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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In the Court of Common Pleas
Steven C. Kirven, Master-in-Equity

Case No. 2021-CP-37-00093
Appellate Case No. 2023-000918

Mountain View Pointe Owners Association, Inc.; Jane P. Hale; L. Shepard Hamrick, Jr.; Martha Hamrick; Matthew Williams; Sue Williams; Barry Noffze; Ruth Noffze; Michael Dorsey; Monica Dorsey; Jack J. Dorsey; Lucinda Dorsey; Kai Evensen; Lynn Elliot Amos, as Trustee of the Lynn Elliot Amos Qualified Personal Residence Trust; Lynn Keith Amos, as Trustee of the Lynn Keith Amos Qualified Personal Residence Trust; Charlene Finucan; John Prescott, Jr.; Elizabeth Prescott; Steven Trojan; Dottie Trojan; Leonard J. Stoecklein; Patricia Stoecklein; Dale Hill; Rebecca Hill; Larry Kuykendall, as Trustee of the Larry Kuykendall Revocable Trust; Larry Kuykendall as Trustee of the Elle Kuykendall Revocable Trust; Thomas McCaw; Roberta McCaw; Robert Albergotti; Elaine Albergotti; Frank Patterson; Frances Patterson; Brian Fox, and Jennifer Fox,, ... Respondents,

v.

Rodney Halsell; Barbara Halsell; Graham R. Piper; Christine A. Piper, Michael Newton; Angela Newton; Gary Hutchinson; Daniel Horner; Lonnie Harper; Elianor Harper; Christopher Tam; Amie Kerley; Karan Sandhu; and Gloria Sandhu,..... Defendants,

Of Whom Rodney Halsell and Barbara Halsell are the ..... Appellants.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Rodney and Barbara Halsell petition the Court for a rehearing of the opinion filed in this case on January 14, 2026 ("Opinion").[1] In the Opinion, this Court affirmed the master in equity's order finding that a non-exclusive Landscape Easement

[1] Capitalized terms have the same meanings applied in the Halsells' briefs in this matter.

vested in Respondents "sole management and control of beautification, vegetation, landscaping, soil disturbance and grading in the Landscape Easement Area which is necessary in order to insure [*sic*] the full use and enjoyment of the Landscape Easement and any interference with the same by the servient estate owners or anyone claiming through them is a violation of the POA's rights in the Easements" such that the Halsells must remove a driveway placed on a small portion of the easement area (less than 3% of the total area) that had not been landscaped by the Respondents. The Halsells respectfully submit that the Court's Opinion overlooked or misapprehended the following points:[2]

I. The evidence does not support the last sentence of section 1 of the Opinion.

The Opinion is in a Rule 220, SCACR format and contains little factual discussion. The last sentence of section 1 of the Opinion incorrectly recites, "Appellants constructed the driveway with knowledge that it was hostile to the POA's easement and would destroy the existing landscaping."

As an initial matter, the POA does not own the Landscape Easement. (R. at 596-603). On April 8, 2005, Crescent deeded to the POA the property labeled as "COS," "Common Open Space," and "Access Area," shown on the Subdivision Plat. (R. at 596-99). On June 16, 2005, by way of "Corrective Deed," the POA reconveyed the "COS," "Common Open Space," and "Access Area" back to Crescent. (R. at 600-03). The Landscape Easement has not been reconveyed to the POA.

By all accounts, the Property is not part of the Subdivision and is not subject to the Covenants. (R. at 199:23-200:4, 341:21-25). The only reference to the easement in the Halsells'

[2] The Halsells incorporate their Appellant's Brief and Reply Brief and all arguments made therein by reference.

chain of title is by reference to two plats. (R. at 609-15, 617-19). As shown on the plats, the easement runs approximately 1,125 lineal feet along the edge of the Property and covers approximately 28,125 square feet (.645 acres). (R. at 593-95, 619, 416:11-417:7). The paved portion of the Halsells' driveway within the easement covers only 750 square feet (.017 acres).

Before starting work, the Halsells were advised by counsel that they could proceed with their driveway plans. (R. at 396:20-23, 398:12-399:2). The Halsells obtained all required permits for the project, including a permit to place the driveway within the County's right of way on Mountain View Pointe Drive. (R. at 411:4-7). During construction, the Halsells were careful to only remove naturally growing small pine trees within the easement and not to remove any landscaping installed by the POA. (R. at 374:10-25, 408:21-409:5, 411:8-25), and the cleared area on either side of the paving has been replanted. (R. at 418:8-24, 420:17-421:23, 697-98).

