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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Walton J. McLeod IV, Circuit Court Judge
Case No: 2021-CP-41-00032

Appellate Case No. 2025-001669

Jan H. Bryant ..... Appellant,

vs.

Saluda County, Saluda County Council, Donald E. Hancock,
in his Official Capacity as Chairman of Saluda County Council,
Rhonda H. Browning and First Community Bank ..... Defendants,

of which Saluda County, Saluda County Council and
Rhonda W. Browning are ..... Respondents.

FINAL BRIEF OF RESPONDENT, RHONDA W. BROWNING

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May 4, 2026
Columbia, South Carolina

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I.

Did the Circuit Court err by declaring Browning owned her .72-acre tract free of Bryan's claims when most of Browning's property was fringe land never owned by the subdivision developers, there was no evidence that SCE&G, the fringe land owner, intended to dedicate the fringe land as a public road, and the rest of Browning's tract included no part of Moonlight Drive Extended?

II.

Did the Circuit Court err by rejecting Bryan's claim that non-fringe land part of Moonlight Drive Extended was a publicly dedicated road where there was no evidence the County accepted the dedication and, even if acceptance could be inferred, a predecessor-in-interest to Bryan closed the road and it remained closed to the public until the County quitclaimed any interest it had in the road to Browning?

III.

As an additional sustaining ground, did the Circuit Court err in dismissing Bryan's claims to an interest in Moonlight Drive Extended when the evidence showed that Bryan raised the issue of the existence and extent of Moonlight Drive Extended and her claims to an interest in Moonlight Drive Extended as early as 1988, and pursued no legal remedy regarding those claims until filing this lawsuit in 2021, 33 years later?

Statement of the Case

This dispute concerns whether a public road runs through Respondent, Rhonda W. Browning's ("Browning"), property.

Appellant, Jan H. Bryan ("Bryan"), filed her Complaint and Lis Pendens on February 18, 2021. (Complaint and Lis Pendens, R. pp. 36, 37-43, 44). Bryan's Lis Pendens described all of Browning's property and added that Bryan's Complaint also concerned "land contiguous to [Browning's property], bearing no known address or TMS number, historically owned by [Saluda County] and purportedly conveyed to [Browning] by quitclaim deed (Bk: 1088; Pg.52) pursuant to Saluda County Ordinance Number 07-15...." (Bryan Lis Pendens, R. p. 44).

Bryan's Complaint named Respondents Saluda County Council, Saluda County and Browning as Defendants and named Saluda County Council, Donald E. Hancock in his official capacity as Chairman of Saluda County Council, and First Community Bank as Defendants.[1] (Bryan Complaint, R. pp. 37 - 43).

Bryan's Complaint asserted two causes of action. The first cause of action sought a declaratory judgment "regarding the status and ownership of the portion of [what is referred to hereafter as Moonlight Drive Extended] that runs along the [Bryan and Browning] property lines... remains a public road and the quitclaim deed [from Saluda County to Browning regarding part of Moonlight Drive Extended] [2] is void...."

The second Bryan cause of action sought as an alternative remedy to the public road declaration, a declaration that Bryan held a prescriptive easement over the area she asserted was Moonlight Drive Extended. (Bryan Complaint, R. pp. 37 - 43).

Saluda County Council and Saluda County (collectively the "County"), answered Bryan's Complaint, denying its material allegations, and asserting the affirmative defenses of laches, waiver, estoppel, unclean hands and acquiescence and alleging that if the Court determined the

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[1] On April 5, 2021, Bryan filed a Notice of Dismissal regarding Donald E. Hancock in his official capacity as Chairman of the Saluda County Council. (Bryan Stipulation (sic) of Dismissal, R. p. 45). Bryan has never pursued any claims against Defendant First Community Bank either in the court below or in this Court and any such claims must be deemed abandoned. *See S.C. Farm Bureau Mut. Ins. Co. v. Oates,* 356 S.C. 378, 384, 588 S.E. 2d 643, 646 n. 1 (Ct. App. 2003) ("Oates has not appealed these issues ... [t]hus they are deemed abandoned..." *Cf. Floyd v. Floyd,* 365 S.C. 56, 73, 615 S.E. 2d 465, 474 (Ct. App. 2005) ("An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). *See also* Byran's opening brief at 1, "[t]he defendants participating in this appeal are [Saluda] County, [Saluda County] Council and Browning...."

[2] Over the course of the proceedings below, the disputed area was referred to as Moonlight Lane, Moonlight Lane Extension, Moonlight Drive, Moonlight Drive Extended, and Greenwood Street. This brief will refer to the disputed area as **Moonlight Drive Extended.**

County owns the disputed property, Bryan could not obtain an interest in that property by prescription. (County Answer, R. pp. 46 – 52).

Browning's Answer, Crossclaim and Counterclaims denied the Bryan Complaint's material allegations, asserting the affirmative defenses of the applicable limitations period, laches, waiver, estoppel, stale claim, and acquiescence and alleging a crossclaim and counterclaim and two counterclaims. Browning's Crossclaim and First Counterclaim sought a declaration that neither the County nor Bryan held any interest in what Browning's answer described as the Browning Lot or Moonlight Drive Extended. Browning's Second Counterclaim sought a declaration that to the extent Bryan claimed the right to an easement over part of the Browning Property or Moonlight Drive Extended, Bryan had abandoned any such interest. Browning's Third Counterclaim alleged that to the extent Bryan had a prescriptive easement over any part of Browning's Property or Moonlight Drive Extended, Browning's adverse possession of her property had extinguished any such title. (Browning Answer and Counterclaims, R. pp. 53 - 61).

Bryan Replied to Browning's Answer and Counterclaims, denying their material allegations. (Bryan Reply, R. pp. 62 – 63).

The County and Browning moved for summary judgment and Bryan moved for partial summary judgment. (Judge Keesley's August 16, 2023, Order, R. 1 - 9). Bryan conceded that she could not establish the exclusivity element of her prescriptive easement cause of action. Judge Keesley partially granted Browning's summary judgment motion dismissing Bryan's prescriptive easement claim and denied the rest of Browning's summary judgment motion and denied the County's summary judgment motion. (Judge Keesley's August 16, 2023, Order, R. 1 - 9).

After the denial of a second round of summary judgment motions (Judge McLeod's Order of July 17, 2024, R. p. 10 - 17), the case was tried before Judge McLeod in a one-day bench trial

on December 10, 2024, with Judge McLeod issuing his Order Denying All Claims and Dismissing All Crossclaims Asserted Against the Defendants on April 2, 2025. (Judge McLeod's April 2, 2025, Order, R. pp. 18 - 32).

On April 10, 2025, Bryan filed a motion under Rules 59(e) and 52(b), SCRCP, regarding Judge McLeod's April 2, 2025, Order and on April 14, 2025 (there being an intervening weekend), Browning filed a Rule 59(e), SCRCP motion regarding that same order. (Bryan's Rule 59(e) and 52(b) Motion and Browning's Rule 59(e) Motion, R. pp. 372 – 375, and pp. 376 – 318).

On July 23, 2025, Judge McLeod issued his Order Granting Motions to Reconsider in Part and Denying in Part and on August 21, 2025, Bryan filed her Notice of Appeal. (Judge McLeod's July 23, 2025, Order and Bryan's Notice of Appeal, R. p. 33 – 35).

Judge McLeod's April 2, 2025, Order, as amended, dismissed Bryan's remaining claim regarding what she alleged was a public road, and declared Browning to be the owner in fee simple absolute of the .72-acre tract conveyed to her in 2007. (Judge McLeod's April 2 and July 23, 2025, Orders, R. pp. 18 – 35).

Statement of Facts

The Bryan and Browning properties are in a residential subdivision known as Lake Murray Shores in Saluda County.

