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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
In The Court of Common Pleas for the Eighth Circuit

J. Mark Hayes, II, Circuit Court Judge
Trial Court Case No. 2018CP3600089, 2019CP3600245

Appellate Case No. 2025-000497

Lisa Summer Rice and Joseph F. Rice..Appellants,

v.

Newberry Lions Club and Betty S. Amick, as Personal
Representative of the Estate of C. Ray Amick..Respondents,

AND

A. Murray Gray, Claude H. Schumpert, and Melissa B.
Schumpert..Appellants,

v.

Betty S. Amick, as Personal Representative of the Estate
of C. Ray Amick, and Cheryl Littlejohn...Respondents.

FINAL REPLY BRIEF OF APPELLANTS

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I. THE BRIEF OF THE RESPONDENTS, AS WELL AS THE ORDERS OF THE LOWER COURT, OVERLOOK THAT THERE WERE GENUINE ISSUES OF MATERIAL FACT SUPPORTING APPELLANTS' CLAIMS.

The very first step for a trial court in deciding a Rule 56 motion for summary judgment is to review the evidence presented by both parties to determine if there is a dispute relating to any material fact. After all, if there is a dispute about any material fact, summary judgment constitutes reversable error. Rule 56, SCRCP; Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). The Brief of Respondents and the Orders of the court below skip over this fundamental step. Thus, the dispositive question in this appeal is does the evidence presented by the parties show there are any genuine issues of any material fact supporting Appellants' claims for a prescriptive easement and an easement by estoppel over Lions Club Road for access to their respective lots and the boat ramp and beach at the shores of Lake Murray.

A. There Are Genuine Issues of Material Fact as to Prescriptive Easement.

Contrary to their argument on Page 12 of their Brief, the question in this case is not whether the record could support a reasonable jury finding in favor of Appellants' prescriptive easement. At the summary judgment stage of litigation, unlike a jury, the court does not weigh conflicting evidence with respect to a disputed material fact. South Carolina Property and Cas. Guar. Ass'n v. Yensen, 345 S.C. 512, 548 S.E.2d 880 (Ct. App. 2001). Rather, the only question is whether the evidence, construed most strongly against the moving party, shows the presence of a genuine issue of material fact. *e.g.*, Kitchens Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023); Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). It is only in the rare case where the moving party demonstrates that there are no genuine issues as to any material fact that that the analysis of summary judgment turns to the law.

Charles Blanchard Construction Corp., Inc. v. 480 King Street, 2026 L.W. 158105 (January 21, 2026) (emphasis added).

While the trial court acknowledged in its Orders the standard for Rule 56 is that all evidence must be viewed in the light most favorable to the non-moving party, it overlooked that Appellants presented evidence showing genuine issues of material fact. When viewed in the light most favorable, Appellants have shown that they (and their predecessors) have freely used and maintained the road for more than six decades prior to February 2018 to access the boat ramp and beach and that no permission was ever sought, much less granted. See, for example, the Affidavit of former Lions Club President John Summer, who stated that no permission was ever requested nor granted to Appellants or their predecessors and that Lions Club Road, including the gravel portion leading through and beyond the fringelands, was maintained by Appellants and the other adjoining property owners (R. pp. 1042-1043; Affidavit of John Summer, para. 6-16). The evidence further shows that throughout these many years no objection or other attempt to prevent Appellants (and their predecessors in title) from using or maintaining the gravel road, boat ramp or beach was ever made. In fact, the record contains no evidence of any permission requested from, or granted by, the Lions Club for using the easement sought by Appellants (R. p. 1145, ll. 2-8; R. pp. 1182-1183). As detailed in Appellants' Brief, these facts, if viewed in the light most favorable to Appellants, are sufficient to preclude summary judgment.

The lower court further not only failed to construe the evidence most strongly against Respondents, it also improperly weighed the evidence and erroneously placed the burden of proof on Appellants for Respondents' defense of permissive use. As stated in Appellants' Brief, the record contains substantial evidence of Appellants' (and their predecessors and neighboring property owners) use and maintenance of the full length of Lions Club Road, the boat ramp, and

beach area over the course of six decades. For example, see Affidavit of Neel McSwain (R. pp. 1051-1052; para. 3-6); Affidavit of Ferd Summer (R .p. 1047; para. 7-9); Affidavit of Murray Gray (R. pp. 1022-1023; para. 2-3); Deposition of Neel McSwain (R. p. 1246; p. 84); Deposition of Claude Schumpert (R. pp. 1293, 1300, 1312, 1315; pp. 25-28, 54-55); and, Affidavit of Claude Schumpert (R. p. 1056; para. 8). It is undisputed in the record that their use and maintenance was done openly, notoriously, continuously, uninterruptedly, and contrary to the true property owner's rights for a period well exceeding twenty years. Accordingly, that use and maintenance is presumed to be adverse (i.e., without permission). Simmons v. Berkeley Cooperative, Inc., 419 S.C. 223, 797 S.E. 2d 387 (2016). Contrary to the lower court’s conclusion on page 3 of its February 19, 2025, Order, the burden of proof to show the use and maintenance was instead permissive is, in fact, on Respondents. Slater v. Price, 96 S.C. 245, 80 S.E. 372 (1913); see also, Kelly v. Snyder, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012)(holding that when the presumption of adverse use is established, “the burden shifts” to opposing party).

