant estate. *Xanadu*, 306 S.C. at 172-73, 410 S.E.2d at 581-82. The holding of *Xanadu* is controlling when, as here, the unambiguous terms of the easement are set forth in specific dimensions and therefore *any reduction in size is impermissible* even if there are alternative routes of ingress and egress available to the dominant estate. *Id.* at 173-74, 410 S.E.2d at 581-82. This case demonstrates the impossibility of the Halsells' interpretation of the easement because planting trees and shrubs in a concrete driveway is an impossibility, which no court nor litigant could resolve. "Somebody has got to break their back to get a hole in the concrete" in order to landscape and plant trees. (Tr. 46:20-25).

As adduced at trial, the Halsells contend that an inability to build a driveway through the easement is tantamount to not "want[ing] any access at all in the landscape easement area by

anybody" (Tr. 58:3-15), even though Mr. Piper testified he had never been denied access to the easement nor did he know if Mr. Halsell had been similarly denied access. (Tr. 62:9-14). Similarly, Mr. Halsell testified he was blocked from accessing his property on foot only to backtrack during testimony and acknowledge the *actual* concern raised by the POA as "it . . . had to do with the driveway, that was the interference that [the POA] were objecting to, wasn't it? Yes, sir." (Tr. 282:7-24).

Here, the easement was designed, in part, to provide a natural screen "from whatever happens to go on Parcels A or B." (Tr. 77:16-78:10). The easement did not prohibit access across it, a fact broadly adduced at trial. (Tr. 79:7-14). The easement only burdened the servient estate to the degree necessary to allow the POA to maintain and landscape the twenty-five foot (25') length down MVP Drive. Instead of simply accessing the easement, the Halsells caused "hand-cutting and chainsaw cutting" of the landscaping in the easement as "[t]hey started the process to de-tree that area." (Tr. 88:16-23). Additionally, the Halsells tore up irrigation equipment installed by the POA and removed all of the sod because the driveway could not be built if the landscape easement remained undisturbed. (Tr. 85:19-25). Further, the Halsells had to bring in "heavier equipment" such as a "track hoe" because of the extensive nature of the work to turn that portion of the landscape easement into a driveway. (Tr. 89:4-10). Lastly, the Halsells had to go so far as to alter the grade of the slope in order to complete the driveway as well as destroy berms maintained by the POA in the landscape easement. (Tr. 90:3-10). The POA had historically exercised its powers to assess the homeowners for installation of berms and other landscape features in the landscape easement, which the driveway has now harmed. (Tr. 97:6-24).

The easement would require substantial repairs to return it to the condition prior to the Halsells' driveway, including the necessary steps of somebody having to "break their back" to get a hole in the concrete in order to landscape again. (Tr. 86:9-87:8).

**d) The Master-In-Equity Correctly Ruled that the Easement was not Abandoned and Balanced the Purpose of the Easement Against the Halsells' Actions**

As an alternative theory raised at trial (Tr. 17:6-11), the Halsells sought a finding the easement was abandoned by the POA; however, the Master-in-Equity concluded there was nothing evidencing the POA's intent to abandon the easement. (Order, § II.6). To determine if an easement was abandoned by the dominant estate, the court must consider the "surrounding circumstances, and is shown by acts and conduct clearly inconsistent with any intention to retain and continue the use or ownership of the property or right. So, in determining whether property or a right was intended to be abandoned, it is proper to consider, and to give due weight to the nature of the property or right, and the conduct of the owner to it . . . ." *Witt v. Poole*, 182 S.C. 110, 115-16, 188 S.E. 496, 499 (1946) (citing 1 C.J.S. Abandonment, § 4b)). The crucial determinate is the intention of the *dominant estate* and not the perspective of the *servient estate*.

"The authorities are harmonious in holding, that mere nonuse of an easement created by deed for a period however long will not amount to an abandonment, except where otherwise provided by statute, or by the deed itself. In addition, there must be other acts by the owner of the dominant estate conclusively manifesting, either a present intent to relinquish the easement, or a purpose inconsistent with its further existence." *Witt*, 182 S.C. at 115, 188 S.E. at 498. The Halsells rely heavily on the natural state of portions of the easement to assert abandonment, which requires ignorance of the POA's intention to landscape both naturally and artificially. The landscaping easement has a purpose and the POA "must be limited to the least restrictive use and []only has

rights incident or necessary to its proper enjoyment but nothing more." *Snow*, 416 S.C. at 86, 784 S.E.2d at 249.