Parts of the Bryan and Browning properties are shown on a plat dated September 1950 (1950 Subdivision Plat, Joint Exhibit [JE] 8, R. p. 648). The part of Bryan's property shown on the 1950 Subdivision Plat are Subdivision Lots 79 and 80. Browning's property is part of 1950 Subdivision Plat Lot 1. (JE 8, R. p. 648).

The 1950 Subdivision Plat also shows Greenwood Street, which is now known as Moonlight Drive, running from its terminus between Subdivision Lots 80 and 1 north to where it

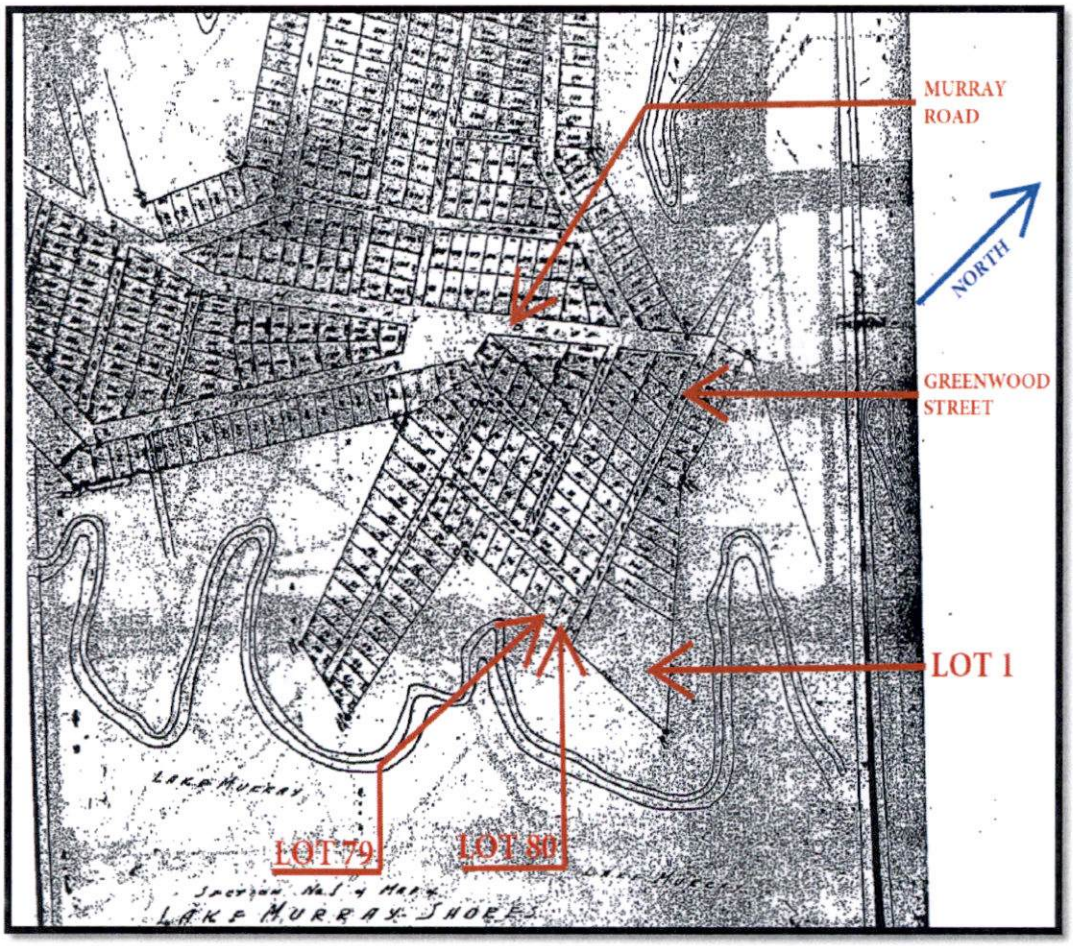
intersects Murray Road.[3]

The part of Moonlight Drive Bryan claimed which is shown on the 1950 Subdivision Plat, runs from its terminus between lots 80 and 1 to about the northern boundary of Lot 80. (JE 8, R. p. 648).

The part of Moonlight Drive claimed by Bryan not shown on the 1950 Subdivision Plat, extends from Moonlight Drive's apparent terminus between lots 80 and 1, south to the 360-contour line of Lake Murray.[4]

Part of the 1950 Subdivision Plat is reproduced below, which was copied from page 4 of Judge McLeod's April 2, 2025, Order, with a blue "north" arrow, and red arrows pointing to Lots 1, 79 and 80, Moonlight Drive/Greenwood Street and Murray Road.

[3] At some point, Greenwood Street's name was changed to Moonlight Drive, and will hereafter be referred to as either Moonlight Drive/Greenwood Street, or just Moonlight Drive.
[4] The part of Moonlight Drive claimed by Bryan, both the part shown on the 1950 Subdivision Plat and the part not shown, is called hereafter Moonlight Drive Extended.



1950 Subdivision Plat, Judge McLeod's April 2, 2025, Order, R. p. 21.

A. Browning's chain-of-title.

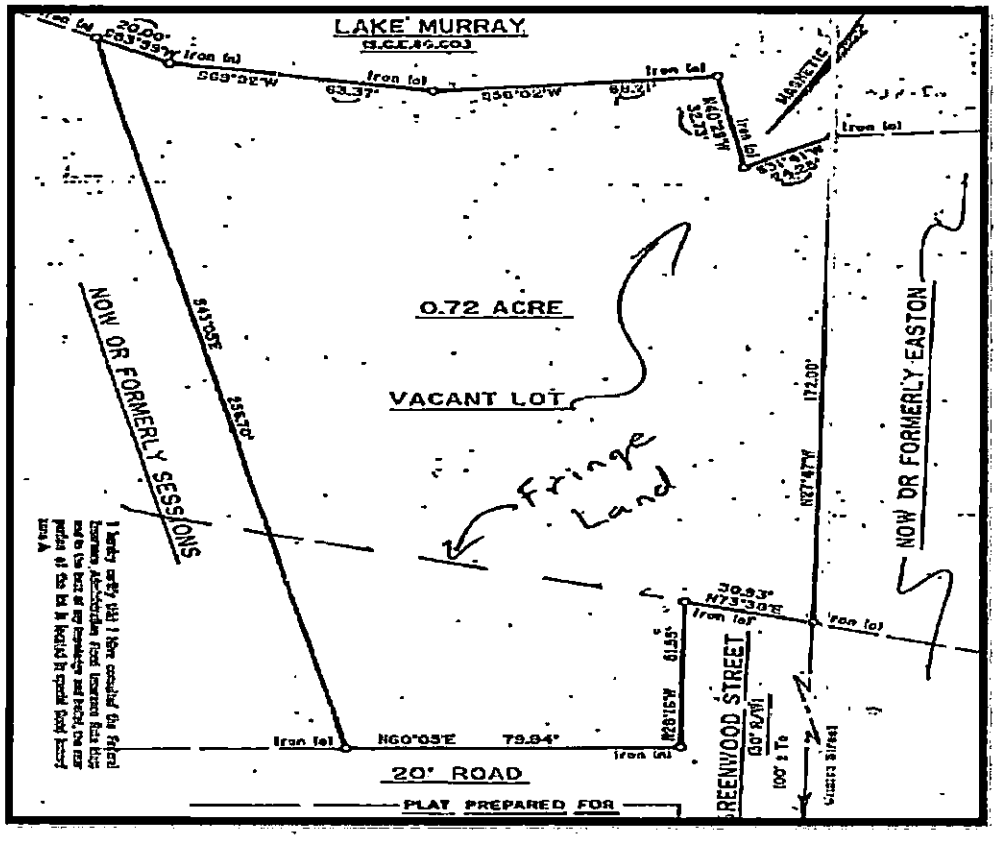
By deed dated April 30, 1951, the Lake Murray Shores subdivision developers conveyed Lot 1 on the 1950 Subdivision Plat to Maye W. Sessions. (JE 1, R. p. 631).

