

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Perry H. Gravely, Circuit Court Judge

Circuit Court Case No. 2019-CP-23-02476

Appellate Case No. 2020-001051

Thomas C. Skelton,

Appellant,

v.

First Baptist Church of
Travelers Rest, South
Carolina, a non-profit
Corporation,

Respondent.

REPLY OF RESPONDENT TO APPELLANT'S PETITION FOR REHEARING

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INTRODUCTION

I. The Respondent (“Church”) honors the Appellant’s military and law enforcement service. In all probability members of the Church also served in the armed forces of the country as well as law enforcement. While the Church appreciates the Appellant’s service, such service does not give the Appellant any special rights to use the Church’s property.

RESPONSE TO APPELLANT’S ARGUMENT

II. A AND B.

There is not a scintilla of evidence that at the time the Appellant purchased his home he had any need to drive or park trucks or landscaping equipment on the Church’s property. The Appellant’s need arose after he left law enforcement and started his landscaping business. Thus, the Appellant’s need did not arise until after the Appellant purchased his home.

Strive as he might, the Appellant cannot get around the requirement that the necessity must exist at the time the Appellant acquired his home. Boyd v. Bellsouth Telephone Co., Inc., 369 SC 410, 633 S.E.2d 136 (S.C. 2006); Merrimon v. McCain, 201 S.C. 76, 21 S.E.2d 404 (S.C. 1942).

The case law in South Carolina almost exclusively dealt with the ability of the dominant estate to have ingress and egress to a public road. Without access to a public road the owner of the dominant estate could not avail himself of the benefits of society such as selling his crops, attending church or school and many others.

In Brasington v. Williams et al, 143 S.C. 223, 141 S.E. 375 (S.C. 1927) the Court stated the necessity must be actual, real and reasonable as distinguished from inconvenience.

The Appellant purchased his property as a residence. He has access to a public road. In short, nothing prevents him from continuing to use his property as a residence without crossing the Church's property.

After the Church purchased its property, the Appellant changed jobs and went into the landscaping business. This change of employment created a need to have a place to park the landscaping equipment. Thus, the Appellant created a need to use the back of his property for storing and repairing his landscaping equipment. The Appellant must cross the Church's property to reach the back of his property.

Appellant ignores the fact that he can store his landscaping equipment elsewhere. He can certainly maintain the equipment elsewhere. It is simply more convenient to cross the Church's property.

Should the Appellant prevail in establishing a necessity that did not exist at the time of severance of the estate, several hundred years of jurisprudence will be erased.

C.

The Appellant contends he raises a factual question as to adverse possession or a prescriptive easement by six acts he took on the Church's property over the years. Adverse possession requires continuous, hostile, open, actual, notorious and exclusive for at least ten years. Davis v. Monteith, 289 SC 176, 345 S.E.2d 724 (SC 1986).

The Appellant built a berm on the property line, some of which encroached on the Church's property. The berm was to fight surface water, the berm cannot be considered hostile. The Appellant wrote the following in an e-mail in November 2011. "As I have assured you and

previous pastures we have no thought of trying to claim any “squatters rights” on the property and that this mowing we are freely donating to the church”¹

The landscaping and planted trees are on the berm. The Appellant stated under oath “...that he has planted three trees and numerous shrubs on the berm installed for protection against [Church’s] surface water...”²

The power conduit and electric dog fence appear to be the same.³

On February 28, 2019, the Appellant wrote a letter to the Church admitting he had the Church’s permission to use the lower portion of the field for ingress and egress.⁴ His admission dooms the claim of adverse possession.

CONCLUSION

The decision of the Court should remain place.

Respectfully submitted,

August 4, 2023

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¹ R. 288

² R. P.32 ¶ 15

³ R. P.33

⁴ R. P.38