The Halsells also sought to have the master find they had an easement by necessity that would defeat the primacy of the Landscape Easement, thereby excusing the breach. (Order, § II.24-25). There is no evidence of necessity on the part of the Halsells as they sought out, applied for, and obtained an encroachment permit to build a driveway connected to Doug Hollow Road. (Pla. Exs. 10-11). Such a permit establishes there is at least one alternative to building a driveway over the landscape easement.

"It flows from the deed and plat of the former owner to appellant's predecessors in title and, as is uniformly held, equity and good conscience require its vindication and protection." *Cason v. Gibson*, 217 S.C. 500, 507, 61 S.E.2d 58, 61 (1950). The POA is, in equity and good conscience, vindicating and protecting the rights afforded to it as owner of the dominant estate in a manner the POA has the authority to select unless this landscaping becomes so egregious as to increase the servient estate's burden. *Witt*, 182 S.C. 110, 188 S.E. 496 (holding an easement for a pond was abandoned when the dominant estate turned the pond into a dam for mill purposes).

The landscape easement is no fishpond turned into a dam and mill. *Witt*, 182 S.C. at 116, 188 S.E. at 499. The POA is empowered to landscape the easement in accordance with the plain meaning of "landscaping" regardless of whether the servient tenement agrees with what constitutes landscaping. The record is replete with evidence that the Halsells did in fact remove landscaping placed by the POA. Compare App. Br. 12, "As reflected in the record, the Halsells did not remove any landscaping placed by the POA" with:

> Tr. 247:20-23: Rodney Halsell's testimony about making arrangements with the builder to "start[] remove some trees."

Tr. 256:8-14: Halsell testifying the driveway cost $43,000, which included the landscaping and "the trees planted in the landscape easement, and the mulch around the area. The mulch is in the landscape easement also."

Tr. 257:6-10: testimony as to the "minimal times where there was either mud or gravel" during the 18-month period of construction.

Tr. 258:12-25: testimony as to the placement of sod instead of grass seed to restore the area faster; break of an irrigation line installed by the POA; installation of stronger piping and inclusion of a two-inch sleeve.

Tr. 262:15-18: testimony that "where you see [those] small pine trees; and like I said, there's no other bushes or shrubs or plants that I disturbed. *I took out the wild pine trees.*" (emphasis added).

Tr. 263:18-25: testimony concerning "after *I had started clearing, not just through the easement* but up towards my building where the driveway was going to go . . ." and "[s]ome friends and neighbors helped me out and *we went and we cut some trees down.*" (emphasis added).

Tr. 274:22-24: testimony concerning "taking down those trees and destroying those trees."

Tr. 302:23-303:17: testimony concerning the largest trees that were felled and their width, Mr. Halsell averaged the "wild pine that had been growing up" as "[t]he average of the largest tree was five

inches." (See also, Tr. 301:12-22, identifying between "35 or 40, 45" pine trees removed from the easement area).

Multiple homeowners testified at trial about the Halsells' destruction of areas of the easement. Jack Dorsey testified about the trees cut down by the Halsells as well as the damage caused by the heavy equipment brought in. (Tr. 89:1-10; Pla. Exs. 12A, 12B). The heavy machinery dug up the sod and natural habitat maintained by the POA. (Tr. 89:23-90:10; Pla. Exs. 12C, 12E). Robert Albergotti testified to the same destruction of the landscape caused by the Halsells (Tr. 154:25-155:18) and "the vegetation and removal of part of the berm and those other things that were on the landscape easement that Mr. Halsell removed." (Tr. 152:17-19). Steven Trojan testified to the state of the landscape easement when he took title to his property as being landscaped with trees and "forested." (Tr. 172:19-24).

The Master-in-Equity found the "Halsells began clearing an 80' by 25' swath of trees from the Landscape Easement Area, removed turf, curbing and guttering from the public road-right-of-way, graded and entirely cleared the area needed for his driveway and demolished a section of the irrigation system . . . as well as the berm in the Landscape Easement Area." (Order, §I.30). The master did not find Mr. Halsell's testimony credible as evidenced by the order; however, this finding was supported substantially by the evidence and the testimony presented at trial. The order should be affirmed.

## II. The Master-In-Equity Correctly Ruled that the Halsells' Destruction of Property Constituted a Trespass or Nuisance

"Property owners are charged with constructive notice of instruments recorded in their chain of title." *Binkley*, 348 S.C. at 71, 558 S.E.2d at 909 (citing *Carolina Land Co. v. Bland*, 265 S.C. 98, 107, 217 S.E.2d 16, 20, (1975); *Harbison Cmty. Ass'n v. Mueller*, 319 S.C. 99, 103, 459

S.E.2d 860, 863 (Ct. App. 1995); *Fuller-Ahrens P'ship v. South Carolina Dep't of Highways and Pub. Transp.*, 311 S.C. 177, 183, 427 S.E.2d 920, 923-24 (Ct. App. 1993)). The Halsells had full notice of the easement as it was referenced and set forth in their chain of title and further identified by metes and bounds. (App. Br. 2).

