

RECEIVED

Jul 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Master in Equity

The Honorable James E. Chellis

Case No. 2021-CP-18-01535
Appellate Case No. 2024-000430

Sinclair Brown, Jr. and Joetta A. Brown,..... Respondents,

v.

George B. Corrie, II, Shawna Corrie, Anthony Wayne All, Sandra Rae All, Paul W. Jones, Madelyn W. Jones, Keith A. Muray, Stephanie L.R. Murray, Dollar Bank Federal Savings Bank, The Bank of South Carolina, John Doe and Mary Roe, fictitious names representing unknown persons who may claim any right, title or interest or lien upon the subject real estate, as well as anyone who may be incompetents, in the military, or under any legal disability, and Richard Roe and Sarah Doe, fictitious names representing all unknown heirs and devisees, Defendants,

Of which George B. Corrie, II and Shawna Corrie are the.....Appellants.

THE RESPONDENTS' INITIAL BRIEF

G. Hamlin O'Kelley, III
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
T: (843) 856-4488
F: (843) 856-0613
Hamlin.okelley@buistbyars.com
Attorney for Respondents

TABLE OF CONTENTS

Table of Authorities	i
Statement of Issues on Appeal	1
Statement of the Case	1
Statement of Facts	5
Standard of Review	32
Argument	32
Conclusion	36

TABLE OF AUTHORITIES

CASES

Bennett v. Investors Title Ins. Co., 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006).....34

Blue Ridge Realty Co. v Williamson, 247 S.C. 112, 145 S.E. 2d 922
(1965)34, 35

Carolina Land Company v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975)34

Carson v. Gibson, 217 S.C. 500, 61 S.E.2d 58 (1950)34

Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991)32

Murrells Inlet v. Ward, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008)34

Myers v. Town of Calhoun Falls, 441 S.C. 146, 892 S.E.2d 514 (Ct. App. 2023)32

Okatie River, LLC v. Se. Site Prep, LLC, 353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2003)...32

Proctor v. Shelley, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012)36

Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 77332

STATUTES

S.C. Code Ann. §15-53-10.....32

STATEMENT OF ISSUE ON APPEAL

- I. THE TRIAL COURT CORRECTLY RELIED ON YEARS OF CASE LAW TO DETERMINE THE RESPONDENT'S OWNERSHIP OF .12 ACRES OF THE POND AT ISSUE IN THIS CASE RULING THE RESPONDENTS HAVE A SPECIAL INTEREST AND EASEMENT IN AND OVER THE POND
- II. THE PLAT AND DEEDS PROVE THE CLEAR INTENT TO CONVEY .12 ACRES OF THE POND TO THE RESPONDENTS AND THEIR PREDECESSORS IN INTEREST AS SHOWN ON THE APPLICABLE PLATS AND IN THE DEEDS AS RELIED UPON BY THE RESPONDENTS AND THEIR NEIGHBORS WITH SIMILAR PLAT AND ACREAGE REFERENCES IN THEIR DEEDS

STATEMENT OF THE CASE

This matter is before this Court on the appeal of George B. Corrie, II and Shawna Corrie, (the "Appellants"), appealing the Final Decree of the Honorable James E. Chellis dated February 6, 2024, (the Order) and the Form 4 Order denying their Motion to Reconsider dated March 6, 2024. (Form 4 Order)

In the Final Decree, Judge Chellis resolved a dispute between four (4) landowners who own two contiguous parcels of land in Dorchester County. (Order, p.1). Ultimately, Judge Chellis affirmed that the Respondents, Sinclair Brown, Jr. and Joetta A. Brown, (the "Respondents"), own 0.12 acres of a pond and that they acquired a special property interest in the pond as shown on the plat called the "Metts Plat" as a "Proposed Pond" and on the plat called the "Rhode Plat" as an actual pond along with a private right of access to that pond, which includes an easement to use and enjoy the pond. (Order)

Judge Chellis also ruled that the Appellants were required to remove a fence blocking the Respondents' access to the pond and not interfere with the Respondents' right to use and enjoy the pond.

This case commenced with the filing of a Lis Pendens on August 18, 2021, and a Summons and Complaint on September 2, 2021. (Lis Pendens) (Summons and Complaint).

In their Complaint, the Respondents asserted causes of action for a declaratory judgment pursuant to S.C. Code Ann. §15-53-10 to obtain a declaration of the rights, status, and other legal relationships of the parties in respect to the Respondents' and Appellants' subject properties and for nuisance and trespass whereas the Appellants willfully, wantonly and deliberately denied the Respondents access to the pond in question interfering with the Respondents' quiet enjoyment of their land by constructing a fence, blocking Respondents' access to a portion of the pond they are entitled to and continue to trespass on Respondents' property. *Id.* The Respondents also sought their attorneys' fees, costs and punitive damages pursuant to the above-referenced statutory provisions. *Id.*

The Guardian ad Litem filed an Answer on September 9, 2021. (Answer)

Keith Murray and Stephanie Murray, (the "Murrays"), were served on September 15, 2021, and September 22, 2021. (Affidavits of Service) A Stipulation of Dismissal as to the Murrays was filed on October 8, 2021, in which they consented to the relief requested by the Respondents. (Dismissal)

Wayne Anthony All and Sandra Rae All, (the "Alls"), were served on September 16, 2021. (Affidavits of Service). They filed a Motion to Dismiss on October 4, 2021, and, later, a Motion for Summary Judgment on December 13, 2021. (Affidavits of Service) (Motions) A Stipulation of Dismissal as to these Alls was filed on April 4, 2022, in which they consented to the relief requested by the Respondents. (Dismissal)

Madelyn Jones, ("Mrs. Jones"), former owner of the subject properties before they were subdivided into the Lots owned by the Respondents and the Appellants, filed an Answer on October 11, 2021. (Answer)

The Appellants filed an Answer and Counterclaim on November 11, 2021 (Appellants' Answer and Counterclaim).

Bank of America filed an Answer on March 21, 2022. (Answer) As they had been placed in default on October 12, 2021, after being served on September 15, 2021, a Stipulation as to Waiver of Default and Consent to Order of Reference was filed on November 29, 2022. (Affidavit of Service) (Default) (Stipulation)

The Respondents served their First Set of Interrogatories, First Set of Requests for Production and First Requests for Admission on the Appellants on November 15, 2021. (Discovery) The Appellants failed to answer and the Respondents filed a Motion for Summary Judgment on December 13, 2021. (Motion) The Appellants filed a Memorandum in Opposition to the Respondents' Motion for Summary Judgment on February 8, 2022. (Memorandum)

The Appellants filed a Motion to Withdraw Admissions filed on February 1, 2022, and a Memorandum in Support of their Motion to Withdraw Admissions on February 8, 2022. (Motion) (Memorandum)

Discovery continued.

