THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2024-000898

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

v.

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

BRIEF
OF RESPONDENTS EDISTO LAKE, INC. AND EDISTO LAKE RIDGE, LLC.

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

STATEMENT OF THE CASE

This matter is before the Court on the appeal, by the Appellants from the Order of the Honorable Courtney Clyburn Pope entered May 8, 2024 holding that the applicable restrictive covenants did not prohibit hunting on lands owned by the Respondent, Terry M. Hutto and others similarly situated. (R. pp. 4-11) This Brief is submitted on behalf of the Respondents Edisto Lake, Inc. and Edisto Lake Ridge, LLC in support of said Order.

FACTUAL BACKGROUND

The Edisto Lake Subdivision is a private gated community surrounding the 192-acre Edisto Lake in Aiken County. Edisto Lake Subdivision was developed as two distinct neighborhoods, the lots fronting on Edisto Lake ("Edisto Lake Neighborhood") developed by Respondent Edisto Lake, Inc. and larger off lake parcels developed by Edisto Lake Ridge as the Edisto Ridge Neighborhood. (R. pp 410-414)

At some time prior to 1972 Edisto Lake, Inc. constructed a private road circling Edisto Lake (the "Perimeter Road") back enough from the lakeshore to develop approximately one hundred lots of two to three acres between the road and lakeshore (the "Lake Lots"). The Lake Lots, roads and amenities within the subdivision were developed as the Edisto Lake Neighborhood and sold by the Respondent Edisto Lake, Inc., a South Carolina corporation. No

overall restrictive covenants were imposed applicable to the Edisto Lake Neighborhood and Lake Lots, instead as often was the custom at that time, each Lake Lot was conveyed pursuant to an indenture deed which imposed use and aesthetic restrictions on the lot being conveyed and required that the Owner of the lot would be a member of and subject to the property owners association created to manage the restrictions and common areas (the "Deed Restrictions"). (R. p. 147 Line 4 – p. 148 Line 9; p.189 Line 6-16 and pp 455-460) The Deed Restrictions, imposed upon each lake lot at the time of sale, contained a prohibition as to hunting: "No hunting will be permitted on or over Edisto Lake of (*sic*) on any of the roads or parkways adjacent to this property." (R. p. 455-460) The Respondent Edisto Lake Property Owners Association is the property owner's association established pursuant to the indenture deeds. The common areas including Edisto Lake and the private roads within the Edisto Lake Neighborhood were subsequently conveyed by Edisto Lake, Inc. to the Property Owners Association.

The remainder of the property owned by Edisto Lake, Inc., which was located across the road from the Lake Lots, initially remained undeveloped, was not subject to the Deed Restrictions and was not considered to be a part of the Edisto Lake Subdivision. (R. p. 188 Line 18 – p. 192 Line 1 and R. p. 201 Line 18 – p. 203 Line 9) In December 2003 Edisto Lake, Inc. conveyed the approximately 690 acres lying outside the perimeter road, to the Respondent Edisto Lake Ridge, LLC by a general warranty deed which did not contain the Deed Restrictions. (R. pp. 415-418). Thereafter, in August 2006, Edisto Lake Ridge, LLC and Edisto Lake Property Owners Association established the Edisto Ridge Neighborhood, consisting of approximately thirty-one large lots of between 5 and 38.5 acres and imposed use and aesthetic restrictions upon the property within the Edisto Ridge Neighborhood pursuant to duly recorded Declaration of Covenants, Conditions and Restrictions for Edisto Lake Ridge (the "Ridge Restrictions") (R. pp.

425 - 454). The Ridge Restrictions also made owners of property within Edisto Lake Ridge members of the Edisto Lake Property Owners Association and subject to its dues and assessments.

The Ridge Restrictions contained only a limited restriction as to "hunting:" "No hunting will be permitted on or over Edisto Lake, or any roads or parkways within the Property." (R. p. 447) These restrictions contained no other mention or limitation upon hunting within the Edisto Ridge Neighborhood.

The Respondent Terry M. Hutto, Jr. purchased and currently owns multiple parcels in the Edisto Lake Subdivision including one lot in the lake section, which is subject to the Deed Restrictions and multiple large parcels in the Edisto Lake Ridge Neighborhood, totaling approximately 219.96 acres, which are subject to the Ridge Restrictions. (R. p. 207, Line 11 – p. 208 Line 16) The parcels owned by Respondent Hutto in the Edisto Lake Ridge Neighborhood and the restrictions applicable to the parcels are the subject of the complaint filed by the Appellants in this matter.

