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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master In Equity

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

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. Murray, Stephanie L.R. Murray, Dollar Bank Federal Savings Bank, The Bank of South Carolina, John Doe and Mary Roe, fictitious names representing all 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.

FINAL BRIEF OF THE APPELLANTS

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INTRODUCTION

On February 6, 2024, the Honorable Judge James E. Chellis, of the First Judicial Circuit in Dorchester County, issued a ruling in favor of the Respondents, granting them an appurtenant easement over the Appellants' property and ordering the removal of a fence from the grounds of said property. Appellants filed a Motion to Reconsider the lower court's ruling on February 16, 2024, whereupon the motion was later denied on March 6, 2024. Appellants subsequently filed a Notice of Appeal with this Court on March 15, 2024, and submit this Final Brief as result of their Appeal.

The lower court's ruling warrants rehearing on the grounds that the court misapplied or misapprehended South Carolina precedent when determining the outcome of this case. Specifically, the lower court's decision declined to correctly apply established South Carolina case law regarding implied easements to the facts of this case when issuing its ruling. Additionally, as stated in more detail below, the lower court overlooked material facts in issuing its order requiring the removal of the Appellants' fence which was located solely on their own private property. For these reasons, and those articulated below, the Appellants respectfully request that this Court overturn the lower court's ruling by revoking the appurtenant easement placed on the Appellant's property and reversing the order requiring the removal of the Appellants' fence from the same.

STATEMENT OF THE CASE

On September 2, 2021, Respondents filed a Complaint against the Appellants (and various other parties previously associated with the properties in question) in the Dorchester County Court of Common Pleas. (R. pp. 40-48) The Respondents sought a declaratory judgment against the Appellants and a court order requiring the removal of a fence from the Appellants' land. (R. pp. 40-48) In their complaint, the Respondents sought judgment from the court solely on the grounds of private nuisance and trespass. (R. pp. 40-48) However, neither of these causes of action were

fundamental in the lower court's ruling, seeing as both actions were dismissed with prejudice in the court's Final Decree. (R. p. 32) On November 11, 2021, Appellants filed their Answer and Counterclaim against the Respondents, denying all allegations in the Complaint and seeking declaratory judgment from the court, stating the Appellants are the sole and rightful owners of the pond located on the property and were within their lawful rights as property owners to erect the fence in question. (R. pp. 69-79)

On January 20, 2022, Respondents filed a Motion for Summary Judgment with the lower court, requesting that the court grant their motion on the grounds that the Appellants failed to timely reply to the Respondents' first set of requests for admissions, thus deeming all referenced statements as admitted. (R. pp. 96-97) On February 1, 2022, Appellants filed a motion to withdraw the admissions which resulted from their inadvertent failure to submit a timely reply. (R. pp. 98-100) Relying on SCRCP Rule 36, Appellants requested that the court grant their motion on the grounds that allowing the withdrawal would serve the presentation of the merits of the action, and Respondents would not be prejudiced in their ability to maintain their action on the merits. (R. p. 98-100) The Appellants' motion was granted.

Spanning from the months of February 2022 to November 2022, all other parties named in this case as defendants by the Respondents were dismissed from the action, leaving only the Respondents and Appellants as active parties to the matter. On November 30, 2022, this case was referred to the Honorable Justice Chellis, Master in Equity for Dorchester Country. (R. pp. 10-13) On January 23, 2023, the Appellants' Consent Order substituting Steven L. Smith of Smith | Closser, P.A. as counsel was granted, discharging all previous representation of their duties.

On June 16, 2023, Appellants filed a Motion for Summary Judgment with the lower court on the grounds that there was no material issue of fact and requested a judgment on the pleadings.

(R. pp. 123-124) On August 25, 2023, Respondents filed a second Motion for Summary Judgment with the lower court based on the allegation that one of the original boundary stake posts had resurfaced from underneath the water of the pond in question, entitling them to a property interest in the pond based on the plat referenced in their initial Complaint. (R. pp. 125-126) All Motions for Summary Judgment were denied prior to trial. (R. pp. 14-17)

This case was heard before the Honorable Judge Chellis on October 16, 2023, and the Final Decree was issued in favor of the Respondents on February 6, 2024. (R. p. 18-33) Appellants filed a Motion to Reconsider with the lower court on February 16, 2024. (R. pp. 128-150) However, the motion was later denied on March 6, 2024. (R. p. 34-36) Appellants come before this Court as a result of their Notice of Appeal filed on March 15, 2024. (R. p. 92) The Appellants request that this Court set aside the lower court's ruling and allow their arguments to be heard again.

