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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CLARENDON COUNTY

Court of Common Pleas

G. Wells Dickson, Jr., Special Referee

Appellate Case No. 2025-000064

Gina M. Derry and Catherine M. Stone, Appellants

v.

Ray A. Zuber and Ellen R. Zuber, Respondents.

FINAL BRIEF OF APPELLANTS

Mary Patricia Crawford, Esquire
S.C. Bar # 101455
PO Box 654
Walterboro, SC 29455
843-810-0405
thecrawfordlawfirmllc@gmail.com
Attorney for Appellants

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STATEMENT OF ISSUES

1. Did the trial Court err when it reasoned that establishing a disputed boundary line by acquiescence requires that acquiescence must occur for "a long period of time"?
2. Did the trial Court err when it determined that the Respondents did not acquiesce in establishing the disputed boundary line by acquiescence?
3. Did the trial Court err in when it determined that the Respondents did acquiesce to the boundary line their actions and inactions did not "justify" moving the boundary line between the properties?
4. Did the trial Court err when it determined that in order for equity to prevail to the benefit of the Appellants the entire neighborhood owners must also benefit from the change in the disputed boundary line?
5. Did the trial Court err when it determined that the constructive knowledge of the existence of the survey done at the time of purchase, despite the existence of an original subdivision plat and several differing subsequent surveys of the same property, defeats the argument of equity by acquiescence?
6. Did the trial Court err when it determined that the Appellants were using equitable estoppel acquiescence as an offensive action?
7. Did the Court err when it determined that the most recent survey taken of the properties overrode the boundary lines established in the original plat for the purposes of establishing a development?
8. Did the trial Court err when it denied the Appellants' request to amend or alter the Final Order in light of the Court's own findings of fact and applicable law?

STANDARD OF REVIEW

When reviewing decisions rendered by a Master in Equity the scope of review for a case heard by a Master in Equity who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury." *Tiger, Inc. v. Fisher Agro, Inc.,* 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1990).

When reviewing an equitable action heard first by a Master in Equity and after a S.C.R.C.P. Rule 59 (e) motion has been heard and the issue of amending/altering of the Final Order has been decided by the Master in Equity and appealed to the appellate court, the court should review the facts in accordance with its own view of the preponderance of evidence in the record." *Osterneck v. Osterneck,* 374 S.C. 573, 577, 649 S.E.2d 127, 129 (Ct. App. 2007).

"This broad scope of review does not require the appellate court to ignore the fact that the Master in Equity was in a better position to assess the credibility of witnesses and assign weight to their testimony." *Id*

STATEMENT OF THE CASE

Appellants filed this action in the Court of Common Pleas of Clarendon County, State of South Carolina on March 30, 2017 and undertook the burden of proof. Both the Appellants and the Respondents participated fully in a trial before Special Referee, G. Wells Dickson, Jr. at which time they had opportunity to introduce evidence in support of their claims and in opposition to the defenses.

Following that trial, Special Referee, G. Wells Dickson, Jr. ruled in favor of Respondents, denying quiet title action based on adverse possession or balancing of equities made by Appellants; denying the claim for compensation for the value of the improvements made by

Appellants to the "Disputed Strip"; denying Respondents' claims of fraud and constructive fraud as well as Respondents' claims for resultant actual and punitive damages; declaring the "Disputed Strip" is owned by the Respondents and had been since their purchase of their property in 2004; Ordering an immediate injunction requiring Appellants to remove all improvements from Respondents' property no later than forty-five (45) days after the date of the Order; cancelling the Lis Pendens filed on March 30, 2017; and retaining jurisdiction to address subsequent motions or other actions to the jurisdiction of this particular Special Referee.

Motion having been served upon the Appellants by the Respondents on May 16, 2023 and filed with the Court of Common Pleas in Clarendon County on May 15, 2023, and served by the Respondents on May 16, 2023, on the ground that the Order in the specific incidences set forth herein constitute error, abuse of discretion, and are against the weight of testimony and other evidence in the record.

Pursuant to Rule 59(e), SCRCP, the Court granted the request that the Court reconsider its Order dated May 11, 2023 (the "Order") based on its determination that pursuant to Rule 59(e) and Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) the trial Court had failed to rule on an issue which was raised by the Respondents concerning the equitable issue of acquiescence.

On August 9, 2023 a hearing was held on the Appellants' Motion to Reconsider and Alter or Amend. On December 9, 2024 the trial court issued its decision.