The master made specific findings of fact concerning when the Halsells undertook completion of the driveway. The Halsells purchased the lot in December of 2020 after negotiating a fifty-thousand-dollar ($50,000.00) reduction in the purchase price. (Order, ¶¶ 25-26). The master found the reason was due to the anticipated cost of accessing the property from Doug Hollow Road. (Order, ¶ 26; Pla. Exs. 7, 10, & 11). After being informed as early as September (Order, ¶ 17) and as late as January 12, 2021, (Order, ¶29; Jt. Ex. 11-B) the Halsells knew of the dispute concerning the easement. On January 22, 2021, the:

> "Halsells began clearing an 80' by 25' swath of trees from the Landscape Easement Area, removed turf, curbing and guttering from the public road-right-of-way, graded and entirely cleared the area needed for his driveway and demolished a section of the irrigation system running along the roadway as well as the berm in the Landscape Easement Area and roadbed."
>
> (Order, ¶ 30).

In July of 2022, the "Halsells widened the cleared areas in the Lanscape Easement Area and roadbed and poured concrete curbing along their driveway." (Order, ¶ 32). In August of 2022, the Halsells spent "in excess of $43,000" to pave and landscape their brand-new driveway. (Order, ¶ 32). The master further noted these actions were undertaken with "trial just a little more than two months away." (Order, ¶ 32).

Up through trial, Mr. Halsell continued to deny intruding upon the landscaping easement: "Well, as I've testified earlier what I did not disturb anything the neighborhood had done." (Tr. 284:6-7).

While a property owner generally has an easement "in a street upon which his property abuts," this "generally recognized principle" is not absolute. *Brown v. Hendricks*, 211 S.C. 395, 45 S.E.2d 603 (1947). "It is generally held that when the owner of land has it subdivided and platted into lots and streets and sells and conveys lots with reference to the plat, he thereby dedicates said streets to the use of such lot owners, their successors in title and the public." *Carolina Land Co. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975). This principle of an easement in a street for an abutting property owner is constrained by the express conditions that existed when the Halsells took title to the property because the landscaping easement was an express condition burdening their lot. The public records and deeds also described the easement. *Binkley*, 348 S.C. 58, 71, 558 S.E.2d 902, 909.

The Halsells raised the argument of necessity in both their Motion for Summary Judgment and again in their post-trial motions. (Mot. for Summ. Judgment, p. 3; Amended Order, pp. 4-5). Relying upon *Hardin*, the Halsells argued that "regardless of whether he has access to and from an additional public road," the appurtenant nature of MVP Drive inheres in Parcel A an easement that must necessarily overwhelm the landscape easement as it is difficult to plant much in poured concrete. *Hardin v. S.C. Dept. of Transportation*, 371 S.C. 598, 641 S.E.2d 437 (2007). (Mot. for Summ. Judgment, pp. 3-4). The Halsells sought, and received, a permit from the South Carolina Department of Transportation to build a driveway from Doug Hollow Road, which indicates the Halsells had at least one meaningful alternative to pouring concrete over the landscape easement. The same month as the encroachment permit was granted, Mr. Halsell testified he opted to "rough

in the driveway" across the landscape easement and leave untouched the portion of his property abutting Doug Hollow Road. (Tr. 297:17-25).

The argument that the POA must be estopped from denying the easement of access over the landscape easement to join MVP Drive is distinct and inapposite from the holding of *Brown* whereby the court studiously addressed the nuanced balancing required of these determinations. *Brown*, 211 S.C. at 402-03, 45 S.E.2d at 606-07 (noting the property owner still bore the burden of proof as to damages resulting directly from the obstruction).

The Halsells were not injured because they took ownership of the property with notice as to the easements attached thereto and may not now seek rescue from the court for their own ignorance of the obligations in their chain of title.

There is no reconciling the Halsells' driveway across the landscape easement with the purpose of the easement as they are mutually exclusive, regardless of how minimal the percentage of the driveway is as a function of the entire length of the landscape easement.

## CONCLUSION

For the reasons stated above, this Court should affirm the Master-In-Equity's order ruling the Appellants violated the non-exclusive landscape easement and that the Appellants are charged with the costs and responsibilities of restoring the easement area to its state prior to the Appellants' substantial work.

John S. Nichols, SC Bar # 4210
Bluestein Thompson Sullivan, LLC
1614 Taylor Street
Columbia, SC 29201
Phone: (803) 779-7599

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Columbia, SC