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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Allison Renee Lee, Circuit Court Judge

C/A No. 2016-CP-41-00153
Appellate Case No. 2021-000659

CARR FARMS, INC. and TITAN FARMS, LLC……Appellants,

v.

SUSANNAH SMITH WATSON, CARSON M. WATSON, and JUNE WATSON……Respondents.

RETURN TO PETITION FOR REHEARING

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s/Daniel L. Draisen
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Respondent, Susanna Smith Watson, by and through her undersigned attorney, hereby files her Return to Appellants Petition for Rehearing on Opinion Number 2024-UP-086 filed on March 20, 2024.

ARGUMENTS

I. The Court has not misapprehended the facts or law applicable to this matter.

The Court has not misapprehended the facts or the law applicable to this matter. As such, Appellant's Motion for Rehearing should be denied.

II. The Court correctly evaluates that the subject easement is an appurtenant easement.

Appellant simply rehashes its arguments asserted in its prior briefs and at oral arguments. Respondent has shown by the documents, facts, and evidence that the easement at issue in this matter (i.e., the easement to construct and maintain a dam and to impound water) meets each of the necessary elements for the creation of an appurtenant easement. The Court, in its Opinion, addressed the necessary elements including the "exclusive use" element. Appellant's argument is without merit that, "the 'exclusive use' encumbrance, however, would eliminate the owner of the servient estate from making any use of its property." This is a red herring. First, only a portion of Appellant's overall property is being used for the dam and to impound water. Second, easements by their very nature prevent the servient estate owner from making full use of the property subject to the easement granted (either in whole or in part). While it is the sole right of Respondent to use that portion of Appellant's property to construct and maintain a dam and to impound water, Appellant still owns the property. If Respondent, her successors or assigns, ever abandons or terminates the easement, Appellant would then regain the right to full use of that portion of its property. Finally, any owner granting an easement is presumed to be aware that he/she is giving

up some right, title, or interest to the full use of that portion of his/her property encumbered by the easement. This the very nature of an easement.

Appellant's argument that [sic] because the dam was not there and the water not impounded at the time of the Smith deed it is necessarily separable from the land, if accepted as a basis for defeating the element of "inhering in the land" for an appurtenant easement would necessarily mean that ANY easement granted wherein the intended use is not in existence at the time of the grant *could not* inhere in the land and therefore *could not* be an appurtenant easement. Appellant would have the Court hold that prior to granting an appurtenant easement the servient estate owner must first allow the dominant owner to exercise control over his/her property, to install the road, pond, fence, utility, or whatever the use being made is, and to do so *prior* to the granting of the easement. Otherwise, if the Court accepts Appellant's argument, such easements could only be *in gross* and not appurtenant. This is simply not the law.

III. The Court correctly determined that Titan had notice of the easement.

Respondent asserts that the Smith deed is not completely "absent from their chain of title" as asserted by Appellant. The title history of the Titan tract is within the title history of the greater Bonnette tract that includes: a) that Mattie Lee Bonette owned the greater tract of land; b) that Mrs. Bonette, at various times, sold off parts of her property including, but not limited to, on October 1, 1960 the property soled to F. Broadus Smith, his heirs and assigns. It is also from this greater tract that:

> **The remainder of the property owned by Mattie Lee Bonnette relative to this action was deeded to Titan Farms, LLC by deed from Carey Frick a/k/a Carey Edward Frick on January 24, 2012. (R. p. 160)**
>
> **The property transferred by Mr. Frick to Titan Farms, LLC is more particularly shown on that certain boundary survey prepared for Carey E. Frick, revised November 4, 2002 as recorded in the public records for Saluda County. (R. p. 166).**

Appellant's argument appears to be that when a greater tract of property is subdivided, the title history of the greater tract of land, and particularly other tracts subdivided therefrom, are not within the chain of title for each of the other portions divided therefrom. This is not entirely the case. When the Smith property was subdivided from the greater Bonnette property, there is record notice of this subdivision and such subdivision is part of the chain of title to the Bonnette property. Any subsequent purchaser of the remainder of the Bonnette property searching the title history would (or should) have discovered the portion subdivided and sold to Smith and should have taken note of the granting of the easement contained in the Bonnette to Smith deed.

While the title history of each of the subdivided tracts may not be directly within the title chain of each separate tract, it is clearly within the overall title history of the greater piece of property. This is why it is necessary when searching the title to look for deeds issued by a common grantor. As stated by the Court, to do so would otherwise undermine the broad constructive notice afforded recorded conveyances under the recording statute.

Further, and more importantly to the analysis here, in the instant case a simple visual inspection of the property clearly put Titan on notice that there was water being impounded on a portion of the property it was purchasing. It was then incumbent on Titan, prior to closing, to ascertain who had the legal rights to the impounded water. Appellant would have the Court find that reliance on ONLY a title search is appropriate for determining "notice" of the existence of an

easement. Such egal position is contrary to the law of easements by necessity, easements by prior use, and other types of easements that exist, not because of an express grant, but based on a number of other factors.

IV. The Court's decision in this matter comports with the laws of this State.

Appellant's assertion that by permitting exclusive use the nature of the conveyance must necessarily be a fee simple devise is misplaced. Again, as set forth above, Appellant mischaracterizes the exclusive use granted. While it is solely the right of Respondent to use that portion of Appellant's property subject to the easement to construct and maintain a dam and to impound water, Appellant still owns the property. If Respondent, her successors or assigns, ever abandons or terminates the easement, Appellant would then have the right to full use of that portion of its property. This is consistent with the law of easements in this State and generally throughout the country.

CONCLUSION

The Court has not misapprehended the facts or the law applicable to this matter. As such, Appellants Motion for Rehearing should respectfully be denied, and the previous ruling of this Court should be affirmed.

Respectfully Submitted,

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April 3, 2024
Anderson, South Carolina

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PROOF OF SERVICE

I certify that I served a copy of the *Return to Petition for Rehearing* by e-mail and by depositing a copy of same in the United States Mail, postage pre-paid, on April 3, 2024, to Appellant's attorney of record, addressed to:

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