A Motion for Consent Order of Reference was filed on November 10, 2022 and a Consent Order of Reference filed on November 30, 2022. (Motion) (Order)

The Appellants filed a Motion for Summary Judgment on June 16, 2023, and the Respondents filed a Motion for Summary Judgment on August 25, 2023. (Motions) The case had been set for trial on September 18, 2023, through September 20, 2023, and the Respondents filed and mailed a Notice of Hearing on June 22, 2023. (Notice).

On September 18, 2023, the Motions for Summary Judgment were heard instead and a Form 4 C Order Denying those Motions was filed on September 25, 2023. (Order)

The case was again set for trial for October 16, 2023, through October 18, 2023, and the Respondents filed and mailed a Notice of Hearing on September 12, 2023. (Notice)

Trial was held on October 16, 2023, before The Honorable James E. Chellis. (Transcript)

Based upon the testimony of the witnesses and the exhibits offered into evidence as well as the arguments of counsel, a Final Decree Order was filed on February 6, 2024, in favor of the Respondents. (Final Decree)

The Appellants filed a Motion to Reconsider on February 16, 2024, and the Respondents filed a Memorandum in Opposition to their Motion to Reconsider on March 4, 2024. (Motion) (Memorandum)

Judge Chellis issued his Form 4 C Order Denying their motion was filed on March 6, 2024. (Order)

The case was then appealed to this Court by Notice of Appeal filed on March 15, 2024. (Notice of Appeal).

STATEMENT OF FACTS

The Respondents are residents and citizens of Dorchester County and are the owners of certain real property, located in the County, South Carolina, and identified by Tax Map Number or Parcel Identification Number 093-00-00-025 (the "Brown Property").

The Appellants are residents and citizens of Dorchester County and the owners of certain real property, located in the Dorchester County, South Carolina, and identified by Tax Map Number or Parcel Identification Number 093-00-00-003 (the "Corrie Property"). Paul W. Jones, Madelyn W. Jones (the "Joneses") were the previous owners of certain real property, located in Dorchester County, South Carolina, and identified by Tax Map Number or Parcel Identification Number 093-00-00-025, which they subsequent subdivided. (Order, p.2)

The Joneses formerly owned some 67.134 acres of land in Dorchester County. (Deed) The Jones subdivided that property into five (5) parcels. (Order, p. 2). That subdivision created four (4) lots along with a residual tract of land. *Id.* All of these sales and property descriptions referenced a new plat in which an area described as a "Proposed Pond" was included on that plat, which is referred to as the Metts Plat. (Metts Plat)

The Metts Plat shows each of the four subdivided Lots containing a certain total acreage, of which a portion is described as being some many acres of "pond". (Metts Plat) The Respondents' property is shown as being Lot 3 on that plat, containing 3.50 acres total and **0.12 acres of pond**. *Id.* (emphasis added)

The deed from the Respondents' predecessors in interest describes the property as follows:

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon if any, situate, lying and being in Givhans Township, County of Dorchester, State of South Carolina, being shown and designated as LOT 3, 3.50 AC. TOTAL, 0.12 AC. POND, more or less, as more particularly shown on that certain plat entitled, "PLAT TO SHOW THE SUBDIVISION OF A PORTION OF

A 65.25 ACRE TRACT SURVEYED FOR PAUL W AND MADELYN W JONES, LOCATED 6 MILES SE OF GROVER, DORCHESTER COUNTY, SOUTH CAROLINA," dated February 6, 2005 and revised May 28, 2005, prepared by Raymond B. Hager, S. C. RLS. No. 15185, and recorded June 21, 2005 in Plat Cabinet K, page 157; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to Keith A. Murray and Stephanie L.R. Murray herein by deed of Paul W Jones and Madelyn W Jones dated February 23, 2011 and recorded in the RMC Office for Dorchester County in Book 7824, page 257 and re-recorded in Book 7897, page 274, aforesaid records.

SUBJECT to any and all restrictions, covenants, conditions, easements, rights of way and all other matters affecting subject property of record in the Office of the RMC for Dorchester County, South Carolina.

(Deed, Book 9229, Page 23)

This the same property description in the deed into Murrays in the deed from the Joneses who were the original owners of the parent tract subdivided into the four (4) Lots. (Deed, Book 7897, Page274). The Deed from the Jones to the Murrays described Lot 3 as containing 3.50 acres total, of which 0.12 acres is pond. *Id.*

The Bank of South Carolina, is the mortgage holder of the Appellants' residual acreage property by way of mortgage dated March 15, 2021, and recorded on March 15, 2021, with the Office of the Register of Deeds in Dorchester County, in Book 13199 at Page 245 more fully described as follows:

ALL that certain lot, piece or parcel of land, situate lying and being in Dorchester County, South Carolina, shown and designated as, "41.92 Acres," more or less, on that certain plat entitled, "PLAT SHOWING 41.92 ACRES PROPERTY OF ANTHONY WAYNE & SANDRA RAE ALL (JTROS) LOCATED NEAR GROVER DORCHESTER CO. S.C.," dated October 13, 2018 and prepared by Richard J. Rhode, SCRLS No 11366, and recorded December 7, 2018 in Plat Book M, page 159 in the Dorchester County Register of Deeds Office. Reference to said plat may be had for a more full and complete description thereof.

This being the same property as conveyed to Anthony Wayne All and Sandra Rae All by deed of Madelyn W. Jones, dated July 25, 2018 and recorded July 26, 2018 in Book 11470 at Page 1 in the Dorchester County Register of Deeds Office.

SUBJECT to any and all restrictions, covenants, conditions, easements, rights of way and all other matters affecting subject property of record in the Office of the RMC for Dorchester County, South Carolina.

AND BEING the same property conveyed to George B. Corrie, II and Shawna Corrie by deed of Anthony Wayne All and Sandra Rae All, dated March 15, 2021, and recorded March 15, 2021 in Book RB 13199, page 245 in the ofc the Register of Deeds for Dorchester County, South Carolina.

PROPERTY ADDRESS: 1650 Sandridge Road

TMS# 093-00-00-003

The Joneses conveyed their property to the Murrays, by way of deed recorded in the Office of the Register of Deeds in Book 7824 at Page 257 on March 10, 2011, and re-recorded in Book 7894 at Page 274 on May 25, 2011, and formerly had an interest in the subject Property.

The Murrays conveyed their property to the Respondents by way of deed recorded on April 1, 2014, in the Office of the Register of Deeds in Book 9229 at Page 20 and formerly had an interest in the subject Property.