ARGUMENT

I. THE COURT BELOW PROPERLY FOUND THE APPLICABLE RESTRICTIVE COVEMENTS DID NOT PROHIBIT HUNTING ON RESPONDENT'S PROPERTY.

In *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E. 2d 862 (1998), the South Carolina Supreme Court provided an overview of the law and rules for interpreting restrictive covenants as follows:

> "'Restrictive covenants are contractual in nature,' so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. " *Palmetto Dunes Resort v. Brown,* 287 S.C. 1, 334 S.E. 2d 15 (1985). . . .

> "The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." *Forest Land Co. V. Black,* 216 S.C. 255, 57 S.E.2d 420 (1950). It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property, subject, however, to the provision that this rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. It follows, of course, that where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property. *McDonald v. Welborn,* 220 S.C. 10, 66 S.E. 2d 327 (1951). " A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property. " *Hamilton v. CCM, Inc.* 274 S.C. 152, 263 S.E. 2d 378 (1980).
>
> Taylor v. Lindsey, 332 S.C. 1, 4-5, 498 S.E. 2d 862 (1998) (See also: *Cmty Servs. Assocs., Inc. v. Wall*, 421 S.C. 575, 808 S.E. 2d 831 (S.C. App 2017))

Article VII Section 21 of the Ridge Restrictions addresses the issue of hunting as follows:

> Section 21. Hunting: No hunting will be permitted on or over Edisto Lake, or on any roads, or parkways within the Property.
>
> (R. p. 447)

The clear language and intent of Section 21 of the Ridge Restrictions is to prohibit hunting over the lake and the roads and pathways within the subdivision. Had Edisto Lake Ridge, LLC, as the owner of the property and declarant which imposed the restrictions on the property, intended to prohibit all hunting within the Edisto Lake Ridge Neighborhood, it could have easily done so in the same manner and to the same extent that the Covenants prohibited other activities on the property such as the prohibitions against " hogs, cows and other livestock", "commercial kennels or commercial farming operations" (Article VII Section 3); "temporary structures or mobile homes" or the parking of large trucks and commercial vehicles (Article VII Section 5) on the

property. Likewise, had Edisto Lake Ridge LLC intended to regulate or impose rules on hunting within the property it could have easily done so in the same manner by which it imposed rules pertaining to the operation of automobiles, trucks, motorcycle, all-terrain vehicles (ATVs) and golf carts on the lots, streets and trails within the Property (Article VII Sections 6 and 7); the use of the boat ramp, lake and recreation areas (Article VII Section 8), the construction of improvements on the property (Article VII Section 9) and the limitation on signs or billboards on the property (Article VII Section 8). (R. pp. 425 - 454).

It is clear from a review of the Declaration of Covenants, Conditions and Restrictions for Edisto Lake Ridge that Edisto Lake Ridge, LLC, and the Edisto Lake Property Owners Association in adopting the Restrictions understood how to prohibit undesired activities and to impose rules and regulations for other activities. However, in adopting and approving the Restrictions, Edisto Lake Ridge, LLC, and the Edisto Lake Property Owners Association elected not to include an absolute prohibition against hunting but rather imposed a narrow restriction which only prohibits hunting over the lake, roads, and parkways within the property.

III. THE PROHIBITION AS TO HUNTING IN THE DEED RESTRICTIONS IS NOT APPLICABLE TO THE RESPONDENT'S PROPERTY.

For the first time in this appeal the Appellant argues that the Deed Restrictions are applicable to the Edisto Ridge Lots under the doctrine of negative reciprocal easements. This issue was not raised or ruled upon in the court below. "[A]n appellate court cannot address an issue unless it was raised to, and ruled upon by, the trial court." *Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995).*

However, even if this issue is before this Court, the evidence presented at trial does not support a finding of a negative reciprocal easement prohibiting hunting on within Edisto Ridge.

Appellants seek to impose a prohibition of hunting on the properties within Lake Ridge claiming that the prohibition against hunting contained within the Deed Restrictions applies to the Lake Ridge properties through the doctrine of negative reciprocal easements.