That notwithstanding, the Brief of Appellants points to the affidavit and deposition testimony of over 17 witnesses on the question of permissive use (Brief of Appellant, pp. 7-22). The testimony of each of Appellants’ witnesses, to a person, testified that not only was no permission ever granted, none was ever sought. (R. pp. i-vii; see Index to Record on Appeal). It should go without saying, but where one never seeks permission and permission is otherwise never affirmatively granted, one’s use of the other’s land cannot be permissive. See Click Properties, LLC v. Thomas SC Properties, LLC, 445 S.C. 468, 914 S.E.2d 488 (Ct. App. 2013)(holding that evidence that adjoining landowners never sought or were given permission for the use and maintenance of a drive and turnaround located on another’s property was sufficient to submit the question of permissive use to the jury). See also Crystal Pines Homeowners Ass’n, Inc. v. Phillips,

394 S.C. 527, 716 S.E.2d 682, cert. denied May 7, 2014 (Ct. App. 2011) wherein this Court affirmed the Lexington County Master in Equity's determination that the plaintiff homeowner's association established a right to a prescriptive easement despite the land owner's claim of permissive use based on the lack of any evidence that any of the homeowners ever sought any permission.

The Brief of Respondents and the Orders of the lower court granting summary judgment misapprehended the physical layout of the subject properties at Lions Club Point *vis-à-vis* the location of the boat ramp and beach. The lower court's Order shows a fundamental misunderstanding of the evidence and the extent of the easement asserted in this case. The easement sought by Appellants relates to a road, referred to as "Lions Club Road", runs through the middle of the Lions Club property and then across "fringelands", the "vegetative buffer, the "360-foot contour line" to the waters of Lake Murray where the here concerned boat ramp and beach area are located. These distinct properties, as are clearly shown on the various exhibits presented to the lower court (e.g., Ex. 7 to Fifth Amended Complaint dated 8/31/21), consist of the following:

a. The 5.5 acre tract purchased by the late C. Ray Amick from the Lions Club in February of 2018 (the "Lions Club property");

b. Private lots of Appellants and adjacent property owners, including Respondent Littlejohn, (none of which have vehicular access to launch boats or access the beach property except by using the subject easement identified as Lions Club Road). (R. p. 1028; Ex. 2 to Aff. of Murray Gray);

c. Approximately two acres at Lions Club Point (R. p. 1151, ll. 12-20; Depo. of Lions Club President Crocker, p. 18) on which a community recreation area, including a boat ramp and beach area, made up of the following (all of which have been referred to in this proceeding as "fringelands"):

1. A 75-foot vegetative buffer zone separating private properties from the actual shoreline (the 360-foot contour) to protect wildlife and water quality;

2. Remaining fringelands retained by Dominion lying between the 75-foot vegetative buffer and the portion of the fringelands sold to Amick described in Paragraph (d) below; and,

3. Land beyond 360-foot contour line which includes the property between the 75-foot buffer and the shore and bed of Lake Murray.

d. A .6 acre portion of the fringeland bought by Amick after the entry of Judge Hocker's Order Granting Temporary Injunction (R. pp. 711-714; Deed to Amick dated 10/15/19) which lies between the former Lions Club property he purchased in 2018 and the vegetative buffer and the shores of the lake. The land described in paragraph (c) above constitutes the eastern, northeastern, and northwestern boundaries of this .6 acre parcel. The boat ramp and beach are approximately 150-200 feet beyond this portion of the fringeland purchased by Amick down the gravel drive shown on the 2021 Abraham Surveying plat (R. pp. 715-716; Ex. 7 to 5th Amended Complaint; see also Initial Brief of Appellants, p. 8) over the vegetative buffer and beyond the 360-foot contour line to the literal waters of Lake Murray.

This case commenced after Amick posted "No Trespassing" signs and blocked Lions Club Road with barricades in the Spring of 2018 (R. pp. 212-213). In Amick's deposition, he admitted he was aware of the Appellants' longstanding claims to use of the road over the fringelands to access the beach and boat ramp area (R. pp. 1391-1392; Amick depo., pp. 33-34). He was asked how the adjoining landowners would reach the boat ramp were he allowed to block the road:

> "Q: How were they going to get to the boat ramp?
>
> A: Who knows? Maybe they were going to get a helicopter to carry them over there." (R. p. 1397; Amick depo., p. 40)

Circuit Judge Donald Hocker, in his Order Granting Temporary Injunction dated August 5, 2019, directed Amick to remove the barricades and further enjoined Amick from blocking the road

across the fringeland to the boat ramp and the beach (R. p. 18; Order of Judge Hocker, p. 15)[1]. After being served with the Order Granting Temporary Injunction, Amick proceeded to contact SCE&G's successor in interest, Dominion Energy, in order to purchase this .6 acre portion of the "fringeland" ("Amick fringelands")[2].

