

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

RECEIVED

Nov 04 2025

SC Court of Appeals

Donald A. Brown, Jr.,

APPELLANT,

versus

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

RESPONDENTS.

RECORD ON APPEAL

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
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.**

Karl Stephen Brehmer
(S.C. Bar No. 12849)
Andrew C. Brehmer
(S.C. Bar No. 106113)
BREHMER LAW FIRM, LLC
PO Box 7966
Columbia, South Carolina 29202
(803) 771-6600
ksb@brehmerlawfirm.com
acb@brehmerlawfirm.com
**Attorneys for Respondents
Johnnie L. Dickert, Rachel B. Dickert,
and Johnnie Kyle Dickert**

BROWN V. DICKERT

INDEX TO RECORD ON APPEAL

I.	ORDERS/JUDGMENTS	<u>PAGE</u>
	Order, filed March 24, 2025	1
II.	PLEADINGS AND OTHER FILINGS	
	Complaint, filed April 12, 2022	13
	Answer, filed June 9, 2022	17
	Appellant’s Proposed Order to Trial Court.....	20
III.	TRANSCRIPT	
	Transcript of Trial held July 11, 2024 before The Honorable Eugene C. Griffith, Jr. and The Honorable Milton G. Kimpson	43
	Examination of Murray Gray	55
	Direct Examination by Mr. Verner	55
	Cross-examination by Mr. Brehmer	65
	Redirect examination by Mr. Verner	72
	Examination of Michael Wise	80
	Direct Examination by Mr. Verner	80
	Cross-examination by Mr. Brehmer	91
	Redirect examination by Mr. Verner	98
	Recross-examination by Mr. Brehmer	106
	Examination of Terry Longshore	111
	Direct Examination by Mr. Verner	111
	Cross-examination by Mr. Brehmer	122

Redirect examination by Mr. Verner	125
Examination of Mike Longshore.....	127
Direct Examination by Mr. Verner	127
Cross-examination by Mr. Brehmer	131
Examination of Donald A. Brown, Jr.....	133
Direct Examination by Mr. Verner	133
Cross-examination by Mr. Brehmer	156
Redirect examination by Mr. Verner	168
Motions for Directed Verdict	171
Examination of Johnnie Dickert.....	182
Direct Examination by Mr. Brehmer	182
Cross-examination by Mr. Verner	198
Redirect examination by Mr. Brehmer	214
Renewed Motions for Directed Verdict	215

IV. EXHIBITS

Plaintiff's Exhibit No. 2 - Aerial map.....	235
Plaintiff's Exhibit No. 3 - Deed	236
Defendants' Exhibit No. 6 - May 27, 2022 Letter from Mr. Brehmer to Mr. Verner.....	239
Defendants' Exhibit No. 7 - December 21, 2022 Letter from Mr. Brehmer to Mr. Verner.....	240
Defendants' Exhibit No. 8 - December 21, 2022 Letter from Mr. Brehmer to Mr. Verner.....	241
Defendants' Exhibit No. 9 - January 12, 2024 Letter from Mr. Brehmer to Mr. Verner.....	242

Court’s Exhibit No. 1 - Aerial map with stickers	243
Court’s Exhibit No. 3 - Invoices incurred by Appellant pursuant to agreement for obtaining easement	244
Court’s Exhibit No. 4 - Photograph of property	252
V. CERTIFICATE OF COUNSEL.....	253

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Donald A. Brown, Jr.,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-36-00142

ORDER

RECEIVED
APR 16 2025
SC Court of Appeals

This matter came before the Court for a bench trial on July 11, 2024, in the Newberry County Courthouse. The Honorable Eugene C. Griffith, Jr., presided over a few preliminary matters of the hearing with the Honorable Milton G. Kimpson also sitting at the bench, and who presided over the bench trial with the consent of the parties. This is an action brought by Plaintiff, Donald A. Brown, Jr., to establish an appurtenant prescriptive easement across a 158.245 (158) acre tract of land owned by the Defendants, Johnnie L. Dickert, Rachel B. Dickert and Johnnie Kyle Dickert, to access a 97-acre tract owned by Plaintiff in Newberry County. The Plaintiff was represented by Charles A. Verner, Esq. The Defendants were represented by Karl S. Brehmer, Esq.

Prior to the taking of testimony, Plaintiff made an oral motion to enforce a purported settlement agreement between the parties. The Defendant objected to this motion as the matter was not pled and no prior written motion had been filed with the Court. At the time, the Court took the motion under advisement. The Plaintiff testified during the trial about the purported settlement agreement and the steps he took to attempt compliance. The Court now grants the Plaintiff's motion to amend his complaint to assert that the parties' purported settlement agreement should be enforced. This issue will be addressed in a later part of this Order.

The Plaintiff presented as witnesses the Plaintiff, Murray Gray, Michael Wise, Terry Longshore, and Mike Longshore. The Defendant's sole witness was Defendant Johnnie Dickert.¹

¹ At the conclusion of the evidence, because the parties had not engaged in alternative dispute resolution prior to trial, the Court ordered the parties to mediate their dispute in an attempt to reach resolution. parties engaged in mediation on October 3, 2024 but the mediation ended in impasse. Each party thereafter submitted a proposed order for the Court's consideration.

Based on the evidence and the parties' legal arguments, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACTS

1. Plaintiff Donald A. Brown, Jr., and Defendants Johnnie L. Dickert, Rachel B. Dickert and Johnnie Kyle Dickert are all residents of the County of Newberry, State of South Carolina.
2. Brown owns a 97-acre tract of land located in Newberry County, which he purchased on October 26, 2021, from Brandon Nicole Gray Crumpton, said Deed recorded in Deed Book 2415 at page 163.
3. Defendants Johnnie L. Dickert (Dickert) and Rachel B. Dickert are the owners of a life estate in a 158-acre tract of land located on the Old Whitmire Highway in Newberry County which adjoins the western portion of the property of the Plaintiff. Brown, and their son, Defendant Johnnie Kyle Dickert (Kyle), is the owner of the remainder interest to this real property.
4. Plaintiff's property does not border a public road. Brown has access to his tract of land by entering a neighboring 88-acre tract from the Old Whitmire Highway, located on the western side of the Dickert tract, and then over a field road that crosses a portion of the Dickert tract. While the evidence was inconclusive whether the field road is Plaintiff's only access to his property, this route of access is the most efficient means of reaching Plaintiff's property and has been used to access this property for many years. The Plaintiff seeks to establish a prescriptive easement over this field road.
5. Plaintiff testified that he had visited his 97-acre tract to hunt prior to his purchase and had traversed the field road but did not know whether the road was being used with permission or under a claim of right.
6. The Dickerts placed a gate across the field road shortly after Plaintiff purchased the property which effectively prevents the Plaintiff from accessing his property using this route of travel.
7. On April 12, 2022, Plaintiff filed this action alleging the existence of an easement by prescription, and claims that he, as have his predecessors in interest, has used said field road openly, notoriously and continuously for a period of more than twenty years and that the road is clearly defined on plats and maps of the properties.

8. The Defendants filed an answer denying the allegations of the Complaint and more specifically claiming that any use of the roadway by Plaintiff and the prior owners of the 97-acre tract has been merely permissive by license of the Defendants.
9. Plaintiff called Murray Gray, who owned the 97-acre tract from 1991 to July 2, 2020. Gray testified that he inherited the property from his ancestors, and he was under the impression the roadway in question was always used because of a gentlemen's agreement between his ancestors and the Defendants and their ancestors. Gray's family and the Defendants' family were both in the timber and lumber industry and worked closely together. Neither Murray Gray nor any member of his family had ever claimed ownership of the roadway and had used it with the permission of the Defendants and their ancestors. Gray conveyed the 97 acres to his daughter in 2020.
10. Gray further testified that at one point, the Dickerts erected a gate on the road but that that he and the Dickerts maintained two separate locks on the gate with their own keys and rights of entry. This gate was removed after another landowner bought an adjacent tract of land in 2014.
11. Michael Wise and Mike Longshore are the adjacent former owner and current property owners, respectively, of an 88-acre tract of property purchased from the Defendants and had no knowledge of the terms and conditions of the use of the roadway in question. Michael Wise and Mike Longshore knew the road was used but did not know whether the use was permissive or under a claim of right.
12. Terry Longshore, a former leaseholder of hunting rights on the Plaintiff's 97 acres, admitted to having used the roadway but had no knowledge of the agreement between the owners of the two respective tracts of property about the use of the roadway. Terry Longshore offered no testimony about an agreement between the parties or claim of right of ownership in the roadway.
13. Johnnie Dickert testified about his family's ownership of his land. Dickert Lumber Company, formerly known as Dickert Brothers, purchased the 158-acre tract in 1973. At the time they purchased the property, the tract of land now owned by the Plaintiff was owned by the Murray family, who had another timber business. Following the winding up of Dickert Lumber Company, John W. Dickert, Jr., (Dickert's father) acquired the property. John W. Dickert, Jr., died in 2001, at which time, Dickert and his sister, Phylis

Shifley, inherited the tract. Shifley subsequently conveyed her interest in the tract to Dickert. Thereafter, Dickert conveyed a life estate to his wife, Rachel B. Dickert and himself. The remainder interest Dickert conveyed to his son, Kyle. Dickert had no ownership, control or involvement with the 158-acre tract prior to 2005.

14. Dickert described his family's relationship with the Murray family as competitors in the timber business but "we all sort of worked together and partnered together more or less. Mr. Allen Gray was the grandfather that owned Murray Lumber Company over here on Kline Street. And we had Dickert Lumber Company out on 76 and we occasionally swapped bundles of lumber because we wanted to finish our loads, and it was just a working relationship between the two lumber industries. And Mr. Murray passed it on to Sonny Gray who was his son-in-law, and they eventually closed the Murray Lumber Company. Of course, they had that tract of land [97-acre tract] up there behind the tract that we owned, Dickert Lumber Company owned. And we just had a gentlemen's relationship about ins and outs of the whole property back there."
15. Dickert testified that the right of Allen Gray, the Murray Lumber Company, Murray Gray and others to use the roadway over the 158-acre tract was only by virtue of the permission of the Dickerts, and/or Dickert Lumber Company or its predecessors.
16. Dickert also stated that he believed there are alternative ways to access Plaintiff's tract without using the field road such as by crossing other adjoining tracts, or the Forest Service, or the power line right of way.
17. In early 2023, shortly before the call of the case for trial, the parties reached a tentative agreement as to the contested issues and notified the clerk of court and presiding judge of the settlement and requested the case be removed from the docket.
18. The parties did not comply with the requirements of Rule 43(k), South Carolina Rules of Civil Procedure (SCRCP) in that they did not reduce the purported settlement agreement to writing, did not file an executed written stipulation outlining the terms with Court and did not announce any settlement agreement on the record in a court proceeding.
19. The Plaintiff testified that he undertook to perform work and other activities on the field road pursuant his understanding of the purported settlement agreement and submitted receipts into evidence approximating six thousand (\$6,000.00) dollars as the costs he expended in his compliance efforts.

20. The Defendant disputes that any settlement agreement was finalized and testified to several examples of Plaintiff's failure to perform or complete his obligations pertaining to the purported settlement agreement.

CONCLUSIONS OF LAW

The Court finds that it has jurisdiction over the parties and the subject matter of this action, and that venue is proper. In addition, the Court reaches the following conclusions of law:

I. PREScriptive EASEMENT

Before the Court, the issue was whether the use of the roadway identified by the parties was permissive or whether the Plaintiff established the elements of a prescriptive easement by clear and convincing evidence. In order to establish a prescriptive easement, a claimant must prove by clear and convincing evidence a (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 (S.C. Ct. App. 2024). It is significant that a claimant can add the time of his use to the use by prior owners who share a privity of estate provided the prior owner's use also satisfies the elements of demonstrating a prescriptive easement. *Id.*, at 626, 900 S.E.2d at 479-480.

Here, the Court finds that Plaintiff's proof is lacking as it relates to the second and third required elements of the prescriptive easement test.² "It 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) (citing 9 R.C.L 778) (emphasis added). See also *Horry Cnty. v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993) (holding evidence, which established that use of property was permissive,

² The Court does believe that the Plaintiff established the identify of the easement.

showed use of property was not adverse); *Williamson*, 107 S.C. at 401, 93 S.E. at 16 (stating that permissive use of property “stamps the character of the use as not having been adverse, or under claim of right”); *see also* 12 S.C. Jur. *Easements* § 10 (Supp. 2015) (“Use with the permission of the owner is not adverse.”). Stated another way, when a claimant uses property with the permission of the owner, he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act toward the owner's rights.

The Plaintiff purchased the 97-acre tract on October 26, 2021 and testified that he did not know whether the field road was being used with permission or under a claim of right. In an effort to show the first prong of the prescriptive easement test regarding continued and uninterrupted use or enjoyment of the right for a period of twenty (20) years, the Plaintiff called Murray Gray, who owned the 97-acre tract from 1991 to July 2, 2020, at which time he conveyed it to his daughter. Gray testified that he inherited the property from his ancestors, and he was under the impression the roadway in question was always used because of a gentlemen's agreement between his ancestors and the Defendants and their ancestors. Gray's family and the Defendants' family were both in the timber and lumber industry and worked closely together. Neither Murray Gray nor any member of his family had ever claimed ownership of the roadway and had used it with the permission of the Defendants and their ancestors. This permissive use by the Gray family defeats the Plaintiff's ability to “tack on” the time that the Gray family used the easement prior to Plaintiff's ownership.³

Michael Wise and Mike Longshore are the adjacent former owner and current property owners, respectively, of the adjoining 88-acre tract purchased from the Defendants but had no knowledge of the terms and conditions of the use of the roadway in question. Each witness knew the road was used but did not know whether the use was permissive or under a claim of right. Terry Longshore, a former leaseholder of hunting rights to the Plaintiff's 97 acres, admitted to having used the roadway but had no knowledge of the agreement between the owners of the two respective tracts of property about the use of the roadway. He offered no testimony about an agreement between the parties or claim of right of ownership in the roadway.

The standard of proof for a prescriptive easement is clear and convincing evidence. Given that a prescriptive easement results in diminished rights of the property owner, prior cases have

³ This is underscored by the Court's earlier finding regarding the existence of the gate the Dickerts erected to which both the Dickerts and Gray had locks and keys.

determined that a claimant seeking a prescriptive easement must be held to a strict standard of proof. Accordingly, the Court holds that a party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence. *Bundy v Shirley*, 412 S.C. 292, 772 S.E. 2d 163 (S.C. 2015).

To establish a prescriptive easement, 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. *Bundy*, 412 S.C. at 304, 772 S.E.2d at 169. "'Open' generally means that the use is not made in secret or stealthily. It may also mean that it is visible or apparent." *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016) (quoting Restatement (Third) of Property (Servitudes) § 2.17(h) (2000)). "'Notorious' generally means that the use is actually known to the owner, or is widely known in the neighborhood." *Id.* at 234, 797 S.E.2d at 392 (quoting Restatement (Third) of Property (Servitudes) §2.1717(h)(2000). See also *Braswell v Amick*, 442 S.C. 618, 900 S.E.2d 475 (2024).

The Court holds that the Plaintiff failed to meet its burden of proof that the use of the roadway in question was contrary to the true property owner's rights for a period of twenty years by clear and convincing evidence. The permissive use and or license for the use of the roadway in question has never ripened into a claim of right, and the record is void of a distinct and positive assertion of a right hostile to the Defendant owners or anyone in the Defendant owners' chain of title, or such a claim of right asserted against anyone in the chain of title by any prior owner of the 97-acre tract of property.

II. PURPORTED SETTLEMENT AGREEMENT

At some point during the pendency of this litigation, the parties indicated they had reached a tentative agreement to settle their outstanding issues and end this litigation. Notification was given to the clerk of court and presiding judge that the case had been settled and a request was made to remove it from the docket.

It is undisputed, however, that the parties did not comply with Rule 43(k) of the South Carolina Rules of Civil Procedure (SCRCP) which provides:

(k) Agreements of Counsel. 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, SCRCF.

Nevertheless, the Plaintiff asserts that because he expended approximately six thousand dollars (\$6,000.00) in an effort to comply with the parties' tentative agreement, and further, that the disagreements Defendant relies upon to contend that the settlement was not finalized were minor and not part of the agreement's core terms, that this Court should exercise its inherent authority to enforce the agreement.⁴ Unfortunately, because of noncompliance with Rule 43(k), the Court declines to do so.

In *South Carolina Human Affairs Commission v., Zeyi Chen*, 430 S.C. 509, 521, 846 S.E.2d 861, 867 (2020), where the Human Affairs Commission reached a settlement agreement to resolve a dispute, but the defendant never executed the final agreement, our Supreme Court observed:

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. In this case, the next step in the proceeding would have been the entry of a consent order, but Respondents withdrew their assent. The requirements of Rule 43(k) clearly were not met in the current matter for the reasons found by the circuit court. Consequently, we affirm the circuit court's order denying the Commission's motion to compel enforcement of the settlement agreement.

⁴ In his proposed Order, Plaintiff recited the following actions he took to comply with the tentative settlement agreement:

Brown had the new easement location properly platted in recordable form. Brown ... testified and presented receipts demonstrating that he expended more than six thousand (\$6,000) dollars in the labor and costs of building the new roadway, ditch along the highway with terracotta drainage pipe, and for the gravel. Brown installed a lockable steel cable a short distance approximately 75' feet from the highway at the entranceway of the new easement.

Significantly, the *Chen* Court reiterated its characterization that language in an earlier case, *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (1995), suggesting that strict compliance with Rule 43(k), SCRCF may be overlooked “where the agreement is admitted or has been carried into effect,” was “‘dictum’ that does not comport with the language of Rule 43(k).” *Id.*, at 520, 846 S.C. at 866 (quoting *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006)). As such, this Court will not enforce any settlement agreement as alleged by the Plaintiff.

BASED ON THE FOREGOING, the Plaintiff failed to meet his burden of proof to establish a prescriptive easement by clear and convincing evidence and further, the Court declines to enforce any settlement agreement because of the failure to comply with Rule 43(k), SCRCF.

AND IT IS SO ORDERED:

The Honorable Milton G. Kimpson

March 24, 2024

Newberry, South Carolina



Newberry Common Pleas

Case Caption: Donald A Brown Jr VS Johnnie L Dickert , defendant, et al

Case Number: 2022CP3600142

Type: Order/Other

IT IS SO ORDERED.

s/Milton G. Kimpson 2783

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2022CP3600142

Official File Stamp:

03-24-2025 04:27:40 PM

Court:

CIRCUIT COURT

Common Pleas

Newberry

Case Caption:

Donald A Brown Jr VS Johnnie L Dickert ,
defendant, et al

Document(s) Submitted:

Order/Other Order/Other

Filed by or on behalf of:

Milton Kimpson

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Karl Stephen Brehmer for Johnnie L Dickert et al

Charles Vermeule Verner for Donald A Brown, Jr

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Certificate of Electronic Notification**Recipients**

Charles Verner - Notification transmitted on 03-24-2025 04:27:44 PM.

Karl Brehmer - Notification transmitted on 03-24-2025 04:27:44 PM.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
 FOR THE EIGHTH JUDICIAL CIRCUIT

22-CP-36-_____

Donald A. Brown, Jr.,)
)
 Plaintiff,)
)
 Against,)
)
 Johnnie L. Dickert, Rachel B. Dickert and)
 Johnnie Kyle Dickert,)
)
 Defendants.)
 _____)

S U M M O N S

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office at Harley & Verner LLP, 1219 Boyce Street, P. O. Box 484, Newberry, South Carolina 29108, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the plaintiffs in this action will apply to the Court for the relief demanded in the Complaint.

s/Charles Verner

Charles Verner
 Attorney for Plaintiff
 1219 Boyce Street
 P. O. Box 484
 Newberry, South Carolina 29108
 (803) 276-0812
 (803) 276-7834 (facsimile)

April 17, 2022
 Newberry, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
 FOR THE EIGHTH JUDICIAL CIRCUIT

22-CP-36-_____

Donald A. Brown, Jr.,)
)
 Plaintiff,)
)
 Against,)
)
 Johnnie L. Dickert, Rachel B. Dickert and)
 Johnnie Kyle Dickert,)
)
 Defendants.)
 _____)

COMPLAINT

PLAINTIFF DONALD A BROWN, JR., would respectfully show unto the Court, that:

JURISDICTION

1. Plaintiff is a resident of the County of Newberry, State of South Carolina;
2. Defendants are all residents of the County of Newberry, State of South Carolina;
3. The Court of Common Pleas in Newberry County has jurisdiction of the parties and subject matter of this civil action.

FOR A CAUSE OF ACTION

4. Defendants Johnnie L. Dickert and Rachel B. Dickert are the owners of a life estate of the property shown on a deed recorded in Deed Book 2154 at page 190 in the office of the Newberry County Clerk of Court and described as One Hundred Fifty Eight and Two Hundred and Forty Fifths (158.245) Acres, located on the Old Whitmire Highway, and identified as Tax Map Number 330-7 for Newberry County.

5. Defendant Johnnie Kyle Dickert is the owner of the remainder interest in the real

property identified above, recorded in the same deed as identified in Paragraph 4.

6. Plaintiff Donald A. Brown, Jr., is the owner of a certain piece of property located on the east side of the property of Defendants, by Deed of Brandon Nicole Gray Crumpton, dated October 26, 2021, and recorded in the aforesaid office in Deed Book 2415 at page 163.

7. The only reasonable access to this property is over a field road that borders and crosses the property of Defendants.

8. Recently Defendants have attempted to thwart and block Plaintiff from traveling over a legal and rightful right-of-way to access the property by placing a gate across the roadway. This was done intentionally and deliberately to prevent Plaintiff from exercising his lawful rights to use said right-of-way.

9. For more than sixty years, Plaintiff (and his predecessors in interest) have used the said field road openly, publicly, notoriously and continuously and the said road was clearly defined on plats and maps of the properties. As a result of Defendants continued to place barricades, obstacles and gates on the roadway, Plaintiff is unable to get to his fields, property and timber and will suffer irreparable damages if he is not allowed to continue to ingress and egress over the road without interference in the future.

10. Defendants have expressed their intent to maintain the barriers and deny Plaintiff access to his property across the field road.

11. Plaintiff is informed and believes that he is entitled to an Order of the Court declaring Plaintiff has an easement and right-of-way for vehicular and other traffic across Defendants' real property according to the existing field road.

12. Plaintiff is further informed and believes that he is entitled to an Order enjoining Defendants from interfering with, obstructing the use of said easement immediately and in the future, temporarily and permanently. Plaintiff needs to access his property with equipment as soon

as possible.

13. Plaintiff is further informed and believes that his is entitled to an Order directing Defendants to remove all obstructions, gates and other materials on the roadway which may interfere with the use thereof by Plaintiff on entering and leaving his property over Defendants' property.

WHEREFORE, having fully set forth the Complaint, Plaintiff prays for a Declaration by this Court that Plaintiff has an easement for right-of-way for vehicular and other traffic across the property of Defendants as described above; directing and enjoining Defendants from interfering with or obstructing the use of said easement by any manner; temporarily and permanently; removing any obstructions or gates across the field road; and for the costs of this action, and for such other and further relief as may be consistent with the allegations of this Complaint.

s/Charles Verner

Charles Verner
Attorney for Plaintiff
1219 Boyce Street
P. O. Box 484
Newberry, South Carolina 29108
(803) 276-0812
(803) 276-7834 (facsimile)

April 17, 2022
Newberry, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
Case No. 2022-CP-36-00142

Donald A. Brown, Jr.,

Plaintiff,

vs.

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

Defendants.

**ANSWER OF DEFENDANTS
(Jury Trial Requested)**

The Defendants, answering the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendants denies each allegation of the Plaintiff's Complaint not hereinafter specifically admitted.
2. Paragraphs 1 through 6 are admitted.
3. Paragraph 7 is denied.
4. As to Paragraph 8, the Defendants admit that they installed a gate across the roadway but denies the remaining allegations of paragraph 8 and demands strict proof thereof.
5. Paragraph 9 is denied.
6. As to Paragraph 10, the Defendants admit they intend to maintain the gate in place but deny the remaining allegations of paragraph 10 as drafted and demands strict proof thereof.
7. Paragraphs 11 through 13 are denied.

FOR A SECOND DEFENSE
(Trespasser)

8. The Defendants would show, upon information and belief, that the plaintiff is a trespasser and has no legal property rights to use his property and has only used the same with the Defendants' permission and that the permission has been rescinded.

FOR A THIRD DEFENSE
(Failure to State A Cause of Action)

9. The Defendants would show upon information and belief that the Plaintiff's complaint fails to state a cause of action and for that reason the plaintiff's complaint should be dismissed with prejudice pursuant to SCRCP 12(b)(6).

FOR A FOURTH DEFENSE
(Permissive User)

10. The Defendants will show upon information and belief that the Plaintiff and all the predecessors in interest use of the Defendants' property have been with permission and consent of the Defendants and over the years there has been changes, alterations, and modifications to the means of ingress and egress and there has been no defined designation of an area of specific use, the use has not been open apparent and obvious and apparent to the public, nor has it been hostile to the Defendants and the use has not been continuous.

FOR A FIFTH DEFENSE
(Other Means of Ingress and Egress)

11. The Defendants will show upon information and belief that the Plaintiff has other means of ingress and egress to his property and the Plaintiff's attempt to obtain an easement from the Defendants is an unlawful and wrongful taking of the Defendants property.

FOR A SIXTH DEFENSE
(Full Knowledge of the Plaintiff)

12. The Defendants will show that at the time the Plaintiff purchased his property from the seller that he knew there was no lawful means of ingress and egress and that he purchased the same with full and complete knowledge the property was land locked and is now attempting an unlawful taking of the Defendants property.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiff's Complaint be dismissed with costs.

The Defendant demands a jury trial.

BROWN & BREHMER

By: s/ Karl S. Brehmer
Karl S. Brehmer (SC Bar # 12849)
1720 Main Street, Suite 201
Post Office Box 7966
Columbia, South Carolina 29202
(803) 771-6600
ksb@brownandbrehmer.com
Attorney for Defendants

June 9, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	

Donald A. Brown, Jr.,	)	Case No.: 2022-CP-36-142
-----------------------	---	--------------------------

	)	
Plaintiff,	)	

Against,	)	
----------	---	--

O R D E R

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

This matter came before the Court for a bench trial on July 11, 2024, in the Newberry County Courthouse. The Honorable Eugene C. Griffith, Jr., presided over a few preliminary matters of the hearing with the Honorable Milton G. Kimpson also sitting at the bench, and who presided over the bench trial with the consent of the parties.

This is an action brought by Plaintiff (Brown) to establish an appurtenant prescriptive easement across a 158 acre tract owned by Defendants (Dickert) to a 97 acre tract owned by Brown in Newberry County.

Prior to the taking of testimony, Brown moved the Court to enforce the settlement agreement between the parties prior to the call of witnesses. The Court reserved ruling on this motion.

After hearing from the witnesses, reviewing the exhibits admitted into the record and hearing the arguments of counsel for the parties, the Court finds that Brown has established by clear and convincing evidence the existence of an appurtenant prescriptive easement across the subordinate Dickert tract to benefit Brown's dominant tract in the particulars set out below.

Having found that Brown has demonstrated that he has an easement over the Dickert's

property, the Court returns to the motion to enforce the settlement agreement. The Court finds that Brown and the Dickerts did reach a binding and enforceable settlement agreement, the Court incorporates the settlement into this order establishing the easement as surveyed and constructed in the proposed Plat prepared on behalf of the parties. The final construction, location, design and quality of the easement shall meet the requirements as agreed to by and between the parties.

As an alternative holding subordinate to the above finding to enforce the settlement agreement, the Court finds that Brown has proven the existence of the prescriptive appurtenant easement and set forth in the pleadings and proven from the testimony and exhibits presented in the trial.

The Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff Donald A. Brown, Jr., and Defendants Johnnie L. Dickert, Rachel B. Dickert and Johnnie Kyle Dickert are all residents of the County of Newberry, State of South Carolina.

2. Brown owns a 97 acre tract of land (Murray tract) located in the Maybinton community of Newberry County, which he purchased on October 26, 2021, from Brandon Nicole Gray Crumpton, said Deed recorded in Deed Book 2415 at page 163.

3. Defendants Johnnie L. Dickert (Dickert) and Rachel B. Dickert are the owners of a life estate in a 158.245 acre tract of land located on the Old Whitmire Highway in Newberry County which adjoins the western portion of the property of Plaintiff Brown, and their son, Defendant Johnnie Kyle Dickert (Kyle), is the owner of the remainder interest to this real

property.

4. Brown's property is landlocked and does not border a public road. The only access Brown has to his tract is by entering a neighboring 88 acre tract (Longshore tract) from the Old Whitmire Highway, located on the western side of the Dickert tract, and then over a field road that crosses a portion of the Dickert tract.

5. The Dickerts placed a gate across the roadway shortly after Brown purchased the property and have expressed their intention to continue to deny Brown access to his property from the field road.

6. On April 12, 2022, Brown filed this action alleging the existence of an easement by prescription, and claims that he, as have his predecessors in interest, used the said field road openly, notoriously and continuously for a period of more than twenty years and that the road is clearly defined on plats and maps of the properties.

7. The Dickerts filed an answer denying the allegations of the Complaint and more specifically claiming that any use of the roadway by Brown and the prior owners of the Murray tract has been merely permissive by license of the Dickerts.

8. The Court summarizes the testimony of the most relevant and convincing witnesses as set out below.

Testimony of Murray Gray

9. Brown called Murray Gray, a prior owner of Brown's tract, and other neighboring landowners to testify as to their knowledge and belief of the existence of an easement across the Dickert's subordinate tract in favor of Brown's dominant tract.

10. Gray testified that he owned the Murray tract from 1991 until he conveyed it to

his daughter, Brandon, on July 2, 2020. Gray received the property from his mother's estate and Gray's grandfather had owned the tract since the early 1950s.

11. Gray stated that he has known the Dickert family for most of his life, who are family friends and like his grandfather, have been engaged in the timber business for decades. Gray indicated that he remembered coaching Brown and Defendant Kyle as little league teammates when they were around ten years old.

12. Gray further testified that he has been going to the Murray tract since the 1980s primarily for hunting and timbering.

13. Brown's counsel inquired of Gray, "How would you get to the property?" and Gray responded, "I went through a gate that the Dickerts had that adjoined our property. It was just like an easement or right of way into the property." Gray testified that he has been using the easement/right-of-way "as long as I can remember." Gray added that all of the guests that he permits to hunt his property have always used this easement and only this access to his property. Gray clarified that there is no other road access to the Murray tract other than the roadway the crosses the Dickert's adjacent tract.

14. Gray stated that the roadway is clearly recognizable as such, its parameters identifiable and has existed in the same location since his earliest memories of visiting the Murray tract in the 1980s. Gray testified affirmatively that he "believe[d] that [he] had a right to access [the] property through that easement." Gray noted that for some time, the Dickerts and he maintained two separate locks on the gate with their own keys and right of entry. Gray would grant others permission to unlock the gates to hunt on or access his property, including prior loggers who timbered his property and accessed the property from the roadway, although sometimes he would notify the Dickerts "so they were familiar with them going . . . back there."

15. Gray stated that it was “common knowledge” that he was using the roadway to access his property and that the Dickerts “knew it was being used.” Gray concluded his testimony on direct, “I did believe I had a right to use that road.”

16. During cross-examination, Gray indicated that he tried to be a good neighbor, respectful of the wishes of the Dickerts and desired to maintain a friendly relationship with them. On cross, Gray agreed that he never personally expressed hostility to the Dickerts or manifested an interest adverse to theirs, but it appears to the Court that Gray’s expression and understanding of those legal terms of art was by their common interpretation.

17. Following the cross-examination, Gray again re-stated his belief that he had the right to get to his property across the roadway easement.

Testimony of Michael Wise

18. The testimony of Michael Wise, a poultry farmer who resides in Newberry County, corroborates Gray. Wise noted that he has known the Dickerts for all of his life and has known Brown for around twenty years, and was cordial with all of the parties.

19. Wise testified that he is familiar with the two tracts and neighboring properties in this case and formerly owned the 88 acre property (Longshore tract) adjacent to the western side of the Dickert tract which is the origin of the roadway easement from the Old Whitmire Highway. Wise purchased his tract from Dickert in 2014 for the purpose of building chicken houses on the property.

20. Wise agreed that the 98 acre tract was landlocked and Gray and others, including logging trucks, access the property by using the roadway easement. Wise noted that while he owned the tract, he was on the property every day for five years from 2014 until 2019 until he

sold it to the Longshores. Wise testified that he relocated a portion of the roadway on his property slightly to move the road further from his chicken houses, but that the location of the roadway did not change where it was located or its course on the Dickert tract. In fact, Dickert conveyed 2.4 additional acres of land to Wise to accomplish the modification. Importantly, Wise agreed that this modification was “really done to accommodate Mr. Gray’s access to the property because it extended the boundaries and kept him further away from [the] chicken coops.”

21. Shortly after he bought his tract, Wise stated that he permanently removed the gate where the roadway crossed onto the Dickert tract.

22. Wise continued on direct by stating that he believed that Gray had a right to get to his property by using the roadway easement. The neighbor testified, “I felt like he (Gray) had the right to get there.” Wise testified that others used the roadway to access the Murray tract, including hunters. Wise noted that he himself had traversed the roadway easement.

23. Wise testified that there is a steep gully or ravine that runs at the boundary of his property and the Dickert tract and that the roadway could not be moved to a different location because of the topography.

24. Wise was questioned about a recorded easement also on the Longshore property. He acknowledged that there is a recorded express easement at a different location “independent of Murray Gray’s road” to other property owners (the Lindler tract) who are behind the Longshore tract, but disagreed that this easement was ever used to access the Murray tract. Regardless, the viability of the former express easement has become obsolete because of the construction of the chicken houses.

25. Like Gray, the Court notes that Wise’s expressed his understanding of the term

“hostile” as “getting mad,” or angry, or fighting, and indicated he was unaware of any meaning as a legal term of art.

Testimony of Terry Longshore

26. Terry Longshore, a resident of Newberry and who, although he shares the same last name, is not related to the owner of the Longshore tract, testified for Brown. Longshore worked in at a cotton mill in Newberry County for 20 to 30 years.

27. Longshore testified that he been familiar with the tracts in issue in this case since 1993, and that he and his father have hunted deer and turkey on the Murray tract and adjoining land for a period of time longer than thirty years. Longshore stated that he has known the Dickerts all of his life. Longshore remembered seeing Brown hunting on the Murray tract in 2017.

