THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-CP-20-401
Appellate Case No. 2013-001386

Carol Reid Smallwood, Barbara Reid Strickland, Ann Reid Hamlin,
William L. Reid, III, Judith Lawrence Medlin,
Frances Patterson Lawrence . . . . . .Appellants,

v.

Helen M. Lee, Linda Lee and Joe Lee, Jr., as Co-Trustees of the
Joseph H. Lee, Sr. Family Trust U/W . . . . . .Respondents.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

The action below was filed on October 2, 2012. The appellants requested that the court find that they have a prescriptive easement across the lands of the respondents. The appellants own a timber tract to the east of the parcel owned by the respondents. At issue is whether the appellants have the right to cross the respondents' property by using a path that they claim has been the sole access of their family since 1912.

The respondents answered and denied the existence of the easement. The trial of the case was held before the Honorable Brooks P. Goldsmith on April 18, 2013. On May 14, 2013 his Order was filed, in which he denied he existence of the prescriptive easement. The appellants served their Notice of Appeal on June 12, 2013.

FACTS

Carol Reid Smallwood, Barbara Reid Strickland, Ann Reid Hamlin, William L. Reid, III, Judith Lawrence Medlin and Frances Patterson Lawrence (the "appellants") are the owners of a 127 acre tract of land that is located in northern Fairfield County. Helen M. Lee, Linda Lee and Joe Lee, Jr., as co-trustees of the Joseph H. Lee, Sr. Family Trust U/W (the "respondents") are the owners of a 142.55 acre tract of land in northern Fairfield County that is located to the west of the appellants' parcel. Both parcels extend into southern Chester County, but the issues at hand in this Appeal are concerned primarily with the Fairfield portions of the properties. See Plaintiff's Trial Exhibit #1, a plat showing a general view of the properties.

The appellants received their interests in their property through devise, as did the respondents. The appellants' parcel, being landlocked, has no direct access to a public road, and they claim that access to their parcel has been over a prescriptive easement across the respondents' tract since at least 1912, when their ancestor, William L. Reid, purchased the property. The respondents dispute the existence of the prescriptive easement claimed by the appellants.

The appellants parcel is a wooded timber tract. The respondents' parcel has also been passed down through their family, and respondent Helen M. Lee and her late husband moved onto the property in 1989. Mr. Lee, Sr. died in 1999, and devised the property to the respondents.

The disputed easement as claimed by the appellants leaves the public road, known as the Old Douglass Road, traverses in an easterly direction, then turns to the south, passes the residence of respondent Helen M. Lee, continuing in a southerly direction, eventually turning in an easterly direction where it crosses a pasture before connecting to the road system in the appellants' tract. The appellants' parcel is referred to interchangeably as the Reid Tract or the Henry Place (from the names of the sellers in 1912).

In 1992/1993, the appellants were scheduled to harvest the timber on their parcel and due to reconfigured or new fencing in the respondents' pasture, Joe Lee, Sr. and the appellants' forester arranged for the logging equipment needed for harvesting to pass over the northern end of the pasture, through a gate, instead of the southern end, to reach the Reid Tract.

In 2010, the new crop of timber planted after the 1992/1993 harvesting was scheduled for thinning. Helen M. Lee, one of the trustees currently owning the Lee property refused to allow the appellants access to their property.

ARGUMENT

I. THE TRIAL COURT ERRED IN NOT FINDING THAT THE APPELLANTS HAVE A PRESCRIPTIVE EASEMENT FROM THE PUBLIC ROAD, ACROSS THE LAND OF THE RESPONDENTS, TO THEIR TIMBER TRACT.

The appellants claim a prescriptive easement across the respondents' tract to access their timber parcel. In order to prove a prescriptive easement to cross another's property, one must show: 1) the continued and uninterrupted use or enjoyment of a right for a full period of twenty years; 2) the identity of the thing enjoyed and; 3) that the use or enjoyment was adverse or under a claim of right. Horry County v. Laychur, 315 S.C. 364, 367, 434 S.E. 2d 259, 261 (SC 1993). As shown below, the appellants established at trial their right to a prescriptive easement across the respondents' tract of land.