In its February 19, 2025, Order, the trial court found that the evidence did not support Appellants' contention that their (and their predecessors) use and maintenance of the road over the Amick fringelands was adverse. This is incorrect. Again, the record is replete with evidence of the historic use of the road running through the Amick fringelands to the boat ramp and beach located some 150-200 feet further to the east (See Brief of Appellants, pp. 7-22) (R. pp. 1293-1297, 1298-1305, 1311-1315; Depo. of Claude Schumpert, pp. 17-33, 53-57) (R. pp. 1073-1074; Rice Affidavit, para. 6 and 11) (R. p. 1237; Depo. of Neel McSwain, p. 25). The record also includes testimony concerning the construction and maintenance of both amenities. See Affidavit of former Lions Club President John Summer (R. p. 1042; para. 8); Affidavit of Chris Jay (R. pp. 1044-1045; para. 5) that the lot owners moved gravel, dug ditches, and filled potholes; Affidavit of Neel McSwain (R. p. 1051; para. 4) that the lot owners built a gazebo near the beach, maintained the beach, and maintained the boat ramp; Affidavit of Joe Rice (R. p. 1073, para. 6) that the Appellants and other lot owners refurbished gravel at boat ramp, paid for materials, repaired and maintained road; Affidavit of Missy Schumpert (R. pp. 1109-1111; para. 4 and 10) that the lot owners paid for sand for the beach and for gravel at the boat ramp and maintained Lions Club

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[1] The Order of Judge Hocker was based on 14 affidavits submitted by Appellants (R. p. 4; Order of Judge Hocker, p. 2). These same affidavits, which were submitted to the lower court herein, create genuine issues of material fact to defeat summary judgment.

[2] His deed from Dominion was dated October 15, 2019, yet, it wasn't recorded until July 2, 2020 (R. p. 1377; Amick depo., p. 10). He obtained this property in an attempt to enhance his position in this litigation despite the fact that he was fully aware that Appellants (and their predecessors in title) claimed and presented evidence that they had used and maintained the road to access the boat ramp and beach for over six decades (R. pp. 1384, 1386, 1392-1393, 1998, 1401; Amick depo., pp. 25, 27, 34, 36, 41, 44).

Road. As Judge Hocker found, this evidence constitutes a prima facie showing of use of a character and duration necessary to give rise to the presumption of adverse use. Simmons, *supra*.

Nevertheless, the lower court focused on a single provision of the FERC license issued to SCE&G in 1984, cherry picking only a part of that provision relating to the public's "free access" to the waters of the lake, improperly construing it without regard to the license as a whole which provides critical context in relation to the issues present in this case, and concluded that Appellants' (and their predecessors') use of the road was permissive so as to preclude a prescriptive easement (R. pp. 63-64; Order dated February 9, 2024, pp. 7-8). That very same FERC license, however, explicitly states that SCE&G "may grant permission without prior Commission approval" for "piers, landings, boat docks, or similar structures and facilities...and embankments, bulkheads, retaining walls, or similar structures for erosion control" and "may establish a program for issuing permits for the specified types of use". (R. pp. 908-934, 922; Ex. M, Defendants' Memorandum in Support of Summary Judgment, p. 14)[3]. There is no evidence in the record of any kind or description that anyone ever asked for or received a permit from SCE&G for the construction and maintenance of the here concerned boat ramp and beach; yet, the evidence is that Appellants and their predecessors in title did it anyway.

"Adverse use" is merely use that is "without license or permission" and "contrary to the rights of the true property owner." Simmons, *supra*. The Lions Club and SCE&G were the true owners of the land and therefore could have sought to prevent Appellants (and their predecessors) from the use and maintenance of the road over these properties. The record here shows they did not. However, that fact does not change that such use was contrary to their respective property

[3] Pages 33-41 of Appellants Brief set forth a thorough treatment of the operation of the FERC license in relation to the facts of this case. That discussion is incorporated here.

rights. What is more, when the evidence is viewed in the light most favorable to Appellants, it shows Appellants and their predecessors never sought or were given permission and yet used and maintained the road anyway such that it constitutes "adverse use". Simmons, *supra*.

Therefore, Respondents' argument on pages 16 and 17 of their Brief that it is "undisputed" that Appellants and their predecessors' use of the road in the Amick fringelands was permissive ignores all of the evidence to the contrary, the application of the presumption of "adverse use", and the requirement that on summary judgment all of the evidence and inferences arising therefrom must be construed most strongly against Respondents as the non-moving parties. The lower court's finding that no evidence supports a conclusion that Appellants' use of the portion of the road in the Amick fringelands was "adverse" is built upon the same errors and its decision must be reversed.[4] (R. p. 72; Order dated February 19, 2025, p. 3).

