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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Op. No. 2024-UP-086
Appellate Case No. 2024-000836

Carr Farms, Inc. and Titan Farms, LLC, ... Petitioners,

v.

Susannah Smith Watson, Carson M. Watson, and Jane Watson, . . . Respondents.

BRIEF OF RESPONDENTS

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COUNTER-STATEMENT OF THE CASE

On July 20, 2016, Carr Farms, Inc. and Titan Farms, LLC (Petitioners) brought an action against Susannah Smith Watson, Carson McBee Watson and Jane Brunson Watson ("Watson") on a verified complaint. (Appx. pp. 27-40). Petitioners claimed they had the right to use waters over property for which they own title. Petitioners sought a temporary restraining order, a declaration that an easement was "in gross," a declaration that Petitioners have common law rights or a contractual right to the use of water in a pond, and a money judgment.

On August 24, 2016, Ms. Watson filed an Answer and Counterclaims. (Appx. pp. 41-54). Watson asserted Petitioners had engaged in trespass and conversion, and also sought a declaratory judgment as to "the rights and duties of the parties with regard to the right to impound and to use water from the pond." (Appx. p. 54). On September 30, 2016, Petitioners filed a Reply to the Counterclaims. (Appx. pp. 55-60). On September 14, 2017, and October 10, 2017, Ms. Watson filed Amended Counterclaims. (Appx. pp. 61-106).

On July 30, 2018, the circuit court heard competing motions for summary judgment. (Appx. pp. 107-141). The parties stipulated that there were no facts in dispute, only an interpretation of the documents and "who has the use of the water." (Appx. pp. 132, l. 22 - p. 137, l. 25). On July 26, 2019, the circuit court entered an order granting Ms. Watson's motion for partial summary judgment. (Appx. pp. 6-18). On August 5, 2019, Petitioners filed a motion for reconsideration. (Appx. pp. 235-239). Ms. Watson filed a Reply. (Appx. pp. 240-248). On May 26, 2021, the circuit court entered an order denying Petitioners' motion. (Appx. pp. 19-26). Petitioners appealed.

On December 5, 2023, the Court of Appeals heard oral arguments in the case and on

March 20, 2024, the Court affirmed the circuit court's order in an unpublished opinion. *Carr Farms, Inc. v. Watson*, 2024-UP-086 (S.C. Ct. App. filed March 20, 2024). (Appx. pp. 297). Petitioners timely sought rehearing. (Appx. pp. 303-309). Watson filed a Return to the Petition. (Appx. pp. 310-314). On April 25, 2024, the Court of Appeals denied the Petition. (Appx. pp. 316).

Petitioners sought a writ of certiorari from this Court and on December 20, 2024, the Court granted the petition.

STANDARD OF REVIEW

An appellate court reviews a motion for summary judgment using the same standard employed by the circuit court. *Progressive Direct Ins. Co. v. Groves*, 438 S.C. 26, 882 S.E.2d 464 (2022), *citing Traynum v. Scavens*, 416 S.C. 197, 201, 786 S.E.2d 115, 117 (2016). Ordinarily, to obtain summary judgment the movant must establish the evidence shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a mater of law." *The Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023) (citing Rule 56(c), SCRCP, and clarifying that the "mere scintilla" standard does not apply under the Rule). However, cross-motions for summary judgment are treated as questions of law. *Progressive Direct*, citing *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). That is, "the issue becomes a question of law for the Court to decide *de novo*." *SC Public Interest Foundation v. Calhoun County Council*, 432 S.C. 492, 854 S.E.2d 836 (2021). *See also USAA v. Pickens*, 434 S.C. 60, 64, 862 S.E.2d 442, 444 (2021) ("When parties file cross-motions for summary judgment, the issue is decided as a matter of law.").

FACTS

As Petitioners noted, the facts are not in dispute. (Brief of Petitioner, p. 2). At issue is a pond that encroaches on three separate tracts of land: The Smith/Watson tract, the Abney/Carr Farms tract to the west of the Smith/Watson tract, and the Bonnette/Holston/Titan Farms tract to the south and east of the Smith/Watson tract.