The Halsells ask that these factual errors be corrected and that the analysis be revised accordingly.

II. The Opinion fails to perform the required reasonableness analysis and instead applies an overly restrictive bright-line standard that has previously been applied only to ingress/ egress easements.

Section 1 of the opinion refers to "the POA's exclusive right to landscape." This is patently inconsistent with the non-exclusive language found in the Covenants. As discussed above, the POA does not own the easement and the Property is not subject to the Covenants.

The Court must construe an unambiguous grant of easement in accordance with the terms used by the parties. *Plott v. Justin Enterprises*, 374 S.C. 504, 512–12, 649 S.E.2d 92, 96 (Ct. App. 2007). When an easement is shown on a plat incorporated into a deed, any restriction on the use of the is to be strictly construed and "all doubts resolved in favor of the free use of the property." *Hamilton v. CCM, Inc.*, 263 S.E.2d 378, 380, 274 S.C. 152, 157 (1980).

Consistent with this basic framework, courts in South Carolina have long applied rules of reasonableness with respect to the rights of the servient estate holder. *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973); *Watson v. Hoke*, 73 S.C. 361, 363–64, 53 S.E. 537, 537–58 (1906); *Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 96, 28 S.E.2d 545, 549 (1943) ("The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. In other words, a grant or reservation of an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated."). Whether interference with or obstruction to an easement is unreasonable depends upon the facts and circumstances of each case, and courts apply a balancing test. *Thomas v. Mitchell*, 287 S.C. 35, 39, 336 S.E.2d 154, 155 (Ct. App. 1985) When the impact upon the dominant estate is minimal, the courts will not find unreasonable interference. *Id.*

Here, the Property is not subject to the terms of the Covenants because it is not in the Subdivision. (R. at 15 ¶42). Nor does the POA own the Landscape Easement. (R. at 596-603). The master and this Court erred by construing the terms of the Covenants to preclude any use of the non-exclusive Landscape Easement by the Halsells, effectively giving the POA the fee interest in the area without any of the tax liability. (R. at 14-15 ¶¶14-17, 21-22 ¶¶14-17, 27 ¶¶1-4). Nowhere do the plats in the Halsells' chain, the Subdivision Plat, or the Covenants state or imply that the owners of the Property would have no rights to the Landscape Easement Area or that there is an exclusive right conveyed to the POA with respect to "beautification, vegetation, landscaping, soil disturbance and grading" within the Landscape Easement Area as found by the master. (R. at 27 ¶4). To the contrary, the Covenants state that the easement is non-exclusive.

Like the master, this Court has failed to engage in a reasonableness analysis and instead found that the easement provides the Respondents with the sole right to manage and control landscaping within the easement regardless of the "non-exclusive" description. The Opinion references a "significant restriction" on the Halsells' rights, but it has not provided any explanation of what remaining use there is if the Halsells cannot act in any respect to "beautification, vegetation, landscaping, soil disturbance and grading" and cannot act in any way that would result in "removal of or damage to vegetation."[3] Under this ruling, if the Halsells break a blade of grass or crush a leaf anywhere within the landscape easement, they have violated the letter of the master's order. This is no use, rather than the "free use" discussed in *Hamilton*. The Halsells have not argued for "equal rights" as stated in section 2 of the Opinion, but have argued that they are entitled to reasonable use and enjoyment of property they own and pay taxes on, especially where the POA had not endeavored to landscape the area in question.

Courts in other states have disallowed constructions of easements that effectively convey fee simple title. *Walton v. Cap. Land, Inc.*, 252 Va. 324, 326, 477 S.E.2d 499, 501 (1996) ("If a conveyance grants the right to exclusive use of all or part of the servient estate *for all purposes*, the owner of the servient estate is stripped of his right to use the land. Conveyances of this sort are generally considered to effectively transfer an interest in fee, not an easement, and are not favored."); *Gelfand v. Mortg. Invs. of Washington*, 453 So. 2d 897, 898–99 (Fla. Dist. Ct. App. 1984) (holding that construction of easement to allow dominant estate to prevent use by servient estate would be tantamount to conveyance of land to holder of dominant estate in fee simple).

