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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.

BRIEF OF APPELLANTS

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2. DID THE MASTER-IN-EQUITY ERR IN RULING THAT THE HALSELLS' CONSTRUCTION OF A DRIVEWAY ON THEIR PROPERTY THROUGH A SMALL PORTION OF A LANDSCAPE EASEMENT AREA CONSTITUTED A TRESPASS OR NUISANCE?

STATEMENT OF THE CASE

This appeal arises out of a dispute relating to a non-exclusive easement ("easement," "Landscape Easement," or "Landscape Easement Area") located on property owned by Rodney and Barbara Halsell (the "Halsells") in favor of the Respondents (collectively, the "POA"[1]). The easement derives from a subdivision plat recorded in connection with the Declaration of Covenants, Conditions and Restrictions ("Covenants") for the Mountain View Pointe subdivision ("the Subdivision") located in Oconee County, South Carolina. (R. at 514-95). The Covenants define the "Landscape Easement Area" as the "twenty-five (25') foot easement granted by Declarant along both sides of the main entrance road into the Subdivision . . .." (R. at 522, § 1.23). With respect to the Halsell's chain of title, the only reference to the easement is in the form of two recorded plats. (R. at 609-15, 617-19).

The POA commenced this litigation on February 8, 2021, alleging that the Halsells and an adjoining property owner (Graham and Christine Piper, the "Pipers") had encroached or planned to encroach on the easement through the construction of driveways without permission from the POA. (R. at 43-51). The complaint demanded the following relief: (1) a declaration of the parties' rights under the Covenants; (2) an injunction barring the driveways; (3) restoration of the "landscape easement to its condition prior to [the Halsell's] work in the easement area;" and (4) actual and punitive damages. (*Id.*). The POA filed an amended complaint on February 18, 2021, alleging claims against the Halsells for declaratory judgment, injunction, negligence, breach of contract, breach of contract accompanied by fraudulent act, and trespass. (R. at 52-61). The Halsells timely answered on March 8, 2021. (R. at 62-67). The matter was referred to the master-in-equity for Oconee County ("master") by order dated October 28, 2021. (R. at 1-3).

[1] For ease of reference, "POA" also refers to the Mountain View Pointe Owners Association.

Following a trial on October 26-27, 2022 and the submission of post-trial memoranda by the parties, the master entered an order on March 13, 2023 finding "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 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." (R. at 27). The master further ruled "that the placement of a driveway or other permanent structure in the Landscape Easement Area unreasonably prohibits the POA from using the portion of the easement area obstructed thereby for the purpose for which it was granted and is a violation of the POA's rights in the Landscape Easement." (*Id.*). The master further ordered the Halsells to remove the driveway and restore the landscape easement area to its former condition. (R. at 27-28).