28. Longshore noted that he had formerly leased the Lindler tract from the earlier owner, Champion Timber Company, for hunting in the past thirty years and was familiar with the old express easement to the Lindler property. Longshore recalled when Wise modified the location of the roadway from the Old Whitmire Highway onto the Longshore tract, describing it as “it just made a loop and you’d use the same road to go to Mr. Gray’s property” and the portion that affects the Dickert property is along the same access road that has always been there.

29. Longshore recalled that when he was hunting on the Murray tract, he used the roadway easement that crossed over the Dickert property to get there because “[t]hat was the only way you could get to it because it wasn’t a way to get from the so-called Lindler property because if you tried to go down the powerline, it was gullies probably 30 or 40 foot deep.

Wasn't no way you could get from the Lindler property to the (Murray) property" and that there was no other way with a vehicle to get to the Murray tract other than the roadway easement.

30. Counsel inquired of Longshore, "[w]ho gave you permission to cross the access road to get to the (Murray) property?" He answered, "Murray Gray did." Longshore denied that he needed the Dickerts' permission to cross their property. Moreover, the Dickerts were aware that he and others were using the roadway easement. Longshore remembered logging trucks using the roadway easement. Longshore described how he once had provided a key on his own to a prospective timber buyer, Michael Mills, to cruise the Murray tract. Over the thirty years that Longshore hunted the Lindler and Murray properties, he had never heard nor been aware of the Dickerts ever telling anyone that they could not use the roadway.

31. Longshore recalled that he encountered the Dickerts from time to time on the property and only one time they ever had a "disagreement," was when Dickert approached him about excessive damage on the roadway and Longshore informed Dickert that employees of Santee Cooper had actually caused the damage with their utility trucks which they also drove on the roadway to maintain the power lines.

32. Longshore testified that during his time being on these tracts from 1993 to 2017, the roadway easement was used openly by himself and others, that he "didn't have to get permission" from the Dickerts to use the roadway easement and relied solely on Gray's permission to access the roadway, believing Gray had the authority to grant the right to use the roadway easement.

33. On cross-examination, Longshore testified that Gray "told me that was a right of way that his family had had for years of going to the property. . . . Murray told me, that's the way you get to it and that's the only (way)."

Testimony of Johnnie Dickert

34. Dickert testified as the sole witness in the trial called by the defendants. Dickert is 80 years old and retired from the timber industry.

35. Dickert's father and uncle were also in the timber business and were the owners and operators of Dickert Brothers, which later became Dickert Lumber Company. However, Dickert himself was not involved in either Dickert Brothers or Dickert Lumber Company.

36. Dickert Lumber Company, formerly known as Dickert Brothers, purchased the 158 acre tract in 1973. At the time they purchased the property, the Murray family business had already owned the Murray tract for at least twenty years. Following the winding up of Dickert Lumber Company, John W. Dickert, Jr., (Dickert's father) acquired the property. John W. Dickert, Jr., died in 2001. The estate was extensive and closed sometime in 2005, at which time, Dickert and his sister, Phylis Shifley, inherited the tract. Shifley subsequently conveyed her interest in the tract to Dickert. Thereafter, Dickert conveyed a life estate to his wife, Rachel B. Dickert and himself. The remainder interest Dickert conveyed to his son, Kyle. Dickert had no ownership, control or involvement with the 158 acre tract in Maybinton prior to 2005.

37. Dickert described he and his family's relationship with the Murray family as competitors in the timber business but "we all sort of worked together and partnered together more or less. Mr. Allen Gray was the grandfather that owned Murray Lumber Company over here on Kline Street. And we had Dickert Lumber Company out on 76 and we occasionally swapped bundles of lumber because we wanted to finish our loads, and it was just a working relationship between the two lumber industries. And Mr. Murray passed it on to Sonny Gray who was his son-in-law, and they eventually closed the Murray Lumber Company. Of course, they had that tract of land up there behind the tract that we owned, Dickert Lumber Company

owned. And we just had a gentlemen's relationship about ins and outs of the whole property back there."

38. Dickert conceded that the location of the alleged roadway used to access the Murray tract has not changed and is open and identifiable.

39. Dickert testified that the right of Allen Gray, the Murray Lumber Company, Murray Gray and others to use the roadway over the 158 acre tract was only by virtue of the permission of the Dickerts, and/or Dickert Lumber Company or its predecessors.

40. Dickert also stated that he believed there are alternative ways to access the Murray tract without using the roadway easement such as by crossing other adjoining tracts, or the Forest Service, or the power line right of way.¹

41. Finally, Brown testified as to the circumstances of acquiring the tract and improvements he has made to the property, and his use of the road as an easement to the Murray tract since 2017 or longer, when he first became acquainted with the property. Brown timbered the Murray tract for Gray by using the roadway easement and made repairs and improvements to the road as it crosses the Dickert property.

The Settlement Agreement

42. Prior to reaching the merits of the contested issues, Brown requests the Court to enforce the settlement agreement to this litigation between the parties.

43. In early 2023, shortly before the call of the case for trial, the parties reached an

¹ There are two large electric power line right of ways that cross the Dickert and Murray tracts belonging to Duke Power and Central Electric Company, now Santee Cooper, at the location of the roadway easement.

agreement as to the contested issues and notified the clerk of court and presiding judge of the settlement and requested the case be removed from the docket. The understanding of the settlement agreement was that the parties would relocate the entrance way of the easement from the Old Whitmire Highway to the border edge of the Dickert tract and Longshore tract for a distance of one hundred (100) yards and width of twenty (20') feet, at which point the easement would intersect with the existing roadway on the Dickert tract, which continued on to the Murray tract. Brown agreed to bear both the costs of obtaining a professional survey plat of the new easement location and of constructing the new roadway easement, to the satisfaction of the Dickerts and with SCDOT approval, and the roadway was required to be of the same quality or better as the current roadway easement and graveled until it met the existing roadway. Brown also agreed to place a gate at the entrance way of the new roadway from the highway and to share the financial costs of maintaining the new road. Upon completion of the new roadway, Brown agreed to abandon the easement/entranceway across the Longshore tract. Likewise, Brown agreed to be respectful of the Dickerts' quiet enjoyment and use of their property, which is almost exclusively used for hunting.

44. Brown had the new easement location properly platted in recordable form. Brown, as did Michael Mannel, a consulting forester, testified and presented receipts demonstrating that he expended more than six thousand (\$6,000) dollars in the labor and costs of building the new roadway, ditch along the highway with terracotta drainage pipe, and for the gravel. Brown installed a lockable steel cable a short distance approximately 75' feet from the highway at the entranceway of the new easement.

45. Sometime in December, 2023, there was an counterproductive disagreement between the parties when the son of Kyle and grandson of Dickert was on the property as an

invitee of the Dickerts, hunting in a deer stand close to the boundaries of the two tracts and was alarmed by Brown driving his truck near the borderline, although Brown was on his own property. Dickert testified that this incident was both inconsiderate of his family's quiet enjoyment of the property and potentially unsafe and dangerous. Brown testified that he is also an experienced hunter and that when he arrived on his tract, he saw no one hunting on the Dickert tract. A few hours later, Brown drove his truck on a roadway inside his own property but not far from the boundary line between the tracts and that he unexpectedly encountered the Dickert grandson. There does not appear to have been any confrontation at the property between Brown and the Dickert grandson.

46. Dickert does not challenge the proposed and actual location where the new roadway was laid down, nor any problems concerning the proposed plat. However, Dickert complains of several examples of Brown's failure to perform or complete his obligations pertaining to the settlement agreement. There was a disagreement as to whether Brown agreed to gravel only the newly constructed roadway or the entire existing roadway easement all the way up to his property line. Secondly, Dickert indicated that he expected an actual gate to be installed and not merely a steel cable and a question of its proximity to the highway. Dickert testified that Brown's failure to finalize these details caused him concerns that Brown would not fulfill the terms of the agreement nor be a trustworthy neighbor or partner when using the easement.

47. Shortly after the December hunting faux pas, the Dickerts removed the cable, installed a gate almost at the edge of the highway and the new roadway, which they locked and continue to deny Brown access over the former roadway easement from the Longshore tract.

48. Dickert acknowledged that he had not notified Brown of his dissatisfaction of the

work performed on the new roadway intended to be the new easement nor identified any deficiencies in the roadway and given Brown an opportunity to repair or complete the same.

CONCLUSIONS OF LAW

THE PRESCRIPTIVE EASEMENT

49. The determination of the existence of an easement is a question of fact in a law action. Proof of a prescriptive easement is established by the conduct of the dominant tenement owner. In order to establish a prescriptive easement, the claimant must prove by clear and convincing evidence a (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. The claimant can add the time of his use to the use by prior owners who share a privity of estate provided the prior owner's use also satisfies the elements of demonstrating a prescriptive easement. Braswell v. Amick, 442 S.C. 618, 900 S.E.2d 475 (2024).

50. Stated another way, "in order to establish a prescriptive easement, 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. Coop., Inc., 419 S.C. 223, 797 S.E.2d 387 (2016).

51. The mere fact a landowner holds valid record title does not immunize the landowner from claims of adverse possession. It is possible such a landowner, despite his superior title, could nevertheless be divested of his right to title if an adverse possessor successfully establishes his claim. Jones v. Leagan, 384 S.C. 1, 681 S.E.2d 6 (2009).

52. As to the chain of title, the court finds that the first requirement of privity of estate with the prior property owners is clear, convincing and unchallenged, as Brown

purchased the Murray tract in an arm's length transaction from Gray's daughter, and the Murray/Gray family have been the owners of record of the property for the past seventy years or longer, as referenced in the Findings of Fact above.

53. Additionally, the court finds that Brown has completed the circuit of proof as Gray and multiple other witnesses testified that Gray, his successors, and others have used the roadway for far longer than the presumptive twenty years period; the use of which was not challenged by the Dickerts. As detailed earlier, Gray testified to his continuous and uninterrupted use of the roadway as an easement to his property since the 1980s, which was corroborated by the witness Longshore, who testified to his own use of the easement under the permission of Gray as well as seeing others use the easement, such as hunters, loggers, invitees of Gray and utility workers. Wise testified that he believed Gray had a right to get to his property over the easement. Wise testified that the primary reason he relocated the roadway on his own property back to the entrance of the easement onto the Dickert tract was to preserve Gray's access and use of the roadway given the buffer zone Wise was required to set around the chicken coops. Brown testified that he has used the easement since 2017, both as an invitee of Gray and as the subsequent owner of the property, and improved the roadway over the years.

54. Having established the elements of continuous and uninterrupted use by the Murray timber business, family and then subsequently by Brown, in privity of estate, the court finds that this use has continued without interruption for more than twenty years.

55. For reasons set out above, as well as further testimony establishing that the use of the road by the owners of the dominant estate (Murray business, family and Brown), has been open and notorious to the Dickerts, highlighted by Gray's testimony about maintaining dual locks at the gate, Longshore's testimony about the encounter with Dickert while own the

roadway when leasing the property to hunt, and testimony of Dickert. The standard for whether conduct is open and notorious is whether the legal owner by ordinary diligence should have known of it. Graniteville Co., v. Williams, 209 S.C. 112, 39 S.E.2d 202 (1946). The use of the easement by Gray, Brown and others has continued for decades and cannot be described as temporary and transient. Moreover, it is uncontested that the Dickerts were aware that others have used the easement for years. Actual knowledge of the use satisfies the requirement of whether the use was notorious. Restatement (Third) of Property (Servitudes) Sect. 2.17(h)(2000)).

56. All other elements having been established by clear and convincing evidence, the Court now addresses the final element of whether the use of the easement over the Dickert tract to benefit the Murray tract was adverse. As defined in the Simmons decision, the word “adverse” is substituted or clarified as “contrary to the true property owner’s rights for a period of twenty years.” Further, “when it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another’s rights, for the full period of 20 years, the use will be presumed to have been adverse.” Carolina Center Building Corp., v. Enmark Stations, Inc., 433 S.C. 144, 857 S.E.2d 16 (2021), citing Simmons, supra; emphasis added.

57. As directed by the above precedent, the Court now applies the presumption in favor of the existence of the prescriptive easement. Gray testified that he believed that he had the right to access his property over the easement, the existence of which was confirmed to him by his family members for decades. Likewise, Wise, Longshore and Brown all testified that Gray clearly expressed his belief that his right to use the easement was created by his predecessors in title and without regard to the whims or control of the Dickerts.

58. Finally, the Court has carefully listened to the testimony of Dickert. The Court notes that Dickert's ownership of the property commenced in 2005, at which time it is clear that Gray and many others had been using the easement to access the Murray tract for years, most probably since the Murray Timber Company acquired the property in the early 1950s. Although Dickert's father and uncle's timber company, Dickert Brothers, later Dickert Lumber Company, purchased the Dickert tract around 1972, at that time, Dickert was not involved in that business with his father and uncle. The Court must find that Dickert's testimony as the business dealings of Dickert Brothers with other landowners, including competing businesses, may be an accurate reflection of his father's personality, but it is no more than Dickert's speculation of general traits and fails to establish actual facts or issues of fact from these two particular adjoining tracts and landowners during the time when it is unchallenged that the inception of the easement would have been determined.

59. The Court also notes the witnesses were associates and friends of both parties and presented clear and convincing testimony without any apparent attempt at self-gain or bias against either party. The testimony of Gray was persuasive, and corroborated extensively by the testimony of Wise, Longshore and others.

60. After hearing from the witnesses, reviewing the exhibits admitted into the record, hearing the arguments of counsel for the parties, and applying the burden of presumption based on more than twenty years of continuous use of the easement, the Court finds that Brown has established by clear and convincing evidence the existence of an appurtenant prescriptive easement across the subordinate Dickert tract to benefit Brown's dominant tract in the particulars set out below.

ENFORCEMENT OF THE SETTLEMENT AGREEMENT

61. Trial courts have “inherent authority, deriving from their equity power, to enforce settlement agreements.” However, the courts must only enforce the agreement that the parties reached which turns on whether there was “a meeting of the parties minds.” Therefore, to grant a motion to enforce a settlement agreement, the trial court (1) must find that the parties reached a full agreement and (2) must be able to determine its terms and conditions. A partial agreement will not be enforced if there is a meaningful disagreement on a material term of the agreement, and any partial performance must be rescinded and the case restored to the trial docket. If the parties have a factual dispute over the existence of an agreement, the court is required to conduct an evidentiary hearing. Smith-Phifer v. City of Charlotte, ___ F.4th ___, 2024 WL 4280970 (Sept. 25, 2024), citing Hensley v. Alcon Lab’ys, Inc., 277 F.3d 535 (4th Cir. 2002) and other string citations omitted.

62. In the present case, the Court has heard from all of the witnesses and both parties have had an opportunity to present their cases in full.

63. The trial court determines whether a settlement agreement is binding under the same considerations as any contract would be reviewed. United States v. ITT Continental Baking Co., 420 U.S. 223, 96 S.Ct. 926 (1975). The contract is an obligation that arises from an actual agreement of the parties manifested by words, oral or written, or by conduct. Roberts v. Gaskins, 327 S.C. 478, 486 S.E.2d 771 (Ct.App. 1997). This requires the Court to look objectively at the intentions of the parties. Moore v. Beaufort County, 936 F.2d 159 (4th Cir. 1991).

64. A settlement agreement does not have to be written. The “[f]ailure to complete formal settlement papers does not indicate that a settlement agreement has not in fact been reached.” United States v. Centex-Simpson Constr. Co., 34 F.Supp.2d 397 (N.D.W.Va.1999).

65. The party seeking to enforce the settlement must prove that (1) there was an offer, (2) an acceptance and (3) valuable consideration. See Roberts, supra. An enforceable contract is formed when the parties' mutually assent to all of the material terms of the agreement. Sadighi v. Daghighfekr, 66 F.Supp.2d 752 (1999). In the present matter, the record is clear that the parties made offers to settle the lawsuit, evidenced by the admission of both parties as to the performance thereunder, the performance thereunder by Brown, and the email to the court by counsel requesting the case be stricken from the docket. Acceptance of the offer has been satisfactorily demonstrated by Brown's performance under the contract, and consideration evinced by Brown's partial performance and monies expended to construct the new right of way.

66. The requirements of Rule 43(k), SCRCP, that a settlement agreement be written and signed by both parties and their attorneys does not preclude enforcement of the settlement agreement in this proceeding for two reasons. One, Rule 43(k) recognizes settlement agreements that are announced in open court and noted in the record. In this case, the Court conducted a full hearing wherein all of the material terms of the agreement were entered into the record. Secondly, as written in Ashfort Corp. v. Palmetto Constr. Grp., Inc., 318 S.C. 492, 458 S.E.2d 533 (1995), Rule 43(k) "does not apply where the agreement is admitted or has been carried into effect."

67. There is ample evidence in this case that the parties reached an understanding, a meeting of the minds, to settle the contested issues in this case.

A. Brown testified that at the parties agreed to the location and specifics of the new road for the easement. The easement was depicted in a recordable, professionally engineered Plat. Brown presented the Plat to

the Dickerts, who agreed to then permit Brown to begin construction of the roadway.

- B. Brown testified and entered receipts accepted into the record that he expended more than \$6,000 to build the agreed upon road at the new location.
- C. Brown sought and received permission of SCDOT for the location of the entrance from the highway onto the Dickert tract, and installed the required drainage system between the highway and the property.
- D. Thereafter, Brown had the roadway cleared, graded, graveled, engineered and contoured to remove standing water for a distance of one hundred yards, until the road intersected with the existing road system on the Dickert property.
- E. Brown also bulldozed and improved the roadway beyond the one hundred yard easement to the benefit of the Dickerts.
- F. Brown installed a lockable cable secured by iron posts cemented into the ground at a distance 75' from the highway, which allows logging trucks to access the property without having to remove the gate structure. While Dickert testified that by gate, he envisioned a more rigid system but it cannot be said that what Brown installed undermined the settlement agreement. Further, Brown was not afforded an opportunity to adopt the Dickert's gate or move it to a more suitable location at his expense.
- G. Dickert acknowledges that the parties entered into an agreement to settle

this case. He testified on direct and cross to the following breaches by Brown to satisfy the terms of the settlement agreement.

1. That his “understanding” of the agreement was that Brown would gravel not just the new roadway but drop new gravel on the existing road on the Dickert property all the way to the property line, a distance more than three times farther than the easement. Even if this were a true term of the settlement agreement, the Dickerts prevented Brown from coming onto the property after December, 2023 by installing the new locked gate and maintaining the lock on the roadway at the Longshore entrance, and did not communicate to Brown the Dickert’s refusal to accept the quantity of graveling or offer him the opportunity to remediate this condition. Furthermore, the distance of graveling is not a material term of the settlement agreement and could be resolved by equitable principals of the trial court to determine this condition as set out below.
2. Dickert objected to the type of gate Brown installed. While Brown offered rationale explanations for his choice of light-weight gate, the Dickerts did not communicate a rejection of the gate to Brown nor offer him the opportunity to remediate any non-conformity. Moreover,

the Court finds that the type of gate is not a material term of the parties understanding and can be resolved by equitable principals of the trial court to effect the intentions of the parties of any ambiguities.

3. Dickert testified that he was unhappy with the location of the cable gate installed by Brown. Again the Dickerts did not communicate a rejection of the gate Brown installed nor offer Brown an opportunity to remediate this term. Further, the Court finds that the exact location of the gate is not a material term of the contract.
4. Finally, Dickert testified that the unplanned encounter between Brown and the Dickert grandson evinced an inclination of Brown not to live up to the spirit of the agreement, that both parties would respect the quiet enjoyment of each other's property. However, it appears this encounter was unintentional, accidental but not an unmistakable expression not to abide by the terms of the settlement agreement. The Court finds that it is commendable and expects that the parties will live up to the intangible terms of the settlement agreement, but that this mishap does not justify nullifying the agreement. As the Court recalls from the testimony, the deer stand was approximately 50 yards from the property boundary and

will require greater attention by both parties to communicate the use of that sector of the property.

- H. The Court finds that there are some ambiguities in the settlement agreement as to the type of gate, the exact location of the gate and quantity of graveling. However, ambiguities alone do not undermine the agreement. The Court and the parties must use “common sense and good faith [as] the leading touchstones of construction of the provisions of [the] contract . . .” to find “reasonable, fair and just” construction. C.A.N. Enters, Inc., v S.C. Health & Human Servs. Fin. Comm’n, 296 S.C. 373, 373 S.E.2d 584 (1988). The Court is prepared to provide more definitive terms for the afore-mentioned terms according to the reasonable expectations of the parties at the time they entered into the contract. However, the Court requests the parties to meet once again and attempt to reach a consensus as to how those listed items shall be implemented or modified and should the parties fail to agree, the Court will supplement this order as required.
- I. Finally, the Court notes that Brown has been locked out and prevented him from accessing his land for more than three years and the equities of this matter point to a final resolution for the benefit of all interested parties.

68. Therefore, for the reasons provided in the body of this order, the Court grants Brown’s motion to enforce the settlement agreement establishing the easement at the location

identified in the prepared plat and location of the current roadway. This easement is appurtenant and attaches to the dominant estate of the Murray tract. To the extent that there are two or three possibly ambiguous terms in the settlement agreement, the parties are encouraged to meet and attempt to reach a more clear understanding. Should the parties be unable to do so, then this Court will define the terms from the record before it.

69. In the alternative, the Court finds that Brown has proven the existence of the prescriptive appurtenant easement and set forth in the pleadings and proven from the testimony and exhibits presented in the trial.

IT IS SO ORDERED.

The Honorable Milton G. Kimpson
Presiding Judge

October ____, 2024
_____, South Carolina

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2) FOR THE EIGHTH JUDICIAL
3) CIRCUIT
4) 2022-CP-36-00142
5 COUNTY OF NEWBERRY)

6 DONALD A. BROWN, JR.,)
7)
8) Plaintiff,)
9) TRANSCRIPT OF RECORD
10 vs.)
11)
12 JOHNNIE L. DICKERT, et al,)
13)
14) Defendants.)

15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

July 11, 2024

Newberry, South Carolina

B E F O R E:

HONORABLE EUGENE C. GRIFFITH, JR., JUDGE
and
MILTON G. KIMPSON, JUDGE (training with Judge Griffith)

A P P E A R A N C E S:

Charles V. Verner, Esquire
Attorney for the Plaintiff

Karl S. Brehmer, Esquire
Attorney for the Defendants

Lisa G. Amick
Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF WITNESSES

Mr. Gray

Direct examination by Mr. Verner:	13
Cross examination by Mr. Brehmer:	23
Redirect examination by Mr. Verner:	30

Mr. Wise

Direct examination by Mr. Verner:	38
Cross examination by Mr. Brehmer:	49
Redirect examination by Mr. Verner:	56
Recross examination by Mr. Brehmer:	64

Mr. Terry Longshore

Direct examination by Mr. Verner:	69
Cross examination by Mr. Brehmer:	80
Redirect examination by Mr. Verner:	83

Mr. Mike Longshore

Direct examination by Mr. Verner:	85
Cross examination by Mr. Brehmer:	89

Mr. Brown

Direct examination by Mr. Verner:	91
Cross examination by Mr. Brehmer:	114
Redirect examination by Mr. Verner:	126

1	<u>Mr. Johnnie Dickert</u>	
2	Direct examination by Mr. Brehmer:	140
3	Cross examination by Mr. Verner:	156
4	Redirect examination by Mr. Brehmer:	172
5		
6	Certificate of Reporter	192
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T SPLAINTIFF'S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE #</u>
1	Aerial map	X	X	8
2	Aerial map	X	X	58
3	Deed	X	X	92

DEFENDANT'S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE #</u>
1	Aerial map	X	X	6
2	Map photo (copy)	X	X	6
3	Diagram	X	X	6
3A	Highlighted diagram	X	X	155
4	Map (copy)	X	X	6
5	Recorded right of way	X	X	6
6	Letter	X	X	114
7	Letter	X	X	114
8	Letter	X	X	114
9	Letter	X	X	114

COURT'S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE #</u>
1	Aerial map (with stickers)	X	X	68
2	Plat	X	X	107
3	Invoices	X	X	110
4	Photos	X	X	128

1 THE COURT: We're going to go ahead and get started,
2 I apologize for running a bit late, but we'll catch up.

3 MR. VERNER: Judge, I'm Charles Verner the lawyer for
4 Donnie Brown ---

5 THE COURT: Yes, sir, Mr. Verner.

6 MR. VERNER: --- and of course Mr. Brehmer and the
7 Dickerts you know.

8 THE COURT: And I'm just going to ask for the record
9 if everyone would introduce yourself. You've just done it.
10 Good morning, sir, how are you?

11 MR. BREHMER: Good morning, sir.

12 THE COURT: And Mr. Verner.

13 MR. VERNER: Yes, sir.

14 THE COURT: If you'll introduce yourself and just
15 introduce your clients.

16 MR. BREHMER: My name's Karl Brehmer and I'm
17 representing Mr. Jonnie Dickert and Mr. Kyle Dickert sitting
18 here with me.

19 THE COURT: Good morning. Any preliminary ---

20 MR. VERNER: Your Honor, there's also, Mr. Dickert's
21 wife is also party to it and Mr. Brehmer also represents her to
22 my understanding.

23 MR. BREHMER: I do.

24 THE COURT: Thank you.

25 MR. BREHMER: I represent all of the Defendants.

1 THE COURT: Sounds good, thank you. Any preliminary
2 matters before we get started?

3 MR. BREHMER: Your Honor, I have five exhibits that I
4 have pre-marked. I've made a copy for Mr. Verner and the Court
5 reporter, and I also made a copy for the Court, one for each
6 respective Judge.

7 THE COURT: And have the parties resolved these
8 issues about the exhibits? Do you have any objections to
9 these?

10 MR. VERNER: Judge, I have no objections to the, I've
11 got some, I think we've all both seen all of the possible
12 exhibits ---

13 THE COURT: Yes, sir.

14 MR. BREHMER: I understand, but I would like to see
15 his. If he has no objection, I'd move to have mine admitted by
16 stipulation.

17 MR. VERNER: I have no problems with any of those,
18 Defendant's 1 through 5?

19 MR. BREHMER: Yes.

20 THE COURT: Thank you, Mr. Verner. So Defendant's
21 Exhibits 1 through 5 are admitted by consent.

22 (Whereupon documents were submitted as Defendant's Exhibit
23 Numbers 1 through 5 entered into evidence.)

24 THE COURT: Mr. Verner, do you have exhibits
25 you've already ---

1 MR. VERNER: I do, Your Honor, and they are largely,
2 the, I've got an aerial that I've done for the convenience of
3 the witnesses, have you see this, Mr. Brehmer? That's just the
4 aerial that I think, I think that's an exact copy of what you
5 did other than that one's in color.

6 MR. BREHMER: We don't have a problem with that.

7 THE COURT: Alright.

8 MR. VERNER: And I would, I do have just one
9 preliminary matter, Judge, however the Court wants to handle
10 it.

11 THE COURT: Alright. One second. So what, have you
12 pre-marked this exhibit?

13 MR. VERNER: I would mark it as Defendant's 1, Your
14 Honor, I mean, I'm sorry, Plaintiff's 1. And then the rest of
15 my exhibits, I believe Mr. Brehmer and I are both familiar
16 with, Judge, I may mark those through the witnesses that come
17 in, but I don't think that they're going to be greatly
18 controversial.

19 THE COURT: That'll be fine, and we can deal with
20 them at this point ---

21 MR. VERNER: Okay.

22 THE COURT: Mr. Brehmer, may I, do you have any
23 objection to Plaintiff's 1?

24 MR. BREHMER: Yes, sir, that'll be Plaintiff's
25 1, that's fine.

1 THE COURT: For the record, Plaintiff's 1 is
2 admitted.

3 (Whereupon an aerial map was submitted as Plaintiff's
4 Exhibit Number 1 for identification and entered into evidence.)

5 THE COURT: Mr. Verner, we can just handle the
6 remaining ---

7 MR. VERNER: And I think this, I think it'll go
8 smoothly with, and if I could, Judge, I've got a copy of
9 Plaintiff's 1 I will pass up to the Court.

10 THE COURT: That will be perfect, I was about to ask
11 about that. Thank you, sir. And you said you had one
12 preliminary matter?

13 MR. VERNER: Yes, sir. And just however the Court,
14 Judge, we had a settlement negotiated in this case ---

15 THE COURT: Yes, sir.

16 MR. VERNER: The, and we would ask the Court to
17 enforce the settlement where the, this is a lawsuit, two
18 adjoining landowners. Mr. Brown, my client, has the, what we
19 believe is the dominant state, but it's a landlocked piece of
20 property, it's not on a public road. The, we submit that the
21 adjoining landowner, the Dickerts, the father and mother, have
22 a life estate and Kyle has the remainder interest, but what we
23 would submit for a period to satisfy the, a restrictive
24 easement, that there is a restrictive easement to the dominant
25 tract that runs partially over the Dickert property and that's

1 what we are seeking to enforce. We did all meet, Judge, this
2 is kind of an Alford Case, we all have known each other since
3 high school and beyond. I really entered thinking that I could
4 just talk to everybody and work something out and I'm sorry
5 we're here, we all know each other, but the, we did meet at the
6 property, we did reach an agreement. My client, we agreed to
7 move slightly the easement to run exactly along the property
8 line. My client agreed to pay for all the improvements on the
9 property and that way it would connect to the road system that
10 the Dickerts already had on their property. Both of these are
11 large hundred plus acre tracts largely just used for hunting.
12 The, my client paid about \$6,000.00 to put the road in, to put
13 the improvements on the road, and that was done last year. We
14 have platted the property, the new easement, the agreement was
15 that we would put in a road that the Dickerts believed was a
16 properly constructed road. The, my client paid about \$6,000.00
17 to get the road installed. Unfortunately, in December of last
18 year, Judge, I don't know why, but there was a, Mr. Brown, my
19 client, was on the property and he didn't realize that the
20 Dickerts had guests and were hunting on their property, and I
21 suppose that their guests were upset that their hunting was
22 disturbed. Donnie tells me it was accidental, he looked at the
23 stand, did not believe anybody was using it, but the Dickerts
24 believe that that has interfered with their peaceful enjoyment
25 of their property. There are basically two hunting tracts,

1 Donnie does tell me he did check the stand before he went on
2 the property, did not see anybody and did not think he was
3 disturbing anybody. But as a result of that incident in
4 December, Mr. Brehmer sent me a letter indicating that the
5 agreement had been violated and that we no longer had an
6 agreement. But just, Judge, the proffer would be I intend to
7 offer evidence of the receipts where my client paid over
8 \$6,000.00 to put the road in, had it platted. The, Mr. Brehmer
9 and I both notified the Court at a prior docket meeting that
10 the case had been settled. The only thing that has not been
11 done was that the Dickerts were going to give me notice of,
12 that the road was properly satisfied. The, and part of it was
13 I had a stroke like condition in my leg late last year, so, but
14 that kind of hammered me a little bit, but the, we believe that
15 the settlement should be enforced, Judge. It's a very,
16 everybody participated in it, my client did everything that was
17 asked of him. There was a representation to the Court that the
18 case had amicably settled. My client has suffered the
19 prejudice of paying for the improvements and we can either make
20 that part of the hearing and the Court can decide that as part
21 of the total hearing, or we'd ask the Court to rule prehearing.

22 THE COURT: I think we probably ought to make it part
23 of the hearing, but I do want to ask, was this agreement
24 reduced to writing?

25 MR. BREHMER: No.

1 MR. VERNER: There was not a formal, Rule 42, Judge,
2 anticipates that an agreement in a civil case will be reduced
3 to writing. The, I've got some cases, Judge, that indicate as
4 long as there was a meeting of minds, the, whether there was a
5 settlement or not, it does not have to be reduced to writing as
6 long as the Court finds that there was a meeting of the minds.
7 The legal presumption is the Court will enforce a settlement in
8 a lawsuit. But if there was a meeting of minds, Judge, that
9 the parties had satisfied both, all the parties to the lawsuit
10 and the issue in question, the, so that they're no ambiguities
11 left and the Court, and I've got some cases to pass up that
12 deal with it if the Court should enforce the settlement.

13 THE COURT: Thank you. I think we are going to have
14 to just make that as part of the trial. But I would like to
15 hear, Mr. Brehmer, if you'll just very briefly give me a
16 response.

17 MR. BREHMER: First of all, Mr. Verner's argument's
18 improper procedurally because there is no motion before the
19 Court, there is no filed motion before the Court, this is just
20 an oral motion, okay? He's never said anything about this
21 until yesterday. The applicable standard of review, South
22 Carolina Rule of Civil Procedure, 43(k), the Rule says no
23 agreement between counsel affecting the proceedings in an
24 action shall be binding unless reduced to the form of a consent
25 order or written stipulation signed by counsel and entered in

1 the record, or unless made in open Court and noted upon the
2 record, or reduced to writing and signed by the parties and
3 their counsel. Settlement agreements shall be handled in
4 accordance with Rule 41.1, okay? It's true we did meet with
5 them, tried to work with them, but Mr. Brown did not comply
6 with the agreement. There were repeated requests to Mr.
7 Brown's counsel, please comply with the agreement, he did not
8 comply with the agreement, so eventually, we terminated the
9 agreement.

10 THE COURT: Let's just make that a part, we'll make
11 all of this a part of hopefully ---

12 MR. BREHMER: We would object to it being part of the
13 record in this particular matter because the only thing pled in
14 this Court is the claim for prescriptive easement, that is the
15 only issue before the Court at this time.

16 THE COURT: I understand. And I'm sure you will
17 interpose appropriate objections at that time ---

18 MR. BREHMER: Thank you.

19 THE COURT: --- I'd like to hear all of it. Mr.
20 Verner, your case. Thank you, Mr. Brehmer.

21 MR. VERNER: The Court's ready for our case in
22 chief?

23 THE COURT: Yes, sir. Unless you have another
24 preliminary issue.

25 MR. VERNER: No, Your Honor. At the appropriate

1 time, I'll address some issues that Mr. Brehmer raised, but
2 the, we've got our witnesses here and I think we're prepared to
3 be heard. I call Murray Gray, Your Honor.

4 THE COURT: Mr. Gray, good morning. Good morning,
5 sir, how are you?

6 MR. GRAY: Good morning, how are you?

7 THE COURT: Good. I'm going to ask that you be sworn
8 in.

9 CLERK: If you'll place your left hand on the Bible,
10 raise your right. Do you solemnly swear or affirm that the
11 testimony you give this Court will be the truth, the whole
12 truth, and nothing but the truth so help you God?