By deed dated January 24, 1963, SCE&G conveyed a 2.14-acre tract located to the south of, and contiguous to, Lot 1, to Ms. Sessions. (JE 3, R. p. 633).

This 2.14-acre tract (part of which became the .72-acre Browning tract) was described at trial by Browning's expert land surveyor, Gene Dinkins, as "fringe land." Mr. Dinkins testified that "fringe land" is property above the 360-foot contour line of Lake Murray bought by SCE&G's predecessor during the construction of Lake Murray to make sure it acquired enough land to

accommodate the inundation of Lake Murray up to the 360-foot contour line. (R. p. 575, line 12 – R. p. 579, line 14).

Mr. Dinkins said that the part of the Browning property which was "fringe land" was not owned by the Lake Murray Shores developer, but owned originally by SCE&G's predecessor and then owned by SCE&G. (R. p. 576, line 1 – R. p. 577, line 4). Mr. Dinkins showed the part of the Browning property that was fringe land belonging to SCE&G before it was conveyed to Browning's immediate predecessor-in-interest by drawing a dotted line on R. p. 777 between the fringe land part of the Browning Property and the part of 1950 Subdivision Plat Lot 1 that became the Browning property. (R. p. 576, line 1 – R. p. 580, line 6, and R. p. 583 line 4 – R. p. 584, line. 23 and R. p. 777). R. p. 777 is reproduced below.



By plat dated May 6, 1974, drawn by Arthur Weed (JE 10, R. p. 650), Maye W. Sessions subdivided Lot 1 and the 2.4-acre fringe land tract she bought from SCE&G in 1963, into four lots. The .72-acre tract shown on the 1974 Weed plat became Browning's property. (JE 10, R. p. 650).

By deed dated November 18, 1987, Maye W. Sessions conveyed the .72-acre Browning property to George and Camilla Doss. (JE 4, R. p. 637). This 1987 deed describes the Browning property with reference to the 1974 Weed plat and a 1987 plat done by Cox & Dinkins. (JE 10 and 11, R. p. 650 and R. p. 651).

By deed dated August 22, 2007, Camilla Doss, then known as Camilla Spencer, conveyed the .72-acre tract to Browning. (JE 6, R. p. 641).[5] This 2007 deed describes the .72-acre tract by reference to the 1974 Weed plat (JE10, R. p. 650) and a 2007 plat done by Ben Whetstone (JE 12, R. p. 652).

The 1974 Weed, 1987 Cox & Dinkins and the 2007 Whetstone plats[6] show Moonlight Drive Extended bordering the .72-acre Browning tract on the northeast. The 2007 Whetstone plat shows Moonlight Drive Extended[7] in the same location as the 1974 Weed and 1987 Cox & Dinkins plats and these three plats show Moonlight Drive Extended as a 50-foot long, 30-foot-wide area. Neither the 1974, the 1987 or the 2007 Weed, Cox & Dinkins or Whetstone plats show Moonlight Drive Extended running south to the 360-foot contour line of Lake Murray. Each show Moonlight Drive Extended terminating at what was, before its 1974 subdivision into 4 lots, the southern boundary of the original 1950 Subdivision Plat Lot 1.

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[5] By deed dated September 23, 1993, George Doss conveyed his interest in the .72-acre Browning tract to Camilla Doss. This deed describes the .72-acre tract with reference to the Weed and 1987 Cox & Dinkins Plats. (JE 5, R. p. 639, and R. p. 651).

[6] These plats label Moonlight Drive Extended as "Greenwood Street."

[7] The 2007 plat labels Moonlight Drive Extended as "Moonlight Drive."

On July 13, 2015, the Saluda County Council held the first reading of an ordinance which said that Browning owned the .72-acre tract shown on the 1974, the 1987 and 2007 Weed, Cox & Dinkins and Whetstone plats, that road access to the Browning property was "exclusively through Moonlight Drive [Extended][8]," that "at one time in its history Saluda County had maintained Moonlight Drive [Extended] but has not maintained it in recent years," and that Browning "assumed the maintenance of Moonlight Drive [Extended] and is desirous of maintaining the road as her exclusive access." The ordinance said that Saluda County would sign "a quit claim deed to Browning" for Moonlight Drive [Extended] as it is described in the ordinance, upon the adaption of the ordinance. (Ordinance, Bryan Ex. 2, R. p. 778).

The second reading of the ordinance was on August 10, 2015, and the third reading and public hearing on the ordinance was held on September 14, 2015, at which time the ordinance was adopted. (Ordinance, Bryan Ex. 2, R. p. 778).

On September 21, 2015, the Chairman of Saluda County Council signed a quit claim deed under the September 14, 2015, ordinance. The quit claim deed (JE 7, R. p. 645) describes the property quit claimed to Browning as:

> That certain 30 foot road being an extension of Moonlight Drive formerly Greenwood Street, located in Lake Murray Shores, Section 1, County of Saluda, State of South Carolina and bounded generally now or formerly, on the West by lot of Jan H. Bryan, being known as Saluda County Tax Map No. 206-26-01-079, on the South where it dead ends into the lot of Rhonda W. Browning; on the East by lot of Rhonda W. Browning and by lot of Barbara Blymyer, Trustee, being known as Saluda County Tax Map No. 206-26-01-334; and on the North by the remaining portion of Moon Light (sic) Drive.

[8] The ordinance refers to Moonlight Drive Extended, as shown on the 1974, 1987, and 2007 Weed, Cox & Dinkins and Whetstone plats (JE 10, 11, and 12, R. pp. 650, 651 and 652), as "Moonlight Drive Extension."

The quit claim deed property description matches generally the location of Moonlight Drive Extended shown on the 1974, 1987, and 2007 Weed, Cox & Dinkins and Whetstone plats.

B. Bryan's chain-of-title

By deed dated September 1, 1951, the Lake Murray Shores developers conveyed Subdivision Plat Lots 79 and 80 to Lonnie and Bertha Goodwin. (JE 13, R. p. 653).

By deed dated November 9, 1960, the Goodwins conveyed lot 79 to Wiley B. Easton. (JE 14, R. p. 654).

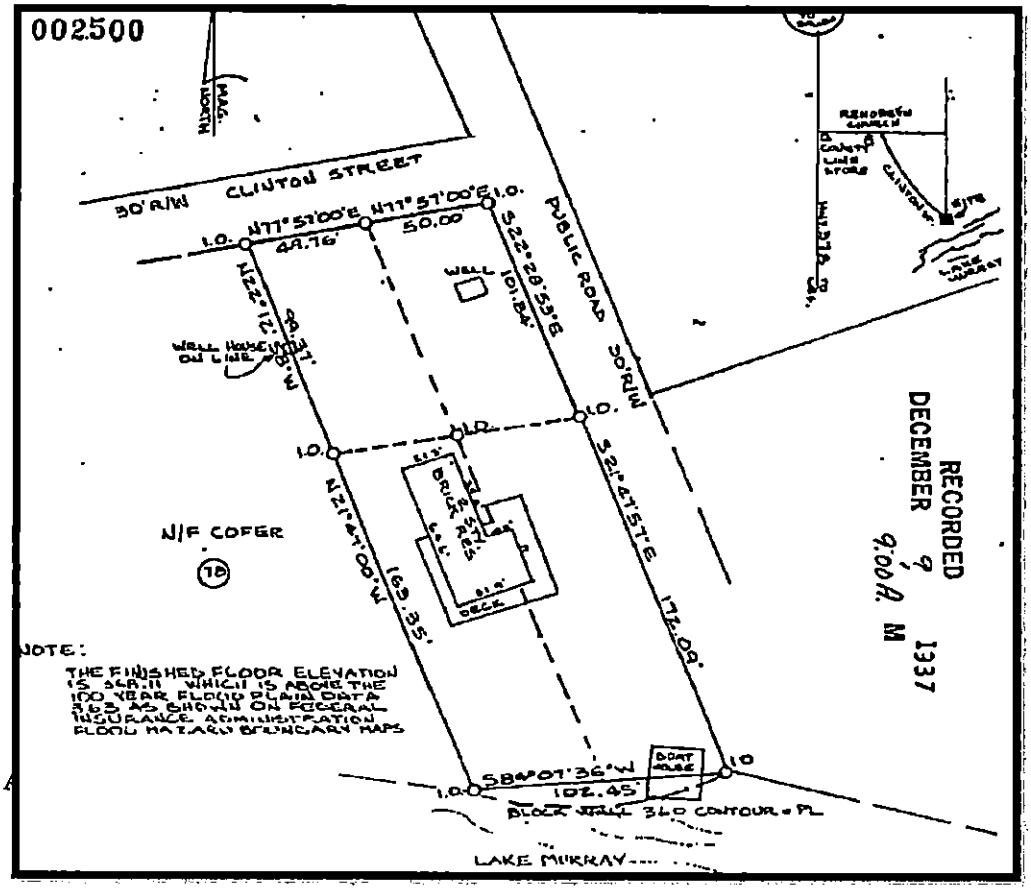
By deed dated June 26, 1961, SCE&G conveyed a .19-acre fringe land tract to Wiley Easton. (JE 15, R. p. 655). This .19-acre fringe land tract is located to the south of and is contiguous to 1950 Subdivision Plat Lot 79 and, just like the 2.14-acre tract conveyed to Maye W. Sessions by SCE&G in 1963, this conveyance expanded the boundaries of Lot 79 to the shores of Lake Murray, whereas before, Lot 79 did not touch Lake Murray.

