THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Milton G. Kimpson, Circuit Court Judge

Civil Action No. 2022-CP-36-00142

Appellate Case No. 2025-000737

Donald A. Brown, Jr.,

Appellant,

v.

Johnnie L. Dickert, Rachel B. Dickert and
Johnnie Kyle Dickert,

Respondent.

RESPONDENT'S INITIAL BRIEF

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September 4, 2025
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STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court err in denying Appellant Brown an appurtenant prescriptive easement because Appellant failed to prove by clear and convincing evidence that the identity of the easement and failed to prove the use of the easement was adverse under a claim of right?

II. Did the Trial Court err in refusing to enforce an alleged settlement agreement between Appellant and Respondents because the parties did not strictly comply with the requirements of Rule 43(k) of the South Carolina Rules of Civil Procedure?

STATEMENT OF THE CASE

On April 12, 2022, Plaintiff-Appellant Donald A. Brown, Jr., ("Appellant") brought this action against Defendant-Respondent Johnnie L. Dickert, Rachel B. Dickert, and Johnnie Kyle Dickert ("Respondents") in the Court of Common Pleas for Newberry County, seeking a determination by the court of an appurtenant prescriptive easement across land owned by the Respondents and to enjoin the Respondents from interfering with or obstructing the use of such easement. (Pl.'s Compl.) Respondents filed an Answer on June 9th, 2022, wherein Respondents raised affirmative defenses of Trespass, Failure to State a Cause of Action, Permissive Use, Other Means of Ingress and Egress, and Full Knowledge of the Plaintiff. (Defs.' Ans.). This case proceeded to a bench trial before the Honorable Milton G. Kimpson on July 11, 2024.[1] At trial, Appellant and Respondents presented testimony and evidence for their respective positions in this matter.

On March 24, 2025, Judge Kimpson issued an Order denying the Appellant's claim for an appurtenant prescriptive easement and declining to enforce any purported settlement agreement between the parties. (Order, filed March 24, 2025). In response to this Order, the Appellant filed and served a Notice of Appeal on April 16th, 2025. (Notice of Appeal).

[1] The Honorable Eugene C. Griffith, Jr. was also present on the bench on the day this matter was heard in the Newberry County Court of Common Pleas; however, Judge Griffith only presided over a few preliminary matters with Judge Kimpson also on the bench before the trial of this case was heard solely by Judge Kimpson.

STATEMENT OF THE FACTS

On October 26, 2021, Appellant purchased an approximate ninety-seven (97) acre tract of land (hereinafter the "97-acre tract") located in Newberry County, South Carolina, from Brandon Nicole Gray Crumpton, bearing TMS No. 385-2. (Pl.'s Ex. 3). Before purchasing the property, Appellant failed to have a title search performed on the 97-acre tract, which would have revealed to Appellant that the 97-acre tract is landlocked. (Trial Tr. 117:7-25). Still, Appellant proceeded with the purchase. *Id.* At the time Appellant purchased the 97-acre tract, Respondents Johnnie L. Dickert and Rachel B. Dickert own a life estate interest in an approximately one hundred fifty-eight (158) acre tract of land (hereinafter the "158-acre tract"), in which Respondent Kyle Dickert owns the remainder interest, immediately adjacent to the 97-acre tract, bearing TMS No. 330-7. (Trial Tr. 141:11-14; 161:8-18)(Pl.'s Ex. 2). The 97-acre tract, located on the east side of the 158-acre tract of the Respondents, was transferred to Brandon Nicole Gray Crumpton from Murray Gray, who inherited the property from his ancestors. (Trial Tr. 91:13 – 92:22)(Pl.'s Ex. 3).

Prior to Appellant's purchase of the 97-acre tract, Dickert Lumber Company, formerly Dickert Brothers, purchased the 158-acre tract in 1973. (Trial Tr. 160:20-25). At that time, the adjoining 97-acre tract was owned by the Gray family, who also operated in the timber business. (*Id.*, 18:1-5; 24:10-14). Respondents' family and the Gray family maintained a cooperative, informal gentleman's agreement regarding the property use. (*Id.*, 24:6-9). The use of the roadway over the 158-acre tract by the Gray family and others was by permission only through the Respondents' family. (*Id.*, 25:1-23). After Respondent Johnnie Dickert and his sister inherited the 158-acre tract in 2005, Respondent's sister transferred the property solely to him, wherein he converted his ownership interest in the property to a life estate for himself and his wife, Respondent Rachel B. Dickert, with a remainder interest for his son, Respondent Kyle Dickert. (*Id.*, 159:15 – 160:3; 161:14-18). Despite the change in ownership over the 158-acre tract, Respondents and the

Gray family maintained the gentlemen's agreement allowing the Gray family to use the roadway over the 158-acre tract by permission. (*Id.*, 143:18-21; 144:10-15).

