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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In the Court of Common Pleas
Steven C. Kirven, Master-in-Equity

Case No. 2021-CP-37-00093
Appellate Case No. 2023-000918

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.

INITIAL REPLY BRIEF

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FACTS[1]

Without dispute, the Covenants are not in the Halsells' chain of title and the Property is not in the Subdivision. The sole reference to the easement is by reference to two plats. (Jt. Exs. 6,7,9,10, R. at ____). As shown on the plats, the easement is twenty-five feet wide and runs the full length of the Property along Mountain View Pointe Drive, a county road. (Jt. Ex. 10, R. at ____). The paved portion of the Halsells' driveway within the easement covers only 750 square feet (.017 acres, less than 3% of the total Landscape Easement Area). (Tr. 269:8-24, 271:17-72:23, Halsell Exs. 12, 13, R. at ____).

As testified by Mr. Halsell, his builder received a permit to build within the County right of way (the first 12.5 feet on either side of the pavement on Mountain View Pointe Drive) and the easement extends 25 feet beyond that. (Jt. Ex. 8, Def. Ex. 1, Tr. 261:6-62:25, R. at ____). He further testified that he was careful not to remove any landscaping that had been placed by the POA. (Tr. 262:11-23, R. at ____). This is consistent with the findings of the master who found that the POA installed sod and sprinklers "in the unpaved portion of the [County] right of way" and left "most of the Landscape Easement Area in its natural wooded state." (Order at ¶¶14-15, R. at ____). Photographs in the record further corroborate this testimony. (Def. Exs. 2-13, R. at ____).

The portions of the POA's brief relating to sod and irrigation fail to state that those areas are within the County's right of way, not the easement. The POA has not undertaken any landscaping activity within the easement.[2] In addition, the Common Areas have not been conveyed to the POA, and thus, the Landscape Easement does not belong to the POA.

[1] Capitalized terms have the same meaning as that applied in the Halsells' Brief of Appellants.

[2] Contrary to the POA's argument, the area in question was not landscaped by the POA. "Landscaping" means "to modify or ornament (a natural landscape) by altering the plant cover."

ARGUMENTS IN REPLY

The parties are in general agreement about the applicable law: (1) the language of the easement controls, *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 67, 558 S.E.2d 902, 906–07 (Ct. App. 2001); (2) the dominant estate only has those rights "incident or necessary to its proper enjoyment, but nothing more" *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973); (3) easements must be narrowly construed "with all doubts resolved in favor of the free use of the property," *Hamilton v. CCM, Inc.*, 263 S.E.2d 378, 380, 274 S.C. 152, 157 (1980); and (4) the interests of the dominant and servient estates must be balanced such that "a grant or reservation of an easement in general terms is limited to a use which is 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 Halsells do not contest the existence of the easement, nor do they seek to destroy or diminish the easement. Instead, they contend that the driveway to their residence does not infringe on the *non-exclusive* landscape easement shown in the plats and that the master's order fails to balance the interests of the dominant and servient estates and goes well beyond the driveway issue, effectively giving the POA a fee simple interest over a large portion of the Property.

The POA fails to address this overreach and spends little to no time on the language of the master's order, which states that "the Easements vest in the POA sole management and control of beautification, vegetation, landscaping, soil disturbance and grading in the Landscape Easement Area which is necessary in order to insure [*sic*] the full use and enjoyment of the Landscape

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Merriam-Webster's Collegiate Dictionary 652 (10th ed. 2002). The master quoted the same definition on page 19 of the March 13 order. Here, the Landscape Easement Area was left in its natural wooded state. The POA had done nothing to "modify or ornament" it.

Easement and any interference with the same by the servient estate owners or anyone claiming through them is a violation of the POA's rights in the Easements." (Order at 24, R. at ____). Given this language, the Halsells may not fence, mow, plant, pasture, or even walk on the Landscape Easement Area (to the extent that walking on the area could result in "removal of or damage to vegetation"). The POA has failed to provide any examples of any way the Halsells might be able to use the Landscape Easement that would not fall afoul of this portion of the order. Instead, it has made general statements that it is a "limited interest," that there are "few limitations," and that the Halsells retain "substantial rights" because it cannot present concrete examples of any rights the Halsells might have with respect to the Landscape Easement Area.

Nor does the POA present any argument that the master balanced the interests of the dominant and servient estates beyond mere citation to the rule. There is no indication that the interest of the servient estate was considered at all.

In addition, the POA has failed to provide any explanation of what the word "non-exclusive" might mean in this context. If the right is non-exclusive, both the dominant and servient estates should be able to landscape the area. The Halsells are not granting themselves an easement; they are merely seeking to use and landscape a small portion of property they own, which had not been landscaped by the POA. Instead, the POA has argued, in essence, that the term "non-exclusive" has no meaning and is not "sufficiently ambiguous" to create an ambiguity for purposes of construing the easement. In a case involving a broadly worded easement like this one, this Court found that an easement for "use" of a lot did not mean that the servient estate could not do anything with the property so as to impede that "use," but rather that the "use of the Lot still must be limited to the least restrictive use and she only has rights incident or necessary to its proper enjoyment but nothing more. Because use is not defined, it must be interpreted as whatever least restricts the property owner. Accordingly, we reverse the master's decision that [the] easement is limited to ingress and egress of the lake and remand to the master for a determination of [easement holder's] rights in using the Lot." *Snow v. Smith*, 416 S.C. 72, 86, 784 S.E.2d 242, 249 (Ct. App. 2016).[3] In this case, the master should have engaged in the required balancing instead of finding that the landscaping easement foreclosed any use or landscaping by the dominant estate. This was error. When that balancing is conducted, the Halsells believe that their use of a small portion of the easement area does not unreasonably interfere with the rights of the POA.

Lastly, the POA fails to respond to the argument raised by the Halsells as to trespass/ nuisance. Very simply, the Halsells cannot trespass on their own property. *See Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 357, 559 S.E.2d 327, 337 (Ct. App. 2001). Nuisance, on the other hand, "is a substantial and unreasonable interference with the plaintiff's use and enjoyment." *Ravan v. Greenville Cnty.*, 315 S.C. 447, 464, 434 S.E.2d 296, 306 (Ct. App. 1993). To prevail on a nuisance claim, the POA was required to prove that the Halsells substantially and unreasonably interfered with their ownership and possession of the land. *Id.* Given these basic principles, the POA cannot prevail under either theory as against the Halsells, the owners of the Property.

CONCLUSION

For these reasons and those presented in their Appellants' Brief, the master's rulings should be reversed in an order finding that the Halsells were within their rights in building and landscaping the driveway and that the improvements they installed may remain. Alternatively, this matter

[3] The sole use of the word non-exclusive in *Snow* is found in the "Facts/ Procedural History" section. There is no analysis of the meaning of the term in the discussion portion of the opinion.

should be reversed and remanded with a clear direction as to the interpretation of the easement and the respective rights of the parties.

Respectfully submitted,

s/ Sarah P. Spruill

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