On October 1, 1960, for valuable consideration, Mattie Lee Bonnette granted, bargained, sold and released unto "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS" certain real property located in Saluda County, South Carolina. (Appx. p. 153). In addition to the conveyance of the real property, Ms. Bonnette also conveyed the following within the granting clause of the deed:

> Also granted *herein* is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein *and that grantee is to have exclusive use and control of the same.*

(Appx. p. 153) (emphasis added).

The Carr Farms Tract

Mr. Smith began construction of his pond some time prior to September 1970. D.C. Abney and Irene Abney owned property bordering the Smith property to the west. On September 21, 1970, Mr. Smith and Mr. Abney entered into an Agreement regarding the flooding of approximately one acre of the Abney property. Pursuant to the Agreement, in exchange for Mr. Abney's grant of authority to Mr. Smith to flood part of the Abney Property, Mr. Smith granted to Mr. Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond." (Appx. p. 157).

The Abney property (or a large portion thereof) was acquired by R.W. Dubose & Sons, Inc. who, on November 1, 2001, changed its name to Carr Farms, Inc. The Abney property was deeded to Carr Farms, Inc. by Quit Claim Deed on May 25, 2010. (Appx. p. 197). The property is shown on a boundary survey prepared for Carr Farms, Inc. dated June 18, 2004 as recorded in the public records for Saluda County. (Appx. p. 180). On May 25, 2010, R.W. DuBose filed a corrective deed involving the Abney property to reflect the name change to Carr Farms, Inc. (Appx. pp. 197-205).

Carr Farms currently owns the Abney property. Because the Abney property remains flooded Carr Farms is entitled to use water from the pond under the Abney/Smith Agreement until the property is no longer flooded. (Appx. p. 53, ¶ 56; Agreement at p. 157).

The Titan Farms Tract

The remainder of the Bonnette property relative to this action was on the southern and eastern borders of the Smith tract. In 1976 Ms. Bonnette conveyed property adjacent to the Smith tract to Jean B. Holston; the Smith pond was in existence at the time, including the portion over part of the Bonnette tract. (Petitioner's Br. p. 4). The Holston property was conveyed to Titan Farms, LLC by deed from Carey Frick a/k/a Carey Edward Frick on January 24, 2012. (Appx. p. 164). The property Mr. Frick transferred to Titan Farms, LLC is shown on a boundary survey prepared for Mr. Frick, revised November 4, 2002 as recorded in the public records for Saluda County. (Appx. p. 170). The deed from Mr. Frick does not mention the Smith easement, but does provide:

> This conveyance is made subject to the following exceptions: all easements, reservations, rights of way, restrictions, encroachments, plats, zoning regulations and covenants of record which may affect the above-described property and those

that an inspection of the property would disclose.

(Appx. p. 166). Furthermore, several recorded plats referenced in the Titan Farms chain of title (after Mr. Smith constructed the pond) show the pond's existence. (Appx. pp. 163, 170, 180).

The Smith Tract

Mr. Smith died and left his property to his wife, "Eliza S. Smith, for and during her natural life, and upon her death to [his children] Francis B. Smith, Jr., Jane S. McGuigan and Susie S. Watson...." (Appx. p. 154). On December 3, 2014, John F. Byrd, Jr., Special Referee, granted, bargained, sold and released unto Susannah Smith Watson (a/k/a Susie S. Watson) the property formerly of Mr. Smith. (Appx. p. 160-163). Ms. Watson is Mr. Smith's daughter and heir and is the current owner of the property formerly owned by Mr. Smith, as described and shown on a plat prepared for the Heirs of Broadus Smith dated December 3, 2013. (Appx. p. 160).

