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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
James B. Jackson, Jr., Master in Equity

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Court of Appeals Case No. 2023-000436

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Timothy J. Judy and Dana A. Judy.....Respondents,

v.

Alice Soto, Joseph B. Rodriguez, Matthew Rodriguez, Gwen Rodriguez and Stephanie B. Wells  
.....Petitioners.

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PETITION FOR A WRIT OF CERTIORARI

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**CERTIFICATION OF COUNSEL**

Pursuant to South Carolina Rule of Appellate Practice 242(d)(1), the undersigned counsel for Petitioners certifies that a petition for rehearing was made and finally ruled on by the Court of Appeals on September 16, 2024.

## QUESTIONS PRESENTED

1. Did the Court of Appeals err when it determined that a boundary line dispute is governed by the intent of a subsequent common owner rather than the intent of the original common grantor of the disputed parcels?
2. Did the Court of Appeals disregard its duty to consider only the evidence in the record when it based its ruling on evidence not in the record and contradicted by the actual evidence presented to the lower court?

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Petitioners respectfully ask the Court to issue a writ of certiorari to review the Court of Appeals' final decision in this case (Opinion No. Unpublished Opinion No. 2024-UP-257, the "*Opinion*") because the Opinion is in conflict with long-standing common law precedent in this State and is based solely on facts not in the record.

## STATEMENT OF THE CASE

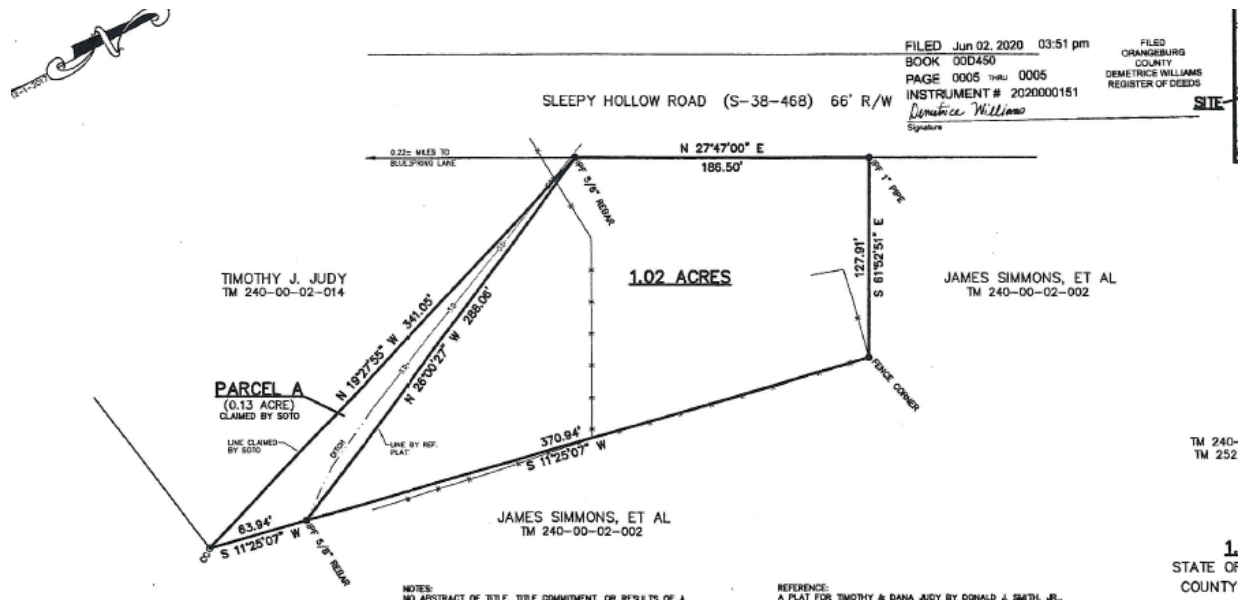
This is an appeal from the trial order of the Orangeburg County Master in Equity filed on February 27, 2023 ("*MIE Order*"), in which the Master in Equity determined a property boundary and quieted title to a disputed parcel of property which forms the border between Petitioner Alice Soto's property and Respondents' property, ordered the removal of a fence and granted a permanent injunction (with prospective penalties for contempt) against the Respondents precluding them from entering the Respondent's property as determined by the Court. (R. pp. 1-10). The Master in Equity conducted the trial pursuant to the Consent Order to Refer Portion of Case to Master in Equity filed on November 1, 2022, by which Respondents' permanent injunction cause of action against all Appellants and Petitioner Alice Soto's quiet title cause of action were referred. (R. pp. 11-13). The remaining claims brought by the Respondents

for trespass remained on Orangeburg County trial docket remained on the jury trial docket and are stayed pending this appeal.