Dollar Bank Federal Savings Bank, is the mortgage holder of the Respondents' property by way of mortgage dated June 30, 2020, and recorded on July 2, 2020 in the Office of the Register of Deeds in Book RB 12592 at Page 338 more fully described as follows:

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon if any, situate, lying and being in Givhans Township, County of Dorchester, State of South Carolina, being shown and designated as LOT 3, 3.50 AC. TOTAL, 0.12 AC. POND, more or less, as more particularly shown on that certain plat entitled, "PLAT TO SHOW THE SUBDIVISION OF A PORTION OF A 65.25 ACRE TRACT SURVEYED FOR PAUL W AND MADELYN W JONES, LOCATED 6 MILES SE OF GROVER, DORCHESTER COUNTY, SOUTH CAROLINA," dated_ February 6, 2005 and revised May 28, 2005, prepared by Raymond B. Hager, S. C. RLS. No. 15185, and recorded June 21, 2005 in Plat Cabinet K, page 157; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to Keith A. Murray and Stephanie L.R. Murray herein by deed of Paul W Jones and Madelyn W Jones dated February 23, 2011 and recorded in the RMC Office for Dorchester County in Book 7824, page 257 and re-recorded in Book 7897, page 274, aforesaid records.

SUBJECT to any and all restrictions, covenants, conditions, easements, rights of way and all other matters affecting subject property of record in the Office of the RMC for Dorchester County, South Carolina.

AND BEING the same property conveyed to Sinclair Brown, Jr. and Joetta A. Brown herein by deed of Keith A. Murray and Stephanie L.R. Murray dated March 27, 2014 and recorded in the Office of the Register of Deeds for Dorchester County in Book 9229, page 23 on April 1, 2014.

Property Address: 1668 Sandridge Road

TMS Number: 093-00-00-025

The Respondents have owned their property since 2014 and took title subject to the Metts Plat dated May 28, 2005, and recorded on June 21, 2005, in the Office of the Register of Deeds in Book K at Page 157. The Plat clearly shows that Respondents own a portion of the pond, being that 0.12 acres described in their deed and shown on the Metts Plat.

The Appellants have owned their property since 2021. Since taking ownership, they fenced off access of the pond on the north side of their property and prohibited the Respondents' quiet enjoyment of their land.

The Metts Plat dated May 28, 2005 and recorded on June 21, 2005 in the Office of the Register of Deeds in Book K at Page 157, clearly shows Respondents' property, Lot 3, contains 3.50 acres of which .012 acres is in the pond which Appellants have now fenced off.

The Appellants' Plat dated October 13, 2018, and recorded on December 17, 2018 in the Office of the Register of Deeds in Book M at Page 159 does not survey Respondents' property and incorrectly shows no ownership interest in the pond for the owners of Lots 1 through 4 on the 2005 Plat.

The Respondents pled properly for relief in their Summons and Complaint, (the "Complaint"), filed with the Court on September 2, 2021, by bringing forth an action pursuant to the provisions of the South Carolina Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et*

seq., to obtain a declaration of the rights, status, and other legal relationships of the parties hereto in respect to the subject property in this matter. The Respondents pled asking this Court to declare rights, status, and other legal relationships as to the parties and as to the Respondents' ownership of their property. (Complaint)

At the trial of this case, the Appellants admitted to constructing a fence and blocking the Respondents' access to the their Property portion of the pond. (Transcript, p. __)

It is important to note much of the testimony at trial which is quoted here.

Raymond B. Hager, the original surveyor of the Metts Plat, testified that the Joneses, the original owners of the subject properties in this matter, hired him to survey it and subdivide it so they could sell waterfront lots including pond acreage.

Q. Tell the judge what you're showing [Plat], and just walk us through the various lots and the pond. Just walk us through it, sir?

A. There was a subdivision of -- of lots. If I remember correctly, I think Mr. Jones had a couple of buyers for a couple of the lots, but I'm not sure that that's what it is. And we divided it into lots the way that Mr. Jones wanted this subdivided out to sell.

Q. As I'm looking at this plat, I see five lots of proposed pond and 42.36 residual acres. Is that to your recollection of how this was subdivided?

A. Yes, sir.

Q. All right. And on lot 3, which is the lot I'll represent as my client's, do you see lot 3?

A. Yes, sir.

...

Q. Lot 3 contains what, sir?

A. 3.5 acres total. And of that, .12 acres would be in the proposed pond.

Q. All right. And then similar questions for lots 1, 2, 4, and 5. Lot 5 doesn't show any pond acreage, does it?

A. No, sir.

Q. And how about lot 1? Does it have some pond acreage?

A. Yes, sir. It has -- it has .66 acres of the 5 proposed pond.

Q. And how about the next lot, lot number 2?

A. Lot number 2 shows .12 acres of the proposed pond.

Q. And how about lot 4?

A. Lot 4 shows .11 acres of the proposed pond.

(Transcript, p. 19-21)(emphasis added)

...

Q. Yes, sir. I was asking you about what the state of the pond was at the time of the plat. Was it being dug, was it finished? Tell the court about that.

A. It -- it was being dug at the time.

Q. All right. And to your knowledge, were the Joneses digging that pond, or people who were working for the Joneses?

A. To my knowledge, Mr. Jones had a mining permit, and was selling sand from this pond.

Q. And that was going to be my next question. Was this an old sand pit, sand mine, that would later be turned into a pond; to your knowledge?

A. To my knowledge, yes.

Q. All right. And do you know, at the time that you did this plat, did you go out and survey what was there or what they told you was going to be there? And don't tell us what they said, how did you come up with these calls for the pond?

A. Okay. The calls where I staked it out?

Q. Yes, sir.

A. Mr. Jones had excavated a canal or a trench there at that location and this was an area that --

Q. And when you say "this," you're talking about the pond?

A. The pond. The other boundaries or -- or other lines showing the proposed pond was areas where Mr. Jones had put up some flags indicating that that's where he wanted to build the pond.

Q. And at the time, you were showing that lot 3, lot 2, lot 1, and lot 4, their property lines would go into the proposed pond; correct?

A. Yes, sir.

Q. And that was what gave you the .12 acres, 2 .12 acres, .11 acres --

MR. O'KELLEY: Oh, thank you, sir.

Q. -- things of that nature that are shown here on the plat; correct?

A. Yes, sir.

Q. And the .66 for lot one?

A. Yes, sir.

Q. Okay. Mr. and Ms. Jones signed off on this plat, did they not?

A. Yes, sir.

Q. All right. And it eventually got recorded with the county; right?

A. Yes, sir.

(Transcript, p. 22-24)

...