ARGUMENTS

I. The Court of Appeals Correctly Affirmed the Circuit Court's Ruling That the Easement at Issue Is an Appurtenant Easement and That Watson Has the Exclusive Right to Impound and Use the Water from the Pond Partly on the Former Bonnette Property Now Owned by Petitioner Titan Farms

This Court has outlined the difference between an appurtenant easement and an easement in gross as follows:

> The character of an express easement is determined by the nature of the right and the intention of the parties creating it. 25 Am.Jur.(2d) *Easements and Licenses* § 13 (1966). An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. *Id.*; *Smith v. Commissioners*, 312 S.C. 460, 441 S.E.2d 331 (Ct. App.1994); *Carolina Land Company, Inc. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975); *Sandy Island Corp. v. Ragsdale, supra*; 12 S.C. Juris. *Easements* § 3. It also passes with the dominant estate upon conveyance. *Carolina Land Co., Inc. v. Bland, supra.* Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross. 12 S.C. Juris. *Easements* § 3(c). Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. *Hamilton v. CCM, Inc.,* 274 S.C. 152, 263 S.E.2d 378 (1980).

Windham v. Riddle, 381 S.C. 192, 201-202, 672 S.E.2d 578, 583 (2009), quoting *Tupper v. Dorchester County*, 326 S.C. 318, 325-26, 487 S.E.2d 187, 191 (1997).

The Court of Appeals held "the circuit court did not err in finding the Smith Deed Easement met each of the necessary elements for an appurtenant easement." *Carr Farms, Inc. v. Watson*, 2024-UP-086 (Ct. App. 2024), slip at 1. The Court found the easement met the requirements that it "inhere in the land" and "concern the premises." *Id.* The Court also found that the easement met the requirement of having a terminus on the land of the dominant estate. *Id.*, at 2. Finally, the Court found the easement:

> was essentially necessary to the enjoyment of the dominant estate because it was necessary to grant the dominant estate the right for the impounded waters to encroach on the servient estate, and therefore necessary for the dominant estate to enjoy the Pond, which was built in accordance with the intentions of the Smith Deed grantor and grantee.

Id.

The Court of Appeals' analysis is correct. This Court should either dismiss this writ or, in the alternative, affirm the Court of Appeals' decision.

A. The Easement Ms. Bonnette Granted Is an Appurtenant Easement and Watson, as Heir and Assign of the Original Grantee, Has the Exclusive Right to Impound and to Use the Water from the Pond

Petitioners contend that although the devise language in the Bonnette deed to Mr. Smith identifies the grantee as "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS," the clause in the deed describing the easement "only awards this authority unto F. Broadus Smith." (Petitioner's Brief, p. 6). Petitioners contend the absence of the language "heirs and assigns" from the easement portion of the deed "reflects an intent within the deed itself to distinguishing the language used for the easement from the overall conveyance of the property." (Petitioner's Brief, p. 6). The Court should reject this argument.

As noted above, the deed from Ms. Bonnette to Mr. Smith identified the "grantee" as "F. Broadus Smith, his heirs and assigns." The easement language contained in the deed provided:

> *Also granted herein* is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and *grantee herein and that grantee is to have exclusive use and control of the same*.

(Appx. p. 153) (emphasis added).

A "grantee" is "[o]ne to whom property is conveyed." Black's Law Dictionary, p. 840 (12th Ed. 2024); *Scott v McAlister*, 436 S.C. 324, 871 S.E.2d 620 (Ct. App. 2022). The property at issue was conveyed to "F. Broadus Smith, his heirs and assigns," who was the "grantee herein." *See, e.g., K & A Acquisition Group, LLC v. Island Pointe, LLC*, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009) ("In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law.")(internal quotation marks and citations omitted). *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-392 (1987) (same).

The easement granted "herein" (*i.e.*, within the deed) is not an easement in gross. *See, e.g., Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994) ("[E]asements in gross are not favored by the courts, and an easement will never be presumed as personal when it may fairly be construed as appurtenant to some other estate."); *Proctor v. Steedley*, 398 S.C. 561, 571, 730 S.E.2d 357, 362 (Ct. App. 2012) ("The distinction between an appurtenant easement and an easement in gross involves the extent of a grant of an easement, as opposed to the creation of an easement.").

The deed's language establishes that Ms. Bonnette intended to convey the "exclusive use and control of" the impounded water not only to Mr. Smith, but to his heirs and assigns (*i.e.*, the "grantee"). The grant was not a privilege limited to Mr. Smith; rather, it inheres in the land, concerns the premises, has one terminus on the Smith/Watson tract, and is essentially necessary to the enjoyment thereof. The essential nature is evidenced by its placement in the deed itself as part of the bargained-for estate at the time Ms. Bonnette sold Mr. Smith the property. Hence, the

Court of Appeals correctly concluded the right derived from an appurtenant easement.