STATEMENT OF FACTS

This case originated in 2005 when the original owners of the parcels in question ("the Jones") subdivided their 67.13-acre tract of land into five parcels. Four of these parcels are fronted to the south by a public highway and collectively account for 25.21 acres of the original tract of land. The remaining 41.92 acres of land ("the Residual Property") remain undivided and lie to the north of the four subdivided parcels.

In 2005, the Jones commissioned Mr. Raymond B. Hager to survey the newly subdivided tracts which the Jones intended to sell. (R. p. 211, 23 lines 1-25) At the time of the subdivision, Mr. Jones, who was deceased at the outset of this trial, had been excavating a sand mine just north of the four subdivided parcels to collect dirt and sand for his construction company. (R. p. 211, 23 lines 1-25) In the resulting plat, which he rendered after surveying the Jones' land ("the Hager Plat"), Mr. Hager included the large pit which Mr. Jones had been excavating for

resources, labeling it as a "proposed pond." (R. p. 284) This label was included on the Hager Plat despite the absence of any water in the pit at the time of the survey and seemingly without consulting with the Jones regarding the pit's intended use. At trial, Mrs. Jones' stated that the hole that was dug was never intended to be a pond. (R. p. 226, 85 lines 12-20 - p. 227, 86 lines 1-9) In fact, Mrs. Jones further testified that she was unaware of the "proposed pond" label contained in the Hager Plat until days ahead of the trial. (R. p. 227, 86 lines 7-9)

Following the survey, the Jones began selling the four subdivided parcels individually. The parcel which demands the attention of this Court is labeled as Lot 3 on the Hager Plat. (R. p. 284). Lot 3 was first conveyed by the Jones to the Murrays on March 10, 2011. (R. p. 287) The Murrays subsequently conveyed Lot 3 to the Respondents on March 27, 2014. (R. p. 293) Both conveyances of Lot 3 relied on the Hager Plat as their primary source for the boundaries of the lot. (R. p. 284) According to Mrs. Jones' testimony, none of the lots sold, including Lot 3, were advertised, or marketed as "waterfront property," and no right or easement to the pond was ever implied to have run with the land. (R. p. 227, 88 lines 14-16)

On July 25, 2018, the Jones conveyed the Residual Property to the All family. (R. p. 298) During their ownership, the Alls commissioned a survey of the property by Mr. Richard J. Rhode. The resulting plat ("the Rhode Plat") provides a detailed depiction of the "proposed pond" seen on the Hager Plat, showing the present-day boundaries of the pond and the lots situated to the south of the pond's waterline. (R. p. 285).

On March 15, 2021, the Alls conveyed the Residual Property to the Appellants. (R. p. 302) Upon acquiring the Residual Property, the Appellants erected a fence along the southern boundary line of their property as indicated by the Rhode Plat. (R. p. 285). Subsequently, Respondents sued the Appellants in the Dorchester County Court of Common Pleas, stating that

the fence interfered with the Respondents' use of the pond located on the Appellants' land. (R. pp. 40-48) The lower court issued a ruling granting the Respondents a special property interest in the form of an appurtenant easement over the Appellants' land and are entitled to the private use and enjoyment of the pond located on the Appellants' property. (R. pp. 31-32) In its ruling, the lower court also ordered the removal of the fence from the Appellants' property. (R. p. 32) The Appellants now appeal the lower court's ruling.