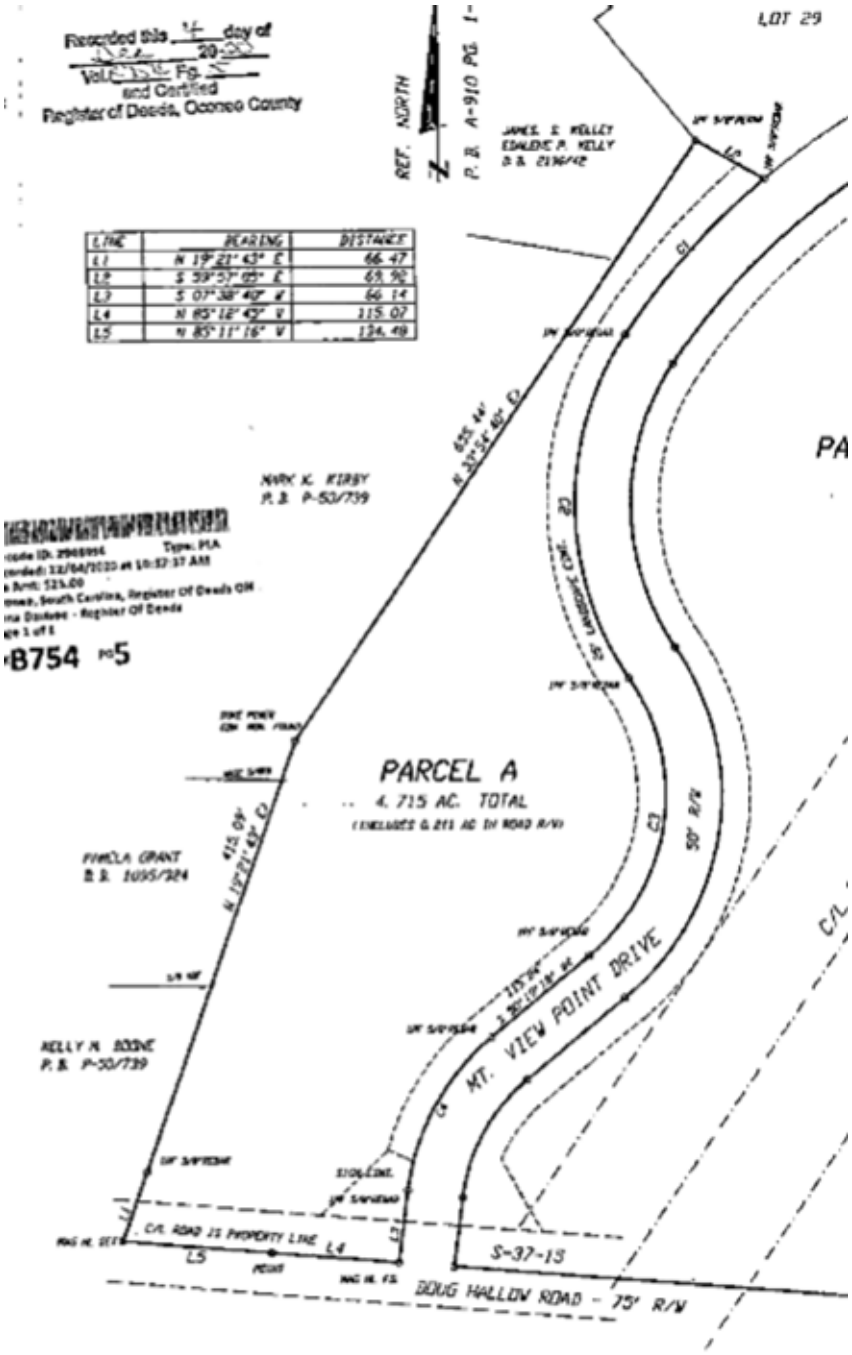
On March 23, 2023, the Halsells filed a motion to alter or amend pursuant to Rules 52 and 59, SCRCP. (R. at 146-49). After a hearing, the master entered a supplemental order on the motion to alter or amend on May 31, 2023. (R. at 33-42). This appeal followed.

FACTS

I. The lay of the land.

In 2020, the Halsells purchased a 4.715 acre parcel described as "PARCEL A" (the "Property") from the Pipers.[2] (R. at 617-18). The purchase was made subject to "those easements and/or rights-of-way as may appear on the premises and/or of record and all zoning and setback requirements." (*Id.*). The plat referenced in the Halsells' deed shows the following:

[2] The Pipers purchased the Property from Crescent Communities S.C, LLC ("Crescent"), the developer of the Subdivision, in 2013. (R. at 609-14, 204:18-22).



(R. at 619). As reflected there, the Property is located at the intersection of Doug Hollow Road, a state road, and Mountain View Pointe Drive, a county road. (*See* R. at 7 ¶5). The instant dispute arises out of the Halsells' construction of a driveway on the Property that connects to Mountain View Pointe Drive.

II. The easement.

In November 2002, Crescent, as declarant, recorded the Covenants and a subdivision plat showing the layout for the Subdivision ("Subdivision Plat"). (R. at 514-79, 593-95). At the time the Subdivision was created, Crescent also owned the Property. (*See* R. at 593-95, 205:16-19). The Property is not part of the Subdivision and is not subject to the Covenants. (R. at 199:23-200:4, 341:21-25). The only reference to the easement in the Halsells' chain of title is by reference to two plats. (R. at 609-15, 617-19).