A. CONTINUED AND UNINTERRUPTED USE OR ENJOYMENT FOR A FULL PERIOD OF TWENTY YEARS

1. Continual Use

To establish the continual use requirement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant. Jones v. Daley, 363 S.C. 310, 318, 609 S.E.2d 597, 601 (S.C. App. 2005) (quoting 25 Am.Jur.2d Easements and Licenses Section 68 (1996)). In its Order, the court below ruled that the appellants did not meet the continual use requirement notwithstanding the Court of Appeal's admonition that "... the elements of continued use does not require the use thereof every day for the statutory period or even on a weekly or even monthly basis; but simply the exercise of the right more or less frequently according to the nature of the use and needs of the claimant."Jones, Id. at 318, 609 S.E.2d at 601. In its ruling the trial court below ruled that despite this inexact language, "... nothing in the Jones decision suggests that usage

separated by six to eight years or even sixteen years is a reasonable frequency." Order at 3.

The appellants submit that this is an incorrect application of the law. Clearly, the Court of Appeals was careful to not set a strict numerical requirement for access purposes. As stated, the use must be only of a reasonable frequency as determined by the nature of the use and the needs of the claimant. Jones, 363 S.C. at 318, 609 S.E.2d at 601.

The appellants' land is a landlocked timber tract with its only access to the public road being the easement in question. Trial tr. at 58, lines 5-25; at 59, lines 1-3. Depending on the growth status of the standing timber, access to the tract for timber management purposes may not be necessary for extended periods of years. As testified to by Tom Patrick, the forestry management consultant of the appellants, timber is a forty year crop; after clear cutting a tract and replanting has taken place, approximately sixteen years pass before it is necessary to access the parcel for thinning. Thereafter, subsequent thinning takes place at eight year intervals with access needs largely limited to the thinning operations. Trial tr. at page 53, line 24-25, page 54, lines 1-5. It is submitted that the usage of the appellants' access to their timber tract, using the disputed easement as their sole access, is entirely reasonable given the type of crop on the land.

Moreover, a close reading of Jones leads to the conclusion that the facts in that case are similar to the facts here. In Jones, the family farmed its parcel from the early 1950's until 1959. Jones, 363 S.C. at 313, 609 S.E.2d at 598. Thereafter, the family's access became less frequent over the years and because of the access road to the property had been plowed to create a firebreak, it became referred to as "buried" property. Id.

Jones took full ownership of the property in 1993. Id. at 313, 609 S.E.2d at 598. In 2001, she attempted to haul timber from her parcel over the disputed easement and was prevented from

doing so by the defendant. Id. at 314, 609 S.E.2d at 599. It is submitted to the Court that given the testimony in Jones that after the access road was plowed and the land became "buried," access to the property by Jones was "sporadic," not only because she was not a local resident, but also because the land was not being actively utilized for active, row crop farming. Thus, the property apparently assumed the character of a timber tract, like the property at issue in this Appeal.

The Jones case was reversed and remanded for the trial court to explore the question of continual use, as that trial court had erroneously ruled that Jones did not have exclusive use of her easement, and thus no easement, but left the continual use question largely unexplored. Id. at 317, 609 S.E.2d at 600. In this Appeal it is submitted that the appellants have fully documented their continual use and the trial court here misapplied the law.

As stated in the testimony of Judith Medlin, who is 67 years old, she has traveled over the disputed easement to reach the Reid tract since she was a young girl up until recent years. Trial tr. at page 11, lines 20-25; at 12, lines 1-4. She first came across the easement with older family members (then owners of the Reid tract) to inspect the planting during summer months, Trial tr. at page 17, lines 18-25, page 18, lines 1-4. Ms. Medlin testified that the route over the easement is the only access to the Reid tract that she could remember, and the one used by her family, her predecessors in title. Trial tr. at page 18, lines 2-4, page 19, lines 3-8.