On January 6, 2025 Appellant filed her Notice of Appeal with the Court of Common Pleas, County of Clarendon, State of South Carolina.

On March 13, 2025 Appellant received the transcript for the hearing on the Motion to Reconsider and Alter or Amend.

STATEMENT OF THE FACTS

1. That the Appellants are the owners of certain real property located in Clarendon County, South Carolina known as Lot 65 of Quail Ridge Shores Subdivision (identified as Clarendon County Tax Map Number 160-03-00-018).

2. That the Respondents are the owners of certain real property located in Clarendon County, South Carolina known as Lot 64 of Quail Ridge Shores Subdivision (identified as Clarendon County Tax Map Number 160-03-00-020).

3. That the Appellants obtained title to their property by deed of George M. Laney on November 29, 2005, said deed having been recorded in the Office of the Register of Deeds for Clarendon County on November 29, 2005 in Deed Book 740 at Page 214.

4. That the Respondents obtained title to their property by deed of Jeanne M. Ward on December 2, 2004, said deed having been recorded in the Office of the Register of Deeds for Clarendon County on December 2, 2004 in Deed Book 554 at Page 153.

5. That in August of 2016, the Appellants added to their existing concrete driveway and installed a metal-framed carport on the southern side of their lot, the side adjacent to the Respondents' property.

6. That after the construction of the driveway and carport, the Respondents inquired of the Appellants whether the additions to the driveway and carport met the minimum setback requirements for the County of Clarendon.

7. That as a result of this inquiry, the Appellants retained Mathis & Muldrow Land Surveying to survey Lots 64 and 65; said survey, dated August 29, 2016, revealed that the driveway, carport, fencing, and boat ramp encroach onto the Respondents' lot, said encroachment at its widest point being 9.97 feet, as is shown on the survey.

8. That after the construction of the driveway and carport, the Respondents inquired of the Appellants whether the additions to the driveway and carport met the minimum setback requirements for the County of Clarendon.

9. That the property in dispute is that certain portion of Lot 65 referred to as "Disputed Strip," said Disputed Strip believed to be 0.03 acres between fence and actual property line.

10. That the Appellants placed and constructed the driveway and metal- framed carport based on the property line that had been established and confirmed by the Respondents on various occasions since the Appellants purchased their property.

11. That on or about November 29, 2005, the Respondents walked over to the Appellants' yard to meet the Appellants and show them the property line, with Defendant Ray A. Zuber implementing a tape measure to verify the property lines.

12. That since November 29, 2005, the Appellants have continuously, hostilely, openly, actually, and notoriously held uninterrupted and exclusive possession of the Disputed Strip.

13. That the Appellants had pine trees cut down on the Disputed Strip in 2006, and the Respondents were aware of the tree cutting and further inquired as to the price.

14. That in the spring of 2006, the Respondents requested that the Appellants limb three (3) trees which had been planted on the Disputed Strip by the previous owners of the Appellants' parcel to enable the Defendant Ray A. Zuber to maneuver his lawnmower while cutting the grass without the limbs hitting him.

15. That in or about 2012, the Appellants had the three (3) trees referenced in Paragraph 15 on the Disputed Strip cut down and the Respondents expressed appreciation that said trees were cut down.

16. That in the spring of 2006, the Appellants had a concrete driveway installed and added a wooden fence along the driveway at the entrance from Hudson Road, as is shown in "Exhibit D" attached hereto.

17. That in March of 2007, the Appellants installed a metal wire fence with wood framing and posts at both ends referenced as "Wood Fence" on the August 29, 2016 survey, on the southwestern side of the property separating the property of the Appellants and the Respondents. As the fence was being constructed, the Respondents walked over to confirm that the fence was located on the Appellants' property and not encroaching on the Respondents' property.

18. That since its installation, the Appellants and the Respondents have planted various shrubs and flowers along the fence.

19. That in the summer of 2009, the Appellants had an electrical service pole that was located on the Disputed Strip removed so that they could avoid the monthly cost; the Respondents were aware of this, as access was requested via their driveway by the electrical company.

20. That in or about 2015, the Appellants applied for and constructed a new seawall and boat ramp, and during the construction process, the Respondents signed a Consent Form as required by Santee Cooper. March 5, 2020 Transcript, p. 19, lines 20-25; p. 20, lines 1-5.