A critical requirement for the imposition of a negative reciprocal easement is that "[t]here must be a general plan or scheme of restriction in existence for the designated land or tract...." *Bomar v. Echols, 270 S.C. 676, 244 S.E.2d 308 (1978).* The record does not support a finding that a single common plan encompasses both the Lake Lots and Edisto Lake Ridge. In construing covenants to ascertain the existence and scope of any common overall plan it is necessary to examine the intent of the parties "... as nearly as possible, gleaned from the instrument itself. However, the circumstances surrounding the origin of covenants should also be considered. [citation omitted]" *Nance v. Waldrop, 258 S.C. 69, 187 S.E.2d 226 (1972).*

The Deed Restrictions by their terms do not specifically state the properties to which they are applicable beyond the specific Lake Lot granted in each deed. (R. pp. 55-460) This commonality shows an intent by the drafter to establish a common plan for all of the Lake Lots but does not demonstrate an intent that the Deed Covenants should apply to any other land of the grantor. The Deed Covenants themselves suggest their limited scope by the seller's promise to incorporate similar restrictions only in other Lake Lots: "... the Seller will enter into similar restrictions, covenants and agreements with the Buyers of any other property abutting Edisto Lake...." Furthermore, the Deed Restrictions taken as a whole are primarily only applicable to the Lake Lots as they govern boathouses, piers, sewer, and drawing water from Edisto Lake which are not applicable to properties off the Lake.

An examination of the circumstances surrounding the development of the Lake Lots and Edisto Ridge supports this two-neighborhood concept. The Deed Covenants prohibit horses (R.

pp. 455-460) while the Edisto Ridge Covenants intended to create an equestrian friendly neighborhood, anticipate horses and provide for riding trails (R. pp. 425 - 454). Other similar distinctions exist, governing goats, chickens, and ducks.

The developer intended for the two neighborhoods to be residential, one consisting of smaller lots surrounding Edisto Lake and the other, named Edisto Ridge, to consist of larger equestrian friendly lots more akin to a farmstead. (R. p 142 Lines 9 - 16) The undisputed testimony of Mr. Edwin Cooper on behalf of the developer revealed that the intent was to develop the neighborhood as two distinct, but complimentary developments sharing use of Edisto Lake and the roads within the community, owners of both being members of the Edisto Lake POA formed for owning the roads and Lake. (R. p. 142 Line 9 – p. 143 Line 2 and R. p. 189 Line 10 – p. 192 Line 1) It has been recognized that a large tract may be developed with distinct portions subject to separate restrictions. In *Edwards v. Surratt, 228 S.C. 512, 90 S.E.2d 906 (1956)*, the Supreme Court noted that a large tract could be developed with portions being governed by separate covenants:

> *As we view the entire record, we reach the conclusion that there were set up separate and distinct units within the large area of the Vance Edwards land rather than a single development of the entire area according to any general scheme or plan. When this is the case, as was said in Craven County v. First-Citizens Bank & Trust Co., 237 N.C. 502, 75 S.E.2d 620, effect will be given to the restrictions as it may be determined they relate to the separate units, with the right of the property owners in each unit to enforce them inter se.*

Therefore, even if the doctrine of negative reciprocal easements is considered it fails to make the prohibition against hunting in the Deed Covenants applicable to the Respondent's property.

III. CASUAL HUNTING WITHIN EDISTO LAKE RIDGE DOES NOT CONSTITUTE A NUISANCE.

Appellants contend that hunting within Edisto Lake Ridge constitutes a prohibited nuisance under the Edisto Ridge Covenants. In support of its contention, the Appellants offered the testimony of five of the owners within the Lake Lots. The substance of this testimony was sparse and did little to support a claim of nuisance. In sum, the witnesses testified that they sporadically heard gunshots, primarily during hunting season which they believed emanated from respondent's property and that "deer stands" were observed on Respondent's property together with allegations of expended shot gun shells located on the ground in the vicinity of one of the deer stands. None of the witnesses offered by the Appellants were able to testify that Respondent Hutto was the source of the gunshots or to having ever witnessed Respondent Hutto carrying or discharging a firearm on his property. (R. p. 122 Line 11 – p. 123 Line 1; p. 253 Lines 18 -25; p. 273 Lines 8-112; p.281 Lines 15 -23 and p. 291 Lines 6-10) The complained gun shots did not arise above that which are heard in virtually any South Carolina rural community.