Petitioners filed their Notice of Appeal on March 14, 2023. The Court of Appeals held oral argument on June 12, 2024, and issued its Opinion affirming the Master in Equity’s decision on July 17, 2024. Petitioners filed their Petition for Rehearing on July 31, 2024. On September 16, 2024, the Court of Appeals issued the order denying the Petition for Rehearing.

### STATEMENT OF THE FACTS

This is a lawsuit that concerns a dispute parcel of property totaling .13 acres (“*Disputed Parcel*”) on the border of property owned by Petitioner Alice Soto and designated as Orangeburg County TMS# 0240-00-02-001.000 (“*Lot 1*”), and Orangeburg County TMS # 0240-00-02-014.000, now owned by the Respondents (“*Lot 14*”). The Disputed Parcel is denoted as “Parcel A” below.



(R. p. 166). Lot 1 is denoted on the right. Lot 14, now owned by the Respondents, is on the left. The Petitioners claim the property line is the one denoted as 341.05’ (on the left) and the Respondents claim the property line is the one denoted as 288.06’ (on the right).

**A. History of Lot 1 and the Original Common Owner.**

Prior to 1951, Lot 1 and Lot 14 were part of a larger tract of land owned by Lawrence Stroman. Mr. Stroman deeded Lot 1 to Dewey Edwards by deed recorded in the Orangeburg County Register of Deeds Office on August 11, 1951 at Deed Book 170, Page 74. (R. p. 160-161). The property description from the 1951 Deed is as follows:

All that certain piece, parcel or lot of land, with any and all improvements thereon, situate, lying and being in the County of Orangeburg, State of South Carolina, containing one (1) acre, more or less, located near the Calhoun-Orangeburg County line, on a highway which connects State Highway No. 176 and U.S. Highway 301 and being bounded as follows: On the North and East by lands now or formerly of Kennerly's Estate; on the South by other lands of the grantor herein, Lawrence E. Stroman, and on the West by said highway (Sleepy Hollow Road).

At the time of conveyance, Lawrence Stroman retained substantial acreage bordering Lot 1. Dewey Edwards solely owned Lot 1 through the year 2000. Through a series of deeds recorded between 2000 and 2009, life estates and remainder interests in Lot 1 were transferred between Dewey Edwards, his wife, Betty Edwards, and their daughter, Janet Gaillard. (R. pp. 171-176). By deed recorded in the Orangeburg County Register of Deeds Office on August 31, 2009 at Book 1328, Page 296, Dewey Edwards and Betty Edwards became owners of Lot 1 in fee simple. (R. pp. 169-170). Subsequently, Dewey Edwards and Betty Edwards pledged Lot 1 as security for a loan. Dewey and Betty Edwards then conveyed Lot 1 to Champion Mortgage Company by deed in lieu of foreclosure recorded in the Orangeburg County Register of Deeds on May 9, 2016 at Book 1675, Page 285. (R. pp. 151-157). Champion Mortgage Company conveyed Lot 1 to Petitioner Alice Soto by deed recorded in the Orangeburg County Register of Deeds on May 27, 2016 at Book 01678, Page 0316. (R. pp. 158-159).

The property description in the deed chain for Lot 1 did not meaningfully change from the date Dewey Edwards took title in 1951 to the date Petitioner Alice Soto took title in 2016.

Further, Lot 1 was never surveyed prior to the date on which Petitioner Alice Soto took title to Lot 1. Lot 1 was only described by the reference to the neighboring property owners in the 1951 Deed and all subsequent deeds.

**B. Indications of Property Boundary Prior to Repondent Alice Soto Taking Title to Lot 1.**

There were no surveys of the boundary between Lot 14 and Lot 1 between the time Lot 1 was divided from the larger Stroman property and deeded to Dewey Edwards in 1951 and May 27, 2016 – the date on which Petitioner Alice Soto took title to Lot 1. However, as confirmed by title abstractor Eve Nester, there were two historical tax maps – one from 1977 and one from the 1960s – that depicted Lot 14 as a pure triangle:

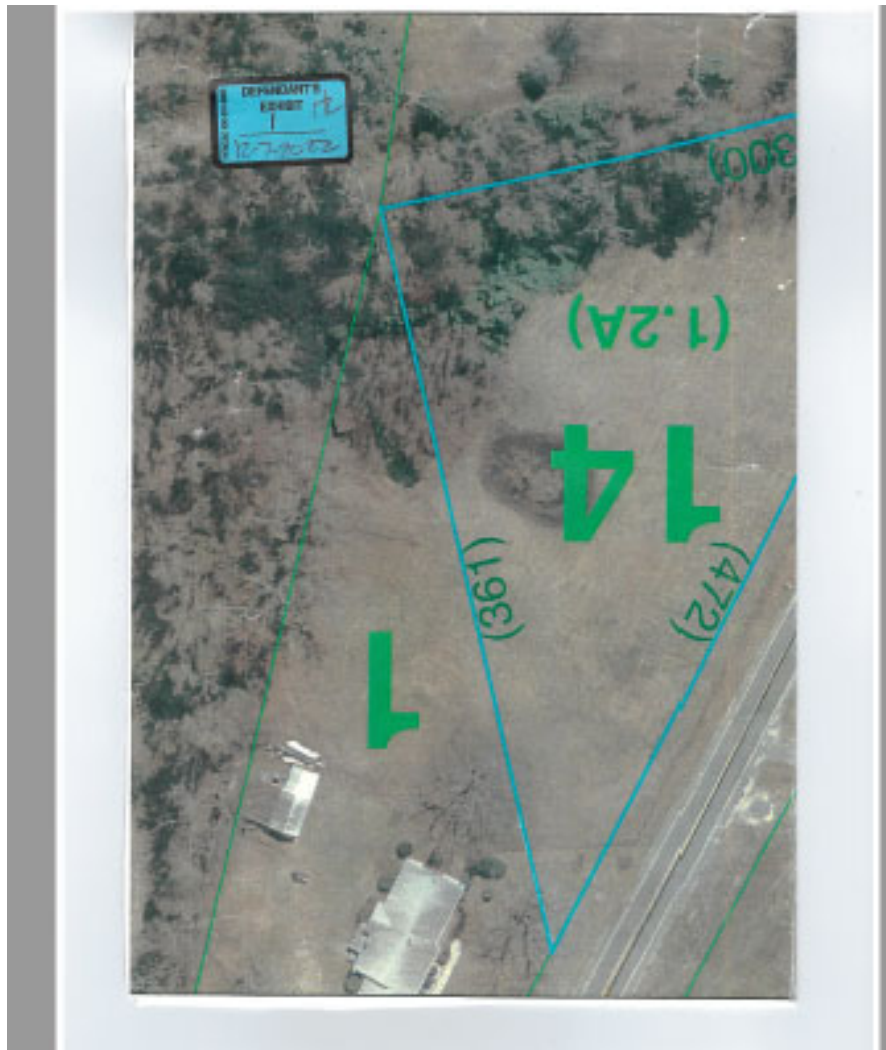


(R. p. 177) (R. p. 95, line 16-p. 95, line 25) (Lot 1 denoted with a “6”, Lot 14 to the lower left).



(R. p. 178) (R. p. 97, lines 1-25) (Lot 14 highlighted).

In addition, there exists an aerial depiction from 2007, also depicting Lot 14 as a triangle:



(R. pp. 164-165).

C. History of Lot 14.

Lawrence Stroman deeded approximately 61 acres, a portion of which abutted Lot 1 and became Lot 14, to Betty Edwards by deed recorded in the Orangeburg County Register of Deeds Office on March 1, 1974 at Book 393, Page 391. (R. pp. 180-181). The property was in Orangeburg and Calhoun counties, and the deed description contained only a reference to neighboring property owners:

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, containing sixty-one (61) acres, more or less, of which twenty-three (23) acres, more or less, is situate, lying and being in Orange Township, School District No. 2, County of Orangeburg, State of South Carolina, and thirty-eight (38) acres, more or less, is situate, lying and being in Lyons Township, School District No. 2, County of Calhoun, State of South Carolina, and the entire tract is bounded as follows: On the North by lands now or formerly of Moody Rast; on the East by S. C. Highway No. 468, lands now or formerly of Bardin, lands now or formerly of Kennerly, lands now or formerly of Dantzler, lands now or formerly of Kennerly, and lands now or formerly of Edwards; on the South by lands now or formerly of Kennerly, lands now or formerly of Edwards, and lands now or formerly of Dantzler, and on the West by lands now or formerly of Dantzler and lands now or formerly of Evans. Being the same tract of land devised to L. Edgar Stroman by Lewis A. Stroman who died testate in the County of Orangeburg, S. C., on February 6, 1938, and the Will of Lewis A. Stroman and the proceedings of his estate are recorded in the office of the Judge of Probate for Orangeburg County, S. C., in Apartment 254, Package 12.