STANDARD OF REVIEW

"In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E. 2d 773, 775 (1976). The rule is the same whether the judge's findings are made with or without reference. *Id.* The judge's findings are equivalent to a jury's findings in a law action. *Id.*

As the finder of fact, it is for the trial court to resolve conflicts in the trial testimony. *Sherman v. W & B Enters., Inc.,* 357 S.C. 243, 250, 592 S.E.2d 307, 310 (S.C. Ct. App.) (2003). "Although there may be conflicts in the evidence in the trial record, the appellate court's standard of review allows the court to only look for the existence of evidence and not to weigh its credibility." *Id.*

"The determination of the existence of an easement is a question of fact in a law action" and subject to an any evidence standard of review when tried by a judge without a jury. *Jowers v. Hornsby*, 292 S.C. 549, 551, 357 S.E.2d 710, 711 (1987). However, the determination of the extent of a grant of an easement is an action in equity. *Moore v. Reynolds*, 285 S.C. 574, 577, 330 S.E.2d 542, 544 (Ct. App. 1985). Thus, we may take our view of the evidence on the latter issue. *Townes Assoc., Ltd. v. City Council of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); see also [**335]

Floyd v. Floyd, 306 S.C. 376, 412 S.E.2d 397 (1991) (for treatment of cases containing both legal and equitable issues). *Smith v. Comm'rs of Pub. Works*, 312 S.C. 460, 467 (S.C. Ct. App.) (1994).

ARGUMENT

Pursuant to South Carolina case law, an appurtenant easement may be expressly or impliedly applied to the land of another to allow for an individual landowner to fully enjoy their own property. *Inlet Harbor v. S.C. Dept. of Parks, Recreation and Tourism*, 377 S.C. 86, 659 S.E.2d 151 (2008). Once an appurtenant easement has been recognized by the courts, it runs with the land and will transfer in all future conveyances of the land. *Steele v. Williams*, 204 S.C. 124, 130, 28 S.E.2d 644, 647 (1944). Absent an express agreement, when determining whether an implied easement exists the courts will look at the intent of the original conveyors as well as four elements required to establish an appurtenant easement. *Inlet Harbor* at 88.

In addition to these elements, courts also defer to well established South Carolina law in differentiating the special property interests a landowner may have in land which sits adjacent to the landowner's property. These interests are dependent upon whether the easement is being sought over a public road, park, or square or if the land falls within the category of private property. *Cason v. Gibson*, 217 S.C. 500, 509, 61 S.E.2d 58, 62 (1950).

Based on the facts of this case and the governing case law on the issues, the lower court erroneously applied South Carolina precedent regarding special property interests and erred in granting the Respondents an easement over the Appellants' land and thus further erred in ordering the removal of the fence from the Appellants' property.

I. The lower court erred in finding Respondents' have established a special property interest in the form of an appurtenant easement over Appellants' property.

An appurtenant easement is a right held by one landowner to use the land of another landowner for a specific purpose. *Jacobs v. Service Merchandise Co.,* 297 S.C. 123 (SC Ct. App.)

(1988). Appurtenant easements may be created either expressly or by implication. *Inlet Harbor v. S.C. Dept. of Parks, Recreation and Tourism*, 377 S.C. 86, 659 S.E.2d 151 (2008). In *Inlet Harbor*, the Supreme Court provided, "Implied easements are based upon the theory that whenever one conveys property, he intends to convey whatever is necessary for the property's use and enjoyment." *Id*.

Pursuant to well established South Carolina Supreme Court case law, an appurtenant easement must "inhere in the land, concern the premises, have one terminus on the land of the party claiming it, and be essentially necessary to the enjoyment thereof." *Steele v. Williams*, 204 S.C. 124, 130, 28 S.E.2d 644, 647 (1944). In simpler terms, for an appurtenant easement to exist, the easement must: (1) be related to the dominant property itself; (2) affect the dominant property in some way; (3) connect the dominant property to the servient property; and (4) be *essentially necessary* to the enjoyment of the dominant property. *Id.* Once established, an appurtenant easement runs with the land and transfers with it upon conveyance. *Id.* Alternatively, if the easement does not satisfy all four elements required of an appurtenant easement, it may be characterized as an easement in gross. 12 S.C. Juris. *Easements* § 3(c). Notably, an easement in gross is a mere personal privilege to use the land of another and thus is incapable of transfer upon conveyance of the dominant land. *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414 (1964). In this case, access to the pond in question was never intended to be conveyed with Lot 3 by the original conveyors nor is access to the pond necessary for the Respondents' enjoyment of their land.