Respondents eventually sold a portion of the once-larger 158-acre tract to Michael Wise, who intended to use the purchased property for poultry production (hereinafter the "Wise property").[2] (Trial Tr. 141:15-20). In doing so, the entrance to the roadway over the 158-acre tract, which provided access to the 97-acre tract, was no longer owned by Respondents and was removed; however, Respondents permitted the Gray family to continue using the remaining portion of the roadway under their agreement.[3] (*Id.*, 144:25 – 145:8).

Upon purchasing the 97-acre tract, Appellant accessed his tract of land by entering the Wise property from the Old Whitmire Highway, located on the western side of the 158-acre tract and then over the field road that crosses the 158-acre tract of Respondents. (Trial Tr. 93:22 – 94:5)(Pl.'s Ex. 2). The Respondents placed a gate across the field road shortly after the Plaintiff purchased the property. (*Id.*, 99:23 – 100:4). On April 12, 2022, Appellant filed a Summons and Complaint against the Respondents, alleging that the Appellant has an appurtenant prescriptive easement through the prior use of the land of the Gray family and that the prohibition of road use causes irreparable damage because of the lack of access to fields, property, and timber. (Pl. Compl., ¶ 9).

Shortly after Appellant filed his Complaint, the parties began discussing an agreement for the resolution of the Appellant's complaints, where the Appellant was to lay three-inch (3") stone gravel on top of the roadway from a new entry point on Respondents' property along the property line with the Wise property to the back of Respondents' property and to install a gate to prevent

[2] The property sold to Michael Wise is now owned by Mike Longshore.
[3] Due to South Carolina DHEC regulations and complaints from members of the community, Mr. Wise was forced to remove the roadway's entrance, including removal of an access gate and a culvert, thereby making the roadway inaccessible from Old Whitmire Highway.

third-parties from entry. (Trial Tr. 162:9-15)(Ltr., dated May 27, 2022)(Ltr., dated December 21, 2022). However, no binding settlement was reached between the parties, no such agreement was never reduced to writing and executed, nor did Appellant perform or complete the obligations contemplated under the alleged agreement. As such, Respondents advised Appellant via written correspondence on January 24, 2024, that Appellant breached the alleged agreement and that such agreement was deemed void and would not be revisited (Defs.' Ex. 9).

STANDARD OF REVIEW

The Respondent adopts the Standard of Review submitted by the Appellant in brief.

ARGUMENT

I. The Trial Court did not err in denying Appellant Brown an appurtenant prescriptive easement, because use of the easement in question has been permissive since its inception without any assertion of right hostile to Respondents.

Pursuant to *Braswell v. Amick*, a claimant seeking a prescriptive easement must prove by clear and convincing evidence that there must be (1) continued and uninterrupted use or enjoyment of the right for a period of twenty (20) years; (2) the identity of the easement; and (3) that the use is adverse under a claim of right. *Braswell v. Amick*, 442 S.C. 618, 626, 900 S.E.2d 475, 479 (Ct. App. 2024)(See also *Bundy v. Shirley,* 412 S.C. 292, 772 S.E.2d 163 (2015). However, *Williamson v. Abbott* provides that:

> [i]t is the well-settled rule that use by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since user as of right, as distinguished from permissive user, is lacking, if permissive in its inception, such permissive character will continue of the same nature, and no adverse user can arise, until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him.

Williamson v. Abbott, 107 S.C. 397, 93 S.E.2d 15 (1917). As such, permission provided by a property owner to a user over a subject parcel serves as a bar to a claimant seeking a prescriptive easement over the same. *Id.*

Here, the Appellant has failed to establish by clear and convincing evidence all of the elements required to have a prescriptive easement. As previously outlined, the former owner(s) of Appellant's 97-acre tract were permitted by Respondents and their ancestors to use the roadway on Respondents' 158-acre tract to access their property through a gentlemen's agreement, including the addition of a lock on the access gate for the Gray family. (Trial Tr. 25:1-23; 27:7-11; 27:22-23; 28:4-12; 29:9-19; 55:9-24). The Gray family did not claim an interest in the roadway, knew the roadway did not belong to the Gray family, knew the roadway belonged to Respondents and their family, and were permitted to use the roadway with Respondents' permission. (*Id.*, 25:1-23; 27:22-23; 28:4-12; 29:9-19; 144:10-15; 149:7-15). As such, the Respondents permitted use of the roadway by the Gray family from the 1970s when Respondents' ancestors purchased the 158-acre tract until 2021 when the 97-acre tract was sold to Appellant.