Like Lot 1, neither the 61 acres nor the portion that became Lot 14 were surveyed or platted prior to Appellant Alice Soto taking title to Lot 1 in 2016.

Respondent Timothy Judy testified that Kevin Edwards, the son of Dewey and Betty Edwards, handled the sale of Lot 14 to the Respondents. (R. p. 35, line 16-p. 36, line 8). Respondents were friends with Mr. Edwards and effectively traded Lot 14 for some construction work performed by Respondent Timothy Judy. (R. p. 36, line 17-p. 38, line 3). As part of the transaction, Kevin Edwards obtained a survey from Donald Smith ("*Smith Survey*"), dated December 1, 2017. (R. p. 64, lines 1-19) (R. p. 149). This was the survey the Master in Equity

and Court of Appeals relied upon to determine the boundary line. Donald Smith was deceased at the time of the trial. (R. p. 49, lines 13-16).

Mr. Edwards testified that he did not accompany Donald Smith when he did the survey and did not provide instructions to him. (R. p. 71, lines 11-21). The Smith Survey cites no prior boundary markers, and notes that it is subject to facts that may be revealed by a title search:

THE SAME BEING A SURVEY OF BOUNDARY LINES AS CLAIMED BY KEVIN EDWARDS AND IS NOT A RETRACEMENT OF A PREVIOUSLY PLATTED PARCEL[] BOUNDARIES MAY BE IN QUESTION. . . .

THIS SURVEY SUBJECT TO ANY FACTS THAT MAY BE REVEALED BY A FULL AND ACCURATE TITLE SEARCH. NO ABSTRACT OF TITLE, NOR TITLE COMMITMENT, NOR RESULTS OF TITLE SEARCHES WERE FURNISHED THE SURVEYOR. THERE MAY EXIST DOCUMENTS OR RECORD THAT WOULD AFFECT THIS PARCEL.

(R. p. 149). Unlike the prior tax maps and aerials, the Smith Survey portrays Lot 14 as a 4-sided parcel. (R. p. 149).

Kevin Edwards then hired attorney Jack Bryant to prepare a deed transferring Lot 14 from Betty Edwards to the Respondents. (R. p. 81, line 21-p. 82, line 9). Mr. Bryant confirmed that Kevin Edwards provided the Smith Survey to him, and that Mr. Bryant drafted the deed. (R. p. 83, lines 3-19). The property description for the Judy Parcel referenced only the Smith Survey. (R. pp. 146-148). Mr. Bryant confirmed that he simply drafted a deed – he did not search or certify title for Lot 14, did not issue a title policy, and has no opinion regarding whether the Smith Survey and the deed to the Respondents depict the actual boundary between Lot 1 and Lot 14. (R. p. 83, lines 3-19). The deed from Betty Edwards to the Respondents was recorded on March 16, 2018 in the Orangeburg County Register of Deeds Office at Book 1795, Page 42. (R. pp. 146-148).

Therefore, as of the date that Lot 1 was conveyed to Champion Mortgage, Betty Edwards was a joint owner of Lot 1 with Dewey Edwards and was the sole owner of Lot 14. There were

no surveys done of either property prior to this conveyance of Lot 1 from Betty Edwards and Dewey Edwards to Champion Mortgage, Petitioner Alice Soto's predecessor in title.

**D. The Quitclaim Deed and Subsequent Events.**

There also exists a quitclaim deed, the origins of which are mysterious. The deed quitclaims all of the property delineated as "N/F Alice Hutto" in the Smith Survey to Appellant Alice Soto and was recorded one minute after the deed to the Respondents. (R. pp. 167-168). Mr. Bryant appears to have prepared the deed but does not recall who asked him to prepare it. (R. p. 83, line 20-p. 84, line 6). Kevin Edwards did not know that the quitclaim deed existed prior to the commencement of this lawsuit. (R. p. 73, lines 10-23). Despite the mysterious circumstances behind the preparation of the Quitclaim Deed, it was recorded in the Orangeburg County Register of Deeds Office on March 16, 2018 at Page 1795, Page 46. (R. pp. 167-168).

Subsequent to discovering the Smith Survey, Ms. Soto obtained her own survey. The survey was prepared by J. Jowers and is dated June 2, 2020. (R. p. 166). The Jowers Survey depicts the property line as claimed by Petitioner Alice Soto. It plainly shows Lot 14 as a triangle (like the historical tax maps), not a four-sided parcel. (R. p. 166).

