THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

Ellis B. Drew Jr., Master in Equity

Case No. 2009-CP-37-165

Ted and Bonnie Adams — Appellants

v.

Louis Nexsen and McCager Alexander, — Respondents

PETITION FOR REHEARING

Appellants, Ted and Bonnie Adams, pursuant to rule 240 SCACR, petition the Court for a rehearing based on Appellant's belief:

(A) that the Court failed to apply the benefits of a liberal construction to pro se appellant's filings for court costs and other issues which are customarily accorded pro se litigants so that substantial justice results. See Boswell v. Meyer, 169 F3d384 (6th Cir 1999).

(B) that the court overlooked or misapprehended the Master's finding and the record on several key issues of fact which are set forth below and are further explained in the attached memorandum of law.

(1) COURT ERRED IN HOLDING THAT THE APPELLANTS ABANDONED COURT COSTS ISSUE DUE FAILURE TO CITE TO ANY LAW OR AUTHORITY.

Appellants respectfully cite the below decision and ask the court to reconsider the court's ruling. See Memorandum point 1.

(2) MASTER'S ORDER MISQUOTED

The court misstated the master's order concerning degree of fault of parties and damages. See Memorandum point 2.

(3) COURT UNDERSTATED NUMBER OF RESPONDENT'S 'FAULTS' See Memorandum point 3.

(4) COURT OVERSTATED NUMBER OF APPELLANT'S "FAULTS" See Memorandum point 4.

We believe that the Master also erred in finding the respective "faults" to be equal when the consequences or injuries of the respective faults were so vastly unequal. No faults or trespasses of the Appellants' arose to or were equal to the Respondents' faults or trespasses which caused the Adams both the loss of property and the loss of use and control of their property; their home and 52 acres

for 15 months.) Accordingly, Appellants request that the Court grant Appellant's Petition for Rehearing to re-consider the Court's affirmation.

Ted Adams
Ted Adams
Bonnie Adams
Bonnie Adams
Appellants
P. O. Box 1757
Taylors, South Carolina 29687
(864) 292 5001

November 4, 2013

CERTIFICATE OF SERVICE

We hereby certify that on this day, November 4 2013, we caused to be served a copy of the foregoing PETITION FOR REHEARING upon the individuals whose names and addresses are listed below by placing a copy of it in the U.S. mail with proper first class postage affixed thereon.

Robert P. Lusk, Esq.
Kenyon, Lusk and Anderson
P.O. Box 1286,
Anderson, SC 29622
Attorney for M. Alexander
864-224-2597

Louis Nexsen
PO Box 4639
Pinopolis,SC 29469
Respondent Pro Se
843-899-6346

V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201
(803)734-1890

Ted Adams
Ted Adams
Bonnie Adams
Bonnie Adams
Appellants
P. O. Box 1757
Taylors, South Carolina 29687
(864) 292 5001

AFFIDAVIT IN SUPPORT OF PETITION FOR REHEARING

We, Ted and Bonnie Adams, hereinafter Petitioners, both being 18 years of age or older, having first been duly sworn, having firsthand knowledge of the facts in this Petition, state under oath that the facts relied upon in the foregoing Petition for Rehearing, but which are not found in the Record on Appeal, are to the best of our knowledge and belief, true, correct, complete and not misleading.

Ted Adams

Bonnie Adams

Ted Adams
Bonnie Adams
Appellants
PO Box 1757
Taylors, SC 29687
864 292 5001

November 4, 2013

State of South Carolina
County of Greenville SS

Signed and sworn to before me on November 4, 2013

Nancy Lynn Wiser
Notary Public My commission expires on My Commission Expires October 15, 2020

NANCY LYNN WISER
Name printed

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MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR REHEARING

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1. COURT COSTS

Were court costs abandoned because the pro se Appellants failed to cite any law or authority in support of their argument on the issue of court costs?

Was their claim not supported by Appellant's inclusion of a copy of their MOTION FOR COSTS in the record on page 50, which stated that their request

was pursuant to Rule 54 of the SCRCP? They believed this would suffice to cite to the law or authority (Rule 54), by which the appellants supported their claim.

Haines v.Kerner, 404 US 519, 30 LEd2d 652, 92 SCt 594 (1972) "Pro se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with pleading requirements."

Master erred by awarding appellants $528.50, an amount that is neither explained nor shown in their itemized list and is $672.36 short of the amount of allowable costs.

The Master erred by failing to explain why other allowable costs were disallowed by Master and how award of $528.50 was calculated.

2. MASTER'S FINDINGS MISQUOTED

The master found that: "Both Plaintiffs and Defendants are equally at fault in placing gates or obstacles to block the easement; therefore no damages will be awarded to either party".

The Court quoted the Master as saying that "all parties were at fault" in placing...", omitting the word **equally** which the Master used meaning that the

Master had compared the extent or degree of fault by each of the parties and found them to be equal.

