

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and Betty S.
Amick, as Personal Representative of the
Estate of C. Ray Amick,

Defendants.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert,
and Melissa B. Schumpert,

Plaintiffs,

vs.

Betty S. Amick, as Personal
Representative of the Estate of C. Ray
Amick, and Cheryl Littlejohn,

Defendants.

ORDER

This matter comes before me on the parties' cross motions for summary judgment pursuant to Rule 56, SCRPC. A hearing was held in this matter on December 6, 2023. Having thoroughly and carefully considered the extensive record, as well as the written and oral arguments of counsel,

the court hereby grants in part Defendants' motions for summary judgment and denies Plaintiffs' joint motion for summary judgment for the reasons set forth herein.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder, *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003), and to assist parties in avoiding—or mitigating—the burdens associated with conducting trials when there exist no genuine issues of material fact. Summary judgment is appropriate if the pleadings and other supporting documents “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(e), SCRPC. In determining whether a genuine issue of material fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). At the summary judgment stage, “the court does not weigh conflicting evidence with respect to a disputed material fact.” *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

In this case, Plaintiffs and Defendants have submitted cross motions for summary judgment. Therefore, the required standard of viewing the facts and any inferences that may arise therefrom in the light most favorable to the non-moving party flips back and forth in favor of and against each side, depending on which motion is under consideration. Nevertheless, when denying a motion or opposing motions for summary judgment, the Court is not required to make specific findings of fact or conclusions of law and, as such, need not address every reason for denying each

party's arguments in support of summary judgment. *Ballenger v. Bowen*, 313 S.C. 476, 478 n.1, 443 S.E.2d 379, 380 n.1 (1994).

Additionally, as Defendants correctly note in their motion, the burden of proof with respect to prescriptive easements is heightened and requires proof of each element by clear and convincing evidence. *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170 (2015). Previously, “to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party [was] only required to submit a mere scintilla of evidence.” *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) (citing *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). On the other hand, “[i]n cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment.” *Id.* (citing *Hancock*, 381 S.C. at 330–31, 673 S.E.2d at 803). While the South Carolina Supreme Court has overruled the “mere scintilla of evidence” standard with respect to claims to be proven by a preponderance of the evidence, *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463–64, 892 S.E.2d 297, 301 (2023), the court did not address the standard for claims requiring a heightened burden of proof. Nevertheless, based on the Supreme Court’s holding in *Kitchen Planners* that “the proper standard is the ‘genuine issue of material fact’ standard set forth in the text of [Rule 56,]” *id.* at 463, 892 S.E.2d at 301, the Court has applied the same Rule 56 standard to all claims in this case, regardless of their ultimate burden of proof.

UNDISPUTED FACTS

The undisputed facts are as follows. Plaintiffs and Defendants all own real property on a peninsula on Lake Murray referred to as “Lions Club Point.” The property at Lions Club Point is comprised of approximately ten (10) acres and was originally purchased by the Newberry Lions

Club in 1933. Lions Club Road bisects the property from east to west, beginning from State Park Road on the west boundary of the property. The adjacent fringe lands between the property and Lake Murray were, at all times prior to 2019, owned by SCE&G.

At some point after 1933, the Newberry Lions Club divided up the property and deeded out multiple lake front parcels to various Club members, including Plaintiffs' fathers. The Lions Club retained a five-acre parcel containing Lions Club Road and the surrounding wooded area, as well as a small structure closer to the point of the peninsula which was used as the Lions Club clubhouse (the "Lions Club Property" or the "Property"). Over the years, the Lions Club created a boat ramp and a beach area on the SCE&G fringe land adjoining the Lions Club Property (the "Fringe Land"), beyond the clubhouse. The parties agree that the Lions Club permitted its members, including Plaintiffs' predecessors and their families, to use Lions Club Road and traverse the Lions Club Property to access the boat ramp and beach beyond the Fringe Land.