Q. According to the plat as you drafted it, the Browns were supposed to own .12 acres of this property; correct?

A. That's correct, sir.

Q. And lot 1 was supposed to own .66 acres of the pond; correct?

A. Yes, sir.

Q. And lot 2 was supposed to also own .12 acres of the pond; correct?

A. Yes, sir.

Q. And lot 4 was supposed to own .11 acres of the pond; correct?

A. Yes.

Q. And that's what the Joneses told you to do when you did this plat back in 2005; correct?

A. Yes, sir.

(Transcript, p. 27-28)

Likewise, the Respondent, Sinclair Brown, also testified regarding his Property and his understanding of ownership.

Q. And what was your understanding at the time of what you were buying when you closed on this purchase from the Murrays? And this is a copy of the plat. Here's a pointer if you need to point. What you were you buying when you purchased this property?

A. To my understanding I was buying 3.5 acres of lot 3 and .12 acre of the pond.

Q. And is that actually referenced in the property description in your deed?

A. Yes.

Q. And in that deed, it references a plat; does it not?

A. Yes.

Q. Is that the plat that Raymond Hager just testified to?

A. Yes.

Q. And to your knowledge, you were getting 3.5 acres and .12 acres of a pond; correct?

A. Yes.

(Transcript, p. 36-37)

...

Q. Is it your understanding that it was the Joneses who originally subdivided these lots?

A. Yes.

Q. And when you bought this property from the Murrays, did they tell you there was any problems with the pond, or access to the pond, or ownership of the pond?

A. No.

(Transcript, p. 38)

...

Q. All right. Sir, when you purchased this property and moved into your house, did you have any problems with access to the pond?

A. No.

(Transcript, p. 39)

...

Q. Okay. Mr. Brown, when you bought this property, again, what was your understanding of the ownership of the pond?

A. That I had owned 1.2 acres [sic] of the pond, and there were no restricted access or restrictions using it at all.

Q. And for almost three years, that was the case; correct?

A. Yes.

Q. And you brought this lawsuit why?

A. Because I was denied access to the pond that I thought I paid for.

Q. And it's your contention that this fence was put up on your property; correct?

A. Yes.

Q. And are you allowed to enjoy or use your property fully, in your opinion?

A. No. I'm not.

Q. Why is that?

A. Because I've been denied access to a portion of my property that I thought I had paid for.

(Transcript, p. 43)

...

Q. And prior to this fence going up, did they ever use or have access to this property?

A. Yes.

Q. And tell His Honor about that.

A. I just -- my son and I and my granddaughter would go out and fish. In fact, we bought her a little, small fishing pole to teach her how to fish. Just to enjoy it.

Q. And you haven't been able to do that since 2021; correct?

A. Yes, sir.

Q. Mr. Brown, do you consider your property to be valued less without access to this pond?

A. Yes. Absolutely.

Q. And why is that, sir?

A. Well, my access was denied, and the eighth of an acre that I thought I owned was actually taken from me.

Q. And one of the reasons you bought this property was because of that pond, I hear?

A. Yes. Just one of the several features of it.

Q. And again, you've tried to ask this court to get the fence brought down; correct?

A. Yes.

Q. And to declare that you own .12 acres of this pond; correct?

A. Yes.

Q. And Mr. Brown, you're not a surveyor, are you?

A. No, I'm not, sir.

Q. And you're not an engineer, are you?

A. No, I'm not.

Q. And you're not a hydrological expert in any way, are you?

A. No.

Q. And you're not an agronomist or soil expert in any way, are you?

A. No.

Q. You just want what you paid for, right, Mr. Brown?

(Transcript, p. 44-45)

The Respondent, Joetta A. Brown, also testified regarding the Property she owns with her husband.

Q. And in terms of purchasing the property, lot 3, that's brings us here today, what was your understanding of your ownership of the pond?

A. My understanding is that we own a portion of the pond.

Q. Based on the deed?

A. Based on the deed. Based on what -- the -- I forgot her name, that sold us the property.

Q. If I told you it was the Murrays does that ring a bell?

A. The Murrays. Yeah. Based on the Murrays. That was the selling point. She said "There's a pond back here --

Q. No, don't. You can't tell us what Ms. Murray said.

A. Oh, okay. I'm sorry. Well, based on what she said is why we bought it.

Q. And that's why you've been living there happily ever since; correct?

A. Yeah.

Q. Until this fence issue came up; right?

A. Exactly.

(Transcript, p. 60-61)

Brian Kendall, neighbor of the Respondents and Appellants, and owner of Lot 2, 1676 Sandridge Road, also testified.

Q. Mr. Kendall, tell His Honor where you live?

A. I live at -- excuse me -- I live at 1676 Sandridge Road.

Q. And you've been in the courtroom this morning; correct? And this afternoon?

A. Yes, I have.

Q. And on the blow up of Mr. Hager's plat, using the pointer, show His Honor where you live.

A. I live here on lot 2, sir.

Q. And you're next-door neighbors with my clients, the Browns; right?

A. Yes, I am.

Q. And tell His Honor about what your understanding was when you purchased lot 2, vis— a-vis, your ownership of the pond, or your family's or whoever owns your lot?

A. Yes, sir. When we purchased the plot, we were told that we had 3.5 acres, .12 of that actually going into the water, sir.

Q. And when did you close on your lot?

A. July of 2020, sir.

Q. Okay. And from July of 2020, were you able to access the pond?

A. Initially, there was a dispute with the previous owner, so we really didn't have anything other than we created a beach. There was a lot of brush that we cleared up and made it a nice-looking beach going into the water. But we never really used it because of the dispute that was going on.

(Transcript, p. 62-63)

...

Q. And tell the judge what you remember about the fence going up across your property?

A. Yes, sir. So previous to the fence going up, I actually met the Corries and we spoke. During that time it was very cordial. We got along. He had told me at the time that we'd be able to use the pond. A little fishing here and there, a little bit of swimming wouldn't be an issue. Approximately maybe two or three weeks later, I was on the beach -- what I call the beach.

Q. What you called the beach earlier, correct?

A. Yes, there's a slope. I was on there with my tractor preparing it because my daughter was getting ready to get married on my property, and that's when I saw Mr. Corrie, and they were putting up posts on the property. So I got off the tractor and I spoke to him. He said that he had to put up a fence due to a dispute with the other neighbors. I think he told me it was on advice from his counsel. He did say that he was going to stop at that point, just putting posts up, so it wouldn't

interfere with my daughter's wedding. Which he did. But then after the wedding, he put the fence up on approximately say about 80 percent of my property.

(Transcript, p. 64)

...

Q. 80 percent along the proposed pond line as shown on this plat, or along the north/south line? Just tell the judge where it is.

A. Along the water line. So it pretty much went from -- well, it came from here and he stopped it probably about 80 percent or so on my property. There it stopped originally. Since then he's closed the whole thing off.

(Transcript, p. 65)

Heather Regan, neighbor of the Respondents and Appellants, and owner of Lot 4, 1676 Sandridge Road, also testified.