Furthermore, as noted above, the Frick conveyance to Titan Farms contains the following language:

> This conveyance is made subject to the following exceptions: all easements, reservations, rights of way, restrictions, encroachments, plats, zoning regulations and covenants of record which may affect the above-described property and those that an inspection of the property would disclose.

(Appx. p. 166). The three recorded plats as well as an inspection of the land disclosed to Titan Farms the impoundment of the water over a portion of the property. As the Court of Appeals explained in *Frierson v. Watson*:

> Notice of a deed is notice of its entire contents and whatever matters one would have learned upon the inquiry that the instrument made it one's duty to pursue. [*Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App.2001)]. Further, "where a deed describes land as is shown as a certain plat, such becomes a part of the deed." *Carolina Land Co. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975). The law imputes to a purchaser of real property notice of the recitals contained in the written instruments forming the purchaser's chain of title and charges him with the duty of making such reasonable inquiry and investigation as is suggested by the recitals and references therein contained. *McDonald v. Welborn*, 220 S.C. 10, 16, 66 S.E.2d 327, 330 (1951); *LoPresti v. Burry*, 364 S.C. 271, 276, 612 S.E.2d 730, 732-33 (Ct. App.2005); *see also S. Ry., Carolina Div. v. Howell*, 79 S.C. 281, 286, 60 S.E. 677, 679 (1908) (finding the equivalence of notice in circumstances where one has knowledge of such facts as were sufficient to put one on inquiry, which if pursued with due diligence, would have led to the knowledge of one's rights).
>
> An easement by grant is not required to be recorded to be valid. Although notice is assumed when a document conveying an interest in real property is recorded, recording is not necessary if the buyer has actual notice.

371 S.C. 60, 67-68, 636 S.E.2d 872, 876 (Ct. App. 2006).

In this case, the Court of Appeals stated:

> * * * Here, the Pond was apparent from a visual inspection of the property

> and Titan Farms's deed referenced a plat prepared for its grantor showing the Pond was partially on the property conveyed. *See Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 232, 662 S.E.2d 452, 455 (Ct. App. 2008) ("[W]here a deed describes land as is shown as a certain plat, such becomes a part of the deed." (alteration in original) (quoting *Carolina Land Co. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975)). Thus, Titan Farms had notice of the existence of the Pond and wasn on inquiry notice about the legal ownership of the Pond, which spanned three separate properties. Further, if Titan Farms had searched for deeds from its common predecessor-in-title with Watson, it would have discovered the properly recorded Smith Deed. Accordingly, Appellants were not entitled to claim they werer not bound by the easement.

Carr Farms, Inc. at p. 2.

The Court of Appeals correctly concluded that the granting clause of the Bonnette/Smith deed created an appurtenant easement rather than an easement in gross, and that Titan Farms had at least inquiry notice of the easement's existence. This Court should dismiss the writ or, alternatively, should affirm the Court of Appeals' opinion which affirmed the circuit court's order.

B. The Easement Ms. Bonnette Granted to Mr. Smith to Impound and Use the Water Contains the Necessary Elements for an Appurtenant Easement

As this Court explained, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. *Windham v. Riddle*, 381 S.C. 192, 201-202, 672 S.E.2d 578, 583 (2009); *Tupper v. Dorchester County*, 326 S.C. 318, 325-26, 487 S.E.2d 187, 191 (1997). The circuit court and the Court of Appeals correctly held the easement in this case meets all of the elements necessary to be an appurtenant easement.

1. The Smith Easement "Inheres in the Land" and "Concerns the Premises"

Petitioners assert that the Bonnette grant of the easement was a personal privilege to F.

Broadus Smith only, and that the easement does not "inhere" or "exist as a permanent, inseparable, or essential attribute or quality of a thing." (Petitioner's Br. p. 7). The circuit court and the Court of Appeals disagreed. This Court should concur.