13 MR. GRAY: I do.

14 CLERK: Thank you. Please have a seat and state your
15 name for the record.

16 MR. GRAY: My name is Murray Gray.

17 THE COURT: Good morning, sir.

18 MR. GRAY: Good morning.

19 THE COURT: Mr. Verner?

20 **DIRECT EXAMINATION**

21 BY MR. VERNER:

22 Q Mr. Gray, I don't need your address, but what county do
23 live, sir?

24 A Newberry.

25 Q Okay. And you're familiar with the Defendants and

1 and Donnie Brown?

2 A I am.

3 Q How long have you known everybody in this case?

4 A I've known everybody as long as, a long time. I coached
5 Donnie and Kyle both in baseball when they were 10, and I've
6 known Johnnie through his family through the timber and the
7 logging business.

8 Q Okay. And your family was also in the logging business,
9 correct?

10 A Well, we were in the timber, owned timberlands ---

11 Q Okay.

12 A --- and we would sell them timber on their logging, they
13 had a mill, and we would sell them timber.

14 Q Would you classify yourself with everybody as cordial with
15 everybody?

16 A Oh, yes, sir.

17 Q Okay. Friends, longtime friends with everybody?

18 A Of course.

19 Q But you're, unfortunately, you're familiar with why we're
20 here today?

21 A I am.

22 Q The, are you familiar with the property in the Whitmire
23 section of Newberry that we're here about today?

24 A Yes, sir.

25 Q Now, I call it the Whitmire ---

1 A I call it the Maybinton, but you can call it

2 ---

3 Q Maybinton? Okay. And Maybinton's like a little area
4 right before Whitmire in Newberry County?

5 A It is.

6 Q Okay.

7 A It's a long lean area.

8 Q And that is in Newberry County?

9 A Yes, sir.

10 Q If I showed you an aerial --

11 MR. VERNER: May I approach, Your Honor?

12 THE COURT: Oh, yes, I'm sorry, please do.

13 Q If I showed you an aerial of the property, would you know
14 what property is what?

15 A No, sir, probably not. I've never really seen, I had a
16 plat of it from wherever, but I have never seen an aerial.

17 Q Okay. Are you familiar with ---

18 A I'm familiar with the tract.

19 Q Okay. So physically you know where it is ---

20 A Yes, sir, I do.

21 Q How long have you, you used to own a 96-acre tract ---

22 MR. BREHMER: I'm going to object to the leading
23 nature of the question.

24 THE COURT: I'm going, at the very beginning, I'm
25 going to allow him to, a little bit ---

1 Q Did you used to own ---

2 THE COURT: Objection overruled.

3 MR. VERNER: Thank you.

4 Q Did you used to own a 96-acre tract in Newberry?

5 A I did.

6 Q And subsequently did you sell it or transfer it?

7 A I transferred it.

8 Q To whom?

9 A My daughter and her husband.

10 Q And do you know what they did with the property?

11 A They sold it.

12 Q To whom?

13 A Donnie Brown.

14 Q Okay. Do you know when they sold the property?

15 A It's probably been four years ago.

16 Q Okay. But you actually came with them?

17 A I came to the meeting when they discussed the sale with
18 Donnie.

19 Q Okay. And how long had you owned that 96-acre tract of
20 property?

21 A Since 1991.

22 Q That was in your name?

23 A It was in my name. When mother passed in '90, it
24 transferred to me in a will.

25 Q So you inherited it?

1 A I inherited it.

2 Q From your mother?

3 A Correct.

4 Q Okay. And how did your mother come to acquire the
5 property?

6 A She got it from my grandfather who I'm not quite sure how
7 he obtained it, but I believe he bought it on the Courthouse
8 steps a long, long time ago in the '50s, '55, something of that
9 nature.

10 Q Okay.

11 A But it's been in the family, it's been in what's
12 considered, we had a company called the Murray Company and then
13 just our own personal, and when my grandfather died, he left
14 two trusts, one to my grandmother and one to my mother. And
15 this one, when my grandmother died, everything went to my
16 mother and when my mother died everything came to me.

17 Q Okay. Do you think it's possible your grandfather owned
18 the property as far back as the '40s?

19 MR. BREHMER: I'm going to object to ---

20 A '50s.

21 MR. BREHMER: --- the leading nature of the question,
22 Judge.

23 THE COURT: I do need the background so I'm going to
24 overrule your objection.

25 A I'm under the impression, and I do not know for a

1 fact, we could go back and look, but I believe he bought it
2 somewhere like '55.

3 Q Okay. And your family has owned it continuously since
4 then?

5 A Correct.

6 Q What would be the use of the property?

7 A It was just timberland.

8 Q No houses or anything built?

9 A No, sir.

10 Q Okay. Are there any, is that the general characteristic
11 of pretty much all the property in this location of the
12 county?

13 A As far as I know, I can only attest to what I owned.

14 Q Okay. How long have you been going onto the property?

15 A Since '91, before '91 because, you know, my mother owned
16 it before that. There was a gentleman that worked for the
17 Murray Company, and he took me back in there in the '80s.

18 Q Okay. And what use have y'all done with the property?

19 A It was just timber.

20 Q Timber?

21 A Just timber, that's all.

22 Q You ever hunt the property?

23 A I don't hunt, no, sir. I have let people hunt, but I have
24 never hunted.

25 Q How would you get to the property?

1 A I went through a gate that the Dickerts had that adjoined
2 our property. It was just like an easement or right of way
3 into the property.

4 Q And how long have you been using that easement or right of
5 way?

6 A As long as I can remember.

7 Q Did other people, have you seen other people use it as
8 well?

9 A Yes, sir. The people that I've let hunt the property had
10 to go through the same place I did to get into the property.

11 Q Is there any way that you can access the 96 acres by a
12 vehicle other than that easement?

13 A Not that I'm aware unless you go in through the chicken
14 houses that Mr. Wise built. At some point in time, he gave me
15 access through that way ---

16 Q Okay.

17 A --- at one point in time, but before that, no, sir.

18 Q If you look at the aerial photograph ---

19 A Yes, sir.

20 Q --- do you see the long rectangular buildings?

21 A Yes, sir.

22 Q What do you believe those buildings are?

23 A Those are, I believe those are the chicken houses.

24 Q Okay.

25 THE COURT: Mr. Verner, if you would, knowing

1 that I'm not from this area, if you would kind of orient me a
2 little bit more to ---

3 MR. VERNER: Okay.

4 Q What is marked as 383-13 on the plat, is that what you're
5 talking about would be the chicken houses?

6 A Correct.

7 Q Okay. Do you know how long the chicken houses have been
8 there?

9 A I do not. I know that I sold Mr. Wise a portion of my
10 tract, the 96 acres, so he could put the six or whatever, how
11 many chicken houses there are, he had to have that area and so
12 he, Mr. Wise could probably tell you more than I can, I can't
13 remember when it was done.

14 Q But you can go off road to get to your property, but by
15 road the only way to get to the property is the easement we
16 talked about?

17 A Correct.

18 Q And that does cross the Dickert property?

19 A It did then, yes, sir.

20 Q Okay. Is it identifiable as a road?

21 A Yes, sir.

22 Q I mean, it's clearly, openly there as a road ---

23 A Yes.

24 Q --- that crosses the Dickert property to your property?

25 A There was then, yes, sir.

1 Q Okay. Do you know how long that road has been there?

2 A Mr. Small and I went back in there in the '80s and then
3 when my mother passed, I went in there with, Donnie and I went
4 in there and I had Donnie cut some timber back in there for me
5 and that's how we used it to get in there and out then. And
6 since I cut the timber and planted it, I've really not been
7 back in there since then because I had no reason to.

8 Q Is it an improved road or is it a dirt road?

9 A It's a dirt road.

10 Q Okay. But it's clearly, there's no way you can miss it
11 being a road ---

12 A Not that I ---

13 Q --- with your eyes unless you ---

14 A In my opinion, I think it's a road.

15 Q Okay. And that's the only way basically onto the 96-acre
16 tract?

17 A Yes, sir, that was then.

18 Q Okay. Today is what, July 11th ---

19 A Right.

20 Q --- 2024?

21 A Yes, sir.

22 Q And you testified that you've been using it since the
23 '80s?

24 A We, as long as I can remember it's always been that way.

25 Q Okay. So that's certainly more than a 20-year period?

1 A Yes, sir.

2 Q Okay. Did you believe that you had a right to access your
3 property through that easement?

4 A Yes, sir. We had two locks, we had an interjoining lock
5 that I had a key to, and so I could just unlock my lock, go in,
6 come back out and lock it back on their lock. And that way,
7 you know, they could come in with their lock and I could come
8 in with my lock.

9 Q Would the locks keep like third parties off the property
10 from poaching or ---

11 A Yes, sir. We were the only two that had a key to it and
12 then went I gave hunting rights to a gentleman and his son, I
13 let them have a key so they could use it. And I notified the
14 Dickerts that they were going to be hunting it, so they were
15 familiar with them going to be back there.

16 Q Okay. Just so they wouldn't think there were people
17 poaching?

18 A Correct. I wanted to make sure that they knew somebody
19 would be back in there hunting.

20 Q Now, do you believe that other people who were with you,
21 that the logging companies in your grandfather's time, that
22 they, that was their road to get to the property?

23 A As far as I know, I can't, I can't attest to that because
24 my grandfather died when I was four years old.

25 Q Did you believe that you, and you were good

1 neighbors with the Dickerts?

2 A Oh, yes, I feel I was, I've always been friends with them
3 and ---

4 Q Did you believe that you had to get their permission to
5 use that road?

6 A Not after I, not after we discussed that after everything
7 was done, it was just, I thought it was just common knowledge
8 they knew I was coming back and forth in there. And, I mean,
9 if there was ever a problem, they would call me and say hey, so
10 and so went back in there and left a, you know, left a rut and
11 everything, how about talk to them and how about get them to
12 fix it or do whatever. So they knew it was being used and if
13 there was a problem they knew they could call me and I would
14 address it.

15 Q But you're a good neighbor but you believe you had a right
16 to use that road?

17 A I did believe I had a right to use that road, yes, sir.

18 Q Okay.

19 MR. VERNER: If Mr. Brehmer has any questions or the
20 Judges.

21 THE COURT: I do have, but I'll wait until Mr.
22 Brehmer finishes. Mr. Brehmer, please, cross examination.

23 **CROSS EXAMINATION**

24 BY MR. BREHMER:

25 Q Mr. Gray?

1 A Yes, sir.

2 Q The road's got a gate across it, correct?

3 A Correct.

4 Q Okay. It's got a Dickert sticker on it?

5 A Correct.

6 Q Okay. And the truth of the matter is is that your
7 grandfather and the Dickert family had a longstanding working
8 relationship?

9 A That is correct.

10 Q Alright. The Dickerts were in the lumber business, your
11 family was in the timber business, your family and the Dickerts
12 would, say if they had an order that was not completely filled
13 by one, the other one would complete the order, wouldn't they?

14 A Correct, as far as I know.

15 Q Great working relationship?

16 A Oh, yes, sir, always.

17 Q Mr. Lee Smallwood would handle all of your timber
18 transactions, correct?

19 A Yes, that's correct.

20 Q And Mr. Smallwood basically took care of your timber
21 sales, correct?

22 A That's correct.

23 Q And the access to this property was through the Dickerts'
24 gate, correct?

25 A That's correct, yes, sir.

1 Q And because of the family relationship and the working
2 relationship, the Dickert family allowed your family to put its
3 own lock on that gate for access, correct?

4 A That is correct.

5 Q Your double lock?

6 A That's correct.

7 Q And it was done with their permission?

8 A That's correct.

9 Q And consent?

10 A That's correct.

11 Q Okay. You weren't claiming ownership in that road, were
12 you?

13 A No, sir.

14 Q You knew that that road didn't belong to you, didn't you?

15 A That's correct.

16 Q You knew that that road belonged to Johnnie Dickert,
17 didn't you?

18 A That's correct.

19 Q Okay. And you knew that you were using it with his
20 approval?

21 A That's correct.

22 Q And his permission?

23 A That's correct.

24 Q And that that permission was revokable?

25 A I guess so ---

1 Q Yeah.

2 A --- that was never discussed ---

3 Q I understand, because they were gentlemen?

4 A Right.

5 Q They were friends?

6 A Right.

7 Q They were co-business owners?

8 A Correct.

9 Q They had a good working relationship, they respected each
10 other, correct?

11 A Yes, sir.

12 Q You respect Mr. Dickert, don't you?

13 A I do, most certainly.

14 Q And the two Mr. Dickerts sitting at my table respect you,
15 don't they?

16 A I would hope so.

17 Q Okay. Alright. They always showed you respect, did they
18 not?

19 A Yes, sir, they have always, that's right.

20 Q Okay. Now, there's no doubt that we're talking about a
21 woods road, are we not?

22 A Correct.

23 Q Okay. This is not a road that is open, apparent, and
24 obvious to somebody just driving down the Old Whitmire Highway,
25 is it?

1 A No, sir.

2 Q Okay. It's not open to the community, is it?

3 A No, sir.

4 Q Okay. It doesn't have open and obvious access to the
5 community, does it?

6 A No, sir.

7 Q And the truth of the matter is is that the agreement
8 between the Dickert family and your ancestry was that you can
9 use the road as long as you put it back like you found it,
10 right?

11 A Yes, sir.

12 Q Whenever y'all had Mr. Glenn Metz cut the timber back
13 there, the agreement was that Mr. Metz would take his crawler
14 and fix the road back, put the water parts back in so that the
15 water would go off the road whenever he exited the property?

16 A Correct.

17 Q So it would be preserved for everybody?

18 A Correct.

19 Q But the ownership was always in the Dickert family, wasn't
20 it?

21 A Correct.

22 Q And the control of it was always in the Dickert family?

23 A Yes, sir.

24 Q Okay. And because they are good neighbors and good people
25 they let you use it ---

1 A Correct.

2 Q --- with their permission ---

3 A Yes, sir.

4 Q --- right? You weren't ever claiming a right of ownership
5 in it were you?

6 A No, sir.

7 Q Okay. You've never said that I have a legal right to it,
8 do you?

9 A No, sir.

10 Q Okay. And you never said that I am adversely trying to
11 possess this from the Dickert family, are you?

12 A No, sir.

13 Q Okay. Now, Mr. Brown didn't purchase this property from
14 your daughter until four years ago, did he?

15 A Correct.

16 Q Okay. And you transferred it to your daughter; your
17 daughter sold it to Mr. Brown?

18 A That's correct.

19 Q After it was clearcut, correct?

20 A Yes, sir.

21 Q Okay. And the way that was clearcut, Johnnie Dickert was
22 the gentleman he always was, wasn't he? He let you use the
23 road?

24 A Correct.

25 Q Okay. He let the logging trucks come in and out?

1 A Yes, sir.

2 Q But you knew at that time it was solely with his
3 permission, wasn't it?

4 A Yes, sir.

5 Q Okay.

6 A I informed them that everything would be done like that.

7 Q Yeah. You told them because you respected him?

8 A Well, that's standard procedure.

9 Q And you agree that in your whole family line, let's say
10 your granddaddy got it in '46, let's just use that number, I'm
11 not sure it is, but let's just say it is.

12 A Alright.

13 Q From '46 until 2020, okay?

14 A Okay.

15 Q It's your position that your family's use of that road was
16 with the Dickerts' permission?

17 A Correct.

18 Q Okay. And it was not averse to their interest, was
19 it?

20 A No, sir.

21 Q There was no hostility or taking by your family of the
22 Dickerts' property?

23 A No, sir.

24 Q Okay.

25 MR. BREHMER: Thank you.

1 THE COURT: Mr. Verner, can this witness, can you
2 have this witness, keeping in mind I'm not from this area,
3 which parcels we're talking about and then also identify the
4 road for me. And then I'm going to ask if you have any
5 redirect, but I did need to ---

6 MR. VERNER: May I approach, Your Honor?

7 **REDIRECT EXAMINATION**

8 Q The chicken coops, the long rectangular buildings, that is
9 property that is owned by whom?

10 A It was owned by Michael Wise, I'm under the impression
11 he's sold it since then.

12 Q Okay. And then your property was 96 acres?

13 A Yes, sir.

14 Q So that is on 385-2?

15 A That's correct.

16 THE COURT: Hold on one second. 385-2?

17 MR. VERNER: And Your Honor, it would be the one with
18 the yellow sticker on it. You can use this; you can have this
19 one in fact.

20 THE COURT: Okay. That'd be great, thank you.

21 MR. VERNER: And you can hand that one back.

22 THE COURT: I will be happy to do that.

23 Q But the 96 acre tract is the one with the yellow marker,
24 that would be your former property?

25 A Correct.

1 Q And I put a red sticker on the larger tract that kind of
2 borders at the 158 acres, and that would be the Dickert tract?

3 A I guess so.

4 Q But the Dickerts are the adjoining landowners?

5 A Correct.

6 Q So red would be the Dickert property, and I believe Mr.
7 Brehmer would agree with that. The Dickert property, Brown
8 property, chicken coop, the Longshore property not involved
9 with this?

10 MR. BREHMER: I think that that's accurate, but my
11 client will explain it in totality when he gets here.

12 MR. VERNER: And through the exhibits Mr. Brown has
13 already offered, Judge, y'all would be the Brown property and
14 the dominant property red would be the Dickert property. And
15 just because it was kind of, access also crosses the property
16 with the chicken coops, that would be the third ---

17 THE COURT: Good enough. Now, where's the road?

18 MR. VERNER: On orange, Judge, I've highlighted it on
19 your map, in orange, that's the Old Whitmire Highway.

20 THE COURT: Yes, sir.

21 MR. VERNER: Okay. And that would be the old, the
22 highway, the only road in that area. So I highlighted that in
23 orange in what I handed up.

24 THE COURT: What has been referred to as the woods
25 road that we are, we've got, we're alleging is the ease way?

1 MR. VERNER: I guess. Judge, and I did have some
2 follow-ups, so I guess if I could do it now?

3 THE COURT: That'd be fine, and I apologize for
4 it.

5 MR. VERNER: No, I should have, I meant to.

6 Q What road do you get on to get to your property, the 96
7 acres?

8 A What do you mean, the main road?

9 Q Would you use the Old Whitmire Highway?

10 A Yes, sir.

11 Q And then to get to your 96-acre property, your former
12 property, whose property would you actually have to enter
13 first?

14 A The Dickerts'.

15 Q From Old Whitmire Highway or from the ---

16 A When I went before, you mean before the chicken houses?

17 Q Right.

18 A I have only been there once since the chicken houses were
19 built.

20 Q Okay.

21 A I always went in the other way. I have been one time
22 through the chicken houses, but other than that, I came in
23 through the Dickerts', the chicken houses were not there at
24 that point in time.

25 Q Can you recognize whether, is this the right of way

1 that runs along the border of the chicken ---

2 A Yes, sir, that appears to be.

3 Q Okay.

4 A I have never seen an aerial. When I was going through
5 this thing it wasn't none available ---

6 Q Okay.

7 A --- so I've just known the road to be where it is, I have
8 never looked at it from an aerial view.

9 Q Okay. But you went into the Wise's, Mr. Wise's
10 property?

11 A I didn't know whose, I just knew we went in that gate. I
12 had no earthly idea whose land it was.

13 Q Okay.

14 A The only thing I knew was that I had access to that gate
15 through the lock ---

16 Q Right.

17 A --- and as far as I knew, it was the Dickerts' gate, and
18 we went through that right of way to get into the property.
19 That's all I knew, I didn't know any other person that was in
20 that, involved in that, it was explained to me that it was the
21 Dickerts' and that we were given access to it through the lock
22 and that's how I got in and out. I never spoke to anybody but
23 Johnnie Dickert and his family going in and out of it, that's
24 all I knew.

25 Q But again, Mr. Brehmer asked you this, whether the

1 road was open, and you can't see it from the road because it's
2 covered by woods, right? You would have to look through the
3 woods to see it?

4 A Right. You have to get into that little turn to get into
5 the gate?

6 Q Well, when you get to the gate, it's clear what it is?

7 A Yeah, it's a road.

8 Q And it's obviously a road?

9 A Yes, sir.

10 Q Okay. And I think we're struggling over some legal,
11 but you recognize the right of way runs over the Dickert
12 property?

13 A Correct.

14 Q And you've been respectful of their property?

15 A Yes, sir.

16 Q But you also understand that that is your easement to get
17 to your former property?

18 A Yes, sir.

19 Q Okay. If they had, and you've got two locks on the gates,
20 yours and theirs?

21 A At that point in time, I mean, it's been a long time ago,
22 I feel comfortable that, I did then.

23 Q You had one lock for us and one lock for them?

24 A I had one lock for me and one lock for them.

25 Q Right. If the Dickerts had landlocked, if they said

1 you could no longer get to your property, would you feel
2 like they were interfering with your right to get to your
3 property?

4 MR. BREHMER: Objection, Your Honor. That's
5 speculation, that didn't happen, it's irrelevant.

6 MR. VERNER: Well, it's ---

7 THE COURT: Yes, sir?

8 MR. VERNER: It's in rebuttal, it's a question of
9 whether it was permission, permissive use of the property or,
10 and I think it's relevant to whether, Mr. Brehmer had many
11 questions about whether he was using it by mere permission or
12 right, the easement, and so that's what the question is.

13 THE COURT: I'm going to allow it, objection
14 overruled. Mr. Verner, please continue.

15 Q Did you believe you had the right to get to your property
16 through where the road was?

17 A Yes, sir.

18 Q Now, respectful that it does cross their property

19 ---

20 A Correct.

21 Q --- but, so if Mr. Dickert had said you can't use that
22 road anymore, would you have felt that he was interfering with
23 your right to get to your property?

24 A It would have been impossible to get to my property after
25 that, but that was something that never did occur, so I never

1 had a second thought about it. I just never, there never was
2 an issue.

3 Q You spoke to your daughter before she sold it to Donnie
4 Brown, right?

5 A Yeah.

6 Q And you made representations that, you knew that Donnie
7 was buying it from your daughter?

8 A Yes, sir.

9 Q And she relied on you giving her fatherly advice?

10 MR. BREHMER: I'm going to object to speculation as
11 to what someone else relied upon.

12 A Well, she's a child, so ---

13 THE COURT: One second, please. Do you have any ---

14 MR. VERNER: I'll withdraw the question.

15 THE COURT: Okay. He's going to withdraw it, please
16 do.

17 Q Did you represent to Mr. Brown that you believed he had a
18 right to access his property through that easement?

19 A Yes, sir.

20 Q Okay.

21 MR. VERNER: If the Judge has any more questions or
22 Mr. Brehmer.

23 THE COURT: Sir, can you tell me where on this map
24 the gate is?

25 MR. GRAY: No, sir, I can't.

1 THE COURT: Okay.

2 MR. GRAY: I don't have a, I've never seen an aerial.
3 Now, if you want to get in the car and ride, I can show you,
4 but other than that, you know, this is something, this is
5 technology that wasn't there when I first started going in
6 there ---

7 THE COURT: I understand.

8 MR. GRAY: --- so I just knew where it was.

9 THE COURT: I believe the Supreme Court would tell me
10 that I couldn't ride to see it, but I appreciate that offer.

11 MR. GRAY: That's the only way I can help you,
12 though.

13 THE COURT: Alright. Thank you, sir. May he be
14 excused?

15 MR. VERNER: Judge, he is under subpoena, but I'll
16 excuse him if Mr. Brehmer will excuse him, or you're free to
17 stay or go if you want to Mr. Gray.

18 MR. BREHMER: Mr. Gray can be excused as far as
19 Defense is concerned.

20 THE COURT: Okay. Thank you. Sir, you are more
21 than, you can stay in the Courtroom, but you can leave as
22 well.

23 MR. GRAY: I've enjoyed it, but I think I'm going.

24 THE COURT: Thank you for your testimony today. Mr.
25 Verner?

1 MR. VERNER: Yes, sir. Mr. Wise, Michael Wise.

2 THE COURT: Good morning, sir, how are you?

3 MR. WISE: Good morning.

4 THE COURT: Please be sworn in.

5 CLERK: Place your left hand on the Bible and raise
6 your right. Do you solemnly swear or affirm that the testimony
7 you give this Court will be the truth, the whole truth, and
8 nothing but the truth so help you God?

9 MR. WISE: I will.

10 CLERK: Thank you. Please have a seat and state your
11 name for the record.

12 MR. WISE: Micheal Wise.

13 **DIRECT EXAMINATION**

14 BY MR. VERNER:

15 Q Mr. Wise, in what county do you live, sir?

16 A Newberry.

17 Q Okay. Can I ask you what you do for a living?

18 A I'm a poultry farmer.

19 Q A poultry farmer. Are you familiar with Mr. Johnnie
20 Dickert and Kyle Dickert and Mr. Johnnie Dickert's wife?

21 A Yes, sir, I am.

22 Q How long have you known the Dickerts?

23 A All my life.

24 Q Okay. Are you from Newberry?

25 A I am.

1 Q Are you familiar with Donnie Brown?

2 A I am.

3 Q How long have you known Donnie?

4 A I don't know, probably 20 plus years.

5 Q Okay. Do you believe that you were cordial with everybody

6 ---

7 A Absolutely.

8 Q --- in this case or is there any reason that you believe
9 you might have a bias against anybody in this case?

10 A No, sir.

11 Q Okay. Are you familiar with the property we've been
12 talking about out there on the Whitmire Highway in the
13 Maybinton ---

14 A I am.

15 Q How are you familiar with that property?

16 A I used to own that property.

17 Q Which property are we talking about?

18 A Where the chicken houses are I bought from Johnnie
19 Dickert.

20 Q Now, Mr. Gray was not great at aerals, you think that you
21 can understand ---

22 A Yeah, I think so.

23 Q Okay. Can you, you want that pulled closer to you? Mr.
24 Darrell the Bailiff, the deputy will ---

25 A I bought the tract ---

1 Q And just make sure Judge Kimpson can hear you.

2 A I bought the tract, 383-913, it was 88.53 acres.

3 Q And that is the one that the rectangular chicken houses
4 are on?

5 A Yes, sir.

6 Q And I believe it's got a blue mark on it, maybe? Oh, the
7 Judge's sticker has a blue, okay. When did you buy that
8 property, Mr. Wise?

9 A 2014.

10 Q 2014? Do you remember who you bought it from?

11 A Mr. Johnnie Dickert.

12 Q Okay. Were the chicken houses on it at the time you ---

13 A No, sir.

14 Q And is that that proper, would you call those chicken
15 houses or what would you ---

16 A Chicken houses.

17 Q Okay. And I would guess if you have chicken houses then
18 you fall under some DHEC or some government regulations on
19 sanitary conditions ---

20 A Yes, sir.

21 Q Does that put some restrictive conditions on your
22 property?

23 A It did.

24 Q Okay. Are you familiar where the Dickerts' property is?

25 A I do.

1 Q Where's the Dickerts' property?

2 A It's adjacent to, it's the 333 acres point 7, I'm sorry,
3 330.7.

4 Q The tax number is 330-7?

5 A Yes, sir.

6 Q It's 158 acres?

7 A Yes, sir.

8 Q And that is right next to your former property?

9 A Yes, sir.

10 Q What road or highway did you use to get to your property?

11 A Old Whitmire Highway.

12 Q Okay. And is that the same ---

13 THE COURT: I'm sorry, Mr. Verner, I didn't hear it.

14 MR. WISE: Old Whitmire Highway.

15 THE COURT: Oh, thank you, sir.

16 Q Is that the same property that the Dickerts use to get to
17 their property?

18 A Yes, sir.

19 Q Do you remember the old Gray property behind yours?

20 A I do.

21 Q Do you know who owned it at the time?

22 A Mr. Murray Gray.

23 Q Okay. When you bought your property, Murray Gray owned
24 the property behind yours?

25 A Correct.

1 Q Does that property frontal any highways or public roads?

2 A No, sir.

3 Q Would you consider that a landlocked property in terms of
4 it's not on a road ---

5 A Yes, sir, I do.

6 Q With that being said, did you regularly visit your
7 property out there?

8 A Oh, yeah, I was there every day.

9 Q Okay. So you were there ---

10 A I was there every day.

11 Q You were actually out there at the chicken farms
12 ---

13 A Yes. I was there every day.

14 Q For how long a period of time?

15 A Until 2019 when I sold it to Mike Longshore.

16 Q So for a period of five years, you were there pretty much
17 every day?

18 A Yes, sir.

19 Q And I would think managing chicken farms, possibly don't
20 get weekends off?

21 A I was there seven days a week.

22 Q Okay. Did you see people accessing the Gray property at
23 the time?

24 A What, during my time there?

25 Q Your tenureship of your property, yes, sir.

1 A Well, I did, back when they started, when they was
2 starting to log, started logging the property.

3 Q You've seen logging trucks go through there?

4 A Well, I did after I saw what they were doing,
5 yes.

6 Q Are you familiar with the, what we're proposing is the
7 easement or the right of way into the Murray Gray property, you
8 don't have to look at the map, but are you familiar with that
9 road?

10 A Yes, I'm familiar with that road.

11 Q Is it a dirt road?

12 A It is.

13 Q Is it clearly apparent that it is a road?

14 A Yes.

15 Q Okay. Well, you may not be able to see it from the
16 highway because you have to look through the woods

17 ---

18 A Right.

19 Q --- but when you're there, it's clearly a road?

20 A That's correct.

21 Q And it's been there at least since 2014 that you've owned
22 the property?

23 A Yeah, since, yeah.

24 Q How do people get to the Gray property or what's called
25 the Gray property from Old Whitmire Highway?

1 A I don't know how they get to it now, I guess ---

2 Q Well, at the time you were familiar with the property?

3 A When I was owner of the property, they would, what they
4 did do -- let me back up. When they started timbering the
5 property, Donnie Brown called me and said that we were going to
6 have to access through my property to get the timber out for
7 Mr. Murray Gray ---

8 Q Alright.

9 A --- because at that time the DHEC regulations required you
10 to have a 400 foot buffer around that, my chicken houses. That
11 forced me, well, DHEC forced me to buy two extra acres of
12 property from Mr. Johnnie Dickert which incorporated that old
13 access road to the Murray Gray tract, okay. When DHEC required
14 me to buy the two extra acres of property, they forced me to
15 dig the terracotta pipes up and tear the gate down because they
16 didn't want two accesses into the chicken house.

17 Q Okay.

18 A So therefore, when Mr. Murray Gray cut the timber, that
19 forced Donnie and them to come through my access road, and they
20 had to go through my buffer to get to the property to access
21 that road.

22 Q Okay. But that was, up until Mr. Gray wanted to timber
23 the property, that was part of the Dickert tract ---

24 A Yes.

25 Q --- the two acres?

1 A Yes.

2 Q But just to make sure you were within the guidelines you
3 went ahead and bought it from Mr. Dickert amicably?

4 A I didn't have any choice ---

5 Q Right. But you ---

6 A --- DHEC required me to buy it.

7 Q Okay. So now, but the location, the easement of the road
8 hasn't changed, the only thing that has changed is you have now
9 bought that two acres that includes the front portion of the
10 easement?

11 A That is correct.

12 Q But the easement was already there, you just bought it to
13 increase the buffer around it?

14 A I had to increase the buffer.

15 Q Okay.

16 A And I told Donnie at that time, I said, I don't care that
17 you have to come through my property to get, you know, get the
18 timber out for Mr. Murray Gray. But I said, if DHEC comes up
19 here, I said, they're going to probably, you know, make me shut
20 it back down. But I told Donnie and them when they got
21 through, to make sure they put everything back like they found
22 it, and they did, they put everything back where, you know,
23 like the buffer never was disturbed. So at that time that's
24 what happened.

25 Q So your concern in the beginning wasn't necessarily

1 of the Dickerts or anybody being upset, it's just that I want
2 to make sure I'm not violating any DHEC rules?

3 A Exactly.

4 Q Other than you now own it, the easements, the Old Whitmire
5 Highway, the old Gray property, the location hasn't changed?

6 A No.

7 Q And you believe that Mr. Gray had a right to get to the
8 property to timber it?

9 A Yeah. I felt like he had the right to get there.

10 Q Okay. Are you familiar with people also hunting out
11 there?

12 A Yes.

13 Q Okay. Do the hunters also access that road to hunt?

14 A I gave them permission to park right there at my shop, but
15 I couldn't allow them to go to the chicken houses, but I
16 allowed them to park right there at my, you know, the shop
17 there on top of the hill so they could go back there and hunt.

18 Q But people have generally been respectful of your right to
19 run your business there and they tried not to, just good
20 neighbors ---

21 A Yes, sir, everybody's been good neighbors ---

22 Q Okay.

23 A --- yes, sir.

24 Q Okay. And did I hear you say that you took down the
25 gates?

1 A I had to take down the gates.

2 Q Okay. Then that was the gate in front the road to the ---

3 A I guess it's the old access road.

4 Q Okay. But when you bought that property and gave Donnie
5 the right to get on the property, you believe that Mr. Gray did
6 have the right to get to the property through that easement,
7 you just didn't want to disturb the DHEC buffer?

8 A That's correct.

9 Q Okay. And were people using that road continuously since
10 2014 when you, since you been there?

11 A No, I mean, they weren't in and out of there every day,
12 no.

13 Q But I mean, but on a regular, it wasn't like a never used
14 road, was it?

15 A I mean, nobody actually went, it wasn't very used that
16 much at all, no.

17 Q Is that because the property is timber slash hunting
18 property?

19 A Right.

20 Q But you've been out of the property since 2019?

21 A That's correct.

22 Q On the edge of your property, do you know what the,
23 between you and the Dickerts' property, is that level ground or
24 is that hilly or ---

25 A It's kind of hilly.

1 Q Okay. So is it fair to say that there is kind of a gully
2 that runs along the border of the properties?

3 A It does, yes, sir.

4 Q And the location of the road is designed to run at the
5 edge of the gully?

6 A Well, it's at the top of, you know, the property line,
7 right, I mean, right through the property line.

8 Q Okay. So the topography of the property is the road
9 couldn't be moved any more slight because of the gully?

10 A That's right.

11 Q Without a lot of effort, but it really couldn't be moved?

12 A Yes.

13 Q Okay. Just out of curiosity, have you ever been on the
14 access road?

15 A I've walked it, I mean, I have never road on it.

16 Q Okay. Just out of curiosity, you've walked it?

17 A Yes, I've walked it, just walking the property.

18 Q Is it improved? I mean, in terms of somebody, it's more
19 than just somebody's pushed over things with a pickup truck,
20 it's been scraped out with like bulldozer type stuff?