William L. Reid, III, one of the current owners of the Reid tract, testified that based on his knowledge and experience, the only way his family's tract has been historically accessed is by using the easement in question, across the respondents' land (the Lee Tract). Trial tr. at page 36, line 1-14:

> "Q. ...do you have any knowledge how your family, your predecessors had crossed the property?
> A. That is the only way I am aware it has ever been accessed.

Q. Are you aware of any time that the access across this easement was ever obstructed or any overt act that prevented you or anybody in your family to your knowledge the easement could not be used?
A. No, not until this matter here.

Q. And to your knowledge, to the best of your knowledge, how long has this easement been utilized by your current owners and the predecessors?
A. Since it was purchased by our family a hundred years ago, 1912."

Furthermore, Tom Patrick, the appellants' agent and forestry management consultant, testified that he has been employed to manage the timber on the Reid tract since 1983. Trial tr. at page 51, lines 3-16. He testified that he was instructed to use the easement in question by a member of the previous generation of the appellants' family, a prior owner. Trial tr. at page 77, lines 11-19: As such, he testified he used the disputed easement "many times." Trial tr at page 51 lines 24-25.

Based on the above, it is clear that the continual use or enjoyment of a right for a full period of twenty years has been met by the appellants. Both Judith Medlin and William L. Reid, III testified that they themselves have used the easement in question to access their tract, albeit infrequently, since they were children (Ms. Medlin is 67 years old and Mr. Reid is 57 years old), that this was the easement used by their family members, who were their predecessors in title, and they know of no other way to reach the Reid tract. Tom Patrick, the appellants' forester, bolstered their testimony when he explained to the Court that the easement in question was the way he was instructed by Mr. Reid or Mr. Lawrence, predecessors in title, to get to the Reid tract in 1983, and that he used the route on their behalf "many times" until he was asked by Mr. Joe Lee to alter the route in 1993 (Defendant Helen Lee testified that she and Mr. Lee moved to the property in 1989 or 1990. Trial tr. at 119, lines 13-15) when logging was scheduled. Thus, it is respectfully submitted that the appellants have established the continual use aspect of the prescriptive easement calculation at the very least from the 1950's up to 2010, when respondent Helen Lee refused them passage. Even if

the respondents claim that Joe Lee, Sr.'s request to alter the route in 1993 interrupted the continuous use of the easement, it is clear that the twenty year continuous use element had been already reached.

Moreover, the appellants have established that they can tack onto the prior owners' use of the easement. Parties may tack to the period of the prior owners to satisfy the twenty year prescriptive easement period if the prior owners are in privity and the prior owners' use was adverse or under a claim of right. Kelley v. Snyder, 396 S.C. 564, 575, 722 S.E2d 813, 819 (Ct. App. 2012).

> "In its broadest sense; 'privity' is defined as mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right . . .Thus, the executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor, the donee with the donor, and the lessee with the lessor."

Black's Law Dictionary 1199 (6th ed. 1990). There is no dispute that the appellants are the descendants of William Lowry Reid, who purchased the Reid tract in 1912. As stated by Judith Medlin, "This property was purchased by my grandfather William Larry [sic] Reid in 1912 and it passed to his three children. I mean to his widow first and then to his three children and then to the children, his grandchildren and I am one of the grandchildren." Trial tr. at page 8, lines 5-9. Further, appellant William L. Reid, III testified that he, his sisters and cousins have the right to cross the Lee land, noting it is the "historical" access, signifying their privity with the previous family generations that have owned the Reid tract. Trial tr. at page 36, lines 15-21. Also, Tom Patrick testified that "Mr. Reid or Mr. Lawrence," "original" owners of the Reid Tract instructed him on how to access the Reid Tract by using the historic easement. Trial tr. at page 77, lines 15-19. Clearly, the appellants are in privity with the prior owners of the property.