A. There was no intent by the original conveyors to transfer an appurtenant easement over the Appellants' land to any future owners of Lot 3.

The establishment of an appurtenant easement can be achieved through various different means. One common way is through an express grant, where the character of the easement is determined by the nature of the right and the intention of the parties creating it. *Smith v. Comm'rs*

of Pub. Works, 312 S.C. 460, 467 (S.C. Ct. App.)(1994). The language of the agreement can be evidence supporting the conclusion that the agreement establishes an appurtenant easement. *Id.* For instance, if an agreement contains language such as "the future owners shall…" this language can indicate the intent of the parties and be binding on any successors to the land. *Smith* at 471. Alternatively, S.C. courts have been hesitant to recognize non-expressly authorized easements, or implied easements. In *Harbor Inlet*, the Supreme Court provided "The purpose of an implied easement is to give effect to the intentions of the parties to a transaction, and because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself, implied easements are not favored." *Harbor Inlet* citing 17 Aam. Jur. Easements 37 (1957) (*see also* 28A C.J.S. *Easements* 61 (1996)).

This Court issued a ruling on a case with facts strikingly similar to the matter at hand in its opinion for *Braselton v. Roberts. Braselton v. Roberts,* No. 2021-UP-280, 2021 S.C. App. Unpub. LEXIS 305 (Ct. App. July 21, 2021). In *Braselton*, a plaintiff appealed a trial court's ruling which held that a notation on a subdivision's plat which listed certain lots for "agricultural use only" did not create a valid restriction on the lots therein. *Id.* The trial court held that the notation did not create a restrictive covenant because upon viewing extrinsic evidence surrounding the creation of the original plat, there was no intent by the parties who commissioned the plat to restrict the use of the lots or convey a certain purpose for the lots. *Id* at 1. On appeal, this Court opined, "In the interpretation of maps and plats, intention will not be inferred by symbols of uncertain meaning or from fanciful adornments on the plat…circumstances surrounding the origin of an alleged restriction may also be considered in construing that restriction." *Braselton* citing *Hamilton v. CCM, Inc.*, 274 S.C. 152, 263 S.E.2d 378 (1980). This Court further provided "Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties.

The determination of the parties' intent is then a question of fact." *Id* at 3. Moreover, this Court ruled that while the language used in the agricultural use provision of the plat was not ambiguous, the origin of the language on the plat created ambiguity. *Id* at 3-4. This Court opined "The presumption of an implied easement may be rebutted by a specific, contrary intention by the grantor." *Id* at 4-5. In conclusion, this Court found that because the grantors in the case never intended to create a restrictive covenant requiring the lots to be used for agricultural use only, the language on the plat was not binding. *Id.* Supporting these findings, this Court concluded, "As the grantors, their intent is paramount as only the grantors can create a restriction that runs with the land." *Id* at 12.

Like the facts of *Braselton*, as evidenced by Mrs. Jones' testimony, there was absolutely no intention by the original grantors for there to be a pond on the Residual Property at the time of its survey, thus making any alleged intention of an easement for Lot 3 to have access to the Appellants' pond an impossibility. As previously mentioned, Mrs. Jones, the original subdivider and conveyor of all lands in question, never marketed Lot 3 as being "waterfront property" nor did she ever represent to any prospective purchaser of Lot 3 that they would be entitled to the use and enjoyment of the "proposed pond." (R. p. 227, 88 lines 14-16) Additionally, providing further evidence of a lack of the original party's intentions to convey an appurtenant easement over the Appellants' land, Mrs. Jones was unaware that the original plat made any mention of a "proposed pond" until she was shown the Hager Platt mere days before the trial of this case. (R. p. 226, 85 lines 12-20) In fact, the hole in the property that is now filled with water was never intended by the original conveyors to be a pond at the time of the subdivision and conveyance of Lot 3. (R. p. 211, 23 lines 1-20) Mrs. Jones testified that the hole which was surveyed and included on the Hager Plat as a "proposed pond" was a sand mine that her husband had been excavating to harvest

resources for his construction company. (R. p. 226, 85 lines 12-22) She further testified that the hole was never intended to be a pond or any other type of amenity to be conveyed with the subdivided land. (R. p. 226, 85 lines 12-25-p. 227, 86 lines 1-8) Lacking any intention to transform the empty hole into a pond, there could have been no intention by the Jones' family to convey any right to a pond which they, at the time, had no intention or anticipation of its very existence.