To the contrary, Appellant places substantial reliance on the holding of *Simmons v. Berkeley Elec. Cooperative, Inc.,* which provides that "the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and **contrary to the true property owner's rights** for a period of twenty years." *Simmons v. Berkeley Elec. Cooperative, Inc.,* 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016)(emphasis added). Appellant has not and cannot demonstrate that the use by the Gray family of the roadway across Respondents' 158-acre tract was contrary to Respondents' rights. Instead, Respondents, through the Appellant's witnesses, established that the Gray family's use of the roadway was solely with the permission of Respondents. (Trial Tr. 29:9-19; 55:9-24). Under *Williamson*, the permission given by the Respondents and their ancestors prevented any such claim that the easement over the roadway across the 158-acre tract could ripen to an easement by prescription, as the Gray family, at no point, asserted a distinct and positive assertion of right to use over the roadway against the interests

of the Respondents. Therefore, Appellant has failed to prove any such adverse use under a claim of right in this matter for a period of twenty (20) years.

Further, the appellant contends that there was no permission because the Respondents did not take possession of the tract until 2005. (Appellant's Br. 17). This approach lacks legal and factual support. Regardless of when the Respondents took possession of the 158-acre tract, the Respondents' family has continuously owned and controlled the 158-acre tract since the 1970s. (Trial Tr. 160:20 – 161:9). Throughout the course of Respondents' and Respondents' ancestors' ownership of the 158-acre tract, Mr. Gray confirmed that his family's use of the roadway in question was specifically and solely allowed by the Respondents' permission. (Trial Tr. 29:9-17). As such, the use of this roadway was permissive from its inception and continued in the same nature throughout the course of the Gray family's ownership of the 97-acre tract. For this to become adverse to the Respondents, someone in the Gray family's chain of ownership had to repudiate permission and assert a hostile claim, bringing it home to the owner, as provided in *Williamson*. That never happened. (Trial Tr. 29:18-23). While the Appellant may argue that the Gray family had a lock on the gate that provided access to the roadway on the 158-acre tract to prove a claim of right, the shared lock arrangement between the Respondents and the Grays is consistent with permission and prudent control of the Respondents, not a claim of right. (Tr. 25:1-8). As such, Respondents respectfully request that this Court not disturb the findings of the Trial Court after hearing the arguments, testimony, and evidence of the parties and uphold the findings of the Trial Court in favor of Respondents based upon the well-settled law in the State of South Carolina.

II. **The Trial Court did not err in refusing to enforce an agreement between the Appellant and Respondents for the grant of an easement, because the parties did not comply with Rule 43(k) of the South Carolina Rules of Civil Procedure, and substantial compliance is insufficient.**

Under *Ashfort Corp. v. Palmetto Const. Group,* the South Carolina Supreme Court has ruled that Rule 43(k) of the South Carolina Rules of Civil Procedure is applicable to settlement agreements, wherein Rule 43(k) provides:

> No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, **or** unless made in open court and noted upon the record, **or** reduced to writing and signed by the parties and their counsel. However, where the parties reach a settlement agreement during a mediation governed by the South Carolina Court-Annexed Alternative Dispute Resolution Rules and the settlement agreement involves payment by an insurer, the signature of counsel retained by an insurer on behalf of the Defendant(s) or third-party administrator shall suffice in place of the signature of the insured party. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

South Carolina Rules of Civil Procedure, Rule 43(k), SCRCP (emphasis added); *Ashfort Crop. v. Palmetto Const. Group,* 318 S.C. 492, 494, 458 S.E.2d 533, 534 (1995). Furthermore, the South Carolina Supreme Court addressed issues pertaining to Rule 43(k) in *South Carolina Human Affairs Commission v. Zeyi Chen,* wherein the Court held:

> Where Rule 43(k) applies, this Court has held its terms are mandatory, which **precludes a party from turning to contract or equitable principles** (or counter public policy arguments) **to vitiate those terms. Substantial compliance is not sufficient.** The purpose of Rule 43(k) and its predecessors is the avoidance of uncertainty.

S.C. Human Affairs Comm'n v. Zeyi Chen, 430 S.C. 509, 521, 846 S.E.2d 861, 867 (2020)(emphasis added). In *S.C. Human Affairs Comm'n,* the South Carolina Human Affairs Commission reached a settlement with Chen to resolve the disputes in that matter; however, the Defendant never executed a final agreement and withdrew its assent to the same. *Id.* As such, the

Court found that the requirements of Rule 43(k) were not met and refused to enforce the settlement agreement.

