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May 20 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III

Case No.: 2017-CP-07-02110
Appellate Case No. 2024-001053

Charles Willis Gardner.....Respondent,

v.

Taylor Reuben Adams, and Beaufort County, South Carolina, Defendants,
of which Taylor Reuben Adams is the Appellant.

AND

Beaufort County, South Carolina is a Respondent.

RECORD ON APPEAL
VOLUME 1 of 2

May 20, 2025

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

CHARLES WILLIS GARDNER,)

Plaintiff,)

vs.)

TAYLOR RUBEN ADAMS,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-07-02110

CONSENT CONSTRAINT
RESTRAINING ORDER

This matter comes before the Court upon the consent of the parties.

NOW, THEREFORE, upon the motion of the Defendant, by and with the consent of the Plaintiff,

IT IS ORDERED that the parties are hereby mutually restrained from harassing, impeding, interfering with, or causing any third parties or encouraging any third parties to harass or interfere with the other party in any fashion during the pendency of this action.

AND IT IS SO ORDERED.

I SO MOVE:

FINGER, MELNICK & BROOKS, P.A.

s/Terry A. Finger

Terry A. Finger

S.C. Bar No. 2012

Attorney for Defendant

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I CONSENT:

PYATT LAW FIRM, LLC

s/William L. Pyatt

William L. Pyatt

S.C. Bar No. 4599

Attorney for Plaintiff

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(803) 750-5929

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Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Consent Order

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2018-05-23 00:04:17 page 2 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

CHARLES WILLIS GARDNER,)

Plaintiff,)

vs.)

TAYLOR REUBEN ADAMS,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-07-02110ORDER GRANTING PARTIAL
SUMMARY JUDGMENT

Defendant's Motion for Partial Summary Judgment came before this Court in the Beaufort County Courthouse on June 26, 2018. Present at the hearing was William L. Pyatt, Esquire, attorney for the Plaintiff and Terry A. Finger, Esquire, attorney for the Defendant.

This Court has reviewed the pleadings, Motion for Partial Summary Judgment, and listened to the arguments of counsel. Additionally, this Court has reviewed a Decree of Title Clearance in Case No. 89-CP-07-879, judgment roll number 82475 in the Office of the Clerk of Court for Beaufort County, said decree being signed by Thomas Kemmerlin, Jr., Beaufort County Master in Equity on November 20, 1990; a deed from Leroy Gardner, Sr. to Charles W. Gardner recorded in the Office of the Register of Deeds in Book 635 at Page 2600; a plat of the property prepared for Charles Gardner dated October 31, 2013 recorded in Plat Book 137 at Page 156; a plat prepared for Charles Gardner dated February 6, 1995 recorded in Plat Book 52 at Page 36; and a plat prepared for the Defendant dated September 19, 2017 recorded in Plat Book 147 at Page 133.

Based upon the pleadings, arguments of counsel, Quiet Title Action, relevant deeds and plats, this Court makes the following findings of fact:

1. The thirty (30') foot road right-of-way does not belong to the Plaintiff. The Quiet Title Action and the Deed to the Plaintiff from the Plaintiff's father specifically excludes the thirty foot road and the property to the south of the road.¹

2. The current Plaintiff was a Defendant in the 1989 Quiet Title Action which was resolved by the consent of the parties.

3. John Howard is shown by the Quiet Title Action, the deeds, and the relevant plats to be the owner of the thirty foot road and the property to the south of the current Plaintiff.

4. The Defendant is the successor in interest to the real property owned by John Howard at the time of the Quiet Title Action.

THEREFORE, based upon the above Findings of Fact, this Court finds:

1. There are no disputed facts and partial summary judgment is appropriate based upon the record.

2. The thirty foot road, the boat ramp at the eastern end of the thirty foot road and the property to the south of the road is owned by the Defendant, Taylor Ruben Adams. This property is shown on the plats referenced above.

3. The Plaintiff's causes of action for trespass, conversion, and injunction are hereby dismissed by virtue of the fact the property in question is owned in fee simple by Taylor Ruben Adams.

4. The counterclaim of the Defendant shall continue if Defendant elects to pursue same.

5. The consent restraining order dated May 23, 2018 shall remain in full force and effect.

¹ Title to the subject property has been determined in a Decree of Title Clearance signed by the Honorable Thomas Kemmerlin, Jr. on November 20, 1990 in Civil Action No.: 1989CP0700879.

NOW THEREFORE, IT IS ORDERED that the Defendant's Motion for Partial Summary Judgment is hereby **GRANTED**;

It is further Ordered that the thirty foot road, boat ramp and the +/- 1.054 acres below the road are owned in fee simple by Taylor Ruben Adams.

IT IS FURTHER ORDERED that the Plaintiff shall forthwith be prohibited from trespassing upon the property of Taylor Ruben Adams. From the plats shown to this Court, it is clear and apparent that Plaintiff has access to his property from Ashton Drive as shown on Plat Book 137 at Page 156 and it is not necessary for the Plaintiff to trespass upon Defendant's property in order to gain access to his property.

AND IT IS SO ORDERED this _____ day of July, 2018.

The Honorable Perry M. Buckner, III

Walterboro, S.C.
July 9, 2018



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Summary Judgment

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2018-07-10 11:55:44 page 4 of 4

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

CHARLES WILLIS GARDNER,)

Plaintiff,)

vs.)

TAYLOR REUBEN ADAMS,)

Defendant.)
_____)IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-07-02110**ORDER DENYING MOTION FOR
RECONSIDERATION**

THIS MATTER came before this Court pursuant to the Plaintiff's Motion for Reconsideration or a New Trial and Motion to Stay Proceedings filed on July 20, 2018. A hearing was held on Defendant's Motion for Partial Summary Judgment in Beaufort County on June 26, 2018. Present at the hearing was William L. Pyatt, Esq. attorney for the Plaintiff¹ and Terry A. Finger, Esq., attorney for the Defendant. An Order Granting Partial Summary Judgment was filed on July 10, 2018 with the Beaufort County Clerk's Office. The Plaintiff subsequently and timely filed their Motion for Reconsideration or New Trial ("hereinafter Motion to Reconsider") on July 20, 2018.

After considering the record in this matter, the arguments of counsel, and the applicable legal authorities, this Court respectfully **DENIES** the Motion to Reconsider.

Additionally, the Motion to Reconsider, for the first time, alleges that the Plaintiff has some type of implied easement to use the road. That issue is not raised by the pleadings and was not raised in the argument on the summary judgment motion. That argument is not proper in a Motion to Reconsider.

¹ Plaintiff has substituted counsel since the original hearing on the Summary Judgment Motion on June 26, 2018.

Having fully reviewed the Motion to Reconsider, the pleadings, and the documentation submitted at the Summary Judgment hearing, this Court finds that the Motion to Reconsider is respectfully **DENIED**.

AND IT IS SO ORDERED this _____ day of August, 2018.

The Honorable Perry M. Buckner, III

Walterboro, S.C.



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2018-08-09 14:20:05 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
CHARLES WILLIS GARDNER,)
Plaintiff,)
vs.)
TAYLOR REUBEN ADAMS,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-07-02110

**CONSENT ORDER OF SUBSTITUTION
OF COUNSEL**

THIS MATTER comes before me upon the motion of Bryan A. Raymond, proposed attorney for the Plaintiff Charles Willis Gardner in case no. 2017-CP-07-02110, seeking the Court's Order substituting Bryan A. Raymond as attorney for Plaintiff, replacing William A. Pyatt as Plaintiff's counsel in this case.

I find that the necessary parties have consented to the release of William A. Pyatt as Plaintiff's attorney and that Bryan A. Raymond has now been selected by the Plaintiff as his attorney representing his interest in this matter.

It is hereby ORDERED, ADJUDGED AND DECREED that William A. Pyatt is hereby relieved as counsel for the Plaintiff Charles Willis Gardner in the above-captioned case and Bryan A. Raymond is substituted as the attorney of record for the Plaintiff.

AND IT IS SO ORDERED!

Presiding Judge
FOURTEENTH JUDICIAL CIRCUIT

Beaufort, South Carolina
August 6, 2018

I SO MOVE:

/s/ Bryan A. Raymond, Esq.
Bryan A. Raymond, Esq.

WE CONSENT:

/s/ William A. Pyatt, Esq.
William A. Pyatt, Esq.
Relieved Attorney for Plaintiff



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Consent Order

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2018-08-10 11:09:21 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2017CP0702110
	)	

Charles Willis Gardner	)	ORDER REFERRING NON-JURY
	)	ACTION TO THE BEAUFORT
Plaintiff(s)	)	COUNTY MASTER IN EQUITY
	)	
vs.	)	
	)	
Taylor Reuben Adams	)	
	)	
Defendant(s)	)	
	)	

Pursuant to an Order of the South Carolina Supreme Court this Non-Jury matter is now referred to the Beaufort County Master in Equity with Finality. The Plaintiff is responsible for paying the Reference Fee pursuant to South Carolina Code of Laws Section 14-11-310. (\$100.00 for Partition Actions and Foreclosures and \$50.00 for all other cases); however, if the Plaintiff's case is over, any remaining party seeking Affirmative Relief will be responsible for paying the fee. The Reference Fee shall be paid within 30 days from the date this Order is signed or the Master will dismiss the case for non-payment of the Reference Fee.

IT IS SO ORDERED:

Jerri Roseneau
Beaufort County Clerk of Court

Dated: _____
 Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams

Case Number: 2017CP0702110

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jerri Ann Roseneau, Beaufort County Clerk of
Court

Electronically signed on 2018-08-15 11:19:52 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2017-CP-07-02110

Charles Willis Gardner,

Plaintiff(s),

vs.

ORDER VACATING ORDER OF
REFERENCE AND ORDER

Taylor Reuben Adams,

Defendant(s).

The Clerk of Court administratively referred this case to the Beaufort County Master in Equity on August 15th, 2018. Prior to the issuance of the Order of Reference, Judge Buckner heard and granted Partial Summary Judgment by Order dated July 10th, 2018. He then on August 9th, 2018 issued an Order denying the Motion to Reconsider his July 10th Order. Plaintiff's then filed a Notice to the Court of Appeals on September 6th, 2018. The Appeal remains pending in the Court of Appeals and to date the Mater's Referral Fee is not showing paid.

Therefore, the August 15th, 2018 Administrative Order of Reference is hereby vacated.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court Judge
for Beaufort County

October ____, 2018
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-10-05 09:35:04 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2017-CP-07-02110

Charles Willis Gardner,

Plaintiff(s),

vs.

Taylor Reuben Adams,

Defendant(s).

ORDER

This matter came before me on November 14th, 2018 on Plaintiff's Motion to Stay (filed October 3rd, 2018). I deny the motion but impose upon Adams the following restraint: Pending further Order of the Court, Defendant may not erect any permanent structure on the road, nor otherwise render the road permanently unusable.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

December ____, 2018
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams

Case Number: 2017CP0702110

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-12-10 10:01:18 page 2 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

CHARLES WILLIS GARDNER,)

Plaintiff,)

vs.)

TAYLOR RUBEN ADAMS,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-07-02110**CONSENT ORDER**

This matter comes before the Court on July 24, 2019 for a status conference/discussion concerning a Motion filed by Plaintiff on July 23, 2019. This case is on appeal to the South Carolina Court of Appeals but the trial court retains certain ancillary jurisdiction.

One of the issues discussed was the location of a septic tank drain field being installed on the property. Plaintiff requested that his client be allowed to perform a survey of his boundary adjacent to Defendant's property and requests an Order allowing his surveyor limited access to Defendant's property to perform the proper field work.

Counsel for the Defendant had no objection to this survey request.

NOW THEREFORE, IT IS ORDERED that the Plaintiff's survey is authorized and the surveyor is allowed limited access to Defendant's property to perform the necessary and proper survey field work fashion during the pendency of this action. Plaintiff's counsel shall reasonably advise Defendant's counsel as to when the field work will transpire.

AND IT IS SO ORDERED.

The Honorable Marvin H. Dukes
Beaufort County Master in Equity

I SO MOVE:

COBB, DILL & HAMMETT, LLC

s/Bryan A. Raymond

Bryan A. Raymond, Esq.

S.C. Bar No. 101341

Attorney for Plaintiff

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I CONSENT:

FINGER, MELNICK & BROOKS, P.A.

s/Terry A. Finger

Terry A. Finger

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Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Consent Order

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-07-26 13:44:44 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2017-CP-07-02110

Charles Willis Gardner,

Plaintiff(s),

vs.

Taylor Reuben Adams,

Defendant(s).

ORDER

This Rule to Show Cause seeking Contempt and other matters came before me on September 11, 2019. (The matter was continued from August 7th, 2019 because no Court Reporter was available at that date and time)

Present for the Plaintiff/Movant was Bryan Andrew Raymond and for the Defendant/Respondent was Terry A. Finger.

The case involves ownership of a disputed 30 foot wide parcel of property on Warsaw Island, SC.

On June 26th, 2019 Judge Perry Buckner heard and granted a Motion for Summary Judgment in favor of the Defendant, which Order is currently on appeal.

For purposes of this and prior Orders the disputed 30 foot parcel is described as "road".

The facts are undisputed:

- 1) On December 10th, 2018, this Court entered an Order which, in pertinent part stated:
"...Pending further Order of the Court, Defendant may not erect any permanent structure on the road, nor otherwise render the road permanently unusable...."
- 2) At certain times thereafter, Defendant/Respondent installed, or caused to be installed an underground septic drain field consisting of 300 linear feet of 4" PVC pipe (with another PVC pipe contained therein).
- 3) This septic drain field was installed beneath the 30' "road".

This is an unusually contentious matter. The purpose of the December 10th, 2018 Order was to attempt to cool tempers and prevent any sort of permanent structure from forever impeding the

"road" should the final verdict fall to the Plaintiff. The Defendant's installation of the drain field in the contested area certainly violates the spirit of the Order, but clearly does not violate the mandate of the Order. (Plaintiff acknowledges that a final verdict not in his favor would carry with it the requirement of removing the drain field.)

Plaintiff seeks to convince me of a violation of the Order based upon a possible DHEC violation related to drain fields and driveways, but I am unconvinced that a possible DHEC violation triggers a Contempt in anything but an Order specifically related to Regulatory violations.

To quote from Plaintiff's excellent motion:

"In a proceeding for contempt for violation of a court order, the moving party must show the existence of a court order and the facts establishing the respondent's noncompliance with the order." Hawkins v. Mullins, 359 S.C. 497, 501, 597 S.E.2d 897, 899 (Ct. App. 2004). "[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct." Widman, 348 S.C. at 119, 557 S.E.2d at 705. "Once the moving party has made out a prima facie case, the burden then shifts to the respondent to establish his or her defense and inability to comply with the order." Id. at 120, 557 S.E.2d at 705."

In this case the sole question involves whether installation of an underground septic drain field renders the Road "...permanently unusable...". Because I find insufficient evidence that the road has been rendered permanently unusable, I find for the Respondent in this matter.

Respondent seeks costs and fees for defense of this matter. For the reasons set forth hereinabove regarding violation of the spirit of the Order, I decline to do so.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

September ____, 2019
 Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams

Case Number: 2017CP0702110

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-09-19 16:23:06 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2017-CP-07-02110
	)	
CHARLES WILLIS GARDNER	)	
	)	ORDER GRANTING PLAINTIFFS
Plaintiff,	)	MOTION TO ALTER OR AMEND
	)	ORDER DENYING RULE TO
vs.	)	SHOW CAUSE
	)	
TAYLOR REUBEN ADAMS	)	
	)	
Defendant.	)	

This Order is an amendment to my Order of September 20, 2019 in which I denied the Plaintiff Charles Gardner's Petition for a Rule to Show Cause and find the Defendant Taylor Reuben Adams in contempt of my December 10th, 2018 Order.

On September 27th, the Plaintiff/Movant filed a motion to alter or amend the Order of September 20th pursuant to Rule 60(a) and Rule 59(e), SCRCF seeking permission for the Plaintiff or its representatives to be granted access to the Defendant's property to perform survey of the 30 foot road and boat ramp at issue in this case.

On November 18, 2019, a hearing was held on this matter attended by the Plaintiff/Movant, Mr. Gardner who appeared with counsel, Bryan Raymond as well as Mr. Adams, who appeared with counsel Terry Finger.

Upon reconsideration of the arguments made before me at both the hearings on September 11, 2019 as well as the hearing on November 18, 2019, I make the following ruling.

All provisions of my Order of September 2019, 2019 remain in effect with the following addition:

Upon reasonable notice between the attorneys in this matter, Defendant Mr. Adams shall allow a professional surveyor, David S. Youman of Beaufort Surveying, Inc. unimpeded access to his property to conduct all of the necessary and proper survey field work to evaluate the metes and bounds of the road and boat ramp. The access required to the property shall be determined in the sole opinion of Mr. Youman.

Mr. Youman shall be allowed access to Mr. Adams property for as long as is necessary to conduct the survey within reason. At the hearing, Mr. Youman represented to the Court that he could conduct this survey in two to three hours. This Court finds that given Mr. Youman's experience that the survey should take no more than a maximum of two working days. Any extension of this time beyond two working days shall require a request from Mr. Youman and subsequent approval of the court.

The only persons allowed on Mr. Adams property shall be Mr. Youman and any person employed by him to conduct the survey. For the term of the surveying, Mr. Adams shall keep his dogs in his home and shall refrain from taking any harassing or intimidating actions, as determined in the sole discretion of Mr. Youman.

Should the Plaintiff be required to file an action with this court to enforce this Order, Mr. Adams may be required to pay all of Plaintiffs attorneys fees associated with this Order. Any noncompliance with this Order shall potentially subject Mr. Adams to sanctions including but not limited to contempt of court.

IT IS SO ORDERED.

The Honorable Marvin Dukes
Master In Equity For Beaufort County

Date: November ____, 2019



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Amend

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-12-13 10:34:59 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CHARLES WILLIS GARDNER,

Plaintiff,

vs.

TAYLOR RUBEN ADAMS,

Defendant.

IN THE MAGISTRATE'S COURT

CIVIL CASE NUMBER

2020OR0710400012

MUTUAL RESTRAINING ORDER

2021 JUN 21 10:14
CLERK

This matter came before the Court for hearing on June 17, 2021, upon the Plaintiff's Complaint and Motion for a Restraining order. Plaintiff appeared *pro se* and had no witnesses. Defendant appeared represented by Terry A. Finger, Esquire.

Prior to taking testimony, Defense Counsel informed the Court that the parties were previously under a Restraining Order in the Magistrate's Court and referenced an Order, dated May 5, 2020.

Counsel for Defendant indicated his client would agree to the issuance of a Mutual Restraining Order. Upon questioning, Plaintiff also agreed to a Mutual Restraining Order.

NOW, THEREFORE, upon motion of Defendant, by and with the consent of the Plaintiff,

IT IS ORDERED as follows:

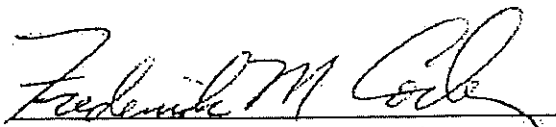
A. The parties are hereby mutually restrained from harassing, abusing, threatening to abuse or harm, molesting, stalking, impeding, interfering with, or causing, or encouraging, or allowing any third parties to harass or interfere with the other party or members of their respective families in any fashion; and

B. Plaintiff is restrained from entering or attempting to enter on the property of Defendant, located at 240 Warsaw Island Road, St. Helena Island, South Carolina; and

C. Defendant is restrained from entering or attempting to enter on the property of Plaintiff, located at 259 Warsaw Island Road, St. Helena Island, South Carolina; and

D. This Restraining Order shall continue in full force and effect for the period of one year commencing midnight on June 17, 2021 and shall expire at midnight on June 16, 2022.

AND IT IS SO ORDERED.


The Honorable Frederick M. Corley
Beaufort County Magistrate

Beaufort, South Carolina
June 24, 2021

2021 JUN 24 PM 10:45

2017-CP-07-2110
**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Charles Willis Gardner, Appellant,

v.

Taylor Reuben Adams, Respondent.

Appellate Case No. 2018-001635

2022 MAY 20 PM 12:06
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Appeal From Beaufort County
Perry M. Buckner, III, Circuit Court Judge

Unpublished Opinion No. 2022-UP-185
Heard April 6, 2021 – Filed April 27, 2022

**REVERSED IN PART, VACATED IN PART,
AND REMANDED**

Bryan Andrew Raymond, of Mount Pleasant, for
Appellant.

Terry A. Finger, of Finger, Melnick, Brooks & LaBruce,
P.A., of Hilton Head Island, for Respondent.

PER CURIAM: Charles Willis Gardner appeals the circuit court's order granting partial summary judgment to Taylor Reuben Adams, specifically the findings vesting Adams with title to a road and boat ramp of disputed ownership. Gardner argues the circuit court's judgment must be reversed because (1) Adams failed to

show he was the successor in interest to John Howard's property (the Howard Property); (2) a 1990 quiet title order in a dispute between prior property owners did not confer title in the road and boat ramp to Adams;¹ and (3) questions of material fact exist as to ownership of the road and boat ramp and as to the location of property lines impacted by the circuit court's findings. We reverse in part, vacate in part, and remand for further proceedings consistent with this opinion.

Facts and Procedural History

On October 12, 2017, Gardner filed an action for trespass, conversion, and "declaratory & injunctive relief" in an effort to restrain Adams from entering his property. Gardner did not specifically describe his own property but noted Adams "recently purchased property located on Warsaw Island Road in proximity to" Gardner's property on Warsaw Island Road, where he has owned property "in excess of twenty (20) years." Warsaw Island Road is just past Frogmore on St. Helena Island in Beaufort County.

In his answer, Adams agreed he purchased property near Gardner's but asserted he owned the property from which Gardner sought to restrain him as evidenced by the decree in a 1989 quiet title action, his deed to the Howard Property, the chain of title, and the plats of record. Adams also raised counterclaims asserting Gardner had engaged in "a consistent pattern of trespass and harassment" and claimed Gardner's action violated the South Carolina Frivolous Civil Proceedings Sanctions Act.² Gardner replied, denying the allegations of Adams's counterclaims.

In a motion for partial summary judgment, Adams asserted a 1990 quiet title order³ vested his predecessor in title (Howard) to "the 30 foot road and property to the south of the 30 foot road." Adams asked that the circuit court "confirm title to the road and the subject property" to him, restrain Gardner from further trespasses, and hold a hearing to establish Adams's damages.

¹ The boat ramp appears to be an extension of the road. Neither Gardner's complaint, Adams's answer and counterclaims, nor Gardner's reply reference the boat ramp.

² S.C. Code Ann. §§ 15-36-10, -100 (Supp. 2021).

³ Master-in-Equity Thomas Kemmerlin, Jr. signed the order titled "Decree of Title Clearance" on November 20, 1990.

The circuit court held a brief hearing on Adams's motion. Although Adams did not provide a deed from Howard or Howard's successors to the circuit court, he presented Judge Kemmerlin's 1990 title decree and argued it cleared title in favor of Howard as to the property at issue under a "save and except" clause. The 1990 "Decree of Title Clearance" states at page 11:

(3) That the Plaintiff [Leroy Gardner, Sr.], by virtue of having acquired all of the interest of the heirs of Ardelle S. Gardner, owns all of Lot 15, Section 12, 1S1W, Warsaw Island, St. Helena Township, Beaufort County, South Carolina, more particularly described on that plat prepared for Ardelle S. Gardner by Rod C. Spann dated November 11, 1976, and recorded in Plat Book 28 at Page 21, *save and excepting, however, the 1.054 acre portion of Lot 15 situate immediately below (southeast) the unpaved Beaufort County road running in a generally southwest to northeast direction*, said portion of Lot 15 being more particularly shown on a plat prepared by Niels Christensen, IV dated June 5, 1990, attached hereto and incorporated as a part hereof, said piece of Lot 15 being owned by the Defendant John Howard; and further save and excepting the portion of Lot 15 which consists of a triangle situate immediately below (southwest) *the unpaved county road running in a generally southeast to northwest direction* and shown on the 1989 Beaufort County Tax Maps as Parcel 5A, Map 9, District 300, the ownership of said triangular tract being unknown. This is the same property described in the deed of Lot 15, Section 12, 1S1W, Warsaw Island, St. Helena Township, Beaufort County, South Carolina from Dan Taylor to Ardelle S. Gardner, dated October 22, 1976, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 241 at page 1637, *except as to the parcel southeast of the unpaved county road (which belongs to John Howard)* and the triangular parcel southwest of the unpaved county road, the ownership of which is unknown, reflected in the survey for Ardelle S. Gardner prepared by Rod C. Spann dated November 11, 1976, and recorded in Plat Book 28 at Page 21. The 1.054 acre piece of Lot 15 shown on the

plat for John Howard (attached hereto) was acquired by John Howard from Dan Taylor by way of deed dated July 24, 1960, and recorded in Deed Book 102 at Page 270. The Plaintiff is the only individual who could possibly contest John Howard's ownership of this 1.054 acre tract, and he has stipulated that John Howard owns this parcel in fee simple. *The unpaved county road separates the respective portions of Lot 15 owned by the Plaintiff and John Howard.*

(emphases added).⁴ In the summation of the 1990 order, Judge Kemmerlin quieted title of certain acreage to Leroy Gardner, Sr., including an 8.91 acre Warsaw Island Road tract (Tract C),

SAVE AND EXCEPT: The thirty (30) foot dirt road running in a generally southwest to northeast direction across Lot 15 and that 1.054 acre portion of Lot 15 immediately below (southeast) the thirty (30) foot dirt road, is owned by Defendant, John Howard; and the parcel constituting a triangle immediately below (northeast) the twenty (20) foot dirt road, the ownership of which is unknown, as reflected in the plat prepared by Rod C. Spann for Ardelle S. Gardner, just referenced.

Adams claimed ownership through the John Howard chain of title due to his purchase of the Howard Property at a tax sale. Adams provided the circuit court with a deed from Leroy Gardner, Sr. to the current plaintiff, Charles Gardner, that included a "save and except" clause identical to that referenced in the "Tract C" discussion at pages 11-12 of Judge Kemmerlin's 1990 quiet title order. The Gardner deed's clause referencing Tract C excepted "[t]he thirty (30) foot dirt road running in a generally southwest to northeast direction across Lot 15 and that 1.054 acre portion of Lot 15 immediately below (southeast) the thirty (30) foot dirt road, owned by John Howard" and the triangular portion of unknown ownership. Adams also provided a 1995 plat reflecting the "boat ramp owned and claimed by Leroy Gardner." This 1995 plat contains a notation of a "line shown to me [the surveyor] by Leroy Gardner." A 2013 plat bears the same language, "boat ramp owned and claimed by Leroy Gardner."

⁴ Certain plats and deeds referenced in Judge Kemmerlin's order were not provided to the circuit court and have not been included in the record on appeal.

In response, Gardner asserted Adams had presented no deed to establish he held title to either the Howard property or the disputed area; Gardner then attempted to discuss Judge Kemmerlin's 1990 order. The circuit court interjected with questions, asked the parties to clarify the areas they were referencing on the plat, and held an off the record bench conference. When back on the record, the circuit court noted the parties "have designated on my plat the approximate location of the road, which is the road that is in issue." Thereafter, Adams referenced and presented a 2017 plat, asserting it "specifically shows the road if that will help the Court." The circuit court responded "All right. I think it shows it very clearly if this is the shaded portion of the plat."

The 2017 plat, prepared for Adams, bears the language "Problem Plat See Assessor" and includes lines pointing to a road with the statement, "area being claimed by Reuben Adams as per judgment roll." The 2017 plat also shows the "boat ramp"; however, other language on this section of the plat is indiscernible. At the hearing, Gardner noted Adams provided no attachments to support his motion, to which the circuit court responded it could "take attachments [because] it is a Motion for Summary Judgment." The circuit court then requested proposed orders and concluded the hearing.

In its order granting Adams partial summary judgment, the circuit court found Adams, as Howard's successor in interest, owned the "thirty foot road, the boat ramp at the eastern end of the thirty foot road, and the property to the south of the road." The circuit court dismissed Gardner's causes of action for trespass, conversion, and injunctive relief "by virtue of the fact the property in question is owned in fee simple" by Adams. The circuit court allowed Adams's counterclaims to proceed and left a 2018 consent restraining order in place.

Gardner filed a motion to reconsider in which he asserted Adams did not establish ownership of the Howard Property, the boat ramp, or the road. Gardner argued the 1995 plat showed Leroy Gardner, Sr. owned and claimed the road and boat ramp, which conflicted with the boat ramp statement in the 2017 "Problem Plat" relied on by the circuit court. Gardner further noted Adams presented no evidence to support the circuit court's finding that Adams owned the road and boat ramp and Judge Kemmerlin's quiet title decree provided Howard and his successors no ownership interest in the road or ramp. Gardner claimed, "The Quiet Title Order indicates that Beaufort County is the rightful owner of the Road, not John Howard or his successors." The circuit court denied Gardner's motion to reconsider.

Standard of Review

"In reviewing a motion for summary judgment, the appellate court applies the same standard of review as the trial court under Rule 56(c), SCRCP." *Companion Prop. & Cas. Ins. Co. v. Airborne Exp., Inc.*, 369 S.C. 388, 390, 631 S.E.2d 915, 916 (Ct. App. 2006). "Summary judgment should be affirmed if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* The nonmoving party "is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Law and Analysis

I. Successor in Interest

Gardner argues the circuit court erred in granting partial summary judgment because Adams failed to show he was the successor in interest to the Howard Property or the disputed road and boat ramp. Gardner contends Adams's failure to prove his title to the Howard Property "leaves an ambiguity" as to the ownership and the property's measurements. We agree that the circuit court's order is unsupported by the record.

As an initial matter, Adams raises issue preservation as a bar to reversal because Gardner "did not make any objection or contest the assertion that [he] was in the chain of title." *See generally Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *id.* ("Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector."). However, we note Gardner's argument during the summary judgment hearing was essentially that Adams had not established title—either through Adams's own deed or in opposition to the "save and except" clause in the 1990 order. Despite this, the circuit court found Adams was the successor in interest to the Howard Property. In his motion to reconsider, Gardner more specifically asserted that the circuit court erred in determining Adams owned the Howard Property, including the road and boat ramp. Gardner discussed the prior quiet title order and its implications for Howard's ownership of the road and again stated no document established Adams owned the road and boat ramp. We find Gardner's challenge of the circuit court's conclusion that Adams owned the Howard property is preserved because Gardner attempted to bring the proof issue to the attention of the circuit court before the court essentially cut off the argument with interjected questioning. *See Elam v.*

S.C. Dep't of Transp., 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004) ("[C]ivil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party . . .").

On the merits, we agree with Gardner that Adams failed to establish he was in fact the owner of the Howard Property or the road and boat ramp. The only items in the record supporting Adams's assertion of ownership are counsel's statements at the summary judgment hearing, the "Problem Plat," and pleadings asserting Adams recently purchased property located on Warsaw Island Road in proximity to Gardner's property. This did not provide the proof necessary to support the circuit court's findings of ownership. *See Ex parte Morris*, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006) ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence."); *see also Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct. App. 1986) (explaining statements of fact can constitute an admission in determining whether a genuine issue of material fact exists, but "factual statements of counsel . . . ordinarily may not be so considered").

Even if this court could properly take judicial notice of Adams's title to the undisputed portions of the Howard Property, the questions of ownership and access to the road and boat ramp would remain due to the parties' conflicting interpretations of the language in the 1990 decree. "For a fact to be subject to judicial notice, it must be so notorious that the court may properly assume its existence without proof." *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984). "Unless the fact is either of such common or general knowledge that it is accepted by the public without qualification or contention, or its accuracy is capable of verification by reference to readily available sources of indisputable reliability, it is not subject to judicial notice." *Id.*

In *Masters*, this court held that "original judicial notice of adjudicative facts at the appellate level should be limited to matters which are indisputable." *Id.* at 256, 321 S.E.2d at 197. Thus, the court declined to take judicial notice of a deed that had been recorded to determine whether the property at issue was paid for with valuable consideration. *Id.* at 255–57, 321 S.E.2d at 196–97. In any event, both Adams's interpretation of the 1990 decree and the conflicting plats in the record demonstrate that a factual dispute persists as to the road and boat ramp.

II. Property at Issue: The Road and Boat Ramp

Only if the summation portion of the 1990 "Decree of Title Clearance" is read in isolation and in the light most favorable to the *moving* party can an argument be found in the record to support the circuit court's conclusion that Adams owns the road and boat ramp. This is not the lens through which we view a grant of summary judgment. See *S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 117, 804 S.E.2d 854, 858 (2017) (noting an appellate court "reviews all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below").

"It is a question of law for the court whether the language of a contract is ambiguous." *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 462, 839 S.E.2d 879, 881 (2020) (quoting *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001)). "A [deed] is ambiguous when the terms of the [deed] are reasonably susceptible of more than one interpretation." *Id.* (alterations in original) (quoting *McClellanville*, 345 S.C. at 623, 550 S.E.2d at 302)). "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." *Gardner v. Mazingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391 (1987). "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." *Id.* at 25, 358 S.E.2d at 391–92. "The intention of the grantor must be found within the four corners of the deed." *Id.* at 25, 358 S.E.2d at 392.

In the body of the 1990 quiet title order, the master described Leroy Gardner, Sr.'s property and then included the following "save and except" language: "the 1.054 acre portion of Lot 15 situate immediately below (southeast) the unpaved Beaufort County road running in a generally southwest to northeast direction, said portion of Lot 15 being . . . owned by the Defendant John Howard." Later in the same paragraph, the order again referenced that Howard owned the property to the southeast of the unpaved county road. Thereafter, in the summation of the order, the court excepted the "thirty (30) foot dirt road running in a generally southwest to northeast direction across Lot 15 *and* that 1.054 acre portion of Lot 15 immediately below (southeast) the thirty (30) foot dirt road, is owned by Defendant, John Howard." (emphasis added). While the "is" that is handwritten in the summation could arguably be interpreted to conflict with the description of Tract C provided in greater detail earlier in the decree at pages 11–12, no interpretation of Judge Kemmerlin's decree supports the circuit court's conclusion that Adams owns the road and boat ramp.

The deed from Leroy Gardner, Sr. to appellant Gardner did not grant Gardner the road, as it excepted "[t]he thirty (30) foot dirt road running in a generally southwest to northeast direction across Lot 15 and that 1.054 acre portion of Lot 15 immediately below (southeast) the thirty (30) foot dirt road, owned by John Howard." Clearly, Mr. Gardner, Sr. had no power to deed ownership of the unpaved county road. But this in no way places title to the road in Adams (through Howard). Nor does a review of the submitted materials support the circuit court's conclusion that title to the road had been quieted in Howard.

A reasonable interpretation of the master-in-equity's 1990 order is that the "unpaved county road," "unpaved Beaufort County road," and "thirty (30) foot dirt road" are all the same road. Neither Leroy Gardner, Sr. nor John Howard owned the road; thus, neither Charles Gardner nor Adams (through his position in the Howard Property's chain of title) owns it now. The 1995 and 2013 plats indicate Leroy Gardner, Sr. claimed ownership of the boat ramp, and the issue of the boat ramp is not explicitly raised in the pleadings. As the record does not support the circuit court's findings that the Howard Property included the road or boat ramp, or that Adams now owns both, we vacate these findings.⁵

Conclusion

We reverse the grant of partial summary judgment, vacate the circuit court's findings as to ownership of the road and boat ramp, and remand for further proceedings consistent with this opinion.

REVERSED IN PART, VACATED IN PART, AND REMANDED.

KONDUROS, GEATHERS, and MCDONALD, JJ., concur.

⁵ Gardner conceded at oral argument that no action for conversion lies here and that he has no cause of action for trespass upon property he does not own (i.e., the road). Likewise, Adams has no action for trespass upon property he does not own.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1880
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www.sccourts.org

May 18, 2022

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

2022 MAY 20 PM 12:06
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

REMITTITUR

Re: Charles Gardner v. Taylor Adams
Lower Court Case No. 2017CP0702110
Appellate Case No. 2018-001635

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: Terry A. Finger, Esquire
Bryan Andrew Raymond, Esquire
The Honorable Perry M. Buckner, III

WE SO MOVE AND CONSENT:

/s/ G. Hamlin O'Kelley, III

G. Hamlin O'Kelley, III

SC Bar No. 15491

Buist, Byars & Taylor, LLC

652 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

(843) 856-4488

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/s/ Stefanie L. Huffer

/s/ Bryan A. Raymond

Stefanie L. Huffer

SC Bar No. 100645

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Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Substitution Of Counsel

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2023-01-31 15:44:42 page 3 of 3

WE SO MOVE AND CONSENT:

/s/ G. Hamlin O'Kelley, III

G. Hamlin O'Kelley, III

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/s/ Terry A. Finger

Terry A. Finger

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/s/ Robert W. Achurch, III

Robert W. Achurch, III

Howell Gibson & Huges, PA

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rachurch@hghpa.com



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Continuance

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2023-01-31 16:43:47 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,)
)
) Plaintiff,
)
vs.) SCHEDULING ORDER
)
TAYLOR REUBEN ADAMS,)
)
) Defendant.
)

This matter came to be heard before the undersigned for purpose of creating a schedule to complete discovery and coordinate trial in the above referenced matter. It appears that counsel for each of the parties consents to a scheduling order to enable the parties to complete discovery. Therefore, with the consent of counsel for all parties, the undersigned adopts the following schedule set forth herein, and the following time limits are hereby established in this case:

1. Mediation is to be held on or before August 15, 2023.
2. This case is eligible to be called for trial on or after October 15, 2023.

MASTER IN EQUITY
FOURTEENTH JUDICIAL CIRCUIT

_____, South Carolina

March _____, 2023

WE MOVE:

By: s/Robert W. Achurch, III
Robert W. Achurch, III (SC Bar #64854)
Howell, Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, SC 29901
Attorneys for Beaufort County

WE CONSENT:

By: s/G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III (SC Bar #15491)
Buist, Byars & Taylor LLC
652 Coleman Blvd, Ste 200
Mt. Pleasant, SC 29464
Attorney for Plaintiff

By: s/Terry A. Finger
Terry A. Finger (SC Bar #2012)
Finger, Melnick, Brooks & LaBruce, P.A.
Post Office Box 24005
Hilton Head Island, SC 29925
Attorney for Defendant,
Taylor Reuben Adams



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Scheduling Order

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2023-03-23 11:10:37 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,)
)
Plaintiff,)
)
vs.) ORDER
)
TAYLOR REUBEN ADAMS,)
)
Defendant.)

This matter came to be heard before me on May 3, 2023 upon Beaufort County's Motion to Intervene in the above referenced matter.

Attending the hearing on behalf of Beaufort County, was Robert W. Achurch, III. Attending the hearing on behalf of the Plaintiff, Charles Willis Gardner, was attorney G. Hamlin O'Kelley, III. Attending the hearing on behalf of the Defendant, Taylor Reuben Adams was attorney Terry A. Finger.

At the hearing, counsel for the Defendant consented to Beaufort County's Motion to Intervene.

Based on briefs submitted by the parties and oral arguments, I find that Beaufort County has a right to intervene in this matter and, therefore, I grant Beaufort County's Motion to Intervene.

LET IT BE ORDERED ADJUDGED AND DECREED
IT IS SO ORDERED.

By: _____
The Honorable Marvin H. Dukes, III
Judge, Fourteenth Judicial Circuit

_____, South Carolina

May _____, 2023.



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2023-05-12 14:57:15 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2017-CP-07-02110

Charles Willis Gardner,

Plaintiff(s),

vs.

Taylor Reuben Adams, et al.,

Defendant(s).

ORDER DENYING SUMMARY JUDGMENT

This matter came before me July 26th, 2023, on Intervenor, Beaufort County's (County) Summary Judgment motion; filed June 26th, 2023.

This case began as a property dispute and trespass action involving the ownership of a road and boat ramp on St. Helena Island in Beaufort County. The Defendant Adams took title to his property from a tax sale purchaser. At some point the Defendant claimed the road and boat ramp and asserted his ownership in the same. The Plaintiff is an adjoining landowner who also claims ownership of the road and boat ramp.

In 2018, The Honorable Perry M. Buckner, III granted partial summary judgment to Adams on the issue of ownership of the road. This Order was appealed, and the ruling was reversed, vacated, and remanded in an Unpublished Opinion (Gardner v Adams, Op. No. 2022-UP-185 (S.C. Ct. App. Filed April 27, 2022)). The Opinion finds a "reasonable interpretation" of ownership to be that of the County rather than either party.

The County has now intervened and now claims ownership of the road and boat ramp. The County has filed Summary Judgment based primarily on the findings of the Court of Appeals.

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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. Gecy v. S.C. Bank & Trust, 422 S.C. 509, 513

"Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved". Rule 268, SCACR

It would be error for me to rely on the Unpublished Opinion as precedent in this case. Such reliance would be required for me to grant County's motion as the balance of evidence in this case includes conflicting material facts.

I therefore respectfully deny the Motion.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court Judge
for Beaufort County

July ____, 2023
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2023-07-27 11:49:06 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-07-02110

Charles Willis Gardner

Taylor Reuben Adams, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This came before me on Beaufort County's Motion to Reconsider; filed August 2nd, 2023. After hearing from counsel and a review of the file, I hereby respectfully deny the motion.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	3069 Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

G. Hamlin O'Kelley, III

Robert W. Achurch

Dylan Kidd

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2023-08-25 11:47:11 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,)

Plaintiff,)

vs.)

TAYLOR REUBEN ADAMS and)
BEAUFORT COUNTY,)

Defendants.)

AMENDED CONSENT
SCHEDULING ORDER

This matter came to be heard before the undersigned for purpose of creating a schedule to complete discovery and coordinate trial in the above referenced matter. It appears that counsel for each of the parties consents to a scheduling order to enable the parties to complete discovery. Therefore, with the consent of counsel for all parties, the undersigned adopts the following schedule set forth herein, and the following time limits are hereby established in this case:

1. Discovery shall be completed on or before December 31, 2023.
2. This case is set for trial January 22-24, 2024, beginning at 9:30 a.m.

JUDGE, FOURTEENTH JUDICIAL CIRCUIT

_____, South Carolina

October _____, 2023

WE CONSENT

HOWELL, GIBSON & HUGHES, P.A.

By: s/Dylan C. Kidd
Dylan C. Kidd
Robert W. Achurch, III
ATTORNEYS FOR BEAUFORT COUNTY

By: s/G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III
ATTORNEY FOR PLAINTIFF

By: s/Terry A. Finger
Terry A. Finger
ATTORNEY FOR TAYLOR REUBEN ADAMS



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams

Case Number: 2017CP0702110

Type: Order/Scheduling Order

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2023-11-08 14:28:13 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0702110

Charles W. Gardner

Taylor R. Adams

Appellant

Respondent

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Beaufort County Master in Equity

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This case came before me on January 8, 2024 based on a Motion to Compel (filed November 10, 2023) and two Motions for Summary Judgment (filed July 24, 2023 & June 26, 2023). Present at the hearing were George O'Kelley representing the plaintiff; Terry Finger representing the defendant, and Dylan Kidd representing Beaufort County. The Motion to Compel was settled by the parties, and both Motions for Summary Judgment are respectfully hereby denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Marvin H. Dukes, III

Circuit Court Judge

3069

Judge Code

1/8/2024

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

George O'Kelley III

Terry Finger

Dylan C. Kidd

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCp.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

[illegible]

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams

Case Number: 2017CP0702110

Type: Order/Form 4

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2024-01-09 09:48:12 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,	)	

Plaintiff,	)	

vs.	)	

	)	FINAL ORDER

TAYLOR REUBEN ADAMS, and	)	
BEAUFORT COUNTY, SOUTH	)	
CAROLINA,	)	

Defendants.	)	

This case involves the ownership and use of certain real property located on and adjacent to Warsaw Island Road on St. Helena Island in Beaufort County, South Carolina. The matter was referred on March 15th, 2023. A trial was held before the undersigned on January 22-24, 2024, with additional testimony and arguments taken on February 5, 2024. Based upon the following, the Court concludes that Beaufort County ("the County") is the owner of the subject 30-foot road and adjoining boat ramp at issue in the case. The Court dismisses the parties' remaining causes of action and counterclaims and enters judgment in favor of the County.

PROCEDURAL/FACTUAL BACKGROUND

a. Case history

On October 12, 2017, Plaintiff Charles Willis Gardner ("Gardner" or "Plaintiff") filed an action alleging trespass on property he claimed to own. Plaintiff further alleged that the Defendant, Taylor Reuben Adams ("Adams" or "Defendant

Adams") was converting the Plaintiff's property for his own use and requested an injunction and restraining order against Defendant Adams. Defendant Adams answered the Complaint and asserted a counterclaim alleging that he was the owner of the property that the Plaintiff was seeking to restrain him from using. Defendant Adams additionally asserted that Plaintiff had trespassed upon his property and sought an order restraining Plaintiff from further trespasses, as well as actual and consequential damages. Finally, Defendant Adams claimed that Plaintiff's suit violated South Carolina's Frivolous Civil Procedures Sanctions Act and requested attorney's fees and costs.

Thereafter, Defendant Adams filed a motion for partial summary judgment requesting that the court confirm title to the subject property, which was described in said motion as "the 30' road and property to the south of the 30 foot road." In fact, the subject property referenced is a thirty-foot unpaved portion /extension of Warsaw Island Road, a public right of way, which leads to a boat ramp commonly referred to as the "Warsaw Island Boat Ramp." Warsaw Island Road is located on St. Helena Island in Beaufort County.

A hearing was held before The Honorable Perry M. Buckner, III on Defendant Adams's Motion for Partial Summary Judgment. The Circuit Court ultimately ruled in favor of Defendant Adams, determining that Adams owned "the thirty foot road, the boat ramp at the end of the thirty foot road and the property to the south of the road." The Court further dismissed Plaintiff's causes of action and allowed Defendant Adams's counterclaims to proceed. Plaintiff filed a motion for

reconsideration in which he contended the County was the rightful owner of the road, which the Court denied.

Plaintiff then appealed the order granting partial summary judgement. On appeal, Plaintiff argued that Defendant Adams failed to show that he was the successor in interest to the predecessor in title; that a 1990 Quiet Title Order that was in dispute between the parties did not confer title in the road or boat ramp to Adams; and that questions of fact existed as to the ownership of the road and boat ramp.

In an opinion filed April 27, 2022, the South Carolina Court of Appeals held that "a factual dispute persists as to the road and boat ramp" and that "no interpretation of Judge Kemmerlin's 1990 decree supports the Circuit Court's conclusion that Adams owns the road and the boat ramp." Gardner v. Adams, Op. No. 2022-UP-185 (April 27, 2022). The Court of Appeals additionally determined that Plaintiff was never granted the thirty-foot dirt road by his predecessor in title who "had no power to deed ownership of the unpaved county road." Id. at *9. However, the Court also explained that "this in no way places title to the road in Adams . . . [n]or does a review of the submitted materials support the circuit court's conclusion that title to the road had been quieted in [Defendant Adams's predecessor in title]." Id.

Furthermore, the Court determined that:

"A reasonable interpretation of the master-in equity's 1990 order is that the 'unpaved county road' 'unpaved Beaufort County road' and 'thirty (30) foot dirt road' are all the same road. Neither Leroy Gardner, Sr. nor John Howard (predecessors in title of Plaintiff and Defendant, respectively) owned the road; thus neither Charles Gardner nor Adams (through his position in the Howard Property's

chain of title) owns it now. The 1995 and 2013 plats indicate Leroy Gardner, Sr. claimed ownership of the boat ramp, and the issue of the boat ramp is not explicitly raised in the pleadings. As the record does not support the circuit court's findings that the Howard Property included the road or boat ramp, or that Adams now owns both, we vacate these findings."

Id. As a result, the Court of Appeals reversed the grant of partial summary judgment, vacated the circuit court's findings as to ownership of the road and boat ramp, and remanded for further proceedings consistent with its opinion.

On remand, the County moved to intervene based upon the Court of Appeals' conclusion that neither of the adjacent property owners to the road and ramp in question (Plaintiff or Defendant) had an interest in title, taking the position that the County owned the road and ramp. The Court granted the County's motion to intervene. Plaintiff also amended his pleadings to assert that he owned an easement over the subject road, seeking a declaratory judgment to this effect, and asserted claims for trespass, nuisance, and injunctive relief. During the pendency of the appeal, the Undersigned entered an order stating that, "[p]ending further Order of the Court, Defendant may not erect any permanent structure on the road, nor otherwise render the road permanently unusable."

The parties proceeded with limited discovery, and both Plaintiff and the County moved for summary judgment. Both motions were denied. The parties agreed that, because the crux of the case is competing claims of property ownership, mediation would be fruitless. Accordingly, the case was set for trial before the Undersigned beginning on January 22, 2024.

b. Trial evidence

The trial before the undersigned featured testimony from eight witnesses and the introduction of approximately forty exhibits. A summary of the evidence relevant to the Court's decision follows:

Plaintiff testified that the property at which he currently resides and adjacent property had been owned by the Gardner family for many years. He received his property via deed from his father, Leroy Gardner, after his mother, Ardel Gardner, passed away in 1983.¹ Plaintiff was under the impression that his property included the 30-foot dirt road for many years, as members of the community seeking to use it and the boat ramp had asked him for permission to do so. He testified that the "whole community" and "different groups" had used the road while he had lived on Warsaw Island.

Plaintiff testified that Defendant Adams moved to his property, which was located southeast of the 30-foot road, in 2015. Plaintiff recalled that Defendant Adams blocked the 30-foot road in 2015, which caused Plaintiff to tell Adams that Adams did not own the road, as Plaintiff believed it had belonged to Plaintiff's father, from whom he received it. Plaintiff testified that he understood that both the Circuit Court and the Court of Appeals determined he did not own the 30-foot road, and he acknowledged that he argued the County owned the road in his motion to reconsider the Circuit Court's determination. Plaintiff testified that he believed Defendant Adams had trespassed on his property and had built a fence on the

¹ The evidence adduced at trial established that Ardel Gardner passed away in 1983, contrary to the language in several of the relevant deeds stating this occurred in 1982.

Plaintiff's side of the 30-foot road. He also stated that, while he could access his property without utilizing the 30-foot road, emergency vehicles could not do so due to the quality of the alternate road. On cross-examination, Plaintiff did not deny that he and others on and around his property had frequently played loud music and shouted at Defendant Adams, among other unneighborly behavior.

Ed Atkins, a local resident, testified that he had utilized the 30-foot road and adjacent boat ramp since he was 8 or 9 years old in 1959 or 1960. When Mr. Atkins began working several years later, he used the road and ramp to make a living, ultimately opening a bait business. Mr. Atkins testified he and other members of the community had used the road and ramp without any impediments until Defendant Adams arrived in 2015 and blocked access to the road. He testified this caused him hardship because he had to travel to another boat landing to conduct his business. Mr. Atkins admitted that he learned indirectly that Defendant Adams offered to allow him to use the ramp during daylight hours.

Another area resident, Richard Williamson, testified that he regarded the road and ramp as belonging to the Gardner family. He testified that he and others asked Plaintiff for access to the road and ramp.

David Youmans, a licensed surveyor, testified that he prepared a survey of the 30-foot road and boat ramp at Plaintiff's request in 2020. In so doing, he reviewed plats prepared by Rod Spann and Gasque and Associates, Inc. Mr. Youmans plotted the lines of Plaintiff's property located to the northwest of the subject road and of Defendant Adams's property located to the southeast of the road, with neither property containing road. Mr. Youmans plotted the midline of

the road and noted the presence of a drain field within the road adjacent to a wire fence at the edge of Plaintiff's property. Mr. Youmans testified that he believed the road was "erroneously" referred to as a county road in recorded documents, but he could not testify as to the legal effect of the 1990 Quiet Title Order or whether it was ever appealed. Mr. Youmans also testified that the dimensions of Defendant Adams's property did not indicate that he owned the road, even if any potential discrepancies were modified.

David Gasque testified that he prepared a plat of the lot recombination/reconfiguration for Plaintiff in 2013, as well as a boundary survey of the area being claimed by Defendant Adams in 2014, which was revised in 2017. The latter was marked as a "problem plat" by the Beaufort County Assessor's Office. Mr. Gasque believes the problem plat designation stemmed from discrepancies in the dimensions cited within the plat, and he disagreed with it because acreage was not as important to him as other factors in preparing such plats. In any event, Mr. Gasque could not and did not determine who owned the 30-foot road after his multiple examinations of the property, and he advised both Plaintiff and Defendant Adams to retain attorneys. He did testify that his best guess was that Defendant Adams owned it by process of elimination.

Defendant Adams testified that he received his property at 240 Warsaw Island Road comprised of 1.05 acres from the Dale A. Gabardy Trust via warranty deed in 2015. His predecessor in title was John Howard. Defendant Adams believed his property included the 30-foot road, and he admitted that he constructed a fence on the side of the road bordering Plaintiff's property and

blocked access to the 30-foot road from Warsaw Island Road. Defendant Adams also constructed a drain field for his septic system within the 30-foot road, opting to construct it himself rather than proceeding with a system recommended by DHEC in another location on the property due to cost concerns.

Defendant Adams testified that he received a letter in 2015 from Eric Klatt, who was serving as Right-Of-Way Manager for Beaufort County's engineering department, opining that Beaufort County did not maintain or own the section of Warsaw Island Road depicted as private on the Beaufort County Tax Map. Defendant Adams also introduced a list of public boat ramps produced by the County which did contain the Warsaw Island Boat Landing. Defendant Adams also received a letter in 2017 from Lolisa Daise, Real Property Records Clerk for Beaufort County, denying his request for a property line revision because the County's judgment rolls did not grant him ownership of the road.

Defendant Adams testified to numerous alleged instances of harassment that he and his wife experienced at the hands of Plaintiff and/or his associates. These included lewd words and gestures, loud music being played, and video surveillance, among other things. On cross-examination, Defendant Adams admitted he used racial slurs towards Plaintiff, repeating them on the stand. Beverly Adams also testified regarding the alleged harassment Plaintiff directed to her and her husband.

Finally, Lolisa Daise testified that she issued the aforementioned letter denying Defendant Adams's request for a property line revision because her review of the relevant title documentation demonstrated he did not own the road.

Ms. Daise specifically cited the "save and except" clause of Judge Kemmerlin's 1990 Quiet Title Order stating that John Howard owned "the 1.054 acre portion of Lot 15 situate immediately below (southeast) the unpaved Beaufort County Road" Ms. Daise reviewed the relevant documentation on multiple occasions due to Defendant Adams's frequent visits regarding the issue.

The documentary evidence submitted to the Court included deeds within the chain of title for Plaintiff and Defendant Adams; lease and permit application documents; various correspondence; plats and surveys; mortgage and tax documents; documents to and from DHEC; documents from the Beaufort County Sheriff's Office to include incident reports; and court rulings, to include Judge Kemmerlin's 1990 Quiet Title Order and the Court of Appeals' opinion in the case. At the close of evidence, each party moved for a directed verdict and argued in opposition to the motions of the others. The Undersigned took the matter under advisement and now issues an Order based upon the following.

ANALYSIS

As an initial matter, neither Judge Kemmerlin's 1990 Quiet Title Order nor the Court of Appeals' opinion in the present case were appealed by any party. Both parties' predecessors in title were parties to the 1990 Quiet Title action, which involved the property at issue in the present case. As a result, the 1990 Quiet Title Order is a legally binding judgment as to the parties and the property at issue. The Court of Appeals' opinion in this case interpreted the 1990 Quiet Title Order in reaching the conclusion that neither Plaintiff nor Defendant Adams owned the 30-foot road or adjoining boat ramp and remanding the case for further proceedings

consistent with the opinion. The Court of Appeals' opinion is the law of the parties' case, even after the County's intervention and the additional evidence entered into the record during discovery and at trial. Accordingly, the 1990 Quiet Title Order and the Court of Appeals' opinion are the lens through which the case must be viewed upon remand. It is axiomatic that "[o]ne claiming title by deed has no greater title than the original grantor in the chain of title upon which he relies." Hoogenboom v. City of Beaufort, 315 S.C. 306, 313, 433 S.E.2d 875, 880–81 (Ct. App. 1992) (citing Belue v. Fetner, 251 S.C. 600, 164 S.E.2d 753 (1968) (a deed cannot convey an interest which the grantor does not have)).

The evidence adduced at trial—including additional evidence submitted on remand—is consistent with the conclusions the Court of Appeals reached in its opinion. While Defendant Adams offered additional evidence regarding his predecessor in interest's title before the 1990 Quiet Title Order, it is insufficient to demonstrate that he owns any more than the 1.054 acres specified in his deed and described in the Order as lying immediately below the 30-foot road. The most plausible reading of the relevant documentation is that Plaintiff's predecessor in title owned the parcel of property situated to the northwest of the 30-foot road, Defendant Adams' predecessor in title owned the 1.054 acre parcel to the southeast of the 30-foot road, and the road itself was explicitly excluded from either's ownership. The road is referred to repeatedly as "the unpaved Beaufort County road" and "the unpaved county road," and the evidence indicates the road and adjoining boat landing were used by members of the community for recreation and to make their living until Defendant Adams blocked access to it in 2015.

While Defendant Adams relies on a letter from a Beaufort County employee stating his opinion as to the County's ownership or maintenance of the 30-foot road and ramp, as well as a list of public boat ramps that does not contain the subject ramp, neither is binding up on the County. Ownership of real property is a matter of law, and South Carolina's courts have held that a government employee's misrepresentation as to such matters does not bind the government body. See Carolina Chloride, Inc. v. Richland Cnty., 394 S.C. 154, 167–68, 714 S.E.2d 869, 875–76 (2011); Quail Hill, LLC v. Richland Cnty., 387 S.C. 223, 692 S.E.2d 499 (2010); Northernair Productions, Inc. v. Crow Wing Cnty., 309 Minn. 386, 244 N.W.2d 279 (Minn. 1976). The same is true for Ms. Daise's decision denying Defendant Adams's request for a property line revision—it is evidence for the Court's consideration, but not dispositive as to legal ownership of property.