Q. And there's a pointer here, Ms. Regan. Tell His Honor what property you and your family own?

A. We live on lot 4.

Q. And that's to the east of the Browns; correct?

A. Yes, sir.

(Transcript, p. 69)

...

Q. Tell the judge about your ownership of lot 4, and your access to the pond and things of that nature?

A. Yes, sir. So we contacted a realtor to go out and look at the pond -- I mean the property. We immediately -- the thing that attracted us to the property was the pond. I lived on a boat, my husband was an avid sailor, so the water was very important to us. And we went out with a realtor, we literally located the pin down at the bottom of the hill -- but the slope, and then looked at the property description, and it said it was .11 acres from that last pin.

Q. And in fact on this plat, it says lot 4 contains 3.15 acres total, of which .11 acres is pond; correct?

A. Right. And we located with the realtor the pin, the last pin 'cause it says on the description from the last pin .11 acres and took -- my husband stood there and figured out how much .11 acres would be, and we measured it. And it went out into the water.

(Transcript, p. 70)

...

Q. And from the time you closed in 2020, were you able to access the pond?

A. We used the pond on and off. My kids did. And then at some point -- I think his name is Steve, down the way, called Mr. All. Apparently, he's the tattletale for the neighborhood.

Q. And was Mr. All the former owner of --

A. He was the former owner, and he showed up on my porch, very angry. Talking about I can't use his pond and this. And I explained to him that this says we have access. My kids were out sometime after that, kayaking on the pond and he threatened to call the police on them.

(Transcript, p. 71)

...

Q. Do you recall your first interaction you had with the Corries?

A. I do.

Q. All right. Tell the judge about that.

A. Initially, we talked to them. Ms. Corrie was very nice; he was kind of standoffish. But -- I mean, it was -- we were glad to have neighbors, we were glad to get rid of Mr. All because he was very rude. We had had some argument over a supposed another plat being drawn, and he told me that he had just had it drawn up for his, you know, personal knowledge of where stuff was. He never disclosed that it had been filed or anything else. And I never gave permission for anybody -- we didn't -- to come on the property and do a plat. So when -- next thing we know, a fence went up.

Q. And a fence went up where? On just yours --

A. It went all the way to the side of my property starting here -- right about here. All the way down and then all the way over.

Q. Okay. When you say down, you're talking about to the south side of the property owned by the Corries?

A. Yeah. Yeah. It kind of goes -- so it goes around here --

Q. When you say "around here" you're talking about to the north side of your lot; correct?

A. Right. Yeah. And then it starts cutting over a little bit and goes around and it comes right to our -- to the other side of the pin here and then across our property .

Q. And do you have access to the pond anymore?

A. I don't.

(Transcript, p. 72-73)

...

THE WITNESS: We were actually right in the middle of feeding baby geese that had hatched on the pond. They would come up on to our -- way up in our yard, and we'd feed them. and he put a fence across, and we totally lost access to be able to do that.

Q. When you say "he" you're talking about Mr. Corrie; correct?

A. Yes, sir.

Q. And Plaintiff's number 8, is this similar to what you see when you look out your back door?

A. Oh, yes.

Q. Barbed wire blocking access to the pond; correct?

A. Yeah. And for us it was an issue because at this section right here, my son had a fort, and he put up barbed wire right beside it. My son can't play there anymore. I'm afraid he'll fall into it. Not that he cared.

(Transcript, p. 73-74)

...

Q. Have you hired a surveyor to determine whether or not everything the Corries have done is on their property or on your property?

A No. When we first moved out there, we had the land clearing company help us locate all the pins and measure it, so we made sure we cleared what we were allowed to.

(Transcript, p.74)

...

Q. So you've never hired a surveyor to come out there and determine you have access? Or whether or not the fence or the barbed wire you talked about is on the Corrie's property; right?

A. I haven't hired a surveyor, no. I mean, like I said, we located the pin that is described in 9 our deed, we measured off that pin. Which takes it into the water.

Q. You and your realtor?

A. The realtor and the land clearing gentlemen.

...

Q. And you don't have any animosity towards anybody for doing anything on their own property; do you? I mean, people should be free to do what they want on their property, shouldn't they?

A. I'm going to say I do have animosity, because the way that this is done has put my son in danger. And -- I had to serve him with trespass notice because we had "No trespass" signs up and he continued to trespass on my property to put his stuff up, so -- and the police officers told him to stay off my property, which was down where he was putting the fence up.

(Transcript, p. 75-76)

Mrs. Regan's husband, John Michael Regan, neighbor of the Respondents and Appellants, and also owner of Lot 4, 1676 Sandridge Road, testified.

Q. And you were the big sailor who wanted to live near a pond; is that right?

A. Yes, sir.

Q. Can you tell the judge about that?

A. As my wife said, when we first found the property, we fell in love with it absolutely. The view, the pond, everything. And that's where we wanted to settle down.

Q. And when you came to find lot 4, you see lot 4 on that demonstrative?

A. Yes, sir.

Q. What was your understanding about what you owned, vis a vis the pond?

A. My understanding was that we had the land itself, the 3.51 acres plus the .11 acres of the pond, thus giving us access to the pond.

Q. And do you have any reason to contradict anything your wife said about access and access being blocked and all that?

A. No, sir.

Q. All right. What about your determination of where the lot actually went into the water? Tell the judge about that.

A. When we first went out to look at the land, we had the -- the guy who was going to clear the land with us. But we actually went and looked at -- there's the pin right here, and we actually measured out from that pin, and that spot fell within the water. I want to say it was -- and I don't remember the exact number of feet, but we did measure it out and it did fall into the water at that time.

Q. And tell His Honor about what has happened since with your having access?

A. Obviously, with the fence up, we have no access to it. As a matter of fact, Mr. Corrie actually trespassed on our land to put his fence up. We actually had to call the law, and they did serve him with trespassing notice, even though we had put "No trespassing" signs up.

Q. And in terms of your being able to access the pond, since 2021, have you been able to?

A. No, sir.

Q. All right. Your wife testified that there is actually a fence running down, I guess it would be your east property line that goes from here all the way down to Sandridge Road?

A. That -- that is correct. It's an all wooden fence with wire, and then it has two layers -- two rows of barbed wire on the top of that one.

Q. And it's my understanding that this property, the 42.36 acres is the Corrie's property; do you see that?

A. Correct.

Q. And part of that property has -- if I call it, I call it a flagpole or a flag, would that make sense?

A. Correct.

Q. That goes down to Sandridge Road; correct?

A. To give them access to that light, yes.

Q. Correct. And does this access from Sandridge Road, their lot, is that how they come on and off this property?

A. Yes, sir.

Q. Okay. I forgot to ask your wife about that. She stated that the fence now cuts off your access to the pond in total; correct?