In 2017, Defendant Cheryl A. Littlejohn ("Littlejohn") purchased the parcel next to the Lions Club Property on the southeastern side. Then, in 2018, the Lions Club sold its Property to Defendant Amick ("Amick"). The following year, Amick also purchased the Fringe Land from SCE&G's successor, Dominion. Plaintiffs subsequently initiated this action to seek an easement over Defendants' properties to use a disputed portion of Lions Club Road to access the boat ramp and beach on beyond Fringe Land.

Thereafter, Plaintiffs initiated these actions seeking, *inter alia*, (1) an order declaring Plaintiffs' right to use Lions Club Road and the Fringe Land pursuant to a prescriptive easement, an easement implied by prior use, or an easement by estoppel; (2) a permanent injunction enjoining Amick from obstructing or in any way impeding Plaintiffs' access to or use of Lions Club Road and the Fringe Land; and (3) an award of actual and punitive damages against Amick for

intentionally infringing upon Plaintiffs’ asserted right to use Lions Club Road and the Fringe Land.¹

ANALYSIS

A. Lions Club Road

As an initial matter, the Court notes its concern as to whether Judge Hocker’s August 6, 2019 ruling granting a preliminary injunction in this matter is binding on this Court’s consideration of Defendants’ present motions for summary judgment. In particular, Plaintiffs assert in their Supplemental Memorandum in Support of their Motion for Summary Judgment and in Opposition to Defendants’ Motions for Summary Judgment that a ruling granting Defendants’ motions would be “impermissible,” relying on the South Carolina Supreme Court’s holding in *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986), that “[o]ne Circuit Court Judge does not have the authority to set aside the order of another.” Plaintiffs’ position reads that, as a matter of law, this Court cannot make a decision that is contrary to Judge Hocker’s order granting a preliminary injunction. This Court is not aware of any legal precedent establishing that a circuit court judge ruling granting a preliminary injunction under Rule 65, SCRCF, in favor of one party prevents the adverse party from being granted a subsequent motion for summary judgment made pursuant to Rule 56, SCRCF. *But see Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981) (“[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits.”); *S.C. Pub. Interest Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022) (holding that, “despite the ‘long-standing

¹ The remaining claims not specifically set forth above—specific performance, promissory estoppel, intentional interference with contractual rights, and breach of contract accompanied by a fraudulent act—are asserted only in *Rice v. Newberry Lions Club et al.*, Newberry County Court of Common Pleas, Case No. 2018-CP-36-00089 (filed Feb. 20, 2018), and are raised in the alternative to the easement claims identified and at issue herein.

rule in this State that one judge of the same court cannot overrule another,’ interlocutory orders ‘may be reconsidered and corrected by the court before entering a final order on the merits’” (internal citations omitted)). Moreover, the Court notes that at the time Judge Hocker issued his ruling, very little, if any, discovery had been conducted by the parties; since then, the parties have engaged in extensive discovery greatly expanding the record beyond what was available to Judge Hocker.

At the hearing in this matter, Plaintiffs clarified their position to assert that Judge Hocker’s order is not binding, but merely instructive in the context of these opposing motions for summary judgment. However, Plaintiffs’ original argument is, at first blush, logical. In granting a preliminary injunction, Judge Hocker necessarily determined that Plaintiffs made a prima facie showing with respect to their claims based on the evidence in the record at that time—specifically, Plaintiffs’ affidavits. *See, e.g., Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011) (“In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief.”); *Levine v. Spartanburg Reg’l Servs. Dist., Inc.*, 367 S.C. 458, 464, 465–66, 626 S.E.2d 38, 41–42 (“Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.” (quoting *Hesel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992))). Given the types of evidence a party may offer in support of summary judgment—particularly evidence that may not be admissible at trial—and the prohibition against weighing the evidence on a motion for summary judgment, a Rule 56 analysis essentially involves merely searching for the existence of evidence. Accordingly, because Judge Hocker’s order relies upon a finding that there does exist

some evidence to support Plaintiff's claims, any grant of summary judgment for Defendants on the claimed easement as it stood before Judge Hocker² necessarily either: (1) in effect, overrules Judge Hocker's finding in this regard or (2) requires the impermissible weighing of contradictory evidence.