On pages 17 and 18 of their Brief, Respondents point to the testimony of three witnesses regarding the presence of a gate on the road and argue that this evidence is indicative of permissive use. However, what is overlooked in that argument is that there is also evidence directly contradicting the testimony they cite. For example, Young Schumpert, whose parents originally acquired lots adjoining the subject property some time prior to the 1950's, states in his affidavit that (1) the gate was installed 40 years ago by the adjoining lot owners (not the Lions Club) for

[4] The court below also found, in its February 19, 2025, Order, that Appellants cannot prevail on its easement claims as to the Amick fringelands because they did not add SCE&G or Dominion as a party to the case. This too is error. First, it is undisputed that neither SCE&G nor Dominion own the property that is the subject of Appellants' claims in this case. See also Loftis v. SCE&G, 361 S.C. 434, 604 S.E. 2d 714 (Ct. Appt 2004) (A purchaser with notice of an open and visible easement takes title subject to such easement). What is more, the only evidence in the record relating to the position of SCE&G (now Dominion) as to Appellants use and maintenance of the boat ramp and beach is the testimony of adjoining landowner, Claude Schumpert, that he was denied a permit to install a boat ramp on his own property precisely because Dominion acknowledged that he and the other adjoining lot owners have the right to use the here concerned boat ramp and beach area (R. pp. 1298-1303, 1307-1308; Depo. of Claude Schumpert, pp. 25-31, 43-44). There is further a lack of evidence in the record of any objection or other attempt on the part of Dominion to prevent Appellants use of the road, boat ramp or beach. There simply is no justiciable controversy to be litigated between Appellants and Dominion. It is for that reason that any attempt to add it as a party would be futile.

their own use in preventing trespassers; (2) it was located 600 feet from the former Lions Club clubhouse on the opposite end of the property from the lake; (3) it was used intermittently during the winter when fewer people used the Lions Club Point property; and, (4) the gate has, nevertheless, been "wide open and never locked" for the last 20 years because the adjoining property owners, including Appellants, determined that "it was 'more trouble than it was worth." (R. p. 1040; para. 5 of Affidavit of Young Schumpert, p. 2).

When construed most strongly against Respondents as the moving parties, this testimony renders the presence of the gate irrelevant to Appellants' claims. After all, the presence of a gate could only lend itself to show permissive use if it were installed by the owner of the land, and where it was instead the adjoining lot owners, including Appellants' predecessors, that installed the gate, its presence cannot have any such implication. In any case, Mr. Schumpert's testimony highlights, at a minimum, one of the many genuine issues of material fact precluding summary judgment which were ignored by the court below.

Also on page 18 of their Brief, Respondents argue Appellants' use and maintenance was permissive because use of the road was "common to all property owners on Lions Club Point, and was acknowledged by all Lions Club members", stating that Appellants' use was "in conjunction with the use of the Lions Club"[5]. This argument is without merit. First, it is important to note that of the Appellants only Murray Gray has ever been a member of the Lions Club.[6] Mr. Gray,

[5] Respondents also argue that Melissa Schumpert's affidavit testimony to the effect that the Lions Club and Amick "acquiesced" in Appellants' use and maintenance of the road somehow precludes a claim of adverse use. In doing so, Respondents overlook the long line of South Carolina appellate decisions holding that acquiescence by the servient tenant to the use of the dominant tenant for the requisite time period can give rise to a prescriptive easement. *e.g.*, Shia v. Pendergrass, 222 S.C. 342, 72 S.E.2d 699 (1952); see also Click, *supra*. The same is true with respect to an easement by estoppel. O'Cain v. O'Cain, 322 S.C. 551, 473 S.E.2d 460 (Ct. App. 1996).

[6] A former President of the Lions Club during 1994-1995, John Summer, testified that the lot owners usage of Lions Club Road all the way to the boat ramp and beach took place for over 60 years before 2018 without requesting or receiving any permission (R. p. 1041-1043; Affidavit of John Summer, para. 5, 16).

however, has not been a member since the 1980's. (R. p. 1024; Affidavit of Murray Gray, p. 3). Therefore, contrary to Respondents' argument, Appellants cannot be said to be "themselves the Lions Club". Appellants are not now, nor have they ever been, "sympatico" with the Lions Club.

It is for this reason, the lower court in its Order dated February 9, 2024, initially found that Appellants presented sufficient evidence of their use and maintenance of Lions Club Road to show issues of material fact existed so as to prevent summary judgment against Appellants' claims to an easement over the Lions Club property (R. p. 63; Order, p. 7). However, the trial court reconsidered and later granted summary judgment to Respondents based entirely on its flawed construction of the FERC license as it relates to the Amick fringelands. (R. p. 70; Order dated February 19, 2025). In doing so, the lower court misapprehended the import of the FERC license and overlooked that all of the evidence of Appellants' use and maintenance of the road over the Amick Fringelands, happens to be the very same evidence upon which it initially concluded summary judgment as to the Lions Club property was improper. In fact, all of the evidence of Appellants' (and their predecessors) use and maintenance relates to the full length of Lions Club Road from the Lions Club property to the Amick fringelands, over the remaining fringelands and the vegetative buffer all of the way to its terminus at the lake shore. See, e.g., Affidavit of Young Schumpert dated June 7, 2019, stating that all property owners have used Lions Club Road through the fringelands, to the boat ramp, and beach. (R. p. 1039; Young Schumpert Affidavit, para. 3). The record is devoid of any evidence that would show Appellants' (and their predecessors) use and maintenance was at any time exclusive of the Amick fringelands. The subject road runs directly through them. Therefore, where the trial court correctly determined this evidence presented questions of material fact as to the Lions Club property, it necessarily presents such questions as to the Amick fringelands such that summary judgment is improper.