A. Correct.

(Transcript, p-78-81)

Mrs. Jones, former owner of the previous owner of both the Respondents and the Appellants' properties also testified.

Q. Yes, ma'am. Are you the Madelyn Jones whose signature is on this plat?

A. Yes, it is.

Q. All right. And your husband was Paul Jones; correct?

A. Yes, sir.

Q. And y'all owned the acreage that brings us here today and got it subdivided at some point; correct?

A. Yes, sir.

Q. And Exhibit 1, which is right in front of you, I'll tell you, is the smaller version of this document.

A. Okay, I see that.

Q. And do you recall hiring Mr. Hager to do this survey?

A Yes.

(Transcript, p. 84-85)

...

Q. Okay. And do you recall that you and your husband subdivided your property into one, two, three, four, five lots with some acreage in the back?

A. Right.

(Transcript, p. 85)

...

Q. Okay. But let me show you another document, and as if this is your signature on this document. This is Exhibit 5, it's a deed from Paul W. Jones and Madelyn W. Jones to Keith and Stephanie Murray. Is that your signature, Ms. Jones?

A. Yes, that's my signature.

Q. All right. Do you recall selling lot 3 to the Murrays?

A. I sold all those lots to people, but I can't remember all their names. I sold -- I sold every one of those lots.

(Transcript, p. 86)

...

Q. Was that your signature in 2011; if you recall?

A. Yeah.

Q. Okay. But you don't remember specifically selling lot 3 to the Murrays?

A. No. I -- I can't remember names.

Q. But this is your signature on this deed; correct?

A. Yes, sir. Yes, sir.

Q. And are you aware this deed references this plat, or you don't have any knowledge about that?

A. Do what now?

Q. Lot 3 is described in this deed.

A. Three and a half acres.

Q. What else does it say? 3.5 acres total, .12 acres pond; correct?

A. Yeah.

Q. All right. Look at this plat, what does it show for lot 3? Shows 3.5 acres total, .12 acres pond; correct?

A. Well, that's what -- that's what those numbers up there at the bottom of the pond.

Q. Yes, ma'am, but I'm just saying you sold the Murrays their lot according to this plat; correct?

A. Right.

(Transcript, p. 87-88)

...

Q. Okay. That's all right. This plat was done in 2005; do you see that?

A. Mm-hmm.

Q. We need a yes or no, ma'am, for the record.

A. Well, if that's -- that's what it says, I did.

Q. Okay. And again, we've established this is your signature; correct?

A. Right.

(Transcript, p. 88-89)

...

Richard Rhode, who surveyed the Appellants' Plat in 2018, also testified.

Q. All right. And in terms of the matter that brings us here today, it's my understanding that you completed a survey and plat that we have marked as Exhibit number 2. Do you recognize that document?

(Plaintiff Exhibit 2 was marked for identification.)

A. I do.

Q. All right. Sir, if you could, please tell the court how you came to produce that plat?

A. This plat was a retracement of an exist -- two existing plats. One from Mr. Hager dated '05 regarding cabinet K-157, and Mr. Albert Ray Judy May 23, 2007, regarding cabinet L, page 67, sheet 3.

Q. And the plat that's K-157 is Exhibit number 1 and the enlarged, demonstrative blowup that's to your right?

A. That's correct.

Q. All right, sir. So you relied on Mr. Hager's work in drawing up your own plat; correct?

A. I surveyed the 42 -- 42.36-acre residual area.

Q. And that's what you were hired to survey; correct?

A. That's correct.

Q. All right, sir. And tell the court how it works in terms of when you're surveying certain acreage, that's all you're surveying. You're not surveying the surrounding properties; correct?

A. That's correct.

Q. And in terms of lots 1, 2, 3, 4, and 5, you weren't hired to make determinations about those lots; correct?

A. I -- I was required to make sure -- were with the -- the corners that's depicted on the -- of the -- of the properties.

Q. So in other words, when you were doing your survey, you had to confirm what Mr. Hager found; correct?

A. Correct.

Q. And were you able to do that, sir?

A. Some of the corners were wrong, and some were obliterated, and I had to reestablish.

Q. And why would they have been obliterated?

A. Have no clue. They just weren't there.

Q. They just weren't there; correct?

A. That's correct.

Q. And that could happen for various reasons, we just don't know; right?

A. Just don't know.

Q. Okay. In terms of your plat, were you able to make any determination about the pond and whether the lots on Mr. Hager's plat were actually waterfront or not?

A. Well, at that time -- there is a line on my plat that -- that shows a jagged line, which is the approximate water line at that time.

Q. And water lines can change over time, can't they?

A. It's according to whether they'd controlled -- controlled structure.

Q. For example if it rains a lot, or if we've 19 been in a drought, or if it's as you said a controlled structure with a dam. Lots of variables; correct?

A. Lots of variables.

Q. All right. And did you make any determination about whether lot 3 was actually --

Al I did not survey lot 3. My -- my survey was for the residual.

(Transcript, p. 92-94)

Elliotte Quinn, the surveyor hired by the Respondents also testified.

Q. And Mr. Quinn, I'm going to show you what we've marked as Exhibit number 3. I'm going to have some questions about that document. Tell His Honor how you came to be involved in this case?

A. I was contacted by your firm to prepare a survey of lot 3 in relation to an existing pond. So I we went out, surveyed the lot, and located the various features of the pond.

Q. And tell His Honor about the "Notes" section of a surveyor's plat. Does that reference what you referenced to come up with this plat. How does it work?

A. Yes. Well, the notes -- some notes are required and some of the notes we list here really are not so much applicable for this survey. Like flood zone wasn't really a part of what we were doing, but the counties and municipalities require that information. But it also references the taxment [sic] number the deed book and page for the ownership of the property and who the property owners are at that time.

Q. And it states in here that you all did not do a title search; correct?

A. That is correct.

Q. Does that ever happen when you do surveying work? Or can it happen?

A. We do not do title searches, but many times we are provided with a title search for fear -- for fear by our client or an attorney.

Q. And there was no title search given to you in this case; correct?

A. That is correct.

Q. And are there references to old plats in your notes?

A. In there are no references to the -- to the recorded plates, but in the title of the survey, is the reference to the recorded plat.

Q. And that would be a plat that we've discussed today. That's plat K-157; correct?

A. That is correct.

Q. All right, sir. But your task was not to reference Exhibit 1, the demonstrative K-157. It was to go out there and see what was on the ground, for lack of a better term; correct?

A. The way I understand my task in this situation was that we were to survey lot 3 in relation to this -- to the K-157 plat as well as the plat prepared by Mr. Rhodes and compare that to what we found on the ground and to the existing pond.

