

RECEIVED

Sep 15 2025

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM NEWBERRY COUNTY
COURT OF COMMON PLEAS
THE HONORABLE MILTON G. KIMPSON
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2025-000737
CIVIL ACTION NO. 2022-CP-36-00142

Donald A. Brown, Jr.,

APPELLANT,

versus

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

RESPONDENTS.

INITIAL REPLY BRIEF

Carmen V. Ganjehsani (S.C. Bar No. 73515)
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
cganjehsani@richardsonplowden.com

Charles V. Verner (S.C. Bar No. 10033)
PO Box 484
1226 College Street
Newberry South Carolina 29108
(803) 915-9798
sclawyer@me.com
Attorneys for Appellant
Donald A. Brown, Jr.

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES IN REPLY	1
ARGUMENT IN REPLY	1
I. The Trial Court erred in denying Appellant Brown an appurtenant prescriptive easement after failing as a matter of law to apply the presumption of adverse use after a claimant or his predecessors in title have enjoyed an easement openly, notoriously, continuously, and uninterruptedly for a period of twenty (20) years	1
II. The Trial Court erred in failing to enforce the agreement between Appellant Brown and the Respondents for the grant of an easement where there is clear evidence of an agreement between the parties and sufficient part performance of the agreement occurred.	3
CONCLUSION.....	4

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Carolina Ctr. Bldg. Corp. v. Enmark Stations, Inc.</u> , 433 S.C. 144, 857 S.E.2d 16 (Ct. App. 2021).....	2
<u>Simmons v. Berkeley Elec. Cooperative, Inc.</u> , 419 S.C. 223, 797 S.E.2d 387 (2016)	2
 <u>STATUTES</u>	
S.C. CODE ANN. § 32-3-10.....	3
 <u>RULES</u>	
Rule 43(k), SCRCP	3

STATEMENT OF ISSUES IN REPLY

- I. The Trial Court erred in denying Appellant Brown an appurtenant prescriptive easement after failing as a matter of law to apply the presumption of adverse use after a claimant or his predecessors in title have enjoyed an easement openly, notoriously, continuously, and uninterruptedly for a period of twenty (20) years.
- II. The Trial Court erred in failing to enforce the agreement between Appellant Brown and the Respondents for the grant of an easement where there is clear evidence of an agreement between the parties and sufficient part performance of the agreement occurred.

ARGUMENT IN REPLY

- I. The Trial Court erred in denying Appellant Brown an appurtenant prescriptive easement after failing as a matter of law to apply the presumption of adverse use after a claimant or his predecessors in title have enjoyed an easement openly, notoriously, continuously, and uninterruptedly for a period of twenty (20) years.**

In determining whether the Trial Court erred in denying Appellant Brown an appurtenant prescriptive easement, the relevant analysis requires the Court to look at the conduct of Murray Gray in using the access road across the 158-acre tract in the twenty (20) year period before the Respondents came into possession of the 158-acre tract. It was common knowledge that Mr. Gray and his permittees were openly using the access road on the 158-acre tract. [R.pp. ___; ___; Tr. pp. 23, ll. 7-8; 78, ll. 1-15.] Mr. Gray had been using the easement continuously, as far as he could remember. [R.p. ___; Id. at p. 21, ll. 15-24.] Mr. Gray's family put their own lock on the gate to the access road. [R.pp. ___; ___; Id. at pp. 22, pp. 2-11; 34, ll. 19-24.] Mr. Gray gave others permission to use the road without seeking permission from anyone else. [R.pp. ___; ___; ___; Id. at pp. 22, ll. 11-19; 76, ll. 6-11; 79, ll. 21-25.] Mr. Gray affirmatively testified he had a right to access his property, the 97-acre tract, through the 158-acre tract and did not need anyone's permission to use the road. [R.pp. ___; ___; ___; Id. at pp. 22, ll. 2-4; 23, ll. 4-6, ll. 15-17; 34, ll. 16-

18.] He told Appellant Brown he had a right to use the access road across the 158-acre tract. [R.p. ___; Id. at p. 36, ll. 17-19.]

No one from the Dickert family ever stopped Mr. Gray or his permittees from using the access road even when the road may have been allegedly damaged by such users. [R.pp. ___; ___; Id. at pp. 23, ll. 4-14; 83, l. 24 - 84, l. 25.] This is a recognition by the Dickert family that Mr. Gray and his permittees had a right to use the road which could not be revoked.