"Inhere" means "[t]o exist as a permanent, inseparable, or essential attribute or quality of a thing; to be intrinsic to something." Black's Law Dictionary, p. 932 (12th Ed. 2024). For the interest to "concern the premises" means "relate to; be about." Merriam-Webster Dictionary at https://www.merriam-webster.com/dictionary/concern (as of March 3, 2025). Thus, the interest must be about or in relation to the particular land.

As the Court of Appeals held, "[t]he right to the impoundment of water on the servient estate was *inseparable* from the land on the servient estate. The land was *essential* to the dominant estate's use of the servient estate for the creation of the Pond as granted in the Smith Deed." *Carr Farms*, at 1 (emphasis added). This ruling is correct. Mr. Smith's construction of a dam for the purpose of creating a pond to impound water to water crops or livestock was contemplated in the Smith Deed itself, and was not something of a "temporary" nature. Even in 1970, the cost to construct the dam to create the pond was no small undertaking.

Petitioners argue that at the time Ms. Bonnette granted the easement there was no impounded water to which Mr. Smith could have used exclusively. Petitioners describe the interest as "a prospective grant of authority to impound water," and notes it "wasn't until ten (10) years later that Broadus Smith elected to start constructing the dam to impound the water and thereby form the pond." (Petitioner's Br. p. 7). Petitioners assert "[t]his lapse of time demonstrates that the initial right in the easement – to construct the dam and impound water – was, in fact, separable from the land." *Id.* The Court or Appeals rejected this argument. This

Court should do the same.

As the Court of Appeals noted:

> [T]he legal creation of an easement by express grant can precede the physical creation and use of the easement. *See Binkley v. Burry*, 352 S.C. 286, 297, 573 S.E.2d 838, 844 (Ct. App. 2002) ("An easement by its very nature involves *the right to encroach* upon another's property."); *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015) ("An easement is a *right* given to a person to use the land of another for a specific purpose."); *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 69, 558 S.E.2d 902, 908 (Ct. App. 2001) (holding the "clear and unambiguous language" of a deed granting the defendant flowage rights over the dam created an easement that extended to the top of the dam, even though the impounded waters did not extend that far until a flood almost twenty years after the creation of the easement).

Carr Farms, at 1 (emphasis added).

The Smith Deed granted the *right* for Mr. Smith to build the dam at some point and impound water on the Bonnette land. The express right granted was first to construct a dam "partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein to impound water" on Ms. Bonnette's lands and for the "grantee" "to have exclusive use and control" of the water encroaching upon the Bonnette land. (Appx. p. 153). While the dam had not been built and water was not yet being impounded at the time of the grant, the spring existed that produced water, and water was accessible and available on the property. The parties therefore contemplated that when a dam was constructed the water would be impounded and flow onto the Bonnette tract, and that the grantee of the deed ("F. BROADUS SMITH, HIS HEIRS AND ASSIGNS") would have exclusive use of the impounded water.

Petitioners also contend the Court of Appeals failed "to address how the 'exclusive use' of the pond might 'inhere in the land.'" (Petitioners' Br., p. 8). Petitioners argue that because the

impounded water did not exist at the time of the conveyance, the "exclusive use" also did not exist. (Petitioners' Br. p. 8). Petitioners point out that Mr. Smith "granted unto his neighbor, [Mr.] Abney, the right to use the impounded water" and therefore the exclusive nature of the use of the water "was not essential, permanent, inseparable." (Petitioners' Br. p. 8). The Court should reject this argument.

Mr. Smith obtained from Mr. Abney the right to flood a portion of Mr. Abney's property, and in exchange gave Mr. Abney "the right to use *said water* from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond." (Appx. p. 157) (emphasis added). This grant involves *only* water that floods the Abney tract (now owned by Carr Farms), not the water that flooded over into the Bonnette property (now owned by Titan Farms). Mr. Abney gained the right to use the water that was on his property but once that water drained down, Mr. Abney had no use of any other water either from the pond itself or from the water impounded on the Bonnette tract.