Section 7.9 of the Covenants purports to establish "***non-exclusive*** perpetual easements ***for the purpose of landscaping and maintaining the property adjacent to the main entry road*** for the Subdivision as 'Landscaping Easement' on the Map." (R. at 543 (emphasis added)). Section 1.25 of the Covenants defines "Map" as the Subdivision Plat. (R. at 522). Section 1.23 of the Covenants defines the "Landscape Easement Area" as the "twenty-five (25') foot easement" granted by Declarant along both sides of the main entrance road into the Subdivision . . .." (*Id.*). As shown in the Subdivision Plat (R. at 593-95) and the Halsells' plat (R. at 619), the easement is a 25 foot strip running the full length of the Halsells' frontage on Mountain View Pointe Drive.[3]

The Covenants also created the POA to own, maintain, and administer common areas and enforce the Covenants. (R. at 520). Pursuant to Section 1.12 of the Covenants, the term "Common Area(s)" includes the Landscape Easement Area. (*Id.*). Section 3.1 of the Covenants provides, "[o]n or before ten (10) years from the date this Declaration is recorded, [Crescent] shall convey fee simple title by limited warranty deed (or grant of easement) to the Common Areas to the Association, to be owned and maintained by the Association." (R. at 525).

[3] As shown on the plats, the easement runs approximately 1,125 lineal feet along the edge of the Property and covers approximately 28,125 square feet (.645 acres). (R. at 593-95, 619, 416:11-417:7).

However, the property records for Oconee County show that the POA does not own the Landscape Easement. (R. at 596-603). On April 8, 2005, Crescent deeded to the POA the property labeled as "COS," "Common Open Space," and "Access Area," shown on the Subdivision Plat. (R. at 596-99). On June 16, 2005, by way of "Corrective Deed," the POA reconveyed the "COS," "Common Open Space," and "Access Area" back to Crescent. (R. at 600-03). The Landscape Easement has not been reconveyed to the POA.

III. The Halsells seek to build a driveway.

On September 7, 2020, the Halsells met with the POA board of directors regarding their plan to construct a residential garage and driveway on the Property. (R. at 372:17-25, 373:3-376:14). In a written proposal to the POA, the Halsells indicated that they were seeking to "[d]etermine a mutually agreeable arrangement to secure a driveway off Mountain View Pointe Drive across the landscape easement." (R. at 629-30). The POA responded that it could not grant permission to construct a driveway through the easement without the unanimous vote of all property owners within the Subdivision. (R. at 620-21).

In response, the Halsells stated that the purpose of the September 7, 2020, meeting was not to seek permission but to "avoid any conflicts before beginning the project." (R. at 622-23). The Halsells further communicated to the POA that routing the driveway to Doug Hollow Road rather than Mountain View Pointe Drive would negatively impact the Subdivision because doing so would require the removal more than 30,000 square feet of trees and vegetation as opposed to the much more limited clearing required for their proposed driveway on Mountain View Pointe Drive. (R. at 625-28, 384:1-12, 400:5-17). The Halsells also addressed the logistical challenges posed by putting a driveway on Doug Hollow Road due to the topography of the Property, including elevation changes and an embankment at the roadway. (R. at 443:4-13, 440:17-22, 701).

After these discussions and after consulting with multiple attorneys regarding their rights with respect to the easement, the Halsells began work on their new garage and driveway in February 2021. (R. at 396:20-23, 398:12-399:2). The Halsells obtained all required permits for the project, including a permit to place the driveway within the County's right of way on Mountain View Pointe Drive. (R. at 411:4-7). As part of the construction, the Halsells spent more than $8,000.00 on landscaping along the sides of the driveway being careful to only remove naturally growing small pine trees and not to remove any landscaping installed by the POA. (R. at 374:10-25, 408:21-409:5, 411:8-25). The paved portion of the Halsells' driveway within the easement covers only 750 square feet (.017 acres), and the cleared area on either side of the paving has been replanted. (R. at 418:8-24, 420:17-421:23, 697-98).

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. Dep't of Transp. v. Horry Cnty.*, 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011). The determination of the existence of an easement is a fact question in an action at law; however, the determination of the scope of an easement is an action in equity, and the proper scope of review is *de novo*. *Hardy v. Aiken*, 369 S.C. 160, 164–65, 631 S.E.2d 539, 541 (2006). "The language of an easement determines its extent. Clear and unambiguous language in grants of easement must be construed according to terms which parties have used, taken, and understood in [the] plain, ordinary, and popular sense." *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) (quotations and footnotes omitted).