Second, the prior owners' use was under a claim of right. First, appellant Judith Medlin testified that easement in dispute was used as a matter of right by her predecessors in title.

"Q. ...as far as you know how did your family access the track [sic] before your time.
A. The same way I indicated on the map.

Q. Okay. Do you have any recollection of any other way?
A. No

Q. Any other access?
A. No, sir.

Q. Okay, now, as far as the right to access this property, do you feel like you have a right to use it?
A. Yes.

Q. And can you tell me why?
A. Because there is no public road to this property and this is traditionally the road — the route that we always used."
Trial Tr. at page 18, lines 16-25, page 19, line 1-5.

Similarly, appellant William L. Reid, III testified:

"Q. ... Explain to the court if you could why you think you have the untethered ability to cross over the property?
A. Because it is the historical access and there is no other public road access.

Q. You think you have a right to cross the property?
A. Yes, sir."
Trial tr. at 36, lines 10-12, 17-23

The above testimony, in addition to the testimony of Ms. Medlin and Mr. Reid concerning accessing the family tract across the respondents' property in the company of earlier generations when they were younger clearly illustrates that the prior owners' access was by a claim of right.

Clearly, the Appellants have met their burden of proof regarding the continual use element.

2. Uninterrupted Use or Enjoyment for a Full Period of Twenty Years.

A servient owner can interrupt the prescriptive period by engaging in "overt acts, such as erecting physical barriers, which causes a discontinuance of the dominant landowner's use in the land, no matter how brief." Pittman v. Lowther, 363 S.C. 47, 52, 610 S.E. 2 d 479, 481 (S.C. 2005.) "In addition to physical barriers, verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period." Id.

In its Order, the trial court stated:

"At the trial of this case, witnesses for each landowner testified that a fence was erected in the Defendant's pasture in 1992, obstructing the path alleged by the Plaintiffs. Tom Patrick testified that Joe Lee, the deceased husband of Defendant Helen M. Lee, instructed him to redirect his forestry equipment to avoid the fence. Defendant Helen M. Lee testified that, in response to requests in 2009 by Tom Patrick, she verbally objected to her property being used for access to the Reid property. This Court finds that the physical act of erecting a fence in 1992 and verbal objections in 1992 and 2009 were sufficient to interrupt any prescriptive period."

Order at 3.

First, Thomas Patrick testified that he was *requested* by Joe Lee, Sr. to alter the route to the Appellants' land at that time, not *instructed* to:

"Q. And you mention that you were asked to change the route in the early 90's?
A. That's correct.

Q. Who asked you to do that?
A. Joe Lee. He had some cows and he had I think sort of expanded some pasture or done something different as far as fencing.

Q. And you were happy to accommodate him?
A. I was."
Trial Tr. at page 53, lines 3-11

"Q. As far as your access to this property, wasn't it your testimony that from 1983 until Mr. Lee asked you to change the route you accessed it by going through the southern route, is that right?

A. That is correct."
Trial Tr. at 57, line 25, at 58 lines 1-4

"Q. But as far as up until that time that you were asked to change the route that was the only route, the southern route, historical route, was the only way that you accessed the Reid property; is that right?
A. That is correct."
Trial Tr. at 60, line 25, at 61, lines 1-4.

"Q. You testified that in the early '90's Joe Lee asked you to change your direction across the property; is that right?
A. That is correct."
Trial Tr. at 71, lines 20-23

"Q. Well, your testimony today was in '92 Joe Lee asked you to redirect your access; is that correct?
A. That's correct."
Trial Tr. at 74, lines 5-7.

"Q. At that time, Joe had already asked you to go a different direction; is that right?
A. To go that way

"Q. Yeah, why would you take your equipment through the gate?
A. Why would we?

"Q. Yeah, why if he asked you not too [sic] and put up the gate?
A. No, he asked us to go through the gate."
Trial Tr. at 75, lines 4-12.