Furthermore, just because Mr. Smith gave Mr. Abney, his heirs and assigns the right to use impounded water so long as the water flooded the Abney property does not negate Mr. Smith's right to exclusive use of the water. His grant to Mr. Abney was part of that use.

The circuit court and the Court of Appeals both held the easement "inhered in the land" and "concerned the premises." This Court should dismiss the writ or, in the alternative, affirm this ruling.

2. The Smith Easement Has One Terminus on the Smith/Watson Land

Petitioners do not dispute that the easement has one "terminus" on the Smith/Watson

dominant estate. Even so, the Court of Appeals held:

> The Smith Deed Easement met the requirement of having a terminus on the land of the dominant estate. *See Williams v. Tamsberg*, 425 S.C. 249, 263, 821 S.E.2d 494, 502 (Ct. App. 2018) (stating that in order for a terminus on the land of the party claiming an easement appurtenant to exist, "the dominant estate must have access to the purported easement"); *id.* ("[A] court could find an easement appurtenant if the purported easement ... at least touches the dominant estate."). Here, the Smith Deed Easement clearly touched the dominant estate as the waters of the Pond touched both the servient and dominant estates.

Carr Farms, at 2. This ruling is correct.

In this case the party claiming the appurtenant easement are the Watsons. The undisputed evidence as reflected on the recorded plats clearly show that a portion of the dam and the shoreline of the pond containing the impounded water exists on Ms. Watson's property. There is no evidence that the portion of the dam on Ms. Watson's property has ever been removed, or that the water levels have ever dropped to a point where the pond is wholly on the lands owed by Petitioner Titan. There is, therefore, a terminus on the Ms. Watson's property.

The circuit court and the Court of Appeals correctly held the easement had a terminus on the dominant estate. This Court should agree.

3. The Smith Easement Is Essentially Necessary to the Enjoyment of the Land

Petitioners contend once again that the fact that Mr. Smith did not build the pond for ten (10) years as well as the existence of the Smith/Abney agreement establishes that the easement was not "essentially necessary for the enjoyment of the property." (Petitioners' Br. pp. 8-9). The Court should reject these assertions.

The Court of Appeals held:

> * * * Finally, the Smith Deed Easement was essentially necessary to the enjoyment of the dominant estate because it was necessary to grant the dominant estate the right for the impounded waters to encroach on the servient estate, and therefore necessary for the dominant estate to enjoy the Pond, which was built in accordance with the intentions of the Smith Deed grantor and grantee.

Carr Farms, at 2. This ruling is correct.

With regard to Petitioners' argument that Mr. Smith's delay in constructing the dam belies the essential nature of the easement, this argument ignores that it was the *right* to construct the dam that Ms. Bonnette conveyed. As noted above, the Court of Appeals held:

> [T]he legal creation of an easement by express grant can precede the physical creation and use of the easement. *See Binkley v. Burry*, 352 S.C. 286, 297, 573 S.E.2d 838, 844 (Ct. App. 2002) ("An easement by its very nature involves *the right to encroach* upon another's property."); *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015) ("An easement is a *right* given to a person to use the land of another for a specific purpose."); *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 69, 558 S.E.2d 902, 908 (Ct. App. 2001) (holding the "clear and unambiguous language" of a deed granting the defendant flowage rights over the dam created an easement that extended to the top of the dam, even though the impounded waters did not extend that far until a flood almost twenty years after the creation of the easement).

Carr Farms, at 1 (emphasis added). There was nothing in the easement that required the dam to be built within a certain period of time; rather, Mr. Smith obtained the right to build the dam, impound the water, flood the land, and use exclusively the water on the flooded land. The easement was essential and necessary for Mr. Smith to ultimately obtain that result.

As to Petitioners' claim that the Smith/Abney arrangement undermines the element of "essentially necessary to the enjoyment" of the property, the fact that Mr. Smith granted Mr. Abney, his heirs and assigns the right to *also* use the water does not negate the ability of Mr. Smith, his heirs and assigns from using the water that floods the Abney/Carr Farms property. Mr. Smith's "exclusive use" included his ability to permit Mr. Abney and his successors to also use

the property, so long as the land remained flooded.