An action for injunctive relief is equitable in nature. *Miller v. Borg-Warner Acceptance Corp.*, 279 S.C. 90, 92, 302 S.E.2d 340, 341 (1983). In reviewing an appeal of an equitable action tried before a master, the "Court must review the entire record and make its own findings of fact according to its view of the preponderance of the evidence. This requirement does not, however, command [the Court] to ignore the findings of the trial judge." *Thomas v. Mitchell*, 287 S.C. 35, 37–38, 336 S.E.2d 154, 155 (Ct. App. 1985) (citation omitted).

ARGUMENT

I. The master erred in ruling that the Halsells are prohibited from *any* use of the non-exclusive landscape easement area located on their property not expressly permitted in writing by the POA.

"A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Binkley*, 348 S.C. at 71, 558 S.E. 2d at 909, quoting 28A C.J.S. *Easements* § 57, at 235 (1996). The court must construe an unambiguous grant of

easement in accordance with the terms used by the parties. *Plott v. Justin Enterprises*, 374 S.C. 504, 512–12, 649 S.E.2d 92, 96 (Ct. App. 2007). When an easement is shown on a plat incorporated into a deed, any restriction on the use of the is to be strictly construed and "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).

Consistent with this basic framework, courts in South Carolina have long applied rules of reasonableness with respect to the rights of the servient estate holder. In *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973), the South Carolina Supreme Court recited the following basic premise:

> Though the rights of the easement owner are paramount, to the extent of the easement, to those of the landowner, the rights of the easement owned and of the landowner are not absolute, irrelative, and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both the easement and the servient tenement. The owner of an easement is said to have all rights incident or necessary to its proper enjoyment, but nothing more.

(quotation omitted). By way of illustration of the type of balancing that should be done between the dominant and servient estates,

> The sole question in this case is whether the defendant should be required to remove gates erected across plaintiff's right of way over defendant's pasture land and be enjoined from again erecting them. The facts are set out in the decree of the circuit judge, and this court is fully satisfied with his reasoning and the conclusion that the erection of the gates was necessary for the reasonable enjoyment by defendant of his land over which the way passes, and that they do not constitute an unreasonable interference with plaintiff's right of way. Whether the owner of land over which a right of way runs has a right to erect gates across it depends upon the circumstances. The owner of the servient estate in farm land does not lose the right to inclose his land for agricultural purposes by reason of taking it subject to a private right of way, nor is it his duty to run a fence on both sides for the entire length of the way [.] He may inclose his land, using gates, provided they are necessary for the enjoyment of his property, and are not so numerous and of such size and construction as to constitute an unreasonable burden on the right of way… To require the defendant to throw his pasture lands open would deprive him of their use, and to require him to fence the right of way on either side would entail a most unreasonable burden upon him. On the other hand, the erection of two gates, which

> are well constructed, does not materially affect plaintiff's enjoyment of his right of way.

Watson v. Hoke, 73 S.C. 361, 363–64, 53 S.E. 537, 537–58 (1906); *see e.g., Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 96, 28 S.E.2d 545, 549 (1943) ("The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. In other words, 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."). Whether interference with or obstruction to an easement is unreasonable depends upon the facts and circumstances of each case, and courts apply a balancing test. *Thomas*, 287 S.C. at 39, 336 S.E. 2d at 156. When the impact upon the dominant estate is minimal, the courts will not find unreasonable interference.[4] *Id.*

Here, the master correctly found that the Property is not subject to the terms of the Covenants because it is not in the Subdivision. (R. at 15 ¶42). Nor does the POA own the Landscape Easement. (R. at 596-603).

The master erred by construing the terms of the Covenants to preclude any use of the Landscape Easement by the Halsells, effectively giving the POA the fee interest in the area without any of the tax liability. (R. at 14-15 ¶¶14-17, 21-22 ¶¶14-17, 27 ¶¶1-4). Although the master paid lip service to the case law cited above, he barred the construction of any permanent structure in the Landscape easement (R. at 22 ¶16), disregarded the source of the easement in the Halsells' chain of title, and read/ rewrote the inapplicable Covenants very broadly so as to give the POA

[4] In ingress-egress cases, courts have considered the following: (1) is the gate located, constructed, and maintained as not to unreasonably interfere with the right of passage of the dominant estate, (2) whether the gate is necessary to preserve the servient estate, and (3) whether the gate was necessary for the use of the servient estate. *Id.*

complete control over "all vegetation, landscaping, and grading" (R. at 22 ¶17). Nowhere do the plats in the Halsells' chain, the Subdivision Plat, or the Covenants state or imply that the owners of the Property would have no rights to the Landscape Easement Area or that there is an exclusive right conveyed to the POA with respect to "beautification, vegetation, landscaping, soil disturbance and grading" within the Landscape Easement Area as found by the master. (R. at 27 ¶4). To the contrary, the Covenants state that the easement is non-exclusive.