Thus, although the Court is not aware of any controlling precedent prohibiting it from granting Defendants' subsequent Rule 56 motions for summary judgment following Judge Hocker's prior issuance of a preliminary injunction pursuant to Rule 65, without further direction or argument distinguishing the Plaintiffs' affidavits from the subsequent discovery conducted, this Court feels constrained by Plaintiffs' argument. Further, even without these analytical restrictions, this Court's desire would be to show the necessary and appropriate respect to Judge Hocker's decision under Rule 65. Therefore, Defendants' motions for summary judgment with respect to the existence of an easement over Lions Club Road is **DENIED**.

This conclusion inevitably leads the Court to find that, after reviewing the materials and the record, there are clearly genuine disputes of material fact—particularly as it relates to the use of the disputed area—which require that Plaintiffs' motion for summary judgment as to the Road is likewise **DENIED**.

B. Fringe Lands

Even with unresolved disputes of facts concerning the existence of an easement over Lions Club Road on Defendants' properties, however, Plaintiffs' asserted theories of easement when separately analyzed do not apply to the Fringe Lands as a matter of law. The only evidence

² The Court notes that when Judge Hocker issued his ruling granting the preliminary injunction on August 6, 2019, the Fringe Lands still belonged to SCE&G and had not yet been purchased by Mr. Amick, and Plaintiffs did not assert an easement over them. Therefore, this analysis with respect to the limiting impact of Judge Hocker's order—if any—is restricted to the issue of the existence of an easement over Lions Club Road, not the Fringe Lands.

presented establishes that the prior owner of the Fringe Lands—SCE&G—at whatever time the property was used, granted permission to use the property such that no prescriptive easement could arise thereon. *See* June 1, 1984 Federal Energy Regulatory Commission License; *see also* *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016) (noting “it ‘is well-established that evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse’” (quoting *Bundy v. Shirley*, 412 S.C. 292, 310, 772 S.E.2d 163, 173 (2015))).

Similarly, no evidence was presented that ownership of the Fringe Lands was ever claimed by the Newberry Lions Club nor that there was ever any unity of title between the Fringe Lands and the parties’ properties. Accordingly, no implied easement by prior use for the benefit of Plaintiffs’ properties can arise over the Fringe Lands. *Boyd v. Bellsouth Tel. Tel. Co., Inc.*, 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006).

Finally, Plaintiffs have failed to allege or present any evidence that SCE&G, its successor, Dominion, or Defendants engaged in any “conduct which amounts to a false representation or concealment of material facts . . . which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which [Defendants now] attempt[] to assert[,]” as required for establishment of an easement by estoppel. *Id.* at 422, 633 S.E.2d at 142 (citing *S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993)). Furthermore, “[a] properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it.” *Id.* at 423, 633 S.E.2d at 142 (quoting *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001)). According to the record before the Court, the properly recorded

title to the Fringe Lands clearly establishes that no easement has ever existed or been granted over that land. Thus, Plaintiffs cannot establish an easement by estoppel as a matter of law. Therefore, Plaintiffs' motion for summary judgment is **DENIED** and Defendants' motions for summary judgment are **GRANTED** as to the Fringe Lands.

CONCLUSION

For the reasons set forth herein, Plaintiffs' motion for summary judgment is **DENIED** and Defendants' motions for summary judgment are **GRANTED in part** and **DENIED in part**. Accordingly, Plaintiffs' claims (1) for an order declaring the existence of an easement over Defendants' properties; (2) for a permanent injunction enjoining Defendants from erecting or placing any obstructions to interfere with or impede Plaintiffs' access to Defendants' properties; and (3) for trespass and nuisance are **DISMISSED** with respect to the Fringe Lands.

IT IS SO ORDERED.

J. Mark Hayes, II
Judge for Designated Complex Case

January __, 2024

_____, South Carolina



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al
Case Number: 2018CP3600089
Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132