Q. And you just heard Mr. Rhodes. You've been in the courtroom for some time; correct?

A. Yes.

Q. And you heard his testimony saying, I-- he rather, not I. But he, Mr. Rhodes, survey was of the residual property; correct?

A. Correct.

Q. And you understood that when you looked at his plat in connection with yours; correct?

A. I did. Yes.

Q. And you understood Mr. Hager's plat said, "proposed pond, lot 3" which the title was supposed to have .12 acres on the pond; correct?

A. That' is the way Mr. Hager's plat is -- is labeled, yes.

Q. All right, sir. And Mr. Quinn, what did you discover when you went out to the property? Just walk us through your plat, in other words.

A. Okay. My crews surveyed lot 3. Found all of the corners of lot 3, which the back to corners --

Q. And you're pointing to --

A. -- at the northeast corner and the northwest corner of lot 3, were actually offsets to the actual corner of the lot. I believe there's 17 feet or -- yeah, 17 fee on the -- on the plat. They are set along the bank of the -- pond. And we also surveyed - we -- because of the issue in which we were made aware of going in, we also located the back corners of lots 2 through 4. And the intermediate corner on the rear line of lot 1. So we verified this entire back - monumented back line.

Q. And you stated a second ago, there were corners along the bank. Explain what you mean by that.

A. Well, the corners are not at the -- at the lot line. So the corner is along the sidelines, at an offset from the actual corner of the lot, so the monument to the corner is an offset to the actual corner.

Q. And in terms of where the pond is, does the water level of the pond matter, in your mind?

A. Well, it mattered in our mind because that's -- our task was to locate the pond in relation to the -- to the property corners.

Q. And what did you ultimately determine?

A. We determined that the water line of the pond, the actual water level of the pond was beyond the -- the bounds of lot -- well, 2, 3, 4.

Q. But you didn't make a determination about ownership of that section that was beyond the bounds; did you, sir?

A. No. Ownership is a legal term, not a surveying term.

Q. That's for His Honor to decide?

A. Exactly.

Q. And no one's asked you your opinion about that; have they, sir?

A. No, they have not.

Q. They've only asked you your opinion about what you found on the dirt; correct?

A. That is correct.

(Transcript, p. 96-101)

The Appellant, George Corrie, testified as follows:

Q. Who owns lot 1 as shown on this plat, sir?

A. That would be Steve and Mary Womble.

Q. And Steve and Mary Womble use this pond; do they not?

A. They own that section. You see where the survey line goes right across the water.

Q. And you're talking about this section here?

A. Yes, sir.

Q. All right, sir. And in terms of lots 2, 3, and 4, there's a section on this plat that goes across the water, too; isn't there?

A. Yes, there is.

Q. Okay. But you blocked access for those lots; correct?

A. I put a fence on my property line.

Q. Your testimony is that lot 1 has access because the lot line is shown on this plat; correct?

A. Correct.

Q. And I asked you if lots 2, 3, and 4 also have access as shown on this plat, and you said yes; correct?

A. That proposed pond is not on that side of the property line.

Q. That wasn't my question.

A. Oh, I know.

Q. My question is --

A. I see where you're going with it, but yeah.

(Transcript, p. 130-131)

...

Q. Yes, sir. Lot 1 you said has access because of the way the property line is shown running

--

A. Yes, sir.

Q. Let me just finish. Running north/south on this plat; correct?

A. Correct.

Q. And then there's also access for lots 1, 2, 3, and 4 for the property line running east/west on this plat; correct?

A. Sure.

Q. Were you here for when Ms. Regan testified, sir?

A. Yes, I was.

Q. All right. And you've been put on trespass notice by somebody for the county?

A. By -- by the sheriff's department. Yes, sir.

Q. Okay. And why is that?

A. Because erecting the fence, I stepped on her property.

(Transcript, p. 132-133)

...

Q. All right, sir. Let me show you the deed from Madelyn Jones to Anthony Wayne All and Sandra Rae All. Those are the folks who sold you your property; correct?

A. The Alls, yes, sir.

Q. Yes, sir. And you paid the Alls \$250,000 for your property?

A. That is correct.

Q. And that was back in March of '21; correct?

A. That sounds about right.

Q. All right, sir. And when did you put the fence across my client's property?

A. Probably within a month or two after that.

Q. Okay. And did that fence also run against lots 2 and 4 at the time?

A. The whole -- the whole edge of that pond if that's what you're asking.

Q. Okay. And who was the surveyor with whom you spoke about putting up this fence?

A. Vaughn and Melton.

Q. And that person's not here today; are they?

THE COURT: What's his name?

THE WITNESS: Vaughn and Melton.

BY MR. O'KELLEY:

Q. Do you think it'd be important to bring the person who told you you were authorized to do what you had to do? For the judge to listen to that person today?

A. That's not my responsibility, sir. I think it would be important, yes, but I don't call witnesses.

Q. And that person isn't here; are they?

A. Apparently not.

Q. And you want the court to believe that you put this fence in the right place; correct?

A. That's right.

(Transcript, p. 134-136)

...

Q. Does that plat agree with my client's position, sir?

A. I've seen -- I walk that property most every day. I know exactly where those pins are and they're not where they are on that survey.

Q. That wasn't my question.

A. I know.

Q. Does this survey show my client's own .12 acres of this pond?

A. That's -- that is a proposed pond. That pond is not -- that pond is, first of all, not even the same shape. It's not the same dimensions. It's not where that is on paper.

Q. Right, but --

A. But to answer your question, yes. If that's what you -- yes.

(Transcript, p. 137)

STANDARD OF REVIEW

In an action at law tried without a jury, the standard of review extends only to the corrections of errors of law. *Myers v. Town of Calhoun Falls*, 441 S.C. 146, 892 S.E.2d 514 (Ct. App. 2023); *Okatie River, LLC v. Se. Site Prep, LLC*, 353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2003). The standard of review in a declaratory judgment action is determined by the underlying issues. *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991). However, some of the of the underlying causes of action in this matter are equitable which means this Court may take its own view of evidences as to some of the issue presented and ruled upon below. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773. As there are both legal and equitable issues in this case, there is more than one standard of review.