Plaintiff now agrees, or has agreed during the course of the case, that the County is the owner of the 30-foot road and ramp. He seeks only an easement over the road, which he and his family have utilized for many years. Interpretations of deeds and the scope of easements are equitable matters. Eldridge v. City of Greenwood, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (Ct. App. 1998); Slear v. Hanna, 329 S.C. 407, 496 S.E.2d 633 (1998); Smith v. Commissioners of Public Works, 312 S.C. 460, 441 S.E.2d 331 (Ct. App. 1994). Equity considerations counsel not only the conclusions that the County owns the road and ramp, but also that the Plaintiff will have unencumbered access to the road and ramp, as shall every member of the public, and he does not require an easement. County ownership of the road and ramp yields the additional equitable result of legal

separation of the properties of Plaintiff and Defendant Adams' respective properties, something the evidence of unneighborly behavior between them demonstrates to be needed.

Because the County is the owner of the subject road and ramp, the Undersigned additionally finds that Defendant Adams violated the Court's order in installing a drain field within the bounds of the road and blocking access to it. Defendant Adams is therefore ordered to disconnect his drain field system, clearly identify it for purposes of removal, and bear the cost of removal, which the County has elected to pursue through a vendor. Defendant Adams is further ordered to remove the fence he erected on the side of the road bordering Plaintiff's property. The parties' additional claims are dismissed with prejudice and each party is to bear their own costs and fees incurred in pursuing the case.

CONCLUSION AND ORDER

Based on the foregoing, the Undersigned finds that Beaufort County owns the subject 30-foot road and adjoining boat ramp. It is hereby **ORDERED AND ADJUDGED** that:

1. Judgment in favor of the County's ownership of the 30-foot road and adjoining boat ramp located adjacent to Warsaw Island Road on St. Helena Island in Beaufort County, SC, shall be entered;
2. Defendant Adams shall disconnect his drain field system and clearly identify all components thereof for purposes of removal within 30 days of this Order;
3. Defendant Adams shall bear the cost of removal of the drain field system as arranged by the County;

4. Defendant Adams shall remove any barriers to access of the 30-foot road and ramp at his own expense within 30 days of this Order;
5. Defendant Adams shall remove the fence situated on the side of the 30-foot road bordering Plaintiff's property at his own expense within 30 days of this Order;
6. Plaintiff's claim for an easement over the subject road is denied as moot;
7. Each party shall bear their own costs and fees incurred associated with the subject case; and
8. The parties' remaining claims are dismissed with prejudice.
9. The Court retains jurisdiction to enforce the Order and enter monetary judgments, if needed, related to the foregoing paragraphs 2-5.

IT IS SO ORDERED.

By: _____
Marvin H Dukes III
Master in Equity for Beaufort County

Beaufort, South Carolina

April ____, 2024.

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE COURT OF COMMON PLEAS		FORM 4	JUDGMENT IN A CIVIL CASE CASE NO. 2017-CP-07-02110
<u>Charles Willis Gardner</u>		<u>Taylor Reuben Adams, et al.</u>	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by: Master In Equity		Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant	

- DISPOSITION TYPE (CHECK ONE)**
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify
arbitration award; ☐ Other

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

_____ Circuit Court Judge	3069 Judge Code	_____ Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

G. Hamlin O'Kelley, III

ATTORNEY(S) FOR THE PLAINTIFF(S)

Terry A. Finger

Dylan Kidd

Robert W. Achurch, III

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Form 4

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2024-04-05 09:55:06 page 17 of 17

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2017CP0702110

Charles Willis Gardner,
Plaintiff(s),

vs.

Taylor Reuben Adams, et al.,
Defendant(s).

ORDER

This came before me May 22nd, 2024, on Defendant, Taylor Reuben Adams' Motion to Reconsider; filed April 11th, 2024.

After hearing from parties, I hereby respectfully deny the motion.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity for Beaufort County

May ____, 2024
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams , defendant, et al
Case Number: 2017CP0702110
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2024-05-24 15:48:23 page 2 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

CHARLES WILLIS GARDNER,)

Plaintiff,)

vs.)

TAYLOR RUBEN ADAMS,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-07-02110

NOTICE OF MOTION
AND MOTION FOR PARTIAL
FOR SUMMARY JUDGMENT

TO: WILLIAM L. PYATT, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE, that the undersigned, by and on behalf of the Defendant, Taylor Ruben Adams (hereinafter referred to as the "Defendant"), will move before the Presiding Judge or the Beaufort County Master-in-Equity of the Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, in the Beaufort County Courthouse on the tenth day after service hereof, or as soon thereafter as is convenient to Court and counsel, for an Order granting unto the Defendant Partial Summary Judgment against Plaintiff, Charles Willis Gardner (hereinafter referred to as the Plaintiff"), pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, on the following grounds:

1. Title to the subject property has already been determined in a Decree of Title Clearance signed by the Honorable Thomas Kemmerlin, Jr. on November 20, 1990 in Civil Action No.: 89-CP-07-879. Said Decree of Title Clearance vests title to the 30 foot road and property to the south of the 30 foot road in the Defendant's predecessor in title.

2. The Plaintiff has attempted to interfere with the Defendant's lawful ownership of the property and has continually trespassed across it.

3. This Honorable Court should confirm title to the road and the subject property in the Defendant's name and restrain the Plaintiff from any additional trespass.

4. The Defendant is informed and believes he is entitled to a hearing on its Counterclaims to establish his damages.

The undersigned attorney for the Defendant hereby certifies that consultation between the parties would serve no useful purpose and he has not contacted the Plaintiff's attorney to resolve this matter.

FINGER, MELNICK & BROOKS, P.A.

s/Terry A. Finger

Terry A. Finger

S.C. Bar No.: 2012

Attorney for the Defendant

Taylor Ruben Adams

35 Hospital Center, Suite 200

P. O. Box 24005

Hilton Head Island, SC 29925-4005

(843) 681-7000

tfinger@fingerlaw.com

Hilton Head Island, South Carolina
March 15, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
CHARLES WILLIS GARDNER	)	CASE NO.: 2017-CP-07-02110
	)	
Plaintiff,	)	NOTICE OF MOTION AND
	)	MOTION FOR RECONSIDERATION OR
vs.	)	NEW TRIAL
	)	MOTION FOR RELIEF FROM ORDER
TAYLOR REUBEN ADAMS	)	MOTION TO STAY PROCEEDINGS TO
	)	ENFORCE A JUDGMENT
Defendant.	)	

PLEASE TAKE NOTICE that Charles Willis Gardner ("Mr. Gardner") by and through his undersigned attorney, hereby moves pursuant to SCRCF Rule 52(b) and SCRCF Rule 59(e) for a reconsideration of this Court's Order (Re: Order Granting Partial Summary Judgment) against Taylor Reuben Adams ("Mr. Adams") filed on July 10, 2018 (the "Order"). THE MOVANT ALSO MOVES the Court to grant a new trial pursuant to Rule 59(b) and relief from the Order pursuant to Rule 60(b).

Specifically, Mr. Gardner requests this Court alter or amend:

- i. Its Order that the thirty (30) foot road, boat ramp (the "Road") and the +/- 1.054 acres below the road are owned in fee simple by Mr. Adams.
- ii. Its Order stating that Mr. Gardner has access to his property from Ashton Drive and that it is not necessary for Mr. Gardner to trespass on the above property to access his property.
- iii. Assuming the above Order is amended, to reinstate the Mr. Gardner's causes of action for trespass and injunction as to the road.

Pursuant to Rule 62(b), the Mr. Gardner moves the Court to stay the execution of the Order as it pertains to the Mr. Gardner's access to the thirty (30) foot road during the pendency of the hearing on the above motions.

MOTION FOR RECONSIDERATION

I. Motion for Reconsideration Pursuant to Rule 52(b) and Rule 59(e)

In Paragraph 2 of the Order, the Court makes a factual finding that, “The thirty-foot road, the boat ramp at the end of the thirty foot road and the property south of the road is owned by the Defendant, Taylor Ruben Adams. This factual finding is disputed in the record. The dispute of the record constitutes a genuine issue of material fact, and thus summary judgment was not proper.

When findings of fact are made in actions tried by the court without a jury, the question of evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment. SCRCP Rule 52.

“[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (S.C., 2004).

i. As to the Ownership of the Road.

In Paragraph 2 of the Order, the Court makes a factual finding that, “The thirty-foot road, the boat ramp at the end of the thirty foot road and the property south of the road is owned by the Defendant, Taylor Ruben Adams.

On Page 1 of the Order the Court states that to make its determination of ownership, the Court relied on “a plat prepared for Charles Gardner dated February 6, 1995 recorded in Plat Book

52 at Page 36...". A plain reading of this plat states that the Road is owned and claimed by Leroy Gardner. This plat constitutes a recorded document that disputes the factual finding that Mr. Adams owns the Road.

Further, no evidence in the record establishes that the Mr. Adams owns the Road in fee simple. The Court reviewed a Decree of Title Clearance in Case No. 89-CP-07-879, judgment roll number 82475 in the Office of Clerk of Court for Beaufort County, said decree being signed by Thomas Kemmerlin, Jr., Beaufort County Master in Equity on November 20, 1990. ("The Quiet Title Order"). The Quiet Title Order does not establish the ownership of the road by John Howard. Order, Findings of Fact, ¶3. The Quiet Title Order states, "Save and Except: The thirty (30) foot dirt road running in a generally southwest to northeast direction across Lot 15 and that 1.054 acre portion of Lot 15 immediately below (southeast) the thirty (30) foot dirt road, owned by Defendant, John Howard." *Gardner, et al. v. Gardner, et. al.*, Beaufort County Master in Equity, Case No. 89-CP-07-879, November 20, 1990. The Quiet Title Order goes out of its way to specify that John Howard owns the parcel of land southeast of the unpaved county road, but never states that John Howard owns the road. *Id.* At The Quiet Title Order states on Page 11, "The unpaved county road separates the respective portions of Lot 15 owned by the Plaintiff and John Howard" and reiterates the ownership stating, that the Plaintiff owns the property save and excepting, however, the 1.054 acre portion of the Lot 15 situate immediately below (southeast) the unpaved Beaufort County road running in a generally southwest to northeast direction...". *Id.* The Quiet Title Order indicates that Beaufort County is the rightful owner of the Road, not John Howard or his successors.

No further document in the record establishes the Mr. Adamss ownership of the Road. Moreover, for over twenty-seven (27) years, prior to and since the issuance of the Quiet Title Order, the Mr. Gardner has lived on, maintained, and paid taxes on the Road. The Road has been

used by the Gardner family for over one hundred (100) years. By continuous use and maintenance of the Road, the Mr. Gardner has acquired at the very least an implied easement to use the Road.

The Court should reconsider its grant of the Road to the Mr. Adams in fee simple.

- ii. **As to the Order stating that access to his property from Ashton Drive and that it is not necessary for Mr. Gardner to trespass on the above property to access his property.**

The Mr. Gardner does not have access to his property from Ashton Drive as stated in the Order. As stated above, the Mr. Gardner has used the Road for the last twenty-seven (27) years as his primary and exclusive access to his property. Since the Order was granted, the Defendant has blocked his access to the Road. The proposed access stated in the Order is illusory. Although it is apparent that Ashton Drive abuts the Mr. Gardner's property line, Mr. Gardner's home is situated behind a wooded area in trees that must be cleared to grant access to the property.

The Mr. Gardner requests this Court amend the Order to allow for Mr. Gardner to use the Road to access his property.

II. Motion for Relief from Judgment or Order and Motion for a New Trial

Pursuant to 60(b) and Rule 59(a)(1) the Mr. Gardner request the Court grant relief from the Order granting Partial Summary Judgment and moves for a new trial on the grounds of mistake, inadvertence, surprise, or excusable neglect.

In determining whether to grant relief under Rule 60(b) (1), the court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party. *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010).

Page 3 of the Order grants the Mr. Adams Partial Summary Judgment on his counterclaim to confirm title to the Road and injunctive relief prohibiting the Mr. Gardner from trespassing on the Property of the Mr. Adams. The confirmation of the title to the Road and the boat ramp should be vacated as the Mr. Adams's counterclaim does not indicate that he considered the Road to be part of his property. Thus, the Mr. Gardner was unaware of his ability or need to assert defenses claiming ownership of the Road by claims of adverse possession or implied easement.

The Counterclaim in this action requested relief of actual and consequential damages for the consistent and continual trespass by the Plaintiff. See Page 3 of Counterclaim. The Counterclaim states, "the property in question is owned by the Defendant by virtue of the 1989 Quiet Title Action, the Defendant's deed and chain of title and the plats of record. Defendant's Answer and Counterclaim ¶16. As noted above, on Paragraph 3 of the Order, the Court found that the 1989 Quiet Title Action did not establish Mr. Adams's ownership of the Road. The Counterclaim thus was not sufficient to inform the Mr. Gardner of the intention of the Mr. Adams to include the Road as part of the property alleged to be trespassed upon.

The failure of the Mr. Gardner and the Mr. Gardner's prior legal counsel to assert defenses of adverse possession or implied easement constitutes excusable neglect based on the pleadings. Typically, the asserted failure of an attorney to interpose available defenses does not amount to the kind of mistake, surprise, inadvertence, and excusable neglect contemplated by Rule 60(b). *Greenville Income Partners v. Holman*, 308 S.C. 105, 107, 417 S.E.2d 107, 108 (Ct. App. 1992). This case is an exception to the general rule because the Mr. Gardner's attorney did not have proper notice based on the Mr. Adams's counterclaim to know that Mr. Adams was claiming ownership to the Road. The failure to interpose a defense of adverse possession or implied easement was therefore excusable.

As stated above, in Mr. Gardner's motion for reconsideration, it is our contention that the language of the Quiet Title Order does not specifically grant the Road to the Mr. Adams or his predecessor. The Mr. Gardner had no reason to believe based on the pleadings that the Mr. Adams was alleging that the Road was part of the property in which Mr. Gardner was alleged to have trespassed. The Mr. Gardner should be allowed an opportunity to establish defenses such as adverse possession or implied easement.

The claims of adverse possession and implied easement are meritorious. As stated above, the Mr. Gardner's continuous, hostile, notorious, and exclusive use of the Road for over twenty (20) years allows him the opportunity to raise the defense of adverse possession. Further, as he has been using the Road as the sole and exclusive access to his property for over twenty (20) years, he would likely succeed on an implied easement cause of action.

Finally, the Mr. Adams would not be prejudiced by the Mr. Gardner's use of the Road. The vacation of the grant of the Road in fee simple to the Mr. Adams would not restrict Mr. Adams's use of the Road in any way.

The Mr. Gardner reserves his right to establish the claims of adverse possession and implied easement in another action. In the interest of judicial economy and justice, the Mr. Gardner moves that a new trial be granted with the Road being part of the disputed land of trespass so as to determine the equitable rights of all parties involved.

Wherefore, the Mr. Gardner prays for the following relief:

1. An amendment of the Order stating that the Road is not owned by the Mr. Adams.
2. An Order staying the enforcement of the of the injunction.
3. An Order granting relief from the Judgment or Order and the granting of a new trial or leave to amend the pleadings.

Respectfully submitted,

COBB DILL & HAMMETT LAW FIRM, LLC

/s/ Bryan A. Raymond

Bryan A. Raymond, Esq.

Cobb Dill & Hammett, LLC

300 W. Coleman Blvd. Suite 106

Mt. Pleasant, SC 29464

(843) 936-6676

ATTORNEY FOR THE PLAINTIFF

Mt. Pleasant, South Carolina
July 20, 2018

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CHARLES WILLIS GARDNER

Plaintiff,

vs.

TAYLOR REUBEN ADAMS

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-07-02110

MOTION TO SUBSTITUTE COUNSEL

The Plaintiff, Charles Willis Gardner, by and through undersigned counsel, hereby moves this court to substitute Bryan A. Raymond, Esquire of Cobb, Dill, and Hammett LLC, as counsel of record for Plaintiff in this Matter. By virtue of the enclosed letter dated June 28, 2018, Mr. Gardner terminated representation by Mr. William A. Pyatt. Mr. Raymond has attempted to contact Mr. Pyatt by telephone to confirm this termination of representation, but as of yet has been unable to reach him. Due to the time constraints of filing post-judgment motions, Mr. Gardner, by and through undersigned counsel, hereby requests that Mr. Bryan A. Raymond, Esq. of Cobb Dill & Hammett, LLC be immediately substituted as counsel for Plaintiff.

Respectfully submitted,

COBB DILL & HAMMETT, LLC

/s/ Bryan A. Raymond, Esq.

Bryan A. Raymond

S.C. Bar No.: 101341

300 W. Coleman Blvd., Suite 106

Mt. Pleasant S.C. 29464

Phone: (843) 936-6678

braymond@cdhlawfirm.com

Attorney for Plaintiff

Mount Pleasant, South Carolina
July 20, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	CASE NO.: 2017-CP-07-02210
CHARLES WILLIS GARDNER,	)	
	)	
Plaintiff,	)	
	)	NOTICE OF MOTION
	)	AND MOTION FOR STAY OF ORDER
-vs-	)	
	)	
TAYLOR REUBEN ADAMS,	)	
	)	
Defendant.	)	
	)	

TO DEFENDANT AND HIS COUNSEL

PLEASE TAKE NOTICE that Charles Willis Gardner ("Mr. Gardner") by and through his undersigned attorney, hereby moves pursuant to SCRCR Rule 62, and South Carolina Appellate Court Rule 241, the Plaintiff moves the Court stay the execution of the Order Granting Partial Summary Judgment in favor of the Defendant granted on July 10, 2018 pending the decision on a similar Motion made to the South Carolina Court of Appeals on October 2nd, 2018 and the following statement of facts:

1. On September 12, 2018 the Plaintiff in this action filed a Notice of Appeal of the Order Granting Partial Summary Judgment filed on July 10, 2018.
2. Pursuant to Rule 241 of the South Carolina Appellate Court Rules, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.
3. The Plaintiff has appealed the following findings from the Order Granting Partial Summary Judgment:

- i. The Order that the thirty (30) foot road, boat ramp (the "Road") and the +/- 1.054 acres below the road are owned in fee simple by Mr. Adams.
- ii. The Order stating that Mr. Gardner has access to his property from Ashton Drive and that it is not necessary for Mr. Gardner to trespass on the above property to access his property.

Pursuant to the above, the Plaintiff hereby moves the Court to stay the enforcement of the Order during the pendency of the appeal.

Respectfully submitted,

/s/ Bryan A. Raymond, Esq.
Bryan Raymond
S.C. Bar No.: 101341
Cobb Dill & Hammett LLC
222 W. Coleman Blvd.
Mt. Pleasant, SC 29464
(843) 936-6676

Mt. Pleasant, South Carolina
October 2nd, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2017-CP-07-02110
	)	
CHARLES WILLIS GARDNER	)	
	)	
Plaintiff,	)	PETITION FOR
	)	RULE TO SHOW CAUSE
vs.	)	
	)	
TAYLOR REUBEN ADAMS	)	
	)	
Defendant.	)	

TO: TAYLOR REUBEN ADAMS, and his attorney of record Terry Finger. .

The Petitioner, Charles Gardner, by and through undersigned counsel, alleges as follows:

OVERVIEW OF ALLEGED CONTEMPT

1. The parties are subject to an Order of the Court filed on or about December 10, 2018, case number 2017-CP-07-02110. See Exhibit A.
2. This Order of the Court held in pertinent part:
 - a. Pending further Order fo the Court, Defendant may not erect any permanent structure on the road or otherwise render the road permanently unusable.
3. The Appellate action on this case is still pending.
4. Upon information and belief, on or about August 27, 2018, Defendant applied for a permit to construct a septic system on the road which would render it unusable.
5. Upon information and belief, on or about October 12, 2018, DHEC initially denied the application for a septic system as it did not meet the required criteria to install the septic system. See Exhibit B.
6. On or about November 14, 2018, Defendant's counsel appeared at a Plaintiff's Motion Hearing in front of the Honorable Judge Dukes in which the Plaintiff requested a stay of

an Order which would allow Plaintiff to use the road as he had been doing for the previous 50 years while the appeal of the Court's decision was pending.

7. The Court issued the above referenced Order denying the stay to allow the Plaintiff to use the road, but enjoining the Defendant from erecting a permanent structure or rendering the road unusable.
8. Upon information and belief, Defendant, in direct defiance of the court's Order, then hired the Beaufort Group, LLC to conduct an engineering plan to allow Defendant to obtain a permit to install a septic system.
9. Upon information and belief Defendant represented to DHEC that the road was part of his private property and therefore did not have any restrictions to build upon it.
10. On or about April 10, 2019, DHEC issued the Defendant a Permit to Construct an Onsite Wastewater System. See Exhibit C.
11. The plans call for the septic drain system to be installed on the road.
12. On or about July 23, 2019, the Defendant began installing a septic system on the road. See Exhibit D.
13. Plaintiff called the Sheriff's Department. Upon information and belief Mr. Adams initially represented to the Sheriff's Department that he was doing road maintenance and the Sheriff left.
14. When it became clear that the Defendant was installing a septic system, Plaintiff again called the Sheriff's department and provided the Sheriff a copy of the above referenced Order of the Court.
15. The Sheriff's department stated that they would require an emergency stop work order from the Court in order to enforce the Order.

16. Upon information and belief, Defendant has installed the septic system on the road.
17. Pursuant to Regulation 61-56, no part of a septic system may be placed within five (5) linear feet of a building, or under a driveway or parking area. S.C. Code Ann. Regs. 61-56.200.6 (1) (West)
18. Upon information and belief, no part of a septic system can be driven over. See Exhibit D.
19. In addition, Defendant has erected a fence which would restrict Plaintiff's previous path of use of the road to his property. See Exhibit E.
20. Plaintiff has been forced to utilize the services of his attorney to resolve these issues, at a considerable expense to him.
21. Upon information and belief, due to the inaction of the Sherriff's Department, Defendant has been bolstered in his defiance of the Court's Order will continue to disregard the Orders of the Court unless he is stopped by the Court's intervention.
22. Upon information and belief, Defendant has violated the Courts Order in the following ways:
 - a. Installing a septic system across the road rendering it permanently unsuable.
 - b. Installing a permanent fence blocking the previous path of the Plaintiff's use of the road.

LAW

"The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." Miller v. Miller, 375 S.C. 443, 453, 652 S.E.2d 754, 759 (Ct. App. 2007). A determination of contempt is within the

sound discretion of the trial judge. Whetstone v. Whetstone, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1992).

“Contempt results from the willful disobedience of an order of the court.” Bigham v. Bigham, 264 S.C. 101, 104, 212 S.E.2d 594, 596 (1975). “A willful act is one which is ‘done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.’” Widman v. Widman, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct.App.2001) (quoting Spartanburg County Dep’t of Soc. Servs. v. Padgett, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988)).

“In a proceeding for contempt for violation of a court order, the moving party must show the existence of a court order and the facts establishing the respondent's noncompliance with the order.” Hawkins v. Mullins, 359 S.C. 497, 501, 597 S.E.2d 897, 899 (Ct. App. 2004). “[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct.” Widman, 348 S.C. at 119, 557 S.E.2d at 705. “Once the moving party has made out a prima facie case, the burden then shifts to the respondent to establish his or her defense and inability to comply with the order.” Id. at 120, 557 S.E.2d at 705.

The Court has wide discretion in determining the appropriate relief for contempt of court. Curlee v. Howle, 277 S.C. 377, 287 S.E.2d, 915 (1982). Courts, by exercising their contempt power, can award attorney's fees under a compensatory contempt theory. Miller, 375 S.C. at 463, 652 S.E.2d at 764-65 (citing Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 178-79, 557 S.E.2d 708, 711-12 (Ct. App. 2001)). Compensatory contempt seeks to reimburse the party for the costs it incurs in forcing the non-complying party to obey the court's orders. Id.; see also Poston v. Poston, 331 S.C. 106, 114, 502 S.E.2d 86, 90 (1998) (“In a civil contempt proceeding, a

contemnor may be required to reimburse a complainant for the costs he incurred in enforcing the court's prior order, including reasonable attorney's fees. The award of attorney's fees is not a punishment but an indemnification to the party who instituted the contempt proceeding.”); Curlee, 277 S.C. at 386-87, 287 S.E.2d at 919-20 (“Compensatory contempt is a money award for the [wife] when the [husband] has injured the [wife] by violating a previous court order Included in the actual loss are the costs of defending and enforcing the court's order, including litigation costs and attorney's fees.”).

PRAYER FOR RELIEF

WEREFORE, the Plaintiff requests the following relief:

1. The Court schedule a Rule to Show Cause hearing as soon as possible.
2. The Court enter an Order directing the Defendant to remove the septic system, immediately;
3. The Court enter an Order directing the Defendant to remove the fence obstructing Plaintiff's former path, immediately;
4. The Court enter an Order of Stay as to the execution of the underlying Order of Partial Summary Judgment allowing Plaintiff to utilize the road during the pendency of the Appeal.
5. Notice be given to all parties as provided by law;
6. At the hearing, that Defendant be held in contempt of the Court's Order;
7. That based on her contempt, Defendant reimburse Plaintiff for all funds expended related to this matter.
8. That based on her contempt, Defendant pay all reasonable attorney fees and costs incurred by the Plaintiff, related to this matter;
9. For any further and additional relief the Court deems just and proper.

Respectfully submitted,

COBB DILL & HAMMETT LAW FIRM, LLC

/s/ Bryan A. Raymond

Bryan A. Raymond, Esq.
Cobb Dill & Hammett, LLC
222 W. Coleman Blvd. Suite 106
Mt. Pleasant, SC 29464
(843) 936-6676

Mt. Pleasant, South Carolina
July 23, 2019

ATTORNEY FOR THE MOVANT

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2017-CP-07-02110

Charles Willis Gardner,

Plaintiff(s),

vs.

Taylor Reuben Adams,

Defendant(s).

ORDER

This matter came before me on November 14th, 2018 on Plaintiff's Motion to Stay (filed October 3rd, 2018). I deny the motion but impose upon Adams the following restraint: Pending further Order of the Court, Defendant may not erect any permanent structure on the road, nor otherwise render the road permanently unusable.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

December ____, 2018
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Charles Willis Gardner VS Taylor Reuben Adams
Case Number: 2017CP0702110
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-12-10 10:01:18 page 2 of 2

ELECTRONICALLY FILED - 2018 Dec 10 10:33 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0702110
ELECTRONICALLY FILED - 2019 Jul 23 3:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0702110

Subject: Re: Warsaw Island Septic Permit
Date: Tuesday, July 23, 2019 at 3:03:45 PM Eastern Daylight Time
From: Threatt, Richard
To: Bryan A. Raymond

[THIS MESSAGE IS FROM AN EXTERNAL SOURCE]

An application was submitted on 8/27/2018. An owner/options letter was mailed to Mr. Adams on 10/12/2018 and subsequently a permit was issued on 4/10/2019 for a Specialized Onsite Wastewater System.

The standard for the Specialized Onsite Wastewater System can be found in Regulation 61-56: Onsite Wastewater Systems, Section 415 Appendix O

Richard L. Threatt, Jr.
Office Manager
Lowcountry- Beaufort EA
S.C. Dept. of Health & Environmental Control
Office: (843) 846-1030
Cell: (843) 986-4426
Fax: (843) 846-0604
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)

From: Bryan A. Raymond <braymond@cdhlawfirm.com>
Sent: Tuesday, July 23, 2019 2:48:39 PM
To: Threatt, Richard <threatl@dhec.sc.gov>
Subject: Re: Warsaw Island Septic Permit

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Mr. Threatt,

Could you tell me when the initial application was denied and what the regulation is that allowed the alternative engineering? I appreciate your help.
Thanks,

Bryan Raymond
braymond@cdhlawfirm.com
Phone: (843) 936-6676
Mobile: (618) 731-1183



PERMIT TO CONSTRUCT Onsite Wastewater System

File Nbr: 2018080018

County: Beaufort

Name: Ruben Adams

Program Code: 362

Type Facility: House

Address: 240 Warsaw Island Road
St. Helena, SC 29920

System Code: 611

Subdivision:

Water Supply: Public

Block:

Lot:

Site: 240 Warsaw Island Road
St. Helena, SC 29920

TM#: R300 009 000 010 A 0000

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC
Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not
relinquish the property owner of responsibility in attaining any and all necessary approvals or
permits required to develop this property.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification,
and other supporting documentation as required by this standard and
supplied by:

The Beaufort Group, LLC

(Engineering Company)

Robert G. Gross

(Consulting Engineer)

6058

(State and License Number)

John H. Thorp

(Soil Classifier)

SC #49

(State and License Number)

04/03/2019

(Plan Date)

R 300 009 000 010A 0000

(Project Number)

*Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting
engineer's design, certification, and other supporting documentation.*

Reviewed By: Reahnita S. Tuten

Date: 04/10/2019

DHEC 1781 (01/2014)

This Permit will Expire and Become Null and Void Five (5) Years from the
Issuance Date.

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require a Site Reevaluation.

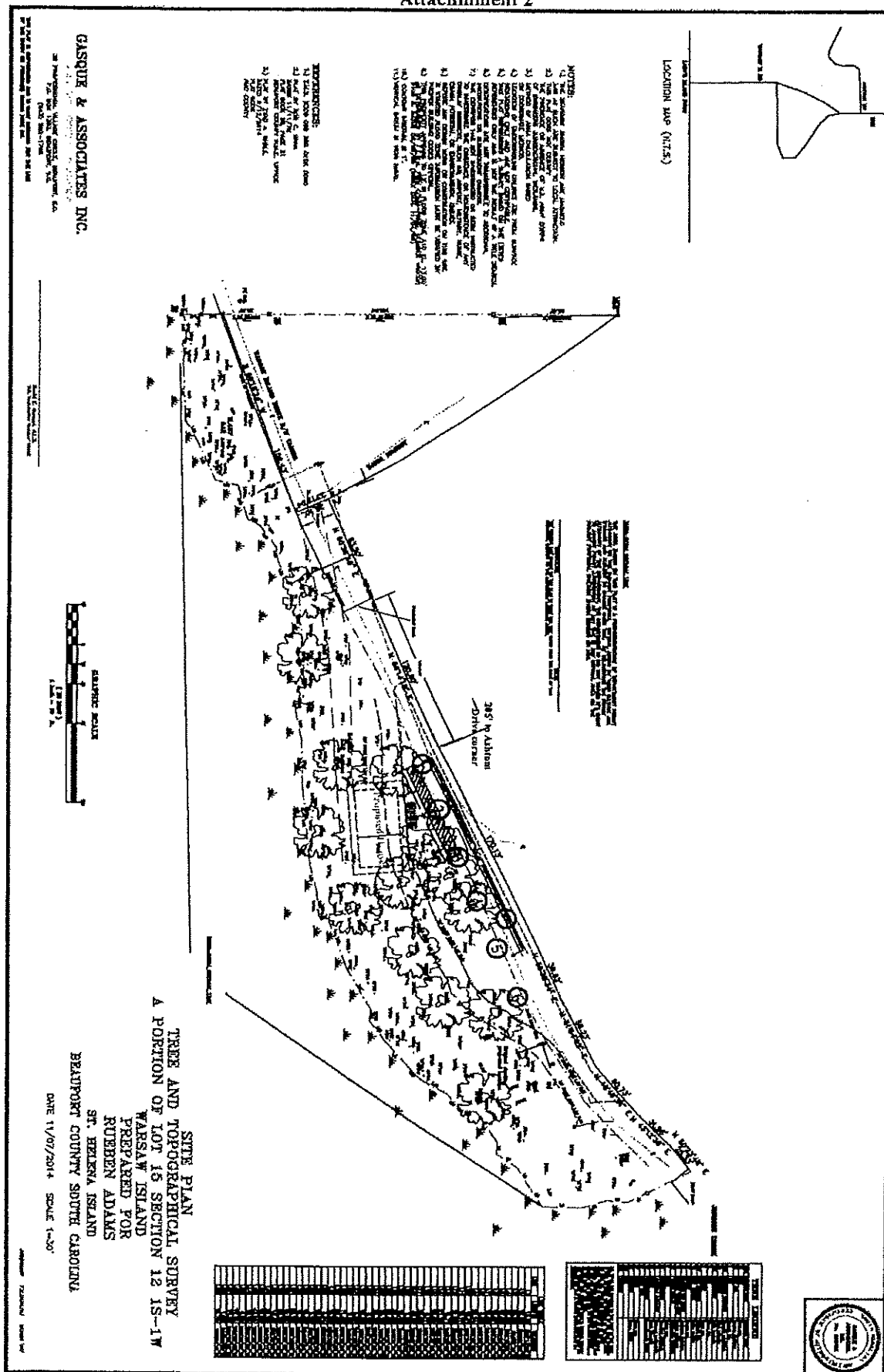
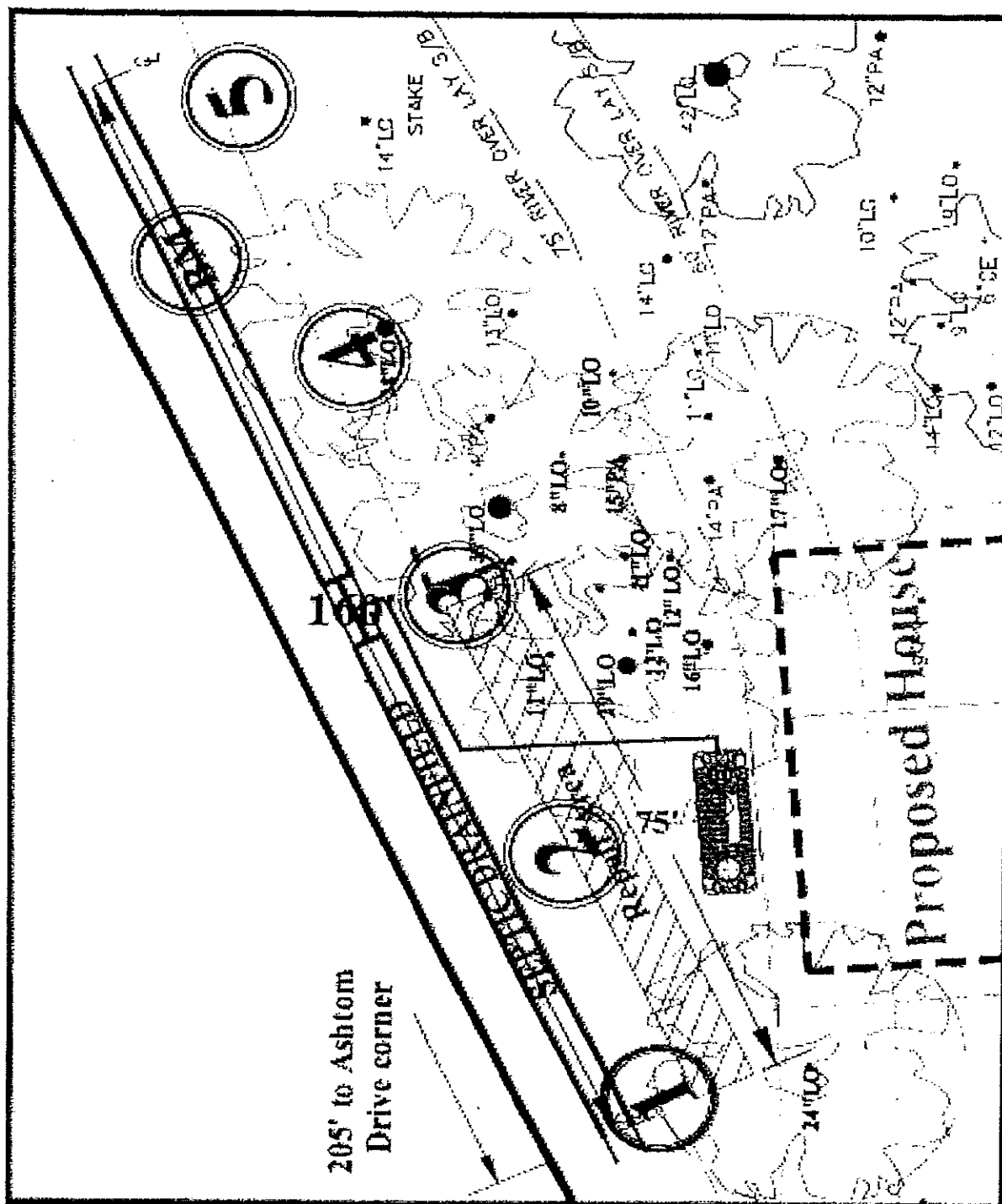
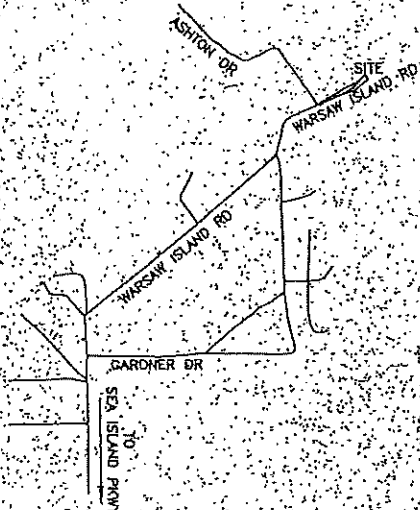


Figure 3 Drain Field Details





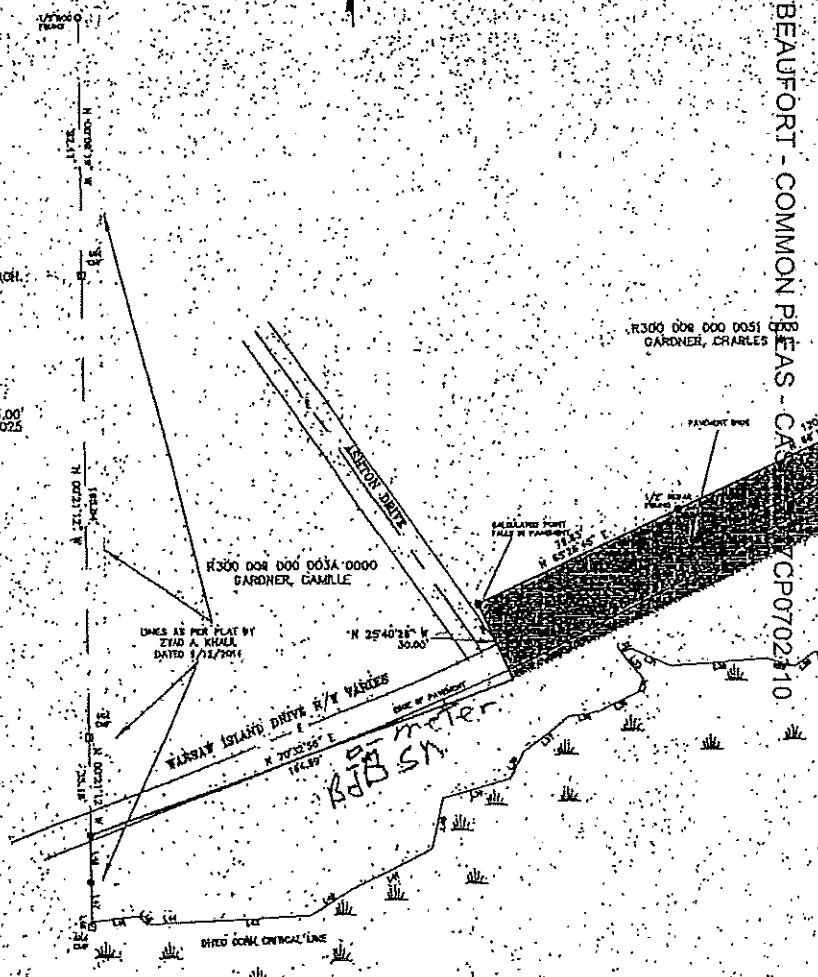
LOCATION MAP (N.T.S.)

NOTES:

- 1.) THE BEARINGS SHOWN HEREON ARE MAGNETIC AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION.
- 2.) THIS PLAT DOES NOT CERTIFY THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS OF ENGINEERS JURISDICTIONAL WETLANDS.
- 3.) METHOD OF AREA CALCULATION BASED ON COORDINATE METHOD.
- 4.) LOCATION OF UNDERGROUND UTILITIES ARE FROM SURFACE INDICATIONS ONLY AND ARE NOT CERTIFIABLE.
- 5.) THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY AND IS NOT THE RESULT OF A TITLE SEARCH.
- 6.) CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
- 7.) THE CERTIFIER HAS NOT INVESTIGATED OR BEEN INSTRUCTED TO INVESTIGATE THE EXISTENCE OR NONEXISTENCE OF ANY OVERLAY DISTRICTS, SUCH AS: AIRPORT, MILITARY, NOISE, CRASH POTENTIAL OR ENVIRONMENTAL ISSUES.
- 8.) BEFORE ANY DESIGN WORK OR CONSTRUCTION ON THIS SITE IS STARTED FLOOD ZONE INFORMATION MUST BE VERIFIED BY PROPER BUILDING CODES OFFICIAL.
- 9.) THIS PROPERTY APPEARS TO BE IN FLOOD ZONE A10 EL. 13.00' AS DETERMINED BY FEMA TRM COMM-PANEL NUMBER 450025 0100 D. DATED 04/28/88 (INDEX DATE 11/04/82).

REFERENCES:

- 1.) T.I.S. R300 D08 000 D01A 0000
- 2.) PLAT BY ROD C. SPAN, DATED 11/11/76, BOOK 28, PAGE 21, BEAUFORT COUNTY RMC
- 3.) PLAT BY ZYAD A. KHALIL, DATED 9/12/2014
- 4.) DEED BY ROBERT L. GONG, ESQUIRE, BOOK 3375, PAGE 447-449, DATED 1/15/2014, BEAUFORT COUNTY RMC
- 5.) DEED BY ROBERT L. GONG, ESQUIRE, BOOK 3375, PAGE 450-452, DATED 1/15/2015, BEAUFORT COUNTY RMC
- 6.) DEED BY BERNARD McINTYRE, ESQUIRE, BOOK 635, PAGE 2800-2803, DATED 7/2/1993, BEAUFORT COUNTY RMC
- 7.) TAX SALE DEED BY DOUGLAS E. HENDERSON, BOOK 3278, PAGE 1837-1838, DATED 1/15/2014, BEAUFORT COUNTY RMC
- 8.) DEED BY KAREN SAMINSKI, ESQUIRE, BOOK 673, PAGE 440-451, DATED 10/19/1993, BEAUFORT COUNTY RMC



GASQUE & ASSOCIATES INC.
LAND SURVEYORS - PLANNERS

28 PROFESSIONAL VILLAGE CIRCLE, BEAUFORT, S.C.
P.O. BOX 1363, BEAUFORT, S.C.
(843) 522-1788

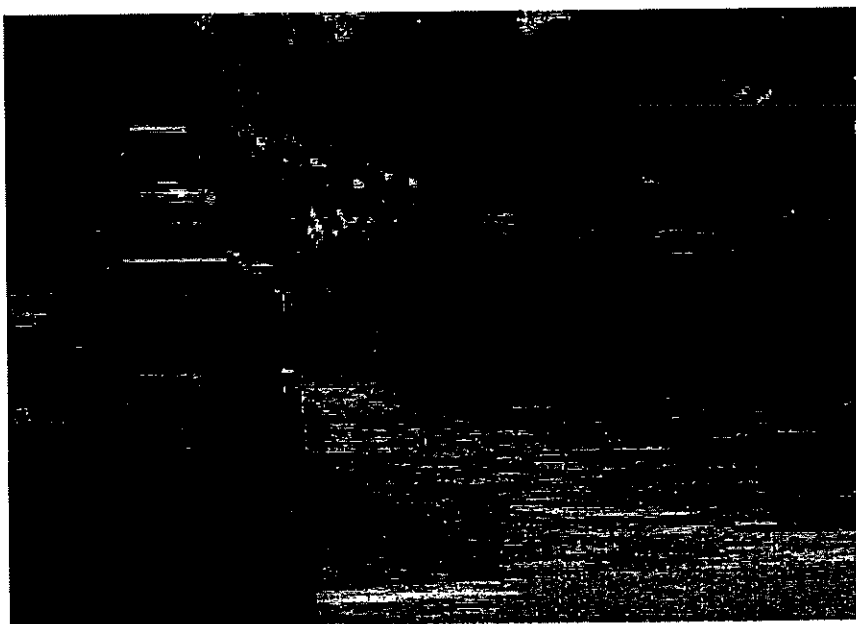
THIS PLAT IS COPYRIGHTED AND IS ONLY INTENDED FOR THE USE OF THE ENTITY OR PERSON(S) SHOWN HEREON.

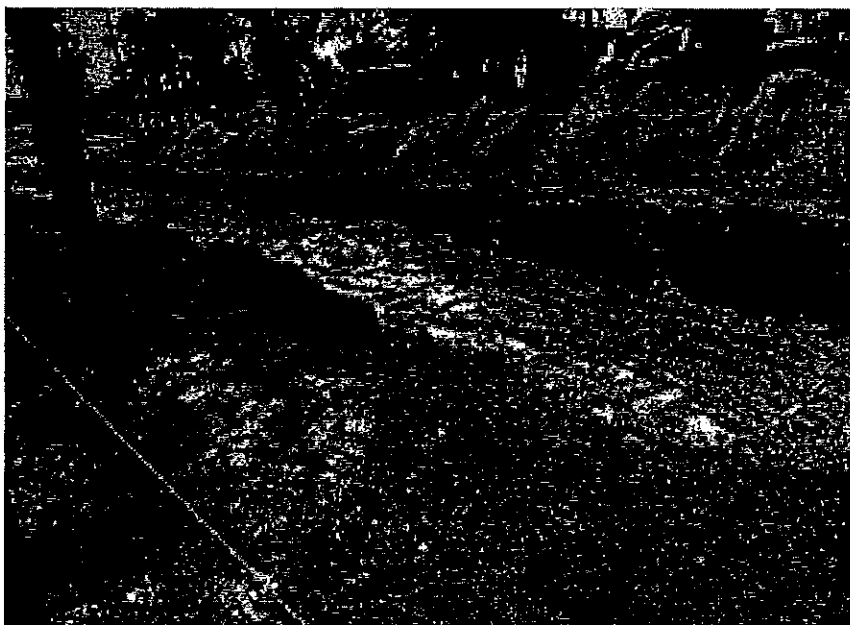
I, David E. Gasque, a Registered Professional Land Surveyor in the State of South Carolina, hereby certify that I am the author of this plat and that it was prepared by me or under my direct supervision and that I am a duly licensed and qualified person to prepare such a plat.

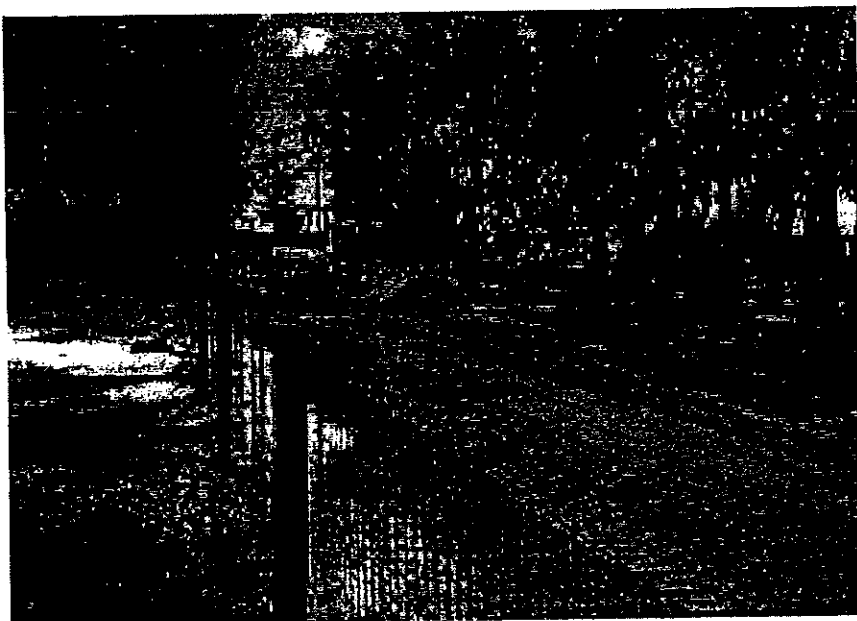
DATE: 1/25/17

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENTAL AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE ARE SUBJECT TO CHANGE OVER TIME. BY DEMANDING THE AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY INTENDS TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA SUBJECT PROPERTY, WHETHER SHOWN HEREON OR NOT.

DATE: 1/25/17
SIGNATURE: [Signature]
I, David E. Gasque, R.L.S., S.C. Registration Number 10308







STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2017-CP-07-02110
	)	
CHARLEST WILLIS GARDNER	)	
	)	NOTICE OF MOTION AND
Plaintiff,	)	MOTION TO ALTER OR AMEND
	)	JUDGMENT
vs.	)	
	)	
TAYLOR REUBEN ADAMS	)	
	)	
Defendant.	)	

PLEASE TAKE NOTICE that Charles Willis Gardner ("Movant") by and through his undersigned attorney, hereby moves pursuant to Rule 60(a) and Rule 59(e), to correct a clerical error or, in the alternative, to alter or amend this Court's Order of September 20, 2019 (the "Order.")

It is the Movant's understanding that during the September 11, 2019 hearing, the Court orally ruled that the Defendant was ordered to allow Movant to access to the contested road perform a survey. However, this ruling was not included in the written order of September 20.

Pursuant to Rule 60(a), SCRCP clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. S.C. R. Civ. P. 60.

Pursuant to Rule 59(e), SCRCP A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order. S.C. R. Civ. P. 59. A party *may* wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been

raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (S.C., 2004).

Movant requests this Court alter or amend the Order to grant Mr. Gardner the right to access the thirty-foot road and boat ramp (the “Road”) to take a professional survey to determine the metes and bounds of the Road. Mr. Gardner is willing to provide reasonable notice to Mr. Adams, through counsel, but we ask that Mr. Gardner’s surveyor have access granted within 30 days of this order.

Wherefore, the Movant prays for the following relief:

1. An amendment of the Order to grant Mr. Gardner the ability to take a professional survey with the conditions set forth above.

Respectfully submitted,

COBB DILL & HAMMETT LAW FIRM, LLC

/s/ Bryan A. Raymond
Bryan A. Raymond, Esq.
Cobb Dill & Hammett, LLC
222 West Coleman Boulevard
Mt. Pleasant, SC 29464
(843) 936-6676

ATTORNEY FOR THE MOVANT

Mt. Pleasant, South Carolina
September 27, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	CASE NO.: 2017-CP-07-02210
CHARLES WILLIS GARDNER,	)	
	)	
Plaintiff,	)	
	)	NOTICE OF MOTION AND MOTION
	)	A TEMPORARY INJUNCTION
-VS-	)	
	)	
TAYLOR REUBEN ADAMS,	)	
	)	
Defendant.	)	
_____	)	

TO DEFENDANT AND HIS COUNSEL

PLEASE TAKE NOTICE that Charles Willis Gardner ("Mr. Gardner") by and through his undersigned attorney, hereby moves pursuant to SCRCP Rule 65 as well as South Carolina Code Section 15-19-10 respectfully submit this Motion for a Temporary Injunction. In support of their claims, Mr. Gardner offers the following:

INTRODUCTION

1. On October 12, 2017, Mr. Gardner filed an action for trespass, conversion, and "declaratory and injunctive relief" in an effort to restrain Defendant from entering his property.
2. In a motion for partial summary judgment, Defendant asked this Court to "confirm title to the road and the subject property".
3. In the order granting Defendant's partial summary judgment filed on July 10, 2018, this Court found Defendant owned the "thirty foot road, the boat ramp at the eastern end of the thirty foot road, and the property to the south of the road."
4. Mr. Gardner filed a motion to reconsider on July 20, 2018, which was denied by this Court on August 9, 2018.

5. On September 11, 2018, Mr. Gardner filed a notice of appeal to the South Carolina Appellate Court.
6. Mr. Gardner appealed the following findings from the Order Granting Partial Summary Judgment:
 - i. The Order that the thirty (30) foot road, boat ramp (the "Road") and the +/- 1.054 acres below the road are owned in fee simple by Mr. Adams.
 - ii. The Order stating that Mr. Gardner has access to his property from Ashton Drive and that it is not necessary for Mr. Gardner to trespass on the above property to access his property.
7. The South Carolina Appellate Court heard this matter on April 6, 2021 and issued its written opinion on April 27, 2022.
8. That Opinion reversed the order granting partial summary judgment, vacated the Circuit Court's findings as to owners of the road and boat ramp, and remanded for further proceedings consistent with their opinion.

GROUND FOR INJUNCTIVE RELIEF

Mr. Gardner respectfully requests that this Honorable Court grant a temporary injunction precluding Defendant from blocking access to the road and boat launch. More specifically, to ENJOIN, RESTRAIN, and PROHIBIT, the Defendant from continuing to block the road and boat ramp which the Appellate Court has determined does not belong to the Defendant.

Mr. Gardner has not had access to his driveway off of Warsaw Island Road in 2017. Currently, Defendant has the road blocked by a locked gate and has fenced off access to Mr. Gardner's property.

“To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation.” *Levine v. Spartanburg Regional Services District, Inc.*, 697 S.C. 458, 464 (Ct. App. 2005). A request for Temporary Injunction or a Preliminary Injunction is proper if (1) Plaintiff will suffer irreparable harm if the injunction is not granted, (2) Plaintiff is likely to succeed on the merits of the litigation, and (3) there is an inadequate remedy at law. *Grosshuesch v. Cramer*, 697 S.C. 1,4, (2005). When considering whether to grant an injunction, the court should balance the equities of the opposing parties on the particular facts of the case to determine which side is more entitled to relief. *Id.*

Here, Mr. Gardner has already been irreparably harmed by being denied access to his driveway since 2017. Based on the ruling by the Appellate Court, Mr. Gardner is expected to succeed on the merits of this litigation, and there is no adequate remedy at law currently existing. Evidence in support of these elements is as follows:

A. PLAINTIFF HAS DEMONSTRATED THAT IRREPARABLE HARM WILL RESULT IF AN INJUNCTION IS NOT GRANTED

“The sole purpose of an injunction is to preserve the status quo to avoid potential irreparable injury to the aggrieved party pending litigation.” *Levine*, at 464. Mr. Gardner or his father, has owned their property for over 30 years. Upon Defendant’s purchase of the adjacent property, Mr. Gardner has been denied access to his property via his driveway. Additionally, Defendant has installed a septic system on the property in dispute. Being denied access to real property is an irreparable harm as the denial to property cannot simply be remedied by money or additional real property, as real property is a limited resource. Granting of the injunction will not harm the Defendant as he will still have access to his property. In this situation, the opening of the road,

does not deny the Defendant any rights but does clearly prohibit the rights of Mr. Gardner and whomever is determined to be the rightful owner of the road, access to property that has been used and maintained by Mr. Gardner (or his immediate family) for over 30 years.

B. PLAINTIFF HAS SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS.

“When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present a fair question to raise as to the existence of such a right.” *Levine*, 697 S.C. at 465 (internal quotations omitted). A court “may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate.” *Helsel v. City of North Myrtle Beach*, 307 S.C. 29, 32, (1992).

Here, this Court has guidance from the Appellate Court. The Appellate Court states:

A reasonable interpretation of the master-in-equity's 1990 order is that the "unpaved county road," "unpaved Beaufort County road," and "thirty (30) foot dirt road" are all the same road. Neither Leroy Gardner, Sr. nor John Howard owned the road; thus, neither Charles Gardner nor Adams (through his position in the Howard Property's chain of title) owns it now. The 1995 and 2013 plats indicate Leroy Gardner, Sr. claimed ownership of the boat ramp, and the issue of the boat ramp is not explicitly raised in the pleadings. As the record does not support the circuit court's findings that the Howard Property included the road or boat ramp, or that Adams now owns both, we vacate these findings.

Therefore, the continued possession of the road by the Defendant is improper.

C. PLAINTIFF LACKS AN ADEQUATE REMEDY AT LAW.

An equitable injunction rather than a remedy at law is necessary where ownership of the property at issue in a case is disputed or unclear. *Grosshuesch*, at 833. Preservation of the property at issue until the matter has been adjudicated is the “quintessential hallmark of an injunction.” *Id.*, at 835.

Here, Defendant has restrained anyone from accessing the property except him and his invitees or licensees denying the true owner a right to the property. Additionally, since Defendant

has installed a septic system on the property in dispute, preservation of the property is a genuine concern, and the Court needs to step in and ensure that the property is preserved while this matter is being resolved.

D. COMPLIANCE WITH RULE 65

South Carolina Rules of Civil Procedure Rule 65(c) requires the applicant give security upon request of an injunction. As such, Mr. Gardner is willing and able to pay a bond or security that this court deems proper.

WHEREFORE, Mr. Gardner is informed and believes he is entitled to and hereby respectfully request that this honorable Court issue a Temporary Injunction to ENJOIN, RESTRAIN, and PROHIBIT, Defendant from refusing access to the property until such time a court rules on the merits of Plaintiff's action. Specifically, we request this Court order Defendant to unlock and keep the gate that is currently crossing Warsaw Island Road unlocked and open. In the event that the Defendant fails to comply, we request this Court grant the Beaufort County Sheriff's office authority to open the gate, and remove any fencing or other impediments limiting Mr. Gardner's access to his property.

This Application is based upon those documents and pleadings referenced herein, Rule 65 of the South Carolina Rules of Civil Procedure and case and statutory law of the State of South Carolina and upon such further and additional material as may be presented to the Court.

Rule 11, SCRCF Certification:

Undersigned counsel certified that consultation would serve no useful purpose as to the foregoing motion for temporary restraining order.

Signature Page to Follow

Respectfully submitted,

COBB DILL & HAMMETT, LLC

s/ Stefanie Huffer, Esq.

Stefanie Huffer, Esq. (SC Bar # 100645)

Thomas Krahe II, Esq. (SC Bar #105297)

Cobb Dill & Hammett, LLC

222 West Coleman Blvd.

Mount Pleasant, SC 29464

Telephone: (843) 936-6680

shuffer@cdhlawfirm.com

tkrahe@cdhlawfirm.com

Attorneys for Plaintiff

May 24, 2022

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,)
) Plaintiff,)
vs.) BEAUFORT COUNTY'S
TAYLOR REUBEN ADAMS,) MOTION TO INTERVENE
) Defendant.)