**ARGUMENT**

The first question presented in this Petition touch upon a central issue in boundary line jurisprudence in South Carolina – where the boundary line is disputed, which grantor's intent controls? The Master in Equity and Court of Appeals appear to believe that it is not the common grantor of the two parcels that were subdivided (Lawrence Stroman) and is instead the later part-owner of both parcels (Betty Edwards). That issue has not been addressed by the Supreme Court of South Carolina and needs to be clarified.

The second question presented in this Petition is whether the use of evidence not in the record can serve as the basis for the Court of Appeals' affirmance of the lower court ruling.

Specifically, the Court of Appeals affirmed entirely on the “compelling” testimony of Kevin Edwards that the Smith Survey boundary line reflects the location of a now-covered ditch in the disputed area. However, as set forth below, Mr. Edwards specifically testified that he did not instruct the surveyor to follow the covered ditch and never testified that the survey relied upon actually mirrors the ditch’s location. The plain contradiction of evidence in the record is not evidence, and it cannot be used as a basis for affirming the lower court’s ruling. This certainly qualifies as a “special and important reason” for granting review by this Court. Rule 242(b), SCACR.

**1. The Court of Appeals erred by looking to the intent of a later part owner of the disputed parcels – rather than the original common grantor – to resolve the boundary line dispute.**

The Court of Appeals wrongly affirmed the Master in Equity’s trial order, which did not ascertain the intent of the original grantor of Lot 1, Lawrence Stroman. The Master in Equity touched upon the concept, but incorrectly, by stating:

Because the Court cannot ascertain the intent of Lawrence Stroman when he conveyed [Lot 1] to Dewey Edwards by deed recorded in the Orangeburg County Register of Deeds Office on August 11, 1951, in Deed Book 170, Page 74, or when he later conveyed [Lot 14] to Betty S. Edwards by deed dated March 1, 1974, and recorded in the office of the Register of Deeds for Orangeburg County in Deed Book 393, at Page 391, the Court must look extrinsic evidence to determine the boundary line. In locating land, resort first to natural boundaries, next to artificial monuments, then to adjacent boundaries, and last to courses and distances.

(R. 5 ¶ 1). South Carolina law provides that the Court must resort to extrinsic evidence to determine the intent of the original grantor, not when that grantor’s intent cannot be determined. *Garrett v. Locke*, 309 S.C. 94, 98, 419 S.E.2d 842, 845 (Ct. App. 1992) *citing Klapman v. Hook*, 206 S.C. 51, 32 S.E.2d 882 (1945). While the Master in Equity’s order could normally be explained as a possible mistake, it is not. The Master in Equity clearly based his determination

on the intent of Betty Edwards – a later part-owner of Lot 1 and owner of Lot 14 – to determine the boundary line:

I find that because Betty Edwards conveyed Lot 14 to the Plaintiffs, which included the disputed area, this showed that she and her husband Dewey Edwards did not intend to include the disputed area in the deed they gave to Champion Mortgage Company.

(R. 6 ¶ 7). He therefore looked to extrinsic evidence, either in a vacuum, or to determine the intent of Betty Edwards, not Lawrence Stroman the original grantor. This raises the question of whose intent is appropriate in these circumstances – the original grantor or a later owner (in this case part-owner) of both parcels?

The Court of Appeals specifically acknowledged this issue when it noted that the “Appellants contend the master erred in failing to ascertain the intent of the original grantor of Lot 1 . . .” Opinion at 7. The Court then failed to address whether it is the intent of the original grantor – Mr. Stroman – or Betty Edwards, the later owner, that controls. This failure to address the issue impacts and pollutes the rest of the Opinion, as the Court of Appeals then recites the same alleged evidence that supported the Master in Equity’s determination of Betty Edwards’ intent. This error is compounded when the Court based the entire affirmance on the testimony of Kevin Edwards regarding the location of a now-covered ditch that may or may not have been in existence at the time of the original deed to Lot 1 and for which there is no evidence that the ditch is accurately depicted in the Smith Survey.<sup>1</sup> In this case, the confusion over the legal standard drives the evidentiary errors, as it is not clear whether the existence and location of the now-covered ditch – that may not have been in existence in 1951 – evidences the intent of Lawrence Stroman or of Betty Edwards.

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<sup>1</sup> As noted below, the ditch does appear to be identified in the Petitioner’s survey conducted by Mr. Jowers. Neither the purported boundary line depicted by Smith nor the boundary line depicted by Jowers follows the ditch line.