The Court of Appeals correctly affirmed the circuit court's holding that the interest Ms. Bonnette granted to Mr. Smith, his heirs and assigns was an appurtenant easement. This Court should dismiss the writ or, alternatively, should affirm the Court of Appeals' decision.

C. The Court of Appeals Did Not Overlook Petitioners' Argument That Petitioners Lacked Any Notice of the Exclusive Use Nature of the Impounded Water

Petitioners contend that the Court of Appeals "failed to recognize that nothing in Petitioners' chain of title, or a physical inspection of the property would suggest 'exclusive use' of the pond." (Petitioners' Br. pp. 9-11. Petitioners' argument ignores that it was on inquiry notice about the nature of the interest on the property (the existence of the pond's encroachment onto the land as obvious from inspection and from the recorded plats) and that inquiry would have revealed the Bonnette/Smith Deed Easement. This Court should reject Petitioners' assertions.

The Court of Appeals stated:

> [W]e disagree with Appellants' argument that because the Smith Deed Easement was absent from their chain of title, they should not be bound by the easement's purported grant of "exclusive use and control" of the Pond. *See Spence v. Spence*, 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006) (holding constructive notice is "notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts" (quoting *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 64 n.6, 504 S.E.2d 117, 122 n.6 (1998))); [*Binkley v. Rabon Creek Watershed Conserv. Dist.*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001)]("Notice of a deed is notice of its whole contents ... and *it is also notice of whatever matters one would have learned by any inquiry which the recitals of the instrument made it one's duty to pursue.*" (emphasis in original) (quoting 66 C.J.S. *Notice* § 19 (1998))); *Ten Woodruff Oaks, LLC v. Point Dev., LLC*, 385 S.C. 174, 184, 683 S.E.2d 510, 515 (Ct. App. 2009) ("[C]onstructive notice is not

necessarily confined to the public record ...."); 66 Am. Jur. 2d *Records and Recording Laws* § 78 (2021) ("[T]here is authority that a purchaser cannot ignore deeds issued by a common grantor, or fail to search for them, on the theory that the deeds are outside the servient estate's chain of title, since to hold otherwise would undermine the broad constructive notice afforded recorded conveyances under the recording statutes."); *id.* ("If a deed or a contract for the conveyance of one parcel of land with a covenant or easement affecting another parcel of land owned by the same grantor is duly recorded, the record is constructive notice to a subsequent purchaser of the other parcel."); *S.C. Dep't of Transp. v. Horry County*, 391 S.C. 76, 84, 705 S.E.2d 21, 25 (2011) (holding servient estate holders had constructive notice of an easement their predecessor-in-title granted the State even though their 1985 deeds did not mention the easement, explaining, "[i]n this case, the deed creating the easement was properly recorded; thus, Appellants had constructive notice of the easement, regardless of their legally unfounded argument that finding the deed in question would be like 'finding a needle in a haystack.' "). Here, the Pond was apparent from a visual inspection of the property and Titan Farms's deed referenced a plat prepared for its grantor showing the Pond was partially on the property conveyed. *See Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 232, 662 S.E.2d 452, 455 (Ct. App. 2008) ("[W]here a deed describes land as is shown as a certain plat, such becomes a part of the deed." (alteration in original) (quoting *Carolina Land Co. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975))). Thus, Titan Farms had notice of the existence of the Pond and was on inquiry notice about the legal ownership of the Pond, which spanned three separate properties. Furthermore, if Titan Farms had searched for deeds from its common predecessor-in-title with Watson, it would have discovered the properly recorded Smith Deed. Accordingly, Appellants were not entitled to claim they were not bound by the easement.

Carr Farms, p. 2. These statements reflect a correct application of the law.

D. The Court of Appeals' Decision Is Not Contrary to Established South Carolina Law

Petitioners contend that the Court of Appeals' decision transforms the grant of an easement into "a fee simple devise and thereby divests Petitioner Titan of the ability to make any use of the property underneath the impounded water." (Petitioners' Br. p. 12). The Court should reject this argument.