A purchaser of land with actual, constructive, and/or implied notice that a property is burdened with an easement which is open and visible ordinarily takes the property subject to the easement. Loftis v. S.C. Elec. & Gas Co., 361 S.C. 434, 441, 604 S.E.2d 714, 717 (Ct. App. 2004), overruled on other grounds by Simmons v. Berkeley Elec. Coop., Inc., 419 S.C. 223, 797 S.E.2d 387 (2016).

Thus, the only way Amick could avoid Appellants' claims to an easement over these fringelands would have been if he were unaware of the claims at the time he purchased the property, but that is just not true. The lower court erroneously found on Page 4 of its February 19, 2025, Order that after Amick acquired the .6 acre portion of the fringelands, "[Appellants] subsequently initiated this action to seek an easement over Defendants' properties to use a disputed portion of Lions Club Road to access the boat ramp and beach beyond the fringeland." (emphasis added) This finding is also simply wrong. Appellants' easement claims were made in the Third Amended Complaint in Rice of July 26, 2019. The easement sought and actually pled by Appellants includes the full length of the gravel road which goes through the former Lions Club property, over and beyond the fringelands purchased by Amick, through the vegetative buffer to the boat ramp at the waters of the lake (Third Amended Complaint, para. 75-76). This Complaint preceded Judge Hocker's temporary injunction in August 2019. Both the Complaint asserting the easement and Judge Hocker's Order enjoining him from blocking it were served on Amick several months before he purchased any portion of the fringelands in October of 2019.

On this point, Respondents' Brief and the lower court further ignore Amick's own deposition testimony admitting that he obtained his deed to the .6 acre portion of the fringeland from Dominion only after Judge Hocker enjoined him from blocking Appellants from using the road through these fringelands to the boat ramp. (R. pp. 1389-1391; Amick depo., pp. 31-32). In

fact, Amick admitted that he knew beforehand that Appellants claimed a right to cross the very portion of the fringeland he purchased from Dominion (R. p. 1401, ll. 3-10; Amick depo., p. 44). The following additional deposition testimony makes this clear:

> "Q: But the point is, you understood that their claim was to be able to cross over these fringelands to get to the boat ramp?
>
> A: Right.
> (R. p. 1392; Amick depo. of 9/2/21, p. 34)
>
> ...
>
> Q: ...from the Complaint filed May 2019 is it not clear that the Plaintiffs have claimed since the inception of this lawsuit, the right to go across the fringelands to get to the boat ramp and the...
>
> A: Okay. They have claimed that."
> (R. p. 1401; Amick depo., p. 44)

He, therefore, admitted he had actual knowledge of Appellants claims to an easement over the Amick fringelands several months before he purchased it. Because these are Amick's admissions, his foreknowledge of Appellants' easement claims is undisputed in this record. Therefore, he purchased the Amick fringelands subject to Appellants' claims to an easement. Loftis, *supra*.

Moreover, because the evidence shows that Appellants and their predecessors' use of the road over the Amick fringelands had been taking place long before Amick acquired the property, were that evidence to be believed at trial, a prescriptive easement would have been established by that use in advance of his purchase such that no subsequent purchase or other conduct on Amick's part could divest them of the easement. See Cuthbert v. Lawton, 14 S.C.L. (3 McCord) 194 (1825) (holding that once a prescriptive easement is acquired, it can only be defeated by obstruction by the owner of the servient estate for the requisite adverse possession time period). Jones v. Daley, 363 S.C. 310, 609 S.E.2d 597 (Ct. App. 2005), reversed on other grounds by Simmons, *supra*

(holding that once a prescriptive easement is established by twenty years of continuous use, subsequent conduct does not defeat the established right by prescription).

For these reasons, genuine issues of material fact remain concerning the character of the use of the subject road precluding summary judgment on Appellants' prescriptive easement claim, and the lower court's Orders must be reversed.

B. There Are Genuine Issues Of Material Fact As To Easement By Estoppel.

The Brief of Respondents and the lower court entirely ignore Appellants' evidence for its easement by estoppel claim. Both conclusorily state that Appellants presented no evidence of SCE&G or Dominion conduct which could support this claim. This is incorrect. Appellants presented evidence that no one with the Lions Club or SCE&G voiced any objection to the lot owners use of Lions Club Road through the fringelands for over sixty years, all the while the lot owners made improvements to the road and constructed and maintained the boat ramp and beach area. Despite the fact that Article 30(a) of the FERC license imposed a positive "continuing responsibility" on SCE&G to "monitor" the use of its project lands, SCE&G never objected or otherwise sought to prevent Appellants or their predecessors from the use and maintenance of the road, boat ramp and beach. Each of Appellants' witnesses have stated that each consequently believed they had a right to maintain and use the road over the Lions Club property and Amick fringelands without any restriction. Appellant Schumpert and Appellant Rice, both of whom built homes at Lions Club Point (and neither of them had a boat ramp), testified that they did so in reliance on continued usage of the boat ramp and beach area. Schumpert expended $800,000 (R. p. 1111; Affidavit of Melissa Schumpert dated 7/18/19, para. 11) on his house and Rice spent $300,000 on his (R. p. 1075; Affidavit of Joe Rice dated 6/14/19, para. 16). The evidence in the record and how it applies to the law of easements by estoppel is set forth on pages 41-49 of