By deed dated August 31, 1962, SCE&G conveyed a .20-acre fringe land tract to the Goodwins. (JE 16, R. p. 659). Like the .19-acre fringe land tract, this .20-acre fringe land tract is located to the south of, and is contiguous to, the 1950 Subdivision Lot 80 and, like the .19 acre fringe land tract conveyed to Easton in 1961, and the 2.14-acre fringe land tract conveyed to Maye W. Sessions in 1963, this conveyance expanded the boundaries of Lot 80 to the shores of Lake Murray, whereas before, Lot 80 did not touch Lake Murray.

By deed dated February 14, 1963, the Goodwins conveyed Lot 80 to Easton, along with the .20-acre fringe land tract conveyed to the Goodwins by SCE&G in 1962. (JE 17, R. p. 663).

By deed dated December 7, 1987, Easton conveyed lots 79 and 80 and the .20 and .19-acre fringe land tracts to Bryan. (JE 18, R. p. 664).

The 1987 Easton deed to Bryan describes the property conveyed with reference to a plat prepared by Ralph Vanadore dated November 30, 1987 (JE 21, R. p. 668). The 1987 Vanadore plat shows the Bryan property and the fringe land to the south of Bryan Lots 79 and 80 and shows what it labels a "public road" noting that the "public road" has a "30' r/w [right of way]". The solid line showing the eastern boundary of the "public road" stops at what appears to be the southwest corner of the original 1950 Subdivision Plat Lot 1, followed by a dotted line extending to the south of the solid line. This dotted line does not go all the way to the 360-foot contour line of Lake Murray, which is also shown on the 1987 Vanadore plat, which is reproduced below.



C. Bryan's Case-in-Chief.

The house on the Bryan property has always been a summer or weekend home, though once a Bryan son lived there for an unknown period. (R. p. 470, lines 12 – 17).

Gregg Anderson testified that he was a friend of the Bryans. He testified that "there was a road that went down to the lake... [and] back in the 80's we used ride (sic) our golf cart down there..." (R. p. 427, lines 16 – 22). Mr. Anderson never saw "anyone from Saluda County out there [on the alleged road] maintaining the road ..., [and he] thought the road was just kind of dirt.... There was grass, had like two rugs [ruts] going down the road..." (R. p. 431, lines 23 – R. p. 432, line 10). No sign showed that whatever it was that Anderson was describing was a public road, and the last time he saw anyone use this alleged road was "[a]bout a long time ... [b]ecause it – it's been growed (sic) up about 40 years at least...." (R. p. 433, lines 13 – 14). Mr. Anderson said he has seen "less than 5" people use this alleged road to launch their boat into Lake Murray. (R. p. 435, lines 9 – 12).

Wiley Easton, Jr., testified that in his "opinion" the area Bryan claimed was a "county road." (R. p. 445, lines, 21 – 23). He said that people used this alleged road "after dad (Mr. Wiley Easton, Sr., Wiley Easton, Jr.'s father and from whom the Bryans acquired titled to their property) pushed it out and opened it up, it had – over years, it had turned into a big wash and it – it had a pretty good slope to it, so it would wash out and he went up there and took a bulldozer or something and opened it up ... enough that we could put our boat in before the boathouse went in...." (R. p. 445, lines 3 - 10). Wiley Easton, Jr. testified that after his father "opened it up..., people started using it [the alleged road] and it was fine until they started leaving all their trash and debris around...." Thereafter, Wiley Easton's father "... went to a - a judge in Saluda and the judge ruled that it was – that he could go ahead and put a chain up and stop that gate (sic) ...," (R. p. 445, lines

15 – 17). Wiley Easton, Jr., said he never saw any "county or other government workers...," maintaining the alleged road. (R. p. 452, lines 4 - 6).

Bryan testified that she was shown the plat of her property (R. p. 459, lines 14 - 21), that there was a "public road" on the plat, but that the road had been "closed off by Wiley Easton [Sr.]" (R. p. 459, line 20). Bryan said that "Wiley had it ... already had it closed off...." when Bryan bought the property in 1987, (R. p. 466, lines 15 – 18). Bryan also testified that "nobody from the county ever maintained this area [Moonlight Drive Extended]." (R. p. 474, lines 4 – 7).

Bryan also identified her handwriting on Browning Ex. 3, R. p. 811, which is a bill from a law firm dated December 22, 2001. Bryan wrote on this bill, "Steve, what is the status of the property that was in question? Did we indeed own it or have it titled wrong?" The single time entry on this bill for legal services says, "Drafting letter to Jan [Bryan] and Carl [Bryan] regarding purchasing the roadbed." This legal service was rendered, according to the bill, on November 28, 2001.

Amanda Rowe, Assistant Superintendent of the Saluda County Roads and Bridges Department, testified that while the County maintained Moonlight Drive, it had no records of ever maintaining Moonlight Drive Extended, although the County's maintenance records go back only to 2007 or 2008. (R. p. 502, line 1). Rowe testified that while the County maintains about 280 miles of mostly dirt roads, the County does not own fee simple title to the roads it maintains – it holds what Rowe described as a right-of-way or maintenance easement over these roads. (R. p. 497, line 25 – R. p. 498, line 7)[9]. Rowe testified that she knows of no evidence showing whatever Moonlight Drive Extended is, that it went all the way to Lake Murray or that the County ever

[9] Billy Corley, the retired Superintendent of the Saluda County Roads and Bridges Department, described the County's interest in its roads as an "[e]asement by prescription." Corley Depo. R. p. 697, line 18, R. p. 698, line 1).

maintained the area known as Moonlight Drive Extended. (R. p. 499, lines 15 - 18). Rowe testified that the "[County] never really accepted roads into its county system before about '08 or '07...," (R. p. 502, lines 6 - 10), and that to her knowledge, Moonlight Drive Extended has never been maintained as a County road (R. p. 505, line p. R. p. 506, line 3).

Tripp Bryan, Bryan's son, testified that it was his "opinion" that Moonlight Drive Extended was a "Saluda County Road,..." (R. p. 516, lines 3 – 5), and "... [w]e've established that the county has not maintained [Moonlight Drive Extended] at any point in time...." (R. p. 560, lines 2 – 3).

D. Browning's case-in-chief.

As recited above, Browning's expert land surveyor, Gene Dinkins, testified regarding the nature of fringe land and the location and amount of fringe land that makes up Browning's .72-acre tract.