Although the master makes reference to the servient estate's ability to "use" the area, there is no use left to be had based on the master's rulings. Courts in other states have disallowed such a construction. *Walton v. Cap. Land, Inc.*, 252 Va. 324, 326, 477 S.E.2d 499, 501 (1996) ("If a conveyance grants the right to exclusive use of all or part of the servient estate *for all purposes,* the owner of the servient estate is stripped of his right to use the land. Conveyances of this sort are generally considered to effectively transfer an interest in fee, not an easement, and are not favored."); *Gelfand v. Mortg. Invs. of Washington*, 453 So. 2d 897, 898–99 (Fla. Dist. Ct. App. 1984) (holding that construction of easement to allow dominant estate to prevent use by servient estate would be tantamount to conveyance of land to holder of dominant estate in fee simple).

The order goes well beyond the facts presented with respect to the driveway. Under the order, 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"). (R. at 27 ¶¶1-4). The master did not balance the respective interests of the parties and instead applied the broadest possible construction to the easement, resulting in no enjoyment of the portion of the Property located within the Landscape Easement Area for the servient estate. This is directly contrary to South Carolina law.

As reflected in the record, the Halsells did not remove any landscaping placed by the POA; thus, the driveway was perfectly consistent with the POA's reasonable enjoyment of the landscape easement area. When the Halsells' use of their own property is balanced against the burden on the POA's rights in the non-exclusive Landscape Easement Area, the facts and law dictate that the Halsells should be allowed reasonable access over an insignificant portion of the Landscape Easement Area. Rather than trying to reconcile the interests of the two estates in light of the language of the easement, the master instead found that the Halsells have no interest in the Landscape Easement, notwithstanding their ownership interest in the Property and the directive that the easement is non-exclusive.

Although there are no reported South Carolina cases expressly defining the term "non-exclusive easement," Black's Law Dictionary provides: "[a]n easement allowing the servient landowner to share in the benefit of the easement, - Also termed *nonexclusive easement*." EASEMENT, Black's Law Dictionary (11th ed. 2019). In contrast, an exclusive easement is "[a]n easement that the holder has the sole right to use." *Id.* These definitions are consistent with the South Carolina cases applying a reasonableness standard and a balancing test cited above.

In addition, this construct is consistent with the law applied in other jurisdictions. *See, e.g.*, *Blalock v. Conzelman*, 751 So. 2d 2, 6 (Ala. 1999) ("the parties have concurrent rights to the use of the easement, and neither party can prevent the other from using the easement in a manner consistent with the purposes for which the easement was created"); *Walton*, 252 Va. at 326, 477 S.E.2d at 501 ("[W]e have repeatedly held that the owner of the servient estate retains the right to use his land in any manner which does not unreasonably interfere with the use granted in the easement."); *Tidwell v. Bezner*, 245 P.3d 620, 622 (Okla. Civ. App. 2010) (absent language in easement that usage is exclusive to dominant estate, "*the fee owner may use the land upon which*

the easement is imposed in any reasonable manner that does not unduly burden the use made by the easement owner"); *Gelfand*, 453 So. 2d at 898–99 (non-exclusive easement permits use by the servient owner); *Pro. Exec. Ctr. v. LaSalle Nat. Bank*, 211 Ill. App. 3d 368, 379, 570 N.E.2d 366, 373 (1991) (use of non-exclusive easement by dominant tenement cannot preclude use by the servient tenement, "but rather use by both must be permitted in accordance with their interests.").