21. That said application required that the seawall and boat ramp be constructed six (6) feet from the Respondents' property line (said seawall and boat ramp depicted in "Exhibit G" attached hereto).

22. That Defendant Ray A. Zuber, using a measuring tape, showed the contractor the property line and where six (6) feet from that line would be prior to his constructing the seawall that is now known to be over the platted property line.

23. That it was the Respondents who established the property line between Lots 64 and 65.

ARGUMENT

In determining whether or not the Court should alter or amend its final order to find that the "Disputed Strip" should be titled to the Appellants and should strike the demand for injunction against Appellants based on the equitable theory of acquiescence the Court should consider both the doctrine of estoppel and the doctrine of estoppel by acquiescence. Under the doctrine of estoppel "a man, as a matter of fact, may not have any right; he may think he has a right. He may not. He may be a trespasser, but he may be honest and really think that he has a right to do so and so. He goes and spends his money, may spend thousands; the other man knows the first man has no right; although the first man honestly believes that he did have the right the second man stands by, knowing the first man had no right to do it, and permits him to innocently go and spend maybe hundreds or thousands of dollars erecting property there at great cost, believing he had a right to do it. The law says that in good conscience the second man must assert his right and say, 'You must not do that, that's my property'; and, [when] he stands by, by acts or words and does anything to encourage the man to go on and doesn't object when the law says he ought to speak up, that's the doctrine of estoppel", Southern Railway Co. *v.* Day, 138 S.E. 870 (S.C. 1926)

The doctrine of estoppel by acquiescence rests upon the general principle that: "When one of two innocent persons — that is, persons each guiltless of an intentional moral wrong — must suffer a loss it must be borne by that one of them who by his conduct, acts, or omissions has rendered the injury possible." Chambers v. Bookman, 67 S.C. 432; 46 S.E., 39.

Where the Court has found that there has been no evidence of actual or constructive fraud on the part of the Appellants ("guiltless of an intentional moral[legal] wrong") and where, as in the instant case, the Court has found that trespass does not lie against the Appellants and where

the facts as stated in their pleadings and as testified to in open Court, the Respondents have failed to act on the placement of the fence on their property from the time of the initial construction of the fence in 2007 until the Appellants erected the carport in 2015 and filed suit in 2017 to quiet title to the Disputed Strip, the Respondents, have, by their omissions and actions rendered the injury of loss of title to land possible and must suffer that loss.

One of the main foundations to the assertion of the doctrine of estoppel is innocence and good faith on the part of the parties asserting the estoppel. In this case Appellants evidenced that they made inquiry as to the status of the boundary line before acting on the premises. The Court found that they asked the very Respondents themselves who lived in the adjoining lot (which is the subject of this action) prior to the Appellants purchasing and moving onto the lot. The Respondents themselves asserted that they did not have knowledge that the property was not as delineated by the fence, yet contrary to their own assertions it was not until a structure was erected inside the fence line on the Appellants' side, that they finally assert that that very structure "encroached on their property". Respondents' own submissions to the Court bely the disingenuousness of some lack of knowledge on their part that the property line established by the fence was not correct. (R. p. 11)

The Court believed that the Appellants ought to have known that the boundary line was not as they had thought, despite the presentation by multiple witnesses, including the very Respondents themselves, that there were multiple plats surveyed and drawn by trained and licensed professional surveyors depicting different boundaries from 1988 through 2016 and the Appellants were deceived by the acts/omissions and words of the Respondents, and it is these facts upon which the Appellants rely to pursue estoppel by acquiescence.

Respondents admitted to following the fence boundary line while mowing the lawn and while landscaping along that property line. Further, Appellants removed and trimmed trees within the Disputed Strip as if the Strip was indeed theirs, in consultation with and without objection and confirmation of the property line by/from the Respondents. It was not until the Appellants themselves erected a carport and filed to quiet title that the Respondents took any action whatsoever to determine boundary lines in direct opposition to those provided by the Respondents themselves to the Appellants. (R. p. 11)

In addition, it was from the Respondents representation by their acts of landscaping along "their" side of the fence and by their omissions in not stating that the fence was not the property boundary line from which the Court determined that the parties operated with the 2007 fence between the two lots as the property line. (R. p. 11)

Where, as here, the Court has found that there has been no evidence of actual or constructive fraud on the part of the Appellants ("guiltless of an intentional moral[legal] wrong") and where, as in the instant case, the Court has found that trespass does not lie against the Appellants and where the facts as stated in their pleadings and as testified to in open Court, the Respondents have failed to act on the placement of the fence on their property from the time of the initial construction of the fence in 2007 until the Appellants erected the carport in 2015 and filed suit in 2017 to quiet title to the Disputed Strip, the Respondents, have, by their omissions and actions rendered the injury of loss of title to land possible and must suffer that loss.