Mr. Dinkins also identified 2 documents from his file regarding the1987 Cox & Dinkins plat. The first document (identified by Mr. Dinkins at R. p. 572, lines 1 – 22), Browning Ex. 16 (R. p. 816), is a handwritten note dated December 21, 1987, which says "Dispute on right side (N/F [now or formerly] Easton. Jan & Carl Bryan (surveyed by Vanadore Deed B[ook]133-72, Atty. [illegible] Ronnie Bruce." The second document (identified by Mr. Dinkins at R. p. 574, lines 1 - 14), Browning Ex. 17, (R. p. 817), is a letter dated May 1, 1990, from Camilla R. Doss, Browning's immediate predecessor-in-interest, and says, "... The question that has arisen is in regard to the strip of land which I have highlighted in yellow. The neighbors [the Bryans] told us they were under the impression that the strip was a public roadway all the way to the lake...." The third document is Browning Ex. 18 (R. p. 818) is described as an enclosure to the May 1, 1990, letter, and is a copy of the 1987 Cox & Dinkins Plat, with Moonlight Drive Extended/Greenwood Street highlighted in yellow, with an arrow at the terminus of Moonlight Drive

Extended/Greenwood Street pointing south toward where the Browning .72-acre lot borders on Lake Murray.

Browning testified that when she bought her property in 2007, to use as her year-round home, Moonlight Drive Extended was an overgrown patch next to her property as shown on the 1974 Weed, 1987 Cox & Dinkins and 2007 Whetstone plats. (R. p. 599, line 4 – R. p. 601, line 2).

After she bought her .72-acre tract, Browning accessed her home through a neighbor's lot and anticipated buying a small piece of her neighbor's property so she would have permanent access to her home. However, about a year after Browning bought her property, her neighbor decided not to sell this access area to Browning and the neighbor ultimately built a storage shed on the property Browning originally used as access to her property. (R. p. 599, line 4 – R. p. 600, line 17).

Deprived of the area she first used as access to her home, Browning contacted Saluda County to ask if she could clear the overgrown Moonlight Drive Extended area to use as access to her property. Saluda County responded that it had no interest in Moonlight Drive Extended, and Browning could clear that area as she wanted. (R. p. 601, line 25 – R. p. 601, line 8).

Browning cleared Moonlight Drive Extended, putting gravel down and making the area her driveway to access her property. The clearing took several months, was completed in 2008 or 2009 and cost Browning several thousand dollars. (R. p. 182, line 4 – 602, line 14).

When Browning bought her home in 2007, the border between her property and Bryan's, from just south of the terminus of Moonlight Drive Extended shown on the 1974 Weed, 1987 Cox & Dinkins, and 2007 Whetstone plats, to just short of the 360-foot contour line of Lake Murray, was planted with 15- to 20-foot-tall Leland Cypress trees. (R. p. 602, line 23 – R. p. 602, line 15,

and Browing Ex. 1, 8 and 9, J. pp. 810, 813 and 814).

In 2010, Browning asked Saluda County for permission to plant more Leland Cypress trees along of western border of Moonlight Drive Extended shown on the 1974 Weed, 1987 Cox & Dinkins, and 2007 Whetstone Plats, and Saluda County gave her permission to do so, the only caveat being the County's request that in planting the trees Browning not create any "sight problems from (sic) road access." (R. p. 607, line 6 – R. p. 609, line 4, and Browning Ex. 7, R. p. 812).

In July 2014, Browning received a letter from Billie Corley, then Superintendent of the Saluda County Roads and Bridges Department, saying the County had received a "complaint in reference to trees being planted on the right of way of Moonlight Drive [Extended]." The letter "recommended" that Browning either "begin an action to close that portion of Moonlight Drive [Extended]..." or remove the trees. (Pl. Ex. 10, R. p. 807). Upon receipt of this letter, Browning contacted a Saluda County attorney who started the process which culminated in the quit claim deed referred to above. (R. p. 600, line 23 – R. p. 612, line 25).

Finally, Browning testified that in addition to her home, a guest house is also on her property. Browning said that the loss of 15 feet of her driveway, i.e., the part claimed by Bryan, would cause the loss of any parking for her guest house guests. (R. p. 617, line 1 – R. p. 618, line 23).

Standard of Review

Browning agrees with Bryan that this case sounds in equity and the Court may make findings based on its view of the preponderance of the evidence. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 290 – 91 (2000). However, the Court is not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge

their credibility. *Id.*

Introduction to Argument on Issues on Appeal I and II

Issues I and II deal with the dispute over whether Moonlight Drive Extended is a dedicated public road and whether, as such, Bryan has any claim to any part of Moonlight Drive Extended.

Browning argued in the court below and submits to this Court that for analysis purposes, Moonlight Drive Extended should be divided into two parts.

The first part of Moonlight Drive Extended, which is the subject of Argument I, is the area of Moonlight Drive Extended made up of the fringe land part of Browning's .72-acre tract described by Browning's expert land surveyor in his testimony and shown on R. p. 777.

The fringe land part of what Bryan claims to be Moonlight Drive Extended was part of the 2.14-acre fringe land tract bought in 1963 from SCE&G by Browning's predecessor-in-interest, Maye W. Sessions. *See* JE 3 and JE 9, R. p. 633 and R. p. 649.

The second part of Moonlight Drive Extended, which is the subject of Argument II, is the part shown on the 1950 Subdivision Plat (JE 8, R. p. 648), the 1974 Weed plat (JE 10, R. p. 650), the 1987 Cox & Dinkins plat (JA 11, R. p. 651), the 2007 Whetstone plat (JE 12, 652), the 1987 Vanadore plat, and described in the quit claim deed from the County to Browning (JE 7, R. p. 641).

Argument

I.

The Circuit Court did not err in declaring Browning owned her .72-acre tract free of Bryan's claims because most of Browning's property was fringe land never owned by the subdivision developers, there was no evidence that SCE&G, the fringe land owner, intended to dedicate the fringe land as a public road, and the rest of Browning's property included no part of the road Bryan claims was publicly dedicated.

Bryan does not dispute that the Bryan and the Browning properties are made up in part of fringe land, once owned by SCE&G and conveyed to Bryan's and Browning's predecessors-in-interest and that this fringe land makes up a substantial part of both tracts. "The chains of title for both the Bryan and Browning lots contain deeds from SCE&G distributing fringe land to the respective lot owners in the 1960s. Despite the minimizing name, the fringe land forms a large portion of what Bryan and Browning own today." Bryan Initial Brief at 7.

Bryan relies on the 1950 Subdivision Plat for her argument that there was "without doubt" a public dedication of Greenwood Street (as Moonlight Drive is labeled in 1950), which "runs to the end of the lots and through to [Lake Murray's] shore." Bryan Initial Brief at 17.

The 1950 Subdivision Plat shows the southern boundaries of Lots 79, 80, and 1 and Moonlight Drive Extended terminating along the same straight line which runs east and west and which is well to the north of, and a considerable distance from, the Lake Murray shoreline. This east and west running straight line boundary is the same southern boundary shown for the five subdivision lots, Lots 74 – 78, located to the west of what became the Bryan's Subdivision Lots 79 and 80, and falls well short of the Lake Murray shore shown on the 1950 Subdivision Plat.

This fact is further confirmed by the property descriptions in the deeds from SCE&G conveying the fringe property lying to the south of Lots 79, 80 and 1 to the predecessors in interest of Bryan and Browning.