TO ALL PARTIES AND THEIR ATTORNEYS:

MOTION FOR LEAVE TO INTERVENE AND FILE INTERVENOR'S COMPLAINT

Beaufort County, a political subdivision of South Carolina, hereby moves this Court for an Order granting its leave to intervene in the above styled and numbered cause pursuant to Rule 24(a)(2) of the South Carolina Rules of Civil Procedure, and would respectfully show the Court the following:

On October 12, 2017 an action was instituted by the Plaintiff herein alleging trespass on property claimed to be owned by the Plaintiff. The Complaint further alleges that the Defendant was converting the Plaintiff's property for his own use and requested that this Court issue an injunction and restraining order against the Defendant.

The Defendant answered the Complaint and asserted a counterclaim asserting that he was the owner of the property that the Plaintiff was seeking to restrain him from using. The Defendant thereafter filed a motion for partial summary judgment requesting that the Circuit Court confirm title to the subject

property which was described in said motion as "the 30' road and property to the south of the 30 foot road." More specifically, the subject property referenced is a 30' unpaved portion /extension of Warsaw Island Road, a public right of way, which leads to a boat ramp commonly referred to as "Warsaw Island Boat Ramp". Warsaw Island Road is located on St. Helena Island, South Carolina in Beaufort County.

A hearing was held on the Defendant's motion for partial Summary Judgment. The Circuit Court ruled in favor of the Defendant indicating that Adams owned "the thirty foot road, the boat ramp at the end of the thirty foot road and the property to the south of the road". The Court further dismissed the Plaintiff's causes of action and allowed Adam's counterclaims to proceed. The Plaintiff filed a motion for reconsideration which the Court denied.

The Plaintiff appealed the circuit court's order granting partial summary judgement to the Defendant arguing that the Defendant failed to show that he was the successor in interest to the predecessor in title; that a 1990 quiet title order that was in dispute between the parties did not confer title in the road or boat ramp to Adams; and that questions of fact existed as to the ownership of the road and boat ramp. In their opinion filed April 27, 2022, the South Carolina Court of Appeals indicated that "a factual dispute persists as to the road and boat ramp" and that "no interpretation of Judge Kemmerlin's 1990 decree supports the Circuit Courts conclusion that Adams owns the road and the boat ramp". The Court further indicates that the Plaintiff was never granted the 30' dirt road by his predecessor in title and that the predecessor in title "had no power to deed ownership of the unpaved county road". Clarifying, the Court stated "this in no

way places title to the road in Adams...[n]or does a review of the submitted materials support the circuit court's conclusion that title to the road had been quieted in Howard" (the Defendants predecessor in title). Further the Court opined that:

"A reasonable interpretation of the master-in equity's 1990 order is that the 'unpaved county road' 'unpaved Beaufort County road' and 'thirty (30) foot dirt road' are all the same road. Neither Leroy Gardner, Sr. nor John Howard (predecessors in title of Plaintiff and Defendant, respectively) owned the road; thus neither Charles Gardner nor Adams (through his position in the Howard Property's chain of title) owns it now. The 1995 and 2013 plats indicate Leroy Gardner, Sr. claimed ownership of the boat ramp, and the issue of the boat ramp is not explicitly raised in the pleadings. As the record does not support the circuit court's findings that the Howard Property included the road or boat ramp, or that Adams now owns both, we vacate these findings."

In conclusion, the Appellate Court reversed the grant of partial summary judgment, vacated the circuit court's findings as to ownership of the road and boat ramp, and remanded for further proceedings consistent with their opinion.

Beaufort County now brings this motion to intervene based upon the Courts conclusion that neither of the adjacent property owners (Plaintiff and Defendant) to the road and ramp in question have an interest in title. Beaufort County is the owner of the road and ramp in question. The road and ramp have been historically used by members of the Warsaw Island Community and Beaufort County residents alike. Beaufort County has a record of maintenance and cooperation with the Army Corps of Engineers as this property was once used to facilitate the building of a bridge and causeway to Dataw Island. Prior to the current action, Beaufort County corresponded with Adams indicating that he does not own the road and the plat indicating otherwise was marked as a

"problem deed" as a result. Beaufort County, claiming ownership of the subject 30' road and boat ramp, respectfully asks this Court, per the Appellate Order, that the parties hereto be judicially estopped from any further claims against each other or any interest of Beaufort County. Based upon the foregoing, and the facts as stated in Beaufort County's Complaint-In-Intervention (attached hereto as an Exhibit), Beaufort County respectfully requests that this Court make the determination that Beaufort County is the sole owner of the property in question and provide an Order indicating same.

HOWELL, GIBSON & HUGHES, P.A.

By: /s/Robert W. Achurch, III
Robert W. Achurch, III [SC Bar 64854]
PO Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Beaufort County
rachurch@hgpha.com

Beaufort, South Carolina

July 26, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,

Plaintiff,

vs.

TAYLOR REUBEN ADAMS,

Defendant.

COMPLAINT IN INTERVENTION
(EXHIBIT TO MOTION)

TO: ALL PARTIES AND THEIR ATTORNEYS

Beaufort County, complaining of the Parties to the above captioned matter, would, along with the Motion attached hereto, respectfully show unto this Court as follows:

1. That Beaufort County is a political subdivision of the State of South Carolina.
2. That the Plaintiff is a citizen and resident of the County of Beaufort and State of South Carolina.
3. That the Defendant is a citizen and resident of the County of Beaufort and Sate of South Carolina.
4. That the real property that is the subject of this lawsuit is located in the County of Beaufort, State of South Carolina.
5. That this action was instituted by the Plaintiff as an action for conversion and trespass.

6. That a dispute existed between the Plaintiff and Defendant as to the ownership of a thirty (30') foot unpaved extension of a public right of way known as Warsaw Island Road ("subject property") which is located on St. Helena Island, Beaufort County, South Carolina.
7. That the parties hereto are adjacent landowners to the thirty (30') extension of the road that leads to a boat ramp known as "Warsaw Island Boat Landing".
8. That the subject property has been continuously utilized by residents of Warsaw Island and Beaufort County residents for a period of at least fifty (50) years.
9. That public use of the subject property has been recently impeded by the erection of a locked fence at the end of Warsaw Island Road, and at the beginning of the subject property, by one or both of the parties hereto.
10. That the subject property was used in the early and mid-1980's as a landing for barges to facilitate the construction of a bridge and causeway to nearby Dawtaw Island.
11. That Beaufort County has historically maintained the subject property.
12. That in the course of litigation, the Defendant answered and brought crossclaims regarding ownership of the subject property and further brought crossclaims against the Plaintiff for trespass and conversion.
13. That Defendant moved for partial summary judgment regarding his claimed ownership of the subject property and the claims for trespass.

14. That the Circuit Court granted the Defendants motion for partial summary judgment, establishing ownership rights to the Defendant.
15. That the Plaintiff filed a motion to reconsider the Court's grant of partial summary judgment which was denied by the Circuit Court.
16. That the Plaintiff filed an appeal with the South Carolina Court of Appeals, Case No. 2018-001635.
17. That the Court reviewed evidence placed into the record on appeal that included a 1990 Order from the then Beaufort County Master in Equity, Judge Thomas Kemmerlin ("Decree of Title Clearance", Beaufort County C/A No. 89-CP-07-879).
18. That the Court considered evidence introduced by both parties that included, but was not limited to, chains of title and plats of survey.
19. That the Appellate Court stated in their opinion that no interpretation of Judge Kemmerlin's decree supports the Circuit Court's conclusion that the Defendant, Adams, owns the road and boat ramp.
20. That the Appellate Court stated that a reasonable interpretation of Judge Kemmerlin's order is that the "unpaved county road", "unpaved Beaufort County road" and "thirty (30) foot dirt road" are all the same road.
21. That the Court of Appeals opined and concluded that neither the Plaintiff nor the Defendant had any interest in title to the subject portion of Warsaw Island property or the boat landing / ramp to which the road leads.
22. That the Court of Appeals, in their opinion filed on April 27, 2022, concluded by indicating that neither of the parties' predecessors in title

own(ed) the road and ramp and thus; "neither Gardner or Adams...owns it now".

23. The Appellate Court has now remanded for further proceedings consistent with their opinion.

FOR A FIRST CAUSE OF ACTION
(Judicial Estoppel)

24. That Beaufort County reiterates the allegations of paragraphs one (1) through nineteen (19) as if repeated verbatim.

25. That the parties hereto have been wrongfully claiming an interest in title to the subject property owned by Beaufort County.

26. That a determination has been by the South Carolina Court of Appeals that neither parties hereto own the "unpaved Beaufort County road".

27. That Beaufort County is informed and believes that it is entitled to an Order from this Court that is consistent with the Opinion of the Court of Appeals and that the parties hereto are estopped from asserting any claims in ownership of the property and that title shall vest in the name of Beaufort County.

FOR A SECOND CAUSE OF ACTION
(Declaratory & Injunctive Relief)

28. That Beaufort County reiterates the allegations of paragraphs one (1) through twenty-seven (27) as if repeated verbatim.

29. That Beaufort County believes that they and the general public are entitled to ownership, use and maintenance of the subject property and that they

will be irreparably harmed if the parties hereto continue to impede and/or block access to the subject property.

30. That Beaufort County prays that an appropriate permanent injunction be ordered restraining the parties hereto from impeding access to the subject property, impeding public use of the subject property, and that a declaration be issued as to title vesting in the name of Beaufort County.

WHEREFORE, all premise considered, Beaufort County hereby prays that this Honorable Court takes jurisdiction of this matter, and grant Beaufort County the relief prayed for herein, as well as such other and further relief this Court deems just and proper.

HOWELL, GIBSON & HUGHES, P.A.

By: /s/Robert W. Achurch, III
Robert W. Achurch, III [SC Bar 64854]
PO Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Plaintiff
rachurch@hghpa.com

Beaufort, South Carolina

July 27, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL
COUNTY OF BEAUFORT	)	
	)	Case No.: 2017-CP-07-02110
	)	
Charles Gardner	)	NOTICE OF MOTION AND MOTION
	)	TO WITHDRAW AS COUNSEL
Plaintiff,	)	
	)	
Taylor Reuben Adams	)	
	)	
Defendants.	)	
_____	)	

This Motion for Withdrawal of Counsel is brought by Attorneys Bryan A. Raymond and Stefanie L. Huffer (collectively the "Movants") as attorneys of record for Plaintiff Charles Gardner. Mr. Gardner has retained new counsel at Counts and Huger. Movants request the Court grant permission to withdraw as attorneys for this case pursuant to SC Rule 1.16(b) South Carolina Rules of Professional Conduct.

1. Plaintiff retained the undersigned counsel to represent him in the above-captioned case;
2. Consistent with Rule 1.16(b) of the Rules of Professional Conduct, there is at least one ground which supports the permissive withdrawal of the undersigned counsel. Such grounds include:
 1. Subpart (b)(1): Withdrawal can be accomplished without material adverse effect on the interests of the client;
 2. Subpart (b)(5): The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services or payment therefor and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

3. Subpart (b)(6): The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; and/or,
 4. Subpart (b)(7): Other good cause for withdrawal exists.
3. The undersigned has attempted on multiple occasions to resolve the basis for withdrawal in good faith to the mutual satisfaction of all involved, to no avail.
 4. The above-described matters constitute an irreconcilable difference and good cause for withdrawal.
 5. The instant Motion has been filed at a point in Plaintiff's case in which withdrawal can be accomplished without any material adverse effect on the interests of any Plaintiff or Defendant.
 6. Plaintiff requested that the Movants cease representation.
 7. Prior to filing this Motion, the undersigned counsel advised the Defendants' counsel of the relief sought by this Motion, and the Defendants' counsel did not respond with any objection.
 8. Upon information and belief Plaintiff's current address is:

259 Warsaw Island Road
St. Helena Island, SC 29920
 9. Counsel for Plaintiff requests that all future correspondence be sent the above referenced addresses.

WHEREFORE, having fully stated the basis for this Motion, to the extent that the Rules of Civil Procedure and Professional Conduct would allow, the undersigned counsel respectfully requests an Order from the Court which allows them to withdraw as counsel for Plaintiff, and to

allow the Plaintiff to secure new counsel, who may then make an appearance on behalf of such parties.

Respectfully submitted,

COBB DILL & HAMMETT, LLC

s/ Stefanie L. Huffer
Stefanie L. Huffer, Esq., S.C. Bar No.: 100645
Bryan A. Raymond., S.C. Bar No.: 101341
Cobb Dill & Hammett, LLC
222 W. Coleman Boulevard
Mt. Pleasant, SC 29464
Telephone: (843) 936-6680
Email: braymond@cdhlawfirm.com
Email: shuffer@cdhlawfirm.com
Attorney for the Plaintiff

November 30, 2022
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>MEMORANDUM IN SUPPORT</u>
	)	<u>OF MOTION TO INTERVENE</u>
TAYLOR REUBEN ADAMS,	)	
	)	
Defendant.	)	

Comes now, Beaufort County, a political subdivision of South Carolina, in support of its Motion to Intervene in the present matter, and would show unto this Honorable Court as follows:

Beaufort County set forth the relevant factual background pertaining to this matter in its Motion to Intervene filed July 27, 2022. The County submits this supplemental memorandum in support of its Motion containing the legal grounds on which it seeks to intervene.

Pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, "[u]pon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Rule 24, S.C. R. Civ. P.

The County claims an interest in the property that is the subject of this action; namely, a 30' unpaved portion/extension of Warsaw Island Road, a public right of way, which leads to a boat ramp commonly referred to as "Warsaw Island Boat Ramp." Warsaw Island Road is located on St. Helena Island, South Carolina in Beaufort County. The County moved to intervene in this action upon becoming aware of the dispute following the Court of Appeals' decision and remand. Accordingly, the County made a "timely application" to intervene under Rule 24, as it did so at its earliest opportunity. Rule 24(a), S.C. R. Civ. P.

As set forth in the County's Motion to Intervene and Complaint-In-Intervention, the South Carolina Court of Appeals has already recognized the County's interest in the property at issue in this case. The Court determined that the record did not support the circuit court's findings that the Howard Property included the road or boat ramp, or that Adams owned them. The Court further concluded that neither of the litigants' predecessors in title owned the road, which was often referred to as an "unpaved county road" or "unpaved Beaufort County road." Indeed, the County asserts that it owns the road and ramp in question, which is indicated by their historical public use, the County's record of maintenance and cooperation with the Army Corps of Engineers, and its prior correspondence with Adams to this effect.

The County is also so situated that the disposition of the present action would impair or impeded its ability to protect its ownership interest in the road and ramp. Should this Court determine that anyone other than the County owns the road and ramp, the County's ownership interest would be extinguished. The

County's interest is not adequately represented by the current litigants, each of whom claim an ownership interest in the property that is diametrically opposed to that claimed by the County. Consequently, the County has a right to intervene pursuant to Rule 24(a)(2), and asks this Court to grant its motion.

Respectfully submitted,

HOWELL, GIBSON & HUGHES, P.A.

By: s/Robert W. Achurch, III
Robert W. Achurch, III
PO Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Beaufort County

Beaufort, South Carolina

February 27, 2023

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 7th day of March, 2023.

By: s/Robert W. Achurch, III
Robert W. Achurch, III

JANUARY 15, 2020

SCALE 1" = 60'

0 25 50 100 150

9-29-86.
450025 0100 D, DATED
COMMUNITY-PANEL NUMBER
DETERMINED BY FEMA, FIRM
ZONE A-10 (ELEV. 13.0), AS
THIS PROPERTY IS LOCATED IN

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE,
INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON
WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF
THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF
LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR
EXCEEDS THE REQUIREMENTS FOR A CLASS 2 SURVEY AS
SPECIFIED THEREIN.
ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR
PROJECTIONS OTHER THAN SHOWN.

DAVID S. YOUNG
RIS 9766

BEAUFORT S.C. 29902
2201 BOUNDARY ST., SUITE 103
BEAUFORT S.C. 29902

BEAUFORT S.C. 29902
2201 BOUNDARY ST., SUITE 103
BEAUFORT S.C. 29902



LEGEND:
IPF = IRON PIN FOUND
CMF = CONCRETE MARKER FOUND
ICV = IRRIGATION CONTROL VALVE
PP = POWER POLE
GW = GUY WIRE
OHL = OVERHEAD LINE

REFERENCE PLATS:
R00 C. SPANN
DATED NOVEMBER 11, 1976
PLAT BOOK 28, PAGE 21
GASQUE AND ASSOCIATES, INC.
DATED FEBRUARY 6, 1985
PLAT BOOK 32, PAGE 30
GASQUE AND ASSOCIATES, INC.
DATED NOVEMBER 7, 2014
REVISED AUGUST 22, 2017
PLAT BOOK 147, PAGE 133

NO.	BEARING	DISTANCE
AA	S50°28'29"W	25.32'
AB	S43°17'15"W	31.93'
AC	S48°50'14"W	50.73'
AD	S25°40'26"E	30.00'
AE	S00°21'12"E	16.78'
AF	S06°10'08"W	14.50'

BEAUFORT COUNTY, SOUTH CAROLINA

AND "30' DIRT ROAD" IN JUDGEMENT ROLL 82475

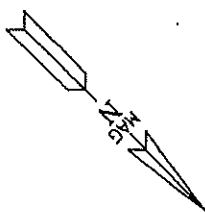
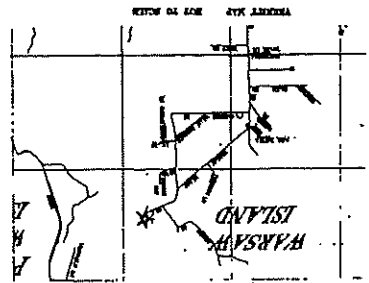
IDENTIFIED AS "UNPAVED COUNTY ROAD"

NORTH OF SAINT HELENA MAP 9, PARCEL 10A

CHARLES GARDNER

PREPARED FOR

AS-BUILT OF WARSAW ISLAND DRIVE EXTENSION

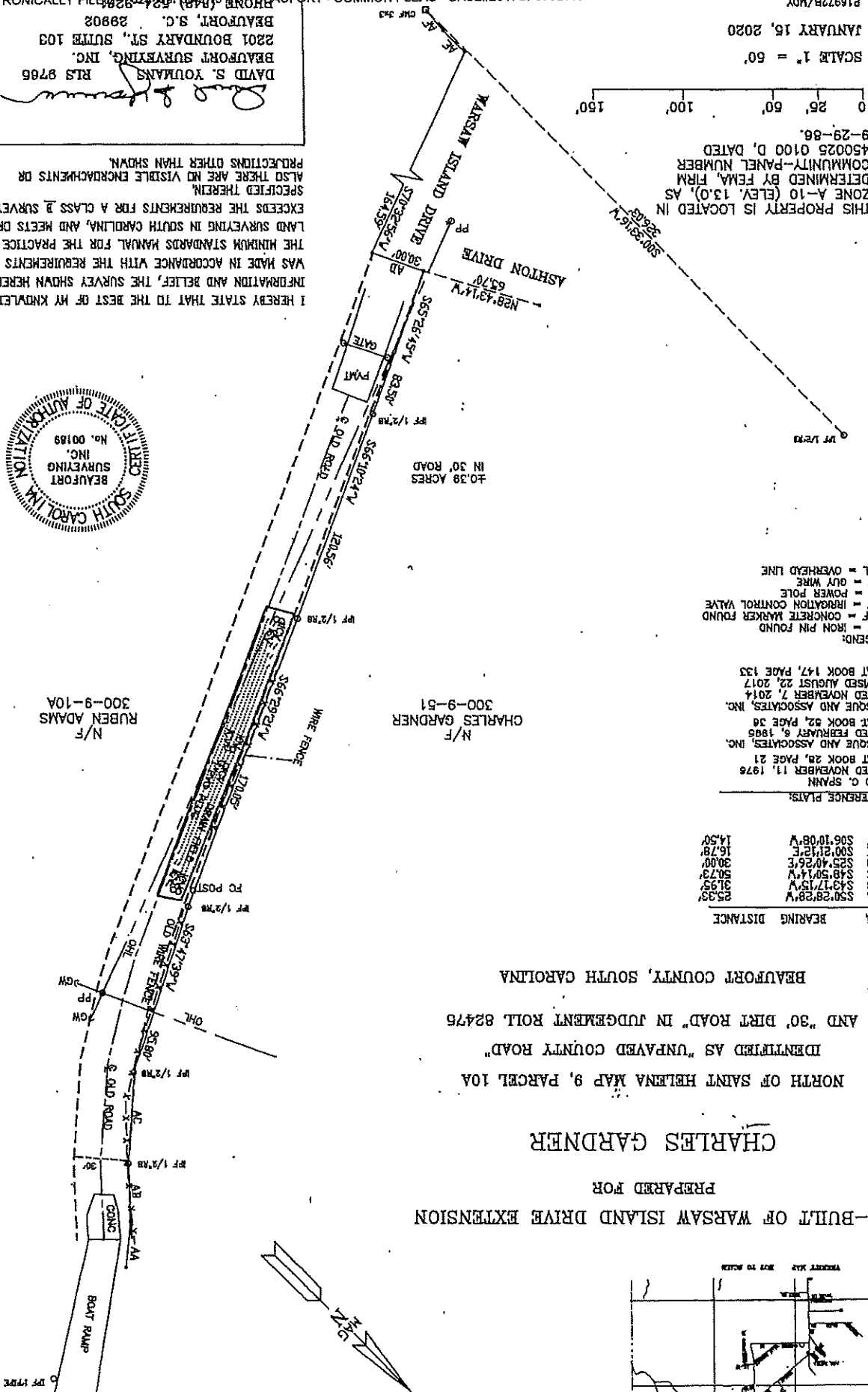


JENKINS CREEK

Bo 0611/40 Page 140

N/F
RUBEN ADAMS
300-9-10A

N/F
CHARLES GARDNER
300-9-51



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2017-CP-07-02110
	)	
Charles Willis Gardner,	)	
	)	
Plaintiff,	)	
vs.	)	MOTION FOR SUMMARY JUDGMENT
	)	
Taylor Reuben Adams and Beaufort County,	)	
	)	
Defendants.	)	

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Charles Willis Gardner, (hereinafter the "Plaintiff"), by and through his undersigned counsel, will move on the tenth (10th) day after service hereof or as soon as counsel may be heard before the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County for an order granting the following:

1. Declaring the Plaintiff is the rightful owner of an easement over and across the thirty (30) foot road with access to the road and the boat ramp at the eastern end of the thirty foot road, and the property to the south of the road which has been owned and enjoyed by his family for over a century, (the "Property");
2. Declaring the Defendant, Taylor Reuben Adams, ("Defendant Adams"), may access his Property over the thirty (30) foot road;
3. Enjoining the Defendant Adams from blocking Plaintiff's access to his Property by removing the fencing he placed on it;
4. Prohibiting Defendant Adams from harassing the Plaintiff, his family, and other members of the community;

5. Prohibiting the Defendant Adams from trespassing on the Plaintiff's Property; and
6. Recording a confirming Master Deed with the Register of Deeds for Beaufort County as to the easement and use.

This Motion is based upon pleadings on file, deposition testimony, and such further evidence as may be presented at a hearing in this matter.

Furthermore, this motion is based upon the deposition testimony of the Defendant Taylor Reubon Adams taken on June 7, 2023, as well as the "The To Whom It May Concern" letter from Eric Klatt (spelled Clatt in the depositions) dated May 19, 2015, which states the property depicted on the Beaufort County tax map is a private section of Warsaw Island Road. A copy of the letter is attached hereto as Exhibit A. (Depo. p. 92-93) The road in dispute is not a public road. It is not owned by Defendant Adams and it is neither owned by, nor has it ever been maintained by, Beaufort County.

The Defendant Adams was also informed in writing by Lolisa Daise dated October 6, 2017, the real property records clerk with the Office of the Assessor, that the road is a private road, never owned or maintained by Beaufort County. A copy of the denial is attached hereto as Exhibit B.

As the Defendant stated:

A. Well, I asked him if he knew who the owner was. And he didn't say that I owned it by any means. He just said that it was a private road.

Q. He just said that Beaufort County –

A. That Beaufort County has never –

Q. Owned or maintained it?

A. Has owned or maintained it.

Further, the Defendant made an attempt to have his property lines revised which were denied and the revised plat of his was not recorded. (Depo, p. 96-97)

Q. Well, Ms. Daise writes, This letter is to inform you we have denied your request for a property line revision. Do you remember applying for a property line revision?

A. No, sir.

Q. All right. But do you recall receiving this letter in 2017?

A. Yes.

Q. And Item Number 3 was checked. And what does that read? If you could read that loud for me.

A. Other, colon, court order is required – court order is required granting you the property Judgment. Rule [sic] Number 82475 does not grant you the road.

After the Defendant Adams continued to deny receiving the letter, he finally admitted to receiving it. (Depo. P. 98)

A. Wait, wait, wait. I saw the letter. I do not remember seeing it as that. That never hit me til you just said this.

When asked about any conversations with Ms. Daise, the Defendant Adams stated that his common law wife, Beverly, spoke with her. (Depo. P.99)

Q. And what was that conversation?

A. The only highlights that I remember about it is this because she said it's not ours. We asked her to tell us why.

Q. When you say it, are you talking about –

A. The other parcel, the parcel that belonged to John Howard that was taken out on the very day that Judge Kemmerlin made the ruling. They took out the road instead of putting it in there. But she had also said when we asked her a very simple question, If Mr. Gardner doesn't

own it and I don't own it, who owns it? And she said, "As far as I'm concerned, it belongs to the whole Gardner family."

Defendant Adams was questioned regarding the problem plat dated November 7, 2014, and revised September 19, 2017, a copy of which is attached hereto as Exhibit C. (Depo. P. 102-105)

Q. All right. Hold on one second. This is a plat, and it's marked as a problem plat, see assessor. Do you see that?

A. Yes. This is the second time I've seen this.

Q. And this plat was never allowed – it's got a recording date right here, but they recorded it with a not on it that says there's a problem with it, correct?

A. I have never seen that, sir.

Q. All right.

A. Until recently.

Q. All right. Well, the date of Ms. Daise's letter is October 6, 2017, correct?

A. That's right.

...

Q. And in the middle, what does it say of this – it shows sort of a black highlighted or darkly-colored in this exhibit –

A. Uh-huh.

Q. What does that note that says on the middle of the other page?

A. Area being claimed by Reuben Adams, as per judgment rule [sic].

Q. And it says, Per judgment rule [sic] Number 82475, correct?

A. Yes, sir.

Q. That's the same judgment rule[sic] Ms. Daise referenced in her letter, correct?

A. Yes, sir.

Q. And this plat, problem plat, see assessor, also shows the property that you actually drew on the earlier plat along the marsh, the point – this says 1.48 acres, correct?

A. It shouldn't.

Q. Well, it does.

A. Well, there's more than one plat out there, sir – not plat, but different plats, but not signed. One is 1.49. But, yes, I've seen that one for 1.48 before.

Q. And the TMS number, that 1.48 acres, that's your property, correct? No doubt about that, correct?

A. Correct.

Q. Not the one you definitely bought. We know you bought that.

A. Correct, sir. That's it.

Q. And then the property that goes to the boat ramp, which I said you disagree with, and I understand that is the extension of Warsaw Island Road –

A. Yes, sir.

Q. That's the property you're claiming and what the County says, No, no, no, you don't own that. And my client says, You don't own it. I know you don't agree with it, but did I say that correctly?

A. Yes, sir.

When questioned by counsel for the Defendant, Beaufort County, Defendant Adams confirmed the road did not belong to him. (Depo. P. 155)

Q. Okay. But you don't know if your first survey that Mr. Christianson did included the road?

A. It didn't. I know that it did not.

Q. It did not, okay. So when you bought the property and you closed it with the survey Mr. Christianson did, that did not include the subject property, correct?

A. That's correct.

The Defendant Adams lied under oath about improperly placing dirt in the marsh despite being fined by DHEC and being placed under administrative order. He also lied about where he disposed of his own waste and that he dug a trench under his camper when he failed to meet requirements to obtain a proper sewage tank system.

Q. All right. So you continued to live in a trailer without the required septic system because you didn't want to do what was being required of you; is that right?

A. That's pretty much it, yes sir. That's what I did...

...

Q. All right. I have got an order here, administrative order, from the South Carolina Department of Health and Environmental Control that says a finding of fact that you were illegally dumping wastewater and that your property wasn't connected to an approved on-site wastewater system. Do you remember that order?

A. Yes, sir.

Throughout the course of the Defendant Adams' deposition, he denied using profanity and threatening behavior, including but not limited to, "...standing in the middle of the road so as to block one's passing, aggressively taking photos of individuals going about their regular business, randomly discharging his firearms both day and night, threatening to kill Mr. Gardner, and

repeatedly and without provocation calling the Sheriff's Office upon the law-long time denizens of Warsaw Island...", as indicated in Plaintiff's letter to the Beaufort County Sheriff's Office dated October 9, 2017, attached hereto as Exhibit D.

In the Beaufort County Sheriff's Office Incident Report dated July 18, 2019, attached hereto as Exhibit E, documents where Joseph Smalls, a neighbor of the Plaintiff and Defendant Adams, was mowing his lawn and witnessed Defendant Adams tailgating the Plaintiff in his pick-up truck. The Plaintiff pulled over and Defendant Adams proceed to use "profane language" while yelling at him.

Another neighbor, Dorothy Gregory, also observed through her window as Defendant Adams tailgated the Plaintiff in his pick-up truck and then proceed to yell at the Plaintiff after he pulled over.

The Defendant Adams became irate after the Officer advised him of the state law on following a vehicle too closely and that he should be mindful of it.

Despite being shown various police incident reports stating otherwise, before being caught in his lies, and while under oath, and admitting he did. (Depo. p. 113-117)

Q. Have you ever used profane language?

A. I have.

Q. At Mr. Gardner towards Mr. Gardner?

A. No, sir.

Q. Oh. You have never – because this says that you were using profane language towards Mr. Gardner. Remember you're under oath.

A. And remember this is the man who says he's going to fuck my wife in the face, so –

Q. That wasn't the question, sir. Have you ever used profane language towards Mr. Gardner?

A. No, sir.

Q. Under oath, you've never cussed at him, you've never yelled at him, nothing of that nature?

A. Sir, on this day – are we talking about that day?

Q. No. Ever. You just said you have never –

A. Yes, sir, I have talked back to him to defend and in defense of me and my wife. I most certainly have.

...

Q. You testified under oath a few minutes ago that you have never used profane language towards Mr. Gardner.

A. I don't remember doing that.

Q. We can find it in the record, but I –

A. Okay.

...

Q. No, sir. What you said is you do not use profane language at Mr. Gardner. When I asked you about it, you then changed your testimony and said you reiterated his language to him. Then I asked you about that, and you said you have used other language towards Mr. Gardner that is course or vulgar or profane.

A. But not on the same day. Yes, I have.

...

Q. You've called him the N. word?

A. Yes.

The Defendant Adams has accused Plaintiff and his family of trespassing yet when under oath stated otherwise. (Depo. p. 40)

Q. Tell me about any trespass. That's what I asked you about.

A. I don't have any trespass other than them throwing things over in the yard. I cannot remember any trespass.

The Defendant Adams was shown photographs of the fence and cinder block he put up, trespassing and blocking the Plaintiff from his own Property. (Depo. p. 137) A copy of the photographs is attached hereto as Exhibit F.

Q. And is that blocking his driveway?

A. It's not blocking his present driveway.

Q. Not his present driveway. Was it blocking the way he used to get to and from his property?

A. It is doing that.

Pursuant to Rule 11 SCRPC, counsel certifies that there is no duty of consultation connected with the filing of this motion.

Please be present to defend if so minded.

Respectfully submitted,

BUIST, BYARS & TAYLOR, LLC

s/ G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III
SC Bar No.: 15491
652 Coleman Blvd, Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com
Attorney for the Plaintiff

Mt. Pleasant, SC
July 24, 2023



COUNTY COUNCIL OF BEAUFORT COUNTY
BEAUFORT COUNTY ENGINEERING DEPARTMENT
104 Industrial Village Road, Building #3, Beaufort, SC 29906
Post Office Drawer 1228, Beaufort, SC 29901-1228
Telephone: 843-255-2700 Facsimile: 843-255-9420

May 19, 2015

Re: Ruben Adams; Warsaw Island; R300 009 000 010A 0000

To whom it may concern:

The property depicted on the Beaufort County Tax Map as a private section of Warsaw Island Rd. is not a public road. It is neither owned by, nor has it ever been maintained by, Beaufort County.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Klatt".

Eric Klatt
Right-Of-Way Manager
Beaufort County Engineering Division

EWK/cvs

BBT 9961.0001

Gardner

.88

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COUNTY COUNCIL OF BEAUFORT COUNTY
Office of the Assessor
Beaufort County Government Robert Smalls Complex
Post Office Box 1228, Beaufort, South Carolina 29901-1228
Phone: (843) 255-2400 Fax: (843) 255-9404
Web Site: www.bcgov.net

October 6, 2017

Rubin Adams
Post Office Box 1084
St. Helena Island, SC 29920

Re: PB147 PG133

Dear Mr. Adams,

This letter is to inform you that we have denied your request for a property lot line revision. I have checked the item(s) below that states the reason(s) for our decision.

- _____ 1. Property is not in the same name(s).
- _____ 2. Lots are not contiguous to each other.
- X 3. Other: COURT ORDER IS REQUIRED GRANTING YOU THE PROPERTY. JUDGEMENT ROLL#82475 DOES NOT GRANT YOU THE ROAD.

Please contact our office within the next thirty (30) days. Thank you for your assistance in this matter.

Sincerely,

Lolisa Daise
Real Property Records Clerk

BBT 9961.0001

Gardner

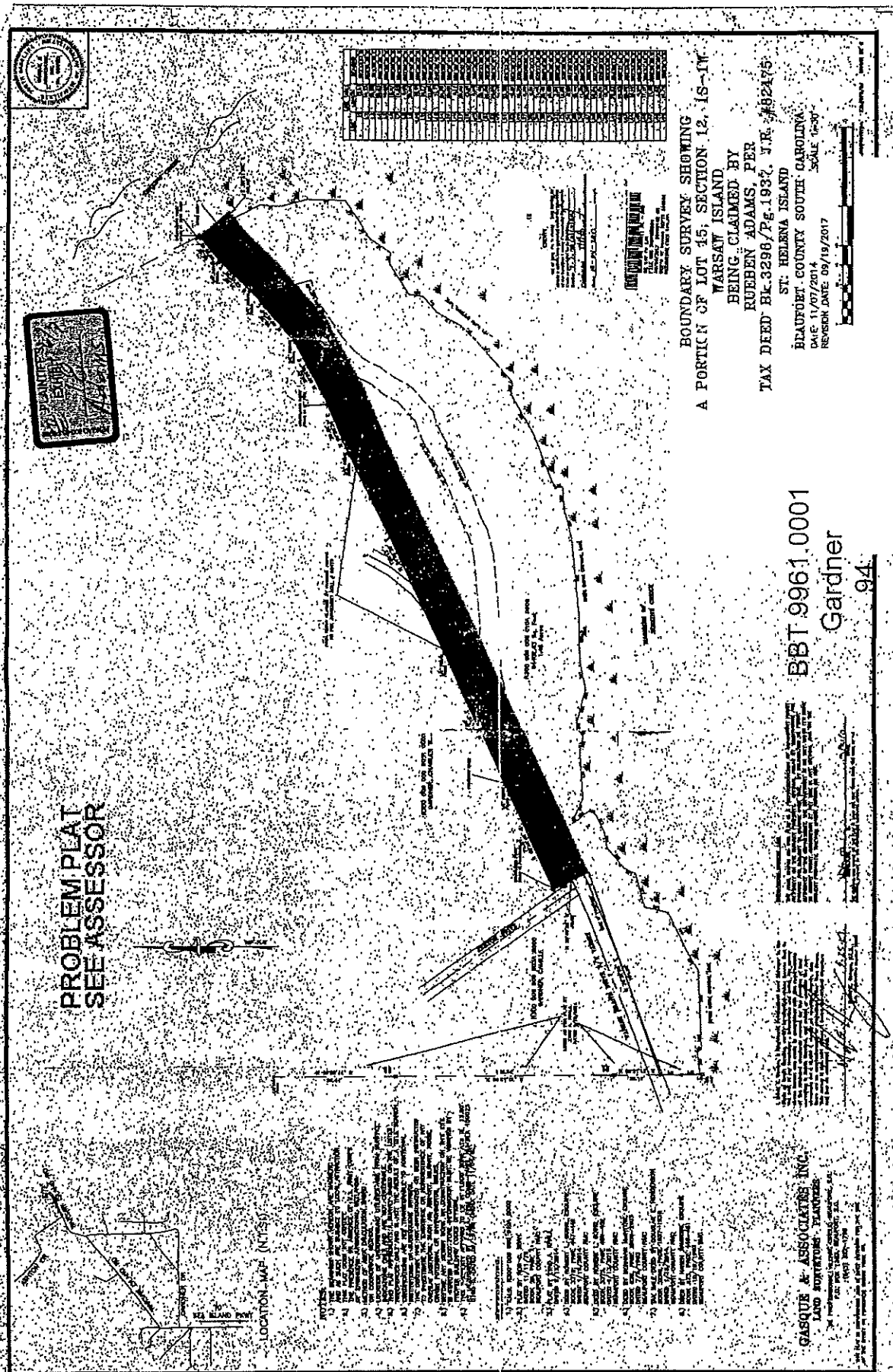
95

P. 150



described in the plat prepared by Niels Christensen referenced immediately above.

- (2) That by virtue of Plaintiff having acquired all of the interests of the living heirs of Ardelle S. Gardner, there is no dispute as to title, boundaries or otherwise on Sub-Lot 20, Section 12, 1S1W, Warsaw Island, St. Helena Township, Beaufort County, South Carolina, in accordance with the deed from Dan Taylor to Ardelle S. Gardner, dated October 22, 1976, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Deed Book 241, at page 1637.
- (3) That the Plaintiff, by virtue of having acquired all of the interest of the heirs of Ardelle S. Gardner, owns all of Lot 15, Section 12, 1S1W, Warsaw Island, St. Helena Township, Beaufort County, South Carolina, more particularly described on that plat prepared for Ardelle S. Gardner by Rod C. Spann dated November 11, 1976, and recorded in Plat Book 28 at Page 21, save and excepting, however, the 1.054 acre portion of Lot 15 situate immediately below (southeast) the unpaved Beaufort County road running in a generally southwest to northeast direction, said portion of Lot 15 being more particularly shown on a plat prepared by Niels Christensen, IV dated June 5, 1990, attached hereto and incorporated as a part hereof, said piece of Lot 15 being owned by the Defendant John Howard; and further save and excepting the portion of Lot 15 which consists of a triangle situate immediately below (southwest) the unpaved county road running in a generally southeast to



Charles Gardner and the entire Warsaw Community
259 Warsaw Island Road
St. Helena Island, South Carolina 29920

October 9, 2017

Sheriff P.J. Tanner, Beaufort County Sheriff's Office
Col. David Brown, Beaufort County Sheriff's Office
Capt. Avery, Beaufort County Sheriff's Office

To whom it may concern:

It is with great concern that we send this letter to the above departments.

On numerous occasions over the last four months, Mr. Charles Gardner of 259 Warsaw Island Road, along with his friends and family members, has been repeatedly harassed by Mr. Taylor Ruben Adams of 240 Warsaw Island Road. This harassment consists of the following behaviors: standing in the middle of the road so as to block one's passing, aggressively taking photos of individuals going about their regular business, randomly discharging his firearm both day and night, threatening to kill Mr. Gardner, and repeatedly and without just provocation calling the Sheriff's Office upon the law-abiding long-time denizens of Warsaw Island.

As a result of these alarming acts, on September 21, 2017 Mr. Gardner filed for a restraining order on Mr. Adams. Service was attempted on Friday, September 29, 2017 and we were told that service was unable to be completed because Mr. Adams was out of town participating in hurricane relief efforts. However, Mr. Adams was seen on the road in question by numerous guests at Mr. Gardner's that very same weekend.

We believe this behavior, in particular his numerous calls to the Sheriff's Office, are part of a larger campaign intended to create a false record of possession of a disputed area of land, namely the section of Warsaw Island Road to the landing that directly aligns with Mr. Gardner's property.

MR. GARDNER'S TITLE AND FALSIFIED CLAIMS AGAINST IT

Mr. Gardner and his family has been in possession of this land, including the road aligning it, for more than 47 years, and is deeded to Mr. Gardner in writing. Prior to taking possession of this land himself, his father maintained it for more than twenty years and Mr. Gardner himself has maintained it, including the road, for the past twenty-seven plus years.

As the owner of record, Mr. Gardner pays taxes on the property, and, as a conscientious neighbor and a decent South Carolinian kindly allows both family and friend to use the stretch of road in his possession to access Jenkins Creek, and many in this community take advantage of that access both to make a living and to feed their families.

When we have complained about Mr. Adam's behavior, or when he has called your offices, we have been told that Mr. Adams has shown papers to your office supporting his claim to the land signed by a Judge Kemmerlin.

BBT 9961.0001
Gardner
98

P. 153



We believe this document is likely falsified, as the Honorable Judge Thomas Kemmerlin retired in 2003 and passed, sadly, in 2010, many years prior to Mr. Adams' purchase of the small piece of property he does own. We believe that what Mr. Adams has shared with your office is likely, if not completely doctored, a small portion of Mr. Gardner's deed, though clearly not the full document.

Mr. Gardner's title to the land in question is indisputable. Mr. Gardner possesses a warranty deed on the property, which states that "The plaintiff is the only individual who could possibly contest John Howard's ownership of the 1.054-acre tract, and he has stipulated that John Howard owns this parcel in fee simple. The unpaved road separates the respective portions of lot 15 owned by the plaintiff and John Howard." It further states "that plaintiff has paid the real property taxes on the property, improved and maintained improvements on the property and evidenced other indicia of ownership regarding said property for a period more than twenty (20) years. Plaintiff has exercised ownership of all parcels described in the agreement openly, hostilely, continuously and adversely for more than twenty (20) years and his actions and those of his predecessors are sufficient to bar the claims of all defendants." This deed refers, specifically, to the "1.054 acres are to the parcel southeast of the unpaved county road."

The county was mistakenly believed to own the section of Warsaw Island Road in dispute, which was later shown to be inaccurate, as described by plat prepared for Mrs. Ardell Gardner by surveyor Rod Spann on November 11, 1976. It is not argued that Lot 15 does not belong to Mr. Gardner, nor is it argued that the landing at the end of the road does not belong to him as well. The section of road, as referenced above, runs *through* Lot 15 (not independent of nor outside of it), owned by Mr. Gardner, through to the landing also owned by Mr. Gardner, so how could it not likewise belong to him?

MR. ADAMS' HISTORY OF UNLAWFULLY EXTENDING HIS SMALL PROPERTY

Furthermore, this road cannot belong to Mr. Adams because it is clear from Mr. Adams' purchase documents (and Mr. Gardner's warranty deed) that his property consists of 1.054 acres – the addition of the road to his small parcel would push that property to significantly more than he purchased. So, beyond the law, the facts, and the county documents – the math just doesn't add up either.

Mr. Adams bought property (formerly belonging to Mr. John Howard), through a tax sale from Beaufort County, which, it is clear, was not large enough to build on properly, due to both its location and shape. The previous owners, Mr. Howard and his wife, also never resided on the property. Since this purchase, Mr. Adams appears to be on a campaign to extend his 1.054 acres, by hook or by crook. Initially Mr. Adams trucked in dirt in order to fill the marsh on his property, but because he simultaneously cut down the natural vegetation barrier along the marsh, allowing the tide (and subsequent hurricanes) to wash away his newly claimed land even faster. Mr. Adams was even, in fact, cited by the county for failing to protect the marsh. Having failed in these attempts, he now seeks to claim additional land in the other direction. As part of this new focus, Mr. Adams dug up the tree line that separated his property from the road, in what we can only assume is an attempt to blur the natural property lines. In addition Mr. Adams piled debris from his property onto Mr. Gardner's. We complained vehemently about this; and were told by your office that Mr. Adams had every right to do so because said debris was biodegradable.

SHERIFF'S OFFICE'S RESPONSE

On that note, we as a community are concerned, despite Mr. Gardner's clear title to the property in dispute, because Mr. Adams has taunted members of this community about both his friends in the Beaufort County Sheriff's Office and his many political friends, going so far on one occasion to drop names like one Sergeant Bush in your office and the Honorable Tom Davis. We do not know Sergeant Bush and have no wish to impugn his reputation by association with this matter, and we do also know Senator Davis as a good, decent man who we are assured follows the law rather than personal friendships. We have faith in the people of your office being of the same character.

That said, our concern remains, a concern that is only exacerbated by the responses of your office to Mr. Adam's calls – no citizen of this community should be detained from traversing Mr. Gardner's road based on the word of one man, a relative newcomer, without any real or proven claim on that property. We, like our parents and grandparents before us, are long-time residents of this island and county. Our community has had, for some time now, a healthy and mutually positive relationship with your office, and we ask that you do not allow one newly resident bad actor, who has shown a wanton disregard for both the laws of this county and societal norms between good neighbors, to enter and stir up trouble.

It is vitally important that all the people of Beaufort County feel like the Sheriff has our back, so long as the laws are on our side.

Where your office fails to adequately confirm the title of the person making a trespassing claim, thereby displacing the rightful owners, or fails to properly service a restraining order request where a death threat was involved, it becomes that much harder to maintain the trust that is necessary for a strong bond between that office and the many citizens of this community.

CONFLICT OF INTEREST AND ORIGINAL MARKERS

To further compound this situation, the previous surveyor, Mr. David Gasque, surveyed both properties, and after setting Mr. Gardner's AND Mr. Adams' property lines where they have been historically, has since surveyed Mr. Adams' property a second time and claims now that Mr. Adams' property lines lie across the road and into Mr. Gardner's yard. As a result of this questionable process we are having an independent surveyor review the property lines and the original concrete markers should be where they were placed marking the original plat and as described by the deed.

A SIMPLE RESOLUTION

We would like to request a formal meeting between the following: Mr. Gardner (along with his deed), a representative of the Sheriff's Office, Mr. Adams (along with his deed, which should be signed by a representative of Beaufort County, a representative from David Gasque & Associates (the surveyor), Beaufort County Right of Way Director, our new surveyor, and the licensing board member for the Beaufort District for Engineers & Surveyors. In this way the matter can be cleared up very quickly, and everyone involved can proceed on with their lives.

BBT 9961.0001

Gardner

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In addition we ask that Mr. Adams be instructed not to obstruct the road or otherwise harass Mr. Gardner or anyone else using the road until that meeting when all parties can settle this matter completely.

Over the years many people in our community have been robbed of land through various means and by various individuals, and so we are, by learned experience, wary of those who, new to this county, may not have the best interests of this community at heart. We have earned our place on these lands through both time and tax, blood and sweat. And our community is warm, loving, caring, tight-knit, and vocal. That said we prefer to settle this matter quietly and quickly, as we are certain the law and the facts are solidly on our side. Because of both the egregiousness of Mr. Adams' behavior and the multitude of similar incidents that have occurred, the people of Warsaw Island, St. Helena, and surrounding communities are awaiting your response.

Sincerely,

Charles Gardner

Cc:

Honorable Tom Davis, SC Senate

Honorable York Glover, Beaufort County Council Member

Honorable Michael Rivers, SC House of Representative

County Administrator, Beaufort County

Beaufort County Right of Way Director

South Carolina Licensing for Engineer and Surveyors

Elizabeth Santagati, SC Silver Haired Legislature, Board Member

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Gardner

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Beaufort County Sheriff's Office

Deputy Report for Incident 19S178287

Nature: Disturbance

Address: 144 WARSAW ISLAND RD;
WARSAW ISLAND
St Helena Islan SC 29920

Location: 3801

Offense Codes:

Received By: Wells, L

How Received: 9

Agency: BCSO

Responding Officers: Domino, S, Arcuri, M, Jezewski, A, King, M

Responsible Officer: Domino, S

Disposition: CLO 07/19/19

When Reported: 11:36:00 07/18/19

Occurred Between: 11:35:45 07/18/19 and 11:35:52 07/18/19

Assigned To:

Detail:

Date Assigned: **/**/**

Status:

Status Date: **/**/**

Due Date: **/**/**

Complainant: 173535

Last: SMALLS

First: JOSEPH

Mid:

DOB: [REDACTED]

Dr Lic: [REDACTED]

Address: 144 WARSAW ISLAND RD;
WARSAW ISLAND

Race: B

Sex: M

Phone: (678)778-4499

City: St Helena Islan, SC 29920

Offense Codes

Reported:

Observed:

Circumstances

L3MOB L3(In car Recording)Rspnsbl
BWC Body Worn Camera
L3MO3 L3(In car Recording)Rspndg
L3MO3 L3(In car Recording)Rspndg
BWC Body Worn Camera
BWC Body Worn Camera
BWC Body Worn Camera

DOMINO / 38379
DOMINO / 034
KING / 41865
ARCURI / 41864
KING / 017
ARCURI / 028
JEZEWSKI / 032

Responding Officers:

Unit :

Domino, S

A54

Arcuri, M

A46

Jezewski, A

V62

King, M

A31

Responsible Officer: Domino, S

Agency: BCSO

Provided by: Beaufort County Sheriff's Office
Criminal Records Division

Released by: [Signature]

Date: 7.19.19

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copy of the original document on file with
the Office of Sheriff for Beaufort County.

[Signature] 07/19/19
Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office
250

Deputy Report for Incident 19S178287

Page 2 of 5

Received By: Wells, L
How Received: 9 911 Line
When Reported: 11:36:00 07/18/19
Judicial Status: VIEW
Misc Entry: fsm

Last Radio Log: **:**:** **/**/**
Clearance: RPT Report
Disposition: CLO Date: 07/19/19
Occurred between: 11:35:45 07/18/19
and: 11:35:52 07/18/19

Modus Operandi: Description : Method :

Involvements

Date	Type	Description	
07/18/19	Name	ADAMS, TAYLOR REUBEN	Suspect
07/18/19	Name	GARDNER, CHARLES W	Victim
07/18/19	Name	SMALLS, JOSEPH	Complainant
07/18/19	Name	SMALLS, JOSEPH	Witness
07/18/19	Name	SMALLS, JOSEPH	Complainant
07/18/19	Name	GREGORY, DOROTHY A	Witness
07/18/19	Cad Call	11:36:00 07/18/19 Disturbance	Initiating Call

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the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

07/19/19

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Gardner

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Narrative

Beaufort County Sheriff's Office

Incident Narrative

SYNOPSIS:

On July 18, 2019 (Thursday) at approximately 1130 hours, BCSO Deputies responded to 144 Warsaw Island Rd, St Helena Island SC, 29920, in reference to a report of a Disturbance that just occurred. Upon arriving to the above location, Deputies met with and conducted a field interview with the Complainant/Victim. Subsequently, a report was filed to document the incident.

INTERVIEW WITH COMPLAINANT (JOSEPH SMALLS):

Mr. Smalls stated while mowing his lawn at 144 Warsaw Island Road, he observed Adams, tailgating Gardner in his white pick-up truck. Mr. Smalls stated Gardner pulled over in front of his yard. Mr. Smalls stated Adams rolled down his window and proceeded to yell at Gardner calling him a land stealer while using profane language toward Gardner. Mr. Smalls stated Adams did not get out of his vehicle or make any direct threats toward Gardner only used profane language why yelling at him.

INTERVIEW WITH WITNESS (DOROTHY GREGORY):

Ms. Gregory resides at 161 Warsaw Island Road, which is directly in front of 144 Warsaw Island Road. Ms. Gregory stated while looking out her bedroom window, she observed Adams tailgating Gardner. Ms. Gregory stated she observed Gardner pull over off the road just past her residence. At this time, Adams proceeded to pull up next to Gardner yelling at him. Ms. Gregory stated she could not hear what Adams was saying to Gardner, only stated she could see that he was yelling at him.

INTERVIEW WITH VICTIM (CHARLES GARDNER):

Mr. Gardner stated this is an ongoing issue with Adams harassing him. Mr. Gardner stated when he pulled out of his driveway at 259 Warsaw Island Rd, he observed Adams following him for no reason. Mr. Gardner stated when he pulled over in front Small's house, Adams pulled up next to him and rolled his window down. Mr. Gardner stated Adams started yelling at him stating, "FUCK YOU LAND STEALER". Mr. Gardner stated once Adams left he proceeded to Mr. Smalls residence at 144 Warsaw Island Rd, and they called Law Enforcement to file a report.

INTERVIEW WITH SUSPECT (TAYLOR ADAMS):

Mr. Adams did admit to driving behind Gardner. While speaking to Adams, He wished to discuss other matters that were already addressed in the past. When I asked Mr. Adams on what took place today, he became a little irate. I did advise Mr. Adams that there is a state law on following a vehicle too closely and that he should be mindful of it and abide by the State of South Carolina's Laws.

OFFICER ACTIONS:

Upon arriving on scene, I made contact with all parties involved and wrote down all pertinent information pertaining to this call. I informed Adams of the state Laws of Following to Closely, 56-05-1930. I advised all parties that a report of the incident would be filed for documentation purposes, at which point I provided the case number along with a written statement requested the witnesses and the victim to fill out a voluntary written statement at which time they complied. My BWC along with my in-car camera was activated. An ICDVS request will be submitted.

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the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

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Gardner
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Deputy Report for Incident 19S178287

Page 4 of 5

EVIDENCE:

A request for officers ICDVS and BWC was completed and assigned unique ID 2019-07-18T13_44_53.

ATTACHMENTS:

3 Voluntary Written Statements.

L/Cpl Domino II, D3153, July 18, 2019 @ 1315 Hrs.

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copy of the original document on file with
the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

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Gardner

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Name Involvements:

Witness : 230253

Last: GREGORY

DOB: [REDACTED]

First: DOROTHY

Dr Lic:

Mid: A

Address: 161 WARSAW ISLAND RD;
WARSAW ISLAND

Race: B

Sex: F

Phone: (843)838-5159

City: St Helena Islan, SC 29920

Suspect : 33461

Last: ADAMS

DOB: [REDACTED]

First: TAYLOR

Dr Lic: [REDACTED]

Mid: REUBEN

Address: 240 WARSAW ISLAND RD;
WARSAW ISLAND

Race: W

Sex: M

Phone: (843)476-8662

City: St Helena Islan, SC 29920

Complainant : 173535

Last: SMALLS

DOB: [REDACTED]

First: JOSEPH

Dr Lic: [REDACTED]

Mid:

Address: 144 WARSAW ISLAND RD;
WARSAW ISLAND

Race: B

Sex: M

Phone: (678)778-4499

City: St Helena Islan, SC 29920

Victim : 108214

Last: GARDNER

DOB: [REDACTED]

First: CHARLES

Dr Lic: [REDACTED]

Mid: W

Address: 259 WARSAW ISLAND RD;
WARSAW ISLAND

Race: B

Sex: M

Phone: (843)838-5798

City: St Helena Islan, SC 29920

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Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

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Gardner
254

195178287 Disturbance

Date 7-K-2019 Page No. _____

STATEMENT OF:

Name: Charles Gardner DOB: [REDACTED] H: 5'6
Add: 259 Warsaw Island SSN: [REDACTED] C: _____
St Helena, SC 29920 W: _____

I was leaving my house Mr. Adams
Stop following me for no reason, I
stop at 144 Warren Island Rd & Mr
Adams St using bad word for no
Reason, Mr Adams is asking strange
for the last week.



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the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

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Gardner

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SF816

195178287 Disturbance.

Date 7-18-2019 Page No. _____

STATEMENT OF:

Name: Dorothy Gregory DO [REDACTED] H: _____Add: 1161 Warsaw Fsl Rd SSN: _____ C: 843-838-5159

W: _____

As I was looking out my bedroom window I saw Charles W. Gardner being trail close behind by Ruben Taylor. As I watched Mr. Gardner stopped his truck and pull off to the right side of the road. At this time Mr. Taylor pull beside Mr. Dorothy as Mr. Gardner sat in his truck Mr. Taylor was yelling, but I couldn't hear the words. As I came out of my house Mr. Taylor drove off down the road.

Dorothy A. J.

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the Office of Sheriff for Beaufort County.
Michael M. Hartfield
Chief Deputy, Beaufort County Sheriff's Office

Dorothy A. J.