21 A Yes, yes, sir.

22 Q Okay.

23 MR. VERNER: If Mr. Brehmer has any questions, Mr.
24 Wise, or Judge Kimpson.

25 THE COURT: Thank you. Mr. Brehmer?

1 MR. BREHMER: Thank you.

2 CROSS EXAMINATION

3 BY MR. BREHMER:

4 Q Good morning, Mr. Wise.

5 A Good morning, how are you?

6 Q Good to see you.

7 A Yes, sir.

8 Q We've known each other a while, have we not?

9 A A long, long time.

10 Q Yes, sir. You don't know what the agreement between the
11 Dickerts and the Gray family was prior to you purchasing the
12 property?

13 A No, sir, I do not.

14 Q And you don't know whether Johnnie Dickert, Mr. John
15 William Dickert, Mr. Earl Dickert had any type of gentlemen's
16 agreement with Mr. Gray's ancestry?

17 A No, sir, I don't.

18 Q So for the Court record, your testimony only deals from
19 2014 to the present, correct?

20 A That's correct.

21 Q So that's all you really have direct knowledge about?

22 A That is correct.

23 Q Now, in addition to the property that you bought from Mr.
24 Dickert, okay. At the time that you bought it, there was
25 property owned by Mr. Leon Peay and Helen R. Lindler directly

1 behind the tract you bought immediately adjacent to the tract
2 Mr. Gray's family owned and Mr. Brown ended up with, correct?

3 A That is correct, yes.

4 Q Okay. And in the chain title, I'm going to show you what
5 is Defendant's Exhibit Number 4, okay. Defendant's Exhibit
6 Number 4, and I'm also going to show you what is Defendant's
7 Exhibit Number 3, and Defendant's Exhibit Number 5, okay.
8 Defendant's Exhibit Number 3 is a schematic of the property
9 where the chicken houses that you formally owned that you sold
10 to Mr. Longshore, isn't it?

11 A That's correct.

12 Q Okay. And on Exhibit Number 3, it's got a little dotted
13 line that leads back to the other side of the powerline, does
14 it not?

15 A That's correct.

16 Q Okay. And that dotted line is the same line that is on
17 Exhibit Number 4 across the property, is it not?

18 A That's correct.

19 Q And that was an easement from the Old Whitmire Highway
20 across the property that Johnnie Dickert or Dickert Lumber
21 Company sold you to go back to the Lindler property, correct?

22 A That's correct.

23 Q Okay. And Exhibit Number 5 is the actual recorded
24 easement, correct?

25 A Yes.

1 Q And that easement provided access not only to the Lindler
2 property but also to the property that Mr. Brown now owns,
3 correct?

4 A I thought, well, I thought that easement, I thought it
5 only went to Mr. Lindler's property.

6 Q Okay. It was for the Lindlers but it leads you to the
7 power line, correct?

8 A Right, yeah.

9 Q And at the power line, the Lindler property and what's now
10 the Brown property formally the Gray property is where they
11 joined, is it not?

12 A Yes.

13 Q Okay. So you can, according to that easement, there is an
14 easement access in there, correct?

15 A In the, in what, in the property that the chicken houses
16 are on?

17 Q Yes, sir.

18 A The only easement that I knew of ---

19 Q Was the Lindler property.

20 A --- was the Lindler property, and we had to incorporate
21 that easement when I bought that property so Mr. Lindler could
22 get to his property ---

23 Q Yes.

24 A --- and that was recorded in the deed of the property when
25 I bought that property.

1 Q But what y'all did is shown in this schematic on Exhibit
2 Number 3 is you basically changed the easement from where it
3 enters the driveway here to the chicken house property,
4 formally your property, now Mr. Longshore's property and
5 ---

6 A It went down to the lower part of the parking lot and came
7 around to the backside of the chicken houses.

8 Q Okay. And that is shown in this diagram on Defendant's
9 Exhibit Number 3, correct?

10 A Right.

11 Q Okay. Is that the road that you allowed Mr. Brown to
12 access the logs whenever they pulled the logs out?

13 A No, sir.

14 Q Okay. So you allowed him other access to come out with
15 his logs?

16 A I allowed him, basically, they cut a path through the
17 buffer ---

18 Q Okay.

19 A --- at the top of the hill where my building is and went
20 through the buffer to get to the access road that bordered Mr.
21 Dickert and myself, the old access road.

22 Q Now, so let's talk about that buffer because that buffer
23 is very important. You bought the property from Johnnie?

24 A Yes, sir.

25 Q Okay. And your intention was was to grade the

1 property to build chicken houses, correct?

2 A That's correct.

3 Q Okay. DHEC required you to have a certain buffer,
4 correct?

5 A Yeah, because of the community was ---

6 Q Mr. Felker raised Cain?

7 A That's correct.

8 Q Alright. So you had to buy this buffer, okay. And so you
9 bought I think it was 2.4 acres?

10 A Yes, sir. That little triangle.

11 Q Yeah. That 2.4 acres from Mr. Dickert as the buffer?

12 A Right.

13 Q Okay. In that buffer is where the gate with the double
14 locks that Mr. Gray just testified about was located, correct?

15 A That's correct.

16 Q Okay. In that buffer is where the terracotta from, that
17 led from the Old Whitmire Highway onto what was formally the
18 Dickert property, now your property, correct?

19 A That's correct.

20 Q DHEC required you to remove those gates, did they not?

21 A Yes, sir, they did.

22 Q Because they would not allow a second access, correct?

23 A That is correct.

24 Q DHEC required you to take up the terracotta, did they not?

25 A Yes, sir.

1 Q Okay. Now, and you did so, correct?

2 A Yes, sir.

3 Q Okay. Alright. And that was all on your property,
4 correct?

5 A Yes, yes.

6 Q Okay. Now, and when you took that terracotta up and you
7 removed that gate, let me ask you, you didn't go ask anybody
8 for permission, did you?

9 A No, I didn't have to.

10 Q Because it was your property?

11 A It was my property.

12 Q And no one else had a right to tell you, other than DHEC,
13 the government, what to do on your property?

14 A That's correct.

15 Q Okay. It was your impression at that time that nobody had
16 an interest legally or otherwise in that terracotta, that road,
17 or them gates ---

18 A That correct.

19 Q --- because they was yours?

20 A Right.

21 Q Okay. You didn't go call Murray Gray and say, hey,
22 Murray, I'm taking this up, do I got your permission, you
23 didn't do that did you?

24 A No, sir.

25 Q Because he didn't have a right to say diddle, right?

1 A That's correct.

2 Q Because it was yours?

3 A Right.

4 Q Okay. So it was your belief at that time that nobody was
5 claiming an interest in that property other than you?

6 A Right.

7 Q Okay. Especially not him, Mr. Brown, right?

8 A That's correct.

9 Q Okay. And it was your understanding that while the
10 Dickerts owned that property, that they had a relationship with
11 the Gray family and his ancestors, did they not?

12 A That's correct.

13 Q They were businessmen in the community, were they
14 not?

15 A That's correct.

16 Q They worked together, correct?

17 A That's correct.

18 Q Okay. And the Dickerts had allowed the Grays to use that
19 road?

20 A That's correct.

21 Q Okay. With permission?

22 A That's correct.

23 Q That's why you've got two locks, correct?

24 A Yes, sir.

25 Q And you, up until Mr. Brown filed this lawsuit,

1 have you ever heard anybody say there was anything hostile
2 going on about this road?

3 A No, sir.

4 Q Have you heard of any hostility over this road, other than
5 that generated by Mr. Brown?

6 A No, sir.

7 Q Okay. And this road is not open, apparent, or obvious to
8 anybody in the community, is it?

9 A No, sir.

10 Q It was a woods road?

11 A Yes, sir.

12 Q Okay. And that road don't even exist anymore, does
13 it?

14 A You talking about the access road?

15 Q What you took up?

16 A Well, no, it don't exist there now.

17 Q It hasn't existed there since 2014, has it?

18 A That's correct.

19 Q Okay. Thank you, Mr. Wise, it was good to see you again.
20 I'm sorry all of us are getting white hair.

21 MR. VERNER: I do have one or two follow up, if I
22 could?

23 THE COURT: Yes, sir, if you would.

24 **REDIRECT EXAMINATION**

25 BY MR. VERNER:

1 Q There's another tract behind your chicken house property
2 where the Lindlers own?

3 A Yes, sir.

4 Q And that would have also been a landlocked property when
5 you bought your property?

6 A That's correct.

7 Q At the time you bought the property, the chicken houses
8 were not there, right?

9 A No. The chicken houses weren't there.

10 Q Okay. And so the Lindlers bought a right of way over your
11 property to get to their property?

12 A Well, that was part of the agreement.

13 Q The agreement was that they would not landlock?

14 A Right.

15 Q But that is in a different location than Murray Gray's
16 road, right?

17 A Yes.

18 Q In fact, the old Lindler access doesn't exist anymore
19 because the chicken coops are now located in at least, in the
20 middle of where that used to be?

21 A Right.

22 Q But that, we agree that that's in a different location,
23 that was independent of Murray Gray's road, right?

24 A That's correct.

25 Q Okay. This is Defendant's Exhibit 1, I've marked,

1 what I've marked in red, that appears to be the Old Whitmire
2 Highway?

3 A Yes.

4 Q Okay. And what I've marked in yellow, does that appear to
5 be the access road to the Gray property?

6 A That's correct.

7 Q Okay.

8 MR. VERNER: Your Honor, I would mark this as
9 Plaintiff's 2.

10 THE COURT: That'd be fine.

11 MR. BREHMER: May I see it, please?

12 MR. VERNER: Yes, sir.

13 MR. BREHMER: That's fine.

14 (Whereupon an aerial map was submitted as Plaintiff's
15 Exhibit Number 2 for identification and entered into evidence.)

16 Q And again, you were saying something?

17 A I was just going to ---

18 THE COURT: Thank you.

19 A I was just going to say entrance, that old entrance,
20 that's an old entrance from Old Whitmer Highway.

21 THE COURT: Mr. Wise, if I can ask you just to take
22 Exhibit, Plaintiff's 2 and illustrate that for me.

23 MR. WISE: This old access right here was the part of
24 the two acres that I had to purchase per DHEC regulations.

25 THE COURT: What's in yellow?

1 MR. WISE: Yes, sir. Right here what's in yellow.
2 So that's an old, what I'm saying is that was part of this two
3 acres right here.

4 THE COURT: Yes, sir.

5 MR. WISE: That I had to buy from the, and that's the
6 reason I allowed them to come through that buffer, coming
7 through my driveway here and entered the buffer to get back
8 over to this road right here ---

9 THE COURT: Yes, sir.

10 MR. WISE: --- to get the timber.

11 Q But what is marked in red is the Old Whitmire Highway?

12 A Yes.

13 Q And what is marked in yellow is the access road to Gray
14 property?

15 A Yes.

16 Q And now because you bought that two acres, it partially
17 crosses the property that you used to own?

18 A That's right.

19 Q But the location hasn't changed. The only thing that has
20 changed is you had bought that property to extend your
21 boundaries?

22 A I mean, I guess the location had to change, I mean, I
23 don't know, I had to take it up, I don't know, you know, other
24 than coming through my buffer is the only way to get back over
25 to the old access.

1 Q Okay. But you certainly didn't buy that property to lock
2 Murray Gray off his property?

3 A No, sir.

4 Q In fact, that was done to accommodate his access to the
5 property?

6 A Do what now?

7 Q That was really done to accommodate Mr. Gray's access to
8 the property because it extended the boundaries and kept him
9 further away from your chicken coops?

10 A Yes.

11 Q Okay. So I mean, it was really to keep away from your
12 property and because he needed to get to his property that you
13 bought it, you had to buy it ---

14 A I don't quite understand your question.

15 Q Well, I think you answered it. Just that you bought that
16 two acres to kind of extend the boundary?

17 A I had to buy that property to extend the 400 foot buffer -
18 --

19 Q Well, the only ---

20 A --- that DHEC required me to do. I didn't intend, when me
21 and Mr. Johnnie made the original agreement to buy the
22 property, the intention was Mr. Johnnie wanted to keep that
23 access the way it was, that was the original intension.

24 Q Right.

25 A And Mr. Eddie Felker was the one that pushed for me

1 to have a 400 foot buffer. Normally, DHEC doesn't require

2 ---

3 Q Mr. Felker's a DHEC man?

4 A No. Mr. Felker is a community man.

5 Q Okay.

6 A A guy in the community. And normally they don't require,
7 DHEC doesn't require a 400 foot buffer around a farm like this
8 facility. And Mr. Eddie Felker pushed me to a DHEC board, I
9 mean, he pushed me all the way almost to the Courts to get this
10 buffer done. So I went back to Mr. Johnnie at that time and I
11 said, Mr. Johnnie, I said, I need for you to sell me that two
12 acres if you will to get this 400 foot buffer in, and he agreed
13 to do that.

14 Q Right. But the reason you bought that two acres because
15 you knew that Murray Gray wanted to put logging trucks through
16 there ---

17 A No.

18 Q --- to get them away from the ---

19 A No, no, I did not.

20 Q Well, I thought that was why you bought the two acres
21 because you and Mr. Gray needed to ---

22 A No, no. I bought the two acres because DHEC required me
23 to put the 400 buffer.

24 Q Right. But if Mr. Gray ---

25 A It didn't have anything to do with Mr. Murray Gray.

1 Q Okay. And if he hadn't been needing to use that access to
2 get

3 to his property, would you have bought those two acres?

4 A I told Mr. Murray Gray I, you know, I would try to give
5 him access through my, you know, buffer, but if DHEC found out
6 about it, I was just trying to be a good gentleman.

7 Q Right, right.

8 A But I mean, as long as, but that's all I was trying to do,
9 but I had no idea that that was the only access to Mr. Murray
10 Gray's property at that time when I bought the two acres of
11 land from Mr. Dickert.

12 Q Right. And while you had the property, you knew that was
13 the access that Mr. Gray used to get to his property?

14 A Yeah. I mean, I guess, I didn't know for sure.

15 Q You understand there's a little bit of legal difference
16 between owning property outright and someone having an
17 easement or a right of way to cross a part of your property,
18 right?

19 A Yes.

20 Q You can own property and yet somebody could still have the
21 right to cross the property?

22 A I mean, I guess so.

23 Q Like the fact that, there are powerline easements that run
24 through these properties, right?

25 A Yes.

1 Q Okay. And when Mr. Brehmer was asking about hostile, are
2 you aware that that's a legal term? Were you answering his
3 question in terms of the legal definition of hostile or just a
4 common use of that word?

5 A I mean, I don't understand what you're saying about
6 hostile.

7 Q Hostile's a word that has both a legal definition and a
8 common sense, how do you define hostile?

9 A Getting mad.

10 Q Okay. Right. Angry or, you know, fighting hostile
11 ---

12 A Yeah.

13 Q --- is that how you were kind of interpreting his
14 question? There was no like fistfights or threats or that type
15 of thing?

16 A Yeah, no.

17 Q Okay. Are you aware that there's also a legal definition
18 of hostile that is different than that?

19 A I guess, I mean, yeah.

20 Q Alright. Okay. Thank you, Mr. Wise.

21 MR. VERNER: Again, if Mr. Brehmer has any follow
22 up.

23 THE COURT: I will allow follow up, but then I have a
24 question for Mr. Wise. Yes, sir?

25 MR. BREHMER: Thank you.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

Q I just want to clarify, Mr. Wise, so that the record's clear. The access points that the Gray family used when you bought that 2.4 acres from Mr. Dickert, okay, where the gate was at the terracottas and all, that's gone?

Q That's been gone since 2014?

Q Okay. And the location that you allowed Mr. Gray's family to access that tract when Mr. Brown's organization timbered it was at a different location, was it not?

Q Okay. It is not the same location, right?

Q Thank you.

THE COURT: Mr. Wise, if you don't mind holding on one second, please, I apologize. Mr. Wise, was there a plat done of the two acres that you purchased, the additional two acres you had to purchase because of DHEC requirements?

MR. WISE: A separate plat?

THE COURT: Yes, sir.

MR. WISE: No, sir.

THE COURT: Okay.

MR. WISE: It was incorporated in this, this

1 original plat right here.

2 THE COURT: And that's, you're referring to ---

3 MR. WISE: Because I, I mean, I had, in addition, I
4 had to purchase a little bit of property here from Mr. Murray
5 Gray, this triangle piece here to get that, again, that 400
6 foot buffer.

7 THE COURT: Yes, sir.

8 MR. WISE: So this, and this little triangle here is
9 the two that I had to purchase extra.

10 THE COURT: And for the record, you are referring to
11 which exhibit? It's underneath ---

12 MR. WISE: This one here, Exhibit 3.

13 THE COURT: So you're referring to Exhibit 3, and
14 would you go through that again? Where's the triangle piece
15 that you were ---

16 MR. WISE: The triangle piece is right here.

17 THE COURT: Yes, sir.

18 MR. WISE: That's Old Whitmire Highway here, that's
19 the triangle piece here.

20 THE COURT: And for the record, he's referring, there
21 is a triangular piece of, a triangular shaped piece of property
22 on Defendant's Exhibit 3 toward the left. Now, Mr. Wise, the
23 original gate that now no longer exists, was it ---

24 MR. WISE: It was within this two acres right here.

25 THE COURT: Alright. I see, and it no longer

1 exists?

2 MR. WISE: Right. When me and Mr. Johnnie originally
3 decided on this property, and I bought the property from Mr.
4 Johnnie Dickert ---

5 THE COURT: Yes, sir.

6 MR. WISE: --- we originally cut the line, he wanted
7 to keep that access gate ---

8 THE COURT: Yes, sir.

9 MR. WISE --- but then when DHEC required me to have
10 this 400 foot buffer ---

11 THE COURT: Yes, sir.

12 MR. WISE: --- and then I went back to him to
13 purchase this extra two acres.

14 THE COURT: I see, so this triangular property now
15 belongs to you, is that correct?

16 MR. WISE: Yes. Well, it did at that time.

17 THE COURT: Yes, sir, I understand.

18 MR. WISE: Yeah, right.

19 THE COURT: Now, at what point, so is this line here
20 the road that's in dispute here?

21 MR. WISE: The road follows this line.

22 THE COURT: Follows this line?

23 MR. WISE: Yes, sir.

24 THE COURT: Okay. Alright. And at what point does
25 this road cross your property versus Mr. Dickert's property?

1 MR. WISE: Well, it actually doesn't cross my
2 property ---

3 THE COURT: I see.

4 MR. WISE: --- I was just giving him access to go,
5 come through here to get over to that road. I was letting him
6 come in this driveway and coming through, it was actually back
7 up in here, back up close to the road, but I was letting him
8 come in this road right here, come through here to get over to
9 his.

10 THE COURT: I see.

11 MR. WISE: And I was just doing that as a, being, you
12 know, a gentleman.

13 THE COURT: I see. Okay. Thank you. Just let the
14 record reflect we've been referring to Defendant's Exhibit 3
15 and Mr. Wise has been illustrating the various access points.
16 Does anybody have any questions based on my ---

17 MR. BREHMER: None.

18 MR. VERNER: No, Your Honor.

19 MR. BREHMER: Your Honor, if we're finished with Mr.
20 Wise, could we take a short break? I have a cracked tooth, and
21 I have an appointment at 12:15 I need to cancel.

22 MR. VERNER: No objection.

23 THE COURT: That of course is perfectly fine.

24 MR. VERNER: Your Honor, he's under subpoena but he's
25 released unless you want him to stay. Unless Mr. Brehmer has a

1 question for you, you can come or stay as you want to, thank
2 you.

3 MR. WISE: Okay. Thank you.

4 THE COURT: Thank you, sir.

5 MR. BREHMER: I don't have any additional questions
6 for Mr. Wise.

7 THE COURT: Sounds good. Before we break, for the
8 record, the map that Mr. Verner provided to the Court with the
9 red and yellow and blue dots, we're going to make this Court
10 Exhibit 1.

11 (Whereupon an aerial map was submitted as Court's Exhibit
12 Number 1 for identification and entered into evidence.)

13 THE COURT: Let's be adjourned. How long do we need?

14 MR. BREHMER: About five minutes.

15 THE COURT: Okay. That's fine.

16 MR. VERNER: It is 20 after 11 right now, about
17 11:30, Judge?

18 THE COURT: I think that's perfect.

19 MR. BREHMER: Good, I'll make my call.

20 THE COURT: Good enough.

21 (Off the record.)

22 MR. VERNER: Terry Longshore, Your Honor?

23 THE COURT: Yes, sir, Mr. Verner. You said Mr.
24 Longshore?

25 MR. VERNER: Yes, sir.

1 THE COURT: Thank you. How are you today, sir?

2 MR. LONGSHORE: Alright. How are y'all?

3 THE COURT: Good. Please take the stand and be sworn
4 in.

5 MR. LONGSHORE: Yes, sir.

6 CLERK: Place your left hand on the Bible, raise your
7 right. Do you solemnly swear or affirm that the testimony you
8 give this Court will be the truth, the whole truth, and nothing
9 but the truth so help you God?

10 MR. LONGSHORE: Yes, ma'am.

11 CLERK: Thank you. Please have a seat and state your
12 name for the record.

13 MR. LONGSHORE: Terry Longshore.

14 **DIRECT EXAMINATION**

15 BY MR. VERNER:

16 Q Mr. Longshore, what county do you live in, sir?

17 A Newberry.

18 Q Okay. and what kind of occupation are you in or what do
19 you do ---

20 A I'm retired.

21 Q From what kind of ---

22 A I used to work at the sheriff's office at the detention
23 center.

24 Q Okay.

25 A And I worked in cotton mills for 26, 23 years, excuse me.

1 Q Are you familiar with the Dickerts?

2 A Yes, sir.

3 Q Johnnie Dickert, and Kyle Dickert?

4 A I'm familiar with them.

5 Q How long have you known the Dickerts?

6 A I've known of Mr. Johnnie all my life, I mean ---

7 Q You're from Newberry?

8 A Yeah.

9 Q Okay. Are you familiar with the property we been talking
10 about today?

11 A I am.

12 Q How long have you been familiar with the property we've
13 been talking about today?

14 A The Murray Gray property, I've been familiar with it since
15 1993.

16 Q Okay. And the Murray Gray property would be the 96 acres
17 off of the Old Whitmire Highway?

18 A Yes, sir.

19 Q Okay. So we're in 2024, so for 30 years, give or take or
20 more that you've been on that property?

21 A When Donnie started, Mr. Brown started hunting out there,
22 I think it might have been in 2017, I hadn't been back out
23 there, you know, no disrespect towards Mr. Brown.

24 Q But you had been on that property and in this general area
25 for over 30 years?

1 A Yeah, yes, sir.

2 Q Okay. Primarily what would be your reason to be on these
3 properties?

4 A Just to hunt, deer hunting and turkey hunting.

5 Q Okay. Are you familiar with the chicken coops ---

6 A Oh, yeah.

7 Q --- and the general layout of it now?

8 A Yeah.

9 Q Okay. Is it fair to say that the property's either used
10 for timber or hunting? Those would be the two main uses?

11 A Yeah. I just used it to hunt, but I've seen where timber
12 had been cut out there before.

13 Q Not like any developments or housing?

14 A No, no.

15 Q And in fact, the chicken coops would only be like the only
16 change in the general ---

17 A That's right.

18 Q Were the chicken coops there when you first started
19 hunting the property in the 1990's?

20 A No, no, it wasn't.

21 Q Okay. Did you hear Mr. Brehmer talking about the Lindler
22 property?

23 A Yeah.

24 Q Now, the Lindlers are not here in Court today, but they
25 are just another adjoining landowner?

1 A Right. I think the Lindlers actually bought it from
2 Champion Paper Company.

3 Q Okay. But that is the 58 acres behind the chicken ---

4 A Yeah.

5 Q --- houses?

6 A Yeah.

7 Q Had you ever been on that property?

8 A Yeah. I had a lease with them. Me and my daddy had a
9 lease with Champion Paper Company from the mid '80s to whenever
10 Champion went belly up or whatever.

11 Q So even before the Lindlers owned that property, you had
12 leased it from the Champion Timber Company.

13 A I had.

14 Q And how did you access that property?

15 A There was an access road from Old Whitmire Highway to it.

16 Q Okay. Had you ever been on, hunting on the Gray property?

17 A Yes, yes.

18 Q Okay. And that's since 1993, I believe you said?

19 A Yes.

20 Q Okay. How did you access the Gray property?

21 A It was an access road where they was talking about that
22 buffer zone that DHEC made Mike Wise buy, it was a road there.

23 Q Okay. Are you familiar with the two acres that we talked
24 about ---

25 A Yeah, yes.

1 Q --- that Mr. Wise purchased ---

2 A I am.

3 Q Other than Mr. Wise has purchased that two acres, has the
4 general location of the road changed at all?

5 A They done away with it because that's the reason I had to
6 start using Mr. Wise's property. They done away with the gate
7 and the terracotta in there, but just, you had to go through
8 Mike, through Mr. Wise's, it just made a loop and you'd use the
9 same road to go to Mr. Gray's property.

10 Q Okay.

11 A It just made a loop and went to the same road.

12 Q Now, the loop, is that on Mr. Wise's property or on the
13 Dickert property?

14 A That's on Mr. Wise's property.

15 Q Okay. So after Mr. Wise bought the two acres, he changed
16 location to get into his property?

17 A No. He always had an access through his chicken houses.

18 Q Okay.

19 A There was always a gate there, a different driveway.

20 Q But he changed, the road on his property kind of looped
21 further away from the chicken coops to get to ---

22 A Yes.

23 Q --- the Murray Gray road?

24 A Right. It just, like I said, they done away with
25 the terracotta, the original right of way and just went

1 to Mike's driveway.

2 Q Okay.

3 A Yeah. They just made a little loop, a little cut
4 through.

5 Q But the location that the road enters the Dickert
6 property, that hasn't changed at all, has it?

7 A No.

8 Q The portion that affects the Dickert property is the same
9 access road that's always been there?

10 A Yeah, it, yeah.

11 Q So Mr. Wise has changed where he wants people to access
12 his property but he still, the access still goes to the Dickert
13 property to get to the Gray property?

14 A Yeah. You go, you have to, there's no way to get to the
15 Gray property unless you go through Mr. Wise's.

16 Q Right.

17 A Yeah. I mean ---

18 Q And of course, the Wise property used to be the Dickert
19 property that he purchased?

20 A Yeah. And then, yeah.

21 Q Okay. Did you hunt, you and your father hunted this
22 property pretty regularly over the years?

23 A Yeah, we did. Especially me, I mean ---

24 Q The ---

25 A Which tract are you talking about? The Gray

1 property or the Lindler property I think you called it.

2 Q I think you testified you had a recorded lease to hunt

3 ---

4 A Yeah, me and daddy hunted the leased property from
5 Champion.

6 Q Was it just the two of you or did you have a hunting club?

7 A It was just me and my daddy.

8 Q Okay. And you bought that from Champion or leased ---

9 A Leased it from Champion, yes, sir.

10 Q But at the same time, you were also hunting the Gray
11 property?

12 A Right.

13 Q With permission from Murray Gray?

14 A Right.

15 Q And just a longtime friend of yours?

16 A Yeah, yes, sir.

17 Q Would you use the access road that crossed over the
18 Dickert property to get to the Gray property?

19 A Yeah. That was the only way you could get to it because
20 it wasn't a way to get from the so called Lindler property
21 because if you tried to go down the powerline, it was gullies
22 probably 30 or 40 foot deep. Wasn't no way you could get from
23 the Lindler property to the Gray property.

24 Q So with a normal type vehicle like a pickup truck, you
25 couldn't cross the gullies to get to ---

1 A No. Not when I was hunting out there, and like I said, I
2 hadn't been out there since 2017.

3 Q Was there any other way with a vehicle to get to the Gray
4 property other than the access road?

5 A No, sir.

6 Q Okay. Who gave you permission to cross the access road to
7 get to the Gray property?

8 A Murray Gray did.

9 Q Okay. Did he ever tell you that you needed to get the
10 Dickerts' permission to cross the property?

11 A No, sir.

12 Q Were the Dickerts aware over the years that you were
13 hunting on the Gray property?

14 A Yes, sir.

15 Q Did they ever prevent you from crossing their property or
16 accused you of trespassing?

17 A No, they haven't accused me of trespassing.

18 Q Do you know if other people hunted the Gray property over
19 the years that you hunted, the property?

20 A The only person that hunted out there when I hunted was my
21 dad before he got where he couldn't go hunting no more, just me
22 and him.

23 Q Were you familiar with whether Mr. Gray ever timbered his
24 property?

25 A Yeah, he timbered it. When I was hunting, he thinned

1 it one time and then it was Mike, Michael Mills, he's a timber
2 buyer I think, he called me about wanting to go out there and
3 cruise the timber and he said that Murray had give him a key,
4 but it wouldn't work. And I said, well, you know, Mike was my
5 neighbor, I said, well, if Murray's key don't work, mine ain't
6 going to work so I think he got in touch with Murray and they
7 got the gate open and go out there, you know, to do the timber
8 thing or whatever.

9 Q So over the years at one point the lock had been changed?

10 A Yes.

11 Q But Murray gave you a new key?

12 A Yeah.

13 Q And that resolved it?

14 A Yeah.

15 Q Okay. Now, when you cross over somebody's property on a
16 right of way, even if you've got permission to cross over
17 somebody's property, are you still generally respectful of
18 other people's property?

19 A Yes, sir.

20 Q So even if you believe that you're crossing legally, you
21 still wouldn't try to do damage to somebody's property?

22 A No, sir.

23 Q Okay. And is that generally how people behaved at that
24 time, that they respected ---

25 A Yes, sir. They should have, I mean...

1 Q Were you ever aware of the Dickerts telling you that you,
2 or anybody that Murray Gray couldn't use the access road to get
3 to his property?

4 A No. I don't know anybody that was told they couldn't use
5 the access ---

6 Q They never stopped you?

7 A No, sir, they didn't stop me.

8 Q Okay. And do you believe that, you weren't sneaking onto
9 the property, were you?

10 A No.

11 Q Were you openly crossing the road to get to the property?

12 A Right, yes, sir.

13 Q And was that for a period of years since 1993, I believe
14 you said?

15 A Yes.

16 Q Is the road, I can't see Main Street from here, but are
17 you familiar with Main Street?

18 A Right.

19 Q But Main Street clearly exists, right?

20 A Right.

21 Q If you're close to Main Street, you can see it?

22 A Right.

23 Q You cannot see the Dickert road from the highway, can you?
24 The access road to the Gray property.

25 A You talking about now since ---

1 Q Well, could you see that this road ---

2 A Yeah. Back before Mr. Wise built the chicken houses you
3 could see it because there was a gate up there.

4 Q Okay.

5 A Yeah.

6 Q But it's clearly a dirt road that goes through the Gray
7 property?

8 A Right.

9 Q There's no mistake about it?

10 A Yeah, it's a road, I mean, you can drive a pickup down
11 it.

12 Q Alright. So I mean, it might not be easily visible from
13 the road, but once you're on it, it's clear what it is?

14 A Right.

15 Q Okay. And there are gates that mark the location of it?

16 A Right.

17 Q And the gates, so you'll be kind of familiar where you're
18 crossing over the Dickert property by the location of at least
19 one of the gates?

20 A Right.

21 Q Did you ever have to get the Dickerts' permission to cross
22 the property?

23 A No, sir, I didn't have to get permission.

24 Q You relied solely on Mr. Gray?

25 A Right.

1 Q And do you believe that, and he believes he had authority
2 to give you permission to get to the property?

3 MR. BREHMER: I'm going to object. He's asking what
4 somebody else believed.

5 THE COURT: And I agree with you on that, and ---

6 Q If Mr. Brehmer or Judge Kimpson have any questions, you
7 need to answer their questions too.

8 A Okay.

9 Q One last question. Your last name is Longshore?

10 A It is.

11 Q Are you any relation to Micheal Longshore?

12 A I am not.

13 Q That's just coincidental ---

14 A Yeah. We're just good buddies.

15 Q Okay.

16 MR. VERNER: Mr. Brehmer?

17 THE COURT: Thank you. Mr. Brehmer?

18 **CROSS EXAMINATION**

19 BY MR. BREHMER:

20 Q Mr. Longshore ---

21 A How are you?

22 Q --- how's Ms. Shirley doing?

23 A She's doing good.

24 Q Tell her I asked about her.

25 A I will.

1 Q Murray Gray never told you that he had a right to that
2 road, did he?

3 A He, he told me that that was a right of way that his
4 family had had for years of going on the property.

5 Q Because of their agreement with the Dickerts?

6 A I don't know about the agreement between Murray and the
7 Dickerts, I don't know anything about that.

8 Q But you knew it had, there was a gate there?

9 A Right.

10 Q And two locks on it?

11 A Right.

12 Q And you only had a key to one of them?

13 A That's right.

14 Q Okay. You didn't have any further, greater right than
15 what Murray Gray had, correct?

16 A Yeah.

17 Q You really didn't know the terms and conditions in which
18 Murray was using that road, you didn't know whether he owned
19 it, whether he had a easement for it, whether he had a
20 gentlemen's agreement for it or what? All you knew was Murray
21 said you could use it and you used it, right?

22 A Yeah. He said that was the only way to get to the
23 property, I already knew that.

24 Q Okay. But as far as once the actual terms and
25 the conditions between the Gray family and the Dickert

1 family were, you didn't know?

2 A No, I didn't, I was just going by what ---

3 Q You just wanted to hunt?

4 A Yeah. What Murray told me, that's the way you get to it
5 and that's the only, that's ---

6 Q You and Mr. Henry wanted to hunt?

7 A That's right.

8 Q That's all you did ---

9 A Yeah.

10 Q --- you went in and out in the hunting season?

11 A That's right, yeah.

12 Q And maybe a little before or a little after ---

13 A Yeah.

14 Q --- to take care of your stuff?

15 A That's right.

16 Q And now, you hadn't been there since 2017, correct?

17 A Yeah. And that's an estimate, 2017. I hadn't been out
18 there since Mr. Brown started hunting or whatever.

19 Q But from 1993 to 2017, you never had a cross word with the
20 Dickerts, did you?

21 A I never had a cross word with Mr. Johnnie or Kyle, but it
22 was some speculations about I tore their road up one time. And
23 you've known me all my life, I never, you know, back talked Mr.
24 Johnnie, but I ain't the one that done it.

25 Q Okay.

1 A I mean, I know what company done it because I seen it, you
2 know.

3 Q Okay. But you didn't?

4 A No, no.

5 Q Okay. And you didn't really know what the terms and
6 conditions of the use of the road was, for example, when
7 somebody came in their logging, you didn't know what they were
8 supposed to do when they left, correct?