As late as 2015 the Respondents signed a government document recognizing that the seawall as constructed was within the required footage which was referenced from the fence line as the property line. (R. p. 11). Respondents cannot assert at one time the boundary line was correct, while they liked what the Appellants were doing on the property and then assert that the

same boundary line is not correct when they did not like what the Appellants were doing on the property. Respondents by their own omissions and actions show that they knew where the line was, but failed to object to any such actions as encroachments on "their property".

As noted in our courts, a disputed boundary line can be established by acquiescence of the parties. Kirkland v. Gross, 286 S.C. 193, 197, 332 S.E.2d 546, 548-49 (Ct. App. 1985), receded from on other grounds by Boyd v. Hyatt, 294 S.C. 360, 364 S.E.2d 478 (Ct. App. 1988). [A]cquiescence is a question of fact determined by the intent of the parties. Id. at 198, 332 S.E.2d at 549. [I]f a party stands by, and sees another dealing with property in a manner inconsistent with his rights, and makes no objection, he cannot afterwards have relief. His silence permits or encourages others to part with their money or property, and he cannot complain that his interest[s] are affected. His silence is acquiescence and it estops him. McClintic v. Davis, 228 S.C. 378, 383, 90 S.E.2d 364, 366 (1955) (quoting S. Ry. v. Day, 140 S.C. 388, 138 S.E. 240 (1926)). In Bull v. Rowe, 13 S.C. 355, it is said: "It is a rule almost of universal application that one who stands by and sees another purchase land or enter upon it under a claim of right, and permits such other to make expenditures or improvements under circumstances which would call for notice or protest, cannot afterwards assert his own title against such person."

The Respondents stood by and saw the Appellants make improvements on the land in dispute at Appellants' own expense, but Respondents failed to object to the fence determining the boundary between the parties which "allowed" the Appellants to improve Appellants' land as understood and confirmed by the Respondents own actions. The Respondents cannot now raise objection after 9-12 years of acquiescing to its placement simply because the improvements are no longer to their liking.

Plats were offered in the instant case in support of the Respondents' contention that the boundaries on the ground (the fence) were/was incorrectly located on the Respondents' property. However, the record contains nothing to dispute Appellants' evidence they have lived on their property within the fenced boundaries as they claim since 2007. The plats simply show that at some point, the boundaries may have been as the Respondents assert they were intended.

ISSUE 1

Did the Court err when it reasoned that establishing a disputed boundary line by acquiescence requires that acquiescence must occur for "a long period of time"?

While the statutory requirements for the finding of adverse possession and those case law based requirements for the finding of acquiescence are similar they differ greatly in the amount of time which must have passed in order for a Party to be able to assert the estoppel by acquiescence principal. "The estoppel may arise, even though the period of acquiescence is very short." 21 C.J., 1161. See, also, *Champv. Nicholas County Court*, 72 W. Va., 475; 78 S.E., 361. Further, our own Courts, held in Southern Railway v. Day, supra, that an "'estoppel may arise, even though the period of acquiescence is very short'", and that in the case of estoppel, it is not necessary that such acquiescence continue for the period necessary to establish adverse possession.

"Acquiescence in a transaction may bar a party of his relief in a very short period. Thus, if one has knowledge of an act, or it is done with his full approbation, he cannot afterwards have relief. He is estopped by his acquiescence, and cannot undo that which has been done. So, if a party stands by, and sees another dealing with property in a manner inconsistent with his rights, and makes no objection, he cannot afterwards have relief. His silence permits or encourages others to part with their money or property, and he cannot complain that his interests are affected. His silence is acquiescence and it estops him." Southern Railway Co. *v.* Day, 138 S.E. 870 (S.C. 1926)

The Respondents in this matter must have known that the Appellants were constructing a fence, building a carport and pouring over the existing driveway and were doing so under a belief that they had a right to do so. The Respondents themselves knew or ought to have known , their own rights, for they had in their possession their deed and original plat, but failed to take action until the Appellants made the carport improvement within the fenced boundary line and filed the within action.