[3] Counsel for the POA was unable to articulate any remaining use when directly asked at oral argument. This is because there is none.

Although there are no reported South Carolina cases expressly defining the term "non-exclusive easement," Black's Law Dictionary provides: "[a]n easement allowing the servient landowner to share in the benefit of the easement, - Also termed *nonexclusive easement*." EASEMENT, Black's Law Dictionary (11th ed. 2019). In contrast, an exclusive easement is "[a]n easement that the holder has the sole right to use." *Id.* These definitions are consistent with the South Carolina cases applying a reasonableness standard and a balancing test cited above. If the right is non-exclusive as is the case here, both the dominant and servient estates should be able to landscape the area.

Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991) does not compel a different analysis or result. In that case, this Court considered the express language of multiple easements for ingress and egress over the same area and found that one of the easement holder's proposed uses infringed on the specific terms of the other's easement. 306 S.C. at 171–72, 410 S.E.2d at 581. There, the proposed uses were mutually exclusive: parking spaces were inconsistent with an easement for "ingress and egress" through the easement area. Here, on the other hand, the Halsells' driveway did not interfere with any landscaping placed by the POA and it is reasonably necessary to the Halsells' enjoyment of the Property. Unlike in *Xanadu*, the Halsells have not restricted the POA's access to any portion of the Landscape Easement Area. The POA is still free to access all portions of the easement and to install landscaping as they see fit. It is the POA that has sought to use the non-exclusive easement as a cudgel to deprive the Halsells of any use of a portion of their property.

By applying *Xanadu* outside the context of an ingress/ egress easement, this Court has overruled the precedent requiring a reasonableness analysis. In *Metro. Water Dist. of Salt Lake & Sandy v. Sorf*, 2023 UT App 146, ¶ 34, 542 P.3d 87, 95 (2023), the Utah Court of Appeals

provided a comprehensive look at this issue nationwide before ultimately settling on a rule of reasonableness rather than a bright line approach at least in the context of easements other than those for ingress/ egress. As set forth there:

> The bright-line rule advocated by the District has been adopted—at least in the context of ingress/egress easements—in a number of other jurisdictions. *See, e.g.*, *Johnson v. Highway 101 Invs., LLC*, 156 Idaho 1, 319 P.3d 485, 487–88 (2014) (compiling cases); *see also* 25 Am. Jur. 2d *Easements and Licenses* § 76 (2023) ("A permanent physical obstruction placed in an express easement created by grant, in the absence of an agreement or surrounding circumstances to the contrary, interferes as a matter of law with the dominant easement holder's right to the use of all of the express easement."). As justification for adopting this bright-line approach, courts have posited that it "will avoid costly and time-consuming litigation concerning whether the servient estate owner's use of the easement area is reasonable," *see Johnson*, 319 P.3d at 488, and have reasoned that a contrary rule would give dominant estate owners "license to retake the easements in a piecemeal fashion," *see Lamb v. Wyoming Game & Fish Comm'n*, 985 P.2d 433, 438 (Wyo. 1999).
>
> Other courts, however, have expressly declined to adopt this bright-line exception to the rule of mutual reasonableness. *See, e.g.*, *Skow v. Goforth*, 618 N.W.2d 275, 278–81 (Iowa 2000). These courts have emphasized the "aggregate utility" that the rule of mutual reasonableness promotes, *see id.* at 280 (quotation simplified), and they have noted the absurdity of a rule that would require a servient estate owner to remove a structure that encroaches on the easement in only a de minimis manner, *see id.* at 281, or that is located in a part of the easement that is entirely "unused" by the dominant estate holder, *see D'Abbracci v. Shaw-Bastian*, 201 Or.App. 108, 117 P.3d 1032, 1041 (2005).

Id., 2023 UT App at ¶¶ 35-36, 542 P.3d at 96 (footnote omitted). After considering authority from across the country, the Utah Court of Appeals ruled,

> "For all of these reasons, then, we decline the District's invitation to adopt—in this case—a bright-line exception to the rule of mutual reasonableness that would apply to permanent structures built within the boundaries of a definite negotiated easement. To be clear, however, our decision to decline this invitation is specific to this case; we offer no opinion on whether adoption of a bright-line rule would be appropriate in cases involving an ingress/egress easement (the context in which the rule has been applied everywhere else). Our decision is simply that the bright-line rule has no applicability in this case, where the Easement at issue has to do with an underground pipeline."