9 A No, I didn't know what...

10 Q And you were just a tenant, right?

11 A Yeah. I was just going out there to deer hunt ---

12 Q I understand.

13 A --- just using the road to go deer hunting.

14 Q Thank you, Terry.

15 A Alright.

16 Q Good to see you.

17 A Good seeing you.

18 THE COURT: Thank you. Mr. Verner, anything
19 further?

20 MR. VERNER: Just briefly, just ---

21 THE COURT: Very briefly, please.

22 **REDIRECT EXAMINATION**

23 BY MR. VERNER:

24 Q Mr. Brehmer asked you, the only time you ever really had a
25 cross word with the Dickerts is this one time they got angry at

1 you because they thought that you had damaged the road on the
2 property?

3 A Yeah.

4 Q Are we talking about the Gray easement access?

5 A Yeah, the Gray easement, yeah.

6 Q Who do you believe actually had caused the damage?

7 A Santee Cooper.

8 Q Okay. And they were also using the road to timber

9 ---

10 A No. They was tending to the power line.

11 Q Okay. So the only time other than maybe trivial stuff
12 that you ever really had a disagreement with the Dickerts was
13 one time they got angry at you because they thought that you
14 had done excessive damage ---

15 A Well, the way that come about, Mr. Johnnie was shooting
16 doves at Mr. Harold Pitts' and me and my daddy was, and daddy
17 says you need to talk to Mr. Johnnie about, you know, that
18 road, you know, going back in there because one time we went
19 back there and it was a different lock on it, I couldn't get
20 in, and Mr. Johnnie said, you tore my road up, I didn't say no
21 more or nothing about it, so...

22 Q Were you denied access to the road after that?

23 A No.

24 Q Okay.

25 A I wasn't.

1 Q Thank you, Mr. Longshore.

2 MR. VERNER: Mr. Brehmer?

3 MR. BREHMER: Nothing.

4 THE COURT: Thank you. May the witness be ---

5 MR. VERNER: He's also here by subpoena, Judge, but I
6 will release him, he's welcome to stay unless Mr. Brehmer ---

7 THE COURT: Thank you, sir.

8 MR. LONGSHORE: Thank you.

9 THE COURT: Thank you, sir.

10 MR. VERNER: And I call Mike Longshore.

11 CLERK: Place your left hand on the Bible, raise your
12 right. Do you solemnly swear or affirm that the testimony you
13 give this Court will be the truth, the whole truth, and nothing
14 but the truth so help you God?

15 MR. LONGSHORE: I do.

16 CLERK: Please have a seat and state your name for
17 the record.

18 MR. LONGSHORE: My name is Thomas Michael
19 Longshore.

20 **DIRECT EXAMINATION**

21 BY MR. VERNER:

22 Q Hey, Mr. Longshore. What county do you live in?

23 A Newberry County.

24 Q Now, you're no relation to the infamous Mr. Longshore that
25 just testified a second ago?

1 A Actually, he's a little bit wrong, we're distant, distant,
2 you know, it's not close.

3 Q Well, he said you're good buddies too, is that
4 fair?

5 A Yeah. I grew up with him.

6 Q But in fairness, you think you're distant cousins?

7 A Probably seventh, eighth cousins, something like that, so
8 you know, that's way down the line.

9 Q The, are you familiar with the property we've been talking
10 about today?

11 A Yes.

12 Q And can I ask you what you do for a living?

13 A Poultry farmer.

14 Q So how are you familiar with the property that we've been
15 talking about in this case?

16 A I bought it from Mike Wise in 2019.

17 Q The property where the chicken farms are?

18 A Yeah. It was a chicken farm.

19 Q Okay. So you are now the current owner of the property
20 where the chicken coups are?

21 A Yes.

22 Q Okay. The, are you familiar with the Dickerts as your
23 neighbors?

24 A Yes.

25 Q How long have you known the Dickerts?

1 A Pretty much ever since I've been in Newberry. Didn't know
2 them personally, you know, but I knew of them. My wife works
3 at a restaurant, and she's waited on them a lot, so I got to
4 know them better through that.

5 Q Okay. The, and are you familiar with the Murray Gray
6 property?

7 A Not, not really. I knew it was back there, but I didn't
8 know anything about it.

9 Q Okay. Are you familiar with the access road through the
10 Gray property?

11 A Honestly, I bought the farm for a business, and I walked
12 over there one time and saw the road and that's it. I turned
13 around and went back to my truck, and that's it. I don't know
14 anything about it.

15 Q And how many years have you actually owned your property?

16 A Five years.

17 Q Okay. So if, if I needed to go to the Gray property, how,
18 and I was on Old Whitmire Highway, how, what would be the first
19 property when I left the highway? How would I get to the Gray
20 property?

21 A Honestly, I don't know anything other than the fact that
22 Mike was letting them come through right by my office to get
23 there, that's all I know.

24 Q And then is there a gate on the edge of your property
25 between your property and the Dickert property?

1 A I think there was, but I'm not, you know, I walked back
2 there one time since I bought it, and I don't remember whether
3 there, I'm thinking there was a gate but I'm not sure.

4 Q Are you familiar with the road that goes to the Gray
5 property?

6 A Yeah.

7 Q Have you ever been on it before?

8 A No.

9 Q Okay. But is it clearly visible as a road?

10 A Honestly, I told you, I walked out of my office right
11 across the way, looked at it and turned around and went back
12 and I have not been down the road at all.

13 Q Well, my question is is it clearly a road?

14 A It looked like a road, yeah, from what I saw, yeah.

15 Q And how often, you've owned the property about five years?

16 A Not quite five years, it's close. I think in October or
17 November it will be five.

18 Q Were you familiar with if the Gray property was locked?

19 A No.

20 Q Okay. Well, you do know where the gate is or used to be
21 to the timber access road?

22 A Yeah.

23 Q Okay. Have you seen people using that road since you've
24 owned the property or...

25 A Yes. It's very few though.

1 Q Okay. But occasionally people will cross over into it
2 from time to time?

3 A The only reason I knew it because sometimes there would be
4 a truck or car parked right there at my office. And I felt
5 like they were back in there, I didn't know.

6 Q And I believe you have acquired ownership of the poultry
7 farm and that includes responsibility for all requirements for
8 the boundaries?

9 A Yeah. DHEC, when Mike built the farm, he had a lot of
10 issues with the neighbors out there, they did not want that
11 farm to be there. And so DHEC put a lot of stipulations on
12 things around there.

13 Q Okay. Thank you. If Mr. Brehmer has any questions or
14 Judge Kimpson.

15 THE COURT: Yes, sir. Cross examination.

16 **CROSS EXAMINATION**

17 BY MR. BREHMER:

18 Q Good morning, Mr. Longshore.

19 A Hey.

20 Q You don't know a thing in the world about what the Gray
21 family's agreement was and Mr. Dickert's agreement was about
22 that road, do you?

23 A No.

24 Q And you don't have any relevant information about the road
25 prior to 2019?

1 A I don't know, I just, no, I know nothing.

2 Q Nothing?

3 A Nothing.

4 Q Thank you, Mr. Longshore. Oh, who's your best neighbor?

5 A You're one of them.

6 Q Okay. Thank you.

7 THE COURT: Good answer, sir. Anything further?

8 MR. VERNER: No questions, Your Honor.

9 THE COURT: Sir, thank you very much. May he be
10 excused?

11 MR. VERNER: He is also under subpoena, you're free
12 to stay, you're free to go my friend, unless Mr. Brehmer has
13 different ideas for you.

14 MR. BREHMER: No.

15 THE COURT: Thank you very much, sir.

16 MR. VERNER: Your Honor, I call Mr. Donnie Brown.

17 THE COURT: Mr. Brown. How are you today, sir?

18 MR. BROWN: Good, Your Honor.

19 THE COURT: Good. Please be sworn in.

20 CLERK: Raise your right hand. Do you solemnly swear
21 or affirm that the testimony you give this Court will be the
22 truth, the whole truth, and nothing but the truth so help you
23 God?

24 MR. BROWN: I do.

25 CLERK: Please have a seat. State your name

1 for the record.

2 MR. BROWN: Donald A. Brown.

3 **DIRECT EXAMINATION**

4 BY MR. VERNER:

5 Q Mr. Brown, where do you live? What county do you live in?

6 A Newberry County.

7 Q Are you from Newberry?

8 A Yes, sir.

9 Q Okay. And you know the Dickerts?

10 A Yes, sir.

11 Q And how long have you known the Dickerts?

12 A All my life.

13 Q Okay. You are currently the owner of 96 acres ---

14 A Correct.

15 Q --- in the Maybinton part of Newberry County?

16 A Correct.

17 MR. VERNER: I'll introduce the deed where he bought

18 it if you have any objection.

19 MR. BREHMER: Okay.

20 Q Do you remember when you purchased the property?

21 A I put it under contract October 20th, 2020.

22 Q Okay.

23 MR. VERNER: And I believe this is Plaintiff's 3,

24 Your Honor, is it 3? And Mr. Brehmer has agreed this is

25 Plaintiff's 3, Your Honor.

1 THE COURT: For the record, I hear no objection from
2 Mr. Brehmer?

3 MR. BREHMER: No objection.

4 THE COURT: So if you'll introduce it.

5 Q Is this the deed where you purchased the property from the
6 Gray family?

7 A Yes, sir.

8 Q Okay. I think that's dated October of 2022, give it to
9 the Judge.

10 A Okay.

11 THE COURT: Thank you. And for the record,
12 Plaintiff's Exhibit 3 is admitted by consent of the parties.

13 (Whereupon a deed was submitted as Plaintiff's Exhibit
14 Number 3 for identification and entered into evidence.)

15 Q The, who did you largely negotiate the purchase of the
16 property from?

17 A Through Murray and his daughter and son-in-law.

18 Q Okay. Now, you understood it was actually the daughter at
19 the time you purchased it owned the property?

20 A Correct.

21 Q But it had been given to her by her father, Murray?

22 A Correct.

23 Q And he participated in meeting with you and ---

24 A Correct.

25 Q How did you become familiar with this particular property?

1 A The company that I own or work for was helping Murray Gray
2 manage his properties and this is one of the properties that we
3 started helping him with in 2012 or '13.

4 Q So Mr. Gray owns several properties in Newberry?

5 A Yes.

6 Q And in fact, he's, his family has been in the timber
7 business for generations?

8 A Yes, sir.

9 Q Okay. So how long did you, when did you start managing
10 this property for him?

11 A Like I said, around 2012 and '13 was when we first started
12 accessing the property.

13 Q Okay. And by managing it, would that just be the timber
14 for timber harvesting or would that be for other purposes, too?

15 A It was solely for timber.

16 Q Okay. Is that the first time that you had been on the
17 property, 2012 was the first time?

18 A Yes, sir.

19 Q And that was because the company you were working for at
20 that time had agreed to contract with him to manage the timber?

21 A Correct.

22 Q Okay. The, how did you get to the property?

23 A You came through the entrance to some chicken houses

24 ---

25 Q Well, start from the highway.

1 A Okay. We came down Old Whitmire Highway, we turned into
2 the entrance to the chicken houses, we went about a hundred
3 yards, and then we turned right through a bumper strip of woods
4 and continued through Dickert property to the power line to
5 Murray Gray's tract.

6 Q Were you aware at the time that you had started managing
7 this property for Murray Gray that you had to cross over a
8 portion of the Dickert property to get to his property?

9 A Yes.

10 Q Okay. And was there a gate that marked the beginning of
11 the Dickert property?

12 A Then, no.

13 Q Okay. In 2012 there was no gate?

14 A No, sir.

15 Q And what's the condition of the road that crosses the
16 Dickert property? What does it look like?

17 A It's just a woods road, it looked like it had been there a
18 long time, it looked like it was just used to access the
19 property.

20 Q Well, I mean, is a wood road just where you see the two
21 tracks of the tires or is it a little bit more?

22 A No. It was, it was a well-defined road through the
23 woods.

24 Q Like bulldozer and scraped out or ---

25 A Yeah, it's been bulldozed, a bulldozed road.

1 Q Alright. So it's not just some tracks of tires going
2 through the woods, it's an actually bulldozed constructed road?

3 A A bulldozed developed road, yes, sir.

4 Q Okay. Did you ever, did Mr. Gray ever tell you that you
5 needed the Dickerts' property, permission to get to his
6 property?

7 A No, sir.

8 Q Did the, how often would you go to the property while you
9 were managing it for the Grays?

10 A Once or twice a year at the most, it just wasn't much
11 activity for us to do when we started managing it.

12 Q Okay. Just check on it and make sure there's no disease
13 or fires or anything like that?

14 A (Nonverbal response).

15 Q Is there any way to get to the Gray property other than
16 the entrance from Old Whitmire Highway across the Wise slash
17 Longshore property?

18 A No, sir.

19 Q Across the Dickert stretch?

20 A No, sir. Because there's gullies that separate the
21 property, they're so deep you can't cross them, and you got
22 forest service on the back. There's just no other, and the
23 Dickerts surrounded on one side, so there's no other entrance.

24 Q And that's the way you've accessed it since 2012?

25 A Correct.

1 Q Okay. The, did you ever timber harvest the property for
2 Mr. Gray?

3 A He contracted with Timber Resources to cut the wood, and
4 we cut the wood and then over the next couple of years we
5 herbicide, site prepped and then replanted the property for
6 him.

7 Q Okay. And that would require the use of timber trucks and
8 stuff like that?

9 A Yes, sir. He was also part of a government program
10 where we improved his road systems and, with bulldozers and
11 trackhoses to fulfill his contract with the government subsidy
12 program.

13 Q Did you do any work on the easement road, the access road
14 to get to his property?

15 A We did. After we timbered it, Mr. Dickert said it was
16 holding water in a few places and then we went back in with a
17 dozer and worked the road up again. But we, when we left that
18 road, that road was in good shape, but somehow it was damaged
19 when I did go check it, however, we didn't do it, but we did
20 pay for dozier work to come in and rework that road.

21 Q Okay. And is that, when you timber property, do you have
22 to cross over other people's property, or even the landowner's
23 property, you'll typically try to put roads back in the same
24 condition?

25 A Correct.

1 Q Did the Dickerts ever prevent you from, over the years, of
2 accessing the Gray property? Until this lawsuit?

3 A No, sir.

4 Q Okay. Were they aware that you were on that property?

5 A Yes, sir.

6 Q The Gray property? Did you ever also hunt the Gray
7 property?

8 A Yes, sir. I started hunting the property in 2017.

9 Q Was anybody else hunting the property?

10 A No, sir.

11 Q Just you? And that was part of, part of what you did was
12 manage it for timber, but you also did recreational hunting?

13 A That's correct.

14 Q Did you make improvements to hunt the property?

15 A Yes, sir.

16 Q Okay. What primarily is the use of the Dickert property
17 beside the Gray property?

18 A Timber management.

19 Q Okay. Do they also hunt the property?

20 A Yes, sir.

21 Q Okay. And then you bought the Gray, how did you come
22 about buying the Gray property?

23 A It just came to negotiations, and we had a meeting, and we
24 signed a contract.

25 Q Just they asked you if you wanted to buy or did you ---

1 A I approached them.

2 Q How much did you buy the 96 acres for?

3 A I gave them \$15,000.00 if I'm not mistaken.

4 Q Okay. And have you made any improvements to the Gray
5 property?

6 A A tremendous amount.

7 Q What have you done to the Gray property?

8 A I have spent about \$25,000.00 putting a road system all
9 the way around the property and through the property for
10 hunting and access and to follow through with some more
11 government programs to help with prescribed fire and wildlife.

12 Q Putting in fire breaks to prevent forest fires?

13 A Yes, sir.

14 Q So since you've owned it, you put in about \$25,000.00 of
15 infrastructure?

16 A Originally.

17 Q Okay. Have you also done work on the access road that
18 crosses the Dickert tract?

19 A I did after they agreed to give me an easement.

20 Q Okay. You've been mindful that access road does cross
21 over the Dickert property?

22 A Yes.

23 Q Have you tried being respectful of their property?

24 A Very.

25 Q In getting to your property?

1 A Yes.

2 Q Is it fair to say they were a little bit unhappy, that
3 they had wanted to buy that property ---

4 MR. BREHMER: Objection, Your Honor, that's
5 speculation.

6 THE COURT: Unless you can tell me why he's not
7 speculating.

8 MR. VERNER: Well, because I've got printouts of text
9 messages, but I'll, I guess it's, I'll move on, Judge.

10 THE COURT: Good enough.

11 Q Had you had problems with the Dickerts until you bought
12 the property?

13 A No, sir.

14 Q And you've been on the property since 2012?

15 A Yes, sir.

16 Q But at some point, you and the Dickerts have now had a
17 dispute about the ownership of the right of way?

18 A Yes, sir.

19 Q What happened that you believe, felt that you needed to
20 file this action to establish the easement?

21 A Well, I bought the property in October of '20 and ---

22 Q October of '22?

23 A October of 2020 and I did a lot of improvements to it and
24 the summer of '21, 2021, I guess they found out that I bought
25 the property and then they put a gate up in that buffer between

1 the entrance to the Longshores' and the road going through the
2 Dickerts' that I had been using and wouldn't let me access the
3 property anymore. So I was locked out from the summer of '21
4 until the summer of '23. So I was locked out for, I had been
5 locked out for over two years, and ---

6 THE COURT: I'm sorry, over how many years?

7 MR. BROWN: Two.

8 THE COURT: Two, okay, thank you.

9 A A total of two years, so we have been in this disagreement
10 about access that long, since I was locked out the summer of
11 '21. So I have not had access to get equipment into my
12 property since.

13 Q So you ---

14 A And then this past, in the summer of '23 ---

15 Q Well, let me back up. So you felt you had to file a
16 lawsuit to get access to the easement?

17 A Yes, sir.

18 Q And you filed that in April 17 of 2022?

19 A Correct.

20 Q And that was about how long after they locked you out of
21 the property and installed the gate?

22 A Well, a year.

23 Q Okay. Did you try to work things out prior to filing the
24 lawsuit with them?

25 A Yes, it was unsuccessful.

1 Q Okay. Is there any way to get to the 96 acres without the
2 access road?

3 A There is not. There's no way you can come through the
4 chicken houses because of DHEC government regulations due to
5 biological hazards to the chicken houses. And Kings Creek
6 surrounds it on the back side, which is a tremendous deep
7 creek, and then US Forest Service touches me on the other side
8 which is on the other side of Kings Creek and then the
9 Dickerts.

10 Q Has the location of the access road changed since 2012?

11 A No, sir.

12 Q And I know you don't go every day, but have you been using
13 it continuously since you started managing this property?

14 A I was until they put the gate up.

15 Q Okay. And that was at the permission of Mr. Gray?

16 A Yes.

17 Q He's the one that authorized you to use the road?

18 A Correct.

19 Q Did anybody ever try to prevent you until you filed this
20 lawsuit ---

21 A No.

22 Q --- or until you bought the property or leased the
23 property?

24 A No, sir.

25 Q Did anybody ever say you were trespassing?

1 A No, sir.

2 Q Were the Dickerts aware over the years that you had been
3 on the property, on the Gray property?

4 A Yes, sir.

5 Q Were they aware that you had timbered the property for Mr.
6 Gray?

7 A Yes.

8 Q Now, did you have some, I believe you said you might have
9 had some dispute about the condition of the road after the
10 timbering?

11 A Yes, sir. Well, after Mr. Johnnie spoke with me and
12 said the road is in bad shape and I told him I would look into
13 it.

14 Q And you fixed it?

15 A And eventually I got a dozier in there and reworked the
16 road.

17 Q The, but he never stopped the trucks because of
18 trespassing?

19 A No, sir.

20 Q But he was unhappy with the right of way and the
21 damage?

22 A Correct.

23 Q Okay. Do you believe you have a right to use that
24 easement to get to your property?

25 A Yes.

1 Q Has anybody ever told you, either the Dickerts or anybody
2 else, that you need permission from the Dickerts to use that
3 access road?

4 A No, sir.

5 Q Have the Wises ever or Mr. Longshore ever try to stop you
6 from entering their property?

7 A No, sir.

8 Q Until you filed this, until you bought the property and
9 filed this lawsuit, you've had continuous, uninterrupted access
10 ----

11 A Yes.

12 Q --- to the Gray property? And your use of the property
13 would have been with the knowledge of the Dickerts?

14 A Yes, sir.

15 Q Okay. Now, subsequently, Mr. Brehmer, I, you and the
16 Dickerts, and maybe other people did meet at the property after
17 this lawsuit had been filed?

18 MR. BREHMER: I'm going to object, Your Honor, to
19 this line of questioning.

20 THE COURT: Yes, sir.

21 MR. BREHMER: This doesn't directly deal with the
22 matter in controversy before the Court that's pled, it's
23 irrelevant ---

24 MR. VERNER: This would be, Judge, on the issue of
25 the settlement. I would ask him to offer some evidence about

1 what he did as far as the summons, and it's nonjury, so we
2 would ask the Court to take it for the limited purpose of
3 whether there was a settlement in this case.

4 THE COURT: And I'm going to do it for that purpose.
5 Mr. Brehmer, I certainly understand your objection, it's
6 overruled. I do want to hear this because, and again, I kind
7 of committed that I was going to do so in the beginning. Yes,
8 sir?

9 MR. BREHMER: So that I don't have to object to every
10 question, can I have a continuing objection regarding any and
11 all settlement compromise questions?

12 THE COURT: Yes, sir.

13 MR. VERNER: I have no objection to Mr. Brehmer being
14 protected fully on any question.

15 MR. BREHMER: I would ask the Court for a brief
16 recess because I have correspondence that I want to print out
17 and question the witness on because that was not a matter that
18 was pled, it was not a matter before the Court. And it's a
19 matter that I have documentation on my computer as to the terms
20 and conditions, and I want to make sure that the Court's aware
21 as to how the Plaintiff did not comply.

22 MR. VERNER: Well, I think I made, let me hand you,
23 I'm going to hand you ---

24 MR. BREHMER: I don't want what he has, I want what I
25 have.

1 MR. VERNER: I have no objection.

2 THE COURT: That's fine. We will work all that out.
3 Now, Judge Griffith needs to leave at a certain point, so I'm
4 going to advise you that I'm going to hear the rest of the
5 case.

6 MR. VERNER: And it might be, I'm very close to the
7 end of this witness, it might be let me get to the end of the
8 questions and then break before Mr. Brehmer does his cross?

9 MR. BREHMER: That'd be fine.

10 THE COURT: That's fine. Please continue.

11 Q We did, after you filed this lawsuit, the lawyers and the
12 parties met at the property to try to reach some kind of
13 amicable resolution?

14 A After many, many months.

15 Q And the Dickerts were kind enough to meet us on the
16 property?

17 A Correct.

18 Q Did you reach an agreement as to all contested issues in
19 this case?

20 A Mr. Johnnie and Mr. Brehmer ---

21 Q Well, my question's yes or no?

22 A Oh, yes.

23 Q Okay. What was the agreement that everybody agreed to?

24 A They would give me the easement from Old Whitmire Highway
25 for, to go through to push a new road through their property on

1 the very edge against the property line to tie on to the
2 preexisting road that we've always used. I had to pay for
3 everything, I had to meet with the Department of
4 Transportation, I had to put the pipes in, you know, legally, I
5 had to do all the work, I had to pay for everything. And I was
6 to put up a gate or something to keep people from coming in and
7 out of the property. And I did everything that they asked
8 before it was over with.

9 Q So the agreement was basically everybody wanted a platted
10 out right of way to be exactly where it was ---

11 A I had to get it surveyed and, yep.

12 Q And that the Dickerts wanted to be satisfied that the road
13 had been professionally put in?

14 A Correct.

15 Q Okay.

16 MR. VERNER: I'll offer this as a Court's Exhibit,
17 Judge. This is the plat of the easement.

18 MR. BREHMER: Same objection.

19 MR. VERNER: I would offer, Judge, the platted as a
20 Court's Exhibit.

21 THE COURT: That's fine.

22 Q Is this the recorded ---

23 A Yes, it is.

24 Q Okay. And who paid for this?

25 A I did.

1 MR. VERNER: 4?

2 THE COURT: Court's Exhibit 2.

3 MR. VERNER: Court's Exhibit 2.

4 THE COURT: And for the record, we're recognizing
5 Court's Exhibit 2 which is a plat. What's the date on the
6 plat? Or is there a title on the plat?

7 MR. VERNER: It is, it's an access easement survey
8 for Donald Brown, Judge, and I'll ---

9 THE COURT: That's enough, that's fine.

10 MR. VERNER: And it was recorded in deed book 2154 at
11 190 on March 31st, 2023.

12 THE COURT: That's fine, thank you.

13 (Whereupon a plat was submitted as Court's Exhibit Number
14 2 for identification and entered into evidence.)

15 Q Now, is there, what is the difference between this survey
16 easement and what's actually on the property?

17 A The difference is that was surveyed out with the new road
18 going from the Dickerts' road to Old Whitmire Highway.

19 Q So the only change is really that ---

20 A The hundred yard stretch right there.

21 Q Okay. The Old Whitmire Highway which is in the top
22 lefthand corner?

23 A Correct.

24 Q We're no longer entering from the Wise or the Longshore
25 property?

1 A No, sir.

2 Q But we've agreed to run a new road along the property line

3 ---

4 A And it's connecting with the old entrance.

5 Q And about a hundred yards in it connects with what the
6 road that's already ---

7 A The previous road, correct.

8 Q Has the road been constructed?

9 A Yes, sir.

10 Q How much did it cost you?

11 A I got, let's see, it cost about \$1,200.00 to get it
12 mulched in ---

13 Q Let me do it this way.

14 A Between five and \$6,000.00.

15 Q This is the --

16 MR. VERNER: The document I just handed you, Mr.
17 Brehmer, I would offer this as Court's Exhibit 3.

18 MR. BREHMER: I would object.

19 THE COURT: Objection's ---

20 MR. BREHMER: We served discovery in this case, these
21 documents have never been produced, revealed, or shown until
22 today. So you know, this is, one, it's irrelevant, two, it's
23 prejudicial, there's no way to verify that any of this stuff is
24 true or correct. And it violates about every rule of evidence
25 we have. So I would object.

1 THE COURT: The objection's so noted. Mr. Verner,
2 have you produced any invoices to support those figures?

3 MR. VERNER: I, these are the invoices, Judge ---

4 THE COURT: Okay.

5 MR. VERNER: --- these are copies of the receipts
6 paid.

7 THE COURT: That's fine.

8 MR. VERNER: And the first page is just a summary of
9 the records. But all of the invoices are ---

10 THE COURT: That's fine.

11 MR. VERNER: --- attached to this.

12 THE COURT: I'm going to allow it as a Court
13 Exhibit.

14 MR. VERNER: This is Court's what? 3. But Judge,
15 these will be the invoices on just whether there was a
16 settlement or not.

17 Q You've got the receipts from where you paid about
18 \$5,490.00 to put the road in there?

19 A Yes.

20 Q Okay. And you got all the receipts attached ---

21 A Yes.

22 Q --- to it? Okay.

23 THE COURT: Thank you.

24 MR. BREHMER: Your Honor, I would ask that the Court
25 get on the record Mr. Verner's response because he never

1 responded to your, the Court's question as to whether he'd ever
2 produced these.

3 MR. VERNER: Well, I will, I'll explain that, Judge.
4 The, in July of 2023, Mr. Brehmer and I both reported to the
5 Court that we had resolved the case.

6 THE COURT: Yes, sir.

7 MR. VERNER: So I was, from July of 2023, I was under
8 the understanding that we had resolved the case. So the, we
9 were only on the issue of fulfilling the settlement agreements,
10 but I was no longer looking at the case from a we're going into
11 Court prospectively. In January of this year is when Mr.
12 Brehmer notified me that he believed that Mr. Brown had
13 violated the terms of the settlement agreement, there was some
14 kind of hunting dispute between multiple people were out there
15 at one time. So until January of this year, I was under the
16 assumption that the case had been resolved. And in fact, that
17 was the representation we had made to the Court.

18 THE COURT: But since January, you have not provided
19 these invoices to Mr. Brehmer?

20 MR. VERNER: Well, I did, I explained several times
21 to Mr. Brehmer that my position was that we had resolved the
22 case by agreement. He had filed a motion at some point to
23 challenge the agreement, but it was withdrawn. My last
24 communications prior to this hearing with Mr. Brehmer was he
25 recommended somebody for mediation ---

1 MR. BREHMER: I did not.

2 THE COURT: One second, please. I'm going to let you
3 respond. We've got to move on, please finish.

4 MR. VERNER: If he disagrees with that, Judge, I'll
5 let him speak, but that's where I thought we were last.

6 MR. BREHMER: That's not correct. I've never seen
7 discovery before today. He called me and said hey, we got a
8 mandatory mediation, I said well, just pick somebody, it's not
9 going to do any good, okay? So no, I didn't call him
10 soliciting him. But no, I have never seen these documents
11 prior to today.

12 MR. VERNER: I don't dispute that.

13 THE COURT: Alright.

14 MR. VERNER: But my last communication with Mr.
15 Brehmer was I asked him who he wanted as a mediator and until
16 this case hit the docket, I was still under the impression we
17 were going to mediate it. But I've always informed Mr. Brehmer
18 that I thought we had an agreement. In fact, we had a hearing
19 scheduled that was withdrawn by Mr. Brehmer on that matter.
20 And I've introduced through this witness all I intend to
21 introduce as far as the settlement agreement, Judge.

22 THE COURT: That's good.

23 Q Have you fulfilled what's required of you to resolve this
24 case?

25 A Yes, I did.

1 Q You're asking this Court to find that there is a
2 restrictive easement over the Dickert property to your property
3 now?

4 A Correct.

5 Q In the same location that you're understanding that
6 easement has always existed?

7 A Correct.

8 Q You've been using that easement continuously since you've
9 been on the property?

10 A Correct.

11 Q Openly?

12 A Correct.

13 Q Where people would see you using it?

14 A (Nonverbal response).

15 Q With the awareness of the Dickerts?

16 A Correct.

17 Q And you've been using it since your ownership and since
18 managing the property with the understanding that you had a
19 right to access the property?

20 A Correct.

21 Q Okay. If Mr. Brehmer has any, well, and since you
22 installed the road, the Dickerts have installed another gate
23 on the property pretty much at the side of the highway
24 blocking you from getting into the property with the new
25 roadway?

1 A Correct. I put up a cable across the entrance on a
2 Thursday, went out of town for the weekend and when I came back
3 on a Monday, the Dickerts had put up a bigger gate really close
4 to the road in front of mine.

5 Q And it's fair to say that you had a history with the
6 Dickerts about they had a guest hunting the property and that
7 you didn't, you were not aware of that?

8 A I'm not sure if it was guest or who it was, but I was not
9 aware that anyone was hunting the property the day of the
10 hunting dispute. But I was on my own property, I never crossed
11 on to their property.

12 Q If Mr. Brehmer or Judge Kimpson have any questions.

13 THE COURT: Mr. Brehmer, do you need ---

14 MR. BREHMER: I would request an opportunity for a
15 brief break ---

16 THE COURT: Yes, sir.

17 MR. BREHMER: --- and hopefully I can access somebody
18 that has an email that I can email the documents that I would
19 like on the computer, if I can email them to Ms. Folk, send
20 them to you?

21 CLERK: You can send them to me.

22 THE COURT: That will be fine. So let's, I don't
23 know how long this is going to take, but let's take 15 minutes
24 and reassess then.

25 (Off the record.)

1 THE COURT: Before we get started, were you able to
2 get the documents you needed.

3 MR. BREHMER: Yes.

4 THE COURT: Okay.

5 MR. BREHMER: And for the Court record, Your Honor,
6 we have marked as Defendant's Exhibit 6, 7, 8, and 9, and the
7 Plaintiff has stipulated, so we would move 6, 7, Defendant's 6,
8 7, and 8 ---

9 THE COURT: Are we back on the record yet?

10 COURT REPORTER: Yes, sir.

11 THE COURT: Okay. Please continue.

12 MR. BREHMER: We would move Defendant's 6, 7, 8, and
13 9 into evidence.

14 THE COURT: And it's my understanding it's without
15 objection, so those are admitted into evidence.

16 MR. VERNER: I haven't stipulated, but I'm not
17 objecting, they are into evidence, yes.

18 THE COURT: Yes, sir. Those exhibits are in
19 evidence.

20 (Whereupon letters were submitted as Defendant's Exhibit
21 Numbers 6, 7, 8, and 9 for identification and entered into
22 evidence.)

23 **CROSS EXAMINATION**

24 BY MR. BREHMER:

25 Q Mr. Brown, when did you start working for the Gray

1 family or your company start working for the Gray family? What
2 year?

3 A Around 2009.

4 Q 2009. And at that time, what was the name of the company?

5 A Timber Resources, Incorporated.

6 Q Okay. And what was the subject of the Timber Resources,
7 Incorporated business plan?

8 A We helped manage properties for private landowners for
9 timber management and wildlife.

10 Q So y'all thin the property, clear cut the property,
11 reforest the property, apply the herbicides, make
12 recommendations, thinning, clearcutting, stuff like that
13 ---

14 A Yes, sir.

15 Q --- timber management, correct?

16 A Correct.

17 Q And that was, what year did you start working for Murray?

18 A 2009.

19 Q 2009. Alright. Now, you were never party to any
20 agreement with Murray or Johnnie Dickert or any of their
21 ancestry, were you?

22 A No, sir.

23 Q Okay. So you have no knowledge about what the term and
24 conditions of the road usage was prior to 2009, do you?

25 A No, sir.

1 Q Okay. Alright. And when you first came to that property
2 in 2009 was before Michael Wise had brought the property from
3 Johnnie Dickert, adjoining it, correct?

4 A I actually probably didn't come on that property until
5 2012, and Michael Wise owned the property adjacent to the
6 Dickerts.

7 Q Okay. So you've changed your testimony, it was not 2009,
8 it was 2012?

9 A 2012 I managed Murray's property but not this piece of
10 property.

11 Q Okay. Let's talk about the relevant piece of property.
12 You first became familiar with the relevant piece of property
13 in ---

14 A 2012.

15 Q --- 2012? 2012. Okay. 12 years ago?

16 A Correct.

17 Q Correct?

18 A Correct.

19 Q Okay. And prior to 2012, you had no knowledge about the
20 terms and conditions of the road usage on the property,
21 correct?