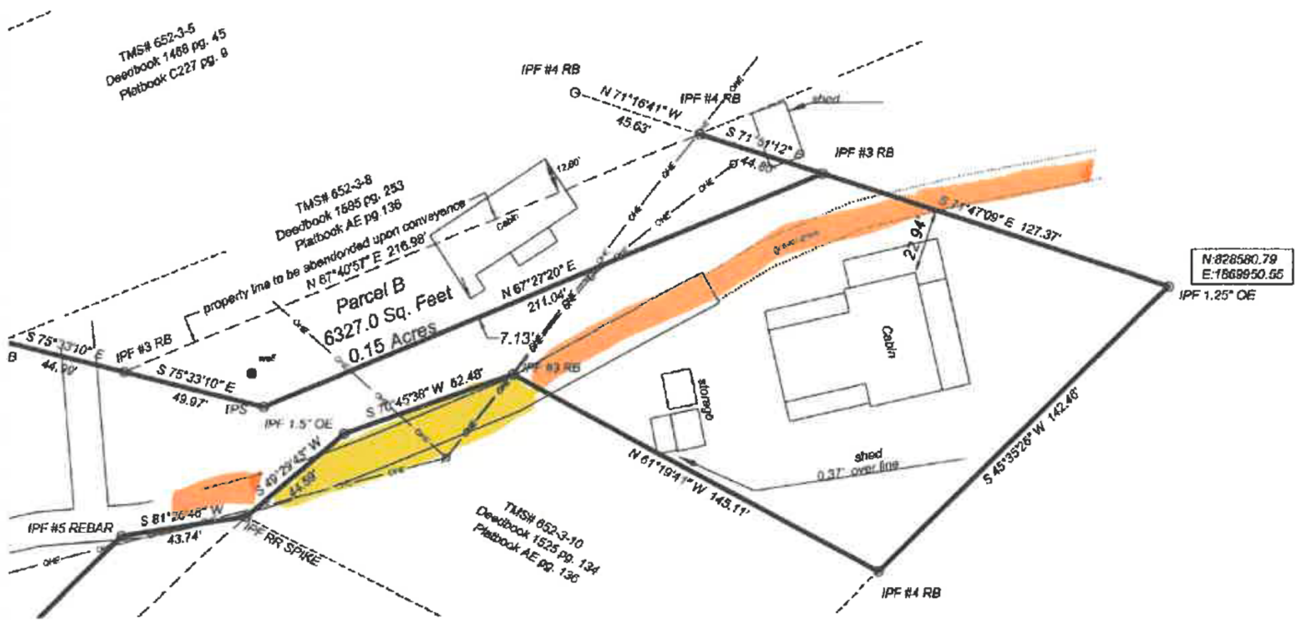
Appellants' Brief. For the reasons stated there, the lower court's finding that no evidence was presented to support this claim is error.

Appellants' Brief discussed at length the applicability of the case of O'Cain v. O'Cain, 322 S.C. 551, 473 S.E. 2d 460 (Ct. App. 1996). Neither the Brief of Respondents nor the Orders of the lower court addressed O'Cain. In O'Cain, this Court held that elements of estoppel as to the party to be estopped were satisfied by evidence of that party's silence while the other party constructed a driveway and made substantial improvements to the property to which the drive led. Id. at 464. Here, neither the Lions Club nor SCE&G voiced any objection to Appellants and their predecessors' use and maintenance of the road, boat ramp and beach. Both remained silent while these improvements were made. Contrary to the brief of Respondents and the lower court's February 9, 2024, Order, this Court further held that knowledge of the lack of written or direct permission to construct the driveway on the part of the party asserting the easement was not a bar to an easement by estoppel where the party believed he had permission, expended considerable sums on the drive and improvements, and no objection was ever made until after the drive and improvements were complete. Id. at 465. The facts of this case are clearly analogous to O'Cain. Appellants assert that the O'Cain decision is instructive to the case at bar.

Because, as stated in Appellant's Brief, the lower court ignored patently disputed material facts appearing in the record improperly weighed evidence, thoroughly misconstrued the provisions of the FERC License concerning Respondents' defense of permissive use and disregarded the evidence supporting Appellants' claims to an easement by estoppel, the Order Granting Summary Judgment must be reversed and the matter remanded for trial.

II. THE LOWER COURT ERRED IN FINDING THE RESPONDENTS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW CHARACTERIZING THE EASEMENT APPELLANTS ASSERT IS WITHOUT A PURPOSE, AN "EASEMENT TO NOWHERE".