The Appellants constructed the subject fence in 2007 and the carport thereafter. The driveway was simply resurfaced by the Appellants and was used by the Respondents. So, while the statutory requirement of ten (10) years for the establishment of adverse possession may arguably not have been met, there is no such time frame requirement for the doctrine of estoppel by acquiescence which may as noted above be satisfied by a very short period of time.

In the instant matter the Court found the fence was erected in 2007 and established the property line as understood the parties, whose actions conformed with that knowledge by the Appellants. It was not until some 8 years or more later, after the Respondents failed to object and acted in conformance with the property line established by the subject fence, (thus accepting and confirming the understanding of the Appellants) that the Respondents admitted the carport was encroaching on their property, a carport which was within the fenced property line.

The Respondents stood by and saw the Appellants make improvements on the land in dispute at Appellants' own expense, but Respondents failed to object to the fence determining the boundary between the parties which "allowed" the Appellants to improve Appellants' land as understood and confirmed by the Respondents own actions. The Respondents cannot now raise objection after 9-12 years of acquiescing to its placement simply because the improvements are no longer to their liking.

Based on the aforesaid laws as applied to the unique facts and circumstances of this matter, the Appellants' position is that the Court did err in finding that ten (10) years was not sufficient time to establish equitable estoppel of acquiescence as to the disputed strip and Appellants should be found to have right, title and interest to the disputed strip and all injunctions should be lifted.

ISSUE 2

Did the Court err when it determined that the Respondents did not acquiesce in establishing the disputed boundary line by acquiescence?

As stated by *Joseph Calhoun Watson* in his scholarly article of the South Carolina Law Review, Volume 38, Issue 1, Article 13 issued in the Fall of 196, "In concluding that no acquiescence existed, the [trial] court relied heavily on Croft v. Sanders 283 S.C. 507, 323 S.E.2d 791 (1984) for the propositions that the mere existence of a fence between adjoining properties is not, in itself, sufficient to establish a boundary by acquiescence and that fences may be erected for purposes having nothing to do with establishing boundaries. Although these propositions were applicable in *Croft,* an important distinction makes their applicability questionable in the matter before the Court: - In *Croft,* however, Croft took no action that would have reasonably led Sanders to believe a new boundary had been created. The *Croft* court, sensing this very problem, specifically noted that "acquiescence depends upon the particular facts of the case. Generally, the question turns on 'the acts or declarations of the parties . . ., on inferences or presumptions from their conduct, or on their silence.' "

In the particular facts of this case, the Respondents admitted to following the fence boundary line while mowing the lawn and while landscaping along that property line. Further, Appellants removed and trimmed trees within the Disputed Strip as if the Strip was indeed theirs, in consultation with and without objection and confirmation of the property line by/from the

Respondents; as late as 2015 the Respondents signed a government document recognizing that the seawall as constructed was within the required footage which was referenced from the fence line as the property line. (R. p. 11). In addition, it was from the Respondents representation by their acts of landscaping along "their" side of the fence and by their omissions in not stating that the fence was not the property boundary line from which the Court determined that the parties operated with the 2007 fence between the two lots as the property line. (R. p. 11). These actions logically gave the Appellants valid reason to believe that the Defendant had acquiesced to the fence as the boundary line.

Therefore, a strong inference of acquiescence can be drawn from the Respondents' conduct as the acts taken by the Appellants which recognized the fence as the boundary line were not objected to by the Respondents and as the acts of the Respondents themselves since the erection of the fence are acts that indicate the Plaintiff's claim to full, undisputed possession. Even if the Respondents' conduct had been insufficient to infer acquiescence, their silence until the erection of the carport by Appellants gave the Appellants valid reason to believe Respondents had waived or abandoned any rights to the disputed strip. For these reasons, the trial court's treatment of acquiescence ignored an important aspect of this issue.

Based on the aforesaid laws as applied to the unique facts and circumstances of this matter, the Appellants' position is that the Court did err in finding that the existence of the fence alone were the ground for the Appellants' equitable argument and the Court did err in finding that the Defendant did not acquiesce by action to establish equitable estoppel of acquiescence. It is the Appellants belief and position as to the disputed strip that the Appellants should be found to have right, title and interest to the disputed strip and all injunctions should be lifted.