The evidence does not support the Master's finding that all parties were "equally at fault". A comparison of "faults" follows.

3. RESPONDENT'S "FAULTS"

The Appellate Court erred by stating only that "Alexander and Nexsen dumped gravel and rocks on the road two times". This statement omitted mention of the third malicious trespass that Respondents Nexsen and Alexander committed against the Appellant's easement rights when Respondents erected a heavy steel post with a lock in the middle of the road to prevent access to the easement by the Adams. (Record page 41 lines 15-17 and p. 55, exhibit A.)

Both Nexsen and Alexander destroyed Adams' steel gate to which they had the key. See Respondent's lawyer's letter confirming their possession of a key but dislike of use of the gate, (Record, pages 53, 54.)

Respondents presented no evidence at trial demonstrating that obstacles created by the locked gate were unreasonable. Ballington v. Paxton, 327 S.C. 372(1997) 488 S.E.2d 882 "A 'right of way' means what those words imply; it does not mean a way always open; it does not mean a way without any obstruction....The right reserved, is to pass and repass; and in the absence of express language, that means to pass and repass in a reasonable manner."

In sum, Respondents were substantially and criminally at fault three (3) times for building obstructions which were not built for passing and re-passing.

1 obstruction of gravel, across the road

1 obstruction of large rocks, across the road

1 obstruction of a large steel post, in the middle of the road, and

one (1) time for destroying:

1 steel swinging gate

All four (4) trespasses are a violation of S.C. Code Ann. 16-11-520(A) which states: "It is unlawful for a person to willfully and maliciously cut, mutilate, deface, or otherwise injure a tree, outside fence or fixture of another or commit any other trespass upon real property of another."

4. APPELLANT'S "FAULTS"

The Court of Appeals affirmation stated: "Specifically, the Adams installed steel posts, chain link gates and a steel gate".

a. Steel posts: Adams did install two side by side temporary posts at a single location assuming that Nexsen would have no objection to the temporary posts because: (a). Nexsen's acts of cutting more roads into the easement road had caused Adams an invasion of intruders who were by passing Adams' gate at the public road rendering it ineffective. (b) The posts did not materially interfere with Nexsen's access to Nexsen's property or with material access to the easement.

(c) The temporary posts were put up to help preserve Adams's estate until Adams could complete building another gate on his own property. (d) Nexsen would have no objection because he had enjoyed being a house guest of Adams for nine months free of charge. (Record, pg. 26, ls. 17-19)

b. Chain link gates: Appellants deny erecting any "chain link gates" and cannot find any reference in the record to "chain link gates".

c. The steel gate: Adams erected the steel gate months before Nexsen became an owner of the adjacent property. Alexander, upon encountering the gate, had the Sheriff call Appellants who immediately drove 65 miles to provide Alexander with a key. (Record, pg.37, lines 3-25)

When Nexsen became one of the servient easement owners, he regularly used the easement and the steel gate and key for nine months to get back and forth to Adams' guest house. (Record, page 26, lns.17-20). It was only after being asked to vacate the Adams' guest house that the use of the gate and key became a problem to Nexsen.

As the Master stated in his order, conclusions of law, (Record, page 3) "Since the Defendants did not consider their heavy steel post in the middle of the road to be an obstruction to them, then neither could the plaintiff's easily operated gate for which the defendants had the combination, be considered an obstruction."

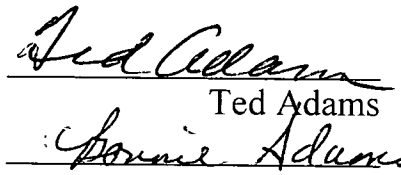
In Ballington v. Paxton, 327 S.C. 372(1997) 488 S.E.2d 882, the Court, Howell, C. J., held that"....a locked fence for which plaintiffs had key was necessary to protect property and did not unreasonably interfere with Plaintiff's right of access over easement." Therefore the steel gate cannot be reasonably counted as an obstruction or "fault" of the Appellants.

The Appellate Court has not cited correct and sufficient facts to support the Master's finding that both parties were equally at fault. Faults are faults because they have consequences which cannot be logically or reasonably ignored when assessing the magnitude of the faults.

The Master may have erred when assessing faults by ignoring the consequences of these faults and failing to differentiate between obstructions that were deliberate versus obstructions that were unintentional; between obstructions that were built to permanently block the way versus obstructions that permitted means to pass and repass in a reasonable manner; between obstructions that caused the loss of control of property for 15 months (Record, pg. 39, ln. 1-6), versus obstructions that did not cause loss of control of property or materially interfere with access to property for even 1 day.

The Court's affirmation of the Master's decision tells those who would commit malicious and unlawful acts against their neighbors that, as long as that neighbor had caused them even the slightest inconvenience, even unintentionally, they can,

with impunity, unlawfully destroy that neighbors property and then unlawfully deprive that neighbor of the control of his property for months on end without worry of the court ordering any compensation for the victims.



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