A "nuisance" has been recently defined by this Court in *Click Props. v. Thomas S.C. Props., Docket No. 6105, Appellate Case 2022-001499, March 12, 2025*:

> *"A nuisance is "anything which works hurt, inconvenience, or damage; anything which essentially interferes with the enjoyment of life or property." The interference or inconvenience must be unreasonable to be actionable. "The traditional test for determining the existence of a nuisance per se is whether the nuisance has become dangerous at all times and under all circumstances to life, health, or property." [citations omitted]"*

This does not mean that every annoyance or disturbance constitutes a nuisance. As aptly stated by the Supreme Court, in *Winget v. Winn-Dixie Stores, Inc., 242 S.C. 152, 130 S.E.2d 363 (1963)*:

> "*On the other hand, every annoyance or disturbance of a landowner from the use made of property by a neighbor does not constitute a nuisance. The question is*

not whether plaintiffs have been annoyed or disturbed, ... but whether there has been an injury to their legal rights. People who live in organized communities must of necessity suffer some inconvenience and annoyance from their neighbors and must submit to annoyances consequent upon the reasonable use of property by others. [citations omitted]"

Whether a particular activity is unreasonable constituting a nuisance is not to a clear rule, but must rather depend on the facts and circumstances of the particular case:

"Whether a particular use of property is reasonable and whether such use constitutes a nuisance depends largely upon the facts and no definite rule can be laid down for the determination of the question. As stated in 39 Am.Jur. 298, Section 16: 'What is a reasonable use and whether a particular use is a nuisance cannot be determined by any fixed general rules, but depends upon the facts of each particular case, such as location, character of the neighborhood, nature of the use, extent and frequency of the injury, the effect upon the enjoyment of life, health, and property, and the like. A use of property in one locality and under some circumstances may be lawful and reasonable, which under other circumstances would be unlawful, unreasonable, and a nuisance." Winget v. Winn-Dixie Stores, Inc., 242 S.C. 152, 130 S.E.2d 363 (1963).

In *Widget* the plaintiffs complained of noises emanating from a grocery store permitted under the appropriate zoning ordinance, specifically "...noise, unhealthy fumes, blocked traffic and generally disturbed the peace and quiet of the community, and ... trash trucks and street sweepers ... at late night hours." Id at 160.

Here the owner of a tract of 220 acres seeks to enjoy casual hunting from time-to-time. There is no showing of any commercial or group activity, merely occasional hunting resulting in sporadic gunfire, primarily during hunting season. This is a reasonable use of his property. The alleged impact is minimal and does not arise to the level of a nuisance.

Hunting is a constitutionally protected activity in South Carolina subject to regulation:

The traditions of hunting and fishing are valuable parts of the state's heritage, important for conservation, and a protected means of managing nonthreatened wildlife. The citizens of this State have the right to hunt, fish, and harvest wildlife traditionally pursued, subject to laws and regulations promoting sound wildlife conservation and management as prescribed by the General Assembly. Nothing in this section shall be construed to abrogate any private property rights, existing

state laws or regulations, or the state's sovereignty over its natural resources. S.C. Constitution Art. I, §25.

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

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

In adopting S.C. Code Ann § 50-11-355 (1976) the legislature anticipated that hunting would take place in proximity to a residence and defined the conditions under which such activity would be illegal and by implication when such activity is allowed. There was no evidence presented by the Appellants at the trial of this matter that Respondent Hutto was violating any of the prohibitions set forth in the statue.

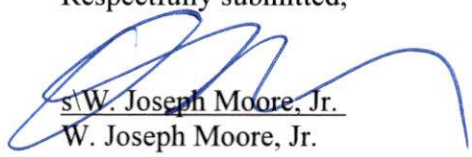
The exercise of this right, absent a prohibiting regulation or contract, neither of which appear in this case, in a rural setting on a substantial tract of land which imposes only occasional noise from a distance upon the property of the complainants is reasonable and not a nuisance.

CONCLUSION

For the foregoing reasons the Lower Court correctly held that hunting is not prohibited within the Edisto Lake Ridge neighborhood. Accordingly, the judgement entered in this matter should be affirmed.

August 21, 2025

Respectfully submitted,



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