BBT 9901.0001

Gardner

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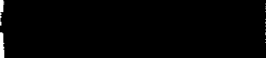
P. 163

SF816

195178287 Disturbance.

Date 7/18/19 Page No. _____

STATEMENT OF:

Name: Joseph Smalls DOB:  H: _____Add: 144 C WARSAN Isl Rd SSN:  C: _____

W: _____

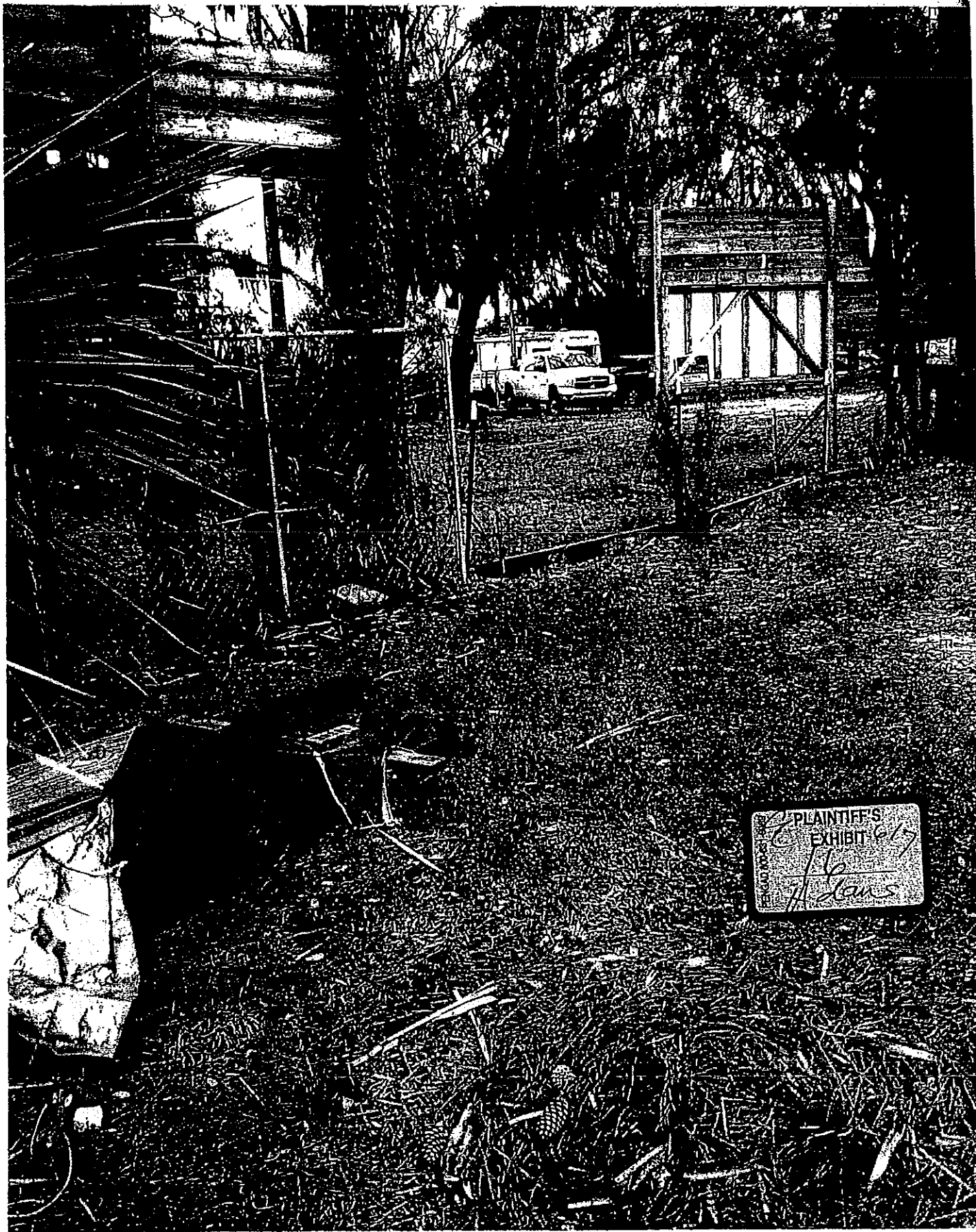
I WAS Aiding my LAWN MOW AND I SAW Robin
 Follow MR ~~BARNES~~ GARDNER right up on him
 Then MR GARDNER Stop. Then he pull beside him
 AND Start CALLING him NAMES. Then he start BEATING
 MR NAME. Something need to be done.

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 copy of the original document on file with
 the Office of Sheriff for Beaufort County.

Michael M. Hatfield
 Chief Deputy, Beaufort County Sheriff's Office

BBT 0061-0001

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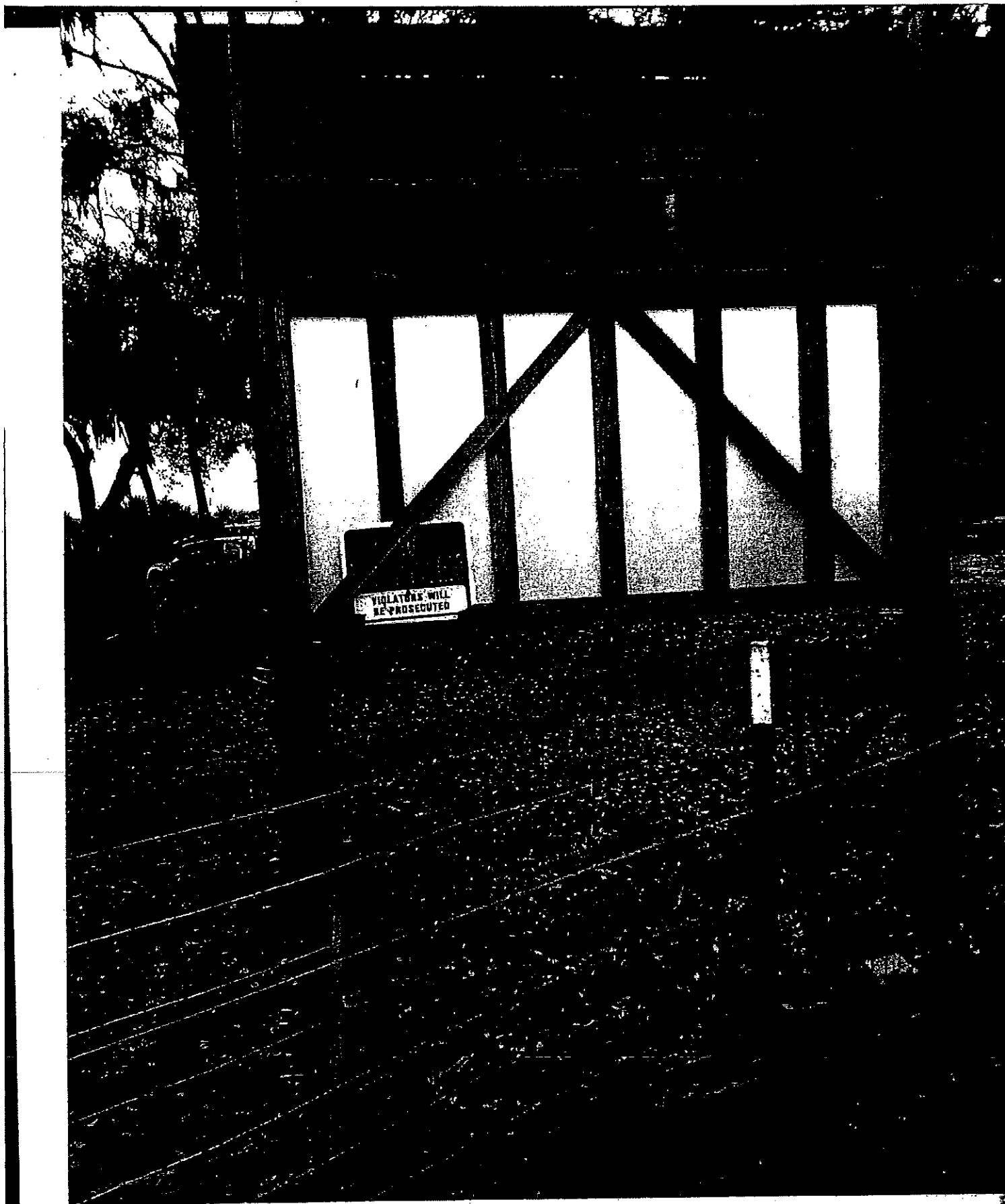


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Gardner

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Gardner
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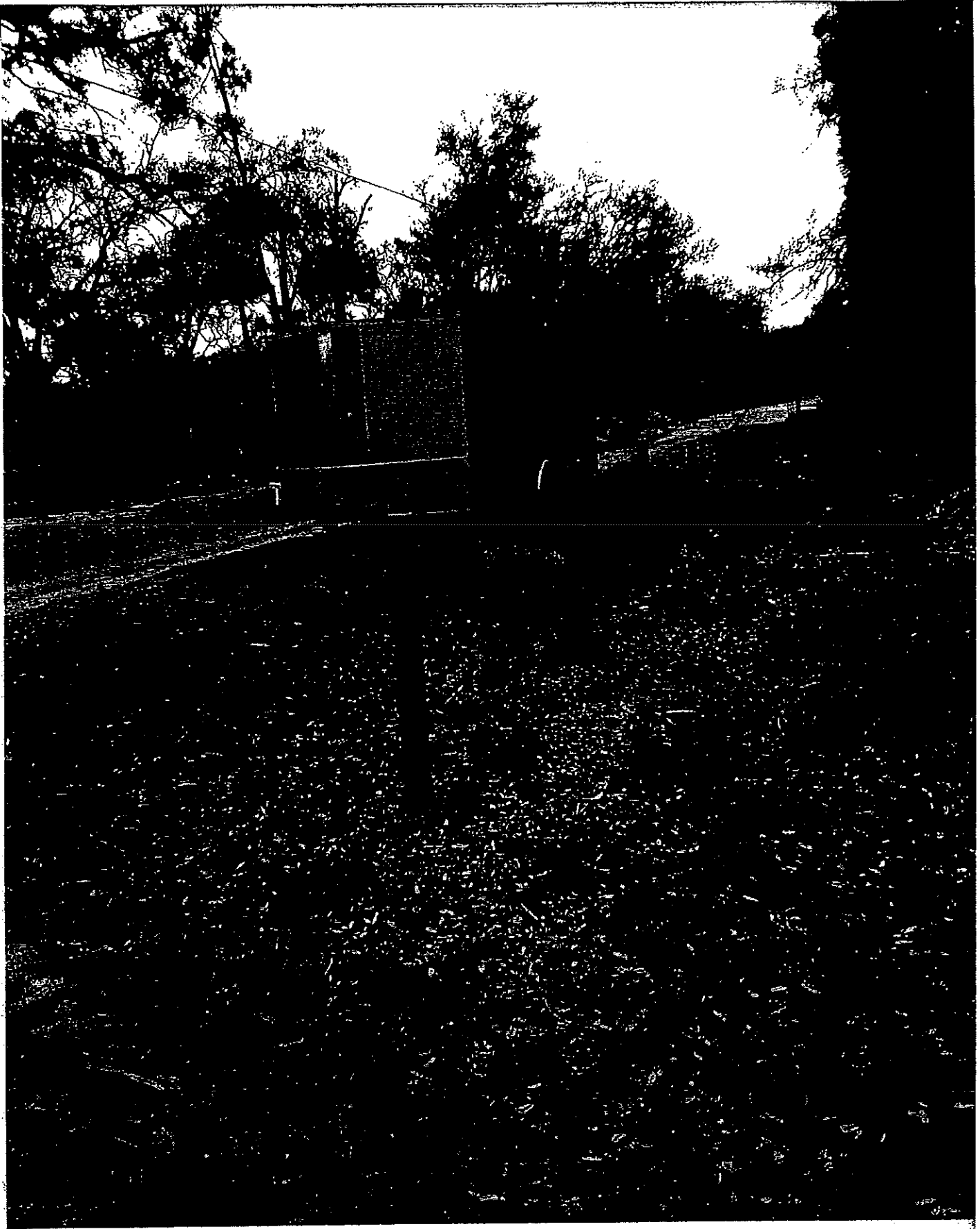


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Gardner

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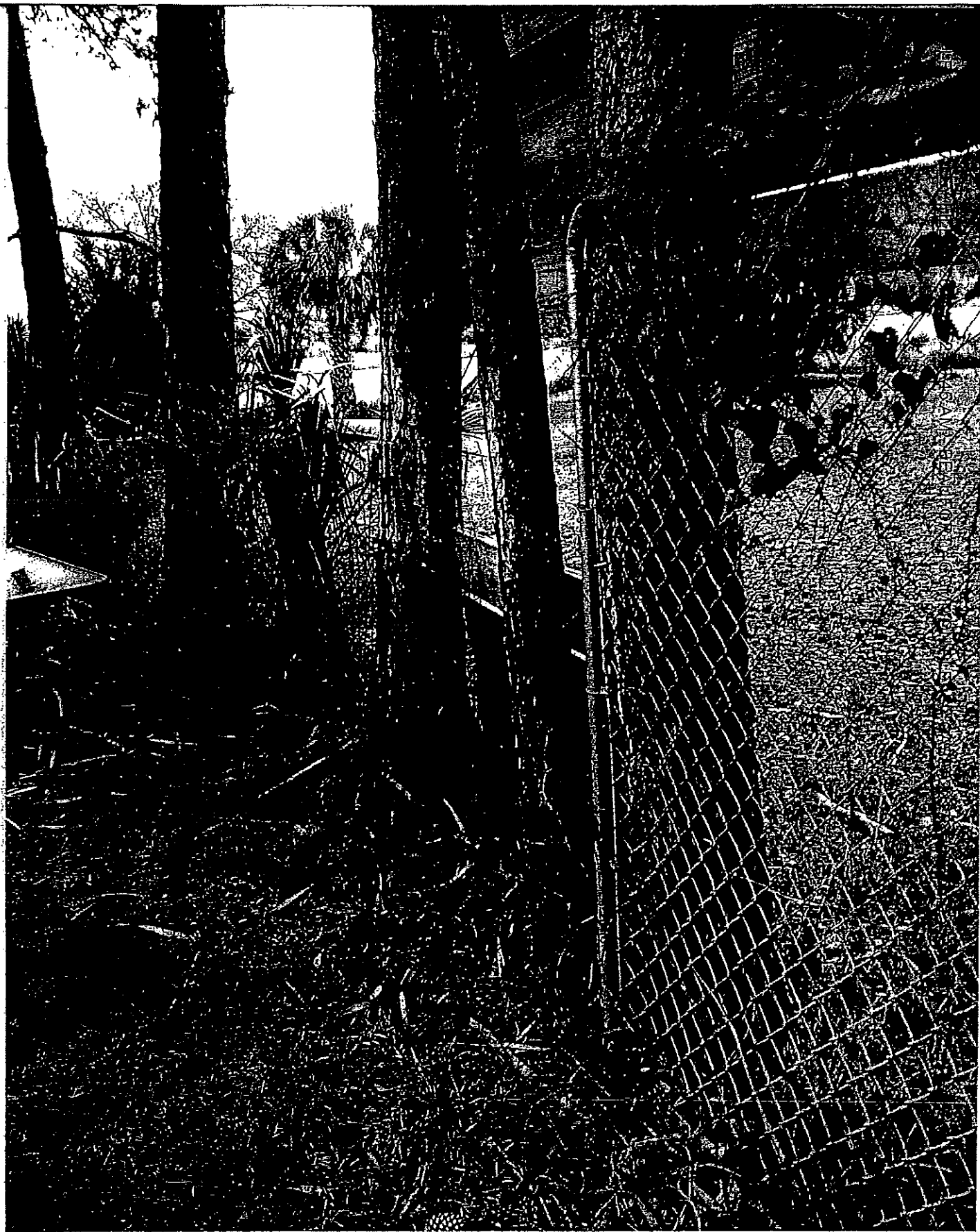
BBT 9961.0001
Gardner
313
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BBT 9961.0001

Gardner

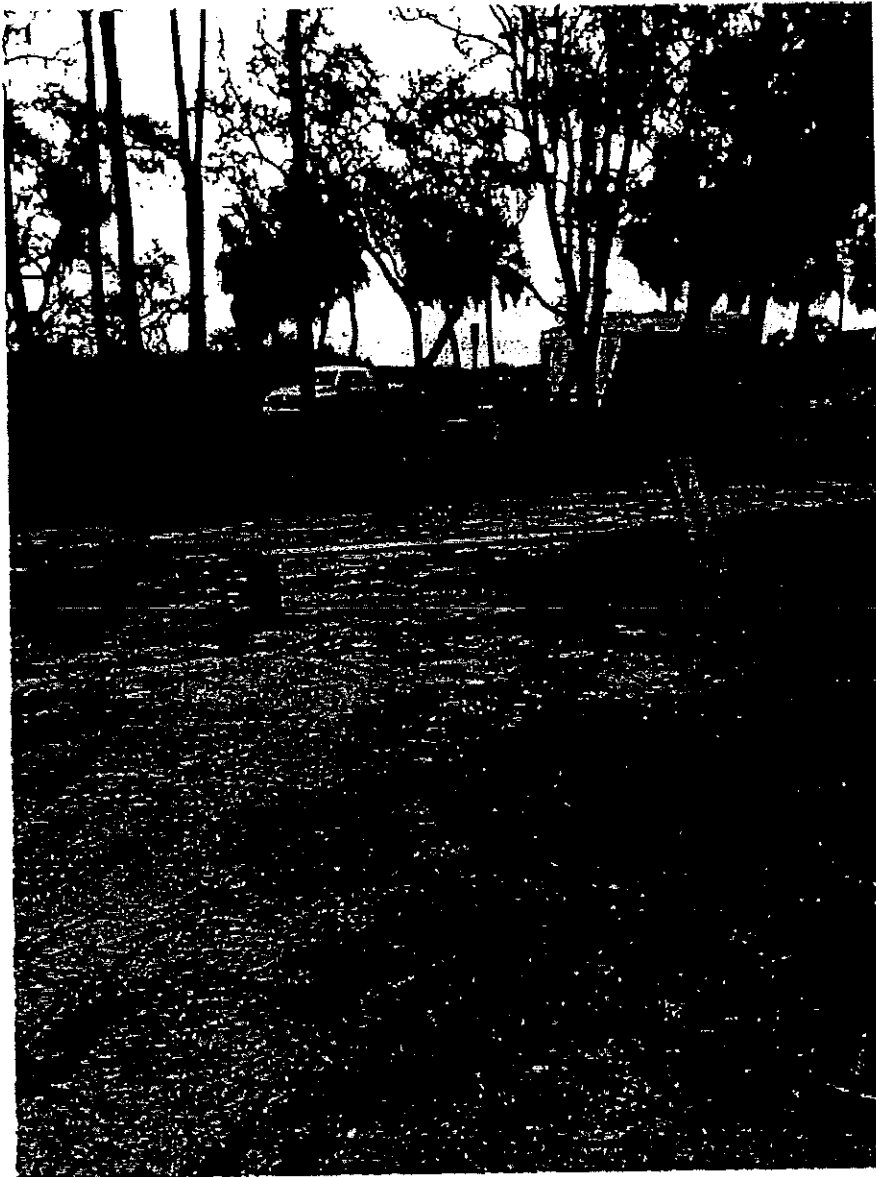
314



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Gardner

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My Drive May

BBT 9961.0001

Gardner

316



BBT 9961.0001

Gardner

317



BBT 9961.0001
Gardner
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Gardner

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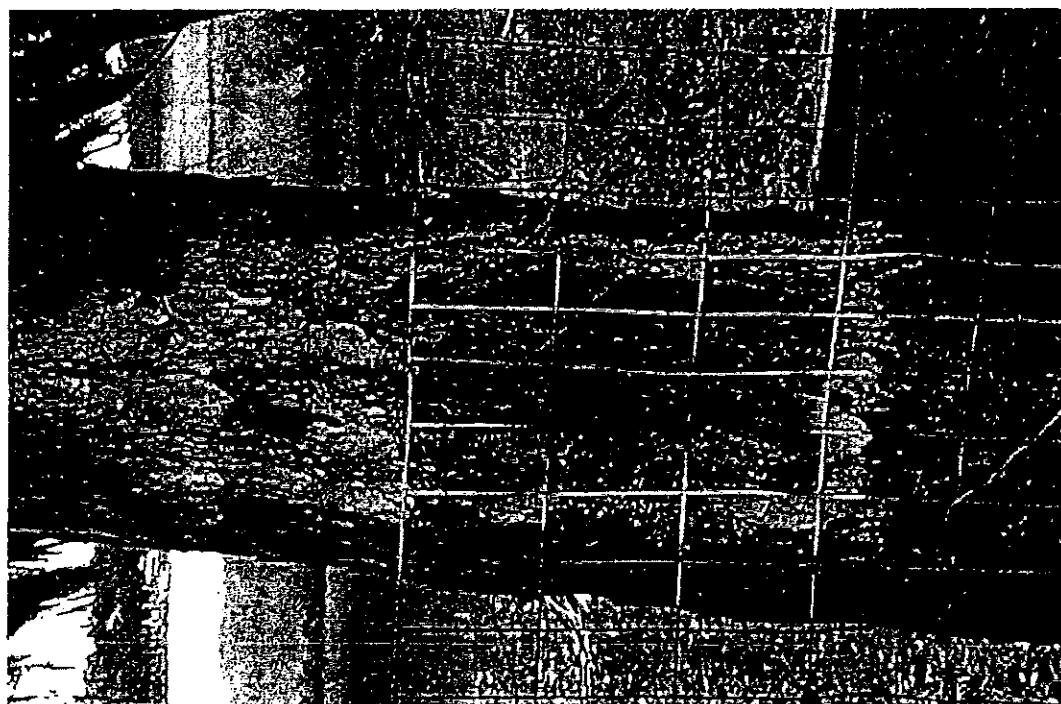


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Gardner

321

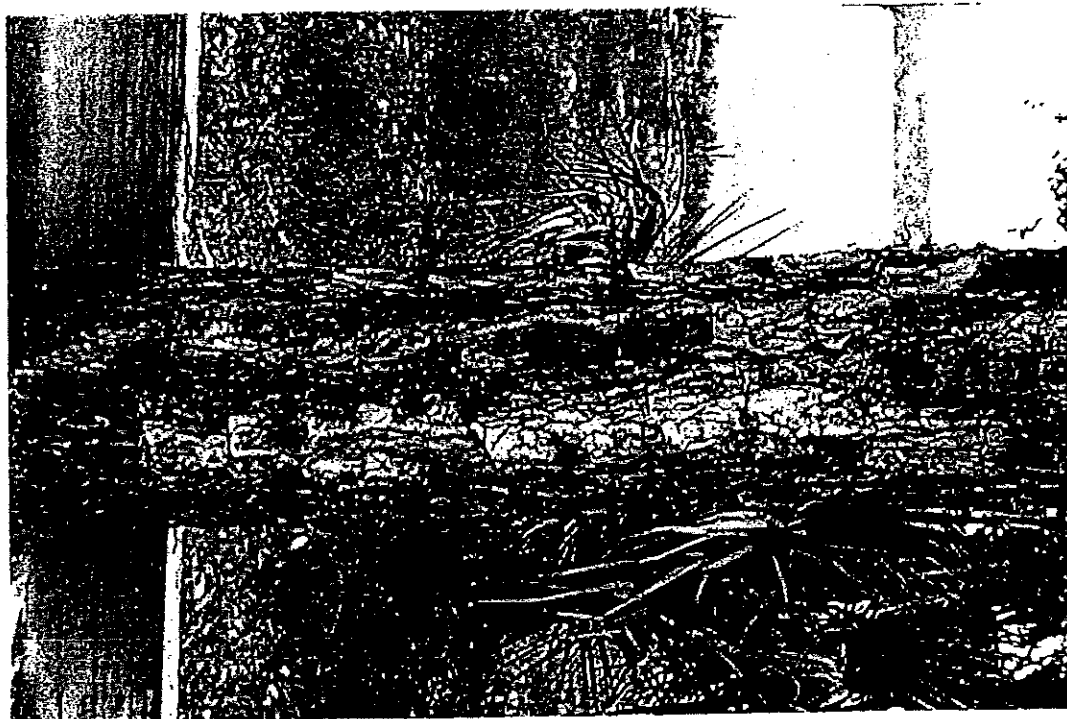
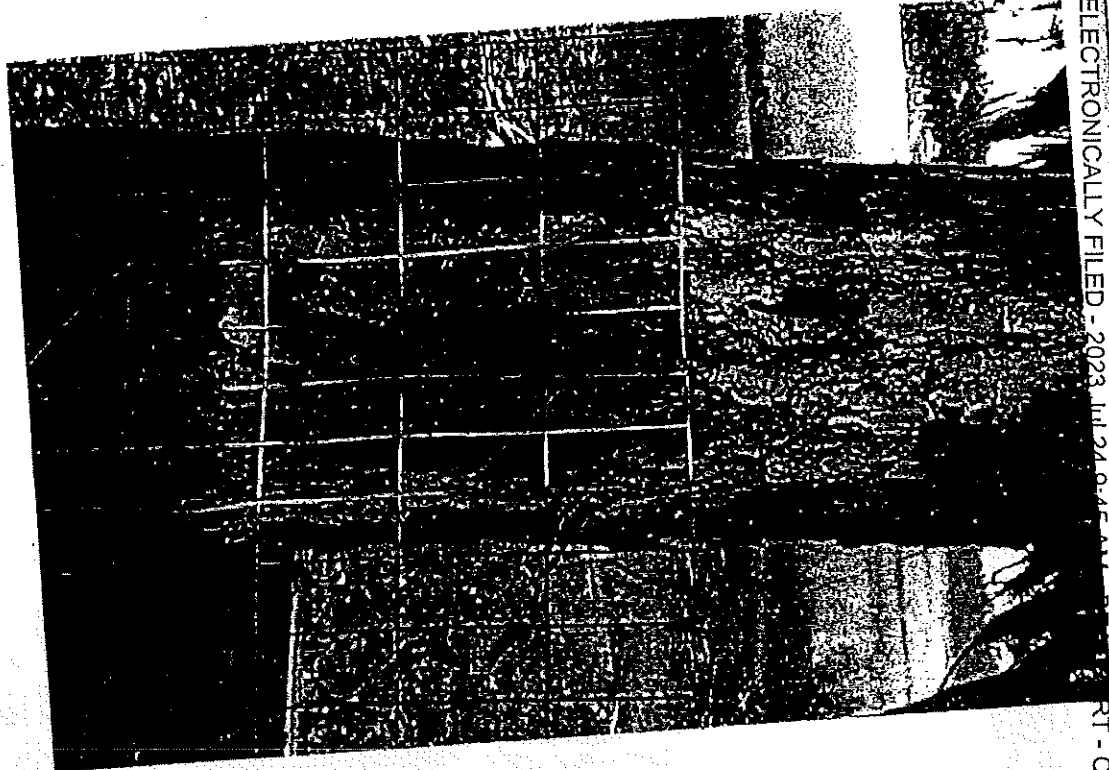
P. 175



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Gardner

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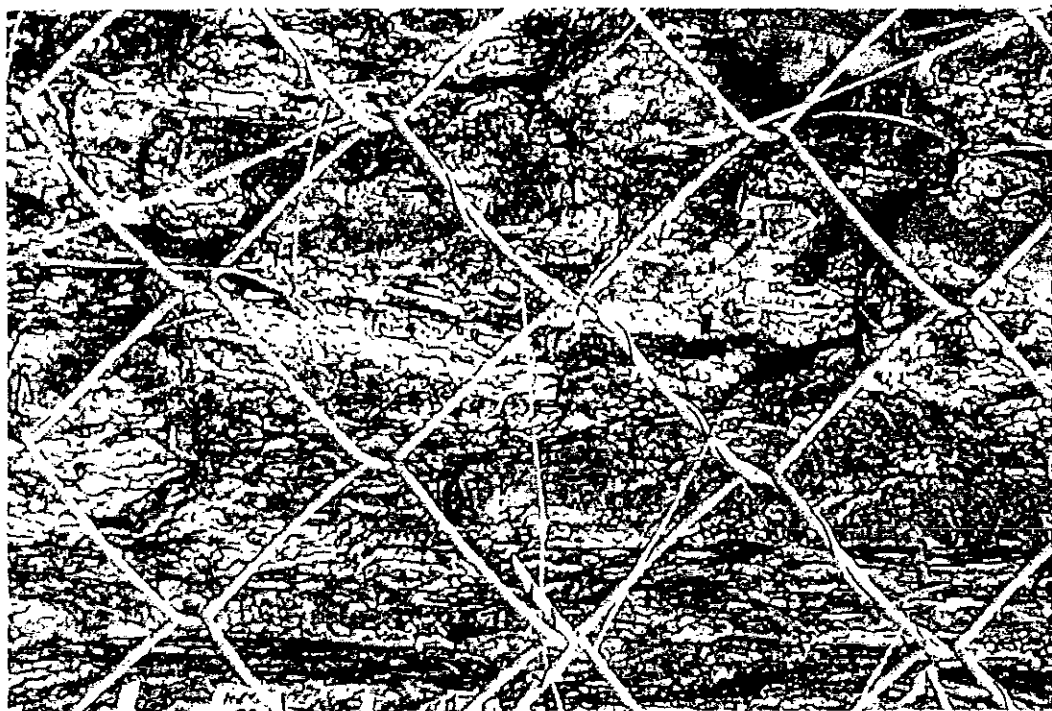


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Gardner

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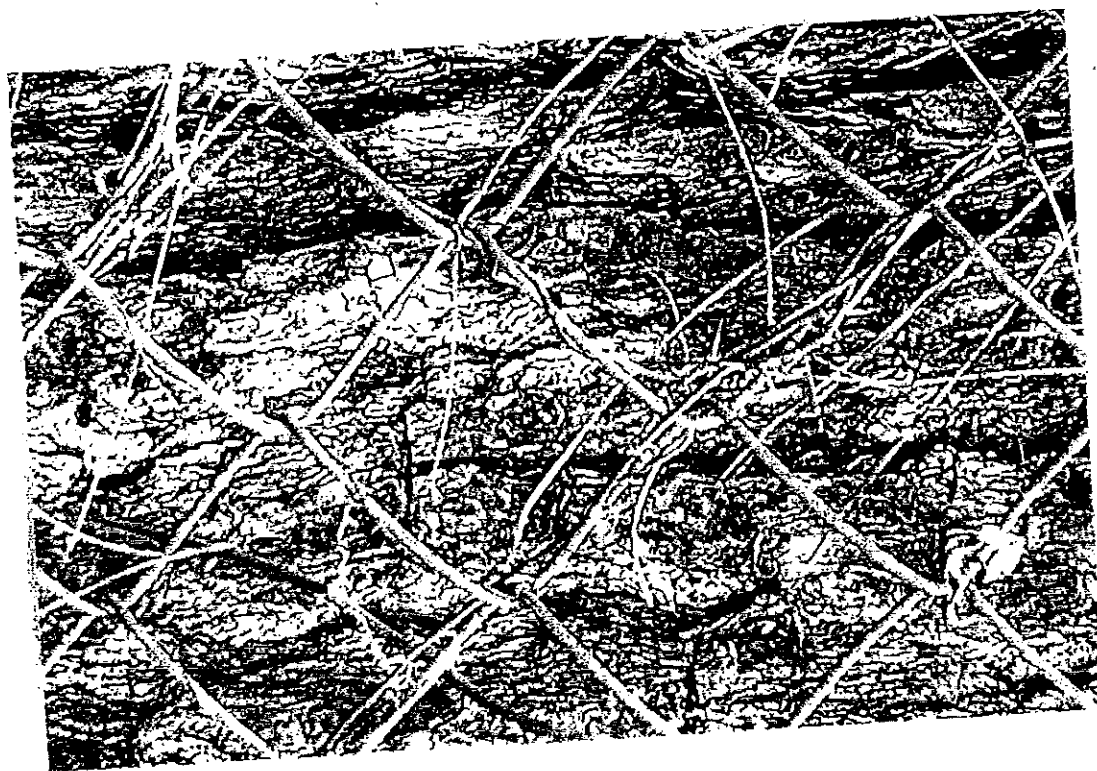
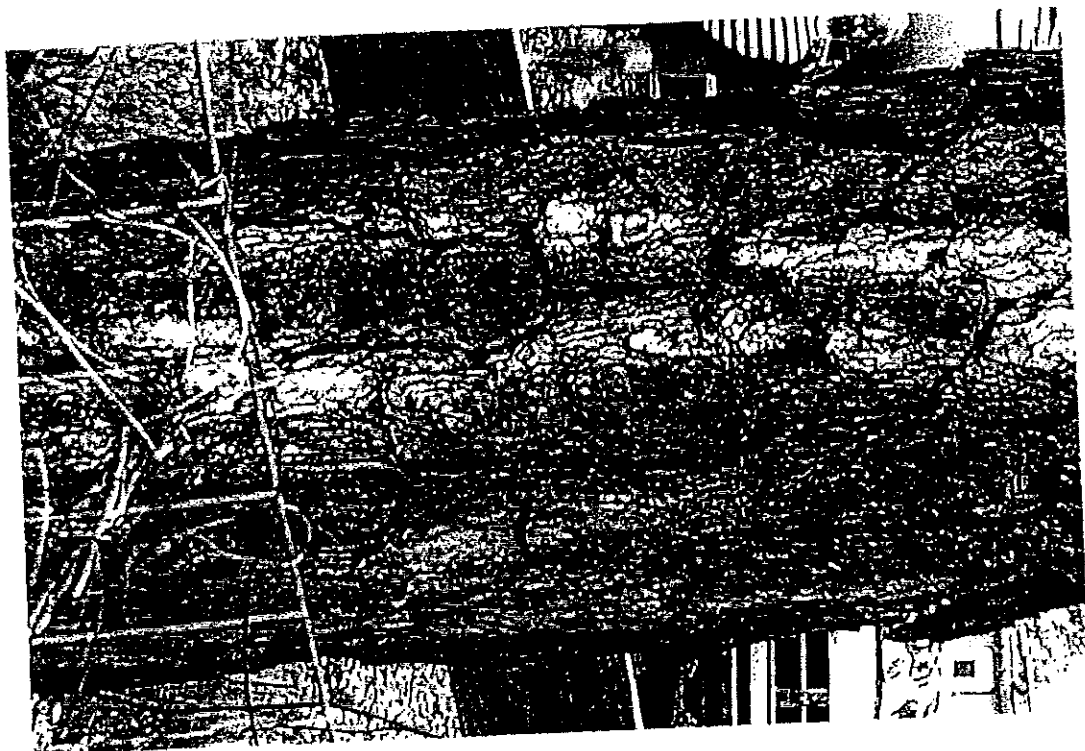


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Gardner

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>BEAUFORT COUNTY'S</u>
	)	<u>MEMORANDUM IN SUPPORT OF ITS</u>
TAYLOR REUBEN ADAMS,	)	<u>MOTION FOR SUMMARY JUDGMENT</u>
	)	
Defendant.	)	

COMES NOW, Intervenor Beaufort County (hereinafter "the County"), a political subdivision of South Carolina, and submits this Memorandum in Support of its Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The County would show as follows.

FACTUAL/PROCEDURAL BACKGROUND

On October 12, 2017, Plaintiff filed an action alleging trespass on property he claimed to own. Plaintiff further alleged that Defendant Adams was converting the Plaintiff's property for his own use and requested an injunction and restraining order against Defendant Adams. Defendant Adams answered the Complaint and asserted a counterclaim alleging that he was the owner of the property that Plaintiff was seeking to restrain him from using.

Thereafter, Defendant Adams filed a motion for partial summary judgment requesting that the court confirm title to the subject property, which was described in said motion as "the 30' road and property to the south of the 30 foot road." In fact, the subject property referenced is a thirty-foot unpaved portion

/extension of Warsaw Island Road, a public right of way, which leads to a boat ramp commonly referred to as the "Warsaw Island Boat Ramp". Warsaw Island Road is located on St. Helena Island, South Carolina, in Beaufort County.

A hearing was held on Defendant Adams's Motion for Partial Summary Judgment. The Circuit Court ultimately ruled in favor of Defendant Adams, determining that Adams owned "the thirty foot road, the boat ramp at the end of the thirty foot road and the property to the south of the road." The Court further dismissed Plaintiff's causes of action and allowed Defendant Adams's counterclaims to proceed. Plaintiff filed a motion for reconsideration, which the Court denied.

Plaintiff appealed the order granting partial summary judgement. On appeal, Plaintiff argued that Defendant Adams failed to show that he was the successor in interest to the predecessor in title; that a 1990 quiet title order that was in dispute between the parties did not confer title in the road or boat ramp to Adams; and that questions of fact existed as to the ownership of the road and boat ramp.

In an opinion filed April 27, 2022, the South Carolina Court of Appeals held that "a factual dispute persists as to the road and boat ramp" and that "no interpretation of Judge Kemmerlin's 1990 decree supports the Circuit Courts conclusion that Adams owns the road and the boat ramp." The Court of Appeals additionally determined that Plaintiff was never granted the thirty-foot dirt road by his predecessor in title who "had no power to deed ownership of the unpaved county road." However, the Court also explained that "this in no way places title

to the road in Adams . . . [n]or does a review of the submitted materials support the circuit court's conclusion that title to the road had been quieted in [Defendant Adams's predecessor in title]."

Furthermore, the Court determined that:

"A reasonable interpretation of the master-in equity's 1990 order is that the 'unpaved county road' 'unpaved Beaufort County road' and 'thirty (30) foot dirt road' are all the same road. Neither Leroy Gardner, Sr. nor John Howard (predecessors in title of Plaintiff and Defendant, respectively) owned the road; thus neither Charles Gardner nor Adams (through his position in the Howard Property's chain of title) owns it now. The 1995 and 2013 plats indicate Leroy Gardner, Sr. claimed ownership of the boat ramp, and the issue of the boat ramp is not explicitly raised in the pleadings. As the record does not support the circuit court's findings that the Howard Property included the road or boat ramp, or that Adams now owns both, we vacate these findings."

As a result, the Court of Appeals reversed the grant of partial summary judgment, vacated the circuit court's findings as to ownership of the road and boat ramp, and remanded for further proceedings consistent with their opinion.

On remand, the County moved to intervene based upon the Court of Appeals' conclusion that neither of the adjacent property owners to the road and ramp in question (Plaintiff or Defendant) have an interest in title. The County takes the position that it is the owner of the road and ramp in question. The County now moves this Court for an Order granting summary judgment in its favor to this effect.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and the moving party is entitled

to judgment as a matter of law. Rule 56(c), SCRCP. "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 116 (1991), quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Singleton v. Sherer, 377 S.C. 185, 197-98 (Ct. App. 2008). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 214 (Ct. App. 2005). Materials used to refute a motion for summary judgment must be those which would be admissible at trial. Hall v. Fedor, 349 S.C. 169, 175 (Ct. App. 2002).

ARGUMENT

I. Both Plaintiff and Defendant are estopped from claiming ownership of the thirty-foot road

Initially, the County would note that, based on the Court of Appeals' decision, attached hereto as Exhibit 1, neither Plaintiff nor Defendant Adams may

argue that they own the thirty-foot road. Neither Gardner or Adams appealed the Court of Appeals decision on the ownership of the thirty-foot road. Accordingly, the Court of Appeals' holding that neither party owns the road is the law of their case. See In addition, the County contends that the Court of Appeals' opinion demonstrates that the County owns the thirty-foot road, although it concedes the Court did not so explicitly hold in its opinion. By recognizing that the 'unpaved county road,' 'unpaved Beaufort County road,' and 'thirty (30) foot dirt road' are all the same road, the Court appreciated that the road was and is a Beaufort County road, and subsequently concluded that ownership had not been transferred. Regardless, because the Court of Appeals determined that neither Plaintiff nor Defendant Adams owns the thirty-foot road, neither may so claim on remand, and the evidence submitted makes clear that the County is the rightful owner of the thirty-foot road.

II. The evidence in the case demonstrates that there is no issue of material fact as to ownership of the thirty-foot road.

Both the thirty-foot road and the Warsaw Boat Ramp have been historically used by members of the Warsaw Island Community and Beaufort County residents alike. Beaufort County has a record of maintenance and cooperation with the Army Corps of Engineers as this property was once used to facilitate the building of a bridge and causeway to Dataw Island. Prior to the current action, Beaufort County corresponded with Adams indicating that he does not own the road and the plat indicating otherwise was marked as a "problem deed" as a result. Beaufort County, claiming ownership of the subject 30' road and boat ramp, respectfully asks this Court, per the Appellate Order, that the

parties hereto be judicially estopped from any further claims against each other or any interest of Beaufort County. Based upon the foregoing, and the facts as stated in Beaufort County's Complaint-In-Intervention (attached hereto as an Exhibit), Beaufort County respectfully requests that this Court make the determination that Beaufort County is the sole owner of the property in question and provide an Order indicating same.

HOWELL, GIBSON & HUGHES, P.A.

By: s/Robert W. Achurch, III
Robert W. Achurch, III
PO Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Beaufort County

Beaufort, South Carolina

July 26, 2023

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum in Support of Motion for Summary Judgment upon counsel of record via email only, in accordance with §(c)(13) of Order 2020-04-22-01 issued by the Supreme Court of South Carolina, using the primary email address listed in the Attorney Information System (AIS) and said document was filed electronically with the clerk of court via CM/ECF, which will then send a notification of such filing to all counsel of record and those who have registered for notice on the 26th day of July, 2023.

By: s/Robert W. Achurch, III

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,

Plaintiff,

vs.

TAYLOR REUBEN ADAMS AND
BEAUFORT COUNTY,

Defendants.

MOTION TO COMPEL

TO: TERRY A. FINGER, ESQUIRE, ESQUIRE, ATTORNEY FOR TAYLOR
REUBEN ADAMS:

YOU WILL PLEASE TAKE NOTICE THAT the Defendant(s) will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the presiding Circuit Court Judge, or such other person as may be designated to hear such motions, for an Order of this Court compelling Taylor Reuben Adams herein to issue Answers to Interrogatories and Return to Requests for Production. This motion is made pursuant to Rules 33, 34 and/or 37 of the South Carolina Rules of Civil Procedure, and upon the further factual ground that:

Beaufort County, by and through the undersigned counsel, served Interrogatories and Requests for Production upon Taylor Reuben Adams on March 30, 2023;

Multiple requests have been made for responses to Interrogatories and Requests for Production and this Defendant has not received responses to the Interrogatories and Requests for Production.

More than thirty (30) days have elapsed since the service of the Interrogatories and Requests for Production, and no responses have been received.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings and discovery requests heretofore exchanged by the parties, and any and all affidavits which may be served on or before the date of hearing hereon.

HOWELL, GIBSON & HUGHES, P.A.

By: s/Robert W. Achurch, III
Robert W. Achurch, III
PO Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Beaufort County

Beaufort, South Carolina

November 3, 2023

CERTIFICATE OF SERVICE

I certify that I served the foregoing Notice of Motion and Motion to Compel Discovery from Charles Willis Gardner upon all counsel of record by email transmission on 10th day of November 2023.

By: s/Robert W. Achurch, III
Robert W. Achurch, III

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that:

- ☒ I have consulted with opposing counsel and have been unable to resolve the matter.
- ☐ Consultation with opposing counsel would serve no useful purpose or is not required.
- ☐ Consultation with opposing counsel could not be timely held.
- ☐ I certify that there is no duty of consultation for the attached motion (to dismiss, for summary judgment, for new trial, for judgment NOV, in real estate foreclosures, or with pro se litigants.)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
CHARLES WILLIS GARDNER,)
Plaintiff,)
vs.)
TAYLOR REUBEN ADAMS, and)
BEAUFORT COUNTY, SOUTH)
CAROLINA,)
Defendants.)

IN THE MAGISTRATE'S COURT

CASE NO.: 2017-CP-07-02110

MOTION TO RECONSIDER

TO: G. HAMLIN O'KELLEY, III, ATTORNEY FOR PLAINTIFF AND DYLAN KIDD, ATTORNEY FOR BEAUFORT COUNTY:

The Defendant, Taylor Ruben Adams, by and through his undersigned counsel, hereby moves the Court to Reconsider its' Order dated April 5, 2024, on the following grounds:

1. The chain of title on the disputed dirt road was established at trial and there are no deeds or any other indicia of Beaufort County ownership. The chain of title showed Taylor Ruben Adams owns the property.
2. Beaufort County presented no evidence at trial of ownership of the dirt road.
3. The Plaintiff's own expert witness indicated the dirt road property was owned by Taylor Ruben Adams.
4. Beaufort County, through acts and documents indicated that the County has never owned, maintained, or claimed ownership of the dirt road.
5. Beaufort County made no request that Taylor Ruben Adams had to move his approved drain field or his fence.

6. The Court of Appeals opinion has no presential value and the Record of Appeal focused primarily on the fact Plaintiff did not own the dirt road and the Defendant was not trespassing. The Court of Appeals stated the “record [before it] does not support the circuit court’s findings” that Taylor Ruben Adams owned the dirt road and boat ramp. The record is now complete.

7. At trial, for the first time, Plaintiff conceded he did not own the road despite requiring third parties to ask his permission to use it. This practice by Plaintiff was long, consistent, and recognized by neighbors.

8. The Order states that Plaintiff frequently played loud music, shouted at Taylor Ruben Adams, and was involved in unruly unneighborly behavior. The uncontradicted evidence, including offensive photographs and videos, presented proved that Plaintiff violated various restraining orders and continued to do so even after he was jailed for violating a Magistrate’s Restraining Order. The Court was in error in not addressing Defendant’s counterclaim.

9. The finding that Taylor Ruben Adams violated the Court’s Order by installing a drain field is not supported by facts or law. The drain field was installed prior to the Court of Appeal opinion. The location of the drain field was approved by the requisite government officials.

10. No request was made at trial for the drain field or fence to be removed.

11. The Court was in error by stating Eric Klatt, the County Right-of-Way Manager, misrepresented any matter.

12. The Court failed to specifically rule on Taylor Ruben Adams’ counterclaims for a violation of the South Carolina Frivolous Civil Proceedings Sanctions Act, the Plaintiff’s interference with Taylor Ruben Adams quiet enjoyment and attempt to sell the property, nuisance, and request for a permanent injunction enjoining Plaintiff from harassing or interfering with Taylor Ruben Adams.

FINGER, MELNICK, BROOKS
& LABRUCE, P.A.

s/Terry A. Finger

Terry A. Finger, Esq.

Attorney for Defendant Taylor Ruben Adams

35 Hospital Center, Suite 200

P. O. Box 24005

Hilton Head Island, SC 29925-4005

(843) 681-7000

tfinger@fingerlaw.com

April 11, 2024
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles Willis Gardner

Plaintiff(s)

vs.

Taylor Reuben Adams

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - ____ - ____

Submitted By: William L. Pyatt
Address: 1507 Bush River Road
Columbia, SC 29210

SC Bar #: 4599
Telephone #: 803-750-5929
Fax #: 803-750-5956
Other: 803-276-1118
E-mail: pyattlawfirm@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Conversion (310)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Motor Vehicle Accident (320)	☐ Condemnation (410)
☐ General (130)	☐ Medical Malpractice (220)	☐ Premises Liability (330)	☐ Foreclosure (420)
☐ Breach of Contract (140)	Previous Notice of Intent Case #	☐ Products Liability (340)	☐ Mechanic's Lien (430)
☐ Fraud/Bad Faith (150)	20 ____ -NI- ____ - ____	☐ Personal Injury (350)	☐ Partition (440)
☐ Failure to Deliver/ Warranty (160)	☐ Notice/ File Med Mal (230)	☐ Wrongful Death (360)	☐ Possession (450)
☐ Employment Discrim (170)	☐ Other (299) ____	☐ Assault/Battery (370)	☐ Building Code Violation (460)
☐ Employment (180)		☐ Slander/Libel (380)	☐ Other (499) ____
☐ Other (199) ____		☐ Other (399) ____	
Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Special/Complex /Other		☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Pharmaceuticals (630)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)	☐ Other (799) ____	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of State Depositions (650)		
☐ Other (699) ____	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		☐ Other (999)
☐ Sexual Predator (510)	☐ Pre-Suit Discovery (670)		
☐ Permanent Restraining Order (680)			

Submitting Party Signature: s/William L. Pyatt

Date: 10/11/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
CHARLES WILLIS GARDNER,	)	
	)	CIVIL ACTION NO.: 2017-CP-
PLAINTIFF,	)	
	)	SUMMONS
vs.	)	
	)	
TAYLOR REUBEN ADAMS,	)	
	)	
DEFENDANT.	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint to the subscriber, William L. Pyatt, at his office at 1507 Bush River Road, Columbia, South Carolina 29210, within THIRTY (30) DAYS after the service thereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint, and judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated this the 11th day of October 2017.

Respectfully Submitted,

PYATT LAW FIRM, LLC

By: s/William L. Pyatt
 William L. Pyatt
 Attorney for Plaintiff

Post Office Box 12041
 Columbia, SC 29211
 (803) 750-5929
 (803) 750-5956 (f)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
CHARLES WILLIS GARDNER,	)	CIVIL ACTION NO. 2017-CP-
	)	
PLAINTIFF,	)	
	)	COMPLAINT
	)	
vs.	)	
	)	
TAYLOR REUBEN ADAMS,	)	
	)	
DEFENDANT.	)	

TO THE DEFENDANT ABOVE NAMED:

NOW COMES Plaintiff, who would respectfully show unto this Honorable Court as follows:

1.

That Plaintiff is a citizen and resident of the County of Beaufort and State of South Carolina.

2.

That Defendant is a citizen and resident of the County of Beaufort and State of South Carolina.

3.

That the real property which is the subject of this lawsuit is located in the County and State aforesaid.

4.

That Plaintiff has owned property on Warsaw Island Road, St. Helena, South Carolina in excess of twenty (20) years.

5.

That Defendant recently purchased property located on Warsaw Island Road in proximity to the property of Plaintiff.

FOR A FIRST CAUSE OF ACTION
(TRESPASS)

6.

That Plaintiff reiterates the allegations of paragraphs one (1) through five (5) as if written herein word for word.

7.

That Defendant has been trespassing upon the real property of Plaintiff without his consent, permission or authorization.

8.

That the trespass of Defendant is preventing the Plaintiff from the quiet use and enjoyment of his property.

9.

That Plaintiff is informed and believes that he is entitled to an Order of this Court restraining and prohibiting Defendant from Trespassing upon his property; and he hereby prays that this Honorable Court grants same.

FOR A SECOND CAUSE OF ACTION
(CONVERSION)

10.

That Plaintiff reiterates the allegations of paragraphs one (1) through nine (9) as if written herein word for word.

11.

That Plaintiff is informed and believes that Defendant has converted or is attempting to convert some of Plaintiff's property for his own use.

12.

That any property of Plaintiff converted by Defendant should be returned to Plaintiff and he hereby prays that this Honorable Court grants same.

FOR A THIRD CAUSE OF ACTION
(DECLARATORY & INJUNCTIVE RELIEF)

13.

That Plaintiff reiterates the allegations of paragraphs one (1) through twelve (12) as if written herein word for word.

14.

That Plaintiff is informed and believes that he will suffer irreparable harm if the conduct of the Defendant is not restrained and enjoined.

15.

That Plaintiff prays that this Court issues an appropriate injunction and restraining order, temporarily and permanently, restraining Defendant from trespassing upon and/or converting the real property of Plaintiff.

WHEREFORE, all premise considered, Plaintiff hereby prays that this Honorable Court takes jurisdiction of this matter, grant Plaintiff all the relief prayed for herein, as well as such other and further relief this Court deems just and proper.

Dated this the 11th day of October 2017.

Respectfully Submitted,

PYATT LAW FIRM, LLC

By: s/William L. Pyatt
William L. Pyatt
Attorney for Plaintiff

Post Office Box 12041
Columbia, SC 29211
(803) 750-5929 (O)
(803)750-5926 (F)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

VERIFICATION

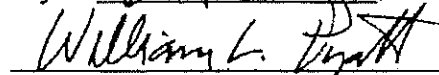
PERSONALLY APPEARED BEFORE ME, the undersigned, Charles Willis Gardner,
who being duly sworn states:

1. That he is the Plaintiff in the foregoing action.
2. That he has read the attached Complaint consisting of four (4) pages.
3. That the attached pleading was prepared by the Plaintiff's attorney based upon the information the Plaintiff has personally furnished to said attorney.
4. That the allegations contained in the pleading are true and correct and based upon the personal knowledge of the Plaintiff, except for those allegations which are based upon his information and belief, and as to those, the Plaintiff verily believes same to be true.
5. That the Plaintiff has authorized said attorney to file the attached pleading; to present the same to the Court; to secure any necessary Orders based thereon; and to secure service upon the adverse party.
6. That the Plaintiff understands that this Verification is sworn to and given under Oath.


Charles Willis Gardner

SWORN to before me this 11th

day of October, 2017


(L.S.)
Notary Public for South Carolina

My Commission Expires: 9/30/2017

BEAUFORT COUNTY SHERIFF'S OFFICE
PJ TANNER, SHERIFF
PO Box 1758
Beaufort, SC 29901

STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

Process Number: 175945

Court Number: 2017CP0702110

TAYLOR REUBEN ADAMS (Defendant)

AFFIDAVIT OF SERVICE

Service of: TAYLOR REUBEN ADAMS (Defendant)
240 WARSAW ISLAND RD; WARSAW ISLAND
St Helena Islan, SC 29920

Deputy VAUGHN says on oath that on the 25th day of October, 2017 at 11:13:10
he/she served the SUMMONS AND COMPLAINTS, VERIFICATION on TAYLOR REUBEN ADAMS
(Defendant) by delivering unto TAYLOR R. ADAMS, at 240 WARSAW ISLAND RD; WARSAW
ISLAND, ST HELENA ISLAN, SC 29920 personally copy(ies) thereof. Service of
process was made in accordance with applicable statutes and the Rules of Civil
Procedures in effect at the time of service.

I also certify that I endorsed on the said copy the date of service, signed my
name, and added my official title thereto.

NOTARY STATEMENT
SWORN to me on this the 26th day of October, 2017.

Notary Public For The State of South Carolina)

My Commission Expires: 10/15/20

Vaughn, A

BEAUFORT COUNTY SHERIFF'S OFFICE
PJ TANNER, SHERIFF
PO Box 1758
Beaufort, SC 29901

STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

Process Number: 175945

Court Number: 2017CP0702110

TAYLOR REUBEN ADAMS (Defendant)

AFFIDAVIT OF SERVICE

Service of: TAYLOR REUBEN ADAMS (Defendant)
240 WARSAW ISLAND RD; WARSAW ISLAND
St Helena Islan, SC 29920

Deputy VAUGHN says on oath that on the 25th day of October, 2017 at 11:13:10 he/she served the SUMMONS AND COMPLAINTS, VERIFICATION on TAYLOR REUBEN ADAMS (Defendant) by delivering unto TAYLOR R. ADAMS, at 240 WARSAW ISLAND RD; WARSAW ISLAND, ST HELENA ISLAN, SC 29920 personally copy(ies) thereof. Service of process was made in accordance with applicable statutes and the Rules of Civil Procedures in effect at the time of service.

I also certify that I endorsed on the said copy the date of service, signed my name, and added my official title thereto.

NOTARY STATEMENT

SWORN to me on this the 26th day of October, 2017.

Notary Public For The State of South Carolina

My Commission Expires

10/25/20

Vaughn, A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2017-CP-07-02110
	)	
CHARLES WILLIS GARDNER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER AND COUNTERCLAIM
	)	
TAYLOR REUBEN ADAMS,	)	
	)	
Defendant.	)	
	)	

The Defendant, Taylor Reuben Adams, by way of Answer and Counterclaim to the Complaint, would allege that:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, qualified or explained is denied.
2. The Defendant admits the allegations of Paragraphs 1, 2, and 3 of the Complaint.
3. As to the allegations of Paragraph 4 of the Complaint, the Defendant would allege that the property records in the Office of the Register of Deeds for Beaufort County will speak for themselves.
4. The Defendant admits the allegations of Paragraph 5 of the Complaint.
5. The allegations of Paragraph 6 of the Complaint require no further response from the Defendant.
6. The Defendant denies the allegations of Paragraphs 7, 8, and 9 of the Complaint.
7. The allegations of Paragraph 10 of the Complaint require no further response from the Defendant.
8. The Defendant denies the allegations of Paragraphs 11 and 12 of the Complaint.
9. The allegations of Paragraph 13 of the Complaint require no further response from the Defendant.
10. The Defendant denies the allegations of Paragraphs 14 and 15 of the Complaint.

FOR A SECOND DEFENSE

11. Each and every allegation of the First Defense is realleged as fully as if repeated verbatim herein.

12. The Plaintiff's claims are barred by the Doctrine of Res Judicata in that all issues raised the Plaintiff have been previously litigated in a Quiet Title Action in Beaufort County bearing Civil Action No.: 1989-CP-07-879.

FOR A THIRD DEFENSE

13. Each and every allegation of the First and Second Defenses is realleged as fully as if repeated verbatim herein.

14. No Cause of Action for Conversion may be alleged concerning real property. The Conversion Cause of Action must fail as a matter of law.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

15. Each and every allegation of the First through Third Defenses is realleged as fully as if repeated verbatim herein.

16. The property in question is owned by the Defendant by virtue of the 1989 Quiet Title Action, the Defendant's deed and chain of title and the plats of record.

17. The Plaintiff has engaged upon a consistent pattern of trespass and harassment towards the Defendant.

18. The Plaintiff has been given multiple trespass warnings, including a warning from the Beaufort County Sheriff's Department, yet the Plaintiff continues to trespass upon the Defendant's property.

19. The Defendant prays that the Court restrain the Plaintiff from any further trespasses on his property and grant the Defendant actual and consequential damages for the consistent and continual trespass by the Plaintiff.

FOR A FIFTH DEFENSE AND BY WAY OF A SECOND COUNTERCLAIM

20. Each and every allegation of the First through Fourth Defenses is realleged as fully as if repeated verbatim herein.

21. The Defendant believes that the Plaintiff's claim violates the South Carolina Civil Frivolous Civil Procedures Sanctions Act and the Defendant, accordingly, requests that he be rewarded his reasonable attorneys' fees and costs.

WHEREFORE, have fully answered the Complaint, the Defendant prays that the Court inquire fully into the matters raised in the pleadings, issue the appropriate Orders, grant the Defendant actual and consequential damages for the consistent and continual trespass by the Plaintiff, grant the Defendant his reasonable attorneys' fees and costs, and for such other and further relief as is just and proper.

FINGER, MELNICK & BROOKS, P.A.

s/Terry A. Finger

Terry A. Finger

S.C. Bar No.: 2012

Attorney for the Defendant

Taylor Reuben Adams

35 Hospital Center, Suite 200

P. O. Box 24005

Hilton Head Island, SC 29925-4005

(843) 681-7000

tfinger@fingerlaw.com

Hilton Head Island, South Carolina
December 12, 2017

F:\client\A\ADAMS-Ruben\Gardener\Pleadings\Answer.docx

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	) FOURTEENTH JUDICIAL CIRCUIT
CHARLES WILLIS GARDNER	)
PLAINTIFF,	) CIVIL CASE NO.: 2017-CP-07-02110
vs.	) REPLY
TAYLOR REUBEN ADAMS	)
DEFENDANT.	)

TO THE DEFENDANT ABOVE NAMED AND HIS ATTORNEY OF RECORD:

NOW COMES Plaintiff, Charles Willis Gardner, and answers the Counterclaim of the Defendant as follows:

1.

That all matters herein not admitted, qualified or explained are hereby denied and strict proof is hereby demanded thereof.

2.

That Plaintiff reserves his rights herein to make any and all appropriate Motions.

3.