As shown above, the court below's characterization of former owner Joe Lee, Sr.'s conversation with Tom Patrick about redirecting the access in 1992 as an "instruction" is inaccurate. In his testimony, Tom Patrick did not waver from his statement that Mr. Lee requested an alteration at that time from the already established easement. As illustrated in the testimony, such a request falls short of a "verbal threat" as contemplated by case law. See Pittman, 363 S.C. 47, 610 S.E.2d at 481 (verbal threats must convey to the dominant landowner the impression that the servient landowner does not acquiesce in the use of the land). Further, Mr. Patrick's testimony clearly displays that the

fencing erected by the senior Mr. Lee was for the purpose of keeping cows in the pasture, not keeping the appellants out. Trial Tr. at 53, lines 7-9 (". . . He had some cows and he had I think sort of expanded some pasture or done something different as far as fencing."); Trial tr. at 76, lines 2-8. Providing a gate for the direct route from the pasture to the Reid tract road system was in the vein of voluntarily providing another way to accommodate the easement enjoyed by the appellants.

As verification of this, Mr. Patrick's testimony exhibits Mr. Lee's acquiescence of the appellants' right of access in stating "[h]e put up some fence and was using a little different pasture configuration or something and he had already put a gate up that provided for a more direct access route across the pasture to the origination of the road on the Reid track [sic]." Trial Tr. at 72, lines 3-7. Clearly, the trial court has misinterpreted the late Joe Lee, Sr.'s actions in the early 1990's, as it is obvious that he was well aware of the right of access the appellants' possessed and was merely asking for an accommodation so his pastureland could be reconstituted. Nothing states that he intended to disallow, obstruct or not recognize the historic easement of the appellants.

Moreover, the court below does not take into account the testimony of appellants Judith Medlin and William L. Reid, III, which shows that the uninterrupted use of the easement for a full period of twenty years had been established long before the Tom Patrick/Joe Lee, Sr. conversation of the early 1990's. Both testified that they had been present with parents and members of previous generations that owned the land from the 1950s on, and they were aware that the easement in dispute had been the only access to the Reid Tract for many years in excess of the prescriptive requirement prior to 1992, or 2010. Trial tr. at 17, lines 18-25; at 18, lines 1-24; Trail tr. at 36, lines 1-14).

Also, regarding the statement in the Order that " Defendant Helen M. Lee testified that, in response to requests in 2009 by Tom Patrick, she verbally objected to her property being used for

access to the Reid property," it is submitted that, while not conceding that Mr. Patrick asked permission from Mrs. Lee, even if he did, the access across the disputed path possessed by the appellants had ripened into a prescriptive easement many years before.

In addition, it is conceded that when Mrs. Lee objected to the appellants' agent's use of the disputed easement it was not utilized pending disposition of the controversy through the legal means being employed here. The appellants certainly wish to resolve the issue in as civil a manner as possible and did not intend to force their way across the respondents' lands, even if they contend they have a legal right to do so. There has never been an intent to abandon their easement.

In summary, the appellants have fully demonstrated that they have had continual and uninterrupted use of the disputed easement across the respondents' land for a full twenty years.

B. THE IDENTIFY OF THE THING ENJOYED

The second element to satisfy regarding a prescriptive easement is the "identity of the thing enjoyed." Horry County v. Laychur, 315 S.C. 364,367, 434 S.E.2d 259, 261 (S.C. 1993). In this case it is submitted that the appellants have satisfied this requirement and met their burden to identify the thing enjoyed.