Where, as here, there is a dispute as to the boundary between two parcels, the “vital question is the intent of the grantor at the time the deed is executed.” *Garrett v. Locke*, 309 S.C. 94, 98, 419 S.E.2d 842, 845 (Ct. App. 1992) citing *Klapman v. Hook*, 206 S.C. 51, 32 S.E.2d 882 (1945). The *Garrett* decision is factually similar to the present case in that it involves an original grantor of adjacent parcels (one in 1953 and one in 1985), the lack of a survey or meets and bounds description in the original deed of the first parcel, and the subsequent conveyance of the second parcel by the original grantor’s child. *Id.* at 96, 419 S.E.2d at 843. To determine the grantor’s intent, the Court noted that “[i]n locating land, resort is had first to natural boundaries, next to artificial monuments, then to adjacent boundaries, and last to courses and distances.” *Id.* at 98, 419 S.E.2d at 845. The decision unquestionably turned on a determination as to the original common grantor’s intent, and not any intent of a subsequent owner. *Id.* at 99, 419 S.E.2d at 845 (“Nevertheless, a determination of the location of the boundary line in dispute depends in large measure on where C.J. Jones Sr. intended the eastern boundary of the Johnsons’ property to be when he deeded the property to them in 1953.”).

The Court of Appeals cited *Williams v. Moore*, 400 S.C. 90, 733 S.E.2d 224 (Ct. App. 2012) to support its affirmance. However, *Williams* does not discuss the intent of any grantor, but is rather a confusing decision regarding competing plats. Thus, it is not clear from the Opinion or the cases cited if the Court of Appeals agreed with the Master in Equity that the intent of a subsequent owner, informed by extrinsic evidence, controls. This holding appears to contradict the *Garrett* decision, but needs to be clarified by this Court.

From a policy standpoint, the Court should hold that the *Garrett* decision controls even where both parcels are later owned by the same owner. Using the present case an example, Lot 1 was established at the time it was first granted to Dewey Edwards in 1951. While Lot 1 was not surveyed prior to that original deed and the property description is of limited utility because it

references only neighboring landowners, the dimensions of that conveyance are established at the time of conveyance. Unless there is a subsequent adjustment of the property lines, evidenced in the chain of title, those dimensions do not change. It is up to the trial court to determine those dimensions using the deed itself or, if necessary, extrinsic evidence. The Master in Equity's use of a now-covered ditch that may or may not have been in existence in 1951 to establish what appears to be the intent of a subsequent owner, Betty Edwards, is plainly in error.

**2. The Court of Appeals cites evidence not in the record, and contradicted by the record, as the sole support for the affirmance of the Master in Equity's Trial Order.**

The entire premise of the Master in Equity's trial order, as affirmed, is based on the finding that the boundary line bearing S 26 degrees 00 minutes 27 seconds E from the Smith Survey depicts the location of a now-covered ditch line that is the requisite extrinsic evidence of the boundary between Lot 1 and Lot 14. (R. p. 7 ¶ 10); Opinion at 8. However, assuming the intent of the original grantor controls, two alleged facts must be proven: (A) the ditch had to have been in existence at the time of the 1951 Deed, and (2) the survey which established the line had to follow the old ditch line. There is no evidence to support either alleged fact.

**A. There is no evidence that the now-covered ditch was in existence in 1951 when the common grantor, Lawrence Stroman, deeded Lot 1.**

The problem with the Master in Equity's reasoning, and the misapprehension of the ruling and evidence by the Court of Appeals, is that there is no evidence in the record that the ditch was in existence in 1951. *See* Rule 210(c), SCACR ("The Record shall not, however, include matter that was not presented to the lower court or tribunal."). This problem was laid bare in the Master in Equity's trial order when he acknowledged that he could not ascertain Lawrence Stroman's intent, and instead looked to the intent of Dewey and Betty Edwards in deeding Lot 1 to Champion Mortgage Company in May of 2016, over 60 years later:

I find that because Betty Edwards conveyed Lot 14 to the Plaintiffs, which included the disputed area, this showed that she and her husband Dewey Edwards did not intend to include the disputed area in the deed they gave to Champion Mortgage Company.

(R. p.p. 5-6) (R. pp. 151-157). In other words, the Master relied on the existence of a now-covered ditch line that may or may not have been existence in 1951 to determine that subsequent owners (Dewey and Betty Edwards) did not intend to deed the disputed property to Champion Mortgage Company as part of Lot 1 in 2016.