The 1963 deed from SCE&G to Maye W. Sessions describes the 2.14-acre fringe property conveyed by courses and distances as follows:

> Beginning at an iron pipe on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line between lands formerly of Mrs. Eugenia Derrick and lands formerly of J.W. Frazier, thence running in along the PBL N 69° 36' E for a distance of 367.5 feet, more or less, to a concrete monument [point of beginning], thence N 55° 24' W for a distance of 278.8 feet, more or less, to an iron pipe, thence leaving the PBL and running N 57° 52 ' E for a distance of 91.5 feet,

more or less, to an iron pipe on the 360 foot contour thence following the contour S 64° 08' E for a distance of 76.6 feet, more or less, thence S 42° 52' E for a distance of 58.1 feet, more or less, thence S 59° 59' E for a distance of 113.6 feet, more or less, thence S 46° 45' E for a distance or 40.8 feet, more or less, thence S 32° 37' W for a distance of 100.0 feet, more or less, thence S 23° 23' W for a distance of 122.4 feet, more or less, thence S 37° 32 ' for a distance of 58.5 feet, more or less, thence S 79° 35' W for a distance of 56.2 feet, more or less, thence S 64° 58' W for a distance of 63.1 feet, more or less, thence S 52° 07' W for a distance of 68.2 feet, more or less, thence N 44° 43' W for a distance of 32.8 feet, more or less, thence S 25° 55' W for a distance of 23.9 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N 32° 00'W for a distance of 172.4 feet, more or less, to the point of beginning.

(JE 2, R. p. 632).

The courses and distances in the 1963 SCE&G deed to Maye W. Sessions match the courses and distances shown on the plat of the fringe property dated September 21, 1962. (JE 9, R. p. 649). These courses and distances correspond closely with the courses and distances shown on the 1974 Weed plat (JE 10, J. p. 650), which subdivided the 2.14 track into 4 lots, the 1987 Cox and Dinkins plat (JE 11, R. p. 651), the 2007 Whetstone Plat (JE 12, R. p. 652), and the distances shown on a tax map identified by Mr. Dinkins during his testimony (R. p. 576, lines 15 – 18 and Browning Ex. 14, R. p. 815), with some minor inconsequential variations.[10] The 1974 Weed Plat shows the entire 2.14-acre tract, the 1987 Cox and Dinkins and 2007 Whetstone Plats show only Browning's .72-acre tract and the tax map shows all of the 2.14-acre tract.

None of the plats, or the tax map, show a road, public or otherwise, going through Browning's .72-acre tract to the Lake Murray shore.

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[10] A. A – a surveyor will almost always find slight deviations. You know, everything from equipment to, if a property [pin] has been knocked slightly, it'll be a 10th or two different, but these are all actually extremely close ... Q. And – and do those points of courses and distances also match what you have on your 0.72-acre 1987 plat [JE 11, R. p. 651]? A. Yes they do." (R. p. 680, lines 7 – 8 and R. p. 580, lines 581, lines 5 - 13, referring to the 1962 SCE&G Plat, JE 9, R. p. 649, a tax map which was in the Cox & Dinkins file, and which showed just distances but no courses, Browning Ex. 14, R. p. 815, the 1974 Weed Plat, JE. 10, R. p. 650, and the 1987 Cox & Dinkins Plat, JE 11, R. p. 651).

Mr. Dinkins, Browning's expert land surveyor, testified:

> Q. Tell me what a surveyor is supposed to do if he sees or she sees evidence of a road or structure or something like that on property that – that they are surveying?
>
> A. When we – when a surveyor surveys a parcel of property, if they see **any type of indications of a road, whether it is a dirt road or you know, paved road, driveway from a neighbor, anything that would cross the subject property being surveyed, that is to be shown on the plat.** That is part of – at the bottom it [JE 11, the 1987 Cox and Dinkins Plat] says "I hereby certify the measurements as shown on the above [plat] are correct. And there are no encroachments or projections other than [as] shown.[11]"

Mr. Dinkins' testimony, R. p. 568, line 24 – R. p. 569, line 9. Emphasis added.

Moonlight Drive Extended never "extended" over Browning's fringe land to the Lake Murray shore.

Only the owner of the fee simple interest in property can dedicate their property to a public use. *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 316, 433 S.E.2d 875, 883 (Ct. App. 1992), citing *Safety Building & Loan Co. v. Lyles,* 131 S.C. 542, 128 S.E. 724 (1925) ("it is essential to a valid dedication that it be made by the owner of the fee [dedicated]."). "In order to show a public road, there must be (1) a positive and unmistakable intent by the owner to dedicate the property to public use...." Bryan Initial Brief at 16, citing *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1984).

When the 1950 Subdivision Plat was recorded, no part of the fringe land to the south of Lot 1, in particular no part of the 2.14-acre tract conveyed by SCE&G to Maye W. Sessions in 1963, was owned by the developers. The 1950 Subdivision Plat cannot establish the intent of the developers, as non-owners, to dedicate to a public use land that was not theirs, i.e., the fringe land.

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[11] In the same vein, Mr. Dinkins testified that "[n]o public road traverses [Browning's] 0.72-acre tract...." R. p. 568, lines 19 – 23.

Bryan argues, however, that because there is no "boundary" between what the 1950 Subdivision Plat shows as Moonlight Drive/Greenwood Street, and what is shown on that plat as "Lake Murray" this is "evidence" of "an intent to create lake access." Bryan Initial Brief at 7.

By there being "no boundary" Bryan is referring to the absence of a line on the 1950 Subdivision Plat across the southern terminus of Moonlight Drive/Greenwood Street where it ends between 1950 Subdivision Lots 80 and 1. Bryan is correct, there does not appear to be such a line on the copy of the 1950 Subdivision Plat in this record. However, Bryan fails to point out that in the northern part of the subdivision, opposite the terminus of Moonlight Drive/Greenwood Street, are three subdivision roads, Lake Drive and Calhoun and Aiken Streets, which are shown by solid lines on the 1950 Subdivision Plat to extend beyond the subdivision lots on their east and west borders all the way to what is shown on the 1950 Subdivision Plat as Lake Murray.

Assuming, for the sake of argument, that the 1950 Subdivision Plat showing Lake Drive and Calhoun and Aiken Streets, extending beyond the subdivision lots on their east and west borders to Lake Murray is evidence of the developers' intent to dedicate for public road purposes, the fringe land over which these three roads must pass to get to the Lake Murray shore, and that this intent can be imputed to SCE&G, the owner the fringe land, the same argument cannot be made regarding Moonlight Drive Extended, which is not shown on the 1950 Subdivision Plat as extending all the way to Lake Murray.

Bryan argues that the "intent" of the subdivision developers to dedicate Moonlight Drive Extended, so it traveled through SCE&G's fringe land all the way to Lake Murray, is shown by the introductory paragraph of the 1962 deed from SCE&G to a predecessor-in-interest to Bryan conveying the .20-acre portion of fringe property. That introductory property description paragraph says,

> All that certain piece, parcel of tract of land situate, lying and being in the County of Saluda, State of South Carolina, bounded on the north by lands of Goodwin, **on the east by a public road,** on the south by lands of South Carolina Electric & Gas Company, and on the west by lands of Easton, and being more particularly described as follows....
>
> R. p. 659. Emphasis added.

The 1962 deed property description describes the .20-acre tract by courses and distances, without reference to the "public road," as a boundary. The deed also refers to a 1962 plat attached to the deed. That plat, JE 20, shows no public road as a boundary to the east of the .20-acre tract. (JE 20, R. p. 667).

Regarding the fringe land part of Moonlight Drive Extended Bryan tried to establish as having a claim to, the 1950 Subdivision Plat does not show Moonlight Drive/Greenwood Street extending south beyond the boundary lines of Lots 80 and 1 to the shores of Lake Murray. While there is no "line" drawn across the southern terminus of Moonlight Drive/Greenwood Street, three other roads on the 1950 Subdivision Plat are drawn with solid lines extending beyond the boundaries of the lots forming these roads' eastern and western boundaries all the way to the waters of Lake Murray. The lack of a line drawn across the southern terminus of Moonlight Drive, does not show the developers intent to dedicate a road extending into the SCE&G owned fringe land and even if it did, that intent could not be ascribed to SCE&G, the owner of the fringe land over which the publicly dedicated road would have to pass.

