

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2020-001051
Opinion No. 2023-UP-260
Submitted May 1, 2023 – Filed July 12, 2023

Thomas C. SkeltonAppellant

v.

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

REPLY TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Petitioners filed a Complaint on May 1, 2019, seeking, among other things, a prescriptive easement for ingress and egress over the Church's lot, easement of necessity for ingress and egress over the Church's lot, and for adverse possession of the Church's lot.

On June 18, 2020, the lower Court granted the Church summary judgment on the above causes of action, the Court denied the Motion to Alter or Amend by Order dated July 13, 2020.

The Petitioner appealed and the Court of Appeals affirmed the grant of summary judgement by Order filed July 13, 2023.

The Petitioner filed for a Writ of Certiorari on November 9, 2021.

ARGUMENTS

I. The Court of Appeals did not err in finding there was no easement of necessity because the claimed necessity arose after the severance of the property.

The facts are that Skelton was a police officer when he purchased his lot. He did not claim he owned any landscaping equipment or had any need to use the Respondents' property to access a blacksmith shop at the rear of his lot at the time of his purchase. In his own words Skelton said: "...I purchased the home from Mr. Smith in 1992 and started the landscape business in 1994. I kept it located off site due to the nature of our lot and the fact that we have children who needed a backyard to play in. Due to the economic decline over the past few years, we have been forced to move the business to the house to cut operating costs. We have located some of our trucks and equipment off site to minimize the impact to the church and our other neighbors along with improving the appearance of the blacksmith building and trying to make the new building as attractive as possible. The biggest challenge we face is there is no access to the back of our property except by extending our driveway into the backyard. We would still face

limitations, however, in our ability to turn a truck and trailer rig around. Doing this would eliminate the usable backyard space and cause the removal of the playground equipment that the children still use...” R.p, 288.

The Court of Appeals correctly followed the law when it pointed out that the necessity must exist at the time of the severance of the estates and the claimed necessity cannot be created where it would otherwise not exist. Boyd v. Bellsouth Tel.Co., 369 SC 410,633 SE2D 136 (2006).

II. The Court of Appeals did not err in finding there was not a scintilla of evidence in awarding summery judgment.

Skelton’s claim he presented a scintilla of evidence that the previous owner of his lot used the church’s property to access the rear of his property. This argument ignores the fact that Skelton’s necessity arose after he purchased his property. Skelton himself testified he did not know how the blacksmith got to the shop at the rear of the lot. Rp 159 Line 17-18.

In order to demonstrate a scintilla of evidence Skelton resorts to supposition that have no evidentiary support, the blacksmith may have needed the Church’s property to turn trucks around in.

Finally, Skelton confuses the dirt road in the plat of his property with the strip of Church land he used with the Church’s permission. Skelton described the structures on his land shown by a plat of his lot. Rp 262.

The dirt road is the shaded area on the left side of the Skelton’s lot viewed from McElhaney Road. There is no dirt road shown on the plat that is on the Church’s property.

III. The Court of Appeals did not err in finding there was no need to consider Skelton's claim his use exceeded the Church's permissive use because the uses fell within the permission granted.

As a starting point, this controversy is not about a berm being on the property line, landscaping, planting a tree, installing a power line, placing an outbuilding or installing an electric dog fence. The controversy is about the withdrawal of permission to use a portion of the Church's property for a driveway to the rear of Skelton's lot.

These facts are not in issue. The Church gave Skelton permission to use a portion of its lot for ingress and egress to the rear of his lot. The Church also gave Skelton permission to mow a portion of its lot to keep down habitat for mice and snakes.

There is not a scintilla of evidence in the record that Skelton intended to make his placement of the berm and other acts to be hostile to the Church. In her own words Skelton's wife stated in a letter to the Church on November 28, 2011. "As I have assured you and previous pastors, we have not thought of trying to claim any "squatters rights" on the property and that this mowing we are freely donating to the Church" (Rp 288).

There simply is no hostility in the acts of Skelton. None of the acts of Skelton were averse to the Church's ownership of the land, McDaniel v. Kendrick 386 SC437, 888 SE2d 852 (app 2009).

CONCLUSION

The Court of Appeals decision should be approved.

Respectfully submitted,



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