ISSUE 3

Did the Court err in when it determined that the Respondents did acquiesce to the boundary line by their actions and inactions but such acquiescence did not "justify" moving the boundary line between the properties?

As noted in our courts, a disputed boundary line can be established by acquiescence of the parties. Kirkland v. Gross, 286 S.C. 193, 197, 332 S.E.2d 546, 548-49 (Ct. App. 1985), receded from on other grounds by Boyd v. Hyatt, 294 S.C. 360, 364 S.E.2d 478 (Ct. App. 1988). [A]cquiescence is a question of fact determined by the intent of the parties. Id. at 198, 332 S.E.2d at 549. [I]f a party stands by, and sees another dealing with property in a manner inconsistent with his rights, and makes no objection, he cannot afterwards have relief. His silence permits or encourages others to part with their money or property, and he cannot complain that his interest[s] are affected. His silence is acquiescence and it estops him. McClintic v. Davis, 228 S.C. 378, 383, 90 S.E.2d 364, 366 (1955) (quoting S. Ry. v. Day, 140 S.C. 388, 138 S.E. 240 (1926)). In Bull v. Rowe, 13 S.C. 355, it is said: "It is a rule almost of universal application that one who stands by and sees another purchase land or enter upon it under a claim of right, and permits such other to make expenditures or improvements under circumstances which would call for notice or protest, cannot afterwards assert his own title against such person."

The Respondents stood by and saw the Appellants make improvements on the land in dispute at Appellants' own expense, but Respondents failed to object to the fence determining the boundary between the parties which "allowed" the Appellants to improve Appellants' land as understood and confirmed by the Respondents own actions. The Respondents cannot now raise objection after 9-12 years of acquiescing to its placement simply because the improvements are no longer to their liking.

It is the Appellants position that the Court did err when it found that the Respondents did acquiesce but that it was not "just" for them to have to adhere to the boundaries their own passive and active acts of acquiescence established. In accordance with the legal definition of just in accordance with Black's Law Dictionary, that which is "Right; in accordance with law and justice" it is just that the Respondents receive the results of their own actions. It has been determined by the laws of the State of South Carolina that the principle of the equitable theory of acquiescence under the circumstances and facts of this particular establishment of boundary lines for real property that the "just" outcome is for the Appellants to receive the title and use to the "disputed strip" and that all injunctions should be lifted.

ISSUE 4

Did the Court err when it determined that in order for equity to prevail to the benefit of the Appellants the entire neighborhood owners must also benefit from the change in the disputed boundary line?

There is no legal basis nor facts presented by the Respondents which support a conclusion that the establishment of a boundary line as between named parties who share a boundary line and are in a boundary dispute must necessarily affect other parties in the same neighborhood. There has been no evidence presented nor legal arguments made in any hearing in this action that the boundaries of any non-parties would be consequently changed or otherwise adjusted as a result of what occurs between the parties to this litigation.

ISSUE 5

Did the Court err when it determined that the Appellants had constructive knowledge of the existence of the survey done at the time of purchase, despite the existence of an original subdivision plat and several differing subsequent surveys of the same property, and that such constructive knowledge defeats the argument of equity by aquiescence?

The original constructive knowledge the Appellants had of the boundaries was at the time of the contract of sale which referenced the deed to the property which referenced the plat for metes and bounds, as well as easements, etc.

The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution, Lancaster v. Smithco, Inc., 246 S.C. 464, 468, 144 S.E.2d 209, 211 (1965). When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979); Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); see also Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 135, 16 S.E.2d 816, 823 (1941) As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of the land . . . .) (citation omitted).

While in Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 118, 145 S.E.2d 922, 925 (1965), our Supreme Court stated the general rule that when the owner of land has it subdivided and platted into lots and streets and sells and conveys lots with reference to the plat, he thereby dedicates said streets to the use of such lot owners, their successors in title, and the public. See also Carolina Land Co., 265 S.C. at 105, 217 S.E.2d at 19. Thus, the purchaser of lots with reference to the plat of the subdivision acquires every easement, privilege and advantage shown upon said plat,

including the right to the use of all the streets, near or remote, as laid down on the plat by which the lots are purchased. Blue Ridge, 247 S.C. at 119-20, 145 S.E.2d at 925; Carolina Land Co., 265 S.C. at 105, 217 S.E.2d at 19. However, the issue of whether or not the incorporation of the plat is for descriptive purposes only is determinative of the ultimate issue of the creation of an easement.