Adhering to the precedent put forth by this very Court, the original grantor's intentions in conveying any implied easement are paramount to any map or plat saying otherwise. *Braselton* at 12. Thus, because the Jones had no intentions in creating a pond when conveying the title of the land in question, no easement to the pond on the Appellants' land was ever conveyed with the title to Lot 3.

B. The pond is not essentially necessary for the Respondents' enjoyment of their land.

In *Proctor v. Steedley*, this Court took up a case which honed in on the fourth factor required for an appurtenant easement to exist; that it be *essentially necessary* for the enjoyment of the property thereof. *Proctor v. Steedley*, 398 S.C. 561, 730 S.E.2d 357 (SC Ct. App. 2012). This case concerned the right of a plaintiff-landowner to exercise an appurtenant easement over the neighboring defendant-landowner's access road. *Id.* The access road ran alongside a pond which opened up into a ravine between the two landowners' properties. *Id.* Without the use of the defendant-landowner's access road, the plaintiff-landowner was unable to access the north side of her property. *Id.* This Court found that an appurtenant easement granting the plaintiff use of the defendant's access road was essentially necessary for the plaintiff's enjoyment of her property, reasoning that without the use of the access road, the plaintiff would have lost all possible use and enjoyment of the north side of her property. *Id* at 577.

When applying the rationale of this Court's holding in *Proctor* to the facts of this case, it is clear that the Respondents' do not meet the judicial requirement needed to satisfy the fourth element to establish a right to an appurtenant easement. As cited by the lower court in its Final Decree, both the pond and the erected fence are located solely on the land of the Appellants, and in no way abut across the property boundaries of the Respondents. (R. p. 28) In contrast from *Proctor*, where the easement was essential for accessing the plaintiff's *own* land, here, the Respondents seek an easement for the sole purpose of being able to venture onto the *Appellants'* land and benefit from a pond that in no part touches the Respondents' own property.

At trial, Respondent testified that he "thought" he had purchased access to the pond which resides on the Appellants' land. (R. p. 216, 43 lines 20-21) Regardless of whether the Respondents' "thought" they were purchasing access to the pond when Lot 3 was conveyed to them, the pond itself is not essentially necessary for the enjoyment of their land. The Respondents' primary use of Lot 3 is that of residential dwelling. No evidence has been shown that the Respondents rely on this pond for the purposes of their livelihood (food, running water, electricity, etc.) The Respondents have not made any argument nor produced any evidence to support the notion that depriving the Respondents of the Appellants' pond endangers their way of life, nor have they made any showing that use of the Appellants' pond is necessarily essential to the enjoyment of Lot 3 for residential purposes. While having access to a pond which they do not own or have a financial stake in might be a massive benefit to the Respondents, the use of the Appellants' property has not been shown to be essentially necessary to the Respondents' enjoyment of Lot 3. For the foregoing, the Respondents do not satisfy the fourth requisite for an appurtenant easement, thus the lower court erred in granting such in its Final Decree.

Due to the lack of knowledge or intention by the original owners to create or convey an easement, in addition to the Respondents' failure to fulfil all four elements required to establish an appurtenant easement, it cannot be shown that Respondents are entitled to any appurtenant easement or special property interest, express or implied, over the Appellants' land. Thus, the lower court erred in finding such an easement existed, as well as ordering the removal of the Appellants' fence.

II. The lower court erred in applying the law of special property interests to the Appellants' private property.

In its Final Decree, the lower court cited *Cason v. Gibson*, which states: "Persons owning lots fronting on or adjacent to property dedicated as *public* parks or squares, or streets, highways, and the like, have such special property interests as entitle them to maintain a suit for the enforcement and preservation of the use of the property as such." *Cason v. Gibson*, 217 S.C. 500, 509-510, 61 S.E.2d 58, 62 (1950) (*emphasis* added). However, the lower court, seemingly contradicting itself, ruled in the following paragraph: "The Plaintiffs Brown own Lot 3, per the Metts Plat[1], which is adjacent to a Pond as shown on that Plat. The Plaintiffs Brown have a special property interest as [to] entitle them to enforce and preserve the use of the Pond." (R. p. 29)

Despite citing to Supreme Court case law which unambiguously grants special property interests only when a private property is adjacent to *public* roads, squares, parks, or highways, the court erroneously applied this principle to a private pond located on the neighboring property of a private landowner. In effect, the lower court has established its own case law, acknowledging the right of any and all private landowners to be entitled to the use and enjoyment of amenities located on the private property of property owners adjacent to them.