As the trial court stated in its Order, Judith Medlin, William L. Reid, III, and their forester Tom Patrick marked the location and path of the disputed easement. See Plaintiff's Trial Exhibits 2, 4, 6, and 8. The court concluded that markings indicate the same direction, but stated "[t]here was no testimony that gravel, pavement, or other lasting characteristic across the Defendants' pasture which would identify a specific path." Order at 4. However, it is submitted that there is no requirement that a prescriptive easement be defined in such terms. South Carolina courts have recognized similar pathways as easements, such as the "firebreak" in Jones, 363 S.C. at 312, and the

"wagon road" in Kelley, 296 S.C. at 816, 722 S.E.2d at 568. Further, a review of Plaintiffs' Exhibits 2, 4, 6 and 8 shows that markings indicating the disputed easement precisely identify the passageway and a close review also shows that the pathway at the southern end (while grassy over the pasture) can be seen for the most part by viewing the photos. Tom Patrick also testified that the pathway across the pasture was "identifiable," Trial tr. at 58, lines 8-13, and that he worked "grass roads" "every day." Trial tr. at 71, lines 16-17. It is submitted that nowhere in South Carolina jurisprudence is there required such a strict requirement for identifying the "thing enjoyed" as employed by the court below. Clearly, the appellants have adequately identified the thing enjoyed.

The identity of this easement was illustrated for the plaintiffs at trial by Judith Medlin, William Reid and Tom Patrick, in their testimonies and by marking and identifying exhibits. Trial tr. at 13-17; at 34, lines 17-25; at 35, lines 12-17; at 52, lines 1-25; at 53, lines 1-2; at 67, lines 18-25; at1-7. As was testified, the easement has the capacity to accommodate trucks, logging vehicles and equipment. Trial tr. at 69, lines 3-25; at 70, lines 1-25; at 71, lines 1-17.

South Carolina courts have not given extensive guidance as to what constitutes the "thing enjoyed." While most cases concerning prescriptive easements concern roadways, such things as a parking lot (Morrow v. Dyches, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997) and a boat ramp (Crystal Pines Homeowners Assoc. Inc. v. Phillips, 394 S.C. 527, 716 S.E.2d 682 (Ct. App. 2011) have been the subjects of prescriptive easement cases. Identifying the "thing enjoyed" is clearly not intended to be a precise exercise.

The easement in this case is not a maintained roadway for the most part, but a passageway that, due to the somewhat sporadic timber harvesting needs of the appellants, is not heavily traveled. Trial tr. at 53, lines 20-25, pages 54-57 (describing the infrequent access needs of a timber parcel).

This is similar to the "dirt trail" (also described as a "deer trail" or a "firebreak") discussed in Jones, and the "wagon road" of Kelley. Based on the testimony recounted in the Jones case, even if the trail was expanded into a full size road in the middle 1990s, the thing enjoyed by Jones and her family before that time was nothing more than a mere passageway. Thus, the character and nature of the thing enjoyed is clearly not easily defined, nor is it apparently intended to be by the courts. In fact, a reading of South Carolina case law on the subject indicates that a clear definition of the thing enjoyed is left intentionally vague.

Accordingly, the trial court erred in its determination that the appellants failed to identify the "thing enjoyed" at trial.

C. THAT THE USE OR ENJOYMENT WAS ADVERSE OR UNDER A CLAIM OF RIGHT.

The appellants have used the easement in question under a claim of right for the requisite period of twenty years. A party claiming a prescriptive easement under a claim of right must show a substantial belief that he had the right to use the property based on the totality of circumstances surrounding his use. Paine Gayle Properties, LLC v. CSX Transportation, Inc., 400 S.C. 568, 583-84, 735 S.E.2d 528, 536-37 (Ct. App. 2012) citing Matthews v. Dennis 365 S.C. 245, 250 616 S.E.2d 437, 440 (Ct. App. 2005)). This "claim of right is without recognition of the rights of the owner of the servient estate." Id. at 584, 735, S.E.2d at 537 (quoting 25 Am. Jur.2d Easements & Licenses Section 57 (2004)). The asking and obtaining of permission stamps the character of the use as not having been under a claim of right, and therefore as lacking that essential element which is necessary for it to ripen into a right by prescription. Id.