That Plaintiff denies the allegations of paragraphs fifteen (15) through twenty-one (21) of the Complaint and hereby demands strict proof thereof.

4.

That Plaintiff prays that the Counterclaim of the Defendant be dismissed and that he be granted the relief prayed for in his Complaint.

WHEREFORE, all premises considered, having fully replied to the Counterclaim of the Defendant, Plaintiff prays that the Court grant the relief prayed for in his Complaint as well as such other and further relief this Court deems just and proper.

Dated this the 18th day of December, 2017.

Respectfully Submitted,

PYATT LAW FIRM, LLC

By: s/William L. Pyatt
William L. Pyatt
Attorney for Plaintiff, Charles Willis Gardner

Post Office Box 12041
Columbia, SC 29211
(803) 750-5929
(803) 750-5956 (fax)



PARTNERS

William Hammett
Michael Dill
Hal B. Cobb
Sean Scapellato

LOCATION

222 West Coleman Blvd.,
Mt. Pleasant S.C. 29464
(P) 843-936-6680
(F) 843-353-2488

ATTORNEYS

Bryan Raymond
Stefanie Huffer
Ryan Andrews
Stephanie Richards

DJ Shymansky
Matthew Z. Kelly
William Z. Smith

September 11, 2018

Delivery Via Electronic Filing

The Honorable Jerri Ann Roseneau
Clerk of Court for Beaufort County
Court of Common Pleas
Post Office Drawer 1128
Beaufort, South Carolina 29901

RE: Taylor Reuben Adams, Respondent v. Charles Willis Gardner, Appellant
Case No. 2017-CP-07-02110

Dear Ms. Roseneau:

Enclosed for filing is a notice of appeal in the above case. We request that the court order the automatic stay of the order granting partial summary judgment during the pendency of this appeal pursuant to Rule 225, SCACR.

Further, I am requesting a transcript from the proceedings of the hearing that took place on June 26, 2018 for summary judgment that took place before the Honorable Perry M. Buckner, III. Thank you for providing the court reporter information to me.

If you should have any questions or concerns, do not hesitate to contact me.

Sincerely,

/s/ Bryan A. Raymond
Bryan A. Raymond, Esq
For Cobb Dill & Hammett, LLC

cc: Mr. Terry Finger, Esq.
P.O. Box 24005
Hilton Head Island, S.C. 29925
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Perry M. Buckner, III Circuit Court Judge

Case No. 2017-CP-07-02110

Taylor Reuben Adams,..... Respondent

v.

Charles Willis Gardner,..... Appellant

NOTICE OF APPEAL

Charles Willis Gardner appeals the order granting Partial Summary Judgment of the Honorable Perry M. Buckner III dated July 10, 2018. Appellant received written notice of the Order denying Plaintiff's Motion for Reconsideration on August 9, 2018.

September 6, 2018


Bryan A. Raymond, Esq.
Cobb Dill & Hammett, LLC
222 West Coleman Boulevard
Mount Pleasant, SC 29464
843-936-6678
braymond@cdhlawfirm.com
Attorney for Appellant

Other Counsel of Record:

Mr. Terry Finger, Esq.
P.O. Box 24005
Hilton Head Island, S.C. 29925

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Case # 17-02110

EXHIBITS

Plaintiff(s) Charles W. Gardner
vs.
Defendant(s) Taylor R. Adams

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 Permits	1 Letter	1
2 Photos	2	2
3 Manual	3	3
4 ~~Order~~ withdrawn		4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

2019 SEP 11 PM 3:34
JERRI ALM ROUSEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Court Reporter Deborah S. Thomas
Clerk of Court Regina Reese

Trial Judge Dukes

Date 9-11-19

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles Willis Gardner,

Plaintiff,

VS.

Taylor Reuben Adams,

Defendant.

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-07-02110

AMENDED SUMMONS

TO THE ABOVE-NAMED DEFENDANT

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned attorneys at 652 Coleman Boulevard, Suite 200, Mt. Pleasant, South Carolina 29464, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded.

Respectfully submitted,

BUIST, BYARS & TAYLOR, LLC

s/ G. Hamlin O'Kelley, III

G. Hamlin O'Kelley, III

SC Bar No.: 15491

652 Coleman Blvd, Suite 200

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(843) 856-4488

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Attorney for the Plaintiff

6. Venue properly lies in this Court pursuant to S.C. Code Ann. §15-7.10.

7. This action is brought pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, and accordingly is properly within the jurisdiction of this Court.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

8. The Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully restated here.

9. This action is brought pursuant to the provisions of the South Carolina Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.* to obtain a declaration of the rights, status, and other legal relationships of the parties hereto in respect to the real estate herein described.

10. The Plaintiff requests that this Court grant an Order declaring Plaintiff has the right to use the thirty (30) foot road, the boat ramp at the eastern end of the thirty foot road, and the property to the south of the road as he and his predecessors and interests have used historically.

11. The Plaintiff also requests that this Court grants and Order stating Defendant has access to his own property by way of Ashton Drive and that it is not necessary for him to trespass ont he Plaintiff's property to access his own.

12. The Plaintiff is further entitled to hid attorney's fees and costs, pursuant to S.C. Code Ann. § 15-53-100.

SECOND CAUSE OF ACTION
(Trespass)

13. The Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully restated herein.

14. The Defendant has willfully, wantonly and deliberately denied the Plaintiff access to the Plaintiff's property, blocking and prohibiting the Plaintiff's quiet enjoyment of his land.

15. The Defendant has constructed a fence, blocking Plaintiff's access to a portion of his property, road and boat ramp he is entitled to and Defendant continue to trespass on Plaintiff's property.

16. The Defendant's willful and reckless actions entitles the Plaintiff to punitive damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Nuisance)

17. The Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully restated here.

18. The Defendant's actions have interfered and caused a nuisance with the Plaintiff's quiet enjoyment of his property for years.

19. The Defendant has been repeatedly informed he was disturbing the Plaintiff's quiet enjoyment of his property to the extent law enforcement has had to intervene on multiple occasions.

20. Despite those notices, the Defendant has continued to engage in behavior that constitutes a nuisance as well as a threat to the Plaintiff's wellbeing.

21. The Defendant's actions are willful, wanton, and reckless, and as a direct and proximate result of this nuisance, Plaintiff has suffered damages in amounts to be proven at the trial of this case.

FOURTH CAUSE OF ACTION

(Temporary and Permanent Injunction)

22. The Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully restated here.
23. The Plaintiff would seek to enjoin the Defendant from blocking the access to his property and from prohibiting the use of the road, which has been historically used by the Plaintiff and his family and predecessors in interest.
24. The Plaintiff would ask that the Defendant be temporarily and permanently enjoined from blocking the road and boat ramp as the law of the case is that the Defendant does not own the road and does not own the boat ramp.
25. As ruled upon by the Court of Appeals, and which ruling was not overturned by the South Carolina Supreme Court, making it the law of the case:

A reasonable interpretation of the master-in-equity's 1990 order is that the "unpaved county road", "unpaved Beaufort County road" and "thirty (30) foot dirt road" are all the same road. Neither Leroy Gardner, Sr., nor John Howard owned the road; thus, neither Charles Gardner nor Adams (through his position in the Howard Property's chain of title) owns it now. The 1995 and 2013 plats indicated Leroy Gardner, Sr., claimed ownership of the boat ramp, and the issue is not explicitly raised in the pleadings. As the record does not support the circuit court's findings that the Howard Property included the road or boat ramp, or that Adams owns both, we vacate these findings.

See Gardner v. Adams, Appellate Case No. 2018-001635 (Unpub. Op. No. 2022-UP-185) April 27, 2022)

26. Accordingly, the Defendant does not own the road and cannot claim ownership through the Howard chain of title.

27. Therefore, the Defendant cannot block the use of the road by the Plaintiff who has historically used the road and accessed his property through that road so that the Defendant should be enjoined permanently from blocking such access and use

Wherefore, having complained of the Defendant, the Plaintiff prays that this Court enter its order and judgment as follows:

1. Granting and declaring the Plaintiff is the rightful owner of an easement over and across the thirty (30) foot road with access to the road and the boat ramp at the eastern end of the thirty foot road, and the property to the south of the road which has been owned and enjoyed by his family for over a century;
2. Record a confirming Master Deed with the Register of Deeds for Beaufort County as to the easement and use;
3. Declaring the Defendant may access his property over the thirty (30) foot road
4. Enjoining the Defendant from blocking Plaintiff's access to his property by removing the fencing he placed on it;
5. Prohibiting the Defendant from trespassing on the Plaintiff's property
6. Awarding the Plaintiff attorneys' fees, costs and punitive damages; and
7. For all other relief that this Court deem just and proper.

Respectfully submitted,

BUIST, BYARS & TAYLOR, LLC

s/ G. Hamlin O'Kelley, III
 G. Hamlin O'Kelley, III
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Attorney for the Plaintiff

Mt. Pleasant, SC
 May 10, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,

Plaintiff,

VS.

TAYLOR REUBEN ADAMS.

Defendant.

COMPLAINT IN INTERVENTION

TO: ALL PARTIES AND THEIR ATTORNEYS

Beaufort County, complaining of the Parties to the above captioned matter, would, along with the Motion attached hereto, respectfully show unto this Court as follows:

1. That Beaufort County is a political subdivision of the State of South Carolina.
2. That the Plaintiff is a citizen and resident of the County of Beaufort and State of South Carolina.
3. That the Defendant is a citizen and resident of the County of Beaufort and Sate of South Carolina.
4. That the real property that is the subject of this lawsuit is located in the County of Beaufort, State of South Carolina.
5. That this action was instituted by the Plaintiff as an action for conversion and trespass.

6. That a dispute existed between the Plaintiff and Defendant as to the ownership of a thirty (30') foot unpaved extension of a public right of way known as Warsaw Island Road ("subject property") which is located on St. Helena Island, Beaufort County, South Carolina.
7. That the parties hereto are adjacent landowners to the thirty (30') extension of the road that leads to a boat ramp known as "Warsaw Island Boat Landing".
8. That the subject property has been continuously utilized by residents of Warsaw Island and Beaufort County residents for a period of at least fifty (50) years.
9. That public use of the subject property has been recently impeded by the erection of a locked fence at the end of Warsaw Island Road, and at the beginning of the subject property, by one or both of the parties hereto.
10. That the subject property was used in the early and mid-1980's as a landing for barges to facilitate the construction of a bridge and causeway to nearby Dawtaw Island.
11. That Beaufort County has historically maintained the subject property.
12. That in the course of litigation, the Defendant answered and brought crossclaims regarding ownership of the subject property and further brought crossclaims against the Plaintiff for trespass and conversion.
13. That Defendant moved for partial summary judgment regarding his claimed ownership of the subject property and the claims for trespass.

14. That the Circuit Court granted the Defendants motion for partial summary judgment, establishing ownership rights to the Defendant.
15. That the Plaintiff filed a motion to reconsider the Court's grant of partial summary judgment which was denied by the Circuit Court.
16. That the Plaintiff filed an appeal with the South Carolina Court of Appeals, Case No. 2018-001635.
17. That the Court reviewed evidence placed into the record on appeal that included a 1990 Order from the then Beaufort County Master in Equity, Judge Thomas Kemmerlin ("Decree of Title Clearance", Beaufort County C/A No. 89-CP-07-879).
18. That the Court considered evidence introduced by both parties that included, but was not limited to, chains of title and plats of survey.
19. That the Appellate Court stated in their opinion that no interpretation of Judge Kemmerlin's decree supports the Circuit Court's conclusion that the Defendant, Adams, owns the road and boat ramp.
20. That the Appellate Court stated that a reasonable interpretation of Judge Kemmerlin's order is that the "unpaved county road", "unpaved Beaufort County road" and "thirty (30) foot dirt road" are all the same road.
21. That the Court of Appeals opined and concluded that neither the Plaintiff nor the Defendant had any interest in title to the subject portion of Warsaw Island property or the boat landing / ramp to which the road leads.
22. That the Court of Appeals, in their opinion filed on April 27, 2022, concluded by indicating that neither of the parties' predecessors in title

own(ed) the road and ramp and thus; "neither Gardner or Adams...owns it now".

23. The Appellate Court has now remanded for further proceedings consistent with their opinion.

FOR A FIRST CAUSE OF ACTION
(Judicial Estoppel)

24. That Beaufort County reiterates the allegations of paragraphs one (1) through nineteen (19) as if repeated verbatim.

25. That the parties hereto have been wrongfully claiming an interest in title to the subject property owned by Beaufort County.

26. That a determination has been by the South Carolina Court of Appeals that neither parties hereto own the "unpaved Beaufort County road".

27. That Beaufort County is informed and believes that it is entitled to an Order from this Court that is consistent with the Opinion of the Court of Appeals and that the parties hereto are estopped from asserting any claims in ownership of the property and that title shall vest in the name of Beaufort County.

FOR A SECOND CAUSE OF ACTION
(Declaratory & Injunctive Relief)

28. That Beaufort County reiterates the allegations of paragraphs one (1) through twenty-seven (27) as if repeated verbatim.

29. That Beaufort County believes that they and the general public are entitled to ownership, use and maintenance of the subject property and that they

will be irreparably harmed if the parties hereto continue to impede and/or block access to the subject property.

30. That Beaufort County prays that an appropriate permanent injunction be ordered restraining the parties hereto from impeding access to the subject property, impeding public use of the subject property, and that a declaration be issued as to title vesting to the subject property and adjoining boat ramp in the name of Beaufort County.

WHEREFORE, all premise considered, Beaufort County hereby prays that this Honorable Court takes jurisdiction of this matter, and grant Beaufort County the relief prayed for herein, as well as such other and further relief this Court deems just and proper.

HOWELL, GIBSON & HUGHES, P.A.

By: s/Robert W. Achurch, III
Robert W. Achurch, III [SC Bar 64854]
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Attorney for Beaufort County
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Beaufort, South Carolina

May 18, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2017-CP-07-02110
	)	
Charles Willis Gardner,	)	
	)	
Plaintiff,	)	THE PLAINTIFF'S ANSWER TO
vs.	)	DEFENDANT BEAUFORT COUNTY'S
	)	COMPLAINT IN INTERVENTION AND
Taylor Reuben Adams and Beaufort County,	)	COUNTERCLAIM AND CROSSCLAIMS
	)	
Defendants.	)	
	)	

FOR A FIRST DEFENSE

The Plaintiff, Charles Willis Gardner, (the "Plaintiff"), by and through his undersigned attorney, answering Beaufort County's Complaint in Intervention, alleges and states as follows:

1. Each and every allegation of Beaufort County's Complaint in Intervention, (the "Complaint") not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Plaintiff demands strict proof thereof.
2. Upon information and belief, Plaintiff admits the allegations set forth in Paragraph 1 of the Complaint.
3. Plaintiff admits the allegations set forth in Paragraphs 2, 3, 4, 5, 6, 7 and 8 of the Complaint.
4. As to the allegations set forth in Paragraph 9, the Plaintiff admits only that the Defendant, Taylor Reuben Adams, ("Defendant Adams"), has erected a fence blocking Plaintiff's usage of his subject property as well as any and all usage by the public. As to the remaining allegations, Plaintiff denies same and demands strict proof thereof.
5. The Plaintiff admits to the allegations set forth in Paragraph 10 of the Complaint.

6. The Plaintiff denies the allegations set forth in Paragraph 11 and demands strict proof thereof. Furthermore, Plaintiff and his ancestors have maintained the subject property for over a hundred years.

7. The Plaintiff admits the allegations set forth in Paragraphs 12, 13, 14, 15, 16, 17, 18, 19, and 20 of the Complaint.

8. As to the allegations set forth in Paragraph 21, 22 and 23, the Plaintiff admits only that the South Carolina Court of Appeals reversed the grant of partial summary judgment to the Defendant, vacated the circuit court's findings as to ownership of the road and boat ramp, and remanded this matter to Circuit Court for further proceedings consistent with its opinion. As to the remaining allegations, the Plaintiff denies same and demands strict proof thereof. Furthermore, Plaintiff has multiple residents of the Warsaw Island community who have signed affidavits and who are willing to testify to the fact that the Plaintiff and his ancestors have been in possession of and maintained the subject property for over a hundred years.

9. Answering the allegations set forth in Paragraph 24 of the Complaint, the Plaintiff repeats and realleges Paragraphs 1 through 8 above as though repeated herein verbatim.

10. The Plaintiff denies the allegations set forth in Paragraphs 25, 26 and 27 of the Complaint, the Plaintiff denies same and demands strict proof thereof. Furthermore, Plaintiff has multiple residents of the Warsaw Island community who have signed affidavits and who are willing to testify to the fact that the Plaintiff and his ancestors have been in possession of and maintained the subject property for over a hundred years.

11. Answering the allegations set forth in Paragraph 28 of the Complaint, the Plaintiff repeats and realleges Paragraphs 1 through 10 above as though repeated herein verbatim.

12. The Plaintiff denies the allegations set forth in Paragraphs 29 and 30 of the Complaint and demands strict proof thereof. Furthermore, Plaintiff has multiple residents of the Warsaw Island community who have signed affidavits and who are willing to testify to the fact that the Plaintiff and his ancestors have been in possession of and maintained the subject property for over a hundred years. Plaintiff has also been the only Party in this matter who has suffered irreparable harm by being prevented from the quiet enjoyment of his own property as well as from created disturbances and trespassing directly caused by the Defendant. Furthermore, the Defendant has deliberately denied the Plaintiff access to his property by the Defendant erected a fence directly blocking and prohibiting the Plaintiff's quiet enjoyment of his own land.

FOR A FIRST DEFENSE
(Counterclaims and Crossclaims)

13. The Plaintiff hereby repeats and realleges Paragraphs 1 through 12 above as though repeated herein verbatim.

14. The Plaintiff, Charles Willis Gardner, (the "Plaintiff"), is a resident and citizen of Beaufort County and is the property owner of certain property on Warsaw Island is the owner of an easement over certain real property, located in Beaufort County, South Carolina, on Warsaw Island Road, St. Helena, South Carolina.

15. The Defendant, Taylor Reuben Adams, (the "Defendant Adams"), is a resident and citizen of Beaufort County and the owner of certain real property, located in Beaufort County, South Carolina, which he obtained via a tax sale, and over which Mr. Gardner's easement is located.

16. The Defendant, Beaufort County, ("Beaufort County"), is a political subdivision of the State of South Carolina.

17. The real property which is subject of the lawsuit is located in the County and State aforesaid.

18. The Plaintiff has owned property on Warsaw Island Road, St. Helena, South Carolina in excess of twenty (20) years.

19. The Defendant Adams purchased property located on Warsaw Island Road in proximity to the property of the Plaintiff.

20. Venue properly lies in this Court pursuant to S.C. Code Ann. §15-7-10.

21. This action is brought pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, and accordingly is properly within the jurisdiction of this Court.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

22. The Plaintiff hereby repeats and realleges Paragraphs 1 through 21 above as though repeated herein verbatim.

23. This action is brought pursuant to the provisions of the South Carolina Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.* to obtain a declaration of the rights, status, and other legal relationships of the parties hereto in respect to the real estate herein described.

24. The Plaintiff requests that this Court grant an Order declaring Plaintiff has the right to use the thirty (30) foot road, the boat ramp at the eastern end of the thirty foot road, and the property to the south of the road as he and his predecessors and interests have used historically.

25. The Plaintiff also requests that this Court grants an Order stating Defendant Adams has access to his own property by way of Ashton Drive and that it is not necessary for him to trespass on the Plaintiff's property to access his own.

26. The Plaintiff is further entitled to hid attorney's fees and costs, pursuant to S.C. Code Ann. § 15-53-100.

SECOND CAUSE OF ACTION

(Trespass)

27. The Plaintiff hereby repeats and realleges Paragraphs 1 through 26 above as though repeated herein verbatim.

28. The Defendant Adams has willfully, wantonly and deliberately denied the Plaintiff access to the Plaintiff's' property, blocking and prohibiting the Plaintiff's quiet enjoyment of his land.

29. The Defendant Adams has constructed a fence, blocking Plaintiff's access to a portion of his property, road and boat ramp he is entitled to and Defendant Adams continue to trespass on Plaintiff's property.

30. The Defendant Adams' willful and reckless actions entitles the Plaintiff to punitive damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Nuisance)

31. The Plaintiff hereby repeats and realleges Paragraphs 1 through 31 above as though repeated herein verbatim.

32. The Defendant Adams' actions have interfered and caused a nuisance with the Plaintiff's quiet enjoyment of his property for years.

33. The Defendant Adams has been repeatedly informed he was disturbing the Plaintiff's quiet enjoyment of his property to the extent law enforcement has had to intervene on multiple occasions.

34. Despite those notices, the Defendant Adams has continued to engage in behavior that constitutes a nuisance as well as a threat to the Plaintiff's well-being.

35. The Defendant Adams' actions are willful, wanton, and reckless, and as a direct and proximate result of this nuisance, the Plaintiff has suffered damages in amounts to be proven at the trial of this case.

FOURTH CAUSE OF ACTION
(Temporary and Permanent Injunction)

36. The Plaintiff hereby repeats and realleges Paragraphs 1 through 35 above as though repeated herein verbatim.

37. The Plaintiff would seek to enjoin the Defendant Adams from blocking the access to his property and from prohibiting the use of the road, which has been historically used by the Plaintiff and his family and predecessors in interest.

38. The Plaintiff would ask that the Defendant Adams be temporarily and permanently enjoined from blocking the road and boat ramp as the law of the case is that the Defendant Adams does not own the road and does not own the boat ramp.

39. As ruled upon by the Court of Appeals, and which ruling was not overturned by the South Carolina Supreme Court, making it the law of the case:

A reasonable interpretation of the master-in-equity's 1990 order is that the "unpaved county road", "unpaved Beaufort County road" and "thirty (30) foot dirt road" are all the same road. Neither Leroy Gardner, Sr., nor John Howard owned the road; thus, neither Charles Gardner nor Adams (through his position in the Howard Property's chain of title) owns it now. The 1995 and 2013 plats indicated Leroy Gardner, Sr., claimed ownership of the boat ramp, and the issue is not explicitly raised in the pleadings. As the record does not support the circuit court's findings that the Howard Property included the road or boat ramp, or that Adams owns both, we vacate these findings.

See Gardner v. Adams, Appellate Case No. 2018-001635 (Unpub. Op. No. 2022-UP-185) April 27, 2022)

40. Accordingly, the Defendant Adams does not own the road and cannot claim ownership through the Howard chain of title.

41. Therefore, the Defendant Adams cannot block the use of the road by the Plaintiff who has historically used the road and accessed his property through that road so that the Defendant Adams should be enjoined permanently from blocking such access and use

Wherefore, having complained of the Defendants, the Plaintiff prays that this Court enter its order and judgment as follows:

1. Granting and declaring the Plaintiff is the rightful owner of an easement over and across the thirty (30) foot road with access to the road and the boat ramp at the eastern end of the thirty foot road, and the property to the south of the road which has been owned and enjoyed by his family for over a century;
2. Record a confirming Master Deed with the Register of Deeds for Beaufort County as to the easement and use;
3. Declaring the Defendant Adams may access his property over the thirty (30) foot road;
4. Enjoining the Defendant Adams from blocking Plaintiff's access to his property by removing the fencing he placed on it;
5. Prohibiting the Defendant Adams from trespassing on the Plaintiff's property;
6. Awarding the Plaintiff attorneys' fees, costs and punitive damages; and
7. For all other relief that this Court deem just and proper.

Respectfully submitted,

Mt. Pleasant, SC
June 1, 2023

BUIST, BYARS & TAYLOR, LLC

s/ G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III
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Attorney for the Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,
Plaintiff,

vs.

TAYLOR REUBEN ADAMS,
Defendant.

BEAUFORT COUNTY'S ANSWER
TO THE PLAINTIFF'S ANSWER TO
COMPLAINT IN INTERVENTION,
COUNTERCLAIM AND
CROSSCLAIMS

The Intervenor, Beaufort County answering the Answer, Counterclaim and Crossclaims of the Plaintiff would allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation contained in the Plaintiff's Answer, Counterclaim and Crossclaim in response to the Complaint in Intervention not specifically admitted hereinafter is denied and strict proof demanded thereof.

2. Paragraphs 1 through 12 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, does not make an allegation against Beaufort County and, therefore, no responsive pleading is required.

3. In response to Paragraph 13 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, Beaufort County admits what has been admitted and denies what has been denied.

4. In response to Paragraph 14 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, Beaufort County admits so much of Paragraph #14 as it alleges that the Plaintiff, Charles Willis Gardner is a resident of Beaufort County and owns property on Warsaw Island. Beaufort County denies the remaining allegations contained in Paragraph 14 of the Plaintiff's Answer to

Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims and strict proof demanded thereof.

5. Upon information and belief, Beaufort County admits so much of Paragraph 15 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, as alleges that Taylor Reuben Adams is a resident of Beaufort County and owns real property on St. Helena Island which he obtained via a tax sale.

6. Beaufort County admits the allegations contained in Paragraph 16 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims.

7. Beaufort County admits the allegations contained in Paragraph 17 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims.

8. Upon information and belief, Beaufort County admits the allegations contained in Paragraph 18 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims.

9. Beaufort County admits the allegations contained in Paragraph 19 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims.

10. Beaufort County admits the allegations contained in Paragraph 20 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims.

11. Beaufort County admits the allegations contained in Paragraph 21 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims.

12. In response to Paragraph 22 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, Beaufort County has admitted what has been admitted and denies what has been denied.

13. Beaufort County admits the allegations contained in Paragraph 23 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims.

14. In response to Paragraph 24 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, Beaufort County will admit that because Beaufort County owns the subject property, the Plaintiff can use the subject roadway as a member of the general public.

15. In response to Paragraph 25 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, Beaufort County will allege that Beaufort County owns the subject roadway, and that the Defendant could use the subject roadway as a member of the general public.

16. Beaufort County denies the allegations contained in Paragraph 26 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims and strict proof demanded thereof.

17. In response to Paragraph 27 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, Beaufort County has admitted what has been admitted and denies what has been denied.

18. The allegations of Paragraphs 28, 29 and 30 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims are not addressed to this Defendant and, therefore, no responsive pleading is required.

19. In response to Paragraph 31 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, Beaufort County has admitted what has been admitted and denies what has been denied.

20. Paragraphs 32, 33, 34 and 35 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims are not addressed to this Defendant and, therefore, no responsive pleading is required.

21. In response to Paragraph 36 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims, Beaufort County will admit what has been admitted and denies what has been denied.

22. Paragraph 37 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims is not addressed to this Defendant and, therefore, no responsive pleading is required.

23. This Defendant admits so much of Paragraph 38 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims as alleges the law of the case is that the Defendant Taylor Adams does not own the road and does not own the boat ramp.

24. Beaufort County admits the allegations contained in Paragraph 39 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims

25. Beaufort County admits the allegations contained in Paragraph 40 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims.

26. Beaufort County admits the allegations contained in Paragraph 41 of the Plaintiff's Answer to Beaufort County's Complaint in Intervention and Counterclaim and Crossclaims.

WHEREFORE, Beaufort County prays this Honorable Court inquire into the matters set forth herein and enter its Order dismissing any counterclaims and crossclaims against Beaufort County, with an award of attorney's fees and costs to Beaufort County.

HOWELL, GIBSON & HUGHES, P.A.

By: s/Robert W. Achurch, III
Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Beaufort County

Beaufort, South Carolina

June 5, 2023

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer to the Plaintiff's Answer to Beaufort County's Complaint in Intervention, Counterclaim and Crossclaims upon all counsel of record by electronically filing with the court on 5th day of June, 2023.

By: s/Robert W. Achurch, III
Robert W. Achurch, III

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2017-CP-07-02110
	)	
CHARLES WILLIS GARDNER,	)	
	)	
Plaintiff,	)	
	)	ANSWER TO COMPLAINT
vs.	)	OF INTERVENTION
	)	
TAYLOR REUBEN ADAMS,	)	
	)	
Defendant.	)	
	)	

The Defendant, Taylor Reuben Adams, by way of Answer to Intervention Complaint by Beaufort County (Complaint), would allege that:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, qualified or explained is denied.
2. The Defendant admits the allegations of Paragraphs 1 through 5 of the Complaint.
3. The Defendant denies the allegations of Paragraph 6 of the Complaint.
4. The Defendant admits the allegations of Paragraph 7 of the Complaint.
5. The Defendant denies the allegations of Paragraphs 8 and 9 of the Complaint
6. The Defendant lacks sufficient information to form a belief as to the truth or falsity of Paragraph 10 of the Complaint. In the event the property was so used, upon information and belief, it was without the permission of the owner.
7. The Defendant denies the allegations of Paragraph 11 of the Complaint.
8. The Defendant admits the allegations of Paragraph 12 through 18 of the Complaint.
9. The Defendant denies the allegations of Paragraphs 19 the Complaint and would allege the Court of Appeals decision was based upon only the Plaintiff's Record of Appeal.
10. The Defendant admits the allegations of Paragraph 20 of the Complaint and would allege the Court of Appeals decision was based upon only the Plaintiff's Record of Appeal.

11. The Defendant denies the allegations of Paragraphs 21 and 22 of the Complaint. and would allege the Court of Appeals decision was based upon only the Plaintiff's Record of Appeal.

12. The Defendant admits the allegations of Paragraph 23 of the Complaint.

13. Paragraph 24 needs no further response.

14. The Defendant denies the allegations of Paragraphs 25, 26, and 27 the Complaint.

15. Paragraph 28 needs no further response.

16. The Defendant denies the allegations of Paragraphs 29 and 30 of the Complaint.

FOR A SECOND DEFENSE

17. Each and every allegation of the First Defense is realleged as fully as if repeated verbatim herein.

18. The Plaintiff's claims are barred by the Doctrine of Res Judicata in that all issues raised the Plaintiff have been previously litigated in a Quiet Title Action in Beaufort County bearing Civil Action No.: 1989-CP-07-879.

FOR A THIRD DEFENSE

19. Each and every allegation of the First and Second Defenses is realleged as fully as if repeated verbatim herein.

20. Beaufort County does not own the "unpaved roadway" or boat ramp and never maintained same.

21. Beaufort County has acknowledged that the County does not own the property and Defendant owns the Property.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

22. Each and every allegation of the First through Third Defenses is realleged as fully as if repeated verbatim herein.

23. The property in question is owned by the Defendant by virtue of the 1989 Quiet Title Action, the Defendant's deed and chain of title, the plats of record, and adverse possession.

WHEREFORE, have fully answered the Complaint, the Defendant prays that the Court inquire fully into the matters raised in the pleadings, issue the appropriate Orders, grant the Defendant his reasonable attorneys' fees and costs, and for such other and further relief as is just and proper.

FINGER, MELNICK & BROOKS, P.A.

s/Terry A. Finger

Terry A. Finger

S.C. Bar No.: 2012

Attorney for the Defendant

Taylor Reuben Adams

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Hilton Head Island, South Carolina
June 13, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BEAUFORT) CIVIL ACTION NO: 2017-CP-07-02110

CHARLES WILLIS GARDNER,)
)
 Plaintiff,)
)
 vs.) BEAUFORT COUNTY'S RESPONSE
) TO DEFENDANT ADAMS'S MOTION
 TAYLOR REUBEN ADAMS, and) TO RECONSIDER
)
 BEAUFORT COUNTY, SOUTH)
 CAROLINA,)
)
 Defendants.)

Comes now, Defendant Beaufort County, South Carolina ("the County"), and responds to the Motion to Reconsider filed April 11, 2024, by Defendant Taylor Reuben Adams ("Defendant Adams"). The County would show as follows:

Defendant Adams moves for reconsideration of the Court's Order entered April 5, 2024, largely rehashing rejected arguments. The Court heard, considered, and ruled against Defendant Adams' contentions that the chain of title showed him to be the owner of the subject property; that there was no evidence of Beaufort County ownership of the property; that County personnel and communications stated that the County did not own the subject property; and that Plaintiff's expert testified that, based on "process of elimination," his best guess was that Defendant Adams owned the subject property. The Court's

Order thoroughly explained the bases for rejecting these arguments, and no reconsideration is required.

Defendant Adams' contention that the Court of Appeals' opinion "has no presential [sic] value" is incorrect, as the Order itself remands the matter for further proceedings "consistent with [the] opinion." Defendant Adams is likewise mistaken that Plaintiff first conceded he did not own the subject property at trial, when the evidence demonstrated that he argued the County owned the road in his motion for reconsideration prior to the appeal. As to the fence and drain field, Defendant Adams asserts that the removal of these structures was not requested at trial. Defendant Adams erected a fence on the border of property owned by the County and Plaintiff and has no ownership interest in the area whatsoever. The County and Plaintiff are well within their rights to require him to remove it. The drain field was erected within the bounds of a County road even after the Court ordered that Defendant Adams was not permitted to erect any permanent structure on the road, nor render it unusable. Defendant Adams thereby did both and violated the Court's order accordingly. While he now argues the drain field was built before the Court of Appeals' Opinion, the interim order was issued for the pendency of the appeal and before the drain field was built.

Finally, Defendant Adams takes issue with the Court's treatment of his remaining claims involving unneighborly behavior and seeking costs and fees associated with the suit. The Court recounted the evidence heard as to the various trespass and harassment claims, noting the behavior of both Plaintiff and Defendant Adams. The Court understandably concluded that neither party could

demonstrate trespass where the subject property did not belong to either of them. The Court specifically dismissed all remaining claims with prejudice, thereby ruling upon them, and ruled that each party to the case was obligated to bear their own costs and fees. No reconsideration is warranted as to any of Defendant Adams' contentions.

Based on the foregoing, the County asks the Court to deny Defendant Adams' Motion to Reconsider.

HOWELL, GIBSON & HUGHES, P.A.

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Beaufort, South Carolina

May 1, 2024

STATE OF SOUTH CAROLINA, COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT

CHARLES WILLIS GARDNER,

Plaintiff,

v.

Case No.

TAYLOR REUBEN ADAMS and

2017-CP-07-02110

BEAUFORT COUNTY,

Defendants.

TRIAL

DATE: Monday, January 22, 2024

TIME: 10:06 a.m.

BEFORE: Honorable Judge Marvin Dukes

LOCATION: Beaufort County Courthouse

102 Ribaut Road

Beaufort, SC 29902

REPORTED BY: Ashley Manini

JOB NO.: 6114963

A P P E A R A N C E S

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1 A P P E A R A N C E S (Cont'd).

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I N D E X

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1	E X H I B I T S		
2	NO.	DESCRIPTION	ID/EVD
3	Plaintiff:		
4	Exhibit 1	Deed Rufus/Darfus Taylor	
5		Transferred to John Howard	111/169
6	Exhibit 2	Plat for Ardelle Gardner	26/34
7	Exhibit 3	Agreement with Alcoa South	
8		Carolina Dated 3/1/1983	30/34
9	Exhibit 4	Thomas & Hutton Letter	
10		Dated 3/14/1983	33/34
11	Exhibit 5	Letter from Army Corps	
12		of Engineers	35/35
13	Exhibit 6	Letter to Alcoa from	
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15		Carolina Coastal Council	36/36
16	Exhibit 7	Larger Copy of Plat	37/37
17	Exhibit 8	1990 Order by Judge	
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19	Exhibit 11	Deed from Leroy Gardner	
20		to Charles Gardner	46/52
21	Exhibit 12	Deed from John Howard to	
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23	Exhibit 13	Mortgage to Community	
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1	E X H I B I T S (Cont'd)		
2	NO.	DESCRIPTION	ID/EVD
3	Plaintiff (cont'd):		
4	Exhibit 14	Larger Plat Showing	
5		Combined Two Parcels	52/52
6	Exhibit 15	South Carolina Electric	
7		and Gas Company Easement	60/169
8	Exhibit 16	Plat Showing Location of	
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10	Exhibit 17	Tax Deed Against Pearl	
11		Howard	60/169
12	Exhibit 19	Deed from Dale A. Gabardy	
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15	Exhibit 20	Letter from Eric Klapp	
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23		Boat Ramp	75/*
24	Exhibit 42	Plat Prepared for Charles	
25		Gardner by David Youmans	82/169

1	E X H I B I T S (Cont'd)		
2	NO.	DESCRIPTION	ID/EVD
3	Plaintiff (cont'd):		
4	Exhibit 43	Court of Appeals Opinion	85/86
5	Exhibit 44A	Set of Photos Including	
6		Gardner 296	86/169
7	Exhibit 44B	Set of Photos Including	
8		Gardner 310	88/93
9	(*Exhibit withdrawn.)		
10			
11	NO.	DESCRIPTION	ID/EVD
12	Defendant:		
13	Exhibit 1	Deed from Charles Gardner	
14		to Leroy Gardner, Sr.	102/102
15	Exhibit 2	Photos of Alleged	
16		Harassment #1	124/
17	Exhibit 3	Photos of Alleged	
18		Harassment #2	124/
19	Exhibit 4	Photo of No Trespassing	
20		Sign	126/127
21	Exhibit 5	Photo of Cable Across Road	126/127
22			
23			
24			
25			

P R O C E E D I N G S

THE COURT: Good morning, then. I'm Marvin Dukes, Master-In-Equity for Beaufort County. This is the case of Gardner vs. Adams and Beaufort County, case 2017-CP-07-02110. This matter comes to me by order of reference filed -- what is that, August 15th, you said?

MR. O'KELLEY: Oh, sorry, Your Honor.

THE COURT: 18?

MR. O'KELLEY: I'll tell you one more time. The order of reference was 8/15/18 from Judge Mullen.

THE COURT: 8/15/18 this matter was referred to me. I've heard a couple of motions on it. I'm somewhat familiar with the general dispute, but today is, of course, the trial, and we'll hear all of the evidence and see what we can do.

So I am happy to hear openings, and I'm happy to hear from the plaintiff.

MR. O'KELLEY: Thank you, Your Honor. Hamlin O'Kelley, and may it please the court.

I'm here with my client, Charles Gardner, who hired me as his second set of lawyers in this case. As Your Honor will remember, this case was filed back in 2017.

1 Mr. Finger's client prevailed on the
2 motion for summary judgment, and the case went up to
3 the Court of Appeals, and the Court of Appeals sent it
4 back to be heard with findings to be made by this
5 court, or trial court, consistent with their order.

6 And what we're here about is property
7 out on Warsaw Island on St. Helena -- right off of St.
8 Helena. My folks, Mr. Gardner and his family, have
9 lived out at Warsaw forever. They own property that
10 has been in the family for a long time, Your Honor.

11 And part of this property, so they
12 thought, was a road. As you come onto Warsaw Island
13 and you take the Warsaw Island Road, it ends and turns
14 into what's called Ashton Drive; and past that is a
15 road that is the -- really the property that's in
16 question here today, a road that leads down to a boat
17 ramp back on Jenkins Creek.

18 And you'll hear today that historically
19 Mr. Garnder used that unpaved portion to access his
20 house. He used it forever. And then, lo and behold,
21 the neighbor across the unpaved road, Mr. Howard,
22 ended up losing his property at a tax sale.

23 And that tax sale resulted in another
24 sale in which the defendant, Mr. Adams, acquired this
25 property, his property, which he acquired by deed from

1 the trustee of something called the Gabardy Trust, and
2 that document is going to be presented to you, Your
3 Honor.

4 And in that document, it's clear that
5 Mr. Adams received 1.05 acres. That's on the face of
6 the deed. And then, through some, I guess some
7 magical thinking or some sort of way in which you
8 decide you're going to get something even though you
9 didn't pay for it and you're not entitled to it, Mr.
10 Adams came along and said he owns this unpaved road
11 that leads down to the boat ramp.

12 We think he's incorrect. He put up a
13 fence. He put up a gate. Mr. Gardner had to actually
14 change his entrance to his house. He had to cut a new
15 driveway off of Ashton Road, which is the road as you
16 come in, Ashton turns, makes a strong left. But for
17 years, he and his family have been going down this
18 portion of the road.

19 And what you're going to hear today
20 from Mr. Gardner, you're going to hear from Mr. Ed
21 Atkins.

22 Please stand up, Mr. Atkins, just so
23 the judge can see you.

24 Mr. Atkins. You're going to hear from
25 David Youmans who is right here, Your Honor; you might

1 know he's testified before you before.

2 And from David Gasque about the use of
3 this road historically, what Mr. Youmans and Mr.
4 Gasque as surveyors determined or thought about the
5 road.

6 Interestingly enough, Mr. Youmans
7 actually lives out on Warsaw Island and knows this
8 property as a layperson, as well.

9 What you're also going to hear, Your
10 Honor, is there's a lot of bad blood between these
11 folks. We -- you hope people will be neighborly.
12 Well, they haven't been neighborly.

13 There's an order in place that Judge
14 Mullen signed early on in this case saying neither
15 party was to harass each other, neither party was to
16 change anything as to the property.

17 There's an order Your Honor signed in
18 this case in 2018 that said no structures should be
19 put on this property, and it shouldn't be gated off.

20 Well, the defendant is in violation of
21 numerous aspects of those orders, which you'll hear,
22 including putting in a drain field, which we contend
23 is a structure and should be pulled up.

24 And that's really the crux of the
25 matter, Your Honor. Mr. Adams can't make this

1 property work. It can't be a viable property with a
2 septic system unless he claims the road because
3 there's not enough property for him to put in the
4 septic system and to be in compliance with the
5 requirements of DHEC for septic purposes.

6 You are also going to hear that when we
7 took Mr. Adams' deposition, he admitted certain things
8 under oath including, you know, yelling at my client,
9 using profanity at my client, and basically being in
10 violation of prior orders of this court and Judge
11 Mullen.

12 Again, I've told you who the witnesses
13 are, Your Honor. One thing I need to bring up that I
14 think is paramount in this case that the Court of
15 Appeals thought was paramount in this case is an order
16 from 1990 from Tommy Kemmerlin.

17 Judge Kemmerlin had a quiet title
18 order, which is going to be an exhibit to this matter,
19 and which Your Honor has read and which the Court of
20 Appeals quoted from extensively, the 1990 Decree of
21 Title Clearance.

22 And on page 3 in the Facts and
23 Procedural History section of the Court of Appeals
24 order, they, the Court of Appeals, Judge -- the
25 tertiary in case actually lifts wholesale from Judge

1 Kemmerlin's order. And what he determined and Judge
2 Kemmerlin determined in 1990, and again that case was
3 not appealed and it's the law of the case, is that
4 there was a save and except portion for the 30-foot
5 dirt road.

6 Judge Kemmerlin called that dirt road
7 the unpaved Beaufort County road. He called it the
8 unpaved county road. He called it the unpaved county
9 road and the unpaved road several times.

10 So that's the problem that brings us
11 here today, Your Honor, is who owns this road, who's
12 allowed to go over it. We're confident we'll show you
13 that Mr. Adams -- excuse me, Mr. Gardner has the right
14 to go over this road and has for years.

15 We're going to tell you about the
16 history of the road and the boat ramp, that Alcoa
17 actually contacted the Gardner family when they built
18 -- developed Dataw back in the early '80s to use this
19 road and the boat ramp to get their stuff across
20 Jenkins Creek.

21 Because, as Your Honor may remember,
22 the old bridge at Dataw was a bit rickety. It was an
23 old, wooden bridge that cars couldn't even go over if
24 there were passengers on it.

25 So this is going to be sort of the

1 history of Warsaw Island to a certain extent, a
2 history of the Gardner family. And we're hoping that
3 Your Honor will come to the same conclusion that we've
4 come to as to the use of the road.

5 Thank you.

6 THE COURT: Thank you very much.

7 Mr. Finger, I'm happy to hear from you,
8 sir.

9 MR. FINGER: May it please the court.

10 Your Honor, I have to my right Reuben
11 Adams, who is the defendant in this matter. I think
12 it's inciteful for the court to look at, actually,
13 what issues are framed by the plaintiffs.

14 And in this case, what was originally
15 filed by Mr. Gardner with his -- Hamlin said he was
16 the second lawyer; he's actually the third lawyer
17 involved with Mr. Gardner. The first lawyer sued my
18 client for trespass, saying being on the property and
19 being on that 30-foot road was trespass.

20 Clearly, the facts in this case show
21 that Mr. Gardner does not own this dirt road or this
22 portion where a dirt road has been.

23 In the amended complaint that Mr.
24 O'Kelley has filed, he says his client has the right
25 to use the 30-foot road and boat ramp.

1 He says my client has no right to
2 trespass on Mr. Gardner's property to access his own.
3 There's no showing. There's no facts that show my
4 client has ever trespassed on any property of Mr.
5 Gardner.

6 And then, the first cause of action
7 also seeks attorney's fees under Section 15-33-100
8 which is a declaratory judgment thing. It says the
9 court may award costs; it doesn't say anything about
10 attorney's fees.

11 The second cause of action in the
12 amended complaint says that my client has
13 intentionally denied Plaintiff access to his property,
14 that the fence that my client installed denies the
15 plaintiff access to his property, and seeks punitive
16 damages.

17 There is no question that Mr. Gardner
18 has access to his property from Ashton Cove. He does
19 not need to use this 30-foot road to access his
20 property.

21 The third cause of action says that my
22 client has created a nuisance and disturbed quiet
23 enjoyment, and Mr. Gardner seeks damages.

24 The fourth cause of action seeks an
25 injunction prohibiting my client from blocking the

1 road and the boat ramp.

2 In response to those four causes of
3 action, my client filed the standard first offense of
4 affirming and denying, a second offense he said is res
5 judicata. Mr. Gardner does not own this road; that's
6 clear from the testimony before Judge Buckner and the
7 record that was given to the Court of Appeals and the
8 Court of Appeals order.

9 Our third defense is unclean hands.
10 Mr. Gardner is seeking equitable relief from this
11 court, and his hands are not even close to being
12 clean. We filed a counterclaim for trespass,
13 harassment, seeking damages. We filed a counterclaim
14 for a frivolous civil procedure sanctions act and
15 sought attorney's fees.

16 We filed a counterclaim for invasion of
17 privacy, a counterclaim for nuisance, and a
18 counterclaim for injunction on harassment.

19 There are certain facts that are a
20 given in this matter, Your Honor. And the first one
21 is, is that Mr. Gardner does not own any portion of
22 this dirt road or any right in the program. His own
23 plats show that. His own deed from his father
24 specifically excludes the road and anything below his
25 property line.

1 The quiet title action from Judge
2 Kemmerlin says John Howard owns the road. In the
3 chain of title, and you'll have all the deeds in the
4 chain of title, we can go back to 1946 on this
5 particular piece of property that my client now owns.

6 There's a deed, it'll be Exhibit 46, in
7 1946 from Isabella Black of -- Township to either
8 Rufus or Darfus Taylor, I can't tell from the -- such
9 an old deed, you can't really tell. That said, it is
10 2.5 acres, is what my client has in his chain of
11 title.

12 The next deed from the -- of that '46
13 deed is in 1960, it's Exhibit 47, from Rufus or Darfus
14 Taylor to John Howard. It says 1.9 acres.

15 You then have John Howard transferring
16 it to Pearl Howard, his wife, 1.9 acres. And then Ms.
17 Howard loses it at a tax sale; it is purchased by the
18 Gabardy Trust at the tax sale, and my client takes
19 whatever Gabardy got from the tax sale.

20 The chain of title clearly shows my
21 client owns not only the 1.05 acres which is
22 referenced in his deed, but also anything that Rufus
23 Taylor, John Howard, and Pearl Howard had in the
24 chain.

25 It is clear that the county in their

1 intervention lawsuit, it is clear that the county does
2 not own this road. There is a letter from Eric Klatt
3 saying the county doesn't own it and has never
4 maintained it. GIS shows that the county does not
5 claim this road.

6 The list of boat ramps in Beaufort
7 County from the county's records shows that this is
8 not a county boat ramp. My client will have -- will
9 testify that various county employees have told him he
10 owns the road. My client will also testify that
11 various surveyors have told him he owns the road.

12 The harassment is the troubling portion
13 of this lawsuit, Your Honor. There has been so much
14 just short of physical combat harassment leveled at my
15 client. My client has been dragged into magistrate's
16 court three times for allegedly violating harassment
17 restraining orders, and each time, he was found not to
18 have done so by the appropriate -- by the applicable
19 magistrate.

20 The last time we were in court and Mr.
21 Gardner alleged that my client was harassing him was
22 January 3, 2023. My client filed a harassment back
23 against Mr. Gardner. Magistrate Corley put Mr.
24 Gardner in jail for seven days, finding that he, in
25 fact, had harassed my client.

1 And you will see as recently as last
2 week that the harassment with the blaring loud music,
3 the vulgar language; we have pictures of people who
4 are -- it's either Mr. Gardner or his guests pulling
5 their pants down and mooning my client, flipping him
6 the bird, taking their penis out and pointing it at my
7 client, and saying horrible things about my client's
8 wife.

9 So that harassment continues as
10 recently as last week, and those videos have been
11 given.

12 Your Honor, we thank you for your
13 attention. We will try to go as fast as we can. I
14 intend on calling Mr. Adams and his wife as my only
15 two witnesses.

16 Thank you, Your Honor.

17 THE COURT: Thank you so much.

18 I'm happy to hear from the county.

19 MR. KIDD: Thank you, Your Honor. May
20 it please the court.

21 My name is Dylan Kidd. I'm here with
22 Robert Achurch of Howell Gibson & Hughes, and we
23 represent Beaufort County in this matter.

24 As Your Honor is aware, we are a late
25 addition to the lawsuit. We intervened after the

1 Court of Appeals opinion was issued in this case,
2 which remain the proceedings to Your Honor consistent
3 with the opinion that your hearing in court reached.

4 We -- first, we contend that any
5 interpretation of the evidence presented today must be
6 interpreted in light of the Court of Appeals order
7 which, of course, referenced Judge Kemmerlin's 1995
8 title action.

9 We are confident that the evidence
10 today and interpreted through the lens of the Court of
11 Appeals order will not change the conclusion that the
12 Court of Appeals reached, which is that neither Mr.
13 Gardner nor Mr. Adams owns this portion of the road.

14 We think that the historical documents
15 will demonstrate that this part of the road has always
16 been treated as separate and apart from the properties
17 claimed by Mr. Adams and Mr. Gardner.

18 As to the -- as it has repeatedly been
19 referred to, as the Court of Appeals pointed out, the
20 county road, the unpaved county road, et cetera, we
21 also are in front of Your Honor seeking equity.

22 Frankly, we believe that an equitable
23 outcome in this case would be that the county owns the
24 road and is able to make the needed improvements and
25 maintain it, and that neither party would then require

1 an easement to access their properties down a road
2 owned by the county.

3 As to the statements of the county
4 employees in the past, we will showcase law to
5 demonstrate that any misinterpretation of, or any
6 legal opinion that was erroneously stated by a county
7 employee does not bind the county in the litigation;
8 that we believe that Your Honor will reach the same
9 conclusion that the Court of Appeals did today after
10 hearing testimony.

11 We thank Your Honor.

12 THE COURT: Thank you very much.

13 MR. O'KELLEY: And, Your Honor, as a
14 matter of housekeeping, Mr. Finger, Mr. Kidd, Mr.
15 Achurch, and I have agreed on almost all of the
16 exhibits except for a few.

17 And we can -- do you want us to tell
18 you which ones we're disputing? Or just as we go
19 through? It doesn't matter to us.

20 THE COURT: I'm happy to do it as we go
21 through.

22 MR. O'KELLEY: Okay. All right.

23 THE COURT: In case there are
24 objections that need to be made on the record.

25 MR. O'KELLEY: Thank you, Your Honor.

1 THE COURT: It probably makes more
2 sense to do it that way, but I appreciate that.

3 MR. O'KELLEY: Yes.

4 MR. FINGER: Your Honor, may we
5 approach on that subject?

6 THE COURT: Yeah, come on up.

7 (Discussion was held off the record.)

8 THE COURT: For all witnesses that are
9 going to sit up here, there's a tripping hazard here,
10 so just be careful as you ascend.

11 MR. O'KELLEY: Your Honor, at this
12 time, we call Charles Gardner to the stand.

13 THE COURT: Good morning, sir. Come on
14 around here.

15 MR. O'KELLEY: Come right up the same
16 walk. Go carefully because there is a bit of a trip.

17 THE COURT: Now that you're situated,
18 hold your right hand up for me, please?

19 WHEREUPON,

20 CHARLES GARDNER,
21 called as a witness, and having been sworn to tell the
22 truth, the whole truth and nothing but the truth, was
23 examined and testified as follows:

24 THE COURT: Okay. Thank you so much.
25 State your full name for the record, please?

1 THE WITNESS: Charles W. Gardner.

2 THE COURT: Thank you so much. Please
3 answer the questions your counsel may have of you.

4 MR. O'KELLEY: And, Your Honor, just so
5 for access to exhibits, I'm just -- is it all right if
6 I stand here?

7 THE COURT: Of course it is.

8 DIRECT EXAMINATION

9 BY MR. O'KELLEY:

10 Q Mr. Gardner, tell His Honor where you live?

11 A I live at 259 Warsaw Avenue, St. Helena
12 Island, South Carolina, zip code 29920.

13 Q And how long have you lived at that
14 property, sir?

15 A I built my house I think it was 1997.

16 Q And tell His Honor where you're from, where
17 you grew up, your education, your background?

18 A I grew up on Warsaw Island and graduated
19 from St. Helena in 1960. I went to New York State
20 about three months, and I went into the military, the
21 United States Air Force for four years.

22 I moved back to New York, and I worked with
23 New York City Transit and New York -- and the United
24 States Post Office.

25 Q And how long did you work in New York, Mr.

1 Gardner?

2 A About -- I worked for the transit for 20
3 years and the U.S. Post Office with my military
4 retirement about 28 years.

5 Q And when did you move home, Mr. Gardner?

6 A Back in 1992. I retired in 1992. After
7 that, I moved back when my father took sick. And he
8 give me all the information that I need.

9 Q So the land that you live on, has that been
10 in your family a long time?

11 A Yes. Since 1976 with my uncle.

12 Q Who is your uncle?

13 A Dan Taylor.

14 Q And how he he your uncle? Your mother's
15 brother?

16 A My mother's side.

17 Q And then how did your father come to own the
18 property where you live?

19 A After my mother passed away in 1983, I
20 think.

21 Q Because your mother inherited the property?

22 A From my uncle, Dan Taylor.

23 Q And what was your mom's name?

24 A Adelle Simmons Gardner.

25 Q And neither she nor your father are alive;

1 correct?

2 A No.

3 Q Okay. And you heard my opening, and you
4 heard Mr. Finger's; you've been involved in this case
5 for a long time. Tell the judge what brings us here?

6 A This bring us here I think in 19 -- I think
7 it was 2015. I came out the house one day.. Mr.
8 Reuben had the road blocked off.

9 Q And would that be Mr. Adams, who is in the
10 courtroom?

11 A Yes.

12 Q Okay.

13 A And so I came out and I asked him why he
14 blocked the road off. He said he owned the road. And
15 I told him no, he did not own the road.

16 Q Why did you tell him he didn't own the road?

17 A Because we always thought that was our road,
18 our private road. Every time that someone needed to
19 come down there, they used to ask my father or ask me.
20 When 19 -- I think it was 1990, I think, my
21 grandmother passed away, then they separated the
22 property, and they said we own all that up to the --
23 to the -- you know, the road.

24 MR. FINGER: You know, that would be
25 hearsay, Your Honor.

1 THE WITNESS: Yes?

2 THE COURT: Yes, sustained.

3 THE WITNESS: Okay.

4 MR. FINGER: Thank you.

5 BY MR. O'KELLEY:

6 Q Let's change the question. What did you
7 believe you owned at the time?

8 A Because everyone keep coming down and asking
9 me to use the road and the boat landing.

10 Q And at some point, do you remember that --
11 well, let's just go here. There was a -- you've seen
12 all the deeds and plats in this case, haven't you, Mr.
13 Gardner?

14 A Yeah, most of it. Yes.

15 Q All right. I'm going to show you what's
16 been marked as Exhibit 2. And it's a plat for Ardelle
17 Gardner.

18 (Plaintiff Exhibit 2 was marked for
19 identification.)

20 MR. O'KELLEY: And, Your Honor, they're
21 in order up there, but we skipped over Number 1.

22 THE COURT: I see we have 46 on top, so
23 it must be on the bottom.

24 MR. O'KELLEY: Oh, no.

25 THE COURT: I'll flip them over here.

1 MR. O'KELLEY: Did I give them to
2 you -- I might have given them to you upside down.

3 THE COURT: I'm going to flip them back
4 the way I got them originally.

5 BY MR. O'KELLEY:

6 Q Mr. Gardner, have you seen that plat before,
7 Number 2?

8 A Yes.

9 Q And it says it's a plat for Ardelle Gardner,
10 and it's recorded in 1979, I think?

11 A I think it's '76.

12 Q '76? All right. Well, I can't tell, so --
13 and tell His Honor what we're looking at with that
14 plat, sir?

15 A We looking at the -- when my uncle signed it
16 to my mother, you're looking at the whole -- whole
17 area.

18 Q And it says "Cow Head Creek"; where is Cow
19 Head Creek? Do we know that by another name?

20 A We used to call it Warsaw Creek, but now I
21 think they call it Jenkins Creek.

22 Q All right. And holding your plat up, just
23 point -- show His Honor where your property is?

24 A In here.

25 Q And you're pointing to where it says "8.91

1 acres"?