[1] Entitled "Hager Plat" in this Brief.

All relevant South Carolina case law regarding private rights of access and special property interests generally revolve around courts granting individuals easements to access public roads. There is no applicable established South Carolina law which necessitates a state court to impede upon the privately owned property of an individual for the purpose of allowing a neighboring landowner to enjoy the benefits of the other's land, unless for the existence of a public access or for the purposes of reaching a blocked off portion of their own land.

In *Cason v. Gibson*, the South Carolina Supreme Court ruled on a case which concerned a property owner's right regarding a public road that was mapped on the plaintiff's plat but was never actually constructed by the city. *Cason* at 502. Years later, the plaintiff's neighbors began building structures on the land which would have been the road fronting the plaintiff's property. *Id.* The plaintiff sued to have the construction halted. *Id.* The Court opined, "Where lots in a subdivision are sold by reference to a map or plat upon which ways are shown which are or become public streets or highways, the private easement which arises upon such a sale survives the vacation, abandonment, or closing of the street or highway by the public." *Id* at 503. Moreover, the Court also adopted another rule which states, "persons owning lots fronting or adjacent to property dedicated as *public* parks or squares, or streets, highways and the like, have such special property interests as to entitle them to maintain a suit for the enforcement and preservation of the use of the property as such. *Id* (*emphasis* added). Thus, the Court ruled in the plaintiff's favor and remanded the case to the lower court for the issuance of the permanent injunction which halted the construction of the buildings on the proposed public road. *Id* at 518.

Following *Cason*, the Supreme Court applied the same rationale in *Blue Ridge Realty Company v. Williamson* when ruling on a dispute involving the obstruction of a cul-de-sac in a public neighborhood. *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965).

In *Blue Ridge* the defendant acquired property rights to the cul-de-sac portion of a public neighborhood which abutted onto lots not owned by the defendant. *Id* at 113. The defendant built a wall obstructing the cul-de-sac so that no one could travel back to his portion of neighborhood lots. *Id.* The neighboring plaintiffs sued, reasoning that their lots fronted the cul-de-sac and therefore they were entitled to an implied easement to the road therein. *Id.* The Court held the plaintiffs, as owners of the land adjacent to the proposed public road, held an easement, which survived any vacation or abandonment of the portion of the road by public authorities. *Id* at 120. The court relied on case law found in *Blair v. Astin*, which states "persons who own lots fronting on or adjacent to property dedicated as public streets or highways have such a special property interest as entitle them to maintain a suit for the enforcement and preservation of the use of the property as such." *Blue Ridge* citing *Blair v. Astin, 10 S.W.2d 1054 (Tex. Civ. App. 1928).*

Here, unlike the facts in *Cason* and *Blue Ridge*, the property in question is in no way a public park, square, road or highway. The application of case law concerning special property interests granted to lands that front or abut public grounds is entirely misapplied to the facts of this case which concerns a private landowners rights to a pond on their property. None of the case law cited in the lower court's Final Decree pertains to the issue of easements over private lands. Instead, all precedents relied on by the lower court in reaching its conclusion concern special property interests relating to public access ways.

Therefore, the lower court erred in applying the laws of special property interests to the private property of the Appellants. Consequently, this Court should overturn the lower court's ruling, revoke the easement granted to the Respondents, and nullify the Order requiring the removal of the fence located on the Appellants' property.

CONCLUSION

For the foregoing reasons, this Court should overturn the lower court's ruling on the grounds that the lower court erred in finding an appurtenant easement exists over the Appellants' land, and rescind the Order requiring the removal of the Appellants' fence.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211, SCACR.

August 2, 2024

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