The Court of Appeals held:

> We disagree with Appellants' argument that the granting of the exclusive easement is contrary to the established law of South Carolina. *See Morris v. Townsend*, 253 S.C. 628, 635, 172 S.E.2d 819, 822-23 (1970) (holding the plaintiffs did not have the right to use waters impounded on their land, for which the defendant had an easement, because the plaintiffs did not acquire an interest in defendant's water); *id.* at 635, 172 S.E.2d at 823 ("The gist of the creation of the easement in this case is in order that the defendant may have and operate his own lake."); *id.* at 636, 172 S.E.2d at 823 ("While it is true that plaintiffs may use their land for any purpose not inconsistent with the rights acquired by the defendant, such does not include the right to use the lake and its waters which came into being solely by reason of the fact that the defendant, at his own expense, built the dam. Except for the dam, which defendant may maintain or remove, water would not approach plaintiffs' land and no riparian rights are here involved."); *White's Mill Colony Inc. v. Williams*, 363 S.C. 117, 130, 134-35, 609 S.E.2d 811, 818, 820 (Ct. App. 2005) (holding "owners of all or part of a pond or lake bed have the right to exclude others from accessing or using the surface waters above their property" but noting the owner of the land under a lake is free to make other arrangements with the abutting property owners). Here, even if Appellants would have had an interest in the use of the Pond's waters by virtue of owning the land beneath the waters, the grantor and grantee of the Smith Deed made an agreement giving the grantee, who undertook the investment to construct the Pond, exclusive use of its waters to protect his investment. We hold the circuit court's finding that Watson had exclusive use and control of the Pond is consistent with both *Morris* and *White's Mills Colony*. *See* 363 S.C. at 131, 363 S.E.2d at 818 ("Because the construction of a man-made water body often involves the expenditure of substantial sums of money and the expense is not, as a rule, divided proportionately among the various abutting owners, the individual making the expenditure is justified in expecting that superior privileges will inure to him in return for his investment." (quoting *Anderson v. Bell*, 433 So. 2d 1202, 1205 (Fla. 1983))).

Carr Farms, at 3. These are correct statements of the law of this State.

As noted, Petitioners argue that the Smith privilege to exclusively use the water over the Bonnette property, if appurtenant, essentially divests the owner of the servient estate of the ability to use the land and effectively renders the easement a conveyance of the property. While it is true that an easement does divest the owner of the servient estate from use of the property so long as the easement exists, it does not constitute a conveyance of title to the property. "An

easement is a right which one person has to use the land of another for a specific purpose and gives no title to the land on which the servitude is imposed." *Douglas v. Med. Investors, Inc.*, 256 S.C. 440, 182 S.E.2d 720 (1971). If the law were as suggested by Petitioners, the law would essentially void all appurtenant easements where "exclusive" use is granted.

Mr. Smith did not need any easement from himself to himself to use the water impounded on his own property. However, without the easement from Ms. Bonnette to impound the water and to use same then (a) impounding water on the Bonnette property after construction of the dam would constitute a trespass, and (b) without the exclusivity provision, Ms. Bonnette would have likewise had the right to use any of the impounded water that covered her property. It is Ms. Bonnette's grant of exclusive use easement that creates the sole right in Mr. Smith, his heirs and assigns, to impound water on and to use the water over the Bonnette Property.

Established South Carolina law allows owners of real property to grant easements, both appurtenant and in gross. Petitioners essentially argue that all easements that are appurtenant and that run with the land, which necessarily deprive the servient estate owner of some right of use of his/her property, should be void as a matter of law or public policy. To the contrary, both South Carolina law and public policy dictate that owners of real property are free to make voluntary agreements concerning the use of their property so long as that use does not violate the law or public policy of this State. In this case, granting an appurtenant easement to an adjoining owner, after giving him the ability to construct a dam partially on the property of the grantor, the exclusive right to impound and to use the water, is not illegal nor does it violate public policy.

The circuit court and the Court of Appeals correctly applied the law to this case, This Court should dismiss the writ or, alternatively, affirm the Court of Appeals' decision.

CONCLUSION

For the reasons stated the Court should dismiss the petition for review. Alternatively, the Court should affirm the decision of the Court of Appeals which affirmed the circuit court's ruling in this matter.

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