2 A Right.

3 Q And do you see on that plat two roads, Mr.
4 Gardner?

5 A Yeah, one -- Ashton Road and Warsaw Island
6 Road is the one I think to the boat ramp.

7 Q Where it says -- where it shows a dead
8 ending onto the marshes of Cow Head Creek?

9 MR. O'KELLEY: And, Your Honor, may I
10 approach just to make it clear?

11 THE COURT: Sure.

12 MR. O'KELLEY: What I'm pointing out is
13 this section on the bottom that --

14 MR. FINGER: Okay. I just wanted to be
15 able to see.

16 I'm sorry, Your Honor, for imposing.

17 THE COURT: Yeah, it's this corner
18 right here.

19 MR. O'KELLEY: It's just really little.
20 It's --

21 MR. FINGER: Okay.

22 MR. O'KELLEY: It's marked as "30-foot
23 boat road," I think is what it says there.

24 MR. FINGER: I think it says "dirt
25 road," I think.

1 MR. O'KELLEY: Or "dirt," "boat."

2 BY MR. O'KELLEY:

3 Q And is that the road that brings us here
4 today, Mr. Gardner?

5 A Yes.

6 Q And to your knowledge, you thought that road
7 belonged to your family; right?

8 A Yes.

9 Q And until this case got started, you and
10 your family used the road; correct?

11 A Yes.

12 Q And did other people on Warsaw use the road?

13 A Yes --

14 MR. FINGER: And what other people use
15 the road is irrelevant, Your Honor. I would object.

16 MR. O'KELLEY: I disagree, Your Honor.

17 THE COURT: I'll allow it.

18 MR. O'KELLEY: Thank you.

19 THE COURT: Thank you.

20 MR. FINGER: Just note my objection,
21 please.

22 THE COURT: Noted. Thank you.

23 BY MR. O'KELLEY:

24 Q I'll ask again. Other people on Warsaw used
25 the road?

1 A The whole community and different people
2 from different community used the road.

3 Q And I'm going to show you what's been marked
4 as Exhibit 3. This is an agreement from 1983 with
5 Alcoa South Carolina signed by someone named William
6 Cochrane.

7 (Plaintiff Exhibit 3 was marked for
8 identification.)

9 In 1983, who owned the property that you own
10 today?

11 A In '83, it was my mother before she passed
12 away.

13 Q All right. And that's a lease bind between
14 Ardelle Gardner and Alcoa; correct?

15 A Yes.

16 Q And it says it's for a proposed storage yard
17 and staging area for construction equipment for use on
18 Dataw Island; have you read that? In the middle?

19 I'll point it out to you. In the middle of
20 the page, it says right here?

21 A Yes.

22 Q "Proposed storage yard, construction area";
23 do you see that?

24 A Right.

25 MR. FINGER: Your Honor, if you'll just

1 note my objection to this document, Your Honor. Ms.
2 Gardner died on April 14, 1982. This document is
3 dated 1983. It's obvious that someone forged her name
4 on it, and I would object on those grounds.

5 MR. O'KELLEY: Your Honor, there's been
6 no evidence of forgery here. This is a document that
7 on its face looks to be signed by someone named
8 Ardelle Gardner and by William Cochrane. That would
9 be a subject for cross-examination, I think.

10 MR. FINGER: I'll be happy to cross-
11 examine on this. A series of deeds, one of them
12 signed by Mr. Gardner, which affirms that his mother
13 passed on 4/14/82. There's no way she could have
14 signed this document in 1983 if, in fact, she passed
15 the prior year.

16 THE COURT: I'll tell you what. I'll
17 allow it for now subject to your objection.

18 MR. O'KELLEY: Thank you, Your Honor.

19 THE COURT: Which is noted for the
20 record, but I'll note that this is filed in the county
21 records and documented. I can't read the -- page,
22 but --

23 BY MR. O'KELLEY:

24 Q And that was going to be my next question
25 is, this document was filed of record in the county on

1 March 28, 1983; do you see that?

2 A Yes. I came home, my mother was sick. And
3 that's when they was talking to Alcoa. And my mother
4 died in 1983.

5 Q Let me show you on the back of that
6 document, there's a drawing and a plat; do you see
7 that? Have you seen that before?

8 A Is that pencil? I'm not sure.

9 Q And it says "Proposed" -- can you read that
10 into the --

11 A Yeah, I think this is where they said they
12 put that on one side.

13 Q And Alcoa used that road?

14 A Yes. To build out there.

15 Q They used that boat ramp; correct?

16 A Yes.

17 Q You saw them using it; correct?

18 A No, I wasn't there when they were using it.

19 Q But you know they used it?

20 A But I know they used it. I was there when
21 my mother signed this document just before she passed
22 away. She passed away in March of '83.

23 Q And this document is dated March 1 of '83;
24 correct?

25 A Yes.

1 Q We've marked several documents. You weren't
2 involved with any of the permitting that Dataw had to
3 -- that Alcoa had to do for Dataw, were you, Mr.
4 Gardner?

5 A No, I didn't have nothing to do with that.

6 Q Okay. But since that time, you've come to
7 learn that they were showing -- and this is on Exhibit
8 4 -- drawings showing the Gardner tract being 9 acres
9 showing 30-foot earth road and the boat ramp; you've
10 seen this before, right?

11 (Plaintiff Exhibit 4 was marked for
12 identification.)

13 A No, this is the first time I've seen this.

14 Q Okay.

15 A If I remember.

16 THE COURT: Was this the Thomas &
17 Hutton letter?

18 MR. O'KELLEY: Yes, sir. From Danny
19 Stanley from March 14 of 1983.

20 THE COURT: And just to catch up real
21 quick for me and perhaps our court reporter, we
22 have -- this plat was Plaintiff's 1; is that correct?

23 MR. O'KELLEY: No, sir. It's
24 Plaintiff's 2.

25 THE COURT: Plaintiff's 2? What's

1 Plaintiff's 1?

2 MR. O'KELLEY: Plaintiff's 1 was the
3 deed we haven't gotten to yet, Your Honor.

4 THE COURT: Oh, okay. All right.
5 That's why I'm confused.

6 MR. O'KELLEY: Yeah, right.

7 THE COURT: All right, so we have 2.

8 (Plaintiff Exhibit 2 was received into
9 evidence.)

10 We have Plaintiff's 3 that was
11 admitted --

12 MR. O'KELLEY: Over objection.

13 THE COURT: Over objection.

14 (Plaintiff Exhibit 3 was received into
15 evidence.)

16 And then we have 4 to which there's no
17 objection, the Thomas & Hutton letter.

18 MR. FINGER: Bear with me one second,
19 Your Honor. Without objection, Your Honor.

20 THE COURT: Okay. Thank you.

21 (Plaintiff Exhibit 4 was received into
22 evidence.)

23 BY MR. O'KELLEY:

24 Q And Number 5 is another letter from the Army
25 Corps of Engineers. What it says is the proposed

1 temporary clearing dock located on Warsaw Island is to
2 be a permanent structure for the private recreational
3 use of the property owner; are you that property owner
4 now, Mr. Gardner?

5 (Plaintiff Exhibit 5 was marked for
6 identification.)

7 A Let me read it first. Yes, my father told
8 me about that before he passed away, that they
9 couldn't move it once they put it up there.

10 Q And you still have the dock on your property
11 today, don't you, Mr. Gardner?

12 A Yes, it's still there.

13 MR. O'KELLEY: All right. Your Honor,
14 we've moved Number 5 in.

15 MR. FINGER: Without objection, Your
16 Honor.

17 THE COURT: Thank you. Plaintiff's 5.
18 (Plaintiff Exhibit 5 was received into
19 evidence.)

20 BY MR. O'KELLEY:

21 Q And Number 6 is another letter to Alcoa from
22 Thomas & Hutton regarding the permit from the South --
23 what was then called the South Carolina Coastal
24 Council.

25 //

1 (Plaintiff Exhibit 6 was marked for
2 identification.)

3 And what it shows is basically the
4 construction of a dock on Jenkins Creek; does that
5 look like your dock today?

6 A The dock is still there. It's this
7 construction?

8 Q Yes, sir.

9 A Yes.

10 MR. O'KELLEY: Your Honor, at this
11 time, we move Number 6 in.

12 THE COURT: All right. That'd be 6
13 with no objection.

14 MR. FINGER: Without objection, Your
15 Honor.

16 (Plaintiff Exhibit 6 was received into
17 evidence.)

18 MR. O'KELLEY: And then we've got a
19 larger copy.

20 Mr. Finger, this is the larger copy of
21 the attachment to the back.

22 MR. FINGER: Without objection, Your
23 Honor. That's Number 7?

24 MR. O'KELLEY: Yes.

25 Your Honor, this is Number 7, which

1 you'll see is the plat here, although it's larger. It
2 should be a folded document right behind -- that's it.

3 (Plaintiff Exhibit 7 was marked for
4 identification.)

5 THE COURT: This one?

6 MR. O'KELLEY: Yes, sir. Yes, sir,
7 this one.

8 THE COURT: This will be 7?

9 MR. O'KELLEY: Correct.

10 (Plaintiff Exhibit 7 was received into
11 evidence.

12 BY MR. O'KELLEY:

13 Q And that document shows larger what we just
14 talked about, doesn't it, Mr. Gardner?

15 A Right.

16 Q And tell the court what we're looking at
17 there?

18 A You're looking at when Alcoa first
19 construction, this is -- yeah, this is where they used
20 to park their -- on this side, they used to park their
21 equipment. This is what they used, and this is the
22 other side they used their equipment -- to park their
23 equipment on one side. This is the boat landing.
24 This is the boat landing.

25 Q And then it shows the post dock; correct?

1 A Yes. Right here.

2 Q And that's the dock that eventually got
3 built that's on your property?

4 A Still -- right.

5 Q Mr. Gardner, I'm going to show you an order
6 from 1990 by Judge Tommy Kemmerlin. We've discussed
7 that, haven't we, sir?

8 (Plaintiff Exhibit 8 was marked for
9 identification.)

10 A Yes.

11 Q And tell the judge who the plaintiff is in
12 that case, Leroy Gardner, Sr., who is he?

13 A My father.

14 Q And your father is suing, it says "Ardelle
15 S. Gardner," and that's your mother; correct?

16 A Yes.

17 Q And then Charles W. Gardner, is that you?

18 A Yes.

19 Q And how about Mary Jane Gardner, who's that?

20 A That's my sister. She's sitting back there.

21 Q All right. And how about Ronald Lee
22 Gardner, who is he?

23 A That's my brother. He's deceased.

24 Q And how about Leroy Gardner, Jr.?

25 A He's my brother. He live in Atlanta.

1 Q All right. How about Arthur Stewart, do you
2 know who that is?

3 A No, I don't know who that is.

4 Q All right. How about Willie Taylor, do you
5 know who that is?

6 A Yes.

7 Q Who's Willie Taylor?

8 A He passed away. That's my -- my grandmother
9 -- I think -- I don't know if it was the brother of
10 my grandmother, kin to my grandmother.

11 Q All right. How about Juanita Taylor?

12 A Yes.

13 Q Who is she?

14 A She passed away. That was Willie Taylor's
15 sister.

16 Q One of your cousins?

17 A Yes. On my mother's grandmother's side.

18 Q And how about George Knowles, who is George
19 Knowles?

20 A George, he was married to, it was Pecola.
21 Her name was Pecola Frazier.

22 Q There's the next person listed on here is
23 Pecola Knowles; so that was --

24 A Right. She did marry -- George married
25 Pecola.

1 Q And who were they, sir? Were they related
2 to you in any way?

3 A Pecola Knowles was my grand-uncle's
4 daughter, Ramsey [ph] Gardner.

5 Q And how about Prince Gardner, who was Prince
6 Gardner?

7 A That's my cousin. He -- we own property
8 next to each other.

9 Q All right. And how about Franklin Heyward?

10 A Franklin Heyward was another of my cousins.
11 He lived between me and Prince.

12 Q Okay. How about John Mattis, who is that?

13 A John Mattis, he deceased. That who we used
14 to -- I bought my property from, my other property.

15 Q Where's that other property, Mr. Gardner?

16 A Other property is on 13 Patchwork Lane.

17 Q But not near the property we're talking
18 about today; correct?

19 A No. No.

20 Q Okay. And what about Lillian Mattis; she's
21 on the next page?

22 A That's John Mattis' wife.

23 Q All right. How about Linda Johnson, who is
24 she?

25 A Linda Johnson is Franklin Heyward's

1 daughter.

2 Q All right. And how about Gerlene Mattis,
3 also known as Cerlene Mattis?

4 A No.

5 Q Do you know who that is?

6 A No.

7 Q All right. How about Norman Mattis, do you
8 know who that is?

9 A No.

10 Q How about Lilly Mae Frazier Simmons, do you
11 know who that is?

12 A No.

13 Q How about John Pizarro?

14 A Johnny Pizarro is -- is Lilly Mae's husband.

15 Q Okay. So you do know who Lilly Mae Simmons
16 is?

17 A No, not Lilly Mae Simmons. Her name wasn't
18 that.

19 Q Is it Lilly Mae Pizzaro, the next person
20 listed?

21 A Lilly Mae Pizzaro, yes.

22 Q Okay.

23 A That's my classmate.

24 Q All right. How about John Howard, who is
25 that?

1 A John Howard married to Pearly Howard. Perly
2 Howard -- I mean, Pearly Atkins was my cousin.

3 Q And how about Joe Ben Taylor, who's that?

4 A That's another one of my cousins. He live
5 down in -- further down the road by, I think -- he's
6 not here now. But he live on Ramsey -- on Gardner
7 Road. The road that say "Gardner."

8 Q Gardner Road; that's out on Warsaw Island?

9 A Right.

10 Q Okay. How about Willie Garnder, do you know
11 who that is?

12 A Willie Gardner supposed to been my great-
13 grandfather, great-great grandfather.

14 Q Okay. And how about Billie Taylor, do you
15 know who that was?

16 A No.

17 Q How about William Angelo, you know who that
18 is?

19 A No.

20 Q How about Brenda Angelo?

21 A No.

22 Q Okay. And then what about Kenneth
23 Singleton?

24 A I know a Kenneth Singleton, but he lived in
25 Beaufort. He was a barber -- if not the same Kenneth

1 Singleton -- I don't know if that's the same one or
2 not.

3 Q All right. And it's my understanding that
4 this was a lawsuit brought by your father to quiet
5 title some property; is that your understanding?

6 A Kenneth Singleton?

7 Q No, sir. I asked you another question.
8 This lawsuit was brought by your dad; correct?

9 A By -- for Johnnie Howard?

10 Q Against a bunch of people to quiet title the
11 property, correct?

12 A Probably so.

13 Q Okay. And you weren't party to this
14 lawsuit; correct?

15 A No.

16 Q All right. Look at page 12. It says
17 "Gardner 51" at the bottom.

18 MR. FINGER: I would just -- the record
19 should I think stand corrected. Charles W. Gardner is
20 a defendant. You --

21 MR. O'KELLEY: He's -- correct. He's a
22 defendant. Correct.

23 MR. FINGER: Yes. And he just said,
24 "No." I just didn't want to let --

25 MR. O'KELLEY: Correct.

1 MR. FINGER: -- that go uncorrected.

2 MR. O'KELLEY: Understood.

3 MR. FINGER: Thank you.

4 THE COURT: All right. Thank you.

5 BY MR. O'KELLEY:

6 Q Are you on page 12, sir?

7 A No.

8 Q All right. Let me help you. It'll make it
9 faster. Page 12 in the middle of the page states that
10 there's a 1.05 acre piece of Lot 15; can you read
11 that?

12 A Yes.

13 Q All right. And it says it was acquired by
14 John Howard from Dan Taylor by way of a deed dated
15 July 24, 1960, recorded in Deed Book 102 at page 270;
16 did I read that correctly?

17 A Yes.

18 MR. FINGER: I will be happy to
19 stipulate that this order says what it says.

20 MR. O'KELLEY: All right. That's fine.

21 Your Honor, then we -- Your Honor can
22 read this at your leisure, but I didn't know if you
23 want us to walk through the order or not. So it's
24 summarized pretty well in the Court of Appeals
25 opinion, as well, which we're going to make an

1 exhibit. But I'm happy to move on with that
2 stipulation on the record, Your Honor.

3 THE COURT: All right. Thank you.

4 MR. O'KELLEY: And, Your Honor, just so
5 you know, we skipped Exhibits 9 and 10. So the next
6 one will be Number 11.

7 THE COURT: What number was the
8 Kemmerlin order?

9 MR. O'KELLEY: That was Number 8, Your
10 Honor.

11 THE COURT: 8?

12 MR. O'KELLEY: Yes, sir.

13 (Plaintiff Exhibit 8 was received into
14 evidence.)

15 THE COURT: Okay. So the next one is
16 11?

17 MR. O'KELLEY: Yes, sir, because 9 and
18 10 we've -- we skipped.

19 THE COURT: Right. Is that a John
20 Howard deed?

21 MR. O'KELLEY: Number 11 is a deed from
22 Leroy Gardner, Your Honor, to Charles Gardner.

23 THE COURT: '93? 1993?

24 MR. O'KELLEY: Yes, sir.

25 THE COURT: Okay. Got it.

1 MR. O'KELLEY: 5 July of '93, Your
2 Honor. And just for the record, Your Honor, that was
3 recorded in Book 635 at page 2,600, 2-6-0-0.

4 BY MR. O'KELLEY:

5 Q Mr. Gardner, I'm going to show you what's
6 marked as Exhibit 11. And that's a deed from Leroy
7 Gardner to Charles Gardner for \$10. Is that how you
8 came to acquire your property?

9 (Plaintiff Exhibit 11 was marked for
10 identification.)

11 A Yes, sir.

12 Q All right. And it's got a property
13 description on it, does it not? It says that it's a
14 certain piece of property containing 2 acres for tract
15 A. And then if you turn the page?

16 A Uh-huh.

17 Q It also has tract C; do you see that?

18 A Yes.

19 Q And that's for 8.91 acres?

20 A Yes.

21 Q Okay. And then it says "Save and except the
22 30-foot dirt road running in a generally southwest to
23 northeast direction across Lot 15 and that 1.05 acre
24 portion of Lot 15 immediately below southeast, the 30-
25 foot dirt road owned by John Howard."

1 So that 1.054 [sic] acres is describing the
2 property owned by John Howard; correct?

3 MR. FINGER: Objection, Your Honor.
4 Leading.

5 MR. O'KELLEY: I'll ask it this way.
6 BY MR. O'KELLEY:

7 Q Who does it say -- who does this deed say
8 owns that 1.05 acres?

9 A I can't --

10 Q I'll point it out to you then. Who does it
11 say owns that 1.05 acres, owned by who?

12 A Johnny Howard.

13 Q And it says you don't own that property;
14 correct, Mr. Gardner?

15 A No.

16 Q And it unfortunately says the 30-foot dirt
17 road, that 8.91 acres does not include the 30-foot
18 dirt road, does it? Even though y'all thought it did;
19 right?

20 A Right.

21 Q Okay. And this deed was three years after
22 Judge Kemmerlin's order; right?

23 A That -- was in 1990, I think.

24 Q And this is a deed from '93; correct?

25 A Right.

1 Q Thank you. I'm going to show you the
2 next --

3 MR. O'KELLEY: And, Your Honor, this is
4 the deed from John Howard to Pearl Howard. It's
5 Exhibit 12.

6 (Plaintiff Exhibit 12 was marked for
7 identification.)

8 BY MR. O'KELLEY:

9 Q This is a deed from John Howard to Pearl
10 Howard. And who is John Howard, Mr. Gardner?

11 A John Howard was -- I met when he married to
12 Pearly Atkins.

13 Q And you testified a few minutes ago she was
14 one of your cousins, or is one of your cousins?

15 A On my grandmother's side, yes.

16 Q And she lives where, sir?

17 A She deceased. She used to live in Jersey
18 City.

19 Q New Jersey?

20 A Yes.

21 Q Okay. And this is a deed from October of
22 1993; do you see that?

23 A Yes.

24 Q If you turn to the next page?

25 A Yeah, top of the page?

1 Q Yes, sir.

2 A Yes.

3 Q It's 19 October of '93?

4 A Yes.

5 Q And your deed was July of '93; correct?

6 A Yes.

7 Q Okay. And this states that what Pearl is
8 getting is "1.9 acres of Warsaw Island bounded to the
9 north and west by land now or formerly of Dan Taylor,
10 east by the public road"; did I read that correctly?

11 A Yes.

12 Q "And south by marshland between Warsaw and
13 St. Helena. The north side of this lot of land runs
14 at right angles to the road and measures 200 feet.
15 The east line along the road measures 430 feet from
16 north to south. The south side bears -- south 70
17 degrees west for about 230 feet to a concrete block
18 which is 487 feet south" --

19 A Wait, I don't see that.

20 Q I'm sorry. You need to go back a page.

21 A Yeah, I see.

22 Q We'll start over. Tell me if I read this
23 correctly?

24 MR. FINGER: Again, I'll stipulate the
25 deed says what it says.

1 THE COURT: Okay.

2 BY MR. O'KELLEY:

3 Q All right. Well, I just want to put and get
4 in the record the following, that this language of the
5 deed states that "the property now or formerly of Dan
6 Taylor in east by the public road"; did I read that
7 correctly?

8 A Yes.

9 Q All right. And is there anything that you
10 see in this deed that says Pearl Howard owned the road
11 that brings us here today?

12 A No.

13 Q I'll show you Exhibit Number 13. And I'll
14 tell you this is a mortgage that you gave to a bank;
15 do you remember taking out this mortgage? To the
16 Community Bank of South Carolina?

17 (Plaintiff Exhibit 13 was marked for
18 identification.)

19 A I can't recall.

20 Q It's for \$24,000. I'm sure it's paid off by
21 now?

22 A Yes. I think -- yes, I think I got it from
23 Reverend Moore.

24 Q But it was a mortgage on your 8.91 acres;
25 correct?

1 A Well, what happened, Mr. Moore had loaned my
2 father the money to -- to help save the property. And
3 by then, my father signed it over to me, and I had to
4 pay Mr. Moore \$24,000.

5 Q Understood. And it says "This mortgage was
6 prepared by Louis O. Dore"; do you --

7 A Right.

8 Q Okay. And do you recall going to Mr. Dore's
9 office?

10 A Yes.

11 Q And signing this document?

12 A Yes.

13 Q Okay. And to your knowledge, that mortgage
14 has long been paid off?

15 A Yes.

16 Q All right. And in part of the mortgage
17 property description, it doesn't mention the road,
18 does it? It just mentions 8.91 acres; correct?

19 A Right.

20 MR. O'KELLEY: And, Your Honor, the
21 next document is a larger of the plat showing the
22 combination of two parcels.

23 THE COURT: This one right here?

24 MR. O'KELLEY: Yes, sir, that's it.

25 THE COURT: Okay. Great. And that

1 will be 14?

2 MR. O'KELLEY: Yes, sir.

3 (Plaintiff Exhibit 14 was marked for
4 identification.)

5 And we forgot to -- well, I'm sure the
6 mortgage is without objection, but we're moving in 11
7 which is the deed, the John Howard deed to Pearl, and
8 the mortgage; and those would be 11, 12, and 13.

9 MR. FINGER: Without objection, Your
10 Honor.

11 THE COURT: All right.

12 (Plaintiff Exhibits 11, 12, 13, and 14
13 were received into evidence.)

14 MR. FINGER: And for the record, I will
15 express an objection, if I have it, to an exhibit.

16 THE COURT: All right.

17 MR. O'KELLEY: Okay.

18 MR. FINGER: If they've already been
19 marked, unless I object, they're in.

20 MR. O'KELLEY: Fine.

21 THE COURT: Thank you. Thank you for
22 that.

23 BY MR. O'KELLEY:

24 Q And the next document is a plat that it says
25 -- it's a plat showing the combination of parcels A

1 and B prepared for Charles Gardner; tell His Honor
2 about that plat if you can, sir?

3 A Yes, I had Gasque to did this to separate
4 the property in case I want to sell it.

5 Q So you subdivided; correct?

6 A Yes.

7 Q All right, sir. And does this property show
8 the boat ramp?

9 A Yes.

10 Q Where is it? Just point it out -- hand up
11 the plat and just point it to His Honor?

12 A Right here.

13 THE COURT: All right.

14 Thank you, sir.

15 BY MR. O'KELLEY:

16 Q And does it show the road that is on this
17 property -- excuse me, south of your property?

18 A Ashton Drive?

19 Q It shows Ashton Drive, and then it shows
20 another road leading to the boat ramp?

21 A Leading to the -- yes, Warsaw Island Road.

22 Q All right.

23 A I'm pretty sure that's Warsaw Island Road.

24 Q And then below that, it says "Now or
25 formerly John Howard"; do you see "NF John Howard"?

1 A Yes, I saw that.

2 Q All right. But it clearly shows the
3 markings of a road here, does it not?

4 A Yes.

5 Q Okay. And it shows a driveway coming in off
6 that road?

7 A Yes.

8 Q Tell His Honor about that driveway?

9 A The driveway I use -- the main driveway that
10 everyone come to my house, that's where they turn in
11 and come. This is where my house is at. And they
12 turn in from the main -- from Warsaw Island Road to
13 the road.

14 That road been there before I built my
15 house, put it that way. And everybody use that road
16 to get to my house.

17 Q And that's the road you can't use anymore?

18 A I can't use it anymore.

19 Q And the driveway you had to cut comes in off
20 of Ashton Drive?

21 A Off Ashton Road.

22 Q And you had to do that when?

23 A When Mr. Adams blocked it, put a gate up
24 there.

25 Q And for how many years did your family

1 use -- to your knowledge, how many years did you or
2 your family use the blocked-off portion of the road?

3 A Oh. I'd say over 200 years. My grandmother
4 born in 1900, and she'd have been 123 years today if
5 she was still living. And her parents used that road
6 to go to church, used the road to both go to church,
7 get wood.

8 Q Access their property?

9 A To the property, yeah.

10 Q If y'all were going to go anywhere --

11 A Going to Dataw or go to church from -- go
12 fishing. Everybody use that road. It's called Mink
13 Point Road.

14 MR. FINGER: As long as I'm protected
15 on my objection, I object to any testimony about
16 anyone other than this gentleman using the road as not
17 being relevant.

18 MR. O'KELLEY: I think it's extremely
19 relevant if he's going to claim an easement over it,
20 and his client says he owns it, we got a certain time
21 period we got to establish by for prescriptive
22 easements.

23 THE COURT: Well, let's break it down.
24 My understanding is this could probably be broken down
25 to his observations of people using the road.

1 MR. O'KELLEY: Well, it's even easier
2 than that. I can change it.

3 BY MR. O'KELLEY:

4 Q Mr. Gardner, since you've owned this
5 property, you used that road continuously, did you
6 not?

7 A Yes.

8 Q And how long have you owned this property?

9 A About -- in 1997, that point. I mean, when
10 I built my house, I just -- when I used to come from
11 New York to go fishing, I used to use that road.

12 Q And you saw other people in your family
13 using that road to get to the property, did you not?

14 A Yes.

15 Q More than 20 years' worth of use?

16 A Oh, yes.

17 THE COURT: I'll allow that.

18 MR. FINGER: Thank you, Your Honor.

19 THE COURT: I think you were getting
20 into a little bit of a hearsay --

21 MR. FINGER: That's correct.

22 MR. O'KELLEY: And Your Honor, I think
23 we cleaned it up.

24 THE COURT: Okay. Perfect. Thank you.

25 //

1 BY MR. O'KELLEY:

2 Q And on this plat, it shows -- do you see
3 where it says "SC" -- it says --

4 MR. O'KELLEY: I'll just point it out
5 to him, Your Honor, if it's easier.

6 BY MR. O'KELLEY:

7 Q Do you see that? It says "Access easement";
8 did you put in another easement to get to parcel B?

9 A Yes.

10 Q Okay. And that goes across the property
11 where your house is; correct, Mr. Gardner?

12 A Right.

13 Q And that access easement was off the bottom
14 of the road that brings us here; correct?

15 A Yes.

16 Q And that's been cut off; correct?

17 A Yes.

18 Q So anyone that's going to access parcels A
19 or B or the remaining acreage now has to come off of
20 Ashton Drive?

21 A Right.

22 Q And you put that road, that new access in as
23 a result of Mr. Adams' actions?

24 A Right.

25 Q And I'll show you the next exhibit. This is

1 Exhibit Number 15; do you remember giving an easement
2 to the South Carolina Electric and Gas Company?

3 (Exhibit 15 was marked for
4 identification.)

5 A Yes, sir.

6 Q And what did SCE&G do out at your property,
7 Mr. Gardner?

8 A They put a light -- a power pole there.

9 Q And I think we'll have pictures of it, but
10 we'll show His Honor on plat number -- on Exhibit 16
11 where approximately that light pole is?

12 (Plaintiff Exhibit 16 was marked for
13 identification.)

14 THE WITNESS: Like, this is the road,
15 Your Honor.

16 MR. O'KELLEY: Hold on one second.
17 Terry, come -- he's explaining --

18 MR. FINGER: You're looking at 16?
19 You're looking at 16, then?

20 MR. O'KELLEY: Yes.

21 MR. FINGER: And this is the
22 reconfiguration?

23 MR. O'KELLEY: Correct.

24 BY MR. O'KELLEY:

25 Q Where is the light pole on that?

1 A It should be somewhere around here. In
2 there.

3 Q And it's across --

4 A It's across the road.

5 Q Across the road is where they put in the
6 pole?

7 A Right.

8 THE COURT: Thank you.

9 THE WITNESS: This is how here. It's
10 across the road.

11 BY MR. O'KELLEY:

12 Q And does that provide power to your
13 property?

14 A Yes.

15 Q How about to Mr. Adams' property?

16 A Yes.

17 THE COURT: Just to keep up with
18 exhibits, we're now at 16, which is this plat?

19 MR. O'KELLEY: Correct..

20 THE COURT: That's without objection?

21 MR. FINGER: Yes.

22 (Plaintiff Exhibit 16 was received into
23 evidence.)

24 MR. O'KELLEY: And then 15 was the
25 SCE&G here.

1 THE COURT: I've got it.

2 MR. O'KELLEY: I introduced them
3 backwards, but.

4 (Plaintiff Exhibit 15 was received into
5 evidence.)

6 BY MR. O'KELLEY:

7 Q Let me show you Number 17. I'll represent
8 to you that that's a tax deed; have you seen this
9 document before? And it says it's against Howard
10 Pearl, but it's really against Pearl Howard?

11 (Plaintiff Exhibit 17 was marked for
12 identification.)

13 A I don't think I seen that. I might have
14 read about it.

15 Q Well, did someone -- you heard that the
16 property got sold; correct?

17 A Right.

18 Q And turn with me to the second page, Mr.
19 Gardner?

20 At the top of the page, I'm going to read
21 something into the record; tell me if I get this
22 right?

23 "All that certain piece, parcel, or lot of
24 land situate, lying, and being on St. Helena Island,
25 Beaufort County, South Carolina, a portion of land,

1 Lot 28 and 29, Section 12, 1S 1W, containing 1.05
2 acres more or less."; did I read that correctly?

3 A Yes, sir.

4 Q It doesn't say 1.9 acres, does it?

5 A No.

6 Q It doesn't say 1.45 acres, does it?

7 A No.

8 Q It says 1.05; correct?

9 A Right.

10 Q And this property was sold in January of
11 2014; is that what it says further down the page?
12 Excuse me -- yes, 15 January 2014, excuse me.

13 A Yes.

14 MR. O'KELLEY: Your Honor, now might be
15 a time for us to take a break so that Mr. Finger and I
16 can discuss the things we were going to discuss.

17 Because all my exhibits are in
18 chronological order, and so the next part of the
19 chronology was the stuff we were discussing with you
20 on a sidebar.

21 THE COURT: All right. Let's take ten
22 or fifteen minutes. Will that do?

23 MR. O'KELLEY: Yes, sir.

24 THE COURT: Let's take a 15-minute
25 break then.

1 MR. O'KELLEY: And can you just tell
2 Mr. Gardner what we got to tell him?

3 THE COURT: And Mr. Gardner, you can
4 wander around, but you cannot discuss your testimony
5 with anyone during the break.

6 THE WITNESS: Right.

7 MR. FINGER: One housekeeping matter
8 first?

9 THE COURT: Sure.

10 (Off the record.)

11 MR. FINGER: -- ultimately installed on
12 the property, there are two marked exhibits, 18, 20 --
13 I'm sorry, 18 --

14 MR. O'KELLEY: 22.

15 MR. FINGER: 22, 26, 27, 28, 29, 31,
16 35, 36, 37, and 38 all deal with DHEC and this septic
17 system. The parties have agreed that we will withhold
18 those exhibits now in an effort for the lawyers to try
19 to come up with a stipulation as to this whole septic
20 system that we could present either later today or
21 perhaps in the morning.

22 If, in fact, we are unable to come to a
23 stipulation, the plaintiff has a right to re-call Mr.
24 Gardner relative to those exhibits, or any other
25 witnesses relative to those exhibits.

1 But we think we'll be able to come up
2 with a stipulation which will save a great deal of
3 time and effort.

4 THE COURT: All right. All in
5 agreement with that?

6 MR. O'KELLEY: We are, Your Honor.

7 THE COURT: Thank you very much.

8 MR. O'KELLEY: And do we need to put
9 that on the record?

10 THE COURT: I think you just did.

11 MR. FINGER: We just did.

12 MR. O'KELLEY: Oh, we were on the
13 record. Okay, good. I thought we weren't. Great.
14 Thank you, Your Honor.

15 THE COURT: All right. Thank you all
16 for that.

17 Please proceed.

18 MR. O'KELLEY: Thank you.

19 THE COURT: Mr. Gardner, you're still
20 under oath, sir.

21 THE WITNESS: Yes, sir.

22 BY MR. O'KELLEY:

23 Q Mr. Gardner, I'm going to show you Exhibit
24 Number 19. And I'll represent to you that's the deed
25 from Dale A. Gabardy, trustee of the Dale A. Gabardy

1 Trust to Taylor Reuben Adams; do you see that, sir?
2 (Plaintiff Exhibit 19 was marked for
3 identification.)

4 A Uh-huh.

5 Q And is that a "yes"? We got to say "yes" or
6 "no" for the court reporter.

7 A Yes.

8 Q Okay.

9 THE COURT: Is this 18 or 19, you said?

10 MR. O'KELLEY: Your Honor, this is
11 Number --

12 MR. FINGER: 19.

13 MR. O'KELLEY: 19. And it's the deed
14 recorded 1/23/15, Your Honor, Book 3375, page 450.

15 THE COURT: What was 18 real quick?

16 MR. FINGER: That's a DHEC document,
17 Your Honor.

18 MR. O'KELLEY: 18 is the DHEC document
19 we're skipping.

20 MR. O'KELLEY: Skipping? Okay. All
21 right. Got you. That explains why it's not in my
22 stack. All right, thanks.

23 MR. O'KELLEY: Yes, sir. Well, sir,
24 we're skipping 18 and --

25 THE COURT: 18, 27, 26, all that?

1 MR. O'KELLEY: Yes, sir, the ones we
2 just discussed.

3 THE COURT: Got it. Okay.

4 MR. O'KELLEY: And so we'll be
5 literally skipping around with exhibits.

6 THE COURT: Just trying to keep up.

7 MR. O'KELLEY: Yes, sir.

8 BY MR. O'KELLEY:

9 Q And Mr. Gardner, tell me if I'm reading this
10 correctly in the middle of the page?

11 "All that certain piece, parcel, or lot of
12 land situate, lying, and being on St. Helena Island,
13 Beaufort County, South Carolina, a portion of land Lot
14 28 and 29, Section 12, Township 1, South Range 1 West
15 containing 1.05 acres more or less."; did I read that
16 correctly?

17 A Yes, sir.

18 Q And then it says "For more legal
19 description, see judgment rule 82475 in Plat Book 28
20 at page 21."; did I read that correctly?

21 A Yes, sir.

22 Q Okay. And so what is being conveyed here is
23 how many acres, Mr. Gardner?

24 A 1.05.

25 Q Thank you, sir. Mr. Gardner, I'm going to

1 show you the next exhibit, Exhibit Number 20; have you
2 ever seen that document, sir?

3 (Plaintiff Exhibit 20 was marked for
4 identification.)

5 A Yes.

6 Q And what does that document say, Mr.
7 Gardner?

8 A You want me to read it?

9 Q Yes, please?

10 A "May the 19th, 2015."

11 Q Yes, sir?

12 A "RE Reuben Adams, Warsaw Island,
13 3R3000090001080000. To whom it may concern, the
14 property spec on Beaufort County map -- Beaufort
15 County tax map as a private section of Warsaw Island
16 Road. It is not a public road, neither is it owned
17 by, nor has it ever been maintained by Beaufort
18 County."

19 Q And that was signed by who?

20 A Eric Cox, whatever.

21 Q Eric Klapp, right-of-way manager of Beaufort
22 County Engineering Division; correct?

23 A Yes.

24 Q All right.

25 MR. O'KELLEY: Your Honor, at this

1 time, we'd like to move Exhibit 20 into evidence.

2 THE COURT: Without objection?

3 MR. O'KELLEY: No objection?

4 MR. KIDD: We don't object to the
5 authentication of the letter. We object to the
6 extent it calls for -- or purports to be a legal
7 conclusion as to title it's on.

8 THE COURT: All right. I'm sure you
9 all will get to that here in a little while.

10 MR. KIDD: Yes, Your Honor.

11 THE COURT: But 20 is in.

12 (Plaintiff Exhibit 20 was received into
13 evidence.)

14 BY MR. O'KELLEY:

15 Q And, Mr. Gardner, do you have some neighbors
16 named Richard and Estelle Williamson?

17 A Yes.

18 Q Are they in the courtroom?

19 A Yes, sir.

20 Q And point them out?

21 MR. O'KELLEY: And if they would,
22 please, if y'all could stand up, Mr. and Mrs.
23 Williamson?

24 THE WITNESS: Stand up?

25 //

1 BY MR. O'KELLEY:

2 Q And they've been involved with you in this
3 case, have they not, sir?

4 A Yes. They've helped me a whole lot.

5 Q Okay. And I'll ask them some questions when
6 the time comes.

7 A Okay.

8 Q And I want to show you Exhibit Number 23.

9 MR. O'KELLEY: And, Your Honor, we're
10 skipping -- Exhibit 23, Your Honor, is a plat
11 that -- yes, sir. And I've got -- I've actually
12 got --

13 Does anyone mind if I give His Honor
14 the larger copy?

15 (Plaintiff Exhibit 23 was marked for
16 identification.)

17 MR. FINGER: That's the recording
18 information on there.

19 MR. O'KELLEY: Remember, this one
20 wasn't allowed to be recorded.

21 MR. FINGER: Yes. But it's got
22 recording here.

23 THE WITNESS: No, it says --

24 MR. FINGER: That's recording right
25 there.

1 MR. O'KELLEY: Right -- 14713.

2 MR. FINGER: Thank you.

3 MR. O'KELLEY: And, Your Honor, I've
4 got a larger original if you want to follow along.

5 THE COURT: Thank you. Because that
6 one's still hard to read.

7 MR. O'KELLEY: Well, and then that one
8 -- so, Your Honor, just so you know, this one was the
9 one that was recorded at 147 and 133. And the
10 exhibit, if you'll look it states "Problem plat, see
11 assessor." So "problem plat" is the stamp of this
12 original.

13 THE COURT: Got it. Thank you.

14 MR. FINGER: Your Honor, if I may, I
15 understand that Ms. Daise who works for the assessor's
16 office is under subpoena. She is sick today.
17 Hopefully she'll be better tomorrow, but please note
18 my objection to the -- to this document until such
19 time as Ms. Daise is able to authenticate it.

20 The original document that was recorded
21 I have right here.

22 MR. O'KELLEY: Well, we've got -- he's
23 got one.

24 THE COURT: That's this one, right?

25 MR. FINGER: Yeah, but the original

1 recorded document does not have "problem plat, see
2 assessor." That was placed after it was recorded.

3 THE COURT: Right.

4 MR. O'KELLEY: Correct.

5 THE COURT: So why don't we -- should
6 we substitute the full-sized one as 23, and we won't
7 worry about this one until we get Ms. Daise?

8 MR. FINGER: That's fine. Thank you
9 very much, Your Honor.

10 MR. O'KELLEY: Or if we could make it
11 23A, maybe?

12 THE COURT: Make the big one 23A?

13 MR. O'KELLEY: Yes, sir, if that's all
14 right?

15 THE COURT: Okay. I'm holding off on
16 23 right now?

17 MR. O'KELLEY: Correct. And Mr. Gasque
18 has come in. He can testify about it, too, later.

19 THE COURT: All right. So 23A is the
20 full-size one that does not contain the stamp "problem
21 plat, see assessor"?

22 MR. FINGER: You got that?

23 MR. O'KELLEY: Yeah, that'll be 23A.

24 MR. FINGER: Thank you.

25 MR. FINGER: 23A, Your Honor?

1 THE COURT: 23A. So this isn't my
2 copy, this is the 23A?

3 MR. O'KELLEY: That is the 23A because
4 we --

5 THE COURT: -- remember to hand it to
6 the court reporter.

7 (Plaintiff Exhibit 23A was marked for
8 identification.)

9 MR. O'KELLEY: And I'm through asking
10 Mr. Gardner, so I'm not going to talk about it. You
11 want to give it to the court reporter. I can fold it
12 for you.

13 THE COURT: I didn't want to try, so..

14 MR. O'KELLEY: And then we're skipping
15 24, y'all, which -- because Ms. Daise is not here.

16 BY MR. O'KELLEY:

17 Q I'm going to show you Exhibit 25, Mr.
18 Gardner. And this is a letter from October of 2017,
19 and it states it's from Charles Gardner and the entire
20 Warsaw community; do you see that? Up at the top
21 right-hand?

22 (Plaintiff Exhibit 25 was marked for
23 identification.)

24 A Yes.

25 Q And do you remember writing this letter with

1 the help of the community back in 2017?

2 A Yes.

3 Q And to who was the letter written?

4 A To Pete Tanner, Sheriff Tanner.

5 Q The Beaufort County sheriff?

6 A Yes.

7 Q All right. And you copied several people on
8 here; do you see at the last page?

9 A Yes.

10 Q It says "Tom David, York Glover, Michael
11 Rivers, the county administrator, the right-of-way
12 director, South Carolina Society for Engineers and
13 Surveyors, and Elizabeth Santagati"; did I read that
14 correctly?

15 A Yes.

16 Q All right. And tell the judge about this
17 letter and why it was written if you remember?

18 A We was trying to get to -- the road to be
19 opened, I believe.

20 Q And was that written in conjunction with
21 this lawsuit for this lawsuit? Tell the court when it
22 was?

23 Because I'll represent to you this lawsuit
24 was filed on October 12th of 2017, and the date of
25 this is October 9 of 2017?

1 A Yeah, October the 9th, 2017.

2 Q Yes, sir.

3 A And when was that written?

4 Q This was October 9th; your lawsuit that
5 brings us here today was filed October 12 of 2017. So
6 you wrote this before the lawsuit was filed; correct?

7 A I think so.

8 Q All right. Did you have help writing this
9 letter?

10 A I think all of us got together and write
11 this letter.

12 Q And who is "all of us"?

13 A The names you have here, and some more
14 people's names that are not here.

15 Q And did anything happen as a result of this
16 letter, Mr. Gardner?

17 A Not exactly, as I remember.

18 MR. O'KELLEY: And same stipulation,
19 Mr. Finger; unless there's an objection, it's in?

20 MR. FINGER: I'm sorry?

21 THE COURT: The letter? Objection?

22 MR. O'KELLEY: The letter that I'm
23 moving that it come in?

24 MR. FINGER: No objection.

25 MR. O'KELLEY: Yeah.

1 THE COURT: Thank you. What number was
2 that, again?

3 MR. O'KELLEY: 25, Your Honor.

4 THE COURT: 25.

5 (Plaintiff Exhibit 25 was received into
6 evidence.)

7 MR. O'KELLEY: And 23 we skipped. Just
8 -- 23A is in, 23 is not.

9 (Plaintiff Exhibit 23A was received
10 into evidence.)

11 BY MR. O'KELLEY:

12 Q Mr. Gardner, who is Ed Atkins, Jr.?

13 A My cousin. He's in the back.

14 Q All right. And what's he do for a living?

15 A He swims in to sell -- swims to go out
16 baiting, get live swims to sell.

17 Q All right. I'm going to put him on the
18 stand in a little bit. But to your knowledge, how did
19 he get access to the water historically?

20 A He used to come down to my -- to use the
21 Warsaw Island Road to the boat landing.

22 Q And he put his boat in there?

23 A Yes.

24 Q And he hasn't been able to do that for some
25 time; right?

1 A No, since Mr. Adams closed the road.

2 MR. FINGER: I would object to this.
3 Mr. Atkins filed his own lawsuit against my client.
4 That lawsuit has been dismissed. It's the law of the
5 case.

6 Whatever he's claiming, Mr. Atkins had
7 his chance in litigation which has been previously
8 filed in this courthouse, and it was dismissed.
9 And --

10 THE COURT: Let me do this. I think
11 we're getting into a little bit of hearsay. Mr.
12 Atkins is going to testify anyway.

13 MR. O'KELLEY: Correct. I'll put him
14 up, Your Honor.

15 THE COURT: All right. Thank you, sir.
16 Sustained.

17 MR. FINGER: Thank you.

18 BY MR. O'KELLEY:

19 Q Mr. Gardner, Exhibit 33 is the next exhibit
20 we're going to have. It's a little bit hard to see,
21 but there's some -- this is more some pictures. And
22 if you turn it over the other way, you can see some
23 pictures of the creek and the boat ramp.

24 (Plaintiff Exhibit 33 was marked for
25 identification.)

1 Hold that up and show Your Honor where your
2 house is on that picture?

3 A I can hardly see it. There's the road.

4 Q The road comes in down there, so it's 240
5 Warsaw Island Road is up there at the top of the
6 picture?

7 A Uh-huh.

8 Q And then your house is down here, and
9 there's --

10 A Oh, yeah. Yeah, this is the Adams property.
11 Yeah, my house will be somewhere down in there.

12 MR. O'KELLEY: And, Your Honor, we've
13 got better pictures. But just so -- we're trying to
14 get you oriented. And on the back, the last one is a
15 much better picture, and it shows the Warsaw Island
16 Road and the location.

17 THE WITNESS: My house is over here.
18 And this is the boat ramp down there. This is 240.

19 THE COURT: All right. Thank you, sir.
20 What number is this one?

21 MR. O'KELLEY: It's 33, Your Honor.

22 MR. FINGER: Your Honor, would you note
23 my objection to this document. There has been no
24 testimony that this witness was the one who did
25 whatever Google search may have been involved in this,

1 so it's not authenticated, and it's not proper from
2 this witness.

3 THE COURT: Mr. O'Kelley?

4 MR. O'KELLEY: I will withdraw it, Your
5 Honor. It's not a very good picture anyway.

6 THE COURT: All right. It's withdrawn;
7 33 is out.

8 (Plaintiff Exhibit 33 was withdrawn.)

9 MR. FINGER: Thank you.

10 THE COURT: It's not a very good
11 picture.

12 MR. O'KELLEY: It's not.

13 BY MR. O'KELLEY:

14 Q Let me show you something, Mr. Gardner.

15 MR. O'KELLEY: And for the record, I'm
16 referencing a consent constraint restraining order,
17 that's what it's called, filed May 23, 2018, signed by
18 Terry Finger and William Pyatt, entered by Judge
19 Carmen Mullen, Your Honor.

20 THE COURT: So that --

21 MR. O'KELLEY: It's not an exhibit, but
22 it's -- it should be in the court file, Your Honor. I
23 can make -- we can make copies of it --

24 THE COURT: It's all right. You can
25 pull it up. But if you want to make it an exhibit,

1 you probably ought to.

2 MR. O'KELLEY: Well, I don't know if we
3 need it as an exhibit because it's already an order in
4 the case, but just -- I just wanted to ask him
5 questions on it.

6 THE COURT: Okay.

7 BY MR. O'KELLEY:

8 Q Mr. Gardner, do you remember anyone telling
9 you or having knowledge that you and Mr. Adams had
10 been mutually restrained from harassing, competing,
11 interfering with, or causing any third parties or
12 encouraging any third parties to harass or interfere
13 with the other party in any fashion during the
14 pendency of this action?

15 A Yes, I remember that.

16 Q And during the pendency of this action, the
17 sheriff's been called out there numerous times;
18 correct?

19 A Yes.

20 Q Tell His Honor about what's gone on between
21 you and Mr. Adams personally, the disputes that have
22 been going on; tell His Honor about that?

23 A Yeah, most of the time I be out there and my
24 company come, and they don't know -- I guess they have
25 no problem taking pictures.

1 And he be coming taking picture and
2 harassing most of the guys, and every time he -- we go
3 fishing or something, he'll come there harassing us.
4 My son have some pictures if they want to see it.

5 And they just keep going back and forth.
6 One -- sometime he sent his girlfriend out there, we
7 talking about sports, and he'll come out there and
8 tell us to be quiet. And just harassing us. And
9 they'll be -- talk right back to them. So this be
10 going on back and forth for the last, I think, three
11 or four years, about.

12 Q And you heard Mr. Finger say that people
13 have been to jail over this behavior, have they not?

14 A Yes. He said that, but most of the time, we
15 have a restraining order, and when we go to court,
16 most of the deputies say they don't have the right
17 papers, and all like that.

18 Mr. Ritchie took him to court. Joey Heywood
19 took him to court. And every time they took him to
20 court, they throw it out. He throw coffee on my
21 daughter; they threw it out.

22 Q Y'all don't get along, do you, Mr. Gardner?

23 A No, we don't.

24 Q All right. And, in fact, you get filmed a
25 lot by Mr. Adams; correct?

1 A Yes.

2 Q Do you recall a meeting that we had at your
3 property on Friday?

4 A Yes.

5 Q And was Mr. Adams out there filming you and
6 me and everybody?

7 A Yes. He do that every day.

8 Q Okay.

9 A Every car come through there, he do that.
10 Everyone come in the yard, he do that.

11 MR. O'KELLEY: All right. So, Your
12 Honor, we've got numerous reports from the sheriff,
13 and I think Mr. Finger and I can take that up over
14 lunch, too, about that -- those documents.

15 BY MR. O'KELLEY:

16 Q But the sheriff's been called out there how
17 many times?

18 A I can't even count, and they can't even
19 count.

20 Q All right. And speaking of sheriff and the
21 road, you had to put in this new road off of Ashton;
22 right?

23 A Yes.

24 Q And can EMS get up that driveway?

25 A No.

1 Q Could a fire truck get up that driveway?

2 A No.

3 Q Could they have gotten up --

4 MR. FINGER: Your Honor, he can't
5 possibly know that.

6 MR. O'KELLEY: Absolutely he can. He
7 can know how wide the road is he had to put in. It's
8 not a public --

9 THE COURT: I'll let it go on, subject
10 to your objection. Thank you.

11 BY MR. O'KELLEY:

12 Q So -- but could they have gotten down the
13 old road?

14 A Yes.

15 Q So it's a life safety issue, isn't it, Mr.
16 Gardner?

17 A Yes. When he stopped -- before -- when he
18 closed the road, my wife was sick, and we told the
19 sheriff department. They tell me I had a way to get
20 through, through Ashton Road, which we never had a
21 road come through there.

22 Q But to your mind, that's not sufficient;
23 correct?

24 A No. We just make it because my wife was
25 sick and in case a way we have to take her to the

1 doctor, or something like that.

2 Q Let me show you what's been marked as
3 Exhibit 42.

4 (Plaintiff Exhibit 42 was marked for
5 identification.)

6 Have you seen that document before, Mr.
7 Gardner?

8 A I might have seen it. I'm not sure. It
9 look familiar.

10 Q All right. It says it's a plat prepared for
11 Charles Gardner?

12 A Yes, sir.

13 Q And it's prepared by David Youmans?

14 A Youmans, you're right.

15 Q Okay. And Mr. Youmans is in the courtroom;
16 right?

17 A Yes.

18 Q And it says it was recorded in Book 160 at
19 page 140; right?

20 A Yes.

21 Q Okay.

22 MR. O'KELLEY: And, Your Honor, I've
23 got a larger copy for you if you want it.

24 THE COURT: All right. This one?

25 MR. O'KELLEY: Yes, sir, but it's --

1 THE COURT: It's about the same size.

2 Well, yeah, but I can read it.

3 MR. O'KELLEY: Okay. All right.

4 THE COURT: This is 43, I think you
5 said?

6 MR. O'KELLEY: Yes, sir.

7 THE WITNESS: 42.

8 THE COURT: 42?

9 MR. FINGER: 42.

10 MR. O'KELLEY: It's 42.

11 THE COURT: Thank you.

12 BY MR. O'KELLEY:

13 Q And do you recall hiring Mr. Youmans to do
14 this plat for you?

15 A Yes.

16 Q And why did you do that?

17 A Because when we went to court, I think Mr.
18 Youmans was -- I mean, not Mr. -- I mean Mr. Adams was
19 trying, I think, when we went to court for the
20 harassment, he said let him survey the property so he
21 could sell his property, if I can recall.

22 Q And you had Mr. Youmans survey basically the
23 unpaved county road and the 30-foot dirt road as shows
24 in Judge Kemmerlin's order; correct?

25 A Right. Right.

1 Q And does this show -- it shows a drainage
2 field on there, does it not?

3 A Yes.

4 Q And it shows a certain wire fencing?

5 A Right, the old wire fencing.

6 Q The old wire fence?

7 A Right.

8 Q And then it also shows a gate, and that's
9 the gate that Mr. Adams put up? Down there?

10 A Yeah, since he -- yeah.

11 Q And it shows your property, "now or formerly
12 Charles Gardner 309 51, and "now or formerly Reuben
13 Adams is 309 104"; correct?

14 A The address?

15 Q No, sir. I'm just asking, your property is
16 on the northern side of the road, and his is on the
17 southern side of the road?

18 A Right.

19 Q It also shows the boat ramp in Jenkins
20 Creek; correct?

21 A Yes.

22 Q And this road, just so His Honor knows,
23 coming in off of the continuation of Warsaw Island
24 Drive, it's not a straight road to the boat ramp. It
25 makes a turn?

1 A A little turn.

2 Q At the end, right?

3 A Yes.

4 Q Okay. And on the north side of that turn is
5 your property; correct?

6 A Yes.

7 Q Has any part of your property been fenced
8 off by Mr. Adams?

9 A Yes.

10 Q The part by the -- down by the boat ramp?

11 A From the boat ramp all the way down toward
12 Ashton, there, Ashton Road.

13 Q He's fenced off part of your property?

14 A Yes.

15 Q In fact, you don't have access to property
16 that you own?

17 A No.

18 MR. O'KELLEY: Your Honor, Exhibit
19 Number 43 is the Court of Appeals opinion. I don't
20 have any questions for this witness about it. I just
21 want to make sure it's in the record.

22 (Plaintiff Exhibit 43 was marked for
23 identification.)

24 THE COURT: 43.

25 MR. O'KELLEY: Thank you.

1 (Plaintiff Exhibit 43 was received into
2 evidence.)

3 BY MR. O'KELLEY:

4 Q Mr. Gardner, I've got two sets of
5 photographs.

6 MR. O'KELLEY: And, Your Honor, we can
7 just walk through them, and it'll be 44A and B. And
8 I'll just use the Bates numbers at the bottom if
9 that's all right?

10 THE COURT: All right.

11 BY MR. O'KELLEY:

12 Q And, Mr. Gardner, let's start with 44A. And
13 that one is a very hard picture -- you see it's 44A
14 and it says "Gardner 296" at the bottom?

15 (Plaintiff Exhibit 44A was marked for
16 identification.)

17 A Yeah.

18 Q And it's a black-and-white photo that's hard
19 to see; do you know what that's a photo of?

20 A It's hard to see.

21 Q Okay.

22 A It look like the fence and the -- where he
23 got me blocked off.

24 Q All right. And then how about the next one?
25 It's 297. It shows a Kubota tractor and someone

1 standing?

2 A Yes.

3 Q Who is that?

4 A I think it was someone putting in the drain
5 field, is what it looks like.

6 Q Did you take these pictures?

7 A I think I did, or someone else took them.
8 It could have been myself, or Richard took these
9 pictures when the sheriff -- yeah, called the sheriff
10 department.

11 MR. FINGER: Your Honor, if this
12 gentleman did not take the pictures, they're not
13 authenticated.

14 MR. O'KELLEY: Well, then I'm going to
15 move on if he didn't take them.

16 MR. FINGER: All right. Thank you.

17 THE COURT: All right.

18 BY MR. O'KELLEY:

19 Q So did you take these pictures? Or did
20 someone else?

21 A I think someone else took these pictures.

22 Q All right. Do you recall who that is?
23 Richard who?

24 A Mr. Richard, back there.

25 Q Yeah, okay.

1 MR. O'KELLEY: Hand me that one. Hand
2 me that set, and we'll get Mr. Richard to testify
3 about them in a little bit.

4 BY MR. O'KELLEY:

5 Q Then let me show you 44B.

6 (Plaintiff Exhibit 44B was marked for
7 identification.)

8 And that begins with Gardner 310 at the
9 bottom; do you see that?

10 A Yes.

11 Q Did you take these pictures, Mr. Gardner?

12 A Yes.

13 Q All right. Starting with 310, tell His
14 Honor what you're looking at?

15 A You're looking at my -- this is my yard.
16 This is the road. This is the fence Mr. Reuben put up
17 there on this property. This is the road on this
18 side. That's the road over here. This is my property
19 in here that's blocked off in here.

20 Q And then what about --

21 A That would be driveway.

22 Q And then tell His Honor about these boards
23 that are nailed between pine trees and on two posts;
24 what are those?

25 A Huh?

1 Q Tell His Honor about the boards that are
2 nailed between the pine trees and on the posts?

3 A That's -- Mr. Reuben put that there, nailed
4 that board there. That's my driveway I used to come
5 out from my garage.

6 Q And then turn to 311; tell His Honor what
7 we're looking at in 311?

8 A These are the boards that's got me fenced
9 off on my property.

10 Q And then turn to 312 and tell His Honor what
11 you're -- what he's looking at?

12 A This is on my -- this is my property, you
13 got private -- private property. I cannot go through
14 there. This is the road right here. All this is my
15 property.

16 Q And is that the property you were saying you
17 were fenced off a portion of it?

18 A Yes.

19 Q And what are we looking at at 313, Mr.
20 Gardner?

21 A This is the road, this is my main driveway.
22 This is his trailer. He got his on the -- on a
23 separate tank on the drain field. This is my main
24 road that I used to use to come to the house. And
25 everybody.

1 Q And then how about 314; tell His Honor what
2 he's seeing?

3 A He's seeing the same thing.

4 Q Okay.

5 A My fence blocked off to the tree. I cannot
6 get out of my driveway.

7 Q And what about 315, Mr. Gardner?

8 A These the fence again, and then these are
9 trees that he painted, my pine trees on my property.
10 That's the tree he painted.