That Mr. Gray acknowledged that he did not own any of the 158-acre tract and did not claim ownership over any part of the tract is not relevant to whether he had an easement over the property. Carolina Ctr. Bldg. Corp. v. Enmark Stations, Inc., 433 S.C. 144, 162, 857 S.E.2d 16, 26 (Ct. App. 2021) (claim of ownership not required for obtaining prescriptive easement). What Mr. Gray claimed was a right to an easement across the 158-acre tract which was evidenced by his actions in using the tract openly, notoriously, continuously, and uninterruptedly for over a twenty (20) year period. Simmons v. Berkeley Elec. Cooperative, Inc., 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016); [R.pp ___; ___; Tr. p. 22, ll. 2-4 (“Q: Did you [Mr. Gray] believe that you had a right to access your property through that easement? A: Yes, sir.”); p. 23, ll. 15-17 (“Q: But you’re a good neighbor, but you believe you had a right to use that road? A: I did believe I had a right to use that road, yes, sir.”).]

Furthermore, Mr. Gray’s agreement with counsel for the Respondents that the Gray family and the Dickert family were not hostile toward each other does not change the nature of Mr. Gray’s actual use of the access road in a manner that was open, notorious, continuous, and uninterrupted for twenty (20) years prior to the Respondents’ possession

of the property. Mr. Gray may not have understood the legal import of certain questions by Respondents' counsel as to the lack of hostility between the two families [R.p. ___; *Id.* at p. 34, ll. 10-18], but Mr. Gray's testimony as to his actual use of the access road for a period of more than twenty (20) years triggered the presumption of adverse use which Respondents cannot overcome by testimony that they gave Mr. Gray permission to use the access road after Mr. Gray's use had already ripened into a prescriptive easement. Accordingly, Appellant Brown requests this Court to reverse the Trial Court's order declining to grant Appellant Brown an appurtenant prescriptive easement.

II. The Trial Court erred in failing to enforce the agreement between Appellant Brown and the Respondents for the grant of an easement where there is clear evidence of an agreement between the parties and sufficient part performance of the agreement occurred.

As stated in his Appellant's Brief, Appellant Brown is aware that the appellate courts of this State have held that the requirements of Rule 43(k) of the South Carolina Rules of Civil Procedure are mandatory. Nevertheless, where this particular agreement also involves a contract involving an interest in land, Appellant Brown submits the courts should reconsider the preclusion pursuant to Rule 43(k) of the enforcement of such a contract where sufficient part performance has occurred in the same manner as the courts allow under the Statute of Frauds, S.C. CODE ANN. § 32-3-10.

CONCLUSION

For the reasons set forth in herein and in the Appellant's Brief, Appellant Brown respectfully requests this Court to (1) reverse the Trial Court's denial of an appurtenant prescriptive easement; or, in the alternative, (2) reverse the Trial Court's failure to enforce the agreement between Appellant Brown and the Respondents for the grant of an easement.

Respectfully submitted,

/s/ Carmen V. Ganjehsani

Carmen V. Ganjehsani (S.C. Bar No. 73515)
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
cganjehsani@richardsonplowden.com

Charles V. Verner (S.C. Bar No. 10033)
PO Box 484
1226 College Street
Newberry South Carolina 29108
(803) 915-9798
sclawyer@me.com
Attorneys for Appellant
Donald A. Brown, Jr.

September 15, 2025.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellant Donald A. Brown, Jr. do hereby certify that I have this date served the foregoing Initial Reply Brief, dated September 15, 2025, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Amended Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

Karl Stephen Brehmer
Andrew C. Brehmer
BREHMER LAW FIRM, LLC
PO Box 7966
Columbia, SC 29202
ksb@brehmerlawfirm.com
acb@brehmerlawfirm.com
Attorney for Respondents

A copy of the sent email is enclosed with this Certificate of Service.


/s Carmen V. Ganjehsani
Carmen V. Ganjehsani (S.C. Bar No. 73515)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
Attorneys for Appellant
Donald A. Brown, Jr.

Dated: September 15, 2025.

From: [Carmen Ganjehsani](#)
To: "ksb@brehmerlawfirm.com"; "acb@brehmerlawfirm.com"
Cc: "[Charles Verner](#)"
Subject: App. Case No. 2025-000737 Brown v. Dickert
Date: Monday, September 15, 2025 2:29:00 PM
Attachments: [2025-000737 Brown v. Dickert \(Initial Reply Brief\) \(3877625\).pdf](#)

Please find served upon you the Initial Reply Brief on behalf of Appellant Donald A. Brown, Jr.

Thank you,
Carmen Ganjehsani

HOME	VCARD	LOCATION
		<p>Carmen V. Ganjehsani Shareholder Cganjehsani@RichardsonPlowden.com</p> <p> Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.253.8692 Fax: 803.779.0016 www.RichardsonPlowden.com</p>

The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (803) 771-4400 and permanently delete this e-mail.