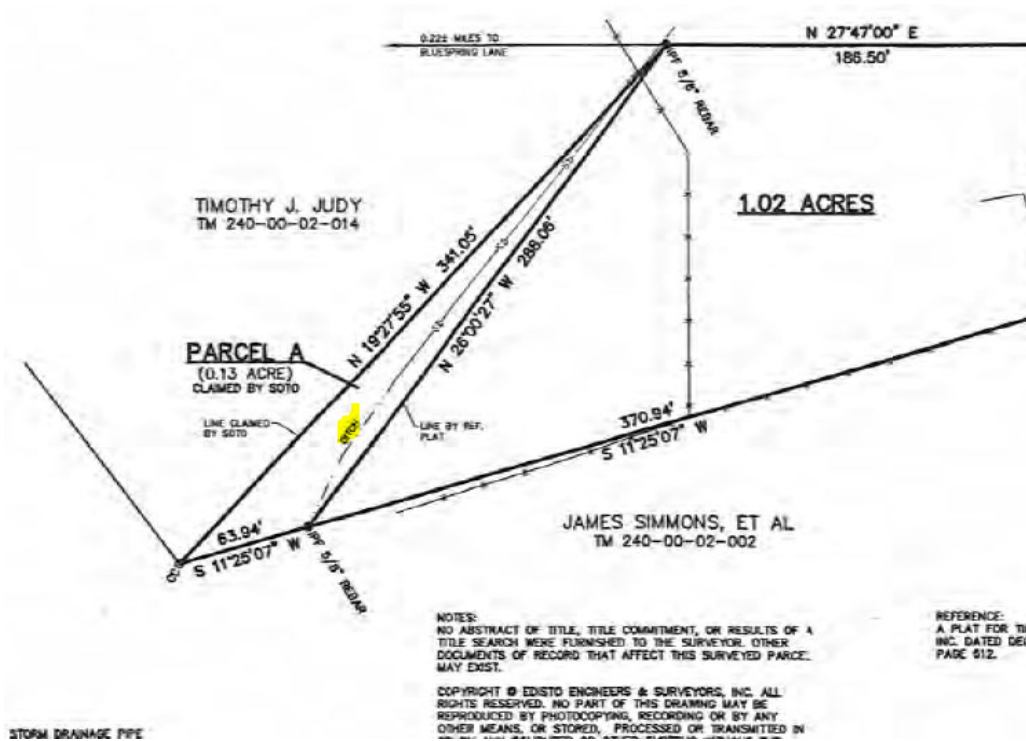
The Court of Appeals simply adopted this illogical leap, noting that the ditch “is akin to a natural boundary, and this court gives great weight to natural boundaries in determining property boundaries.” Opinion at 8. That may be so, but the if the legal standard is that natural boundaries provide extrinsic evidence of the original grantor’s intent, it is axiomatic that that the natural boundary had to be in existence at the time the property was deeded from the original grantor. *See Garrett*, 309 S.C. at 97, 419 S.E.2d at 844 (discussing testimony concerning the state of the disputed property in the year of the original deed). There is no evidence in the record to support the assertion that the now-covered ditch was in existence in 1951.

**B. There is no evidence that the Smith Survey reflects the location of the now-covered ditch line, as Kevin Edwards testified that he instructed Mr. Smith to “put it where it would be good for everybody.”**

Even assuming there was evidence to show the now-covered ditch line was in existence in 1951, there is no evidence that the Smith Survey followed the old ditch line. Indeed, the Petitioner’s survey, which appears to show the ditch, plainly places it in a location other than the Smith Survey boundary line. Despite this, the Opinion reads like a wish list of what the Court hoped the evidence would show, but it does not. The Opinion provides that “Kevin [Edwards] testified [Smith] followed the culvert along the old ditch line separating the home property – Lot

1 – from the pasture property – Lot 14 – in finding the property line.” Opinion at 5. He did not.<sup>2</sup> The Opinion also provides that “Kevin identified the line on Smith’s survey as the old ditch line separating the two properties.” Opinion at 5. He did not. The Court also noted the 2017 aerial photo as evidence of the property line. Opinion at 4. This 2017 aerial was flown in 2017, the year after the Appellant purchased Lot 1. (R. p. 150) (R. pp. 158-159). As a matter of law, it cannot be evidence of the boundary line.

Further, the Smith Survey **does not show the ditch**. (R. p. 149). The Petitioners’ survey shows what appears to be a portion of a ditch, but it is not located along the designated boundary line. (R. p. 166):



<sup>2</sup> Respondent’s counsel testified as such in a leading question at record page 77, but Kevin Edwards never did. *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E.2d 473, 475 (1933) (“This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered”); *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127, 129 (Ct. App.1991)(“Arguments of counsel are ...not evidence”). However, as noted, Kevin Edwards testified that the line was placed on the Respondent’s survey “to be good for everybody” and to reflect what he thought the Appellant wanted. (R. p.p. 64-65).