22 A Correct.

23 Q Alright. And now, now, and you purchased the property
24 from Murray Gray's daughter, correct?

25 A Correct.

1 Q Okay. Now --

2 MR. BREHMER: Can I see the exhibits, Your Honor?

3 Q And who was your closing lawyer?

4 A Mr. Verner.

5 Q Yeah. It's right here on page 3, Mr. Verner, correct?

6 A Correct.

7 Q So you would have had a title search to the property prior
8 to that time before you paid this money for it, wouldn't you?

9 A I don't remember having a title search done.

10 Q Okay. So you know what a title search is, don't you?

11 A Yes.

12 Q Okay. And you knew that all the claims for ownership or
13 interest in the property would be of record in the Newberry
14 County Clerk's Office, correct?

15 A Yes, sir.

16 Q Okay. And you did nothing to search whether there was an
17 easement allowing access to the property or not, correct?

18 A Correct. I just went off of what I was told.

19 Q Okay. But you're an experienced timberman, that was your
20 business, and you were experienced in land transactions,
21 weren't you?

22 A Yes.

23 Q And you bought this property without searching whether
24 there was access, correct?

25 A I did.

1 Q Okay. So you assumed all responsibility for buying the
2 property without access, did you not?

3 A Like I said, I went along with what I was told from the
4 landowners. There was only one access to the property and
5 Murray said that was it.

6 Q Yeah. But, okay. But you also heard earlier here today
7 say that yes, that is it, but it's because we had a gentlemen's
8 ---

9 MR. VERNER: Your Honor, respectfully, it's improper
10 to ask one witness to testify as to what another witness
11 testifies, it's pitting witnesses. I object to one witness is
12 not allowed to testify about the testimony of a different
13 witness.

14 THE COURT: And Mr. Brehmer, I think he's right
15 ---

16 MR. BREHMER: Okay.

17 THE COURT: --- but ---

18 Q But you knew, or you didn't take the time or the
19 initiative to bother as to whether, to find out whether if the
20 access was by permission or by some other means, correct?

21 A I was told that was the access by the landowner.

22 Q Okay. But you didn't find out whether it was by
23 permission or some other means is my question, Mr. Brown,
24 please answer my question.

25 A No.

1 Q Good. Okay. Now, you initiated this action, did you not?
2 In April of 2022?

3 A I did.

4 Q Okay. And you received an offer to resolve it, did you
5 not? Immediately, right?

6 A What kind of offer?

7 Q Okay. Is it not true, well, let's get the exact dates and
8 the timeframe correct. Your summons and complaint is dated
9 April 12th, 2022, is it not? The date's on the lefthand side,
10 on the righthand side, down right here.

11 A Yes.

12 Q That's the date that it was filed in the Court, correct?

13 A Correct.

14 Q I'll show you what's been placed into evidence as
15 Defendant's Exhibit Number 6. That is a letter of offer and
16 compromise to you that I forwarded to your lawyer, is it not?

17 A Yes, it is.

18 Q Would you please read that into the record, sir?

19 A Dear Charles, I have been retained to represent the
20 Dickert family. Please call me next week to discuss a
21 resolution to the case. The Dickerts dispute that the
22 Plaintiff has an easement across the Dickert property into the
23 Plaintiff's property. However, the Dickerts would be willing
24 to consider deeding a 15 foot easement to the Plaintiff if the
25 Plaintiff will gravel the road three inch stone from the

1 Dickerts' property line to the Plaintiff's property line along
2 the road surface. And agree the Plaintiff has equal
3 responsibility for the maintenance and care of the easement
4 which will be extinguished if the Plaintiffs abandon their
5 obligations to participate equally in the maintenance and care
6 of the easement. Please discuss the same with your client and
7 give me a call.

8 Q Okay. Okay. So within a couple days of you serving
9 Johnnie and Kyle and Rachel Dickert with your lawsuit, they
10 extended an olive branch to you, didn't they?

11 A They extended a very expensive resolution.

12 Q Okay. Okay. Now, if, and you countered in saying I need
13 more than a 15 foot, I need a 20 foot, correct?

14 A I do not recall.

15 Q Okay. I show you exhibit number 7 which is reiterating
16 their offer deciding to extend it from 15 feet to 20 feet, did
17 we not?

18 A Yes.

19 Q Okay. And it has the same conditions, does it
20 not?

21 A Yes, sir.

22 Q Okay. So you've always known what the Dickerts'
23 conditions are, correct?

24 A I did, but why should I put ---

25 Q That's not my question.

1 A --- gravel down on a road that should be mine in the first
2 place.

3 Q Okay. Now, and I show you what's been marked as
4 Defendant's Exhibit Number 8 which is a prompting for you to
5 follow up on it and get your part done, correct?

6 A This reads please let me know when the surveyor can come
7 to the property and I'll make arrangements to be there. I want
8 to get this matter concluded as soon as possible.

9 Q Yep. We wanted to end it with you, okay? Now, let's just
10 get, you had it surveyed, correct?

11 A I did.

12 Q You never graveled it, did you?

13 A I did put gravel on it, yes, sir, there's gravel on it,
14 I've got pictures showing gravel.

15 Q Okay. Show me in this exhibit that I objected to where
16 you paved for gravel.

17 A Show me the receipts and I will. I do not have a receipt
18 for the gravel.

19 Q Okay. So now you don't have the receipt for the
20 gravel?

21 A And it's not included in the ---

22 Q Okay.

23 A --- costs that I've got added up either.

24 Q It's not ---

25 A But I've got pictures of the gravel.

1 Q Now, how long have you been knowing you were coming here?
2 This case was filed in April of '22, it is now July of 2022.
3 The offer was made within 30 days of you filing your case, so
4 you've had 26 months.

5 A You and Mr. Johnnie did not give me access to the property
6 for an easement until this past summer.

7 Q Okay. Now, now, you got no proof of gravel, second thing
8 is, where's your receipt for the gate?

9 A I put up a cable and I've got pictures of the cable ---

10 Q Okay.

11 A --- and I've got proof of paying to have the cable put up.

12 Q Okay. We can agree there's no gate there that you
13 installed?

14 A I didn't put a gate up, I put a cable up.

15 Q Okay. What did the offer from Mr. Dickert say? It
16 required a gate, did it not?

17 A A cable keeps anyone from going in just like a gate.

18 Q The cable, the offer was a gate, was it not, Mr. Brown?
19 Did you not read the offer letter that said, required a gate?

20 A No. I didn't realize I had to put up a gate instead of a
21 cable.

22 Q Okay.

23 A I mean, I understood I had to put up something to keep
24 people from ---

25 Q No, sir.

1 A --- coming in and out.

2 Q Mr. Brown ---

3 THE COURT: Mr. Brehmer, don't argue with him. I've
4 got the point you're making.

5 Q The point that I'm making, Mr. Brown, is you did just what
6 you wanted to. You didn't follow the terms and conditions of
7 the agreement, you got what you wanted and then you cut every
8 corner possible. So yeah, Mr. Dickert's been nice enough to go
9 along with me, but am I going to do what he wants, no, I ain't
10 putting down no gravel because they a thousand dollars a load,
11 I ain't putting up no gate because they charge \$150.00 for a 20
12 foot gate. You did just what you wanted, you didn't follow the
13 agreement, did you?

14 A I did.

15 Q Okay. You don't have a gate, do you?

16 A I did not put up a gate.

17 Q You don't have proof of gravel, do you?

18 A Yes, I do.

19 Q Okay. You haven't offered it in this case, have
20 you?

21 A My attorney has not yet.

22 Q Okay. And you were told in our meeting is that if you
23 respect us, we'll respect you, correct?

24 A And I said the same thing, yes.

25 Q But yet, yet you didn't honor the majority of

1 the terms of the agreement, you honored just the portion of it
2 that you wanted to, didn't you?

3 A I told you I spent time with DOT, I told you I had it
4 surveyed, I had a mulching machine go in there, I had a
5 bulldozer go in there, I had rock delivered and I put up cable.

6 Q Okay. So you bought this agreement without checking out
7 whether it was landlocked, okay, we agree to that, correct?

8 A Correct.

9 Q Okay. Then when you find out it's landlocked and you
10 don't have access, you sue the man that's got access,
11 correct?

12 A Because it was a access.

13 Q Okay. Is that correct?

14 A Correct.

15 Q Okay. And then when the man that's got access is kind
16 enough to try to work with you, you don't do what he asked,
17 correct?

18 A I spent almost \$6,000.00 doing what he requested and then
19 he locked me out after I did all the work.

20 Q Okay. Because you didn't fulfill what he asked you to do,
21 correct?

22 A If he wanted me to put up a gate instead of a cable, I
23 would have put up a gate.

24 Q Okay. Well, do you have trouble understanding the written
25 language?

1 A In the timber business and in logging roads, a cable
2 prevents people from access just as much as a gate does.

3 Q Okay. So never mind, no need to argue with you about
4 that. Now, you brought up a very interesting point, you said
5 Kings Creek borders your property, correct?

6 A Correct.

7 Q And you say that the creek keeps you from getting to your
8 property, does it not, from the backside?

9 A And the adjoining landowners.

10 Q Okay. Now, it's a common timber practice to cross creeks,
11 isn't it?

12 A Not with log trucks.

13 Q Okay. They do it every day.

14 A Not with log trucks.

15 Q Okay. Okay. You don't drive a log truck, do you?

16 A No. I contract with loggers ---

17 Q Okay.

18 A --- to drive log trucks.

19 Q Alright. Put pipe in creek beds, can't you?

20 A Not this deep.

21 Q No, you've got an excuse for everything, don't you?

22 A It's a major water shed, it overflows banks, and it's
23 about twenty something feet deep.

24 Q Gotcha. But your reason for putting the pipe in is
25 because it'll be expensive?

1 A You can't put a pipe in this creek, it will wash out and
2 it's a inevitable stream, the corps of engineers wouldn't allow
3 you.

4 Q Yes, sir. Alright. Now, and this other access is from
5 other pieces of property, is it not?

6 A No, sir.

7 Q Okay. And you've actually gone through Mr. Longshore's
8 property to get there, have you not?

9 A Only with the truck, but I can't get to my property
10 because of another huge ravine.

11 Q Okay. That you could easily grade and make access?

12 A I don't think you can because it's too wide and too deep
13 also.

14 Q Okay. Thank you.

15 A You're welcome.

16 THE COURT: Sir, any redirect, brief redirect?

17 MR. VERNER: One with the Court's indulgence, Your
18 Honor. That's a Court's exhibit, Judge, I'm going to offer,
19 I'm assuming Mr. Brehmer's objecting, but I don't know.

20 MR. BREHMER: No, I'm not objecting.

21 MR. VERNER: It's a Court's exhibit, I don't know the
22 next number, Judge.

23 **REDIRECT EXAMINATION**

24 BY MR. VERNER:

25 Q Mr. Brown, can you identify what this is a photograph of?

1 A It's a photograph of cable that I put up, gravel on the
2 road at the entrance, and the gate that the Dickerts put up
3 after I put up my cable with my truck parked sideways on it
4 because I could not get my truck out of the road because there
5 wasn't enough room between the gate and the highway.

6 Q Is this a fair --

7 MR. VERNER: I'm going to hand it up, Your Honor.

8 Q Is this a fair and accurate photograph, when was this
9 photograph taken?

10 A Two days ago.

11 Q Is that a fair and accurate depiction of the point where
12 the road that you just saw intersect with highway, the Old
13 Whitmire Highway?

14 A Correct.

15 Q And again, I guess, a pertinent feature is that's your
16 truck?

17 A Yes.

18 Q Okay. And the truck is right next to a gate?

19 A Yes.

20 Q And that's the gate that the Dickerts put up?

21 A Correct.

22 Q And that is almost beside the road, the highway?

23 A Yes.

24 Q And then the red line is the cable, the chain that you put
25 across the property?

1 A Yes.

2 Q And is the road graveled?

3 A It's graveled with grass in it it's been there so long.

4 THE COURT: Thank you, thank you, sir, I appreciate
5 that.

6 Q The, were you ---

7 THE COURT: This is Court's Exhibit 4.

8 (Whereupon photos were submitted as Court's Exhibit Number
9 4 for identification and entered into evidence.)

10 Q Were you ever told that the cable was insufficient, that
11 they wanted a ---

12 A No.

13 Q Okay. But that chain cable would prevent vehicles from
14 entering into that road?

15 MR. BREHMER: Objection, Your Honor.

16 THE COURT: Yes, sir, grounds?

17 MR. BREHMER: Speculation.

18 MR. VERNER: I'll rephrase it, Your Honor.

19 THE COURT: That's fine, please.

20 Q The point of the chain across the road is to prevent
21 vehicles from entering the road?

22 A Correct.

23 Q Okay. So you believe that you have fulfilled the
24 requirements of the settlement agreement?

25 A Yes.

1 Q If the Dickerts had said that there were some issues here
2 and there that they needed you to resolve or fix, you're still
3 willing to do that?

4 A Yes.

5 Q Okay. If Mr. Brehmer or Judge Kimpson have any more
6 follow up.

7 THE COURT: I don't have any further questions. Mr.
8 Brehmer?

9 MR. BREHMER: None.

10 THE COURT: Now, parties, may the witness step
11 down?

12 MR. VERNER: That is the Plaintiff's case ---

13 THE COURT: Okay.

14 MR. VERNER: --- Your Honor. Just, we are moving for
15 a directed verdict. The, don't expect the Court to grant it,
16 but we are going ahead and moving for a directed verdict based
17 on the testimony already presented to the Court both on the
18 issue of whether there was a settlement, and on the merits of
19 the underlying case as well. You can step down, Mr. Brown.

20 THE COURT: Mr. Brehmer, before I rule, you have two
21 minutes to argue about this directed verdict motion. Yes, sir,
22 you may step, thank you for your testimony, sir.

23 MR. BREHMER: I think the Court should grant a
24 directed verdict, just not for him.

25 THE COURT: I understand that.

1 MR. BREHMER: I mean, he hasn't proven anything. I
2 have the cases here, all the most recent authority on
3 prescriptive easements. Unfortunately for myself, I've been
4 involved in a lot of them.

5 THE COURT: Mr. Brehmer, let me stop you. I'm not
6 going to grant his motion ---

7 MR. BREHMER: Okay.

8 THE COURT: --- for directed verdict, but I'm not,
9 you haven't made one formally yet.

10 MR. BREHMER: I am. I'm going to make one.

11 THE COURT: You're making it now? Please make it
12 now.

13 MR. BREHMER: I do have a motion for a directed
14 verdict, Your Honor. I move for a directed verdict based off
15 the fact that the Plaintiff has only pled a claim for
16 prescriptive easement. The South Carolina Supreme Court in the
17 case of Braswell versus Amick which is a South Carolina Court
18 of Appeals decision decided on March the 27th of this year from
19 a case that was tried in January of 2020 ---

20 THE COURT: Do you have a copy of that ---

21 MR. BREHMER: I do.

22 THE COURT: --- for me or the citation?

23 MR. BREHMER: I have a copy of all this for both
24 sides. Did I give you yours, Charles?

25 MR. VERNER: You did. And I see Mr. Brehmer

1 is the attorney, so he's apparently familiar with it because I
2 see his name in the opinion, Judge, so I think he's familiar
3 with the facts.

4 MR. BREHMER: I'm familiar with the facts. And ---

5 THE COURT: Does that mean I don't need to read the
6 case?

7 MR. BREHMER: I have also brought it, brought the
8 case of Bundy versus Shirley which was a Kershaw County case
9 decided by the Supreme Court on a prescriptive easement. The
10 reason that I'm providing it to the Court is it is factually
11 similar to this case in that it involves a gate and a use of a
12 road, and it discusses how a prescriptive easement and
13 permissive use basically cuts the legs out from under a
14 prescriptive easement claim. And I also brought the case of
15 Fuller versus Aarons Partners for the purpose of saying that,
16 for the legal proposition that if you don't search the chain of
17 title and you don't check it out, it's your baby. And I have
18 basically given those positions to the Court. Now, under the
19 Bundy case which really is probably the holding in this case,
20 there is no open apparent claim of ownership or ownership of
21 right in the chain of title prior to the Plaintiff's purchase,
22 okay? And let me explain that to you. Murray Gray sat right
23 up here and testified that it was his understanding that yes,
24 the property of which the road claimed on had always been in
25 the ownership chain of title of the Dickert family or their

1 associated businesses in that group. And that it was his
2 understanding that there was a gentlemen's agreement, agreement
3 between the parties that the Gray family who was in a sister
4 type industry could use the road with permission, okay? And
5 that the permission was granted from the Dickert family, and
6 that there was never in the chain of title a claim of ownership
7 or ownership right, that it was always known that this was a
8 permissive claim, okay? So by that, the Plaintiff cannot make
9 out the elements of a prescriptive easement that they would be
10 required to to show an open obvious notorious, AKA hostile
11 claim of ownership of right, okay? Because all the testimony
12 in this case is that everyone in the chain of title prior to
13 the Plaintiff's purchase in 2020 were using it with the
14 Dickerts' permission. And they knew it was permission and that
15 they never claimed any type of ownership right or interest in
16 the property, okay? And that the permission was revocable,
17 okay? You heard Mr. Gray, I asked him specifically on that
18 issue. All these other gentlemen, Terry Longshore, he doesn't
19 know diddle, okay? Mike Longshore, he says I know nothing
20 about this, nothing, okay? And Michael Wise, I know nothing
21 prior to the time that I purchased it from Mr. Dickert. So the
22 only relevant, and then I asked the Plaintiff in and of
23 himself, what do you know, I don't know anything. So it hinges
24 on Murray Gray's testimony. Murray Gray's testimony does not
25 make out the elements for a prescriptive claim of easement,

1 okay? Therefore, the Plaintiff's claim for prescriptive claim
2 of easement should be dismissed as a matter of law. And I am
3 asking that the Court dismiss his claim because he has failed
4 to prove the elements of such.

5 THE COURT: Mr. Verner, what say you?

6 MR. VERNER: Briefly, Your Honor.

7 THE COURT: I'm sorry Mr. Brehmer, are you through
8 with your ---

9 MR. BREHMER: Yes, yes.

10 THE COURT: Thank you. Yes, sir?

11 THE COURT: Again, anything Mr. Brehmer indicated
12 about the chain of title, we agree that there's nothing in the
13 chain of title, we've done examinations on the property, that's
14 why we brought the lawsuit for the prescriptive easement
15 because we don't have chain of title proof. The, if the
16 easement is not an express easement in the chain of title then
17 it's got to be a restrictive easement, so that's why we're not
18 alleging that there is a chain of title easement. The elements
19 of a prescriptive easement, Judge, are only three elements, and
20 I am going by the case of Dukes versus Farrell, a York County
21 case from 2017 to establish the, that there are three elements
22 of a prescriptive easement. It has to be continued and
23 uninterrupted use and enjoyment for a period of 20 years,
24 that's the first element, use of it for 20 years. Now, one
25 property owner stands in the shoes of a prior property owner,

1 so if my client has only owned it for five years, but he
2 legally bought it from somebody else, then he stands in the
3 shoes of Murray Gray who has owned it since the '50s or his
4 family. The, you have to, element number two is it has to be
5 able to be identified. In this case, Judge, we've shown the
6 evidence, it's platted, it's in the aerials, everybody has
7 testified so far that it's clearly visible, the road is the
8 road, that there's no mistaking it from other parts of the
9 property, so it's clearly identified. It's platted, it's in
10 the aerial and it's clearly obvious that that's a road. And
11 then the third element, Judge, which is really where this case
12 is going to be won or lost, if the Court doesn't find that
13 there's a settlement of course, is it has to be an adverse
14 claim of rights which is the hostility element. And as the
15 Court says, the adverse use is the same as the belief that you
16 have the right to use the property. Adverse only means that
17 you believe you have the right to use it and that the other guy
18 cannot stop you from using it, that is adverse to his rights.
19 It doesn't mean that there's actual hostility or discord. When
20 it appears that the claimant has enjoyed the easement openly,
21 continuously and uninterrupted in derogation of another's
22 rights for a period of 20 years, the use will be presumed to be
23 adverse. I think, the Court heard from several witnesses that
24 the use of the road has been there since the early '90s and
25 even before, that that's certainly the 20 years of continuous

1 use. All of these witnesses who testified, Judge, said that
2 they are just caught in the middle between both of them, they
3 like both parties, that they're neighbors and friends of both
4 witnesses, they don't have a dog in the fight, that they've
5 known the Dickerts, they've known the Browns all their lives,
6 they all said that basically we like them both. They're as
7 neutral as they can be, they all testified that the easement is
8 there. Mr. Gray is kind of a passive fella, he was, when Mr.
9 Brehmer was cross examining, he was tending to say yes, sir,
10 and no, sir, but he clearly said I believed I had the right to
11 use the road. I mean, I was certainly wanting to get along and
12 appease my neighbors, the Dickerts, and not make them angry,
13 but he said several times and the reason he testified was I
14 believed I had the right to use the road. Now, I'm certainly,
15 I'm not an aggressive guy, I'm not going to make anybody angry,
16 but he testified at his closing and in the beginning and in
17 fact another witness, Mr., the hunter testified that Mr. Gray
18 had said that we've got that family right to use that deed,
19 that property. So he did dolor to Mr. Brehmer several times,
20 and in fairness, Mr. Brehmer is a forceful advocate, and I
21 believe the witness is kind of a type B, but I do believe his
22 testimony was clear what he said I don't want to make the
23 Dickerts angry, but I do believe it's alright to use that road.
24 So the three elements, Judge, are the continuous use of 20
25 years, I don't think that that's really in dispute. That the

1 location, identity of the easement has to be clearly defined
2 for the Court, platted, photographed, unimposed where it is,
3 photographs of where the road is, and once the road is used for
4 20 years the presumption shifts to the Defendant to show that
5 it's not an adverse. And at this point, other than cross
6 examination questions, the Defendant hasn't offered any
7 evidence that it's, merely a permissive use of it. He's only
8 suggested that it could be in cross examination but hasn't
9 actually offered that testimony. I suppose it will be coming,
10 but that will be the first of it that we haven't heard yet in
11 this stage of the case. And just finally, I think that's
12 unlikely based on the facts that these are two logging
13 companies that the timber people owned the property. They're
14 not family where you can use it as my niece or you're somebody
15 who's like actual warmth of my heart or love and affection.
16 These are two logging companies that it would be a little bit
17 inconsistent that they had a relationship where certainly they
18 want to get along, but they're competitors. So I think just
19 the totality of circumstances, would two rival companies have
20 this permissive type use of property, or if they did believe it
21 existed, this is not like two family members, I'm giving
22 permission to my niece or my nephew, these are two rival
23 companies so it would be a little bit inconsistent. So I do
24 believe, Judge, that we've met the threshold for the Court to
25 carry the case forward.

1 THE COURT: Alright. Gentlemen, I've got to read
2 these cases, so I'd like to, let me start with this, Mr.
3 Brehmer, when I get to your case, or if I get to it, how long
4 do you think it'll last?

5 MR. BREHMER: 30, 45 minutes, less than an hour.

6 MR. VERNER: And Judge, my proposal is if the Court
7 does deny the directed verdict for both sides, the, I would
8 propose going ahead and letting Mr. Brehmer present his case
9 and then having the parties present proposed orders for the
10 Court, Mr. Brehmer and the Plaintiff.

11 THE COURT: And I've talked about, I, sometime ago
12 thought that the better route would be proposed orders, if we
13 get to that point. Now, let me kind of talk logistics just for
14 a second. We've been going quite a while.

15 MR. BREHMER: Yeah.

16 THE COURT: Do we need a lunch break?

17 MR. BREHMER: I would like one.

18 MR. VERNER: It is 1:20, Judge, the, I always defer
19 to the, my senior associate over there on what his
20 recommendations are, but we're at the convenience of the Court,
21 Judge.

22 MR. BREHMER: One, I like to eat. Two, the Court
23 personnel and staff ---

24 THE COURT: That's ---

25 MR. BREHMER: --- I mean, needs a reprieve.

1 THE COURT: With all due respect, I'm concerned about
2 the staff.

3 MR. BREHMER: Me, too, I mean, I'm not worried about
4 me, but these nice ladies don't need to be tolerated with us
5 over lunch.

6 THE COURT: Let me ---

7 MR. VERNER: I've never seen them stand up in 25
8 years and put my position before the Court, maybe it has, but I
9 miss them standing up for me in front of the Court ---

10 THE COURT: Let's take an hour and I will try to find
11 a place where I can read these cases. Let me see, what time do
12 we have?

13 MR. VERNER: It is ---

14 THE COURT: Let's just say it's 1:30, it's not quite
15 1:30, let's come back at 2:30, I'll rule and then if the case
16 needs to go forward we can finish up in the afternoon. Will
17 that be enough for you all? Okay. Good enough. Let's adjourn
18 for lunch and we will be back at about 2:30.

19 MR VERNER: Judge, may I ---

20 THE COURT: Yes, sir.

21 MR. VERNER: --- print out for the Court if the
22 Court's going to read this case, it's just one case, the case I
23 cited ---

24 THE COURT: I'm glad you, what is the, I, I, you
25 don't have to print it out.

1 MR. VERNER: I have it printed ---

2 THE COURT: Okay.

3 MR. VERNER: I'll give the Court this copy, but I
4 will photocopy it for Mr. Brehmer.

5 MR. BREHMER: I'd like to read it.

6 MR. VERNER: But the case I cited is Dukes versus
7 Farrell, a 2017 case, and, and I'll photocopy it right here in
8 the Courtroom for Mr. Brehmer.

9 THE COURT: Good enough, that'll be perfect. Give me
10 the cite, I may just pull it up on West Law.

11 MR. VERNER: 2017-UP-155.

12 THE COURT: Alright. It's unpublished, okay.

13 MR. VERNER: Correct.

14 THE COURT: Good enough. I would like that copy
15 though. Let's adjourn until 2:30, hopefully that'll give
16 everybody enough time and we'll go from there.

17 (Off the record.)

18 THE COURT: It looks like everybody is back. For the
19 record, of course, I have already considered and denied the
20 Plaintiff's directed verdict motion. Mr. Brehmer, your motion
21 is close, but I'm going to deny that as well. And I'd like you
22 just to go forward, I know that you'll probably raise it again.

23 MR. BREHMER: Yes, sir. We're ready to proceed then?

24 THE COURT: Yes, sir.

25 MR. BREHMER: We call Mr. Johnnie Dickert, please.

1 THE COURT: How are you today, sir? If you would
2 please be sworn in.

3 CLERK: If you'll place your left hand on the Bible
4 and raise your right. Do you solemnly swear or affirm that the
5 testimony you give this Court will be the truth, the whole
6 truth, and nothing but the truth so help you God?

7 MR. DICKERT: I do.

8 CLERK: Please have a seat and state your name for
9 the record.

10 MR. DICKERT: My name's Johnnie Dickert.

11 MR. BREHMER: Okay.

12 **DIRECT EXAMINATION**

13 BY MR. BREHMER:

14 Q Where do you live, Mr. Dickert?

15 A Old Whitmire Highway in Newberry, South Carolina.

16 Q Okay. How long you been a Newberry County resident?

17 A All my life.

18 Q Okay. Can you pull that a little closer to you? There
19 you go. Now, what was your association with Dickert Lumber
20 Company?

21 A Well, I grew up in Dickert Lumber Company all my life. My
22 dad and his brother owned Dickert Lumber Company and I
23 inherited it.

24 Q Okay. Now, are you familiar with the matter and
25 controversy that we're here about today?

1 A Yes, I am.

2 Q The property that you own --

3 MR. BREHMER: Can I see that paper, please?

4 THE COURT: Yes, sir. Let me give you this one. Let
5 me give you all of the original exhibits.

6 Q Mr. Johnnie, are you familiar with this property?

7 A Yes, I am.

8 Q Okay. This says Plaintiff's Exhibit 1 for the record.
9 This is Old Whitmire Highway?

10 A Right.

11 Q Okay. Now, the property that has the tax map number of
12 330-7, it consists of 158.25 acres, is that property that is
13 owned by yourself?

14 A Yes, it is.

15 Q Okay. Now, this property down here on the tax map number
16 383-13 consists of 88.53 acres. Was that property once that
17 you owned?

18 A Yes, it was.

19 Q Isn't it the property that you sold to Mr. Michael Wise?

20 A It is.

21 Q It's the same Mr. Wise that testified here this morning?

22 A Right.

23 Q And now, prior to you selling this property to Mr. Wise,
24 was there a culvert and an entryway to the property off of Old
25 Whitmire Highway?

1 A Yes, it was.

2 Q Okay. And was there a gate there?

3 A Yes, it was.

4 Q And historically did that road from the Old Whitmire
5 Highway on this tract number 383-13, had that been used as
6 access to part and portion of your property?

7 A Yes, it was.

8 Q Okay. Now, Mr. Gray's family, were you familiar with the
9 Gray family?

10 A Oh, yeah.

11 Q Murray Gray?

12 A Yes, sir.

13 Q Okay. Tell us about the relationship that Dickert Lumber
14 Company, Johnnie Dickert, Mr. John William Dickert, and Mr.
15 Earl Dickert had with the Gray Lumber Company.

16 A Well, we all sort of worked together and partnered
17 together more or less. Mr. Allen Gray was the grandfather that
18 owned Murray Lumber Company over here on Kline Street. And we
19 had Dickert Lumber Company out on 76 and we occasionally
20 swapped bundles of lumber because we wanted to finish our
21 loads, and it was just a working relationship between the two
22 lumber industries. And Mr. Murray passed it on to Sonny Gray
23 who was his son-in-law, and they eventually closed the Murray
24 Lumber Company. Of course, they had that tract of land up
25 there behind the tract that we owned, Dickert Lumber Company

1 owned. And we just had a gentlemen's relationship about ins
2 and outs of the whole property back there.

3 Q Okay. Now, you referred to a tract. Is this tract number
4 385-2, the tax map number consists of 96.1 acres?

5 A Yes.

6 Q Okay. Now, would you explain to the Court what your
7 agreement with Mr. Gray, Sr. was about the access through
8 your property to this tract.

9 A Well, any time they needed to go in and out, I was
10 thinking we had two locks on all the gates, and he had
11 permission to go in and out to visually inspect his property.
12 And at any time if they wanted to cut timber, they could
13 come out our road which was down the borderline and come
14 out on Old Whitmire Highway. It was just a gentlemen's
15 agreement between us and Mr. Gray, and Mr. Murray and all of
16 them, it's been like that ever since the early '50s I guess it
17 was.

18 Q Okay. Was it a permissive agreement between yourself?

19 A Yes.

20 Q You gave them that permission?

21 A Yes.

22 Q And your daddy gave them that permission?

23 A Yes.

24 Q Okay. And y'all had two locks, correct?

25 A That's right.

1 Q Now, what was the agreement about, say they went in there,
2 a logger was cutting property or cutting timber, damaged the
3 road, it rained, they messed up the road, what was the
4 agreement?

5 A Well, anytime they used the road for logging or whatever,
6 it was to be left the way they find it, that was our
7 gentlemen's agreement. And it was always like that. You
8 didn't cut timber but every so often to start off with, but we
9 never had any problems with them at all about that.

10 Q Okay. Did they ever, in your presence, claim that they
11 had an ownership interest or an actual legal right to use that
12 road?

13 A No.

14 Q Okay. Was it always with your permission?

15 A Yes.

16 Q Okay. Now, there's been a lot of talk in this case about
17 this being the only, and when I say the access road that
18 existed off of Old Whitmire Highway through tax map number 383-
19 13 and 330-7 back to 385-2 being the only access, does this
20 property that Mr. Brown owns which is the subject of this
21 claim, does he have access from other locations?

22 A Yes, he does.

23 Q Would you mind explaining to the Court what access Mr.
24 Brown has from other locations?

25 A Well, he can come in, whenever I sold that property

1 to Mike Wise for the chicken houses, he built the chicken
2 houses, they rerouted the easement around the edge of those
3 chicken houses back to the powerline and he can get into his
4 property by coming to that easement ---

5 Q Okay.

6 A --- it's the same easement that Mr. Lindler had, I mean,
7 both of them are right directly behind the tract that Mike Wise
8 bought from me.

9 Q Okay. So you can access it through this driveway,
10 correct?

11 A Right.

12 Q Okay.

13 THE COURT: Mr. Brehmer, I'm sorry. Trace that for
14 me.

15 MR. BREHMER: Okay. I don't have to, Your Honor,
16 it's in the Court's Exhibits or in the Defendant's Exhibits if
17 I could have those, please?

18 THE COURT: Yes, sir. Did I give you the right set?

19 MR. BREHMER: I got it.

20 Q I'm going to put up here Defendant's Exhibit Number 3,
21 okay. This is the easement that we're talking about, it's the
22 Old Whitmire Highway, I'm sorry, this is the Old Whitmire
23 Highway. Would you mind explaining to Judge Kimpson what
24 access you're talking about, is that off this road right here
25 to right here?

1 A Right.

2 Q And that would be right on Mr. Brown's property?

3 A Right.

4 Q Okay. Now, does Mr. Brown have access to other sides?

5 A Well, it's a possibility, but it's a creek back there
6 which would be the back border of that property. You can come
7 in through the forest service, he could come in through other
8 tracts that are on, that are also, have limited access to, I
9 don't know.

10 Q Sure.

11 A Coming in off of 121.

12 Q Off of 121 which is the road on the other side?

13 A That's right.

14 Q Okay. Now, Mr. Dickert, are you retired at the current
15 time?

16 A I am.

17 THE COURT: Mr. Brehmer, excuse me one second,
18 please.

19 MR. BREHMER: Sure.

20 THE COURT: I apologize. Okay. Please continue.

21 MR. BREHMER: Okay.

22 Q And you're retired from the timber industry?

23 A I am.

24 Q How many years did you spend in the timber industry?

25 A All my life.

1 Q Okay. How old are you, Mr. Dickert?

2 A 80.

3 Q Okay. So is it fair to say you've had 60, 70 years'
4 experience in the timber industry?

5 A Oh, yeah.

6 Q Did Dickert Lumber Company at one point in time integrate
7 its business and have a logging operation?

8 A We did.

9 Q Are you familiar with logging operations?

10 A I am.

11 Q Is it any trouble for a logging operation that is
12 competent, successful, and thriving to cross a creek?

13 A No.

14 Q Okay. Now, are you familiar with the topography that the
15 Plaintiff has described in this case about the creeks and
16 whatnot?

17 A Yes.

18 Q Okay. Is it possible for a logging operation to cross
19 those creek beds?

20 A Oh, yeah.

21 Q Okay. Alright. So is it your testimony that there
22 are multiple means of access for Mr. Brown to his property, is
23 it not?