In Lancaster, 246 S.C. at 469, 144 S.E.2d at 211, [t]he only reference in the deed in th[e] case to the plat was in connection with the description of the lot. Therefore, such reference to the recorded plat made it a part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. Id. In that case, our Supreme Court edified:

Both Blue Ridge and Lancaster look to the intention of the parties in incorporating a plat to determine its effect. In the instant case, a reading of the Deed as a whole reveals the parties used the Plat as a reference to the boundaries, metes, courses and distances of the property conveyed. The intention of the parties in incorporating the Plat, when discerned from the Deed as a whole, was to show the boundaries, metes, courses and distances of the property conveyed.

Further, acquiescence is a legal doctrine which focuses on objective actions and conduct, rather than the subjective intent or knowledge of the parties involved. A party's actual knowledge of the true boundary may be considered, but it's not necessarily fatal to an acquiescence claim. In South Carolina, while constructive knowledge can sometimes defeat claims, it generally doesn't automatically negate acquiescence. Acquiescence, the implied agreement to a boundary line, is a distinct legal concept that requires specific elements to be established, including an existing boundary line and a period of inaction or silence by a property owner regarding another's use of their land.

Further, as there were multiple subsequent surveys, the most recent having removed existing markers/stakes from which prior boundaries were determined, (R. p. 80, lines 19-21).

The Appellants, if they had constructive notice it would be of the public record of the original plat (not the 3-4 subsequent differing surveys). The original plat being that which the Appellants understood to coincide with the placement of the fence.

One of the main foundations to the assertion of the equity doctrine of estoppel is innocence and good faith on the part of the parties asserting the estoppel. In this case Appellants evidenced that they made inquiry as to the status of the boundary line before acting on the premises. (R. p. 151, lines 20-25; p. 153, line 108). The Court found that they asked the very Respondents themselves who lived in the adjoining lot (which is the subject of this action) prior to the Appellants purchasing and moving onto the lot. The Respondents themselves asserted that they did not have knowledge that the property was not as delineated by the fence, yet contrary to their own assertions it was not until a structure which Respondents did not like was erected inside the fence line on the Appellants' side, that they finally assert that that very structure "encroached on their property". Respondents' own submissions to the Court bely the disingenuousness of some lack of knowledge on their part that the property line established by the fence was not correct. R. p. 11).

The trial Court believed that the Appellants ought to have known that the boundary line was not as they had thought, despite the presentation by multiple witnesses, including the very Respondents themselves, that there were multiple plats surveyed and drawn by trained and licensed professional surveyors depicting different boundaries from 1988 through 2016 and the Appellants were deceived by the acts/omissions and words of the Respondents, and it is these facts upon which the Appellants rely to pursue estoppel by acquiescence.

The trial Court has found that there has been no evidence of actual or constructive fraud on the part of the Appellants ("guiltless of an intentional moral[legal] wrong") and where, as in the instant

case, the Court has found that trespass does not lie against the Appellants and where the facts as stated in their pleadings and as testified to in open Court, the Respondents have failed to act on the placement of the fence on their property from the time of the initial construction of the fence in 2007 until the Appellants erected the carport in 2015 and filed suit in 2017 to quiet title to the Disputed Strip, the Respondents, have, by their omissions and actions rendered the injury of loss of title to land possible and must suffer that loss.

ISSUE 6

Did the trial Court err when it determined that the Appellants were using estoppel by acquiescence as an offensive action?

The Respondents argue that the Appellants cannot use the legal theory of estoppel by acquiescence as an offensive action. However, it should be noted by this Court that the issue of equitable estoppel by acquiescence was raised by the Respondents themselves and was the basis for the lower Court's granting of the Appellants Rule 59(e) motion for reconsideration.

The Counsel for the Respondents himself raised the equitable issue of acquiescence in his opening arguments (R. p. 69, lines 14-21). It was the Appellants who raised the issue of a matter not decided, but it was not an offensive act on the part of the Appellants, but rather a procedural issue based upon a legal issue which was raised by the Defense itself. The mere possibility that the issue may be decided against the Respondents who raised it, does not make the other party that motioned the Court to hear and decide on all issues presented does not raise the issue necessarily as an offensive argument.

ISSUE 7

Did the Court err when it determined that the most recent survey taken of the properties overrode the boundary lines established in the original plat for the purposes of establishing a development?