How could the Court of Appeals affirm when the only visual evidence in the record plainly shows that the now-covered ditch is not at the boundary line established in the Smith Survey. Further, the culvert relied upon in the Opinion is not shown in either survey. (R. p. 149) (R. p. 166). In fact, the Smith Survey explicitly provides, in CAPS:

**ALL BUILDINGS AND SURFACE AND SUBSURFACE IMPROVEMENTS ON AND ADJACENT TO THE SITE ARE NOT NECESSARILY SHOWN HEREON. THE LOCATION AND/OR EXISTENCE OR UTILITY SERVICE LINES TO THE PROPERTY SURVEYED ARE UNKNOWN AND ARE NOT SHOWN.**

(R. p. 149) (emphasis added).

Given that the Master relied exclusively on the testimony of Kevin Edwards, his actual testimony is critical, and any misapprehension of it in the Opinion would require reversal. Kevin Edwards never testified that the Smith Survey reflects the location of the now-covered ditch line. Instead, on direct examination, he testified that he asked Smith to survey Lot 14 to “be good for everybody”, and said nothing about following a now-invisible ditch line:

Q. I'm gonna refer you back to Plaintiffs' Exhibit No. 2, and I'm gonna show - it's the northeast line between the 1.32 acres and now and formally Alice Soto. Is that line -- how was that line determined or how was it run by Don Smith?

A. When I talked to Ms. Soto and she, you know, wanted it done the way the tax map showed it and everything. So when I went to Don and told him what I was in the process of doing, we needed a survey. I told Don that, you know, she's supposed to get an acre of property with the house, and we need to get it surveyed and she wants to make it look like the tax map. So I said try to get it surveyed and look like the tax map, which is what Ms. Soto wanted at the time. So he went in and did that. And it ended up being a little bit more than 1 acre. **But that put it to where I thought that would be good for everybody.** You know, that was as close as we could get to the tax map like it was supposed to be.

Q. And did that establish the line between the old home place and the 1.32 acres your mother still owned?

A. Yes. Because I don't think there was ever an actual survey done since they owned everything around it.

Q. Okay. And is that similar to or comport with Exhibit No. 3, the tax map and aerial flown in 2017?

A. Yes, sir.

Q. And in your conversation with Ms. Soto, is that the way she wanted it?

A. Yes. This is what I thought she wanted.

(R. pp. 64-65). On cross-examination, Mr. Edwards testified that he was not a part of the negotiations to mortgage Lot 1 to Champion Mortgage and **did not know** the extent of the property his mother pledged as collateral for the loan. (R. p. 70). He further admitted that he did not walk the property lines with Respondent's surveyor and, more importantly did not otherwise show him the property lines. (R. p. 71). On re-direct, there was no testimony concerning whether or under what circumstances either surveyor followed the now-covered old ditch line in completing their survey. Therefore, the only evidence in the record is that Kevin Edwards asked the surveyor to survey Lot 14 "to be good for everybody" nearly 70 years after Lot 1 was conveyed by Mr. Stroman.

The Court of Appeals deemed Kevin Edwards' testimony "compelling because he was most familiar with the property, he grew up in the house on Soto's property, and the surrounding land had been in his family for decades." Opinion at 8. It then wholly ignored his actual testimony and determined that Edwards' testimony supported a finding that the Smith Survey line depicted the now-covered ditch. Opinion at 7. The Court of Appeals therefore plainly contradicted the evidence in order to affirm. This is not simply a run-of-mill disagreement with the Court of Appeals' reasoning. There was no reasoning. There was simply a result that cites evidence that does not exist and worse, is contradicted. This is certainly a "special and important reason" for granting review by this Court. Rule 242(b), SCACR.

## CONCLUSION

This case involves a distinct fact pattern that presents a unique legal question: Is a boundary line dispute resolved by looking to the intent of the original common owner of both parcels or a subsequent owner of both parcels? The Court of Appeals either did not answer the question or affirmed the Master in Equity's determination that the subsequent owner's intent controls. This was an error of law that must be resolved by this Court.

Further, this case is unique in that the Court of Appeals reached its conclusion that the now-covered ditch is reflected in the Smith Survey property line based on evidence that is not in the record and is, in fact, wholly contradicted by the evidence in the record. This is a violation of Rule 210, SCACR and the Court's scope of review. The appellate courts must be governed by the facts actually in evidence, not the facts they wish were in evidence. Without that assurance, there is no reliable outcome. This is therefore a special and important reason for the Court to grant this Petition and reverse the Court of Appeals' affirmance of the Master-in-Equity's trial order.

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