The Lions Club Road easement is depicted on two plats by surveyor Tad Abraham. The first plat dated September 13, 2017, shows the route on Lions Club Road through Respondent Littlejohn's property as a tar and gravel road and then is described on the plat as a "gravel drive" which goes on to the fringeland. Lions Club Road on this portion is highlighted below[7]:

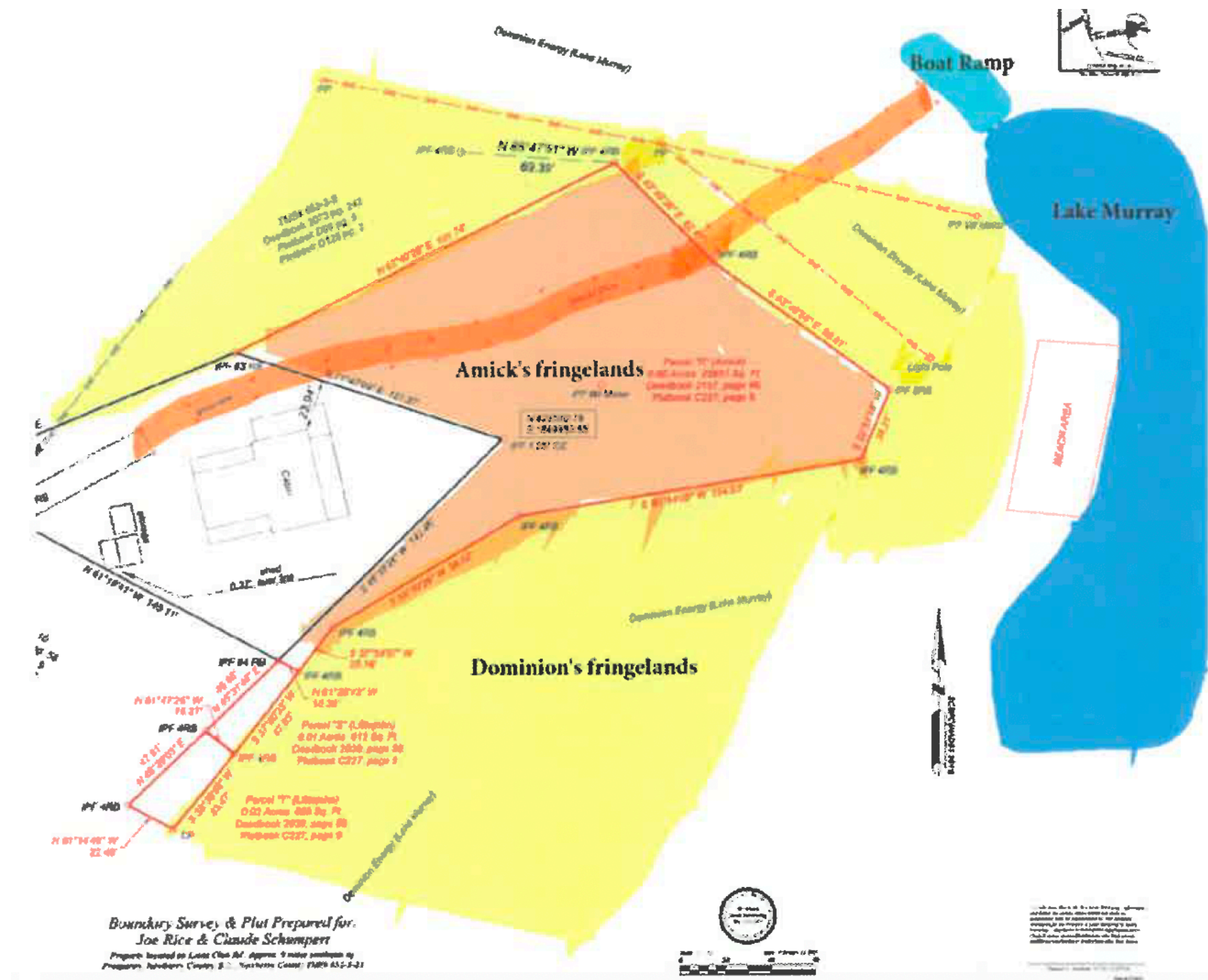


(see Brief of Appellant, p. 4)
(R. p. 1460; Ex. 8 to Cheryl Littlejohn depo. of 9/2/21)

In the second plat of surveyor Abraham dated February 25, 2021, the remaining gravel portion of Lions Club Road is depicted as running through the Amick fringelands, the fringelands retained by Dominion, the 75-foot buffer zone and the 360-foot contour line to the boat ramp and

[7] The property labeled "TMS# 652-3-10" is Respondent Littlejohn's property.

beach area. The path of this final portion of Lions Club Road as depicted by the surveyor is highlighted in orange below:



(R. p. 716; see Brief of Appellant, p. 27) (colors added)

In their Brief, Respondents argue, as the lower court erroneously found, Appellants cannot prevail as a matter of law because they seek an "easement to nowhere" and the easement sought has no purpose. Both contentions are plainly wrong.

While it is true that an easement is the right of one to use the land of another for a particular purpose (e.g., Proctor v. Steedly, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012)), the record here shows it is undisputed that the purpose of the easement sought by Appellants is the use of the road

leading over the Lions Club property and through the Amick fringelands to the waters of Lake Murray to both access their respective lots and so as to use the boat ramp and beach. (Fifth Amended Complaint, pp. 13-20).