24 A There's more than just one, for sure.

25 Q More than just one. More than through you, correct?

1 A Right.

2 Q Now, when Mr. Brown sued you, okay, in April of 2022, did
3 you try to be a good neighbor?

4 A I always have been.

5 Q Okay. And did you try to work with him?

6 A I did, yes.

7 Q Okay. Did Mr. Brown keep his end of the agreement?

8 A No, he didn't.

9 Q Okay. Did Mr. Brown gravel the roadway all the way with
10 three-inch stone?

11 A No.

12 Q Okay. Alright. Did he put up a gate?

13 A He did not put a gate up, he put a cable up which is more
14 less temporary for me.

15 Q Temporary. Okay. Did you eventually have to put a gate
16 up?

17 A I put the gate up, I did.

18 Q Okay. And did you block the gate on each side so somebody
19 couldn't drive around it?

20 A Right. That was another problem with the cable, it was so
21 far up the road anybody could have drove up in and around.

22 Q Okay. And in part and portion of your agreement was that
23 you respect Mr. Brown and Mr. Brown respect you?

24 A Yes.

25 Q Did he honor that term?

1 A Not fully.

2 Q Okay. And did he actually cause a problem on your
3 property in December of 2023?

4 A He did.

5 Q Okay. And is that when you said enough is enough?

6 A Right.

7 Q Okay. Now, prior to Mr. Brown filing this lawsuit against
8 you in April of 2022, okay, which would mean from the time that
9 you were a young adult to age 78, has anyone to your knowledge
10 ever claimed an ownership interest or a legal land interest in
11 this road that came from Old Whitmire Highway onto your
12 property, anyone, the Gray family or anyone?

13 A No.

14 Q Okay. Has that always been your property?

15 A Yes.

16 Q Have you always tried to work with the neighbors and let
17 them use it if they needed to?

18 A Right.

19 Q Okay. But there were limitations?

20 A Right.

21 Q Okay. Alright. And had it not been for Mr. Brown's
22 disregard for the terms and conditions of your agreement would
23 you allow him to do it?

24 A More than likely.

25 Q Okay. Alright. But as far as establishing that

1 somebody has a claim of right, what the law says is somebody
2 has to claim that they have a right, not just permission, but a
3 legal right to use the road. Has anybody other than Mr. Brown
4 ever claimed that?

5 A No.

6 Q Okay. And to the best of your knowledge, has anyone's use
7 of it been without your permission?

8 A Not that I know of.

9 Q And have you always maintained a gate across the entryway
10 of your property?

11 A Always.

12 Q Okay. Alright. And has it always been locked?

13 A Always.

14 Q Alright. Now, is your land forestland?

15 A Do what?

16 Q Forestland ---

17 A Yes.

18 Q --- timber production?

19 A Right.

20 Q Okay. And it's always been forestland?

21 A Yes.

22 Q Okay. Alright. Now, this property, just so that the
23 record is clear, 33-30-0-07 it is titled in yours and your
24 wife's name?

25 A Right.

1 Q And your son?

2 A Right. It has timber that's roughly three or four years
3 old that was replanted. The timber that was cut off of it was
4 75 years old.

5 Q Okay.

6 A And we replanted back three or four years ago, that's all
7 we use it for is that and for my son and grandsons' hunting
8 purposes.

9 Q Recreation?

10 A Recreation.

11 Q Alright. Okay. Now, is the lock that's up there on the
12 gate, is it locked now?

13 A Oh, yeah.

14 Q Okay. Thank you, Mr. Dickert.

15 THE COURT: Before Mr. Verner, before you cross
16 examine, Mr. Brehmer, you had given me a complete set of those
17 exhibits ---

18 MR. BREHMER: Sure.

19 THE COURT: --- did I give them back to you by any
20 ---

21 MR. BREHMER: You did.

22 THE COURT: But did I give you my copies by
23 mistake?

24 MR. BREHMER: 2, 3, ---

25 COURT REPORTER: I think I threw them in

1 the trash by mistake, I'm so sorry, I thought we were finished
2 with them, I am so sorry.

3 THE COURT: That's quite alright.

4 COURT REPORTER: They're right here, I just folded
5 them up.

6 THE COURT: That's fine. If you'll fish them
7 out.

8 COURT REPORTER: I am so sorry.

9 THE COURT: Stop apologizing.

10 COURT REPORTER: I'm so embarrassed, but it's a copy
11 of everything that's already in evidence and I thought we were
12 finished, I'm so sorry.

13 THE COURT: That's quite alright. Mr. Brehmer, I'd
14 like you to -- does anybody have a highlighter?

15 CLERK: Yes, sir.

16 THE COURT: I want you to, I think you were using
17 Defendant's 3. You told me, you had the witness to outline the
18 alternative, potentially another option for accessing ---

19 MR. BREHMER: Sure.

20 THE COURT: Would you, this is Defendant's 3, would
21 you have him mark in a highlighter, and certainly show that to
22 Mr. Verner, what ---

23 MR. BREHMER: Would you highlight the access from the
24 Old Whitmire Highway through there?

25 THE COURT: Mr. Brehmer, the entryway in dispute

1 and he testified that there's an alternative way of getting
2 there.

3 MR. BREHMER: Okay. Alright.

4 Q Johnnie --

5 MR. BREHMER: So that the Court's record is clear,
6 just so that the record's clear, you want me to mark this as
7 3A?

8 THE COURT: Actually, I'm going to make it a Court
9 Exhibit ---

10 MR. BREHMER: Okay.

11 THE COURT: --- since we're marking on it.

12 MR. BREHMER: Okay. Alright.

13 Q Would you mind stating for the record, Mr. Dickert, what
14 you just highlighted?

15 A Whenever we, Abraham, Abraham ---

16 Q Surveyors?

17 A --- Surveyors did this survey for me, the original line
18 went right through the middle of those chicken houses before
19 they were built ---

20 THE COURT: Yes, sir.

21 A --- so they marked this other easement down the edge of
22 the loading docks back to the power line and that's the one
23 that I just marked.

24 Q Okay.

25 THE COURT: And is that what's in dispute here ---

1 MR. BREHMER: No.

2 THE COURT: --- or that's the ---

3 MR. BREHMER: That's the alternative.

4 THE COURT: Alternative, okay. Mr. Brehmer, if you
5 don't mind, just write the word alternative next to that for
6 me.

7 MR. VERNER: And Your Honor, I don't have any
8 objection to it being marked as 3A, it's non-jury and they can
9 mark on an exhibit and then reintroduce it, so I don't think it
10 needs to be a Court Exhibit, it can just be marked as a trial
11 exhibit.

12 THE COURT: That will be fine.

13 MR. VERNER: If the Court, however the Court wants
14 to, I've got no objection however the Court wants to mark it.

15 THE COURT: It's probably better if we do it as
16 Defendant's Exhibit 3A. And Mr. Brehmer, once we finish,
17 please allow Mr. Verner to see that.

18 MR. BREHMER: Mr. Verner?

19 MR. VERNER: Is this the one that shows, okay, I got
20 it.

21 THE COURT: Mr. Brehmer, if you don't mind, have him
22 mark the entryway in dispute as well.

23 MR. VERNER: Maybe put a red X ---

24 MR. BREHMER: Well, that's not shown, show him where
25 the entryway that was built.

1 MR. DICKERT: That's in dispute right now?

2 THE COURT: Yes, sir.

3 MR. BREHMER: Yes, sir.

4 MR. DICKERT: Right here at the edge of the line.

5 THE COURT: And so, sir, that would go how far?

6 MR. BREHMER: Take the highlighter.

7 THE COURT: Thank you, sir. Mr. Brehmer, if you
8 would just mark that, make sure Mr. Verner has seen that.
9 Thank you very much, I didn't mean to delay your cross, thank
10 you so much.

11 MR. VERNER: That's alright.

12 MR. BREHMER: 3A.

13 (Whereupon highlighted diagram was submitted as
14 Defendant's Exhibit 3A for identification.)

15 Q And just for clarification, Mr. Dickert, just so that the
16 record is clear, this Exhibit 3A has a dash line in the middle
17 of this right of way that you just highlighted that goes
18 through what appears to be the middle of the chicken structure,
19 correct?

20 A Right.

21 Q Was that the original easement you gave to the Lindlers in
22 2003?

23 A It was.

24 Q Okay. Would you please, well, highlight, that is the same
25 easement that is memorialized by Defendant's Exhibit 5?

1 A That's right.

2 Q Okay. Because is that where you signed it?

3 A That's my name.

4 Q Is that your signature?

5 A That's it.

6 Q Okay.

7 THE COURT: Thank you, sir.

8 MR. BREHMER: Okay.

9 Q Thank you, Mr. Dickert.

10 MR. BREHMER: Answer any questions Mr. Verner might
11 have.

12 MR. VERNER: Thank you, Your Honor.

13 THE COURT: Yes, sir, thank you.

14 MR. VERNER: May it please the Court?

15 **CROSS EXAMINATION**

16 BY MR. VERNER:

17 Q Good afternoon, Mr. Dickert. Just briefly, the easement
18 that you highlighted on the exhibit just a second ago for Mr.
19 Brehmer?

20 A (Nonverbal response).

21 Q That's an easement on a different part of your property
22 going to a different landowner, right? That's the Lindler
23 easement.

24 A Yes.

25 Q Okay. And that was, Mr. Wise deeded that when

1 the Lindlers bought the property so that they could access
2 their property. And the Lindlers are adjoining landowners of
3 the Murray Gray tract?

4 A Right.

5 Q And that easement's actually obsolete now because the
6 chicken houses have completely changed, they're right on top of
7 where that road would have been?

8 A It is, but the, the road that, the people that drew the
9 map of it, they rerouted that easement around the loading zone.

10 Q When they put the chicken coups in there, you had to adapt
11 to accommodate the Lindlers?

12 A Right.

13 Q Okay.

14 A But the road actually comes out of the power line on the
15 Brown property.

16 Q That's right. On your property, there are two large Duke
17 Power or power line right of ways crossing ---

18 A One Duke Power line and one Central Electric.

19 Q Okay.

20 A Santee Cooper, whatever you want to call it.

21 Q One reason some landowners put gates on their property is
22 to keep third parties from trespassing?

23 A Right.

24 Q Sometimes there are people who illegally hunt on your
25 property, and sometimes even more prodigiously there are people

1 who dump trash out in the country. And so just one good reason
2 that property owners keep fences up there is to keep people
3 that don't have anything to do with the property off?

4 A True.

5 Q Now, correct me if I'm wrong, Mr. Dickert, but the,
6 initially you were in the timber business with your
7 brother?

8 A No. My dad ---

9 Q I'm sorry.

10 A --- and his brother.

11 Q Did y'all do business as Dickert Brothers, though?

12 A Right.

13 Q Okay.

14 A They did, I didn't.

15 Q Okay. Now, my understanding is the Dickert Brothers
16 bought this property in 1973?

17 A Right.

18 Q Is that when you think you bought the, you got, the
19 property you own now is the property that you got from the
20 Dickert Brothers' property?

21 A It was all Dickert Brothers, well, not all of it,
22 but the Dickert Brothers owned property together and ran
23 logging crews, and they furnished logs to the mill, and
24 it was all joined together later on, I don't know what year it
25 was.

1 Q But ---

2 A Dickert Brothers was disbanded.

3 Q It wasn't incorporated but your brother and your father,
4 they ran a business called Dickert Brothers, or that's what
5 they informally called themselves?

6 A Right.

7 Q And then at some point that became Dickert Lumber
8 Company?

9 A Right.

10 Q And so Dickert Lumber Company bought out basically, or
11 took over for Dickert Brothers?

12 A Right.

13 Q And then Mr. John W. Dickert, Jr., who was that now?

14 A That was my daddy.

15 Q Okay. He got this property from Dickert Lumber Company?

16 A Right.

17 Q And then that's how it came to you?

18 A Right.

19 Q So that is the clear chain of title. Who is Ms. Phyllis
20 Shifley?

21 A My sister.

22 Q Okay. So you and your sister and baby brothers inherited
23 from your father and y'all are kind of large landowners, so
24 y'all had to kind of divvy up who got what?

25 A Right.

1 Q Okay. But either you or your dad, or your dad's company
2 have owned this property continuously since 1973?

3 A Right.

4 Q And it is 2024 now, that is 27 and 24, about 51 years
5 ---

6 A Right.

7 Q --- that you've been on this property or had some interest
8 in it?

9 A Right.

10 Q Okay. Alright. And it seems that Dickert Brothers
11 got it from Richard Newton Kennedy in 1972, '73, is
12 that part of your family or that's just the owner at that
13 time?

14 A I have no idea.

15 Q Okay. But that's part of what your dad did was he bought
16 timberland and managed it and cut it, and y'all had a lumber
17 yard at one point, didn't you?

18 A Right.

19 Q Okay.

20 A The property I thought was originally owned by Vance and
21 Wiggins Company which is a company out of North Carolina, it
22 used to be the Box Shop in Newberry, South Carolina and later
23 turned it over to Dickert Lumber Company because that's when my
24 dad and his brother bought it out in '72 or 3, somewhere along
25 in there.

1 Q Now, it seems that your father must have passed away
2 sometime around 2005?

3 A 2001.

4 Q 2001, but the estate, maybe the estate opened because of
5 all the land he owned or whatnot for a couple years to close
6 everything out?

7 A Right.

8 Q And it came to you sometime around 2005, 2006?

9 A That's right.

10 Q Okay. So you largely had it all after your father passed
11 away in 2005 and at some point you put your wife as a co-owner,
12 as a joint tenant?

13 A Right.

14 Q But y'all only own a life estate, right?

15 A That's right.

16 Q And you've given, Kyle, your son, the remainder interest -
17 --

18 A That's right.

19 Q Okay. At the time, were you part of Dickert Brothers?

20 A No.

21 Q So that really, that business only came to you by virtue
22 of your father's interest in the company?

23 A Right.

24 Q At the time that Dickert Brothers bought their property,
25 the Murray Lumber Company is Murray Gray's family,

1 right?

2 A Right.

3 Q His grandfather through his mother's side?

4 A That's right.

5 Q But were you aware that they had already owned their
6 property out there prior to the Dickert Brothers? They were
7 there before the Dickerts.

8 A I have no idea about that.

9 Q Okay. Would you agree with me that Donnie Brown, that the
10 agreement was only that Donnie was to gravel the new portion of
11 the road up until where it connected to the existing road?

12 A No. He told me he would gravel it back to the line back
13 there, to our line. And he was going to put a gate up and
14 locks, we could put locks on it, and he would abide by the
15 courtesy of fair hunting which he did not. He come riding in
16 on my grandson when he was hunting one afternoon which I didn't
17 appreciate. There's just been a range of things that he did
18 not abide by.

19 Q I guess I would say the straw that broke the camel's back
20 was there was an incident where your grandson was hunting the
21 property and you felt that Donnie had gotten too close or
22 intruded or was making too much noise that day?

23 A He did.

24 Q And that's kind of the straw that broke the camel's
25 back?

1 A I have a son and three grandsons that hunt, and I want a
2 safe environment for them to hunt, be comfortable when they go
3 out there hunting without somebody invading on them.

4 Q Close to the old Murray Gray line, y'all have a feed plot?

5 A Yes.

6 Q Now, Donnie did accommodate y'all at some point by
7 moving the road away from your feed plots to make the
8 lines further for hunting or to make it kind of make it
9 quieter?

10 A There was no distinction for any road changes or
11 anything.

12 Q Okay. So in terms of the agreement we had to settle the
13 case, what has Donnie Brown not done on the settlement
14 agreement?

15 A Well, like I said, he didn't gravel the road all the way
16 and he violated hunting rules and regulations that we had set
17 aside for the safety of our hunters, especially my son and
18 grandsons. And he did not put the gate up for several months
19 after they went up there and put the terracotta in, and I don't
20 know whether I spoke to him or he spoke to me after that and I
21 inquired about it, but anyhow, he went up there and put a cable
22 up that was probably 20 or 30 feet off the main highway that
23 anybody could drive up in there and park or go around it. And
24 I know that the gate that I put up myself is close to the
25 highway, but that was the purpose in it.

1 Q Right. But you also remember when we were meeting with
2 you Donnie said that I can't put a gate right on the highway
3 because I might have logging trucks coming through and they
4 can't stop halfway on the road to open the gates, they have to
5 at least ---

6 A I don't remember that, but it was, it was logged on
7 the Murray tract and then it was logged on the Dickert
8 Lumber Company tract at different times with those same
9 gates.

10 Q Well, except at the entranceway from the old highway would
11 have been through the Longshore property?

12 A That's right.

13 Q Okay. But you don't agree with me that the agreement was
14 only to gravel up unto where the existing right of way already
15 existed?

16 A The best to my knowledge, he told me all the way to the
17 line.

18 Q Well, I mean, that's what, your initial, when Mr. Brehmer
19 indicated that you made a counteroffer or proposal to Donnie
20 back May I think of 2022, your initial position was you wanted
21 Donnie to gravel the entire right of way. And as your lawyer
22 said, it was a thousand dollars per load of rock and Donnie
23 said he couldn't afford to do that. And that's been kind of a
24 haggling point on the case, wasn't it?

25 A Not really.

1 Q And then you're dissatisfied with the quality of the cable
2 as a gate?

3 A Right.

4 Q Okay. Did you ask Donnie or tell him that the gate was
5 unsatisfactory to you?

6 A Well, I mean, I expected a gate and there was not a gate
7 put up, so that's the reason I went there and put one up
8 myself.

9 Q I agree it's not a gate, but I think the agreement was
10 that Donnie at his own cost was going to build the road to the
11 existing right of way because there was not a road, he added
12 like a hundred yards of new road along the borderlines to reach
13 it so that Mr. Longshore's property would no longer be
14 affected, right?

15 A Well, it was right at the property line, yes.

16 Q Right. Okay. And that was really to kind of benefit
17 Mr. Longshore so people wouldn't get near the chicken
18 coops?

19 A Well, I don't know whether any problem with Mr. Longshore,
20 he said it was not a problem with him coming in where they had
21 always come in, but I think that was some of Donnie Brown's,
22 his feeling he'd rather have a gate on the right of way
23 himself.

24 Q And the agreement was ultimately that after Donnie at his
25 expense built the new road or put in the new road and tied it

1 into the existing, and there are other roads throughout your
2 property, y'all put time and effort to put roads in and hunting
3 plots on your property, there's already kind of existing series
4 of roads and fire breaks across the property. But the
5 agreement was that you were going to contact Donnie, probably
6 through your lawyer or somehow, and tell him that it had to
7 meet your satisfaction, the work that was done?

8 A Yes.

9 Q Prior to dropping the gate across the right of way, did
10 you ever give Donnie the opportunity to correct any
11 deficiencies?

12 A I think he was told that, I don't know whether it was
13 through me or my lawyer, but we were not happy with the cable
14 gate and we waited and waited, and nothing was ever done so
15 that's the reason I put the gate up myself.

16 Q But there was really no communication until, and again, I
17 wasn't there, but something happened, your grandson was unhappy
18 with the way he was treated or interfered with, and that's
19 really what prompted y'all to ---

20 A We were all unhappy about it, him not abiding by the fair
21 hunting rules and regulations that we had set forth. I mean, I
22 have that property up there for the benefit of me and my family
23 to enjoy and when somebody comes riding under your stand at
24 5:00 in the afternoon, that's not something you do at fair game
25 hunting.

1 Q Oh, I agree, I agree, I think that's fair. Would you
2 concede that the Grays have used that access road to access
3 their property for at least a period of 20 years?

4 A They would always call me whenever they had, he had
5 someone he was going to allow hunting up there, he would tell
6 me who it was, when they would be hunting and anytime they
7 wanted to thin timber or cut timber ---

8 Q I don't mean to interrupt. I'm going to ask you to
9 backtrack just briefly. Yes or no and then you can explain it.
10 But would you agree yes or no that they have been using that
11 property, the direct access road for more than 20 years?

12 A Yes.

13 Q But your position is it's by your permission?

14 A That's right.

15 Q Okay. But there's no dispute that the road has been used
16 as the right of way to the Gray property for 20 years plus?
17 It's just a question whether it's by your permission or ---

18 A It's where the old culvert and the old gate was ---

19 Q Right.

20 A --- which now is owned by Longshore.

21 Q But that, the only change to the right of way is on Mr.
22 Longshore's property. The right of way location has not
23 changed on your property. Now, I understand a settlement
24 agreement has changed it a little bit on where the entrance
25 point is, but where the access road currently exists hasn't

1 changed, the only thing that's changed is that Mr. Longshore
2 bought two acres of where it used to be?

3 A Mr. Wise did.

4 Q I'm sorry, Mr. Wise. So the actual change in location
5 of the entrance is actually now on Mr. Wise's property
6 and now Mr. Longshore's property?

7 A Yeah.

8 Q Okay. So that doesn't really affect the Dickert property
9 because that's their, they used to own but they no longer own
10 that property?

11 A Because of DHEC and the agreement that Mike Wise had with
12 them he had to come back and buy those two acres of land and do
13 away with the gate that they had always used. And then without
14 that gate there, they had no access to our road.

15 Q But where the easement goes from what is now the Longshore
16 property to the Dickert property, that is the same location.
17 The only thing that's changed is after Mr. Wise bought your two
18 acres and you were being a good neighbor to help him out, but
19 he may have moved the entrance onto his property, but where it
20 goes onto your property is still at the same point?

21 A Well, there was not an entry point there, period, until
22 Donnie wanted to put one there.

23 Q Well, you're talking about on the settlement, I'm talking
24 about where the traditional access road was.

25 A Well, it was where the Longshore property is now.

1 Q Right. Which used to be yours?

2 A Right.

3 Q But fair and square, you sold it to Mr. Longshore?

4 A Right.

5 Q Or Mr. Wise and Mr. Longshore now owns it. And
6 you're aware that the Grays may have been friends of yours, but
7 they were still in the lumber, timber business too, so they
8 would be competitors too, right?

9 A Right.

10 Q Okay. We're friendly, but we're still in the same
11 business competing for the same trophies and so there's kind of
12 a business interest to get along with your competitors. And
13 you're aware that the Gray, that that was a timber tract for
14 the Gray Company, the Murray Company, the Grays are really not
15 the family that owned it, it's really the Murrays?

16 A Right.

17 Q But they held that property as timber property?

18 A Right.

19 Q And really, the large part of it is blocked off by a creek
20 and then it's government property behind it?

21 A Right.

22 Q And it would be possible for Donnie to access the
23 property by driving down the right of way of the power line,
24 right?

25 A Yes.

1 Q In your opinion?

2 A Yes.

3 Q Okay. But that's not his right of way, that's the Duke
4 Power right of way, right?

5 A I suppose so, yeah.

6 Q And it would cross over a third party's property, too.
7 Certainly, you would have to cross over possibly the Lindler
8 property or some of the Longshore ---

9 A No. You would not have to cross the Lindler
10 property.

11 Q But he would have ---

12 A All he's got to do is drive across the power line.

13 Q Right. But he would have to get some kind of permission
14 or easement to cross over the Longshore property to get to the
15 power lines?

16 A That's between him and the Longshores.

17 Q That's right. And DHEC because of the chicken coops.
18 It's Longshore property but he's subject to possibly losing
19 business because of the ---

20 A The only thing that DHEC had involved in it was they
21 wanted a border around the chicken houses, they didn't say
22 anything about anything else.

23 Q Is it fair to say that the boundary line between your
24 property, you've got 160 acres out there, right?

25 A Right.

1 Q And the chicken coop, the 90 acres that Mr. Longshore
2 owns, there's kind of a gully that marks the natural boundary
3 between those two properties?

4 A Well, it is a wash there, but people walk, everybody goes
5 up and down that power line.

6 Q Alright. And the road kind of follows the edge of the
7 gully up through the old Gray property?

8 A I don't know about that.

9 Q Okay. Were you aware that the Grays were, that they used
10 that property for timber, but they were also using it for
11 hunting?

12 A Yeah.

13 Q And that's a fairly common practice and then when they,
14 like you, they would have third parties come hunt up there?

15 A (Nonverbal response).

16 Q And Mr. Dickert, final question, but you understand that
17 DHEC may have, you heard that Mr. Longshore and Mr. Wise were
18 required to keep boundaries or buffer zones around the chicken
19 coops?

20 A (Nonverbal response).

21 Q So you understand that DHEC would have a say in crossing
22 over that property too because of the regulations?

23 A I don't know about that.

24 Q Okay. Thank you, Mr. Dickert.

25 MR. VERNER: If Mr. Brehmer has any redirect.

1 THE COURT: Any redirect, Mr. Brehmer?

2 MR. BREHMER: Just one follow up.

3 **REDIRECT EXAMINATION**

4 BY MR. BREHMER:

5 Q Mr. Dickert, prior to Mr. Brown here, nobody ever
6 claimed a legal right to that road other than you?

7 A Right.

8 Q Okay. Murray Gray didn't, Sonnie Gray didn't, grandpa
9 Murray didn't?

10 A No.

11 Q Okay. Thank you.

12 A It was just a gentlemen's agreement on the use of that
13 road. And they always told us if they were going to thin
14 timber or cut timber or what and would let us know.

15 Q Okay. Clarify one other thing. When Mr. Terry Longshore,
16 the deer hunter was up here this morning testifying ---

17 A (Nonverbal response).

18 Q --- and he said that there was a problem, or he thought
19 there was scuttlebutt about him tearing up the road in wet
20 conditions ---

21 A True.

22 Q --- would you mind telling the Court what you told the
23 Grays about the use of that road in wet conditions?

24 A We just asked that anytime, especially during hunting
25 season whenever it was hard rains or wet conditions, try not to

1 have anybody up there because they would tear the roads up and
2 they abide by it.

3 Q Okay. So they adhered to your request?

4 A Right.

5 Q Okay. They didn't call back and say, no, old man,
6 I'm going to do what I want to because I got a legal right in
7 it?

8 A No.

9 MR. BREHMER: Thank you.

10 THE COURT: Thank you. Sir, thank you so much for
11 your testimony.

12 MR. DICKERT: Thank you.

13 MR. BREHMER: That is the Defendant's case, Your
14 Honor.

15 THE COURT: I know we've got some discussions. What
16 motions do we have?

17 MR. BREHMER: Your Honor, I am renewing my motion for
18 directed verdict. There is no issue of material fact, okay?
19 And I'm going to explain to the Court how I come to this. One,
20 the standard of proof in a prescriptive easement for the
21 Plaintiff is not by the preponderance of the evidence, it's
22 clear and convincing which means, or my understanding of what
23 that means is 75 percent or better, okay? The three elements
24 for prescriptive easement, the third of which requires that
25 there have been some claim of right that existed for at least

1 20 years prior to this by some other person that was using the
2 property with ---

3 THE COURT: Which one of those cases are you
4 referring to?

5 MR. BREHMER: I'm referring to the case of Braswell
6 versus Amick, and it says on, let's see, I think it was the
7 fifth page under the analysis which cites the Bundy versus
8 Shirley case, about midways of the page, I think it's the fifth
9 page of the opinion. The sixth page it'll be, the sixth page.

10 THE COURT: Give me one second. Sixth page?

11 MR. BREHMER: Sixth page of the opinion.

12 THE COURT: Yes, sir, I'm looking.

13 MR. BREHMER: Okay. You're with me?

14 THE COURT: Yes, sir.

15 MR. BREHMER: Middle page of that opinion, it says to
16 establish a prescriptive easement the claimant, which will be
17 the Plaintiff, must prove by clear and convincing evidence,
18 okay? That's the first point. Be continued in uninterrupted
19 use or enjoyment of the right for a period of 20 years, the
20 identity of the thing enjoyed, and the use was adverse under
21 claim and right, okay? Under this analysis, if you read on
22 through the decision, the Court went through a, basically an
23 adverse possession type of analysis that they taught us of
24 open, apparent, obvious, against the interest of the person,
25 okay? It was not with the permission, okay? It was not a

1 permissive use, okay? Now, in this particular analysis, here's
2 what we got. We got two business people in the community that
3 were co-competitors but friends, okay? They were good
4 neighbors of each other, but there was never a question, never,
5 not the first time as to who owned the property and who had
6 dominion and control of the property. And there was never a
7 claim of adverse claim of right of use of the property by the
8 Plaintiff's side, the Plaintiff has to prove that, that that
9 occurred. The first time that that ever occurred was in 2022,
10 okay? Two years ago. That well, I got a claim, well, no you
11 don't, okay? Murray Gray testified never in his life did they
12 ever claim a right to use the road. It was his understanding
13 that it was always a permissive agreement between his family
14 and the Dickerts' family that had come to a collective
15 agreement that they would use the road. Each would have his
16 own lock on the same, but they would extend courtesies to each
17 other when we going to use, or they would, it was, the courtesy
18 would be extended by Gray family to the Dickerts, hey, we got
19 to thin some timber, we're going to come out through there, the
20 Dickerts say okay, that'll be fine, just put it back like it
21 was when you got it, okay? Or when it rains three inches,
22 don't come out there with a skidder or a log truck and tear my
23 road up. There was always deference to the Dickert family,
24 there was never a question about who controlled it or whose
25 property it was and that this was a permissive use. That does

1 not arise or meet the elements of a prescriptive easement. The
2 first time there was ever a claim of a right was by the
3 Plaintiff in April of 2022, okay? And we dispute that right.
4 The Plaintiff has tried to say well, you know, there's a
5 question about whether there was permission or not. Your
6 Honor, I defy the Plaintiff in this case to show any evidence
7 prior to April of 2022 that anybody disputed that this was not
8 a permissive relationship, okay? Ever. There was never any
9 adverse claim to full fee simple ownership and title by the
10 Dickerts, nothing. And we would respectfully request that the
11 Court enter an order of judgement dismissing the Plaintiff's
12 claim with prejudice because the Plaintiff's claim has failed
13 to meet the elements that is required under the Court, South
14 Carolina Court of Appeals decision in Braswell versus Amick or
15 under the requirements of the South Carolina Supreme Court in
16 the case of Bundy versus Smith. And for all these reasons as
17 well as the reasons that I argued to the Court which I renew in
18 totality at the end of the Plaintiff's case to dismiss the
19 Plaintiff's claim with prejudice for failure to meet the
20 required elements to the standard of clear and convincing
21 evidence in this particular case. Because in all honesty, Your
22 Honor, I don't believe that the Plaintiff has submitted even a
23 scintilla of evidence that there's ever a claim of right
24 against the interests of the Defendant in any way at any point
25 prior to April of 2022. And therefore, there cannot be the 20

1 year requirement in this particular claim. For those reasons,
2 we would move for a directed verdict as to the Plaintiff's
3 claim, thank you.

4 THE COURT: Thank you, sir. Yes, sir.

5 MR. VERNER: May it please the Court, Your Honor?

6 THE COURT: Of course.

7 MR. VERNER: Mr. Brehmer. Making a claim of the
8 easement is not part of the elements of a prescriptive
9 easement, Judge. So if there was never a claim made until
10 2022, that's not what the elements of proving a prescriptive
11 easement, there was no requirement for somebody to make the
12 claim. The, so whether the claim was made 30 years ago or made
13 recently, to prove a prescriptive easement you don't have to
14 make a claim on the prescriptive easement until you are here in
15 Court.

16 THE COURT: So your interpretation of the third
17 element as outlined in Braswell, its phraseology, use is
18 adverse under claim of right. Explain your interpretation of
19 that.

20 MR. VERNER: There are three elements to prove a
21 prescriptive easement, the first is the open and notorious and
22 that is conceded that people have been using that access road
23 for 20 years. In fact, Mr. Gray testified they owned the
24 property since 1955 or longer, well before the 20 years. Open
25 means that they're not sneaking on the property, notorious

1 means that the other landowner is aware that people are using
2 that road and they have conceded 20 years. The second element
3 is that the easement has to be identifiable, and in this case,
4 Judge, it is a road that everybody has testified is clearly
5 apparent as a road, it's on the aerials, it's on plats, there's
6 no question the identity of where the easement has been
7 conceded. So the only possible defense they have is whether
8 it's a permissive right to use, permissive privilege to use the
9 property, I guess that would be a license, legally, or whether
10 it's an easement, a prescriptive easement. I represent that
11 the case I handed out and in fact, the case that Mr. Brehmer
12 handed out referring to the Supreme Court, both say that once
13 it's been established that there's been 20 years of continuous,
14 uninterrupted use of the road, the presumption shifts, that it
15 is the easement. Let me read that, that's in the case I handed
16 up which is the Supreme Court ---

17 THE COURT: And just for my own benefit, the name of
18 that case, again?

19 MR. VERNER: I handed up, Judge, the Dukes versus
20 Farrell case, but it refers to the Supreme, I believe the
21 Shirley decision of the Supreme Court ---

22 THE COURT: Yes, sir, it does.

23 MR. VERNER: As previously stated, quote, when it
24 appears that the claimant has enjoyed an easement openly,
25 notoriously, continuously, and uninterruptedly in derogation of

1 another's rights for a full period of 20 years, the use will be
2 presumed to be adverse. And that cites the Simmons, that's,
3 I'm quoting Williamson which is a State Supreme Court case.

4 THE COURT: Yes, sir.

5 MR. VERNER: Here's, and I don't mean to redefine
6 everything because again, this is a question, the Braswell case
7 that Mr. Brehmer printed up and I also represented a different
8 Braswell family in a right of way case, but the, the problem
9 with that as authority for the Court is the case, that case was
10 decided because the people claiming the easement had a lease
11 hold interest. They did not have a fee ownership of the
12 property, and the Court said you cannot use that to tack on to
13 prove your 20 years of uninterrupted use. Now, Mr. Brehmer has
14 used that because there was also a gate in it that was dropped
15 across there, but that wasn't done until the case was started.
16 But the, if you read that case, Judge, the Braswell decision,
17 the reason they ruled that way is they said the Plaintiffs
18 cannot use the lease hold, the rental right to the property to
19 tack on to the prior owner to get your 20 years. Now, if you
20 own the property, you stand in the shoes the same legal rights
21 as whoever you got the property from, and that goes back 20
22 years or however long it goes back. But in the Braswell case,
23 they were trying to tack a rental or a lease hold interest in
24 property to get their 20 years, and the Court said you don't
25 have 20 years. And in this case, it's an undisputed 20 years.

