

**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

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Nov 04 2025

SC Court of Appeals

Donald A. Brown, Jr.,

APPELLANT,

versus

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

RESPONDENTS.

FINAL REPLY BRIEF

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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. 65, ll. 7-8; 120, ll. 1-15; 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. 63, ll. 15-24; Id. at p. 21, ll. 15-24.] Mr. Gray's family put their own lock on the gate to the access road. [R.pp. 64, ll. 2-11; 76, ll. 19-24; Id. at pp. 22, ll. 2-11; 34, ll. 19-24.] Mr. Gray gave others permission to use the road without seeking permission from anyone else. [R.pp. 64, ll. 11-19; 118, ll. 6-11; 121, ll. 21-25; 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. 64, ll. 2-4;

65, ll. 4-6, ll. 15-17; 76, ll. 16-18; 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. 78, ll. 17-19; 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. 65, ll. 4-14; 125, l. 24 – 126, l. 25; 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 64, ll. 2-4; 65, ll. 15-17; 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. 76, ll. 10-18; 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,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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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 Final Reply Brief, dated November 4, 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):

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