The court below's Order stated:

"[a]t the trial of this case, Judith Medlin and Tom Patrick testified that permission was sought from Defendant Helen M. Lee or her deceased husband Joe Lee, to use their property for access to the Reid property. Helen M. Lee also testified that she had been asked by Tom Patrick and received letters from the Plaintiffs' attorney requesting access. Each time that access was needed for timber services, permission was sought from the Lees."

Order at 5.

It is submitted to the Court that the trial court's Order is inaccurate in these respects. First, as testified by Judith Medlin:

"Q. You testified that you believe you have a right to come across the Lee's property, is that right?
A. That's correct.

Q. And you testified that the reason why you think you have that right is because there is no public road, is that right?
A. That's correct.

Q. Do you remember at any time in your life time asking for permission to come across the Lee's property?
A. No.

Q. You never asked for permission?
A. No.

Q. Do you remember any of your family members asking for permission?
A. Yes

Q. Who asked for permission?
A. Well, I personally called Miss Lee in recent years to not really ask permission but to say we have the right to cross your property. I did not ask for permission. I was asking - - I was telling her that we needed to thin our timber and we needed to come through."
Trial tr. at 27 lines, 12-25, at 28, lines 1-7.

Ms. Medlin further testified:

"Q. Describe your conversation that you had with Miss Lee?
A. Well, I just said I understood Mr. Patrick was having difficulty accessing the timber that needed to be thinned and we wanted her to acknowledge our right to access the property.

Q. And what was the response.
A. Basically, no."
Trial tr. at 29, lines 21-25; at 30, lines 1-3.

Mrs. Medlin's testimony as stated above demonstrates that she has a substantial belief that she has the right to use the parcel or road based on the totality of circumstances surrounding her use. This is also true of appellant William L. Reid, III's testimony. Trial tr. at 40, line 14 ("I feel we are entitled to a right.") See Revis v. Barrett, 312 S.C. 206, 210, 467 S.E.2d 460, 462 (Ct. App. 1996) (noting that "Revis was under the impression that she had a continuing right to use the road," and "there was certainly ample evidence to support the Master's finding that Revis's belief about her right to use the road flowed from a 'claim of right' ").

Additionally, the trial court's reliance on any assertion that Tom Patrick requested permission to cross the Lee land, thus obviating the appellants' claim of right is misplaced. As stated above, a party claiming a prescriptive easement under a claim of right must show a substantial belief he had the right to use the property based on the totality of circumstances surrounding his use. Paine Gayle Properties, LLC, 400 S.C. at 583-84, 735 S.E.2d at 526-527 (emphasis added). Tom Patrick is not a party to this action, and secondly, his testimony does not reflect that he asked permission to cross the Lee property, as noted in the Order. As he testified:

"Q. So you asked her to come across the property, right?
A. I called her. I always notify somebody when I am going across somebody's property. Just -- just -- I am going to call someone if it is going to be near there [sic] house and she is going to hear equipment."
Trial tr. at 80, lines 5-8.

Further, the assertion that Joe Lee, Sr. was asked permission to cross the property in the early 1990's has been extensively analyzed in preceding paragraphs and shown to be inaccurate.

Moreover, there is no testimony from Helen M. Lee stating that she received a letter from the

appellants' attorney requesting permission to cross her land. She has only testified that she received correspondence, stating "I am saying April because I got a letter from James, Johnny [sic] James the third of May;" Trial tr. at 105, lines 15-16 and "I said well, you do what you have to do and then I starting getting letters from Mr. Johnny [sic] James, III. " Trial tr. at 115 lines 12-14. Clearly, there is no testimony from Mrs. Lee that the attorney for the appellants requested permission from her to cross the property. It is also noted that this correspondence was sent prior to the respondent retaining counsel and in an effort to resolve the issue early on.