11 Q And then turn to 316; do you see that? It
12 says "my driveway"; tell His Honor what we're looking
13 at?

14 A It's my driveway blocked off. You got a
15 piece of board across there. All this is still my
16 property.

17 Q And that's the driveway that you used to
18 use; correct?

19 A Right.

20 Q And then how about 317; tell His Honor what
21 we're looking at with that barrel?

22 A That's the road there, and then you got a
23 barrel across there.

24 Q And is there some debris that's next to the
25 barrel?

1 A Yes.

2 Q What's that, Mr. Gardner?

3 A Mr. Adams put a dead limb of his pine trees
4 and -- and palmetto or something.

5 Q All right. And then I think 310 and 311 are
6 more pictures of the --

7 A Of the tree that he painted.

8 Q Yeah, and same with 312 and 13?

9 A Yes. All this is on my property.

10 MR. O'KELLEY: 14, 15 -- I think
11 they're duplicates, Your Honor.

12 BY MR. O'KELLEY:

13 Q Skip to 319, Mr. Gardner?

14 A Okay.

15 THE COURT: I've somehow gotten off the
16 numbers. So the ones I've got on the bottom are -- I
17 got it. Which one --

18 MR. O'KELLEY: Go back one more page;
19 319 is right there. It shows two trees, Your Honor?

20 THE WITNESS: Yes.

21 THE COURT: Got it.

22 THE WITNESS: Painted.

23 BY MR. O'KELLEY:

24 Q And those are trees he painted?

25 A Yes.

1 Q The trees that are on your property?

2 A Yes.

3 Q And how about 320, what are we looking at?

4 A Looking at more trees that he painted on my
5 property.

6 Q How about 321?

7 A Same thing.

8 Q 322?

9 A Just a minute. More trees that he fenced
10 off and that he painted on my property across the
11 road, on this side of the road.

12 Q And how about 324, although you can't see it
13 because it's in the black at the bottom?

14 A Yes, the same thing. There's more trees.

15 Q Same with 325?

16 A It's not the same trees, but it's more --
17 all of these are my trees on my property. There's
18 more than -- it's not the same tree. It's different
19 trees.

20 Q Right. But that goes all the way to 329;
21 correct?

22 A Yes. Go all the way to 329.

23 Q And those are trees that to your knowledge
24 were always your trees; correct?

25 A Yes.

1 Q But they've now been -- you have been
2 blocked from accessing that portion of your property?

3 A Right. We can't go past that. This is his
4 fence he put up there. All the way to 329, yes, you
5 can see the paint.

6 Q I'm going to show you what's been marked as
7 Exhibit --

8 MR. O'KELLEY: Oh, Your Honor. At this
9 time, we'll move these in.

10 THE COURT: 44B?

11 MR. O'KELLEY: Yes, sir, 44B. I don't
12 think there's an objection to this.

13 (Plaintiff Exhibit 44B was received
14 into evidence.)

15 BY MR. O'KELLEY:

16 Q I'm going to show you this ArcGIS web map;
17 now, is that showing your property?

18 A Yes.

19 Q In the yellow?

20 A 259 in the yellow, and someone's trailer.
21 That was my trailer. I had it rent out, 255. And one
22 that says --

23 Q Yeah, and show His Honor what he's looking
24 at at the bottom?

25 A The bottom you're looking at Mr. Adams'

1 property at 246. This is my property, it says Ashton
2 Drive. This is the -- you see the main road here
3 going on down -- my property and going on out.

4 Q And it shows -- it says -- the red lines
5 around it state it's a live parcel; do you see that?

6 A Yes.

7 Q And according to this, Mr. Adams' live
8 parcel is not part of the private, unpaved road, is
9 it?

10 A No, sir.

11 MR. FINGER: Leading, Your Honor.
12 Objection. And this is -- there's been no foundation
13 laid for this document, either. So I would object.

14 THE COURT: How about that?

15 MR. O'KELLEY: I withdraw the question
16 because it's a county document, and we'll ask the
17 county folks when and if they come tomorrow.

18 THE COURT: All right. Withdrawn.

19 MR. KIDD: Your Honor, so are you
20 withdrawing that document as a --

21 MR. O'KELLEY: For now, yeah.

22 MR. KIDD: Okay. Because we don't
23 object to assume the authenticity of it, that being a
24 GIS record. We would object to it being binding in
25 terms of showing a legal conclusion, as the GIS page

1 explicitly states on the page before you type in the
2 address.

3 THE COURT: And I understand. It's
4 withdrawn for today, and maybe we'll see it tomorrow.

5 MR. O'KELLEY: It may be coming back.
6 Correct.

7 BY MR. O'KELLEY:

8 Q Mr. Gardner, just to sum up, and you've been
9 going a long time. You've always used this road as
10 your driveway, and you need it -- you need to use it
11 again, do you not?

12 A Yes.

13 MR. FINGER: Objection. Leading, Your
14 Honor.

15 MR. O'KELLEY: That's all I have, Your
16 Honor.

17 Please answer any of Mr. Finger's or
18 the county's questions, Mr. Gardner.

19 MR. FINGER: Your Honor, I probably
20 will be probably 35, 40 minutes to an hour. I don't
21 know what you want to do about lunch. I'm ready to go
22 if you want, or if you want to take a break; however
23 you want to proceed.

24 THE COURT: Y'all want to take a -- how
25 long is the county going to be with Mr. Gardner?

1 MR. KIDD: Your Honor, I wouldn't
2 anticipate any more than five to ten minutes.

3 MR. FINGER: I don't have any problem
4 with the county going first.

5 THE COURT: I'm just wondering. So
6 realistically --

7 MR. O'KELLEY: There might be a re-
8 direct, too.

9 THE COURT: -- we're talking an hour?

10 MR. FINGER: Yeah.

11 THE COURT: So maybe we should go ahead
12 and try to break for some sort of lunch and then come
13 back.

14 MR. FINGER: Sure. That might help me
15 carve it down a little bit, too.

16 THE COURT: And Mr. Gardner's been
17 sitting here for a while, so let's do this, then.

18 MR. O'KELLEY: Your Honor?

19 THE COURT: Yes?

20 MR. O'KELLEY: Will you just remind Mr.
21 Gardner about -- because --

22 THE COURT: I will.

23 So let's try to be back at one; that's
24 an hour and five minutes.

25 So Mr. Gardner, again, it's very

1 important that you not discuss your testimony with
2 anyone. You'll be asked under oath as soon as you
3 return whether or not you have been discussing any of
4 this with anyone; and the answer, of course, needs to
5 be no because I'm advising you not to do that. That's
6 not just you. That's a typical rule for any
7 witness --

8 THE WITNESS: Yes.

9 THE COURT: -- that's allowed to leave
10 the stand during the testimony.

11 And I would appreciate those in the
12 audience, please don't try to initiate any
13 conversations with Mr. Gardner about his testimony or
14 about anything other than the weather or football or
15 whatever you'd like to talk about. But it can't be
16 about this case or about any of his testimony.

17 All right, then. We will be recessed
18 until one o'clock.

19 MR. FINGER: Thank you, Your Honor.

20 MR. O'KELLEY: Thank you, Your Honor.

21 (Off the record.)

22 THE COURT: Back on the record, Madame
23 Court Reporter.

24 And, sir, you understand you're still
25 under oath?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. Outstanding. Please
3 answer any questions Mr. Finger asks you.

4 MR. FINGER: Thank you. May it please
5 the court.

6 CROSS-EXAMINATION

7 BY MR. FINGER:

8 Q Mr. Gardner, have you talked to anybody
9 during lunch?

10 A No, sir.

11 Q Thank you. Your mother died on April 14,
12 1982; is that correct?

13 A No.

14 Q When did she die?

15 A She died in April, I think it was '83.

16 Q Tell me when your mother died, again?

17 A April of '83, the 14th of April.

18 Q I'm going to hand you a deed. It's a deed
19 to you, Charles Gardner; is that you? Is that
20 correct?

21 A I have to check it.

22 Q That is your name on it; is that correct?

23 A Yes.

24 Q Okay. Read up top here, this first
25 paragraph; what does it say?

1 A "Adelle S. Gardner."

2 Q That's your mom, right?

3 A Yes.

4 Q Okay.

5 A Okay. "Died April 14, 1982." That's wrong.

6 Q That's wrong?

7 A It's -- yes. As I -- she died in '83, I'm
8 pretty sure, because I go visit her grave all the
9 time.

10 Q There's a number of deeds just like that to
11 all your brothers and sisters, and they all refer to
12 your mother dying in 1982; are all those deeds wrong?

13 MR. O'KELLEY: Objection, Your Honor.
14 Those deeds haven't been presented to Mr. Gardner. We
15 don't know what they say.

16 THE COURT: Sustained.

17 BY MR. FINGER:

18 Q Who did that deed? Bernard McIntyre do that
19 deed, do you know?

20 A I couldn't tell you. McIntyre was
21 representing us at the time.

22 Q Judge McIntyre represented your family at
23 that time; am I correct?

24 A My father.

25 Q Your father?

1 A Yes.

2 Q Who signed that deed?

3 A It should be signed by -- my father probably
4 signed it.

5 Q Is there a signature page? Who signed that
6 deed? It's witnessed by -- go back to the page before
7 that if you would, please?

8 This is a deed from you, Charles Gardner;
9 correct? To your father; is that correct?

10 A That's my name. My father signed me the
11 deed. Signed me the property.

12 Q This is not the deed to you. This is the
13 deed after your mom died. Do you recall any of this
14 at all?

15 A I see the names on the deed, but I don't
16 remember that.

17 Q That's your signature on page 2?

18 A Yes.

19 Q Okay. And it was prepared by Judge
20 McIntyre; am I correct?

21 A McIntyre did the deed, like I said, but
22 McIntyre did it, but he represented my father as part
23 of my father turning it over to me.

24 Q Now, that deed is already in evidence, Mr.
25 Gardner; the deed from your father to you is already

1 in evidence. This is a deed where you gave up your
2 interest in any property your mother had to your
3 father; do you remember that at all?

4 A Say that again?

5 Q Your mother died, right?

6 A Yes.

7 Q Your father was alive at the time?

8 A Right.

9 Q And you had four siblings; is that correct?

10 A Yes.

11 Q Okay. So you and your siblings all deeded
12 the property to your dad because your mother didn't
13 have a will; am I correct?

14 A Yes. All right. I remember that now, yes.
15 I remember that.

16 Q Okay. And that's the deed where you did
17 that; is that correct?

18 A Yes. Yes because they was charging all us
19 tax, and we had to put it in my father name.

20 Q Right. So that deed, and then your brothers
21 and sisters all did the exact same deed you did;
22 right?

23 A Right. I think so.

24 Q And every one of those deeds said your
25 mother died on April 14, 1982; is that correct?

1 MR. O'KELLEY: Again, Your Honor.

2 There's an objection. The deeds are not here.

3 THE COURT: You may answer --

4 MR. FINGER: Your Honor, I would offer
5 this deed into evidence as Defendant Number 1, Your
6 Honor.

7 (Defendant Exhibit 1 was marked for
8 identification.)

9 THE COURT: Okay, but he may answer the
10 question as to this deed, your last question, based on
11 the objection.

12 MR. O'KELLEY: Correct. Because he's
13 asking about --

14 THE COURT: So it's sustained in part.

15 MR. O'KELLEY: Thank you, Your Honor.

16 THE COURT: And yes, without objection,
17 I understand? And that will be Defendant's --

18 MR. FINGER: 1.

19 (Defendant Exhibit 1 was received into
20 evidence.)

21 MR. FINGER: Thank you, Your Honor.

22 Do you have the pile of exhibit there?
23 No, they're right down in here.

24 BY MR. FINGER:

25 Q I'm going to hand you Exhibit 3. This is

1 the Alcoa lease.

2 A Yes.

3 Q Do you remember testifying about that on
4 direct?

5 A Yes, I did --

6 Q All right.' Who signed that document?

7 A My mother signed it. I was home, and she
8 signed it. And she signed it in March. I came home,
9 she was very sick. And I was there when this paper
10 came to the house, and I was there when my mother
11 signed that.

12 Q Is that your mother's signature?

13 A Where?

14 Q On page 2?

15 A Do you want me to tell you -- we should have
16 some document with my mother's signature.

17 Q On page 2, is that your mother's signature?

18 A Yes, this look like my mother's signature.

19 Q Okay. So she was still alive when this was
20 done; is that what you're telling the court?

21 A Yes. Yes. Yes. She was alive. I was
22 home, like I said, when she signed it.

23 Q And you lived in New York for about 28
24 years; do I remember that?

25 A Something like that.

1 Q Okay. That lease generated \$450 a month;
2 who got the money?

3 A My father.

4 Q Why not your mother?

5 A She had done passed away when they started
6 working on -- on the dock, she had done passed away.

7 Q I'll had you Exhibit Number 5. It's
8 something that your counsel asked you a question
9 about. That's a letter from Mr. Romanosky at the
10 Coastal Counsel; is that correct?

11 A Yeah, he asked me about that.

12 Q And that document says that -- the lease
13 says Alcoa is going to build the dock; right? So the
14 dock on your property, Alcoa built; is that correct?

15 A Yes.

16 Q Okay. And it says that dock and the work
17 that Alcoa did pursuant to the lease was for the
18 private recreational use of the homeowner; isn't that
19 correct? Isn't that what that letter says?

20 A After they get through with it. After they
21 get through working at Dataw, yes, that's what it
22 says.

23 Q Right. So when they got done with the work
24 at Dataw, whatever work Alcoa did was just for the
25 private recreational use of the property owner; is

1 that correct?

2 A I think that's what --

3 Q That's what the document says? Okay. And
4 you're now trying to claim that other people have a
5 right to use that ramp; am I correct?

6 A Say that again?

7 Q You are now trying to claim that other
8 people have a right to use the ramp?

9 A The ramp or the dock?

10 Q The ramp was my question?

11 A Repeat that again?

12 Q Alcoa worked on both the dock and the ramp;
13 am I correct?

14 A That ramp was already there.

15 Q Did Alcoa do any work on the ramp?

16 A I couldn't tell you. I wasn't here. But I
17 know that that ramp was already there since I was a
18 kid. That boat landing, if you claims that's the
19 ramp, that boat landing was already there.

20 Q All right. Let me switch gears for a
21 minute.

22 You agree that you don't own that 30-foot
23 road; am I correct?

24 A I thought I did, but we thought the family
25 did.

1 Q But you now know that you don't; is that a
2 fair statement?

3 A That's what they're saying.

4 Q Well, that's what your deed says, isn't it,
5 from your father?

6 A It's a save and except.

7 Q What does "save and except" mean; do you
8 know?

9 A No.

10 Q Save and except means it's not yours.

11 A Okay. Go ahead.

12 Q Okay. So do you agree that the road is not
13 yours?

14 A Well, they say that now. But at first we
15 thought the road was ours.

16 Q Right now, as you sit here today, you agree
17 that the road is not yours; is that correct?

18 A No, I don't -- I don't agree with it. I
19 still think it's ours.

20 Q Show me what proof you have that the road is
21 yours?

22 A Because we always try to -- we claim it.
23 That it was our road. Because when I went to --

24 Q Exhibit 11 is the deed from your father to
25 you; is that correct?

1 A Yes.

2 Q Okay. And in that deed, it specifically
3 states that you don't own the road; is that right?

4 A I don't see where it said in this -- I don't
5 see what it said.

6 MR. FINGER: If I could approach, Your
7 Honor?

8 THE COURT: Go ahead. But while we're
9 doing this, let me ask Mr. O'Kelley.

10 Mr. O'Kelley, just to clarify. The
11 plaintiff is not making an ownership claim to the
12 road; is that accurate?

13 MR. O'KELLEY: No, sir. It's the
14 ability to use it and go over it as historically
15 because the deed says "save and except."

16 As Mr. Gardner said, they thought they
17 owned the road, but I think it has, since this
18 litigation has been going on, that has been changed.

19 THE COURT: Okay. So the
20 representation here today is not of ownership by the
21 plaintiff to --

22 MR. O'KELLEY: I think we would have to
23 go against the deeds and the case law at this point to
24 assert that.

25 THE COURT: I just wanted to make sure

1 because I don't want to --

2 MR. FINGER: Okay. I'll move on.

3 MR. O'KELLEY: That's -- you're
4 correct, Your Honor.

5 THE COURT: Thank you.

6 MR. FINGER: Thank you, Judge.

7 BY MR. FINGER:

8 Q And you don't think the county owns it
9 either, do you?

10 A The letter we got said they didn't own it at
11 the time.

12 Q Right.

13 A What he showed me.

14 Q And John Howard was a cousin of yours; is
15 that correct?

16 A No.

17 Q How is he related to you?

18 A No relation to me.

19 Q No -- and his wife, Pearl, wasn't -- was she
20 related to you? Did I misunderstand that?

21 A Yes.

22 Q All right. So Pearl was a cousin?

23 A A cousin. Distant cousin.

24 Q Okay. So Mr. Howard was kind of related
25 through his wife to your family; would that be fair to

1 say?

2 A Through his wife, yes. We going to say
3 that.

4 Q Yes, okay. And have you ever seen the deed
5 into Mr. Howard when he got the property?

6 A Did I see the deed?

7 Q Have you ever seen the deed into Mr. Howard?

8 A No.

9 Q Have you ever seen the deed from Mr. Howard
10 to Pearl Howard?

11 A No more than the letter that they sent.
12 Something like a letter.

13 Q Exhibit 12 is the deed from John Howard to
14 Pearl Howard?

15 A Right.

16 Q You've seen that; correct?

17 A I seen that, yes.

18 Q And it says 1.9 acres on it; is that
19 correct?

20 A It said 1.9.

21 Q Okay. And that is the same property that
22 we've been arguing about since 2017; is that correct?

23 MR. KIDD: No.

24 MR. O'KELLEY: No.

25 THE WITNESS: No, this is not the one.

1 This is --

2 BY MR. FINGER:

3 Q Is the property --

4 A No because the property you trying to say,
5 it was 1.005, and that's the one they said my uncle
6 Dan Taylor sell -- Johnny Howard bought from my uncle
7 Dan Taylor.

8 MR. FINGER: If I could have just a
9 second, Your Honor?

10 BY MR. FINGER:

11 Q Have you had anyone -- have you commissioned
12 anyone to study this title? To go back as far as they
13 could on this specific piece of property?

14 A Don't know when the papers we went back to
15 the courthouse and looked at it, and then I got this
16 from the courthouse.

17 Q I'm sorry. You got what from the
18 courthouse?

19 A These papers here. Some of these papers
20 here.

21 Q Have you ever seen the deed into Mr. Howard?

22 A No.

23 Q When Mr. Howard got the property?

24 A No.

25 Q I'll hand you Exhibit Number 1.

1 (Plaintiff Exhibit 1 was marked for
2 identification.)

3 That's the deed into Mr. Howard, isn't it?
4 It's either Rufus Taylor or Darfus Taylor transferred
5 to John Howard?

6 A Yeah, I seen this, but --

7 Q And you've seen that, right?

8 A I seen this, but this is wrong because it
9 should say Johnny Howard bought the property from Dan
10 Taylor.

11 Q Well, Dan Taylor went by Darfus Taylor --

12 A No.

13 Q -- he went by Rufus Taylor --

14 A No.

15 Q -- he went by a number of names; is that
16 correct?

17 A No.

18 Q Okay.

19 A He went by Daniel Ron Joe Taylor.

20 Q Is this the same property that Mr. Howard
21 transferred to his wife, 1.9 acres?

22 A No, I couldn't tell you that.

23 Q Well, take a look. Here's the deed from
24 John Howard to his wife?

25 A Yes.

1 Q I'll read the description. You follow the
2 description --

3 A Yeah, go ahead.

4 Q "1.9 acres on Warsaw Island, St. Helena
5 Township, Beaufort County, South Carolina, bounded to
6 the north and west by land now or formerly of Dan
7 Taylor, east by the public road and south by marshland
8 between Warsaw Island and St. Helena"; does that seem
9 correct so far?

10 A Yeah, I don't know if the 30-foot -- the 30-
11 foot side is correct.

12 Q "The north side of this lot runs to right
13 angles to the road and measures 200 feet. The east
14 line along the road measures 430 feet to the north and
15 south."

16 Just let me -- you agree that the property
17 descriptions from Taylor into Mr. Howard and from
18 Howard to his wife are identical?

19 A No.

20 Q How are they different? Tell me how they're
21 different?

22 A Because the property that said that Howard
23 from the -- what they bought off what they said from
24 Dan Taylor was 1.005. I think it's the wrong
25 property.

1 Q The deed from the tax sale?

2 A From the tax sale.

3 Q Right. Is the same property that Pearl
4 Howard got from John Howard; am I correct?

5 A That's what they said.

6 Q Okay. And that property that John Howard is
7 the same property that he got from Isabel Black; is
8 that correct? In 1946?

9 A I couldn't tell you. I was a kid. I
10 couldn't tell you that. Like I said, I think that's a
11 different property.

12 Q Well, where is this property, this 1.9
13 acres?

14 A I don't know where it's at. I know it's not
15 -- I don't know where it's at.

16 Q Leola Daise is related to you; am I correct?

17 A Who?

18 Q Ms. Leola Daise?

19 A No, I don't know her.

20 Q She works for the assessor's office; is she
21 related to you?

22 MR. KIDD: Lolisa.

23 A No.

24 Q Lolisa Daise? I'm sorry if I said the --

25 A No.

1 Q She's not related to you?

2 A No.

3 Q She's not related to the Gardner family in
4 any fashion?

5 A No, not as I know.

6 Q In the quiet title action that Judge
7 Kemmerlin ruled on, you were a party in that action;
8 am I correct?

9 A I was a part of it.

10 Q You were a defendant in that action;
11 correct?

12 A Not as I can recall. My father was.

13 Q Your father brought the action.

14 A Yes.

15 Q Were you not named as a defendant in that
16 matter?

17 A I don't recall.

18 Q This is the caption. You'll see it's "Leroy
19 Gardner, Sr. vs. Ardelle Gardner" -- that's your mom;
20 right?

21 A Yes.

22 Q Who's the second person listed? Right here
23 in bold type? That's you, right?

24 A Yes.

25 Q So you were a defendant in this action?

1 A Probably, sir. Like I said, I wasn't aware
2 of it.

3 Q And John Howard was a defendant in this
4 lawsuit; right?

5 A Right.

6 Q And in this action, John Howard was
7 represented legally by Tom Davis; is that correct?

8 A I couldn't tell you, but I was there.
9 That's right there after my grandmother passed -- had
10 the funeral. I remember that.

11 Q This was after your grandmother passed?

12 A Yes.

13 Q Okay. Your grandmother's name was what?

14 A Mary Jane Gardner.

15 Q Okay. And was Mr. Davis there when this
16 hearing was held?

17 A I didn't know Mr. Davis. Like I said, my
18 father was in charge.

19 Q Okay. And in this order from Judge
20 Kemmerlin, it also clearly says the 30-foot road is
21 not part of your father's property; isn't that
22 correct?

23 A Like I said, I came home to my grandmother's
24 funeral. My father and Johnny -- I was in the
25 courthouse. I was there with my father. And after

1 that, I left. What happened, my father was taking
2 care of business, as far as I can recall.

3 Q Okay. Let me change gears for a minute.

4 A Okay.

5 Q How many times have you and Mr. Adams been
6 in magistrate's court where you alleged he was
7 harassing you? How many times?

8 A Quite a few times. I think about three
9 times.

10 Q About three times? And not once has the
11 magistrate's court ever found that he harassed you; am
12 I correct?

13 A Well, one time y'all said --

14 Q Just answer my question and you can explain.

15 A No.

16 MR. O'KELLEY: Your Honor, will you
17 please let my client answer.

18 BY MR. FINGER:

19 Q Not once did the magistrate's court ever
20 find that my client harassed you; am I correct?

21 A No, he sent us home a couple of time.

22 Because one time he said he all was going to try to
23 sell the property, but my son right in court had our
24 video, showed video that he was harassing, he told us
25 to go home, and y'all never went -- we never went back

1 to court.

2 When he harassed me, we had the picture.
3 But he also, he all was going to sell the property.

4 Q January 3, 2023; do you remember being in
5 court?

6 A Yes.

7 Q That day in front of Judge Corley?

8 A Yes. Yes.

9 Q You took my client to court that day; isn't
10 that correct?

11 A Yes, but he was harassing me.

12 Q Okay. And Judge Corley found my client did
13 not harass you; am I correct? That you did not prove
14 any harassment; isn't that --

15 A I didn't have a lawyer, and my son didn't
16 have the video. Yes.

17 Q In that same hearing, Judge Corley found you
18 were harassing my client and put you in jail for seven
19 days; is that correct?

20 A Yes.

21 Q Took you right from the courtroom, you ended
22 up going to jail?

23 A Yes.

24 Q Found that you were harassing my client?

25 A I wasn't harassing him. He said my radio

1 was too loud.

2 Q That was harassment, though, wasn't it?

3 A That -- he wanted to call it harassment,
4 yes.

5 Q And you still do that to this day; isn't
6 that correct?

7 A I don't have no restraining order no more.

8 Q So you can play your music as loud as you
9 want?

10 A I don't play it loud. I told him if my
11 music too loud, call in the --

12 Q You --

13 A No.

14 Q You play your music very, very loud?

15 A No. I play to my ear.

16 Q Are you deaf?

17 A No, I'm not deaf. Why he be in this -- he
18 come in the road, when we be walking the road, he come
19 to the fence and harassing us.

20 Q Do you play your music very loud --

21 A No.

22 Q -- even up until this day?

23 A No.

24 Q You had cameras in trees. You have five
25 cameras filming my client; isn't that right?

1 A We had that before. My son is right there.
2 Yes, we have cameras.

3 Q Okay. You still have them --

4 A Yes.

5 Q -- filming my client? You have microphones
6 in trees, at least two; isn't that correct?

7 A My son, he's right -- yes, I guess.

8 Q There are times when my client has had
9 buyers, possible buyers of the property there, and you
10 have interfered with his ability to sell the property;
11 is that correct?

12 A No. The only time I interfere is when he
13 come down to the boat landing and told them and the
14 road he claimed is his, and I tell them, I says, "It's
15 in dispute." Which it was in dispute.

16 Q So you've gone out of your way to interfere
17 with my client's ability to sell the property; is that
18 correct?

19 A No. When he comes down to the boat landing
20 and the road, I said the road and the boat ramp is in
21 dispute. I don't go on his land, and I say that's --
22 I don't have nothing to do with this parcel over
23 there. And I told you that before.

24 He come down that road and say, "This is my
25 property, I'm going to sell it." I tell him the boat

1 ramp and the road is in dispute. That's what I said.

2 Q How much alcohol do you drink a day on an
3 average?

4 A I don't know. I don't drink that much. I
5 might drink one or two beer a day.

6 Q You drink Heineken, is that what you
7 typically drink?

8 A I drink Heineken. I drink Michelob -- I
9 mean, whatever.

10 Q How many times have you called the police on
11 Reuben?

12 A About 20 or 30 times. He carry his gun. He
13 shoot up in the air, and we call the -- have to call
14 the sheriff on him quite a few times. And I think
15 about three or four months ago, they come there, he
16 was shooting the gun up in the air, or shooting the
17 gun, and they come and make him and his wife spread
18 eagle.

19 Q When did that happen?

20 A About three or four months ago.

21 Q Did he get arrested?

22 A They took him in the car, they handcuffed
23 him.

24 Q Did he get arrested -- went to jail?

25 A No, he didn't get arrested, but they

1 handcuffed him.

2 Q You never went to court on that, did you?

3 A No, we didn't go to court.

4 Q How many times have you or someone on your
5 behalf complained about my client to DHEC?

6 A How many time?

7 Q How many times?

8 A About two or three times.

9 Q Is it more like 15 or 20?

10 A No.

11 Q Two or three times yourself? Or you and all
12 your people?

13 A That's my cousin -- no. She passed away.

14 Q Okay.

15 A And she called about --

16 Q That was Ms. Champion?

17 A Huh?

18 Q That Ms. Champion?

19 A Ms. Champion, yes.

20 Q Okay. What kind of car does Ms. Champion
21 drive?

22 A She don't drive nothing now. She passed
23 away.

24 Q What did she drive?

25 A A Buick.

1 Q A white one?

2 A Yes.

3 Q Is that a picture of her flipping my client
4 the bird on your property? In the middle on the
5 bottom? The white car?

6 A Yes.

7 Q That is her? Something she did on a routine
8 basis; is that correct?

9 A She drive --

10 Q Who's this?

11 A I don't know who that is.

12 Q That's in your garage, isn't it?

13 A It's in my garage. I don't know who it is.
14 I can't see the face.

15 Q Is that you?

16 A I don't know.

17 Q Might be you?

18 A I can't tell you that.

19 Q This is somebody pulling their pants down
20 and mooning my client; isn't that right?

21 A I don't know who it is, but it's in my
22 garage, yes.

23 Q And you were there; is that right?

24 A I didn't see my picture in there.

25 Q The picture here where it had the car

1 picture, that's also a picture of you down here in the
2 bottom right, isn't it?

3 A Yes.

4 Q And what are you doing there?

5 A I'm pulling my pants, doing my pants like
6 this.

7 Q And you're trying to flash your penis at my
8 client? Is that what you were doing?

9 A No.

10 Q No? What were you doing? You were making
11 grotesque signs towards my client; isn't that correct?

12 A Whatever it is when he was harassing me, and
13 yes, probably that's what I was doing.

14 Q And this is another gentleman at your house
15 doing the same thing; isn't that correct?

16 A I can't see who that is.

17 Q Is that at your house?

18 A Yes.

19 MR. FINGER: I'll be offering these as
20 Defendant's 2 and 3.

21 MR. O'KELLEY: We don't know who took
22 these. We don't know where they're from. Mr. Gardner
23 says he doesn't know who this is.

24 MR. FINGER: All right. For
25 identification --

1 MR. O'KELLEY: So I object to them,
2 Your Honor.

3 THE COURT: Yeah, do we have anything
4 on the photographer or the day or anything like that?

5 MR. FINGER: It'd be my client will
6 identify them, Your Honor.

7 MR. O'KELLEY: He took them?

8 THE COURT: All right. We'll just mark
9 them for identification now.

10 MR. FINGER: Please.

11 THE COURT: I'm not admitting them, and
12 we'll just see what happens.

13 THE REPORTER: 2 and 3?

14 MR. FINGER: 2 and 3. Thank you.

15 (Defendant Exhibit 2 and Defendant
16 Exhibit 3 were marked for
17 identification.)

18 MR. FINGER: Your Honor, I'll put ID on
19 them if that's okay, Your Honor?

20 THE COURT: All right.

21 BY MR. FINGER:

22 Q Before my client bought the property, you
23 used to have a no trespassing sign and a cable across
24 that 30-foot section, didn't you?

25 A Yes.

1 Q Yes. And how long did you have that cable
2 and that no trespassing sign there?

3 A When I come home, my father had that.

4 Q Okay. So that was up there the whole time.
5 So your family considered that to be private property
6 that people were not allowed to come on or they would
7 be trespassing; is that correct?

8 A Yes.

9 MR. FINGER: Bear with me one second,
10 Your Honor.

11 Your Honor, Plaintiff's 4 and 5 [sic].

12 THE COURT: Plaintiff's 4 and 5 are
13 already entered?

14 MR. FINGER: Yes.

15 THE COURT: Are these going to be --

16 MR. FINGER: I think without objection,
17 I think.

18 MR. O'KELLEY: No, I don't know
19 anything about these pictures. I just --

20 MR. FINGER: Okay.

21 MR. O'KELLEY: That would be
22 Defendant's.

23 THE COURT: Defendant's?

24 MR. FINGER: Yes.

25 THE COURT: Okay. I was -- I

1 misunderstood.

2 BY MR. FINGER:

3 Q I'm going to hand you photos 4 and 5,
4 Defense 4 and 5. Those show the sign and the cable
5 that your family had up across the property before my
6 client bought it; is that correct?

7 (Defendant Exhibit 4 and Defendant
8 Exhibit 5 were marked for
9 identification.)

10 A Yes.

11 Q Okay. So your family felt it was private
12 property, not public access; is that correct?

13 A Yes.

14 MR. FINGER: Okay. We move these in as
15 Plaintiff's 4 and 5 [sic].

16 BY MR. FINGER:

17 Q These accurately show what the property look
18 like?

19 A Huh?

20 Do these accurately show what the property looked
21 like when you had -- when your family had the no
22 trespassing and the cable up?

23 A Yes. Yes.

24 Q Thank you.

25 MR. FINGER: We offer these --

1 MR. O'KELLEY: No objection.

2 MR. FINGER: All right, 4 and 5.

3 THE COURT: Without objection, 4 and 5.

4 (Defendant Exhibit 4 and Defendant
5 Exhibit 5 were received into evidence.)

6 MR. FINGER: Your Honor?

7 THE COURT: I can -- they're huge, I
8 can see them. Yes, thank you.

9 Let's go ahead and put them back down
10 there.

11 MR. O'KELLEY: Okay. Thank you.

12 THE COURT: I'm running out of room up
13 here for things.

14 MR. FINGER: I understand.

15 THE COURT: Thank you.

16 BY MR. FINGER:

17 Q When Mr. Adams first bought the property, he
18 got along with you okay, didn't he?

19 A Yeah.

20 Q All right. As a matter of fact, you needed
21 some garage doors, and because he was a licensed
22 contractor, he helped you get garage doors at cost; is
23 that --

24 A He was a licensed contractor, but he helped
25 me put the door up and showed me how to do it --

1 Q He sure did, right?

2 A Right.

3 Q And he got you a significant reduction in
4 price, too, didn't he?

5 A Right.

6 Q Yeah. You got a quote for around \$10,000,
7 and he got you one for about --

8 A No, I said that's what they was going to
9 give me, and he say he can get it cheaper. Yeah, I
10 didn't get a quote. I never had a quote.

11 Q Right. And he helped you get the doors and
12 helped you install them?

13 A Yes. Yes.

14 Q So you had no problems with Mr. Gardner in
15 the beginning; isn't that correct?

16 A You mean Mr. Adams?

17 Q Mr. Adams, I mean, yes? I'm sorry. Is that
18 correct?

19 A No.

20 Q The fact is, at one point in time, a boat
21 washed up on the property. They gave you the salvage
22 rights to the boat, too, didn't they?

23 A Yes.

24 Q Have you ever threatened to kill Reuben?

25 A Did I ever --

1 Q Have you ever threatened to kill Reuben?

2 A With an explanation, he like to sic his dog
3 on people and sic his dog to the gate, and the dog
4 charging on his command.

5 And I told him if that dog bite me or my
6 kids or grandkids, I'm going to kill him. That's what
7 I said. Yes. If his dog -- he like to give his dog
8 command to charge at people. He run, put you down,
9 clear from the -- down, sic the dog on clear from the
10 -- he liked it and is still doing it today.

11 Q You have a fence up between your properties,
12 now, am I correct?

13 A He put the fence there.

14 Q But there's a fence. His dog cannot get on
15 your property?

16 A But the dog be charging it. The fence is
17 not all the way around. You got a hole digger come
18 through there.

19 Q You have any pictures or videos of this dog
20 charging you or anybody?

21 A Yes. My son have it. Have one right back
22 there.

23 Q It has not been produced, but you do -- you
24 say you do have videos?

25 A Yes.

1 Q Okay. So you have threatened to kill
2 Reuben?

3 A Like I said, if his dog bite me or my kids
4 when the dog just charged through the fence, yes,
5 that's what I said.

6 Q Have you ever called your friends over to
7 harass Reuben?

8 A No. He come over there. When my friends
9 come, he come over there and start taking pictures and
10 this. He start harassing them, and they start
11 harassing him back. So it's one back and forth.

12 Q Beverly, who lives with Reuben, seated over
13 here, works at Walmart; is that correct?

14 A Yeah. Yes.

15 Q She works at Walmart; right?

16 A Yes.

17 Q And part of her job is she checks receipts
18 as people are leaving; is that correct?

19 A That's supposed to be -- yes, she check my
20 receipts sometimes.

21 Q Okay. And at one point in time, you told
22 her, "If you check my receipt, I'm going to put you
23 ten feet in the ground."?

24 A No, I never told her that.

25 Q You never told her that?

1 A No.

2 Q Did you ever go to her boss and try to get
3 her fired?

4 A One time -- no. One time I -- no.

5 Q What'd you tell her boss?

6 A One time -- huh?

7 Q What did you tell her boss?

8 A I can't remember what I tell, but I never
9 told her to fire her. I told her she and Ben Green,
10 my cousin, had an argument, and I told her what went
11 down. And so Reuben tried to -- did something to Ben
12 Green, and he ran Mr. Reuben around the store with a
13 knife.

14 And I told him -- told him -- and she wasn't
15 a manager. I said I want to speak to the manager. I
16 ain't never told her that I was going to kill -- put
17 her ten feet in the ground.

18 Q Did you try to get her fired at Walmart?

19 A No.

20 Q In your testimony earlier today, you said
21 that down towards the boat ramp portion of this
22 property, there's a fence that's on your property; do
23 you remember saying that?

24 A Yes.

25 Q Okay. That fence is not something that

1 Reuben put up; am I correct?

2 A Yes, he put it up.

3 Q He put it up?

4 A Yes.

5 Q That fence has not been here the -- been
6 there the whole time?

7 A He took the old white fence down and put a
8 new fence up there.

9 Q The trees that you mentioned have paint on
10 them are all on Reuben's property; am I correct?

11 A No.

12 Q You don't pay any taxes on the road; am I
13 correct?

14 A I thought I paid tax on the road because my
15 -- for the boat ramp, my marker is on the other side
16 of that. Mr. Youmans explained that, if you don't
17 mind.

18 Q Actually, the boat ramp is outside of your
19 property, isn't it?

20 A No. It's run right into my property. In
21 fact, I got a marker on the other side of the boat
22 ramp and road.

23 MR. FINGER: Bear with me one second,
24 Your Honor. I thought I had the plat right here.

25 THE WITNESS: I take it now we're going

1 to need that.

2 THE COURT: I'm sorry, sir?

3 THE WITNESS: I think you had the wrong
4 plat. I think that's the plat you're looking for.

5 THE COURT: I've just got copies of it
6 here.

7 THE WITNESS: Yeah, but that's the one
8 that shows that's where my marker's at.

9 BY MR. FINGER:

10 Q I'm handing you Plaintiff's Exhibit 14,
11 which is a plat that was done for you by Mr. Gasque.
12 You've seen that plat before; is that correct?

13 A Yes. I seen this plat before.

14 Q That's number 14; correct? Exhibit 14?

15 A Yes.

16 Q And doesn't that, in fact, show the boat
17 ramp outside of your property?

18 A Yeah, my marker's on this side. You got
19 the --

20 Q Show the court where you say your marker is?

21 A My marker's on this side. This is my house,
22 the boat ramp, and I got a marker right there. You
23 can pull -- it's on the long map that you got. The
24 marker's right here. I got a marker in the water
25 right here.

1 Q That's nothing more than showing that
2 there's marsh grass there.

3 A No, but there's a marker there.

4 Q Is this a marker here?

5 A No, no, no.

6 Q Is this a marker here?

7 A No, no.

8 Q Is this a marker here?

9 A No.

10 Q It's the same marker there, isn't it?

11 A Well, it look like that, but I've got a
12 marker there. They going to show it, what they --
13 what Mr. Gasque did. We got a marker right there on
14 that side, and it's still there.

15 Q You're claiming that the boat ramp is within
16 your acreage?

17 A Yes.

18 Q Despite the fact the plats you had done show
19 it outside?

20 A Yeah -- Mr. -- hold on.

21 THE WITNESS: Could I talk to my
22 lawyer?

23 MR. O'KELLEY: No.

24 THE COURT: Well, not right now.

25 THE WITNESS: Okay. Well, Mr. Youmans

1 will show you the marker.

2 BY MR. FINGER:

3 Q Well, this is -- Mr. Youmans will show me
4 the marker?

5 A Yes.

6 Q Not Mr. Gasque? Mr. Gasque did this one.

7 A Yeah, I know. But Mr. Youmans did one for
8 me, too. He will show you the markers.

9 Q Okay. You lived up in New York for about 28
10 years; am I correct? Did I count that right?

11 A Something -- wait -- I went to New York in
12 1960.

13 Q Right.

14 A I stayed there three months. I went in the
15 military in 19 -- December 19, 1960.

16 Q Right.

17 A I got out October the 23rd, 1964.

18 Q Okay.

19 A I went to New York, and I worked there. I
20 retired in 1992. That's when I moved back home. I
21 was coming home back and forth all the time I was
22 there when I was working. I retired in 1992.

23 Q And I'm not trying to trick you.

24 A Go ahead.

25 Q You told me when you went up there and when

1 you got back. That was 32 years. And you told me you
2 were in the Air Force for four years, so I just
3 subtracted four. So you were in New York for about 28
4 years?

5 A Probably so.

6 Q Okay. You retired in '92?

7 A Yes.

8 Q Dan Taylor who was in the chain of title to
9 my client's property, that was your mother's brother?

10 A Yes.

11 Q And John Howard was married to Pearl, and
12 Pearl was your cousin?

13 A On my mother's -- grandmother's side.

14 Q Okay. Can you explain to me how the deeds
15 to this property went from 1.9 acres, originally 2.4
16 acres, to 1.9, down to 1.05; can you explain --

17 A No, I can't explain that.

18 MR. FINGER: I'm sorry, Your Honor.
19 I'm trying to find the Exhibit 25.

20 BY MR. FINGER:

21 Q 25 is the letter to Sheriff Tanner. You
22 wrote that letter to Sheriff Tanner?

23 A Yes. I think this one that had the names on
24 it.

25 Q It had a bunch of people you copied on it;

1 am I correct? You said you wrote it; am I right?

2 A The community wrote it.

3 Q Who else helped you write that? You said --

4 A -- the community.

5 Q The whole community?

6 A Not the whole community. Just a few people.

7 Q Tell me who helped you write it, please?

8 A I can't remember. I think it was --

9 THE COURT: Found it?

10 MR. FINGER: Found it. And by finding
11 it, I tore the first page off it, so we'll need to
12 staple that. I'm sorry, Your Honor.

13 THE COURT: That's all right.

14 THE REPORTER: I've got a paper clip.

15 MR. FINGER: Okay.

16 MR. O'KELLEY: I was about to say, I
17 got a paper clip.

18 MR. FINGER: Thank you.

19 BY MR. FINGER:

20 Q All right. You have a copy -- you have the
21 exhibit in front of you; am I correct?

22 A Yes.

23 Q Okay. If you look on the first page, the
24 bold type down about two thirds of the way down, "Mr.
25 Gardner's title and falsified claims against it"; do

1 you see that part?

2 A What? Say that again?

3 Q There's a bold type about two thirds of the
4 way down the first page; "Mr. Gardner's" -- do you see
5 that portion right there?

6 A Uh-huh.

7 Q Under that, it says "Mr. Gardner's family
8 have been in possession of this land including the
9 road aligning it for more than 47 years and is deeded
10 to Mr. Gardner in writing"; do you see that?

11 A Yeah, I saw that. Yeah, go ahead.

12 Q Okay. And, in fact, that's false, isn't it?

13 A What you mean, false?

14 Q The road was never deeded to you; do you
15 agree with that now?

16 A When my father deeded the land to me, I
17 thought it was -- the road was included in that. I
18 told you that before. The family always thought that
19 was our road.

20 Q Okay.

21 A We was maintaining it and everything. My
22 father maintained it, and I maintain it.

23 Q On the second page of this document, it says
24 "We believe this document is likely falsified." It's
25 talking about Judge Kemmerlin's order. Do you see

1 that line right there?

2 A Where?

3 Q The first sentence on the second page says
4 "We believe this document is likely falsified." Do
5 you see that sentence in your letter?

6 A Yes.

7 Q What are you referring to there?

8 A About the road?

9 Q What are you claiming is falsified?

10 A I guess it's the road. Because like I said,
11 the family thought they owned the road all that time.
12 And people used to come to us and ask us to use the
13 road. That's why we had the -- the rope, whatever,
14 the chain over there. And we had a key for it, and
15 only certain people had the key to it.

16 Q Okay. So you decided, you and your family
17 decided who could use that road; is that correct?

18 A Yes.

19 Q Okay. And right now, Mr. Adams is deciding
20 who can use the road. So why is that any different
21 than what you did?

22 A Why can't I use the road? I helped build
23 the road, we helped build it. And he didn't have no
24 right to close it off.

25 Q You and your family closed it off; correct?

1 A Yes because we thought it was our -- that's
2 why we said it was our road. People used to come and
3 ask us, and we used to give them the key to use the
4 road.

5 But Mr. Adams put a fence -- I mean, the
6 gate up there, and I can't use the road. Why is that?

7 Q You put up -- your family put up --

8 A Because they thought they owned the road.
9 And only certain people could use the road. And they
10 had a key to it.

11 Q So you are accusing Mr. Adams of doing
12 something wrong, but it was the same thing that your
13 family did for years and years?

14 A Because my family though they owned the
15 road.

16 MR. O'KELLEY: Objection, Your Honor.
17 That misclassifies what -- mischaracterizes what Mr.
18 Garnder said. He said he thought he owned the road.

19 THE COURT: True.

20 BY MR. FINGER:

21 Q On the second page towards the middle of the
22 page in bold type, it says "Mr. Adams' history of
23 unlawfully extending his small property"; do you see
24 that?

25 A Say what -- hold on. On the second page?

1 Q Second page, middle of the page, it says in
2 bold type "Mr. Adams' history of unlawfully extending
3 his small property"; do you see that portion?

4 A No. I don't see it there.

5 Q In small type right here.

6 A Okay.

7 Q Look at this second paragraph under that
8 bold type.

9 A Uh-huh.

10 Q Mr. Adams bought property formerly belonging
11 to Mr. John Howard?

12 A Right.

13 Q Through a tax sale from Beaufort County;
14 right?

15 A Yes.

16 Q That's what your letter says; am I correct?

17 A Yes.

18 Q That's what your letter reads? Well, that's
19 false, isn't that right?

20 A Is that false?

21 Q That's false. That's incorrect. Mr. Adams
22 did not buy it at a tax sale.

23 A No, Mr. --

24 Q He bought it from the Gabardy Trust.

25 A Right, you said that.

1 Q No, you said he bought it at a tax sale.
2 That's what your letter says, and that's false.

3 A He bought it from the tax sale.

4 Q He bought it from the person who bought it
5 from the tax sale.

6 A From the tax sale, right.

7 Q And go down about seven lines from there?

8 A Uh-huh.

9 Q The line that begins "away his newly claimed
10 land even faster"; do you see that line?

11 A Yes.

12 Q The sentence says "Mr. Adams was even, in
13 fact, cited by the county for failing to protect the
14 marsh"; that's false, isn't that correct?

15 A Say that again, now?

16 Q You said that Mr. Adams was cited by the
17 county for failing to protect the marsh; that's what
18 your letter says?

19 A Yes.

20 Q Isn't that what it says?

21 A Yes.

22 Q And that's false?

23 A No.

24 Q Where's the citation?

25 A I don't see the citation. The county came

1 down there and made him stop. He was putting dirt and
2 stuff around there, and the county -- I don't know if
3 it was the county or not, but someone came down there
4 and made him stop. That's not false.

5 Q You have no proof of that?

6 A Yes, I have proof. I have a witness, too.

7 Q Over to the next page, please?

8 A Uh-huh.

9 Q Page -- it's listed as page 100 in the
10 documents that you --

11 A Yes.

12 Q -- your lawyer numbered.

13 A Uh-huh.

14 Q The end of the first paragraph, "Senator
15 Davis is a good, decent man who we were assured
16 follows the law rather than personal friendships"; is
17 that what you believe about Judge -- about Senator
18 Davis?

19 A I don't know Davis.

20 Q You don't know Senator Tom Davis?

21 A Yeah, I read the name, yeah, but I don't
22 know him. No.

23 Q Well, then, if you don't know him, how does
24 it give you the right to write this letter if you
25 don't know him? You're saying he's a good, decent

1 man, but now you're telling us you don't know him?

2 A I don't know him personally.

3 Q Okay. Over to the last page of this letter?

4 A Uh-huh.

5 Q Which is 101 at the bottom. It's not signed
6 by you; why is not signed?

7 A I don't know.

8 Q Okay. And the third line up, it says
9 "Because of both the egregiousness of Mr. Adams'
10 behavior" what does "egregiousness" mean?

11 A Where is that?

12 Q Right in the middle, the third line up.

13 A Like I said, the community wrote this
14 letter, and I didn't sign it.

15 Q You have no idea what "egregious" means?

16 A No.

17 Q Am I correct?

18 How many plats have been done of this
19 property, do you know?

20 A No, I don't. I know I did about three by
21 myself. My father did some, that's right.

22 Q And you've done a couple -- you had some
23 property recombined; is that correct?

24 A Can you --

25 Q You changed the boundaries on some of the

1 property that you owned of your five acres; is that
2 right?

3 A No.

4 Q Did you do a recombination plat?

5 A I did a couple of plats, and I had tried to
6 put -- what you call it --

7 Q What surveyors did you use to have work done
8 for you?

9 A I always had Mr. Gasque.

10 Q Mr. Gasque. Okay. How about Mr. Youmans;
11 what did he do? Did he do anything for you?

12 A Mr. Gasque, and Mr. Youmans did the last
13 one.

14 Q The last one? Okay. And in all those
15 plats, they show iron pins found along your property
16 line; am I correct? Do you know what that means, an
17 iron pin being found?

18 A Yeah, yeah.

19 Q It's a monument, right?

20 A Yeah.

21 Q Okay. And they show iron pins found all
22 along your property line; is that correct?

23 A Yes.

24 Q And there's not one single plat that shows
25 any iron pins found or any markers that are found

1 below your property towards the marsh; did you
2 understand my question?

3 A Yeah, I understand your question. Yes, one
4 was found on the -- like I shared on the -- by the
5 boat ramp, on the other side of the boat ramp.

6 Q And you think somebody found a marker on the
7 other side of the boat ramp that indicates it's your
8 property?

9 A I think the first person who surveyed it put
10 that there. That marker there.

11 Q Other than your claim that there's one
12 marker out by the boat ramp --

13 A Yes.

14 Q -- are there any markers that have ever been
15 found by any surveyor to the --

16 A I think by the light pole. I'm not sure.
17 By the light pole.

18 Q All right. Show me that plat if you think
19 there's markers by the light pole?

20 A It's on -- if I could get --

21 Q That would be plat 14 that we looked at?

22 A Probably so. No, that's not it.

23 Q That's not it?

24 A No.

25 Q Is it some other plat that was introduced

1 today?

2 A Yes. The large plat that you were showing
3 Mr. Judge.

4 Q The large plat?

5 A A large plat.

6 MR. FINGER: Judge, do you have one of
7 the larger plats?

8 THE COURT: 42?

9 THE WITNESS: Yeah, I think that's it.

10 THE COURT: All right. Hold on a
11 second. Let me see what's attached to it.

12 Attached to it was -- this one is not
13 the official one. This is the court's extra copy, and
14 42 should be in here somewhere.

15 THE WITNESS: Yes.

16 MR. FINGER: Okay.

17 THE WITNESS: Right there. I think
18 that's what it is. The pin. And one on, like where
19 that -- where the light pole at. I think one right
20 here, on that side.

21 BY MR. FINGER:

22 Q You think this is -- on Exhibit 42, you
23 think this is a pin out there --

24 A Yes, I think that's --

25 Q -- on the end?

1 A Yes.

2 Q And where does it tie into your property?

3 A What's it tie in?

4 Q Yeah, because

5 A Because they said it was our boat ramp.

6 That's what I --

7 Q So you will agree with me that the boat ramp
8 is at the end of what we have called the 30-foot dirt
9 road; is that correct?

10 A Yes, the boat ramp is at the end of the 30-
11 foot dirt road.

12 Q And you don't own the 30-foot dirt road?

13 A Well, that's what they said now, but we
14 looked -- like I tell you before, before we always
15 though we owned the 30-foot dirt road.

16 THE COURT: Can I get that back from
17 you?

18 MR. FINGER: I'm sorry, Your Honor.

19 THE COURT: Mr. Gardner is -- I'm just
20 trying to keep my copies together. Thanks.

21 BY MR. FINGER:

22 Q When you were working in New York, you
23 worked for the -- for transportation; is that what you
24 -- part of your job?

25 A Transit Authority.

1 Q Transit Authority? What did you do for the
2 transit authority?

3 A Work on the track and I worked on the work
4 train.

5 Q Okay. So on the subways? Or on the --

6 A Subways.

7 Q Subways? Okay. So did you live in one of
8 the five boroughs up there?

9 A Yes.

10 Q Where'd you live?

11 A Brooklyn. Kings, Brooklyn.

12 Q And when you were in the Air Force, were you
13 stationed anywhere in South Carolina at all?

14 A No.

15 Q What type of occupation did your mom do?

16 A She worked Paris Island in the laundry.

17 Q Okay. And how about your dad, what did he
18 do?

19 A Worked Paris Island in the commissary and --
20 and I think he drove truck.

21 Q And of your four brothers and sisters, you
22 said you lost one?

23 A Yes.

24 Q Okay.

25 A Well, I lost two. One of them died young.

1 Q Lost two? Okay.

2 A Very young.

3 Q And the ones that are still alive, where do
4 they live?

5 A They live in Atlanta, Georgia.

6 Q And their names, please?

7 A Leroy Jr. I have no idea why we call him a
8 junior.

9 Q Right. And there's another one; who's the
10 other one?

11 A No, the one that's -- he passed away.

12 Q So you only have one brother and sister
13 left?

14 A One brother.

15 Q One brother still alive?

16 A Yes.

17 Q Okay. And was Leroy the one that went into
18 bankruptcy and --

19 A Yes.

20 Q -- and he had some kind of nightclub or
21 something around here?

22 A I don't know -- no, he had a clothing store
23 down there.

24 Q Okay. And the property that he owned that
25 he inherited from your mom, the bankruptcy court

1 actually transferred back to your dad; am I correct?

2 A Yes.

3 Q Do you remember that?

4 A Yes.

5 MR. FINGER: Okay.

6 Your Honor, if I could have just a
7 second to confer with my client?

8 THE COURT: No problem.

9 MR. O'KELLEY: You know, while they
10 confer, I'm going to run to the restroom.

11 THE COURT: Yeah, we'll be off the
12 record for five minutes.

13 (Off the record.)

14 THE COURT: We're back on. Let's see.

15 Terry, you'd gotten an exhibit ready
16 for --

17 MR. FINGER: I've handed the witness
18 Judge Kemmerlin's order, Exhibit 8, the quiet title
19 order.

20 THE COURT: All right.

21 BY MR. FINGER:

22 Q I'm going to ask you to please go to page 4
23 of that order? Paragraph 4?

24 THE REPORTER: What exhibit is this?

25 MR. FINGER: This is --

1 MR. O'KELLEY: 8.

2 MR. FINGER: 8.

3 BY MR. FINGER:

4 Q Have you found it, Mr. Gardner?

5 A You said page 4?

6 Q Page 4?

7 A Uh-huh.

8 Q And paragraph 4?

9 A Yes.

10 Q And again, I have asked you a number of
11 times and showed you a number of documents that said
12 your mother died on April 14, 1982; and you said, no,
13 that's incorrect?

14 A Yes, that's what I say.

15 Q This order also says she died on April 14,
16 1982; is that correct?

17 A That what it says.

18 Q Okay. And if, in fact, your mother died on
19 April 14, 1982, the Alcoa lease agreement in 1983 must
20 have been forged by somebody; is that correct?

21 A No.

22 Q So all the deeds are wrong? I'm going to
23 hand you --

24 A It must be wrong because I'm pretty sure my
25 mother died in '83, and I was there when she signed

1 that lease. And I guess you can get somebody to go
2 through the national cemetery. I'm pretty sure it was
3 '83 that she died, not '82. As far as my remembering
4 goes.

5 But I know I was there when she signed that
6 lease to Alcoa. It was in March, me and my brother
7 that passed away and my uncle came home. And she was
8 -- she was sick, and she signed that. I was there
9 when she signed it in March. I remember it was March,
10 but she didn't live very long past that.

11 Q I'm going to hand you a deed from Mary Jane
12 Gardner to Leroy Gardner, your dad; is that correct?
13 This is when --

14 A That's when everybody signed it over to my
15 father.

16 Q And the top of that deed says what day did
17 she die? What's the date it says she died?

18 A It says April of '82.

19 Q Right. And here's the deed from Ronald Lee
20 Chandler to your dad; right?

21 A Right.

22 Q And the same thing, is the date that --

23 A I don't think -- they probably made a
24 mistake or not, but I'm pretty sure it was -- from my
25 recollection it was '83. And like I said, I was there

1 when she signed it. I'll never forget. It was in
2 March when she signed it.

3 In fact, I think we got her signature, like
4 I said, her signature, and look at both signatures.
5 When she signed to Alcoa and look at the one that my
6 uncle, when she and my uncle signed it to her. Look
7 at the signature.

8 Q What do you mean, when your uncle signed
9 what to her?

10 A The property over to her in 1976. There
11 should be something that they signed when my mother
12 signed it, and my mother's signature should be on
13 there. I know that's my mother's signature.

14 Q Okay. When was the last time you had your
15 music playing very loudly directed at Mr. Adams?

16 MR. O'KELLEY: Objection. Your Honor,
17 he's already asked --

18 THE WITNESS: I never played it loud.
19 I had it playing.

20 THE COURT: Hold on one second.

21 THE WITNESS: That was last --

22 MR. O'KELLEY: Hold on, Mr. Gardner.

23 THE WITNESS: Huh?

24 THE COURT: Hold on. What was the
25 objection? I'm sorry.

1 MR. O'KELLEY: The objection is he's
2 already testified several times he doesn't think it's
3 playing loudly.

4 THE COURT: Well --

5 MR. O'KELLEY: If Mr. Adams wants to
6 testify about it, he can. But he's already asked and
7 answered many times.

8 THE COURT: Yeah, we heard about the
9 music.

10 MR. FINGER: Nothing further, Your
11 Honor. Thank you.

12 And the record is I hope catching the
13 fact that we have people laughing in the crowd back
14 here.

15 THE COURT: Well --

16 MR. FINGER: Inappropriate.

17 THE COURT: Yeah, let's try to be
18 respectful of the process, anyone in the courtroom.

19 So, Mr. Kidd, please proceed.

20 MR. KIDD: Thank you, Your Honor. May
21 it please the court.

22 I'll try and stand here so the
23 microphone captures me well.

24 //

25 //

CROSS-EXAMINATION

By MR. KIDD:

Q Mr. Gardner, my name is Dylan Kidd. I'm an attorney who represents Beaufort County in this matter.