Id., 2023 UT App at ¶ 48, 542 P.3d at 99–100.

Here, the easement is a non-exclusive landscape easement and the Halsells only seek access across a de minimis portion of the easement area. The Halsells contend that the Court erred in applying a bright-line rule in this context.

III. The Halsells did not argue on appeal that they were entitled to an easement by necessity.

Section 3 of the Opinion mischaracterizes the Halsells' arguments on appeal. They have not argued an easement by necessity, but have instead argued that the driveway should have been allowed under the reasonableness analysis discussed above. Yes, a longer driveway is possible, but the POA seems to have failed to consider that the longer driveway and necessary clear cutting will be much more detrimental to the viewshed along the entrance drive. The Court has cited *Thomas* as allowing the dominant estate to bar the servient estate from any use of its property within the easement area. To the contrary, *Thomas* preserves the servient estate's use of its property as is necessary for its "efficient use" as long as there is not an unreasonable burden on the dominant estate.

The ultimate purchase price paid by the Halsells is a red herring here. The analysis must be driven by the applicable instruments. And again, the Halsells did not destroy the landscape easement. Instead, they added a driveway over a very small portion of the easement (less than 3%) that had never been landscaped by the POA. Given the large size of the easement, the driveway over a very small, unlandscaped area is a minimal burden of the type contemplated in *Thomas*. At the very least, the Halsells are entitled to have a court perform that reasonableness analysis rather than the bright-line approach rigidly applied by the master and this Court.

IV. The Court erred in finding that the Halsells created a nuisance on their own property.

The master, relying on *Ralph v. McLaughlin*, 428 S.C. 320, 834 S.E. 2d 213 (Ct. App. 2019); *rev'd by Ralph v. McLaughlin*, 432 S.C. 640, 856 S.E.2d 154 (2021), also concluded that

the Halsells "have trespassed in the [POA's] easements (rights)" and that construction of the driveway through the Landscape Easement Area "clearly constituted a nuisance, which has the same consequences as a trespass." (R. at 25-26 ¶¶27, 30). This was error. *Ralph* is inapposite because it involved the destruction of a drainage easement by the defendant that caused flooding and damage to the plaintiff's neighboring property. 428 S.C. at 350, 856 S.E.2d at 229 ("Accordingly, the owner of the servient estate commits trespass by relocating [or destroying] an easement without the consent of the holder of the easement.").

Here, the Halsells have neither destroyed nor relocated the Landscape Easement Area; instead, they have constructed a driveway through a small fraction of it on property they own. For all the reasons above, the Halsells contend they have not interfered with the POA's ownership or possession of land. The POA has no rights to own or possess the Halsells' property. Nor was the POA "using" the area in question as it had never been landscaped. Again, at most, the POA has a non-exclusive and unexercised right to landscape the easement area. For this reason, there is no actionable nuisance here. In addition, a change in the ruling on the easement issues would require a different result on the nuisance issue.

CONCLUSION

For these reasons, the Court should grant rehearing of the Opinion.

Respectfully submitted,

s/ Sarah P. Spruill

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v.

Rodney Halsell; Barbara Halsell; Graham R. Piper; Christine A. Piper, Michael Newton; Angela Newton; Gary Hutchinson; Daniel Horner; Lonnie Harper; Elianor Harper; Christopher Tam; Amie Kerley; Karan Sandhu; and Gloria Sandhu,..... Defendants,

Of Whom Rodney Halsell and Barbara Halsell are the ..... Appellants.

PROOF OF SERVICE

I certify that I have served Appellants' Petition for Rehearing on counsel of record on January 28, 2026, by electronic mail only to the following:

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January 28, 2026

VIA EMAIL AND U.S. MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Mountain View Pointe Owners Assoc. v. Rodney Halsell*
Appellate Case No. 2023-000918

Dear Ms. Kitchings:

This firm represents the Appellants in the above matter. Enclosed for filing, please find Appellants' Petition for Rehearing together with our Proof of Service for the same. Enclosed is our firm's check to cover the cost of the filing fee (w/ mailed copy).

If you have any questions, please give me a call. Thank you for your assistance in this matter.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.

Sarah P. Spruill

SPS/sac
Enclosure
cc: Richard McDuff (rick@mjmlawsc.com)
John S. Nichols (john@bluesteinattorneys.com)