The only deed in evidence that refers to a public road is the 1962 SCE&G fringe land deed into a Bryan predecessor-in-interest (JE 16, R. p. 659), which, in the introductory paragraph to its property description, says that the .20 acre tract being conveyed is bounded on, "... the east by a public road...." There is no evidence that this reference to a "public road" includes the fringe land area of Browning's .72-acre tract which Bryan asserted was part of Moonlight Drive Extended.

This reference is not evidence of "a positive and unmistakable intent by the owner to dedicate the property to public use..." *Mack* at 239, 464 S.E.2d, at 126, nor is it the "clear piece[] of evidence... showing that a public road continues ... through the fringe land [part of Browning's .72-acre tract]..." Bryan Initial Brief at 23.[12]

Finally, while Bryan's brief makes only passing reference to it, (Bryan's Initial brief at 9, n. 8), the 1987 Vanadore Plat, which is referred to in Bryan's 1987 deed to Lots 79, 80, and the fringe land to the south of each lot (JE 18, R. p. 664) shows a public road. The 1987 Vanadore Plat, however, does not show the area it labels as a public road extending all the way to the waters of Lake Murray. This plat shows Moonlight Drive Extended terminating at the southern boundary of the former 1950 Subdivision Plat Lot 1, and then three dotted lines continuing south. These dotted lines are not solid boundary lines, nor do they extend to the shores of Lake Murray.

None of the deeds or plats in Browning's chain of title, beginning with the 1950 Subdivision Plat, the 1951 deed to Sessions (JE 1, R. p. 631), the 1963 SCE&G deed of the 2.14-acre tract to Sessions (JE 3, R. p. 633), the 1963 SCE&G Plat showing that 2.14-acre tract, the 1974 Weed Plat which subdivided Lot 1 and the 2.14 acre tract into 4 lots (JE 10, R. p. 650), the 1987 Deed from Maye W. Sessions to Browning's immediate predecessor-in-interest (JE 4, J. p. 637), the Cox & Dinkins Plat referenced in that 1987 Deed (JE 11, R. p. 651), the 2007 Deed into Browning and the 2007 Whetstone Plat showing the property conveyed to Browning, show a road of any description, public or private, running through Browning's. .72-acre tract. Nor does the 1961 SCE&G fringe land deed into a Bryan predecessor-in-interest (JE 15, R. p. 655), the 1961

[12] The other "clear piece" of evidence referenced by Bryan in her brief (Bryan Brief at 23), is a 1955 aerial marked as Court Exhibit 1. The problem with citing this document is that it was not admitted into evidence. "The Court: Okay. All right – all right. Well, you can – you can make it a court exhibit, but I'll sustain the objection... [referring to the objection to admission of the 1955 aerial]." R. p. 524, line 12 – R. p. 525, line 11).

SCE&G plat referenced in that 1961 deed (JE 19, R. p. 666), the 1962 SCE&G Plat referenced in the 1962 SCE&G fringe land deed into a Bryan predecessor-in-interest (JE 20, R. p. 667), or the 1987 Vanadore Plat, refer to or show a public or private road running through Browning's .072-acre track. None of these documents, considered individually or collectively, establish the clear and unequivocal intent of the then owner of the fringe land, SCE&G, to publicly dedicate any part of its fringe land as a public road.

Judge McLeod correctly concluded that none of Browning's .72-acre tract is encumbered by a public or private road and his order and judgment should be affirmed.

II.

The Circuit Court did not err in rejecting Bryan's claim that the non-fringe land part of Moonlight Drive Extended was a publicly dedicated road where there was no evidence the County accepted any dedication and, even if acceptance could be inferred, a predecessor-in-interest to Bryan closed the road and it remained closed to the public until the County quitclaimed any interest it had in the road to Browning?

Judge McLeod's April 2, 2025, order concluded as a matter of law that Bryan had not met "her burden of proof by a preponderance of the evidence that Moonlight [Drive] Extended is a public county road in need of closure by the Court and that, once closed, she is entitled to half of it in fee simple." (April 2, 2025, Order, R. p. 18).

The dedication of a road to the public requires two elements. "First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication." *Mack* at 239, 464 S.E.2d at 126 (citations omitted).

As to the second part of Moonlight Drive Extended, i.e., the 30 by 50 foot area shown on the 1974 Weed, 1987 Cox & Dinkins and 2007 Whetstone plats, the recording of the 1950 Subdivision Plat by the Lake Murray Shores developers, and their sale of subdivision lots with

reference to that plat, is, again for the sake of this argument, some evidence of the developers' intent to dedicate the roads shown on that plat, including the 30 foot by 50 foot, non-fringe land part of Moonlight Drive Extended, to Saluda County.

However, to prove a public dedication, Bryan must establish not only the intent by the subdivision owners to publicly dedicate their property, but the acceptance of that dedication by Saluda County.

"To have a completed dedication, there must be some form of acceptance of the offer to dedicate." *Tupper v. Dorchester Cty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 192 (1997). Maintenance of a road by a public entity may be considered evidence of acceptance of an implied dedication. *County of Darlington v. Perkins*, 269 S.C. 572, 575, 239 S.E.2d 69, 70 (1977). This maintenance can include filling potholes, spraying for mosquitoes, and removal of trees following storm damage. *Milton P. Demetre Family L.P. v. Beckmann*, 2009 WL 9524570 * 4 (Ct. App. January 14, 2009). "It is the duty of the fact finder to determine whether or not the public dedication has been accepted." *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990).

There is evidence that County maintained parts of Moonlight Drive. However, Bryan is not focused on the entirety of Moonlight Drive, but rather on the 50 foot long, 30-foot-wide Moonlight Drive Extended, and there is no evidence of the County maintaining Moonlight Drive Extended. The evidence is just the opposite.

All of Bryan's witnesses, including Bryan, testified they saw no one from the County working on Moonlight Drive Extended. Gregg Anderson never saw "anyone from Saluda County out there maintaining [Moonlight Drive Extended]." (R. p. 431, line 23 – R. p. 432, line 1). Wiley Easton, Jr., said that "nobody from the county ever maintained this area [referring to Moonlight Drive Extended]." (R. p. 452, lines 4 - 5). Bryan said she had "... never known anyone from the

county to maintain the road...." (R. p. 474, lines 11 - 13). Amanda Rowe, the Assistant Superintendent of the Saluda County Roads and Bridges Department, who was called as a witness in Bryan's case-in-chief, said there were no records of the County ever having worked on Moonlight Drive Extended. (R. p. 499, lines 19 - 22). Billy Corley, the retired Saluda County Superintendent of its Roads and Bridges Department, who died after his deposition was taken, testified at his deposition, which was admitted at trial in its entirety, that he had been Superintendent of the Roads and Bridges Department since 1999, retiring in 2000 and, regarding Moonlight Drive Extended, he "never even knew it was there..." (R. p. 674, line 4 - 18, R. p. 701, line 21 – R. p. 701, line 3). Once after Mr. Corley had inspected Moonlight Drive Extended in person, described it as having "... no redeeming value. I mean, it didn't have any ... there was no road indication. It was just a ... just a piece of property." (R. p. 705, lines 3 - 10). Finally, while Chip Bryan testified that Moonlight Drive Extended was a "Saluda County Road," (R. p. 516, lines 3 - 5), he went on to say that "... [w]e've established that the county has not maintained [Moonlight Drive Extended] at any point in time. (R. p. 560, lines 2 – 3).

The only evidence that Saluda County maintained Moonlight Drive Extended is in the ordinance adopted by County Council in 2015 which says, "...at one time in its history Saluda County had maintained Moonlight Drive Extension but has not maintained it in recent years...."

At deposition, Mr. Corley was asked whether he believed this statement to be true, and he replied, "I do not." When asked if he knew why this statement was put in the ordinance, Mr. Corley replied similarly, "I do not." (R. p. 693, lines 11 - 22).