A Uh-huh.

Q And I just have a few questions for you this afternoon here.

So over the course of this lawsuit, you've ended up reviewing a lot of records pertaining to your property; is that right?

A Yes.

Q Okay. You reviewed a lot of deeds and plats, and most of them that you've seen have been introduced into evidence today; is that right?

A Yes.

Q Okay. And you said you initially believed that you owned what we're calling the 30-foot road here today?

A Yes.

Q Okay. But in going through these records over the course of the lawsuit, you've now come to the conclusion that the 30-foot road wasn't included in the deeds that gave you ownership of your property; is that right?

1 A Yes, that's "save and except."

2 Q Okay. So I want to take you back to a
3 little bit earlier in the case. You recall initially
4 before the trial court, I believe there was summary
5 judgment granted in Mr. Adams' favor?

6 A Yes.

7 Q Okay. And then, you moved for
8 reconsideration before the appeal was filed; do you
9 remember that?

10 A No, I don't remember that.

11 Q Okay. And this was a filing within the case
12 where --

13 A Yes, hold on. I think a couple of times
14 when we tried to get him to open the gates up.

15 Q Okay. Okay, I'm talking about, so after the
16 trial court initially entered summary judgment in
17 favor of Mr. Adams, you wrote -- you had a motion with
18 your attorney, a motion for reconsideration just
19 asking the judge to reconsider his decision before the
20 appeal; is that right?

21 A Yes. Right.

22 Q Okay. Do you remember in that motion that
23 you took the position that the documents that you had
24 seen indicated that the county was the rightful owner
25 of the road?

1 A No.

2 Q Okay. Do you dispute that that was in the
3 motion? Because we have the Court of Appeals order --

4 A I see it now. Yeah. But no, I didn't --
5 never mind that.

6 Q Okay. We can go back to the Court of
7 Appeals opinion I think is 45. Or is it 43?

8 And this has been introduced into evidence
9 today.

10 A Uh-huh.

11 Q I believe you've read this Court of Appeals
12 opinion; right?

13 A Yeah, I read this, yeah.

14 Q Okay. Now, if I may show you here, what I'm
15 looking at is -- so this one doesn't have page numbers
16 on it.

17 It's the fifth page of the Court of Appeals
18 opinion here. And what I'm looking at here is this
19 last paragraph here, if you could take the time to
20 read that?

21 A Yeah. Yes, I read that.

22 Q Okay. All right. And you'll agree with me,
23 and this is in evidence so we don't need to go through
24 the whole thing, but the last page, the last sentence
25 of this says "Gardner claimed the quiet title order

1 indicates that Beaufort County is the rightful owner
2 of the road, not John Howard or his successors"; is
3 that correct?

4 A That's what the sentence says.

5 Q Okay. Well, this is what -- what I'm saying
6 is you filed this motion to reconsider, and this is
7 the argument you made in that motion?

8 A Right.

9 Q Okay. All right, so that was your opinion
10 at the time of that motion to reconsider. And then it
11 went up to the appellate court; right?

12 And you'll agree with me that the appellate
13 court determined that you did not own the road; is
14 that right?

15 A Well, at the time, I thought we still
16 thought we owned the road.

17 Q Sure. I'm just asking you about --

18 A Yeah, go ahead.

19 Q -- the appellate court's decision?

20 A Yes. Yes.

21 Q Okay. The appellate court determined that
22 you did not own the road; correct?

23 A Right.

24 Q And that Mr. Adams did not own the road;
25 correct?

1 A Right.

2 Q Okay. And the appellate court pointed out
3 that these plats and deeds that we've talked about and
4 looked at today repeatedly refer to that road as
5 "unpaved county road" or "county road" or "dirt road";
6 is that correct?

7 A Right.

8 Q Okay. All right. So here today, now that
9 the Court of Appeals sent this case back down to the
10 trial court so we can look at some more documents in
11 accordance and in agreement with that opinion, is it
12 still your position, do you think that the county owns
13 the road today?

14 A No, I still don't think so.

15 Q Okay. You still don't think the county owns
16 the road today?

17 A No.

18 Q Okay. You will agree that the evidence, the
19 deeds and plats we've looked at say that you don't own
20 the road?

21 A No because what happened with my first
22 lawyer, he never turned in no paperwork. So the
23 appellate court was only going by what my -- the
24 lawyer sent him, and it didn't -- he did no research.

25 Like, I guess if you have seen the Alcoa

1 plat and all that, it might have been a different
2 story.

3 Q Okay. But we've sat here and we've gone
4 through --

5 A Yeah, I understand.

6 Q Yes, we've gone through with both your
7 attorney and with Mr. Finger, and you can't point to
8 us a deed or a plat that shows that you own that 30-
9 foot road today; is that correct?

10 A No.

11 Q Okay. Is it -- do you believe that Mr.
12 Adams owns the 30-foot road?

13 A No.

14 Q Okay. But here today, what you are
15 claiming, if I understand correctly, is the right to
16 use that road?

17 A Use the road and -- the right to use that
18 road and the community have a right to use it, and
19 plus take those fence stuff off my property.

20 Q Okay. So in the course of living out there
21 at your home, you've personally witnessed members of
22 the community using that road; right?

23 A Yes.

24 Q Okay. You've personally witnessed members
25 of the community utilizing that boat ramp; right?

1 A Yes.

2 Q Okay. Do you think that road needs
3 improvements? Does it need to be cleaned up?

4 A Yes, after he done put the -- that separate
5 tank there.

6 Q Okay. Do you think that the road needs to
7 be maintained?

8 A Well, I was maintaining it. It wasn't that
9 bad. I was maintaining it, like my father maintained,
10 and I maintained it.

11 Q Okay.

12 A All that time. I mean, if you look at it,
13 the county have -- the city and county have never
14 maintained it, so if everybody was coming to use it,
15 somebody had to maintain it.

16 Mr. Reuben ain't get there until 2015, I
17 think, or 2014.

18 Q Sure. And --

19 A Okay, so how the road -- and everybody would
20 use it to go fishing, making a living. And I was
21 maintaining it, and I have a dock -- I mean, the
22 person who was maintaining it, he's not here. But I
23 sent Mr. O'Kelley a affidavit. Like you said, I just
24 have some -- but I was maintaining the road.

25 Q Okay.

1 A And my father before he passed away.

2 Q Okay. And I don't mean to suggest that you
3 weren't. I'm just asking the condition that it's in
4 now, do you think that it needs to be improved?

5 A Yes.

6 Q Okay. And I believe when you referred to
7 the county saying it didn't own it, you're talking
8 about the exhibit that we have, which is the letter
9 from Eric Klatt; is that right?

10 A Yes.

11 Q Okay. Do you know if Mr. Klatt is a lawyer?

12 A No, I don't know.

13 Q Okay. Do you know if in his position with
14 the county if he's able to grant somebody title by
15 writing them a letter?

16 A No.

17 Q Okay. You don't think that's correct?

18 A No, I don't -- like I said, I don't -- I'm
19 not familiar with that.

20 Q Okay. So you would look to a deed or
21 something like that to determine whether somebody had
22 a legal right to land; is that right?

23 A Probably so.

24 Q Okay. Now, if the --

25 THE COURT: Can you turn that off,

1 please, sir?

2 BY MR. KIDD:

3 Q If the county were the owner of the road,
4 would you need any sort of easement or special access
5 to your property and that land?

6 A No, I don't think so.

7 Q Okay. And if it was a public road, would
8 Mr. Adams need any kind of special access to his
9 property over the road?

10 A No.

11 Q Okay. Would there be any reason for anybody
12 to block the road if it were a county road?

13 A No, I don't see no reason for if it was
14 county to block the road.

15 MR. KIDD: Okay. All right, that's all
16 the questions I have for you. Thank you very much.

17 MR. FINGER: Hold on one more second.

18 MR. KIDD: Just a couple more questions
19 for you, Mr. Gardner.

20 THE WITNESS: Uh-huh.

21 BY MR. KIDD:

22 Q So when did you start living at your
23 residence where you are right now?

24 A I think about '97.

25 Q '97? Okay. How long since you -- when was

1 it after you arrived there that you first started
2 witnessing members of the public using the road --

3 A They was always there. Was always there,
4 since I was a kid.

5 Q Okay. So as long as you've been there,
6 members of the public have been using that road?

7 A Yes. I mean, since I was a kid, they been
8 using that road.

9 MR. KIDD: Okay. That's all the
10 questions I have. Thank you.

11 MR. O'KELLEY: A brief re-direct, Your
12 Honor.

13 RE-DIRECT EXAMINATION

14 BY MR. O'KELLEY:

15 Q You were just asked about the Court of
16 Appeals opinion, Mr. Gardner. I've got a highlighted
17 section here.

18 Read out loud where it says "neither" to the
19 word "now"; what does that say? Read it out loud?

20 A Neither Leroy Gardner, Sr., nor Johnny
21 Howard owned the road. Thus, neither Charles Gardner
22 nor Adams do in his position in the Howard property
23 claim of title owner in it now.

24 Q Thank you, Mr. Gardner. I want to ask you
25 about Exhibit Number 12. Mr. Finger asked you about

1 exhibit; do you remember that?

2 A Yes.

3 Q All right. Let me get that copy.

4 The deed to your cousin, Pearl; right?

5 A Yes.

6 Q Go to that little blurb in the middle; do
7 you see that? It says "That 1.9 acreage"; do you see
8 that part?

9 A Yeah.

10 Q Tell me if I read this correctly. "Bounded
11 to the north and west by land now or formerly of Dan
12 Taylor, east by the public road, and south by the
13 marshland between Warsaw Island and St. Helena"; did I
14 read that correctly?

15 A Yes.

16 Q Thank you, sir. Let's find Exhibit Number
17 19. I'm going to read this out loud, and you tell me
18 whether I'm reading it correctly or not.

19 "All that certain piece, parcel, or lot of
20 land situate lying and being on St. Helena Island,
21 Beaufort County, South Carolina, portion of land Lot
22 28 and 29, Section 12, Township 1, South Range 1 West
23 containing 1.05 acres more or less"; did I read that
24 correctly?

25 A Yes.

1 MR. O'KELLEY: Mr. Gardner, that's all
2 I have. Thank you, sir.

3 RE-CROSS-EXAMINATION

4 By MR. FINGER:

5 Q Have you ever seen anybody from the county
6 maintain this road?

7 A No.

8 Q Okay. And I want to make sure I understand.
9 You had this road closed off with no trespassing
10 signs, and people had to ask you to use it; am I
11 correct?

12 A Yes.

13 Q Okay. And that's what Mr. Adams has done,
14 isn't that correct?

15 A Not as far as I'm concerned.

16 Q He's put a gate up; right?

17 A He put a gate up there.

18 Q Okay. And people had to ask him in order to
19 use the road?

20 A Well, why should I ask him. I was using it
21 all this time, why should I ask him?

22 MR. FINGER: No further questions, Your
23 Honor.

24 THE COURT: Thank you so much.

25 Mr. O'Kelley, were you --

1 MR. O'KELLEY: That's it. I was just
2 trying to fix --

3 THE COURT: I like it. I don't have
4 any questions of this witness right now.

5 Sir -- oh, you did?

6 MR. O'KELLEY: No, sir.

7 THE COURT: You may step down, sir.
8 Watch that step right there. Be careful.

9 THE WITNESS: Yes.

10 THE COURT: Why don't we -- who's up
11 next?

12 MR. O'KELLEY: We got Mr. Atkins next,
13 Mr. Williamson, and Mr. Youmans. So we got three
14 more. But Mr. Atkins will be quick, as will Mr.
15 Williams.

16 THE COURT: All right. Why don't we
17 take a ten, fifteen minute break and then we'll launch
18 into that in a second.

19 All right. We're in recess for 15.

20 (Off the record.)

21 THE COURT: Back on the record. And I
22 think, did y'all want to confirm what we've got as far
23 as exhibits before we continue on?

24 MR. O'KELLEY: Well, Your Honor, I
25 think what we wanted to confirm is that they've all

1 been moved into evidence unless objected to, and
2 you've ruled over a couple of those objections.

3 But we just want to make sure they're
4 all in, the plaintiff's and the defendant's that were
5 not objected to, move them into evidence officially.

6 THE COURT: All right. To the extent
7 that has not been done, it is now done.

8 (Plaintiff Exhibit 1, Exhibit 15,
9 Exhibit 17, Exhibit 19, Exhibit 42, and
10 Exhibit 44A were received into
11 evidence.)

12 MR. O'KELLEY: Thank you, Your Honor.

13 THE COURT: All right. Thank you.
14 And please call your next witness.

15 MR. O'KELLEY: Ed Atkins we call to the
16 stand, Your Honor.

17 And now I'm going to mess these up
18 again, Madame Reporter.

19 And watch your step when you go up on
20 the stand.

21 WHEREUPON,

22 ED ATKINS, JR.,
23 called as a witness, and having been sworn to tell the
24 truth, the whole truth and nothing but the truth, was
25 examined and testified as follows:

1 THE COURT: Be careful there, and have
2 a seat.

3 Can you state your full name for the
4 record, please, sir?

5 THE WITNESS: My full name is Ed
6 Atkins, Jr.

7 THE COURT: Thank you, sir.

8 DIRECT EXAMINATION

9 BY MR. O'KELLEY:

10 Q Mr. Atkins, tell His Honor where you live?

11 A I live at 44 Atkins Bluff, Beaufort, South
12 Carolina, 29907.

13 Q And what do you do for a living, sir?

14 A I run a little bait shop on Lady's Island,
15 collect oysters.

16 Q And you've been in the courtroom all day
17 today, right, Mr. Atkins?

18 A Yes.

19 Q All right. I'm going to show you Exhibit
20 Number 14, which is a Gasque and Associates plat, and
21 it shows a road and a boat ramp. Do you ever use that
22 boat ramp, Mr. Atkins?

23 A Yes.

24 Q Tell the judge how long, when, the
25 circumstances; just tell the tale about your use of

1 the boat ramp?

2 A Well, I used this boat ramp from a little
3 boy, from when I was 8, 9 years old, and I learned how
4 to throw the bucket of oysters.

5 MR. FINGER: If I could just note my
6 objection on the record, the fact that he uses it is
7 irrelevant to any issue in this case.

8 Also, I further state that Mr. Atkins
9 sued my client on January 18, 2019, for alleging he
10 had some type of easement and right to use this
11 property. That lawsuit was dismissed by 40J on April
12 6, 2022, and so law of the case.

13 He's done. He's over. I don't
14 think any of this has any relevance to any issues
15 before the court.

16 THE COURT: All right.

17 MR. KIDD: Your Honor, from the
18 county's perspective, we would contend that the
19 public's use of the road over the course of time is
20 extremely relevant and pertinent to the ownership of
21 the road and any claims to it.

22 THE COURT: All right. Thank you so
23 much. I'm going to respectfully overrule your
24 objection, and I'll allow it to make it his story.

25 MR. FINGER: Okay, Your Honor. Thank

1 you.

2 THE COURT: So please proceed.

3 BY MR. O'KELLEY:

4 Q So, Mr. Atkins, you were telling the court
5 you've been using -- you used this boat ramp when you
6 were a little boy; what year were you born, sir?

7 A '51.

8 Q So since about 1959, '60?

9 A '59. No later than '59.

10 Q Aright, sir. And you said you were going to
11 use the boat ramp to put in boats, oysters, fish; tell
12 the judge what you were doing?

13 A Well, my father was putting boats in where
14 they'd go take oysters and go shrimping. Stuff like
15 that. They used that boat ramp from then until the
16 time Mr. Adams blocked the road.

17 Q And at the time Mr. Adams blocked the road,
18 you were actively using it as part of your business;
19 correct?

20 A Right.

21 Q And what has been the result of that since
22 it's been blocked?

23 A Well, it cost me a lot more now to go get
24 collect bait and oysters now. When it would cost me
25 about ten or fifteen bucks to go up there to collect

1 the bait and do the oysters, now it costs me over \$75
2 to \$100.

3 Q Because you have to put in somewhere else,
4 or?

5 A I put in somewhere else, and the easiest
6 boat ramp I got to put in to is about 15 miles one
7 way.

8 Q So where do you put in since you can't put
9 in at Jenkins Creek?

10 A If I can't put in at Jenkins Creek, I go to
11 Eddings Point landing or Sam's Point landing.

12 Q The one out on Lucy Creek at the end of
13 Sam's Point?

14 A The one at Lucy Creek right --

15 Q And that costs you a lot more fuel?

16 A It costs me a lot more.

17 Q And Eddings Point, too?

18 A And Eddings Point. I got to drive a lot
19 further in the vehicle to pull the boat down there,
20 bring it back, and I lose a lot of bait. So this bait
21 be dying by the time I get back to the bait shop.

22 Q So it's affecting your bottom line?

23 A Right.

24 Q You heard the testimony in the court today,
25 right, sir?

1 A Right.

2 Q And you heard that Mr. Garnder and his
3 family blocked this access at some point?

4 A Yes.

5 Q Were you ever prohibited from using the road
6 or the ramp?

7 A The reason why that gate was closed was to
8 keep some of the local people from going out there and
9 trashing the boat ramp.

10 Q What were they doing, dumping out there?

11 A Yeah, not only dumping, they would go out
12 there and party and leave all kind of different stuff
13 out there overnight.

14 Q So to your mind, it was a security measure,
15 almost?

16 A Right.

17 MR. O'KELLEY: All right. Thanks, Mr.
18 Atkins. That's all I got.

19 CROSS-EXAMINATION

20 BY MR. FINGER:

21 Q Your bait shop is 6.2 miles from Eddings
22 Point Landing; is that right?

23 A That's right.

24 Q Okay. And it is 2.5 miles from this Warsaw
25 Island boat ramp; is that correct?

1 A Right.

2 Q So we're talking about a less than a 4-mile
3 difference; am I right?

4 A That's right.

5 Q Okay. And you filed a lawsuit against my
6 client; is that correct?

7 A Yes.

8 Q In January of '19?

9 A Yes.

10 Q And you voluntarily dismissed that lawsuit
11 in April of 2022?

12 A I didn't voluntarily. The time expired.

13 Q You were represented by a lawyer by the name
14 of Christopher Ramsey?

15 A Yes.

16 Q Okay. This is a copy of the order where
17 your case was dismissed; have you seen this before?

18 A No.

19 Q No? And I'll just say, you see on the side
20 it's dated July 6, 2022?

21 A I never seen that before.

22 Q You never seen that? But you knew that your
23 case was dismissed; correct?

24 A I tried to call him, but he won't answer or
25 -- I don't have no recollection of that.

1 Q Did you bring any tax returns with you
2 today?

3 A No.

4 Q No? Did you bring any monthly profit and
5 loss statements with you today?

6 A No.

7 Q And, in fact, you've discussed this with Mr.
8 Adams, your use of the boat ramp; is that correct?

9 A No. Well --

10 Q You've never talked to him about it?

11 A I talked to him -- he talked, tell me I
12 couldn't be using the boat landing no more --

13 Q As a matter of fact --

14 A -- because that was his property.

15 Q Did Mr. Adams, in fact, tell you that you
16 could use the boat ramp once a day during the day but
17 not after dark?

18 A He did not. I did not get that directly
19 from him.

20 Q You got it from somebody else from him; is
21 that right? So you knew you had the right to use the
22 boat ramp from Mr. Adams once a day as long as it
23 wasn't after dark; isn't that right?

24 A No. My attorney had mentioned that, but I
25 could not agree with that terms 'cause I got to work

1 with the tide. That tide changes every day, every
2 hour. And --

3 Q Tides change every --

4 A -- a lot of times they ain't during the day,
5 I got to go late at night, three, four o'clock in the
6 morning.

7 Q Tides are six hours, right? Between high
8 and low?

9 A Six hours between high and low.

10 Q Correct. Okay. So at least during the
11 daylight, you have at least one complete tide whenever
12 you need?

13 A No, not all the time. 'Cause sometimes the
14 sun get too hot, and I don't -- I'm not trying to go
15 because I lose all the bait, not just a few.

16 Q But you are aware that Mr. Adams authorized
17 you to use it once a day during daylight hours.
18 You're aware of that; correct? You said your lawyer
19 told you about that?

20 A My lawyer told me about that, yes.

21 Q Okay. And you also said that the condition
22 of this boat ramp and the property around it was not
23 very good until Mr. Adams came in and bought it; am I
24 correct? Lots of debris laying around?

25 A No. There -- we could use the boat ramp

1 fine. We could use that fine, and just when he
2 blocked it off because -- to keep people from going
3 and mess up the boat ramp.

4 Q Mr. Adams has done that, right? He's
5 cleaned up the property, has he? Do you know?

6 A I don't. I hadn't been back down there
7 since.

8 Q This is a picture from when Mr. Adams bought
9 the property; does that look about what it looked
10 like?

11 A That about what it looked like. Right.

12 Q And --

13 A Except for the -- except for these posts
14 they got down there.

15 Q Right. Who put the posts in? Do you know?

16 A I don't know.

17 Q They were in there when Mr. Adams bought the
18 property?

19 A No, they wasn't.

20 Q They weren't?

21 A No.

22 Q So you don't know who put those posts?

23 A I don't know who put the posts. But that
24 was not there.

25 Q Those posts would make it hard to get a

1 trailer back down in there, wouldn't it?

2 A We used to go up and pull up in there and
3 turn around and come back. But after they put the
4 posts in, we couldn't do that no more.

5 Q Okay. And you don't know who put the posts
6 in?

7 A I don't know who put them there.

8 Q You don't know whether Mr. Garnder or his
9 family put them in, did you? Do you know whether Mr.
10 Garnder or his family put the posts in?

11 A No, he wouldn't have no reason to put it
12 down there.

13 Q And you had permission from the Gardner
14 family to use the boat ramp; is that correct?

15 A Yeah, whenever I get ready.

16 Q I'm sorry?

17 A Whenever I got ready to use it, day or
18 night.

19 Q So you had their permission to use it?

20 A Right.

21 MR. FINGER: Right. Okay. Thank you.
22 No further questions.

23 CROSS-EXAMINATION

24 BY MR. KIDD:

25 Q Mr. Atkins, I believe I understood you to

1 testify that you had been using that road and ramp
2 since you were 8 or 9 years old, so in 1959 or 1960
3 you started; is that right?

4 A My father -- with my father.

5 Q Okay. And so you were using it as a little
6 boy; when did you start using it for work purposes?

7 A About sometime around '63, '64.

8 Q Okay. So you would have been 12 or 13 at
9 that point by my math?

10 A Right.

11 Q Okay.

12 A I had a boat with a motor when I was 13
13 years old. I had a vehicle.

14 Q Yes, sir. So when you -- throughout your
15 history of using it for your work, did you ever run
16 into any problem accessing the road until Mr. Adams
17 moved in?

18 A Never.

19 Q Were you ever blocked from using that road
20 until Mr. Adams moved in?

21 A No. Never.

22 Q Did you ever notice that anybody -- first of
23 all, I should ask you -- strike that, please.

24 Did you over time using the road and ramp,
25 did you know that other members of the community were

1 using the road and ramp?

2 A Yes.

3 Q Did you know of any of them that were ever
4 blocked or restrained from using the road or ramp
5 until Mr. Adams moved in?

6 A Nobody never had a problem until Mr. Adams
7 came.

8 MR. KIDD: All right. That's all the
9 questions I have. Thank you.

10 RE-DIRECT EXAMINATION

11 BY MR. O'KELLEY:

12 Q Just briefly, Mr. Atkins. Mr. Finger asked
13 you it's this many miles from Eddings Point and this
14 many miles from Jenkins Creek and this many miles from
15 Lucy Creek; it's a lot farther by water, isn't it?

16 A A lot further by water.

17 MR. O'KELLEY: Thanks, Mr. Atkins.

18 RE-CROSS EXAMINATION

19 BY MR. FINGER:

20 Q Well, we're talking about the distance
21 between your bait shop and a boat ramp so you could
22 get in the water; is that correct? Get your boat in
23 the water?

24 A I could put my boat in the water, but I have
25 to run by boat once I put the boat down another five

1 or six miles by water just to get where my catch poles
2 are at.

3 MR. FINGER: All right. No further
4 questions, Your Honor.

5 MR. O'KELLEY: Thank you, Mr. Atkins.

6 THE COURT: All right, Mr. Atkins. You
7 can step down. Watch your step on that.

8 MR. O'KELLEY: Your Honor, our next
9 witness is Richard Williamson.

10 Be careful going up. It's kind of
11 messy on the far side.

12 Good afternoon, sir.

13 MR. WILLIAMSON: Good afternoon.

14 THE COURT: Yeah, they're tough steps.

15 WHEREUPON,

16 RICHARD WILLIAMSON,
17 called as a witness, and having been sworn to tell the
18 truth, the whole truth and nothing but the truth, was
19 examined and testified as follows:

20 THE COURT: Thank you, sir. Please
21 have a seat and state your full name for the record?

22 THE WITNESS: Richard R. Williamson.

23 THE COURT: Thank you, sir. Please
24 answer the questions Mr. O'Kelley has for you.

25 //

DIRECT EXAMINATION

BY MR. O'KELLEY:

Q Mr. Williamson, tell His Honor where you live?

A I live at 18 Ashton Drive.

Q And where is that in connection with the property that we are discussing here today?

A I'm Charlie's other next-door neighbor.

Q And when you say, "other," which -- who's the first neighbor you're talking about?

A Adams.

Q And that's the defendant, Mr. Adams?

A Yes.

Q All right. Mr. Williamson, you've been in the courtroom all day; correct?

A Correct.

Q All right. I want to show you what's been marked as Exhibit 21. It's a letter. Can you tell His Honor about that document?

(Plaintiff Exhibit 21 was marked for identification.)

A My wife and I had moved to the property finally, got hit by two hurricanes right as we got there. Life's been hard. And Charles was having problems with the boat ramp neighbors -- neighbor.

1 And we wanted to express our experiences,
2 and when I'm saying, "ours," myself and my wife's.
3 She not here right now. She was here earlier this
4 morning.

5 And we had previously before we had moved
6 there, we were renting the house out through VRBO.
7 The economy had all turned bad, and we were planning
8 to sell another piece of property to pay for it, so
9 that didn't take place for quite a few years.

10 And so we rented the house out. We have --

11 Q The house where you live now?

12 A The house now. We have grandchildren here,
13 and we would come down and do the repair work and fix
14 work for the next people who were coming in, and then
15 we'd have a slight chance to visit with the family.

16 And some of the people that we rented to
17 would bring boats. And they wanted to get in that
18 river.

19 MR. FINGER: That would be hearsay,
20 Your Honor. He's going to tell -- if he's testifying
21 on what --

22 THE WITNESS: I have had experience
23 myself --

24 THE COURT: Hold on one second, sir.

25 MR. O'KELLEY: Hold on just a minute.

1 THE COURT: So, Mr. O'Kelley?

2 MR. O'KELLEY: I'll rephrase it.

3 MR. FINGER: Thank you.

4 THE COURT: Thank you.

5 BY MR. O'KELLEY:

6 Q So for your renters or your VRBO people, did
7 you have to -- did you ever contact Mr. Gardner?

8 A I did.

9 Q And in relation to people putting boats in?

10 A Yes.

11 Q Okay. And was that ever a problem?

12 A No. No problem. I told them to go see him.

13 Q And was it ever a problem from -- until Mr.
14 Adams moved in that you saw people having a problem
15 accessing that road or the boat ramp?

16 A By the time Adams had come on the scene, we
17 weren't renting it out.

18 Q You were living there?

19 A We were living there.

20 Q But during the time you've owned this
21 property on Ashton Road up until the time Mr. Adams
22 came, there was never been a problem with people using
23 the -- what we call the road or the boat ramp;
24 correct?

25 A Correct. I refer to it as their driveway

1 rather than a road.

2 MR. O'KELLEY: Understood.

3 At this time, Your Honor, we'd like to
4 move Exhibit -- I think it's 21 into evidence.

5 MR. FINGER: Your Honor, I don't have
6 any problem except for the fact that there's hearsay
7 from his wife in there, and I think that that last
8 paragraph -- next-to-last paragraph should be struck.

9 And there's also a line right before
10 it. But she was here this morning, and I assumed she
11 was going to testify about the authenticity. So I'll
12 withdraw my objection, Your Honor.

13 MR. O'KELLEY: Okay.

14 THE COURT: All right. So 21 is in
15 without objection.

16 (Plaintiff Exhibit 21 was received into
17 evidence.)

18 MR. O'KELLEY: All right.

19 BY MR. O'KELLEY:

20 Q And earlier today, Exhibit Number 44, Mr.
21 Gardner said, I think -- what's he call you, Ritchie?

22 A No.

23 Q Okay. I thought he said -- I thought maybe
24 he called you -- does he call you Richard?

25 A He might. He done told me that --

1 Q Does he call you Richard to your face?

2 A Yeah.

3 Q Yeah, well I thought he said, "Richard might
4 have taken these pictures."

5 A I can't tell what that is. I wouldn't even
6 show that to anybody. That's ridiculous.

7 Q If you don't recognize them, that's fine. I
8 can -- this is how they came to us.

9 A Well, I got -- I've taken pictures of the --
10 that looks like it's probably the installation --

11 Q Hold on. Let me just do it the right way.
12 Do you recall taking these pictures; yes or
13 no?

14 A I haven't seen the two pictures, and I can't
15 recognize the first one, so I can't say that I've seen
16 them.

17 Q Take a minute and peruse them?

18 A I know the scenes that they were taken at.

19 Q Right, but the question is --

20 A I didn't take black-and-white pictures.

21 Q All right, then.

22 A I have color pictures on my cellphone.

23 Q We'll take them back, then, because if you
24 didn't take them, then --

25 A I have color pictures of the operation on my

1 cellphone.

2 Q Understood. You've been in the courtroom
3 more or less all day, Mr. Williamson; correct?

4 A Yes, sir.

5 Q All right. Did you help Mr. Gardner write
6 Exhibit Number 25 if you recall? Take your time to
7 read it?

8 A No, I -- I've got a personal file on this,
9 and I haven't got this in my file. I did not.

10 Q Fair enough. I'll take it back. Thank you,
11 sir.

12 And you personally used the boat ramp,
13 didn't you, Mr. Williamson?

14 A I have.

15 MR. O'KELLEY: All right. Thank you,
16 sir. That's all I've got.

17 THE WITNESS: I asked him if I could
18 use it.

19 MR. O'KELLEY: Fair enough.

20 THE WITNESS: And he was happy to let
21 me use it. We've been good friend ever since.

22 THE COURT: Please answer any
23 questions, Mr. Finger may have for you.

24 MR. FINGER: May it please the court.

25 //

1 CROSS-EXAMINATION

2 BY MR. FINGER:

3 Q So you felt you needed to ask permission to
4 use the boat ramp; is that correct?

5 A It wasn't on my property.

6 Q And you asked Mr. Gardner for permission?

7 A I did. There was a cable across it.

8 Q Right. There was a cable across it. That's
9 correct, right?

10 A Right.

11 Q Did you have a key to get into the cable?
12 Or you had to ask Mr. Gardner to take the cable down?
13 Or --

14 A No. I took it down. It was removable at
15 that time and when I was there. I'm kind of new on
16 the -- in the neighborhood, you know. I'm not --
17 there's people out there who can tell you a whole lot
18 more than I can.

19 Q And you took Mr. Adams to magistrate court;
20 am I correct?

21 A On what occasion?

22 Q How many times did you take Mr. Adams to
23 magistrate court?

24 A One, maybe two. I've been up there a couple
25 of times.

1 Q Okay.

2 A We had dog issues on one side and a
3 threatening situation on the other.

4 Q And Judge McIntyre, was he the judge for
5 those hearings?

6 A No. I don't believe he was.

7 Q Who were the judges at which hearing?

8 A I think there was somebody else there.

9 Q Okay. And what did you accuse Mr. Adams of?

10 A Threatening me.

11 Q Okay. And the judge did not rule in your
12 favor; am I correct?

13 A He ruled against both of us. It wasn't just
14 me.

15 Q He ruled against you, said Mr. Adams did not
16 --

17 A He ruled against Adams and me.

18 Q Okay.

19 A Told us to stay separate.

20 Q And threw your harassment charge out; am I
21 correct?

22 A There was no punishment from him. Is that
23 what you're asking? Repercussions?

24 Q The judge ruled that whatever you took him
25 to court over, you didn't prove your case and you

1 lost; am I correct?

2 A I felt like I had established my grounds,
3 and it was important to me to establish my grounds
4 from that point going forward. If I hadn't done that,
5 I would be subjecting myself to danger.

6 Q You took him to court and you lost; is that
7 a fair statement?

8 A I don't say I lost. No.

9 Q Was I there?

10 A Were you?

11 Q That's a question I'm entitled to ask you.

12 A I believe you were.

13 Q All right. And I cross-examined you; isn't
14 that correct?

15 A Afterwards.

16 Q Afterwards? During the court, I didn't ask
17 you any questions?

18 A You did.

19 Q Right. And after you got done with your
20 case, the judge dismissed it; am I right?

21 A We both went home. Is that dismissing?

22 Q You did not get the relief that you went to
23 court to get; am I correct?

24 A I got satisfaction from it.

25 Q By dragging my client into court over

1 nothing; is that correct?

2 A Well, it wasn't over nothing. He made very
3 serious threats to me.

4 Q It turns out the judge didn't believe you;
5 am I correct?

6 A You'll have to talk to the judge about that.

7 MR. FINGER: No further questions, Your
8 Honor.

9 THE COURT: Thank you so much.
10 Mr. Kidd?

11 MR. KIDD: No questions from the
12 county, Your Honor.

13 THE COURT: No question?

14 MR. O'KELLEY: Just briefly, Your
15 Honor.

16 RE-DIRECT EXAMINATION

17 BY MR. O'KELLEY:

18 Q Mr. Williamson, you said there were various
19 threats -- serious threats made by Mr. Adams; what
20 were those, sir?

21 A Well, there were two instances. The first
22 one was at the road intersection of Ashton and Warsaw
23 Island Road. The sheriff was there. The second one,
24 he followed me down my road. He came down my road
25 while --

1 Q "He," the sheriff; or "he," Mr. Adams?

2 A He, Mr. Adams, came down my road while I was
3 working up there. And he cussed at me like I've never
4 been cussed at before. I mean, it was -- it was
5 something.

6 I've done construction work all my life, and
7 I've been around a bunch of rough rednecks all my
8 life. And when that happened to me, I said, "There's
9 got to be something happening here that I don't like."

10 And so that's when I made a move.

11 Q Because you felt threatened?

12 A Yes.

13 MR. O'KELLEY: Thank you, sir.

14 RE-CROSS-EXAMINATION

15 BY MR. FINGER:

16 Q How many times did you bump your car or
17 truck into his gate?

18 A I didn't make it a -- it's not his gate, to
19 start with. And I have --

20 Q Just answer my question, sir?

21 A I have not intentionally bumped or touched
22 his gate.

23 Q So you've unintentionally run into his gate?

24 A I don't know.

25 Q As many as three times?

1 A Did it break something?

2 Q Do you deny bumping into his gate?

3 A I don't remember bumping into his gate.

4 Q And that's what he came down to talk to you
5 about; is that correct? Because he felt you were
6 damaging his property?

7 A I have -- I have a vehicle that's 45 feet
8 long in combination, and I had to turn it around to
9 get into my driveway coming from the other end of
10 Ashton. And there's not a lot of room left in that
11 area between his gate and Ashton Drive.

12 So I'm backing a vehicle up that's 45 feet
13 long, and if I had bumped a gate, maybe I did. I
14 don't know. But I was turning around to try to get
15 back into my driveway.

16 Q Espy trucks come down Ashton Drive on a
17 fairly regular basis, don't they? And they're able to
18 get in and out without hitting anybody's property; is
19 that a fair statement?

20 A They -- no. That's not a fair statement at
21 all.

22 Q What property have the Espy trucks hit?

23 A They hit his mailbox about a hundred times.

24 Q That was Mr. Heyward that hit his mailbox a
25 hundred times.

1 A But his truck. You asked me if it's a
2 truck, and I'm telling you it's a truck, a delivery
3 truck for Mr. Heyward. You asked me that, and I told
4 you.

5 MR. FINGER: I have no further
6 questions, Your Honor.

7 THE COURT: Any other questions of this
8 witness?

9 MR. O'KELLEY: No, Your Honor.

10 THE COURT: Thank you, sir. You may
11 step down and return to your seat.

12 MR. O'KELLEY: Your Honor, at this
13 time, we call David Youmans to the stand.

14 THE COURT: Mr. Youmans, how are you
15 this afternoon?

16 MR. YOUMANS: Fine, how are you?

17 THE COURT: Very good.

18 WHEREUPON,

19 DAVID YOUMANS,
20 called as a witness, and having been sworn to tell the
21 truth, the whole truth and nothing but the truth, was
22 examined and testified as follows:

23 THE COURT: Have a seat, and you know
24 the drill. It's a tricky step there.

25 //

DIRECT EXAMINATION

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BY MR. O'KELLEY:

Q Good afternoon, Mr. Youmans.

A Good afternoon.

Q Please state your full name for the record?

A David S. Youmans.

Q And Mr. Youmans, please tell the court where
you live?

A I live at 11 Ashton Drive, Warsaw Island,
St. Helena, South Carolina.

Q And how long have you been out on Warsaw?

A I've lived there a little over 26 years.

Q And you're, for lack of a better term, down-
the-street neighbors with Mr. Gardner; correct?

A Correct.

Q All right. Mr. Youmans, you testified
before Judge Dukes before, have you not?

A Oh, yes.

Q And just for the record, what is your
professional experience vis-a-vis surveying, sir?

A I'm sorry?

Q What's your professional experience and
background and training in surveying?

A I'm a --

MR. FINGER: I'll stipulate that he's a

1 registered surveyor.

2 MR. O'KELLEY: Well, we want him more
3 for his being a registered surveyor; we'd like to be
4 able to have him render an opinion as to his plats and
5 surveys.

6 MR. FINGER: Okay. You can go.

7 MR. O'KELLEY: Is that -- that's
8 stipulated, too, Mr. Finger?

9 MR. FINGER: I think he would qualify
10 him as an expert witness.

11 MR. O'KELLEY: Correct.

12 MR. FINGER: So we don't need to go
13 down that route. I will agree that Mr. Youmans is --

14 MR. O'KELLEY: That'll make things
15 faster.

16 MR. FINGER: -- is an expert witness.

17 MR. O'KELLEY: Thank you.

18 THE COURT: All right. Thank you. So
19 stipulated.

20 BY MR. O'KELLEY:

21 Q So, Mr. Youmans, Exhibit Number 42 is a plat
22 that you prepared; please tell His Honor about the
23 genesis of that plat, what you did, the long tale of
24 how this plat came to be?

25 A Okay. Mr. Gardner contacted me about doing

1 the survey of the 30-foot dirt road that separates his
2 property from formerly the Howard property. And
3 that's what we did. We showed all improvements inside
4 the 30-foot right-of-way from basically Ashton Drive
5 down to the boat landing.

6 Q And Ashton Drive is located -- I guess that
7 would be the western end of this plat?

8 A Correct. Southwestern end.

9 Q Southwestern end of the plat? And Mr.
10 Gardner's property is the one that's listed "NF
11 Charles Gardner"; correct?

12 A Correct.

13 Q And then on the south side of the road is
14 "NF Reuben Adams"; correct?

15 A Correct.

16 Q All right. And tell the judge what you
17 found when you went out and surveyed the property?
18 What are we looking at for us laymen?

19 A Well, first thing I found was a gate going
20 across the road. We located that at the end of the
21 pavement.

22 And as best we could tell, the center line
23 of the traveling road all the way down to the boat
24 landing, and also the drain field and the septic
25 system inside that 30-foot road, a power line

1 crossing, and then down to the boat ramp.

2 Q And on the northeast corner, the far-right
3 upper-hand corner, it says "Jenkins Creek"; that's the
4 boat ramp going into the creek, right?

5 A That's correct. Yes.

6 Q Okay. And then, because my eyes aren't
7 good, on the boat ramp, it says -- is there a marker
8 or a point or a pin there on the boat ramp?

9 A Yes, an iron pin we found. I think Mr.
10 Gardner pointed it out about where it was, and we
11 found it and tied it.

12 Q And you've been in the courtroom all day,
13 Mr. Youmans; correct?

14 A Correct.

15 Q And you've heard Mr. Gardner testify that he
16 thinks he owns that boat ramp; right?

17 A Correct.

18 Q And do you have an opinion of whether that
19 pin is -- for the boat ramp is adjacent to his
20 property, or how it works? What are your thoughts
21 about that?

22 A I don't think that iron pin down by Jenkins
23 Creek has any bearing on the property line one way or
24 the other, but I do have an opinion on this whole
25 thing.

1 Q Well, share it with His Honor?

2 A I'd be happy to. Charles Gardner's mother,
3 Ardelle Gardner, was deeded approximately 10 acres,
4 this Lot 15 in 1973. It's been in the Gardner family
5 ever since.

6 She had a plat done in '76 by Ron Span [ph].

7 Q Let me see. We might have already made that
8 one an exhibit.

9 A Yeah, it's in there.

10 Q It's Number 2. I'll hand it -- I got to
11 find it, and I'll give it to you.

12 But that was one of the plats you looked at,
13 I'm sure, when you were doing this plat?

14 A Oh, yes.

15 Q This is the plat for Ardelle Gardner from
16 back in -- I didn't mean to interrupt, but you
17 mentioned the plat.

18 A Correct.

19 Q All right. Go ahead, sir. I'm sorry.

20 A It shows the Gardner property, 8.91 acres,
21 and it shows the dirt road, 30-foot dirt road going
22 down to the boat ramp. Which is interesting he calls
23 it a 30-foot dirt road, not a county road.

24 And there's another plat that calls it -- or
25 the deeds, or plats, everything refers to it as a dirt

1 road, not as a county road.

2 And then in 1990, there was a quiet title
3 action done to separate the properties from the
4 Garnder and John Howard. John Howard got a deed to
5 the 1.05 acres south of the 30-foot road. Mr. Gardner
6 got a deed to 8.91 acres on the north side of the
7 road. The deed -- the road was never deeded out.

8 It was erroneously called a 30-foot county
9 road in that quiet title action, but it's never been
10 described before or since as a county road. As a
11 matter of fact, there's a letter from the county
12 stating they don't own it, they don't maintain it,
13 they have nothing to do with it, essentially.

14 Q And you know all this, Mr. Youmans, because
15 you have to do your research as a surveyor before you
16 make a plat; correct?

17 A Yes, sir.

18 Q And you know how to run title and look at
19 title and look at old plats, obviously; correct?

20 A I do. I'm not a title searcher, but I -- I
21 can find my way around.

22 Q Yes, sir. And in your research, have you
23 determined or do you have an opinion about how many
24 acres Mr. Adams owns?

25 A A little over an acre on the south side of

1 the road.

2 Q Because there's one deed in here that says
3 it's 1.9 acres; and you know which deed I'm talking
4 about? The deed to Pearl?

5 A I do. I've read that one several times.
6 It's maybe owned by John Howard, but it's not this
7 piece of property. It's somewhere else on Warsaw.
8 And I want to say I don't know where because --

9 Q And if I represent to you that deed says one
10 of the boundaries is the road itself; do you doubt
11 that? Here it is.

12 A It says "the public road."

13 Q Correct. "East by the public road and south
14 by marshlands between Warsaw and St. Helena"; do you
15 know if that's the same property we're talking about?

16 A I'd say it's not. The one of them is bound
17 over the east by a public road; this says it's
18 somewhere on the west side of the public road, which
19 can't be this piece of property.

20 Q Because this property is on the south side
21 of the road, whether public or private; correct?

22 A Correct.

23 Q And did you look at the tax deed when the
24 county sold Mr. Adams' property for taxes?

25 A I did.

1 Q And how many acres was in that tax deed?

2 A 1.05 acres, as best I remember.

3 Q And tell His Honor anything else you think
4 is important about your work and your plat and your
5 history of the property?

6 A I think I've stated fairly well that it's
7 always been, at least the assumption, that it was
8 Gardner property since at least '73 when it rescinded
9 to Mrs. Gardner. If I can give you an analogy?

10 Q Sure.

11 A If my father owns 100 acres and he deeds out
12 50 acres, and then later he deeds out 48 acres,
13 there's two acres left. That belongs to my father, or
14 when he is deceased, it belongs to his estate. It
15 doesn't belong to anybody other than the estate of the
16 deceased.

17 And that applies to this, too.

18 Q That's what I --

19 A It's Gardner property. That road was never
20 deeded out. The property on either side of it was,
21 but the road wasn't deeded out, so it still belongs to
22 the Gardner family, in my opinion.

23 Q Understood. And have you -- you've read
24 Judge Kemmerlin's order, though; correct?

25 A Yes, I have.

1 Q And did you -- have you read the order of
2 the Court of Appeals, by any chance?

3 A I have.

4 Q Okay. And you're aware that they have said
5 that neither Mr. Gardner's father nor Mr. Howard owns
6 the road?

7 A Correct.

8 MR. O'KELLEY: Okay. Thanks, Mr.
9 Youmans. That's all I have. I appreciate you.

10 THE COURT: Mr. Finger?

11 CROSS-EXAMINATION

12 BY MR. FINGER:

13 Q Aside from the Ardelle Gardner plat, which
14 is Exhibit 2, did you look at -- you looked at a plat
15 from Mr. Span [ph] from 1976?

16 A I did, yes.

17 Q Did you look at any other plats in
18 formulating your opinion today?

19 A I looked at a couple of plats done by Dr.
20 Gasque.

21 Q Okay. And the plats done by Mr. Gasque, let
22 me ask you; did you look at this particular plat from
23 Mr. Gasque?

24 A Yes, I did.

25 Q Okay. And Mr. Gasque's plat finds iron pins

1 all along the Gardner property line; am I correct?

2 A Yes.

3 Q Okay.

4 A No, it says he place them. It says "Iron
5 pin, new."

6 Q Okay. And how many are new versus old?

7 A I can't really tell.

8 Q Can't tell? It's too hard to tell; right?

9 A I can't really.

10 Q I had a bigger copy of that somewhere.

11 MR. O'KELLEY: I think His Honor has
12 the --

13 MR. FINGER: Hold on, let me see if I
14 can find a bigger -- I think the judge may have the
15 bigger --

16 MR. O'KELLEY: I think the judge has
17 the biggest.

18 MR. FINGER: Okay. I may have one
19 here.

20 Reuben, do you have one?

21 THE COURT: Now I got to find it.

22 MR. O'KELLEY: It's the one that's a
23 little yellowed.

24 THE COURT: Surely I gave that back
25 because I didn't have enough room.

1 THE REPORTER: Do you know what exhibit
2 number it is? Is this it?

3 THE COURT: You're talking about the
4 larger size, correct?

5 MR. FINGER: That's it.

6 THE WITNESS: Yeah.

7 MR. FINGER: It's right here, 23A. Let
8 me make sure that's the one we want to use.

9 BY MR. FINGER:

10 Q Okay, yes, 23A. A little bit bigger so we
11 can all see it at the same time.

12 A Oh, yeah.

13 Q Is it fair to say that the markers were
14 found along Gardner's boundary; is that correct?

15 A Yeah. And if I'm not mistaken, these are
16 irons that were placed by Mr. Gasque on a previous
17 survey.

18 Q Okay. And is that the typical language,
19 "One half rebar found"?

20 A Correct.

21 Q Okay. And do you find anything on this
22 Gasque plat that shows any markers out below the 30-
23 foot road?

24 A Marking the 30-foot road?

25 Q Yeah, no. No, do you find anything that

1 would indicate where the property lines would be --
2 and I'm using this south, because that's north --
3 south of the Gardner property line?

4 A No, the only one is a concrete marker out in
5 the marsh way down in the southwest corner.

6 Q And no other markers were found?

7 A No.

8 Q And you didn't find any other markers?

9 A Huh-uh.

10 Q Which would lead you to believe that this
11 property was all one piece of property?

12 A No.

13 Q No? Why not? Wouldn't there have to be --

14 A Because of the deeds. The deed says that
15 the Howard tract was south of the road.

16 Q Right.

17 A The Gardner tract was north of the road.

18 Q And that's correct, isn't it?

19 A Yeah, according to the deeds.

20 Q Okay. But the -- did you look at any of the
21 deeds prior to Howard's deed that said 1.9 acres?

22 A That 1.9 acres doesn't have anything to do
23 with this property.

24 Q And the property description on the 1.9
25 acres would be correct if the east and west was

1 flopped; am I correct? No?

2 A Because of the dimensions in one of the
3 deeds referenced in that property.

4 Q The deed --

5 A It just doesn't work.

6 Q The first deed you find in the chain of
7 title on this says it's 2.5 acres, and then it goes to
8 1.9 acres?

9 A That's not this property.

10 Q What property is it?

11 A I don't know anything about that property.

12 Q You live on --

13 A It won't fit there.

14 Q You live on Warsaw; correct?

15 A Yes, sir.

16 Q Okay. And are there any other surveyors
17 that live on Warsaw Island?

18 A Not that I know.

19 Q Okay. And does your son work with you in
20 the business, also?

21 A He did. He doesn't anymore since I'm
22 retired.

23 Q And when you were faced with this 1.9 acre
24 property description, what efforts did you make to try
25 and figure out where on Warsaw Island that would be?

1 A I didn't need to. It wasn't the property I
2 was tasked to survey.

3 Q You weren't curious as being a resident
4 there to find out where is this deed?

5 A Heck, no. There's hundreds of parcels on
6 Warsaw.

7 Q Okay.

8 MR. FINGER: Bear with me one second,
9 Your Honor.

10 BY MR. FINGER:

11 Q Now, the tax deed, you said you looked at
12 the tax deed; am I correct?

13 A Yes.

14 Q The tax deed into my client's predecessor?

15 A Correct.

16 Q That Pearl Howard lost it at a tax sale and
17 Gabardy Trust bought it, Gabardy transferred it to my
18 client?

19 A Right.

20 Q Okay. And that property description in the
21 tax deed and in my client's deed says it's "1.05 acres
22 more or less, see Judge Kemmerlin's order and see an
23 old plat"; isn't that essentially what it says?

24 A I don't remember. I remember looking at it,
25 but I don't remember the details of it.

1 Q Okay. And if, in fact, my client only has
2 1.05 acres, where are the monuments delineating his
3 boundary?

4 A Your guess is as good as mine.

5 Q But the fact of the matter, there are none;
6 is that correct?

7 A Not that I know of, no.

8 Q And the only monuments are along Mr.
9 Gardner's property line where monuments were found?

10 A Well, the monuments found for that
11 particular area, yeah.

12 MR. FINGER: Thank you. Thank you very
13 much, sir.

14 THE WITNESS: You're welcome.

15 MR. FINGER: Nice to see you. Thank
16 you.

17 CROSS-EXAMINATION

18 BY MR. KIDD:

19 Q Mr. Youmans, I just would like to show you,
20 we're talking about Exhibit 42 was what you prepared?
21 What we were looking at earlier? I just want to make
22 sure I understand exactly what you did going through.

23 A Yes.

24 Q All right. So you -- Mr. Gardner contacted
25 you to survey what we have been calling the 30-foot

1 road itself; is that right?

2 A That's correct.

3 Q Okay. So in looking at this here, do I
4 understand your notations, this dotted line right here
5 and then to the southeast which you have noted "NF
6 Reuben Adams" indicating that that is Mr. Adam's
7 property; correct?

8 A Correct.

9 Q Okay. And on the other side of the road,
10 you've done the same thing here with this dotted line,
11 and on top you said "NF Charles Gardner"; is that
12 correct?

13 A That's correct.

14 Q All right. So then we're looking at this
15 longer dashed line here, and that has "the old road,"
16 and I believe you're indicating here that this is the
17 center line of that old road; is that correct?

18 A That's correct. Because that's what we
19 determined. Yes.

20 Q Okay. So your investigation led you to
21 believe that Mr. Gardner owns the property to the
22 northwest side of the road; that's correct?

23 A Correct.

24 Q And Mr. Adams owns the property to the
25 southeast side of the road?

1 A That's correct, yes.

2 Q Okay.

3 A According to the deeds.

4 Q And as part of this, you noted a drain field
5 within the area of the road?

6 A Correct.

7 Q Okay. But you did not make any
8 determination as to the explicit ownership of this
9 road itself, did you?

10 A No.

11 MR. KIDD: Okay. That's all the
12 questions I have for you. Thank you.

13 THE WITNESS: You're welcome.

14 THE COURT: Any other questions?

15 MR. O'KELLEY: Briefly, Your Honor.

16 RE-DIRECT EXAMINATION

17 BY MR. O'KELLEY:

18 Q Exhibit 8 is Judge Kemmerlin's order. You
19 read that; right?

20 A Yes.

21 Q On the front page, there's a note on here;
22 do you see what that note says? Handwritten?

23 A "I now remain a party to the action, page
24 15, 1.054 acres save and excepted for Howard being
25 below and southeast of the 30-foot dirt road."

1 Q You reached that same conclusion, didn't
2 you, Mr. Youmans?

3 A I did.

4 MR. O'KELLEY: Thank you, sir.

5 RE-CROSS-EXAMINATION

6 BY MR. FINGER:

7 Q And Mr. Youmans, is that your handwriting?

8 A No, sir.

9 Q Do you know who put that on there?

10 A I have no idea.

11 Q It's not on the original order; am I
12 correct? Have you seen a copy of the order without
13 that language on it?

14 A No, I haven't.

15 Q Did you ever look at this order before?

16 A I looked at that one, yes.

17 Q That's the only one that you've seen is that
18 one?

19 A Correct.

20 Q This is an exhibit that was introduced in
21 this case during my client's deposition. Is that
22 language on the front of that document?

23 A No, sir. It's not.

24 MR. FINGER: Okay. Thank you.

25 THE COURT: Any other questions for Mr.

1 Youmans?

2 MR. KIDD: No, sir.

3 MR. FINGER: Thank you, Your Honor.

4 THE COURT: I've got a question.

5 THE WITNESS: Okay.

6 THE COURT: So you've read the -- as a
7 part of this in the research, you read the 1.9 acre
8 description that you, I think, testified a minute ago
9 is somewhere else?

10 THE WITNESS: Correct.

11 THE COURT: What are the discrepancies
12 that you see in this, and I'm looking at Exhibit 12,
13 which is the Pearl Howard/John Howard deed? What are
14 the various discrepancies that -- it's tough for me to
15 ask you a question when you got it in your hand.

16 What are the discrepancies in this
17 description, Exhibit 12, and the piece of property
18 that we're talking about, the Adams property?

19 THE WITNESS: Okay. Right off the bat,
20 it says it's to the east of the public road and south
21 by a marsh. The north side of this lot runs at right
22 angles to the road and measures 200 feet. They
23 just -- the east line along the road measures 430 feet
24 from north to south. It just -- it's impossible to be
25 that.

1 THE COURT: So if east and west are
2 swapped, you've still got 430 feet of linear frontage
3 on a public road; is that what this is saying?

4 THE WITNESS: That's right. Right, and
5 this -- it just doesn't fit here at all.

6 THE COURT: And if east and west aren't
7 swapped, then it's on the wrong side of the island, or
8 something? I don't know. What is your --

9 THE WITNESS: This is the wrong place.
10 I don't know where it is, but it's not here.

11 THE COURT: Do you have any other
12 issues with this -- any other discrepancies between
13 this description and the Adams property?

14 THE WITNESS: I'm sorry, what now?

15 THE COURT: Did you have any other
16 reason to believe that this is not that property?

17 THE WITNESS: No. It just won't fit
18 there.

19 THE COURT: Okay. I don't have any
20 other questions, but there may be questions related to
21 my question.

22 MR. O'KELLEY: No, sir.

23 THE COURT: Okay. All right, you may
24 step down, sir. Watch your step on the way down.

25 MR. O'KELLEY: And, Your Honor, I

1 think, unfortunately, that's as far as we can go today
2 because Ms. Daise was going to be our next witness,
3 and she is indisposed. And Mr. Gasque says he will be
4 here at 9:30 in the morning. But that's -- I'm sorry
5 we -- that's all.

6 THE COURT: No, that'll be fine. Do we
7 want to begin at 9:30? Is that a good time to start?

8 MR. FINGER: I see Madame Court
9 Reporter is saying -- gave us the thumbs up, so yes.

10 THE COURT: As opposed to nine? Or,
11 yeah, that's -- all right.

12 MR. O'KELLEY: 9:30? Okay.

13 THE COURT: 9:30. Let's see. We can
14 leave everything in here and lock it up; does that
15 work?

16 MR. O'KELLEY: Okay, great.

17 MR. FINGER: Yes.

18 THE COURT: I think we're good, then.
19 All right, then. We'll be in recess
20 until tomorrow morning at 9:30.

21 (Whereupon, at 3:10 p.m., the
22 proceeding was concluded.)
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24
25

CERTIFICATE

I, ASHLEY MANINI, the officer before whom
the foregoing proceedings were taken, do hereby
certify that any witness(es) in the foregoing
proceedings, prior to testifying, were duly sworn;
that the proceedings were recorded by me and
thereafter reduced to typewriting by a qualified
transcriptionist; that said digital audio recording of
said proceedings are a true and accurate record to the
best of my knowledge, skills, and ability; that I am
neither counsel for, related to, nor employed by any
of the parties to the action in which this was taken;
and, further, that I am not a relative or employee of
any counsel or attorney employed by the parties
hereto, nor financially or otherwise interested in the
outcome of this action



ASHLEY MANINI

Notary Public in and for the
State of South Carolina

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REBECCA CAMERON