The origins of plat maps — also called cadastral maps, survey plats, or plat books — can be traced back to the 1850s as the first maps to document rural land ownership in the United States. The first plat map publisher was J.Q. Cummings, who founded Rockford Map Publishers in 1944. He meticulously researched and drew his plat maps by hand. "Buyer What is a Plat Map", https://www.homelight.com.

A subdivision plat is created when the owners of a property decide that they want to separate their land into smaller areas of land called lots or parcels. The property owner of the original large parcel of land to create many new lots as part of a residential land development project. The main information shown in a subdivision plat is the new layout of lots that have been created from the original single lot along with boundary distances and orientations as well as areas and new lot numbers to designate the new parcels. Existing conditions information included on this plat are the names of existing streets and general property information for adjoining property owners.

In South Carolina a subdivision plat must be recorded. The original property owner(s) who had the plat created refers to the plat during the selling of the individual lots; the civil engineering company who is hired to prepare a land development plan for the new uses the original plan as a starting point and as a part of the base plan; a proper licensed surveying company uses the original plat information to create individual survey plans and legal descriptions as each lot is sold and developed; and local government officials in charge of managing the local GIS (Geographical Information System) and tax officials use this subdivision plat plan to load information to their

systems. The subdivision plat of the properties of the Appellants and the Respondents are founded on those plats. Individual surveys of the lots by the new owners are to conform to those original plat boundaries.

While plat maps and property surveys are very similar, they aren't exactly the same thing. Plat maps show the legal property lines that belong to the owner, but they offer more of a big-picture view of an entire neighborhood or subdivision, whereas a survey is a more in-depth look of a single property. Typically, the title company will order a survey of the property at the request of the buyer.

Plat maps can indicate a need for a survey if there is any question about a structure or feature of a neighboring property extending past its boundaries, known as an encroachment, What is a Subdivision Plat and Why are Plats Important, www.thelanddevelopmentsite.com

It is the Appellants position that the original plat is the ultimate establishment of boundary lines for a subdivision. Subsequent individual surveys, may, as in this matter vary greatly. A party who originally purchase a lot in a new subdivision and subsequently sells that lot it should conform to the original plat in order to preserve the rights of all parties who have purchased in that subdivision. While title insurance companies often require a survey for purposes of the issuance of title insurance, those should not change, but should conform to the original lot lines.

In Clarendon County, South Carolina, "grandfathering" in subdivisions typically refers to properties or uses that existed legally before the implementation of zoning or subdivision regulations, allowing them to continue despite changes in the regulations. These properties are essentially exempt from current zoning requirements, continuing to be used or maintained as they were prior to the new rules. Clarendon County Subdivision Regulations, Art. VI, Sect. 60.02(a).

ISSUE 8

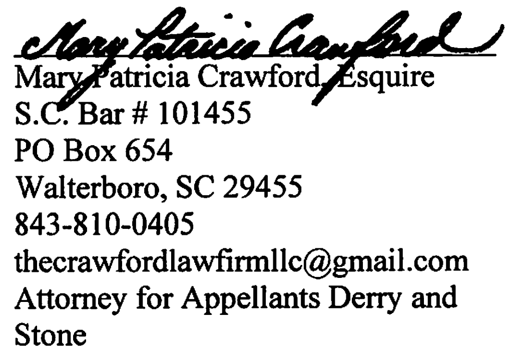
Did the trial Court err when it denied the Appellants' request to amend or alter the Final Order in light of the Court's own findings of fact and applicable law?

In light of the trial Court's misapplication of the law of equitable estoppel by acquiescence to the facts and circumstances of the case, the trial Court made a mistake when it refused to modify or change the previously issued ruling. By failing to amend the Final Order the Appellants' rights to the "disputed strip" of real property and the improvements thereon the Appellants have been harmed financially.

CONCLUSION

The Trial Court improperly denied the Appellants' Motion to Amend or Alter the Final Order and consequently improperly granted permanent injunctive relief against Appellants. This Court should grant the Appellants all right title and interest in the "disputed strip" and lift all injunctions.

Respectfully Submitted,



Mary Patricia Crawford, Esquire
S.C. Bar # 101455
PO Box 654
Walterboro, SC 29455
843-810-0405
thecrawfordlawfirmllc@gmail.com
Attorney for Appellants Derry and Stone

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