Here, the Appellant and Respondents attempted to reach a resolution of the Appellants complaints, wherein Respondents would grant an easement to Appellant to the roadway crossing the 158-acre tract and permit Appellant to use the same to access the 97-acre tract so long as Appellant laid three-inch gravel stone across the entire roadway on Respondents' property, Appellant would maintain the roadway, and Appellant would install a gate at the roadway entrance to prevent third-parties from trespassing. (Trial Tr. 162:9-15)(Ltr, dated May 27, 2022)(Ltr., dated December 21, 2022). The parties also agreed that such agreement would be reduced to writing and signed once the requisite work was completed and satisfactory to the Respondents, thereby conforming to the requirements of Rule 43(k). (*Id.*). However, no such settlement agreement was ever reduced to a consent order or signed stipulation, nor was it detailed in open court such that the same could be noted upon the record, nor was it reduced to writing and signed by the parties and their respective counsel in compliance with Rule 43(k). Instead, Respondents withdrew their assent to any such settlement agreement and notified Appellant that the purported agreement was breached, that Appellant would not be granted an easement, and that no such agreement would be signed by Respondents. (Ltr., dated January 12, 2024)(Ltr., dated January 24, 2024).

Despite the same, Appellant asserts that a mere notice to the Trial Court in a roster meeting that the case was settled is sufficient to evidence the existence and enforceability of a purported settlement agreement. (Appellant's Br. 19)(*see also* Trial Tr. 10:8-10; 110:3-5). As outlined in *Ashfort,* any notice or stipulation that advises the court that a case has settled but does not set forth the terms of the settlement does not support the purpose of Rule 43(k). *Ashfort,* 318 S.C. at 495,

458 S.E.2d at 535 (1995)(citing *Lyons Enter., Inc. v. Custer*, 168 Ariz. 439, 814 P.2d 780 (Ariz. Ct. App. 1991). Therefore, this notice does not conform to the requirements of Rule 43(k).

Alternatively, Appellant argues that he undertook to perform work and other activities on the roadway crossing the 158-acre tract pursuant to his understanding of a purported settlement agreement and submitted receipts into evidence, totaling approximately Six Thousand and No/100 ($6,000.00) Dollars. (Appellant's Br. 20)(*See also* Trial Tr. 108:10-14; 109:17-19; Ct. Ex. 3). To support such argument, Appellant analogizes to the Statute of Frauds and cites several cases that sound in contract and equitable principles; however, those legal theories have no place in this matter. (Appellant's Br. 19-21). *S.C. Human Affairs Comm'n* clearly and unequivocally denounces any such arguments sounding in contract and equitable principles from matters governed by Rule 43(k). *S.C. Human Affairs Comm'n,* 430 S.C. at 521, 846 S.E.2d at 867. The basis for this is that Rule 43(k) is a procedural rule governing litigation agreements, precisely as those alleged in this matter, and allowing any contractual or equitable theories as exceptions would nullify Rule 43(k).

Furthermore, substantial compliance, as argued by Appellant, is insufficient to warrant the enforcement of any purported settlement agreement. *S.C. Human Affairs Comm'n,* 430 S.C. at 521, 846 S.E.2d at 867. As such, Appellant has blatantly disregarded and refuses to accept well-established South Carolina case authority on the issues discussed herein. The parties in this matter do not dispute that Rule 43(k) of the South Carolina Rules of Civil Procedure was not followed and Respondents rescinded their assent to any purported settlement agreement in this matter. (Trial Tr. 10:23 – 11:1)(Ltr., dated January 12, 2024). Therefore, the Respondents respectfully request that this Court not disturb the findings of the Trial Court after hearing the arguments, testimony, and evidence of the parties and uphold the findings of the Trial Court in favor of Respondents based upon the well-settled law in the State of South Carolina.

CONCLUSION

Based on the arguments encompassed herein, the Respondents would respectfully show unto this Court that Appellant failed to prove the existence of a prescriptive easement by clear and convincing evidence, and failed to prove that a purported settlement agreement was executed in compliance with Rule 43(k) of the South Carolina Rules of Civil Procedure. As such, the Respondents respectfully request that this Court not disturb the findings of the Trial Court and uphold the Trial Court's decisions in their entirety in favor of the Respondents.

RESPECTFULLY SUBMITTED

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PROOF OF SERVICE

I certify that a true copy of Respondents' Initial Brief in this case has been served on Carmen V. Ganjehsani, Esq. and Charles V. Verner, Esq., counsel for Appellant, this 4th day of September, 2025, by emailing a copy of such to their primary email addresses (cganjehsani@richardsonplowden.com)(sclawyer@me.com), listed in the Attorney Information System pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022, Order of the South Carolina Supreme Court (Appellate Case No. 2020-000447).

[SIGNATURE PAGE TO FOLLOW]

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