ARGUMENT

I. THE TRIAL COURT CORRECTLY RELIED ON YEARS OF CASE LAW TO DETERMINE THE RESPONDENT'S OWNERSHIP OF 12 ACRES OF THE POND AT ISSUE IN THIS CASE RULING THE RESPONDENTS HAVE A SPECIAL INTEREST AND EASEMENT IN AND OVER THE POND

The Respondents pled properly for relief in their Summons and Complaint, (the "Complaint"), filed with the Court on September 2, 2021, by bringing forth an action pursuant to the provisions of the South Carolina Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, to obtain a declaration of the rights, status, and other legal relationships of the parties hereto in respect to the subject property in this matter. The Respondents pled asking this Court to declare rights, status, and other legal relationships as to the parties and as to the Respondents' ownership of their property. The Court granted the relief requested seeking to declare the Respondents' own a portion of the pond shown on their plat being described as follows:

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon if any, situate, lying and being in Givhans Township, County

of Dorchester, State of South Carolina, being shown and designated as **LOT 3, 3.50 AC. TOTAL, 0.12 AC. POND**, more or less, as more particularly shown on that certain plat entitled, "PLAT TO SHOW THE SUBDIVISION OF A PORTION OF A 65.25 ACRE TRACT SURVEYED FOR PAUL WAND MADELYN W JONES, LOCATED 6 MILES SE OF GROVER, DORCHESTER COUNTY, SOUTH CAROLINA," dated February 6, 2005 and revised May 28, 2005, prepared by Raymond B. Hager, S. C. RLS. No. 15185, and recorded June 21, 2005 in Plat Cabinet K, page 15 7; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

(Deed, April 1, 2014, Book 9229 at Page 20)(emphasis added)

In their Complaint, Respondents requested that this Court grant an Order declaring Respondents own a portion of the pond per the Plat dated May 28, 2005, and recorded on June 21, 2005, in the Office of the Register of Deeds in Book K at Page 157 and Enjoining the Appellants from blocking Respondents' access to their subject property by removing the fencing they placed on it. That request was granted.

Upon completion of all witness testimonies, the Respondents' counsel made a motion for a directed verdict in his clients' favor. The motion was based on the fact that no one has disputed the deed transferring Lot 3 to the Respondents, which references that they were supposed to receive .12 acres of the pond quoting from the applicable plat which was made part of the Respondents' deed. There was no testimony stating otherwise. The pond was referenced in the actual plat which shows that everyone's intent was to actually transfer .12 acres of the pond into any owner of Lot 3. This is further backed up by multiple witness testimonies. Furthermore, the other property owners who testified were shocked when they thought they were getting an acreage of the pond only to have a fence around the entire pond, trespassing and creating a nuisance on the neighbors as well as the Respondents' properties.

The Respondents' counsel argued that his clients are "...a layman, who's entitled to rely on the plain language of his deed that he gets .12 acres. You also heard from the neighbors who said they also thought they were getting some --..." (Transcript, p. 125)

The case law is clear and has been since 1965. If it's referenced in the Plat, it should be relied on as to property ownership. *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E. 2d 922(1965). "We have held that where a deed describes land as is shown on a plat, such plat become part of the deed." *Id.*; see also *Carolina Land Company v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975); *Murrells Inlet v. Ward*, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008); *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006). The plat that is referenced in the Respondents' deed clearly states that the Respondents own .12 Acres of the pond. Under the *Blue Ridge Realty* case and its progeny, the Respondents are entitled to that .12 acres.

The Court ruled properly pursuant to *Carson v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950) that the Respondents' lot adjacent to the Pond gives them a special property interest with which the Appellants interfered.

As the Court noted at trial,

"... the Blue Ridge line case is its progeny, and its successive rules say, essentially -- and these were streets and roads on a plat that were never developed -- that the owner of the lot that took the property according to the plat, had a private access easement to those other roads and streets. And generally, you will look at areas such as recreation areas with the same caution, that if you take property according to a plat in which the recreation area is shown, the party who acquires that lot acquires a private access interest to the recreational area..." (Transcript, p. 126)

A trial the Court further questioned, "...whether or not that line of reasoning and those cases can or does apply to a case in which property subdivided with reference to a "proposed pond" and whether the Blue Ridge cases will control, or whether the Williams case, which is hard

and fast you own the subsurface, you own the ground underneath it, you own the water over it."

(Transcript, p. 126-127)

..."

The case law is clear and has been since 1965. If it's referenced in the Plat, it should be relied on as to property ownership. *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E. 2d 922(1965). "We have held that where a deed describes land as is shown on a plat, such plat become part of the deed." *Id.* The plat that is referenced in the Respondents' deed clearly states that the Respondents own .12 Acres of the pond. Under the *Blue Ridge Realty* case and its progeny, the Respondents are entitled to that .12 acres. At trial the Court further questioned, "...whether or not that line of reasoning and those cases can or does apply to a case in which property subdivided with reference to a "proposed pond" and whether the *Blue Ridge* cases will control, or whether the *Williams* case, which is hard and fast you own the subsurface, you own the ground underneath it, you own the water over it." (Transcript, p. 126-127).

"... the *Blue Ridge* line case is its progeny, and its successive rules say, essentially -- and these were streets and roads on a plat that were never developed -- that the owner of the lot that took the property according to the plat, had a private access easement to those other roads and streets. And generally, you will look at areas such as recreation areas with the same caution, that if you take property according to a plat in which the recreation area is shown, the party who acquires that lot acquires a private access interest to the recreational area..." (Transcript, p. 126)

A trial the Court further questioned, "...whether or not that line of reasoning and those cases can or does apply to a case in which property subdivided with reference to a "proposed pond" and whether the *Blue Ridge* cases will control, or whether the *Williams* case, which is hard and fast you own the subsurface, you own the ground underneath it, you own the water over it." (Transcript, p. 126-127)

There can be no doubt that the Browns own 0.12 acres of the pond. (Order, p. 10)

II. THE PLAT AND DEEDS PROVE THE CLEAR INTENT TO CONVEY .12 ACRES OF THE POND TO THE RESPONDENTS AND THEIR PREDECESSORS IN INTEREST AS SHOWN ON THE APPLICABLE PLATS AND IN THE DEEDS AS RELIED UPON BY THE RESPONDENTS AND THEIR NEIGHBORS WITH SIMILAR PLAT AND ACREAGE REFERENCES IN THEIR DEEDS

As correctly determined by Judge Chellis, the Browns own 0.12 acres of the pond. (Order, p. 10) This is more than a “special property interest” or an “easement”, but, in fact, is ownership. Such ownership gave them their “special property interest” as relied upon by Judge Chellis. Which also includes an easement to use and enjoy the pond. That should be upheld by this Court.

Correctly citing the applicable plats as well as the case of *Proctor v. Shelley*, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012), Judge Chellis recognized the rights of the Browns to use the pond pursuant to their ownership of 0.12 acres of the pond as referenced in their deed and as shown on the Metts plat referenced therein.

CONCLUSION

For the reasons stated above, and as set forth in the Court’s highly reasoned and specific order interpreting the law, it is clear that The Honorable James E. Chellis used his proper discretion and his Order should be upheld.

Respectfully submitted:

Mt. Pleasant, South Carolina
July 10, 2024


G. Hamlin O’Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com