

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2011-CP-23-6400

Transportation Services, Inc.,

Respondent,

v.

Joseph T. Bishop

Appellant.

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Appellants

Other Counsel of Record:
Ronald G. Bruce
P.O. Box 450
Greer, SC 29652
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. That the Court erred in including facts and evidence which were not a part of the record.
2. That the Court erred in making findings of fact and conclusions of law that were not issues raised by the pleadings nor is there any competent evidence to support same.

STATEMENT OF CASE

On September 27, 2011 the Petitioner filed a 2 page "Petition and Rule to Show Cause" requesting that "the Respondent should show cause as to why this Court will not issue its order requiring said Respondent to remove the obstacle to Petitioner's access and right of way...".

A hearing was held on October 24, 2011, at which time the Appellant appeared *Pro Se* and filed his answer to the Petition and Rule to Show Cause with the Court.

A subsequent hearing was held on August 29, 2012 in which the Court did not take testimony and evidence but heard arguments from counsel.

The trial court issued an order on November 8, 2012 and Appellant timely filed a Motion to Reconsider pursuant to SCRCP Rules 59 and 60. No hearing was held on that motion and a superseding order was issued on January 15, 2013 and an additional Motion to Reconsider was timely filed by Appellant. No hearing was held on the subsequent Motion to Reconsider and thereafter the Court entered an Order filed February 13, 2013 denying the motions to reconsider.

This appeal timely followed.

ARGUMENT

(EXCEPTION 1)

The Court erred in making findings of fact and conclusions of law upon issues not raised in the pleadings thereby depriving the Appellant of due process and the ability to fairly defend the issues raised.

(EXCEPTION 2)

The Court erred in setting forth facts and finding of facts for which there is no evidence in the record.

Simply put, the Court ultimately turned a motion for a rule to show cause into an order determining the rights, intent and scope of an easement without any pleading for that relief nor any evidence to support it. The Appellant, appearing *Pro Se*, arrived in Court for the purpose of disputing the rule to show cause. All of the testimony and evidence was submitted at that thirty minute motion hearing on October 24, 2011.

No motion was ever made to amend the pleadings or expand the scope of the original request. No suit was filed. To the contrary, during arguments of counsel at the subsequent hearing, where Mr. Bishop was represented, it was specifically discussed that ultimately it would be necessary for one of the parties to bring an action to determine the scope of the easement and the intention of the parties.

Despite the lack of evidence or notice as to the issues presented the Court ultimately issued its order making numerous findings of fact for which there is no evidence in the record. Indeed the final order starts its conclusions of law by stating “determining the scope of an easement is an action in equity”. The Court then goes on to set out the standards necessary to determine that without regard to the fact that it was never pled or defended. Instead, the Court complains in the order about Mr. Bishop not introducing evidence in support of his contention as to the intended width and scope of the easement. The Court goes so far as to claim that the width cannot be determined even though it is a recorded plat prepared by a licensed surveyor with a scale set forth on the plat. Without any evidence whatsoever of the intent of the parties, other than the deed and the plat, the Court makes a finding of what the parties intended and ultimately makes its decision on what photographs “appear” to show and rather than use the scale of the recorded survey determines a width “that appears to be approximately 35 feet in width as shown by photographs in evidence”.

“The object of pleading is to advise the parties of the issues they will be called upon to meet.” Corley v. Centennial Construction Company, 247 S.C. 179; 146 S.C.2nd 609 (1966). “Procedural due process mandates that a litigant be placed on notice of the issues which the Court is to consider.” Blanton v. Stathos, 351 S.C. 534; 570 S.C. 2nd 565 (Ct. App. 2002). In this instance the Court has determined issues, without evidentiary support, that the Appellant was not given fair notice would be decided on or an opportunity to present testimony and evidence on those issues.

While Appellant does not agree with the relief afforded by the Order he has not appealed the Court's authority or granting of that relief pending a properly pled and tried determination of the scope of the easement. The inclusion of findings of fact and conclusions of law in the instant Order would preclude the Appellant from ever having a meaningful determination and an opportunity to present testimony and evidence, after proper notice that that issue would be litigated and appropriate discovery, in a trial on the merits.

CONCLUSION

The appropriate remedy of the Court in this rule to show cause was simply to afford relief pending the filing of either party of an actual lawsuit seeking to ascertain the scope of the easement. As stated on the record the Appellant is prepared to do so. The inclusion within the order granting that relief of factual determinations and, indeed, the scope of the easement derived from eyeballing the survey should be stricken from the order.



Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Appellant

Other Counsel of Record:
Ronald G. Bruce
P.O. Box 450
Greer, SC 29652
Attorney for Respondent

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DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Petition of Respondent;
2. Answer of Appellant;
3. Order of the Honorable D. Garrison Hill dated November 8, 2011;
4. Order of the Honorable D. Garrison Hill dated January 2, 2013;
4. Appellant's Motion to Reconsider dated January 23, 2013;
5. Appellant's Motion to Reconsider dated November 14, 2012; and
5. Transcript of Hearing dated October 24, 2011 and Transcript of Hearing dated August 29, 2012.

I certify that this designation contains no matter which is irrelevant to this appeal.

August 6, 2013



Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellant

AUG 13 2013

PROOF OF SERVICE

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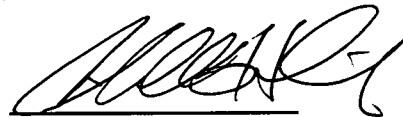
v.

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Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant on Transportation Services, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on August 7, 2013, addressed to its attorney of record, Ronald G. Bruce, Post Office Box 450, Greer, South Carolina 29652.



Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Appellant

August 7, 2013

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