1 Judge, we had four witnesses here, all who are friendly with
2 both men, have known them all their lives, absolutely has no
3 dog in the fight, neutral witnesses as you can find and they
4 all said they believed that the Grays had the right of way to
5 use the property. Murray Gray, who's actually been on the
6 property since the late '80s, early '90s, he testified, Judge,
7 and he was aware why he was here, I mean, he knew what he was
8 testifying to. He said several times, I believe we had the
9 right to use the property. Now, he's a good neighbor, I've got
10 neighbors when I cut branches of my neighbor's tree that are
11 over on my side of the property, I will still be nice to my
12 neighbors, you know, I understand it's your tree, but it's on
13 my property, and try to, being friendly with your neighbor or,
14 you know, asking for permission when you're already going to do
15 it or you think you've got a right to do it doesn't effect your
16 right to cut the branches on your property. And Murray, on
17 several times testified I had the right to use the property.
18 And in fact, that was corroborated by Mr. Longshore's
19 testimony, when he was on the property he said, he testified
20 that what if you run into the Dickerts or they say you can't be
21 there, Murray said we've got a family right to use that
22 property, we got a right to get to our property, it's the only
23 way you can get to the property. So not only did Murray Gray
24 testify that we had an easement to the property and we've been
25 using it for more than 20 years, other hunters he was letting

1 use it. He testified he did not go to the Dickerts to get
2 their permission to let other people use the property, he
3 didn't go to the Dickerts to let other people timber the
4 property, he might notify them that somebody's going to be
5 there, but he never sought their permission to use the
6 property. The Dickerts have never stopped anybody on the
7 Gray's or made any kind of claim that they don't have rights to
8 use the property. But it's a canard, there is no requirement
9 that somebody when I'm using my easement I don't have to raise
10 my battle flag and rub it in your face I'm using your property,
11 there doesn't have to be any type of claim. There just has to
12 be the understanding or my, that I'm using this property and I
13 have the right to use this property to get to my property. But
14 you don't have to put a sign on the property saying I'm doing
15 this in adversity to your rights, you just have to use it. And
16 they used it for 20 years, it's well established where it is,
17 the only person, the only evidence this Court has that there is
18 not an easement, that it's permissive was Mr. Johnnie Dickert.
19 And he is a fine, I'm not disputing that, I do challenge, he
20 never testified when the permission was given, and I do submit,
21 Judge, he technically testified he didn't have any ownership or
22 use or control of this property until his father passed away,
23 2005. When the property was purchased in 1972, '73, it was by
24 his brother and father. So Mr. Johnnie Dickert doesn't have
25 any control or authorization or even knowledge of his property

1 until he gets it from his father in 2005. So whether that was
2 by permission or an easement, Mr. Johnnie Dickert's not in a
3 position to know, he didn't own the property until he inherited
4 it because it was his brother's property. So what, he's
5 speculating that it was by permission, but again, he didn't set
6 foot until 2005, 2006 is when he acquired it from the will of
7 his father. So he is, he's speculating that it's by permission
8 or giving his permission. So that's the only evidence they've
9 offered, Judge ---

10 THE COURT: I understand.

11 MR. VERNER: --- is from a witness who hasn't owned
12 it until 2005 as opposed to four witnesses who've been on the
13 property for 30, 40 years and testified that there is a road
14 there that they all use, we all know where it is, it goes to
15 the Gray property. Mr. Gray said several times it's our right
16 of way to the property, we understand it is on the property of
17 the Dickerts, you know, we're respectful of them, but Mr. Gray
18 said clearly, I've got a right of way to get to the property,
19 I've made representations that is a right of way to get to my
20 property. And he's had other neutral witnesses who like both
21 families, who are well familiar with the area say that the
22 hunters and the timber people all understood that it was an
23 easement and that they never had to get permission from the
24 Dickerts. And so when you weigh that against this one man's
25 testimony that they must have been doing it with my permission,

1 when he didn't come to the property until the last, since 2005.
2 So I mean, I do think that the weight of his testimony is not
3 as solid, so I do believe that the case says that presumption
4 shifts or that there, it certainly becomes after 20 years the
5 presumption that it is an easement.

6 THE COURT: And let me ask, and it may very well be
7 that you're going to say the same thing, these cases also seem
8 to suggest that where there is permission, that is inconsistent
9 with a prescriptive easement. Talk about that a little bit.
10 Can any element of permission trump the prescriptive easement?

11 MR. VERNER: Permission trumps prescriptive easement.
12 That is the only defense they have. They can't challenge it's
13 been used for 20 years, they can't establish location of it,
14 and the only legal defense they have is that it's been by
15 permission. And if it is by permission, it is a license. Now,
16 permission doesn't mean that I don't stop you from using it or
17 that we get along, permission means that they know the only way
18 to get on this property is coming to me and asking my
19 permission. Now, you don't have to do it every time, but the,
20 if you are fishing at my pond by my permission and you know
21 that I can say don't fish in my pond anymore, go away, that's a
22 license and we lose. But if you believe you have the right to
23 be fishing at my pond and you do it openly, you're openly
24 fishing in that pond, and you do it for 20 years plus then the
25 burden shifts. And in this case, Judge, just because they're

1 not fighting you doesn't mean it's by permission, it just means
2 that you get along. The, at the time these two people had
3 these properties side by side, they were competing logging
4 businesses, if 40 years ago the Dickert Logging Company said to
5 the Gray Logging Company, Murray Logging Company couldn't use
6 that property anymore does the Court think that the Murray
7 Logging Company would say you're right we can't get to the
8 property anymore, we're not going to make a claim, they're not
9 in the relationship where there would be a permissive type
10 reason. I understand I don't want to, you know, lawyers get
11 along and we're super friendly particularly in Newberry towards
12 each other, but doing things for business reasons is not the
13 same as a familial letting my mom, letting my brother do
14 things. And I do submit, and I think the Court knows that if
15 the Dickert Company had ever put a wall or a fence and said
16 Gray Murray Company could not timber or access that property,
17 we know we would be in Court 40 years ago. The rival logging
18 companies wouldn't let themselves be locked out. The Dickerts
19 never made a claim for anybody to stop using the property
20 because they knew that the Grays had the right, the Murrays had
21 the right to access the property. And they've never stopped
22 anybody from using that road until Donnie Brown bought the
23 property. And that is the first time that they've ever stopped
24 anybody from using that road, and that's a pretty good
25 indication that it's not permissive. But if the Court finds

1 that it is only by permission that the Grays or the Murrys
2 were using that property, if that's part of it, it's partly by
3 permission, but partly because we think that you got the rights
4 to do it, that's adversarial to my right and we win. So if
5 it's entirely without permission we lose. No matter how good
6 our case is, if it's entirely permissive, we lose. If it's
7 partially permissive, partially by right, we win because that
8 is the right adversarial to yours. And if the Court finds, and
9 I think in fairness, the Court can't find permissive in this
10 case just because of the weight of the evidence. You've got
11 one man who testified in 2005 that he knows it's permissive,
12 but he doesn't remember the date that he gave permission or who
13 gave permission or what the details were and he wasn't even the
14 owner, he didn't even come into this property until much, much,
15 much, decades after the people had bought the property. So I
16 mean, I think the weight of his evidence is weak when you weigh
17 the four neutral witnesses who like both sides, who don't have
18 a dog in the fight, who all testified firmly that there is an
19 easement to get to the property, so, and that with the
20 presumption shifting to them after 20 years of continuous use,
21 I don't think that they can win. I believe the Court, I
22 clerked originally with Judge Hughston and he had a case once
23 and he said alright Verner, I want you to write me an order
24 that says I find that the greater weight of the evidence of
25 such and such happened, and this was right after law school,

1 and I said Judge, you can't do that, the law requires clear and
2 convincing evidence, he looked at me and he said well then
3 write an order saying I find by clear and convincing evidence
4 that there was, so there is no, clear and convincing is
5 stronger than the greater weight of the evidence, but it's just
6 whatever the Court thinks is right. But again, that's kind of
7 a red herring issue because after 20 years the presumption
8 there is that is an easement. And there's no question, it's
9 been marked on the maps for years, it visibly present, it's an
10 improved road, there's just no question where it is, there's no
11 question who's been using it. I would ask the Court to enforce
12 the settlement agreement, Judge. If my client has any further
13 work to do to satisfy them, he'll do it, they haven't told us
14 what hasn't been completed. They've never said they were
15 unhappy with the cable, they never said that they've got a
16 problem with the gravel. We've introduced the photograph on
17 the property, it's gravel, Judge, so that's clearly, it was
18 incorrect. But they've never told us what further work they
19 demanded of us, they just said we've no longer got the
20 agreement. But there's no question it's been platted out, and
21 in fairness, Judge, that, where the easement, where the entry
22 into the road has been changed to, this is a case where you're
23 going to cut off your nose despite your face. Where we
24 negotiated the new entranceway to the road actually works
25 better for all the property owners because it goes straight up

1 the property lines, straight into the easements, avoids the
2 chicken houses, it was put there to make everybody happy in
3 that area. It won't affect the Dickerts at all because the
4 road's already there and it ties into there, so they're not
5 harmed by it at all and that was the logical place to move it.
6 I would ask the Court to enforce the settlement agreement. If
7 we've got further work to make them happy, we'll do it, but
8 they've never come to us and said this needs to be done
9 further, they're just backing out of something that, without
10 giving us a chance to correct, I mean, they're not telling us
11 what needs to be corrected, they're just saying we're not happy
12 with it, we no longer agree to it. And they can't do that if
13 there was a meeting of the minds on what the agreement was, and
14 we had an agreed upon plan. Their only complaints were they
15 don't think a cable counts as a gate, and that they were
16 unhappy with the amount of gravel. So I would ask the Court to
17 enforce the settlement. I would ask the Court to find as the
18 alternative that the 20 years continuous use has established an
19 easement. And I appreciate the Court's consideration.

20 THE COURT: Yes, sir. Mr. Brehmer, I give you two
21 minutes before I rule on the motion.

22 MR. BREHMER: It's very simple, Your Honor. I'd like
23 to point out something to the Court. Mr. Verner says well,
24 I've got four witnesses. No, you don't, no you don't because
25 every one of those witnesses, Terry Longshore, oh, Michael

1 Wise, nope, I didn't know anything about this property until
2 2017 or 2012, okay? Nope, don't know anything about it. Terry
3 Longshore, I don't know anything what, other than what Mr.
4 Gray, Murray Gray told me, nope. Do you know anything about
5 the deal, no. Then Mike Longshore, the current owner, I know
6 less than anybody, I didn't come to this property until 2019.
7 So here's what you got, and then Mr. Brown, I asked him, I
8 don't know about what their deal was, okay? About this
9 property. So here's what you got. You got Murray Gray saying
10 yeah, Dickerts owned it, yeah, we rode through it because the
11 Dickerts gave us permission and yeah, we always knew that they
12 owned it and yeah, we always sought their permission and we
13 never had a claim of right, okay? We never asserted or had a
14 claim of right, boom. Johnnie Dickert tells you the exact same
15 thing. So there is no factual question in this case, this is a
16 fact of law, they can't prove a prescriptive easement for a
17 very simple reason, there isn't one. This is people being good
18 neighbors, okay? And then you got a bad neighbor that comes to
19 town, I'm taking over. Well, no, you're not. So we ask that
20 the Court enter a judgement dismissing the Plaintiff's claim,
21 thank you, Your Honor.

22 THE COURT: Thank both of you. Mr. Verner, I'm not
23 going to reach any decision on this ---

24 MR. BREHMER: I'm sorry? Oh.

25 THE COURT: Mr. Verner, I'm not going to reach

1 any decision at all on enforcing this settlement agreement.
2 I'm not certain that there has been any sort of meeting of the
3 mind, but I'm just not going to rule on that. Mr. Brehmer, I
4 appreciate your arguments and I'm going to deny your motion.

5 MR. BREHMER: Okay.

6 THE COURT: Now, I'd like proposed orders, but this
7 is what I'd also like. Did I understand you to say y'all have
8 not mediated this case at all, you've never been to a mediator?

9 MR. VERNER: That's correct.

10 MR. BREHMER: That's right.

11 THE COURT: I'd like you to go to mediation within 30
12 days. If you can't get this thing resolved in mediation, I
13 need proposed orders. If you, so we'll kind of proceed that
14 way. Now, what I'd like in terms of proposed orders is orders
15 in Word version for my signature, not Judge Griffith's
16 signature. And you can just email that directly to me, I'm in
17 the Bar Book, or the Court's website. So I want you to go to
18 mediation, if after mediation, I'll give you 30 days to do
19 that, if it doesn't work, I want proposed orders, and I'll rule
20 on this case from short order. Any questions? I know this is
21 a little unorthodox, any questions?

22 MR. VERNER: I understand the Court's order. We have
23 discussed, I don't know the man's name, but we had discussed a
24 possible mediator, I cannot remember his name, but the, but I
25 understand the Court's order. I don't want to interfere, but I

1 think we have, if Mr. Brehmer agrees then I'll consent to
2 whoever we talked about.

3 THE COURT: I'm sure you all can figure that out.
4 Let me say thank you for excellent presentations on both sides.
5 You've given me a lot to think about. And let's see what
6 happens after mediation.

7 MR. BREHMER: Okay.

8 MR. VERNER: Judge, I'd ask, I'm available to do it,
9 I can go ahead and draft out just a brief order for what the
10 Court has ruled. If the Court would like just 30 days to
11 mediate it, but I can draft that out unless you have a
12 complaint?

13 MR. BREHMER: I do.

14 MR. VERNER: Okay. Well, we can do it, we understand
15 the Court's a formal oral order, too, Judge ---

16 THE COURT: Yes.

17 MR. VERNER: --- but I'm available to draft out a
18 quick order that just says mediated in 30 days ---

19 THE COURT: If you'll send it to Mr. Brehmer first
20 and then send it to me, I'll, I will sign it.

21 MR. VERNER: Or you can send me one, but I'll do one
22 before the end of the week ---

23 THE COURT: That'll be fine.

24 MR. VERNER: --- and send it to the Court.

25 MR. BREHMER: The end of the week is tomorrow.

1 MR. VERNER: I'll do one today, my friend.

2 THE COURT: Thank you all. To the parties, thank
3 you. Court's adjourned.

4 (Whereupon the hearing ended at 3:50 pm.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)
6)
7)
8)
9 COUNTY OF NEWBERRY)
10
11
1213 I, the undersigned Lisa G. Amick, Official Court Reporter
14 for the Eighth Judicial Circuit of the State of South Carolina,
15 do hereby certify that the foregoing is a true, accurate, and
16 complete transcript of record of all proceedings had and
17 evidence introduced in the trial of the captioned case,
18 relative to appeal, in the County of Newberry, South Carolina,
19 on the 11th day of July 2024.
2021 I do further certify that I am neither of kin, counsel,
22 nor interest to any party hereto.
2324 June 4, 2025
25Lisa G. Amick

Lisa G. Amick

Court Reporter

My commission expires: June 30th, 2025

Image ©, Satellite Imagery by Future International
 Mapping Services provided by ESRI

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS that the Brandon Nicole Gray Crumpton, hereinafter referred to as Grantor, for and in consideration of the sum of ONE HUNDRED FIFTEEN THOUSAND (\$115,000.00) DOLLARS, to Donald A. Brown, Jr., hereinafter referred to as Grantees, in the State aforesaid, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said Donald A. Brown, Jr., his heirs and assigns, forever:

All that piece, parcel or lot of land, with the improvements thereon, situate, lying and being in Tax District No. 40S, County of Newberry, State of South Carolina, containing ninety-seven (97) acres, more or less, known as the Long Lane Tract, and bounded on the North by lands now or formerly of Leon P. Lindler and Helen R. Lindler Life Estate (formerly of Champion International Corporation); on the East by lands now formerly of Cherry Lynn Hughes, as Custodian for Clayton Stanley Hughes, et al. (formerly of H. L. Brock); on the South by lands of the U. S. Forest Service; on the Southwest by lands now or formerly of Johnnie L. Dickert and Rachel B. Dickert Life Estate (formerly Dickert Lumber Company); and on the Northwest by lands now or formerly of Thomas Michael Longshore and Theresa D. Murray Longshore (formerly Dickert Lumber Company). This is the identical tract conveyed to Murray Lumber Co. (predecessor of The Murray Company, Inc. of Newberry, SC) by deed of Newberry Lumber Company dated April 30, 1946, and recorded in Deed Book 47 at page 51 in the office of the Clerk of Court for Newberry County.

This being the same property conveyed to the Grantor by Deed of Allen Murray Gray, dated July 2, 2020 and recorded in the office of the Clerk of Court for Newberry County in Deed Book 2215 at page 258.

TMS No. 385-2.

TOGETHER with all and singular, the rights, members, hereditament and appurtenances to the said premises belonging or in anyway incident or appertaining.

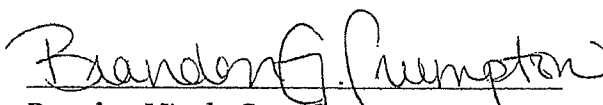
202200067769
Filed for Record in
NEWBERRY COUNTY, SC
ELIZABETH P FOLK, CLERK OF COURT
04-12-2022 At 12:06 pm.
DEED 15.00
SC 299.00
NEWBERRY 126.50
OR Book 2415 Page 163 - 165



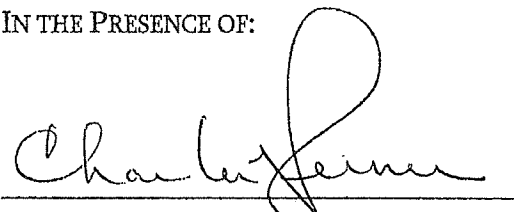
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Donald A. Brown, Jr., his heirs and assigns forever.

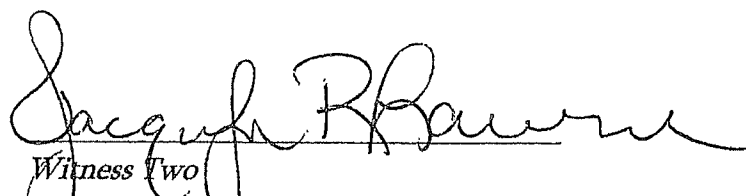
AND I do hereby bind myself, my heirs, successors and assigns to warrant and forever defend all and singular the said premises unto the said Donald A. Brown, Jr., his successors and assigns, against us and our heirs and against every person whomsoever lawfully claiming, or to claim, the same of any thereof.

WITNESS my Hand and Seal this 26th day of October in the year of our Lord Two Thousand Twenty One and in the Two Hundred and Forty Fifth year of Sovereignty and Independence of the United States of America.


Brandon Nicole Gray Crumpton

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:


Witness One


Witness Two

Instrument
202200067769 OR Book Page
2415 165

STATE OF SOUTH CAROLINA)

)

PROBATE

COUNTY OF NEWBERRY)

PERSONALLY appeared before me JACQUELYN R LAWRENCE and made Oath that s/he
Witness Onesaw the within-named Grantor, sign, seal and as their acts and deeds, deliver the within-written
Deed for the uses and purposes therein mentioned; and that s/he withCharles Verner

Witness Two

witnessed the execution thereof.

SWORN to before me this 26th day of
October, 2021.Charles Verner

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: Dec 8, 2030

Jacquelyn R Lawrence
Witness One

Notary Signature

BROWN & BREHMER

Robert C. Brown
Karl S. Brehmer
L. Darby Plexico, III
James D. Floyd

Attorneys at Law
1720 Main Street, Suite 201 (29201)
Post Office Box 7966
Columbia, South Carolina 29202
Telephone: (803) 771-6600
Facsimile: (803) 252-1620

Email
rcb@brownandbrehmer.com
ksb@brownandbrehmer.com
ldp@brownandbrehmer.com
jdf@brownandbrehmer.com

May 27, 2022

Charles Vermeule Verner
Harley & Verner, LLP
PO Box 484
1219 Boyce Street
Newberry, SC 29108
lawyer@sc.rr.com

Re: Brown v Dickert, et al.
C/A # 2022-CP-36-00142

Dear Charles:

I have been retained to represent the Dickert Family. Please call me next week to discuss a resolution to the case. The Dickerts dispute that the Plaintiff has an easement across the Dickerts' property into the plaintiff's property. However, the Dickerts will be willing to consider deeding a fifteen (15) easement to the Plaintiff if the Plaintiff will gravel the road with three (3) inch stone from the Dickerts' Property line to the Plaintiff's property line along the road surface and agree the Plaintiff's has equal responsibility for the maintenance and care of the easement which will be extinguished if the Plaintiff's abandon their obligations to participate equally in the maintenance and care of the easement. Please discuss the same with your client and give me a call.

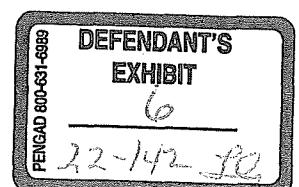
With warmest personal regards, I am

Sincerely yours,

s/Karl S. Brehmer

Karl S. Brehmer

KSB
Johnniedickert@gmail.com



BROWN & BREHMER

Attorneys at Law
1720 Main Street, Suite 201 (29201)
PO Box 7966
Columbia, SC 29202
Telephone: (803) 771-6600
Facsimile: (803) 618-3809

Robert C. Brown
Karl S. Brehmer
L. Darby Plexico, III

E-MAIL
rcb@brownandbrehmer.com
ksb@brownandbrehmer.com
ldp@brownandbrehmer.com

December 21, 2022

Charles Vermeule Verner
Harley & Verner, LLP
PO Box 484
1219 Boyce Street
Newberry, SC 29108
lawyer@sc.rr.com

Re: Brown v. Dickert
CAFN: 2022-CP-36-00142

Dear Charles:

My clients are willing to grant Mr. Brown a twenty (20) foot easement from entry location you suggested provide the same is surveyed, graded, ditched and graveled. Please let me know who and when your client wants the survey to be done. I and my client will need to be present when the survey occurs. Once the survey is done, we can draft the easement and have the parties sign the same.

If you have any questions or need any additional information, please do not hesitate to contact me.

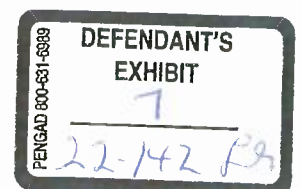
With warmest personal regards, I am

Yours very truly,

Karl S. Brehmer

Karl Brehmer

KSB



BROWN & BREHMER

Attorneys at Law
1720 Main Street, Suite 201 (29201)
PO Box 7966
Columbia, SC 29202
Telephone: (803) 771-6600
Facsimile: (803) 618-3809

Robert C. Brown
Karl S. Brehmer
L. Darby Plexico, III

E-MAIL
rcb@brownandbrehmer.com
ksb@brownandbrehmer.com
ldp@brownandbrehmer.com

December 21, 2022

Charles Vermeule Verner
Harley & Verner, LLP
PO Box 484
1219 Boyce Street
Newberry, SC 29108
lawyer@sc.rr.com

Re: Brown v. Dickert
CAFN: 2022-CP-36-00142

Dear Charles:

Please let me know when the surveyor can come to the property, and I make arrangements to be there. I want to get this matter concluded as soon as possible.

If you have any questions or need any additional information, please do not hesitate to contact me.

With warmest personal regards, I am

Yours very truly,

Karl S. Brehmer

Karl Brehmer

KSB



BREHMER LAW FIRM, LLC

Karl S. Brehmer
L. Darby Plexico, III
Andrew C. Brehmer

1720 Main Street, Suite 201 (29201)
Post Office Box 7966
Columbia, South Carolina 29202
Telephone: (803) 771-6600
Facsimile: (803) 618-3809

Email
ksb@brownandbrehmer.com
ldp@brownandbrehmer.com
acb@brownandbrehmer.com

January 12, 2024

Charles Vermeule Verner
Harley & Verner, LLP
PO Box 484
1219 Boyce Street
Newberry, SC 29108

Re: Brown v. Dickert
CAFN: 2022-CP-36-00142

Dear Charles:

You were going to draft the easement agreement in this matter. You have never done so, and Mr. Brown has breached the agreement. Mr. Brown did not install the gate as agreed and the week after Christmas drove down the power line during prime hunting time and interrupted Cole Dickert's hunting plan. Since you have not fulfilled your agreement to draft the easement agreement and your client has not honored his agreement to install a gate and respect the adjacent property owners hunting practices, my clients consider the agreement previously made as breached. Therefore, there is no easement and there will not be one and if you client uses the road he constructed, he will be treated as a trespasser. Have a nice day.

If you have any questions or need any additional information, please do not hesitate to contact me.

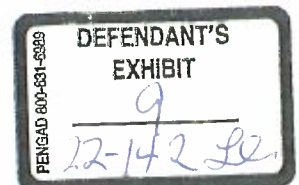
With warmest personal regards, I am

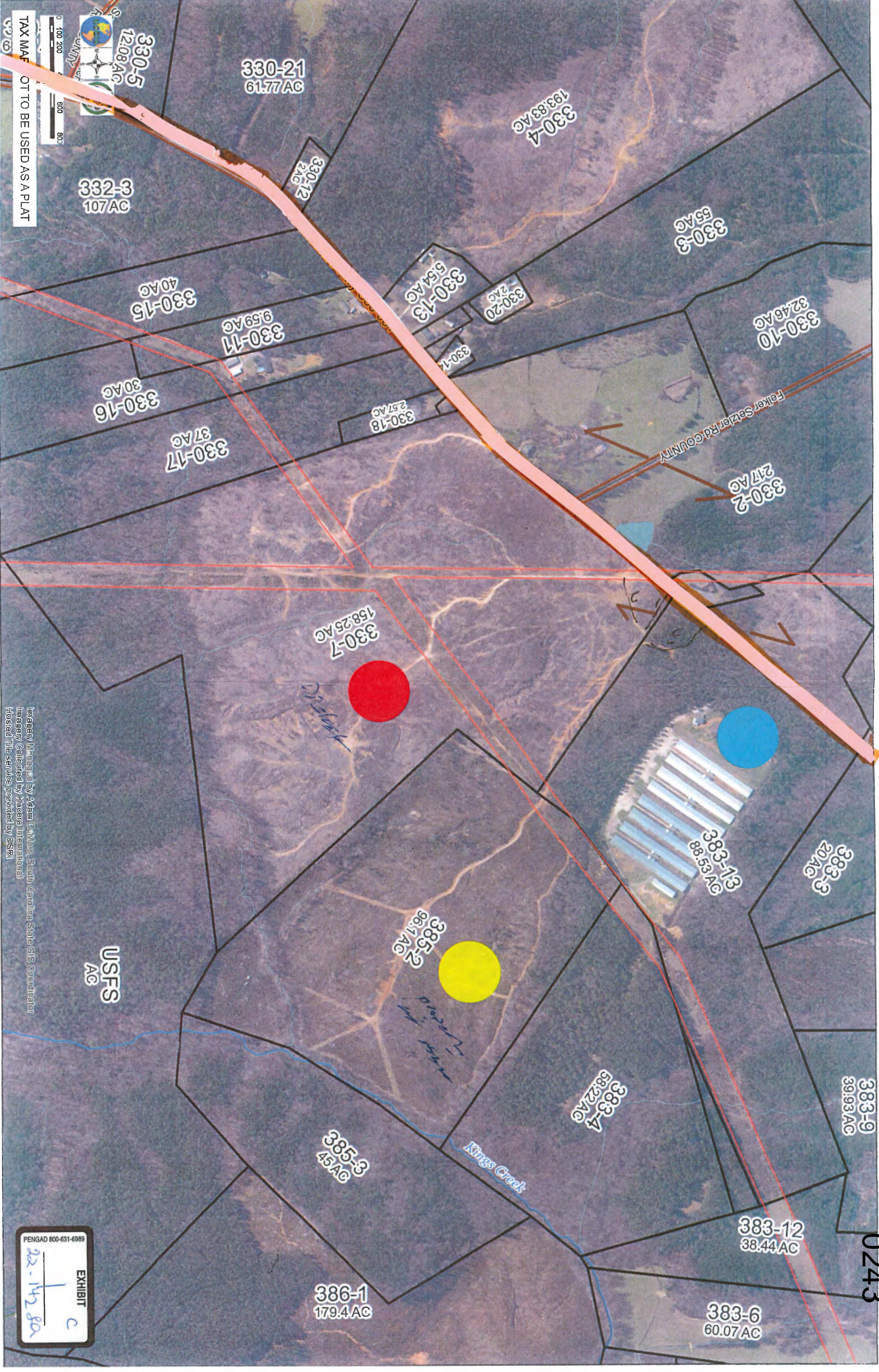
Yours very truly,

Karl S. Brehmer

Karl Brehmer

KSB
Cc: Johnny Dickert





TAX MAP NOT TO BE USED AS A PLAT



Imagery Managed by Adam Dawns, South Carolina State GIS Coordinator
Imagery Collected by Kaseia International
Hosted Title service provided by ESRI

PENGAD 800-631-6969

EXHIBIT

22-1428a

C

0244
Ease ment Entrance Costs 2023 - 24

Survey	980
Mulching Trees for Road	1200
Dozer	2480
Willoughams	490
Pipes, Cement, Cables	50
Cable For Entrance Labor	210
Rye Grass	80

\$5,490



Sheet1

Sheet2

Sheet3



**CANNON-DAVENPORT
SURVEYING, INC.**

PROFESSIONAL LAND SURVEYORS

207 MIXON DR.
CLINTON SC 29325

(864) 505-9784 Cellular

DATE: 3/31/23

JOB # 25055

SURVEY FOR: DONALD A. BROWN
POST OFFICE BOX 484
NEWBERRY, SC 29108

\$980.00

ACCESS EASEMENT SURVEY & PLAT

PLEASE INCLUDE A COPY OF THIS INVOICE WITH PAYMENT

THANK YOU FOR YOUR BUSINESS!!

JEFF DAVENPORT, PLS

0246

Green Forest Land Timber, Inc.
416 Old Cherokee Trl
Saluda, SC 29138 US
+1 8033192333
mike@greenforestlandtimber.com

Invoice

BILL TO
Donnie A. Brown

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
70	10/09/2023	\$2,479.00	11/08/2023	Net 30	

SERVICE	DESCRIPTION	QTY	RATE	AMOUNT
Dozer Work	Install pipe, build entrance - Old Whitmire Hwy tract	13.40	185.00	2,479.00

BALANCE DUE **\$2,479.00**

T D N		A E E		X F T		S D L	
DONNIE BROWN		Acct#:5167	Inv:7/791	Term:2	Sales Person:11	30-Oct-23 10:27	
Scan Number	Description	Part #	Qty	Price One	Sell Price	Per Qty	Ext
Payment	Payment of \$386.84		-1	0.00	-386.84 /	1	-386.84
Card Number: *****1770			ROACREDITCAR		Sub Total		-386.84
EXP Date: 0101 Approval Num: 09595D			D		Total Tax		0.00
Phone			Grand Total				-386.84

0248

INVOICE



Willingham & Sons

6807 SC hwy 219
Newberry, SC 29108
803-276-1257

INVOICE # 65246
ACCOUNT #
DATE 07-Sep-23
TIME 13:01
EMPLOYEE 9 - Steve A.
TERMINAL 3
PAGE # 1

SOLD TO:

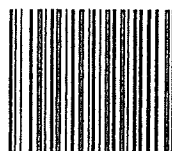
SHIP TO:

BROWN/DONALD A

ITEM	DESCRIPTION	QTY	SALE	U/M	EXT
SACM	SAND AND CEMENT MIX	1.00	9.65	EACH	9.65
CARD AUTH	*****1770 03713D			CARD	10.33

I AGREE TO PAY THE TOTAL ACCORDING TO THE POSTED TERMS AND CONDITIONS

SIGNATURE BROWN/DONALD A



SUBTOTAL \$	9.65
TAX \$	0.68
TOTAL \$	10.33

All returns MUST be accompanied by this bill and are subject to a 20% restocking fee.
We are not responsible for your vehicle or material after it leaves our premises.
Accounts charged 1.5% of balance/month (\$2.00 minimum). Reasonable cost and attorney fees if submitted for collection.
s are valid for 7 days.

0249



Willingham & Sons

6807 SC hwy 219
Newberry, SC 29108
803-276-1257

INVOICE

INVOICE # 69175
ACCOUNT # 5167
DATE 07-Oct-23
TIME 11:22
EMPLOYEE 12 - Christy R.
TERMINAL 3
PAGE # 1

SOLD TO:

DONNIE BROWN
2166 GLENN STREET EXT
NEWBERRY, SC 29108

SHIP TO:

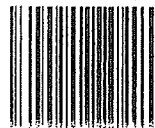
DONNIE BROWN
2166 GLENN STREET EXT
NEWBERRY, SC 29108

ITEM	DESCRIPTION	QTY	SALE	U/M	EXT
SACK	SAND AND CEMENT MIX	2.00	9.65		19.30
				CHARGE	19.30

I AGREE TO PAY THE TOTAL ACCORDING TO THE POSTED TERMS AND CONDITIONS

SIGNATURE _____
Authorized Signer

DUPLICATE



SUBTOTAL \$	19.30
TAX \$	0.00
TOTAL \$	19.30

All returns MUST be accompanied by this bill and are subject to a 20% restocking fee.
We are not responsible for your vehicle or material after it leaves our premises.
Accounts charged 1.5% of balance/month (\$2.00 minimum). Reasonable cost and attorney fees if submitted for collection.
Quotes are valid for 7 days.

0250

DONALD A BROWN JR
JANNA L BROWN
2166 GLENN ST EXT
NEWBERRY SC 29108-8411

3007

3-1-24 DATE

PAY TO THE
ORDER OF

Jac Brown Montgomery

\$ 210.00

Two hundred ten dollars

DOLLARS



 SOUTH STATE
BANK

FOR

Farm - Mow Aol

Donald Brown

⑆063114030⑆ 80100012952091⑈3003

Labor For Helping put cable up-

RECEIPT		No.	821550
DATE	8-25-23		
FROM	Natur Chem		\$1200. ⁰⁰
One thousand two hundred & ⁰⁰ / ₁₀₀ DOLLARS			
☐ FOR RENT ☐ FOR 3 Hours @ \$400/hr-ROW Clearing			
ACCT.		☒ CASH	FROM _____ TO _____ BY <u>Brook Bly</u> A-2501 T-46820
PAID		☐ CHECK	
DUE		☐ MONEY ORDER ☐ CREDIT CARD	

0252



PENGAD 800-631-6389
EXHIBIT
4 C
22-142 JQ

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

/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.

October 15, 2025.

RECEIVED
Nov 04 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

RECEIVED
Nov 04 2025
SC Court of Appeals

Donald A. Brown, Jr.,

APPELLANT,

versus

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

RESPONDENTS.

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 Record on Appeal by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the parties indicated below:

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

s/ Carmen V. Ganjehsani

Carmen V. Ganjehsani

S.C. Bar No. 73515

RICHARDSON, PLOWDEN & ROBINSON, PA

Post Office Drawer 7788

Columbia, South Carolina 29202

Attorneys for Appellant

Donald A. Brown, Jr.

Date: October 15, 2025.