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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Courtney Clyburn Pope
Circuit Court Judge

Appellate Case No. 2024-000898

Albert D. Barwick, Anna Barwick, Gordon G. Holscher II, Billy R. Jeffcoat, Connie M. Jeffcoat, Harriet A. Jones, Ernest J. Matheson, Thomas L. Reading, Kenneth W. Pippen Jr., and Ignas K. Skrupkelis .... Appellants,

v.

Edisto Lake, Inc., Edisto Lake Ridge, LLC, Edisto Lake Property Owner's Association, Inc. and Terry M. Hutto, Jr., ... Respondents.

INITIAL BRIEF
OF RESPONDENT EDISTO LAKE PROPERTY OWNER'S ASSOCIATION, INC.

HULL BARRETT, PC

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY FINDING AND CONCLUDING THAT HUNTING IS NOT PROHIBITED WITHIN THE EDISTO LAKE COMMUNITY?

2. DID THE TRIAL COURT ERR BY FINDING THAT HUNTING IN THE EDISTO LAKE COMMUNITY IS NOT IN AND OF ITSELF A NOXIOUS AND OFFENSIVE ACTIVITY AS DEFINED BY THE RESTRICTIVE COVENANTS?

STATEMENT OF THE CASE

Respondent Edisto Lakes Property Owner's Association, Inc. ("**Respondent HOA**") adopts by reference the Statement of the Case set forth in the Initial Brief of Respondent Terry M. Hutto, Jr., filed with this Court on March 5, 2025.

ARGUMENTS

1. THE TRIAL COURT DID NOT ERR IN FINDING AND CONCLUDING THAT HUNTING IS NOT PROHIBITED WITHIN THE EDISTO LAKE COMMUNITY.

As an initial matter, Respondent HOA was added as a party to this case to ensure the full and just adjudication of all of the issues presented in this matter (Order dated October 27, 2022). To that end, Respondent HOA has no direct stake in the outcome of the appeal and will comply with the Court's holding accordingly. Further, Respondent HOA agrees that the standard of review for this matter is properly stated in the Appellants' Brief for this case.

"Restrictive covenants are contractual in nature." RV Resort & Yacht Club Owners Ass'n, Inc. v. BillyBob's Marina, Inc., 386 S.C. 313, 320, 688 S.E.2d 555, 559 (2010) (quoting Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006)). "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." S.C. Dep't of Nat. Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001) (quoting Taylor v. Lindsey, 332 S.C. 1, 5, 498 S.E.2d 862, 864 (1998)). "Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." Taylor, 332 S.C. at 4, 498 S.E.2d at 863. "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." Id at 4, 498 S.E.2d at 863-64 (1998) (quoting Palmetto Dunes Resort v. Brown, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct. App. 1985)).

The plain language of the restrictive covenants appear to clearly allow the residents of the Edisto Lake subdivision to hunt in certain areas of the community. The applicable provision of the restrictive covenants in this regard provides:

"Section 21. Hunting: No hunting will be permitted on or over Edisto Lake, or on any roads or parkways within the Property."

By placing a prohibition on certain areas within the Edisto Lake Community, the covenants appear on their face to permit hunting on any other areas within the community.

2. THE TRIAL COURT DID NOT ERR BY FINDING THAT HUNTING IN THE EDISTO LAKE COMMUNITY IS NOT IN AND OF ITSELF A NOXIOUS AND OFFENSIVE ACTIVITY AS DEFINED BY THE RESTRICTIVE COVENANTS.

S.C. Code Ann. § 50-11-355 (1976) provides,

> [i]t is unlawful to hunt deer with a firearm within three hundred yards of a residence when less than ten feet above the ground without permission of the owner and occupant. Anyone violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days. The provisions of this section do not apply to a landowner hunting on his own land or a person taking deer pursuant to a department permit.

Legislative authorization generally shields such activities from being classified as public nuisances. For instance, in Belton v. Wateree Power Co., 123 S.C. 291, the Court held that if an act claimed to be noxious is authorized by the legislature, it cannot be deemed a public nuisance.

Here, our legislature clearly contemplates that deer hunting can and will occur near someone's residence. Therefore, it would be inappropriate to conclude hunting in the Edisto Lake Community constitutes a noxious and offensive activity.

CONCLUSION

The lower Court's decision in this matter is supported by the evidence presented at the trial of this case. For the reasons stated, this Court should affirm her judgment.

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April 1, 2025