Contrary to the master's order, *Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991) does not compel a different analysis or result. In that case, this Court considered the express language of multiple easements for ingress and egress over the same area and found that one of the easement holder's proposed uses infringed on the specific terms of the other's easement. 306 S.C. at 171–72, 410 S.E.2d at 581. In that case, the proposed uses were mutually exclusive: parking spaces were inconsistent with an easement for "ingress and egress" through the easement area. Here, on the other hand, the Halsells' driveway did not interfere with any landscaping placed by the POA and it is reasonably necessary to the Halsells' enjoyment of the Property. Unlike in *Xanadu*, the Halsells have not restricted the POA's access to any portion of the Landscape Easement Area. The POA is still free to access all portions of the easement and to install landscaping as they see fit. It is the POA that has sought to use the non-exclusive easement as a cudgel to deprive the Halsells of any use of a portion of their property.

For all of these reasons, the master erred in declaring that the Halsells' have no rights in the Landscape Easement Area, that their driveway violates the terms of the easement, that they have no ability to alter the natural landscape in the Landscape Easement Area "without the express, written consent of the POA," and that the POA has "sole management and control of beautification, vegetation, landscaping, soil disturbance and grading" within the Landscape Easement Area. (R. at 27 ¶¶2-4). As a result, the master further erred in ordering that the Halsells remove their

driveway and "restore all areas disturbed." (R. at 28 ¶¶7-8). Based on the authority cited above, the Halsells' driveway and the replanted landscape are not in violation of any easement and should be allowed to remain.

II. The master erred in ruling that the Halsells' construction of the driveway constituted a trespass or nuisance.

The master, relying on *Ralph v. McLaughlin*, 428 S.C. 320, 834 S.E. 2d 213 (Ct. App. 2019); *rev'd by Ralph v. McLaughlin*, 432 S.C. 640, 856 S.E.2d 154 (2021), also concluded that the Halsells "have trespassed in the [POA's] easements (rights)" and that construction of the driveway through the Landscape Easement Area "clearly constituted a nuisance, which has the same consequences as a trespass." (R. at 25-26 ¶¶27, 30). This was error. *Ralph* is inapposite because it involved the total destruction of a drainage easement by the defendant that caused flooding and damage to the plaintiff's neighboring property. 428 S.C. at 350, 856 S.E.2d at 229 ("Accordingly, the owner of the servient estate commits trespass by relocating [or destroying] an easement without the consent of the holder of the easement."). Here, the Halsells have neither destroyed nor relocated the Landscape Easement Area; instead, they have constructed a driveway through a small fraction of it.

Trespass is an intentional invasion of the plaintiff's interest in the exclusive use of his property. *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 357, 559 S.E.2d 327, 337 (Ct. App. 2001). The essence of a cause of action for trespass is the unauthorized entry onto the land of another. *Snow v. City of Columbia*, 305 S.C. 544, 552, 409 S.E.2d 797, 802 (Ct. App. 1991). "Where an owner of property and an occupier are both in possession, the possession of the legal owner prevails to the exclusion of the other." *Butler v. Lindsey*, 293 S.C. 466, 472, 361 S.E.2d 621, 624 (Ct. App. 1987). The POA in the case at bar can neither establish the right to exclusive

possession of the non-exclusive Landscape Easement Area nor unauthorized entry by the Halsells on their own property.

Not every disturbance of the use of property constitutes a nuisance. *Winget v. Winn-Dixie Stores, Inc.*, 242 S.C. 152, 159, 130 S.E.2d 363, 367 (1963). "The distinction between trespass and nuisance is that trespass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property, whereas nuisance 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.* As argued above, the driveway constructed by the Halsells neither substantially nor unreasonably interferes with any rights the POA may have in the non-exclusive Landscape Easement Area.

CONCLUSION

The POA does not have a fee interest in the Landscape Easement Area. Any interest it may have, is expressly deemed non-exclusive. The master erred in failing to balance the interests of the dominant and servient estates and in rewriting the easement very broadly to preclude any use of the Landscape Easement Area by the Halsells as owners of the Property. This was error, as was the relief ordered by the master based on his findings with respect to the easement. Accordingly, this matter should be reversed in an order stating that the Halsells were within their rights in building the driveway and that the improvements they installed may remain. Alternatively, this matter 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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CERTIFICATE OF COUNSEL

I certify that the Brief of Appellants and Reply Brief in this matter comply with Rule 211(b), SCACR.

Respectfully submitted,

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