On page 3 of its February 19, 2025, Order, the court below found that this easement would serve no purpose "without an exit point at the end of the gravel path off Lions Club Road." To the extent this finding is stating that in order for Appellants' easement claim to prevail, the road must continue beyond the boat ramp, there is no South Carolina law to that effect and none has been cited by the court below or Respondents. *c.f.*, *e.g.*, Carolina Center Building Corp. v. Enmark Stations, Inc., 433 S.C. 144, 857 S.E.2d 16 (Ct. App. 2021), wherein this Court held that the fact that the roadway over which one seeks a prescriptive easement terminates on land belonging to a third party does not prevent the establishment of the easement[8].

Not one of the cases cited by Respondents on pages 15-16 of their Brief have any application to the case at bar. Respondents cite several cases discussing the various reasons an easement may terminate and a Texas case[9] concerning implied easements created by the severance of title in a partition. The language of the latter quoted by Respondents and the lower court's February 19, 2025, Order concerns a litigant's inability to show unity title for the land underlying a road allegedly in use prior to the partition where the road traverses land belonging to a third party. Clearly, none of those issues are present in this case

If, on the other hand, the lower court's finding is that Appellants cannot have an easement merely because the court ruled that Appellants could not maintain a claim for an easement over the Amick fringelands and thus could not reach the boat ramp or beach over the road, this is also

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[8] In that case, this Court noted that the appellant there likewise failed to cite any authority to support that proposition.

[9] Jimmie Luecke Child. P'ship, Ltd. v. Pruncutz, No. 03-10-00840-CV, 2013 WL 4487541 (Tex. App. Aug. 16, 2013).

error. As discussed here and in Appellants' Brief, the lower court's ruling concerning the Amick fringelands should be reversed. In addition, however, Respondents and the lower court overlook that Appellants seek an easement over Lions Club Road for access not just to the boat ramp and beach but also to their respective lots. Access to Appellants' lots does not involve entry onto the Amick fringelands and, therefore, the lower court's ruling with respect to that portion of the road would have no effect on Appellants' claim to an easement over the remainder of it. As a result, the lower court Orders should be reversed.

The lower court erred in finding Appellants seek an easement "to nowhere" and concluding that Respondents are entitled to judgment as a matter of law. The orders should be reversed and the matter remanded for trial.

III. RESPONDENTS' ARGUMENT ON PAGE 14 THAT A PRIVATE CITIZEN CANNOT ACQUIRE A PRESCRIPTIVE EASEMENT ON PROPERTY BEING USED FOR A PUBLIC PURPOSE WAS NOT RAISED BELOW, IS NOT THE LAW OF SOUTH CAROLINA, AND SHOULD OTHERWISE BE IGNORED.

Respondents argue for the first time in this case on page 14 of their Brief that a prescriptive easement may not be established affecting property with a dedicated public use. However, Respondents cite no South Carolina authority for the proposition. The reason is because that simply is not the law of South Carolina. See Jolen Corp. v. Robertson, 142 S.C. 56, 140 S.E. 236 (1927), where it is stated:

> "But where [adverse possession for the statutory period] is accompanied with other circumstances, which would render it inequitable that the public should assert its rights to regain possession, then, upon the principle of estoppel, a party may be protected against the assertion of right by the public, in order to prevent manifest wrong and injustice." Id. at 237, quoting Crocker v. Collins, 37 S.C. 327, 15 S.E. 951 (1892).

Even if the position asserted by Respondents were the law of South Carolina, it would not apply in this case. As explicitly stated in the FERC license on page 8, the Lake Murray project is a "non-publicly owned project" (R. p. 916). Clearly, the purpose of Lake Murray is a private one; i.e., the generation of electricity for sale at a profit. Dominion certainly does this well being a publicly traded company. The land at issue here is not dedicated to a public use.

In any case, no matter may ordinarily be raised on appeal unless first raised and ruled upon by the trial court. I'On, LLC v. Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). Pursuant to Rule 220(c), SCACR, a respondent may raise any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court, provided the additional reasons both appear in the record and the appellate court believes it fair to the other parties. Id. Generally, however, an appellate court is unlikely to perceive it as fair or wise to resolve a case on a ground never mentioned by the respondent prior to the appeal. Id. "Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it." Id.

Here, the law of South Carolina is contrary to Respondents' argument and it is otherwise fundamentally unfair to allow Respondents to assert it now for the first time on appeal. Had Respondents raised this argument below, it would afforded Appellants an opportunity to make a better record of the private nature of the project. Therefore, the Court should follow the Supreme Court's advice and ignore it.

CONCLUSION

The Brief of Respondent and the Orders of the lower court misapprehended that there are genuine issues of material fact as to prescriptive easement and/or easement by estoppel. It was reversible error to grant summary judgment as to both causes of action. The Orders overlooked contradictory evidence, impermissibly "weighed" the evidence, and made erroneous factual findings.

Based on Rule 56, SCRCP, and the case law of South Carolina, the lower court Orders constituted reversible error, the Orders should be reversed, and the matter remanded for trial.

Respectfully Submitted,

POPE PARKER JENKINS, P.A.

May 5, 2026

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