There is ample evidence that the appellants have a substantial belief that they have the right to use the disputed easement identified across the Lee tract. Judith Medlin and William L. Reid, III both testified that they have the right to use the roadway based on their personal use and the extended use by their family members who were prior owners of the Reid tract. Trial tr. at 17-18; at 19, lines 1-8; Trial tr. at 35, lines 12-17; at 36, lines 17-23. Also, their agent Tom Patrick testified that when he was employed to manage the Reid tract in 1983, he was instructed by a member of the previous Reid generation, then an owner of the Reid tract, to use the easement across the southern portion of the Lee tract as the exclusive access to the Reid property, illustrating the previous owners' claim of right. Trial tr. at 77, lines 9-24.

Even when Mr. Joe Lee, Sr., the respondents' predecessor in title, asked Mr. Patrick to alter the route to the Reid tract when logging was scheduled in 1993, such does not suffice to thwart the appellants' claim of right. Mr. Patrick testified he was agreeable to altering the route to accommodate Mr. Lee's request, but there was no indication that Mr. Lee did not recognize the appellants' right of access, and Mr. Lee even provided a gate to allow the access into the Reid tract. Trial tr. at 53, lines 3-11; Trial tr. at 75, line 12. Simply put, Mr. Lee desired that Mr. Patrick change the route for the

scheduled logging and it was agreed to in a neighborly manner. At any rate, the prescriptive easement using the historical easement was securely established by that time, as shown above.

The testimony that William Reid and Tom Patrick would stop by the Lee home and let Mrs. Lee know they were passing through was, as they indicated, a neighborly action, and does not rise to the level of permissive use. Trial tr. at 46, lines 19-25; at 47, lines 1-6; Trial tr. at 80, lines 5-8. In fact, all three of the witnesses for the Reid appellants testified that not only did they never ask permission to use the easement, they were never told they could not use the easement until Mrs. Lee denied access in 2010. Trial tr. at 27, lines 19-23; at 12, lines 2-11; at 40, lines 9-14; at 46, lines 19-15; at 47, lines 1-6.

Based on the above, the appellants have shown that they have established a claim of right to use the disputed easement crossing the southern portion of the Lee tract to reach their parcel.

CONCLUSION

It is clear that the appellants have completely met their burden in establishing their right to an unobstructed easement by prescription across the respondents' parcel using the disputed route as described above. It is submitted to the Court that each and every element to prove a prescriptive easement has been established in detail and the proper disposition in this appeal is a reversal of the trial court's ruling, thus providing the access needed for the appellants to reach their property.

RESPECTFULLY SUBMITTED.

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September 5, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-CP-20-401
Appellate Case No. 2013-001386

Carol Reid Smallwood, Barbara Reid Strickland, Ann Reid Hamlin,
William L. Reid, III, Judith Lawrence Medlin,
Frances Patterson Lawrence . . . . . .Appellants,

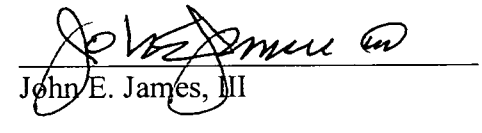
v.

Helen M. Lee, Linda Lee and Joe Lee, Jr., as Co-Trustees of the
Joseph H. Lee, Sr. Family Trust U/W . . . . . .Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Initial Brief of the Appellants by depositing a copy of it in the United States Mail, first class postage prepaid, on September 5, 2013, addressed to counsel for the respondents as follows:

Kevin M. Hope, Esquire
Post Office Box 36425
Rock Hill, South Carolina 29732



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DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

The appellants propose the following to be included in the Record on Appeal:

1. Transcript of Trial of April 18, 2013;

2. Complaint;

3. Order of the Honorable Brooks P. Goldsmith, dated May 14, 2013;

4. Plaintiff's Trial Exhibits 1, 2, 4, 6, and 8.

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

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PROOF OF SERVICE

I certify that I have served a copy of the Appellants' Designation of Matter to be Included in the Record on Appeal by depositing a copy of it in the United States Mail, first class postage prepaid, on September 5, 2013, addressed to counsel for the respondents as follows:

Kevin M. Hope, Esquire
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