"Legislative [fact] findings – express or presumed – are subject to judicial review, and the court may consider extrinsic evidence for this purpose." *Owens v. Stirling,* 443 S.C. 246, 262, 904 S.E.2d 580, 588 (2024).

To the extent the Ordinance's comments regarding the County maintaining Moonlight Drive Extended at some point is a "legislative finding," the extrinsic evidence that this finding is wrong is overwhelming.

Assuming Bryan has "clearly shown" the subdivision developer's intent to dedicate Moonlight Drive Extended as a public road, the evidence is equally clear that Saluda County did not accept, impliedly or otherwise, Moonlight Lane Extended as a public road.

As Judge McLeod's April 2, 2025, Order says, throughout this litigation, Bryan has repeatedly cited *Corbin v. Cherokee Realty Co.*, 229 S.C. 16, 91 S.E. 2d 542 (1956), for the proposition that if a governmental entity accepts the dedication of any part of a street or road, some sort of presumption arises that the entire street has been accepted for a public purpose and the burden shifts to an opposing party to show the opposite, i.e., that less than the whole street or road has been accepted for public use.

As the April 2, 2025, Order shows, *Corbin* is inapposite. "We now advert to the rights of the City of Florence. It was not required to accept the offer of dedication in its entirety. Any street shown on said plat could be accepted in part and the remainder rejected." *Id.* at 25, 91 S.E.2d at 546. While the County may have accepted Moonlight Drive as a county road, the evidence is clear that it did not accept Moonlight Drive Extended as a public road.

Bryan also attacks the quit claim deed from the County to Browning, arguing that Judge McLeod erred in failing to adjudge the quit claim deed invalid because, "[i]f the County had no interest [in Moonlight Drive Extended] it could deed no interest." Bryan Initial Brief at 28.

This misapprehends the nature of a quit claim deed. Black's Law Dictionary, 5th Ed. 1979, defines a quit claim deed as, "[a] deed of conveyance operating as a release; that is, intended to pass any title, interest, or claim which the grantor may have in the premises...." "A quitclaim deed

... does not convey the fee, but only the right, title, and interest of the grantor." *Bennett v. Investors Title Ins. Co.,* 370 S.C. 578, 593, 635 S.E.2d 649, 657 (Ct. App. 2006, citing *Martin v. Ragsdale,* 71 S.C. 67, 77, 50 S.E. 671, 674 (1905).

Accordingly, any right, title or interest, whether fee, easement, right-of-way, etc., the County had in Moonlight Drive Extended, was conveyed to Browning.

And the County was well within its rights to do so because Bryan's argument that S.C. Code Ann. §§ 57-9-10, et seq., is the exclusive mechanism available to South Carolina governmental entities to close roads is incorrect.

S.C. Code § 57-9-40, says that "[t]his chapter [referring to §§ 57-9-10, 57-9-20, and 57-9-30] shall not be construed to repeal any other provision of law **but shall be cumulative thereto.**" Emphasis added.

S.C. Code Ann. § 57-17-10 says that "...[t]he county supervisor and the governing body of the county may order the ... discontinu[ance of] such roads as shall be found useless..."

In 1997 Senator James E. Bryant, sought the opinion of the South Carolina Attorney General as to whether a County had the authority to issue a quit claim deed to an adjoining property owner of its interest in an abandoned road. The informal opinion by Robert D. Cook, Assistant Deputy Attorney General, while not binding precedent, summarizes the applicable law and a well-reasoned basis for the opinion that a County has the authority to quit claim its interest in a roadway which has been abandoned under S.C. Code Ann § 57-17-10. S.C. Atty Gen. Informal Op. (Sept. 4, 1997).

As Judge McLeod concluded, "... the County exercised the discretion available to it pursuant to this statute when executing the [quitclaim] deed to Browning and enacting the associated ordinance." (Judge McLeod's April 2, 2025, R. p. 18).

Bryan's claims to the non-fringe land part of Moonlight Lane Extended were correctly denied by Judge McLeod.

III.

> The Circuit Court did not err in dismissing Bryan's claims to an interest in Moonlight Drive Extended because Bryan raised the issue of the existence and extent of Moonlight Drive Extended and her claims to an interest in Moonlight Lane Extended as early as 1988, and pursued no legal remedy regarding those claims until filing this lawsuit in 2021, 33 years later.

Regarding the assertion of additional sustaining grounds:

> [A] respondent ... may raise on appeal 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. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review. It also could violate the principle that a court usually should refrain from deciding unnecessary questions.

I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000).

However, "an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court." *Id.* at 421, 526 S.E. 2d 724.

Here, Browning specifically noted her defense of laches in her pretrial brief (Browning Pretrial Brief at 8, R. p. 416). At the close of the trial, Judge McLeod said that "I've spoken with the attorneys [and] in lieu of just – for closing arguments back and forth. I'll go and request proposed orders from the parties." (R. p. 628, lines 6 - 8). In a footnote to Browning's proposed order, Browning says, "[g]iven the Court's conclusions of law [in Browning's proposed order which, not surprisingly, called for the dismissal of Bryan's claims], it is not necessary to address Browning's affirmative defense of laches." (Browning's Proposed Order, R. p. 856).

Bryan's affirmative defense of laches was presented to the trial court, both before the beginning of the trial by way of Browning's Pretrial Brief, during the trial by way of Bryan's and

Mr. Dinkin's testimony, and Browning Exhibits 3, 16, 17 and 18, and in Browning's proposed order submitted instead of closing arguments.

Therefore, consideration of Browning's additional sustaining ground of the affirmative defense of laches is not unfair to Bryan because she was aware of that affirmative defense and the evidence supporting it. *Cf. Alexander v. Houston*, 403 S.C. 615, 620 n.4, 744 S.E.2d 517, 520 n.4 (2013). ("Invoking an additional sustaining ground under such circumstances [where the additional sustaining ground had not been fairly presented to the lower court] would generally be unfair to an unaware appellant.")

Laches is the "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums,* 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Chambers of S.C., Inc. v. County Council for Lee County,* 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993).

The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. *Hallums,* 296 S.C. at 199, 371 S.E.2d at 528.

As early as 1988, thirty-three years before this lawsuit was filed, Bryan knew that there was an issue regarding her belief that Moonlight Drive Extended existed, was a public road, and whether it extended all the way to the waters of Lake Murray. Bryan even spoke with her neighbors, the Doss's, (Ms. Doss was Browning's immediate predecessor-in-interest) and told them of her "impression" that the "strip of land [Moonlight Drive Extended] was a public roadway all the way to the lake...." (Browning Exhibits 16 and 17, R. pp. 816 and 817). In 2001, 22 years

before this lawsuit was filed, Bryan contacted an attorney regarding that question and received a letter from that attorney (or at least was billed for such a letter) regarding this issue. (Browning Ex. 3, R. p. 811).

Between 1988 and when this lawsuit was filed in 2021, Browning bought her property relying on the 2007 Whetstone plat showing Moonlight Drive Extended as being no part of her .72-acre tract.[13] When she lost her original access to her property, as alternative access, she was forced to use the abandoned and overgrown Moonlight Drive Extended, spending $8000.00 to $10,000.00 to clear that area and make it into a driveway. (R. p. 599, line 7 – R. p. 600, line 17). Now Browning faces Bryan's claim that, if successful, aims to deprive her of a 15 foot strip of her property, the consequences of which would include the loss of the playground equipment Browning put in her backyard for her grandchildren (R. p. 604, line 15 – R. p. 605, line 7, and R. p. 615, line 21 – R. p. 616, line 10), and the loss of a significant part of the driveway she put in to access her home, for which she paid a considerable sum. Browning also said that if Bryan succeeds in her claim to a 15 foot strip of Moonlight Drive Extended, this would not only affect Browning's ability to access her property, but affects the access this 15 feet provides for her guests coming to her guest house, which is an additional source of income for Browning, who is a public school psychologist, (R. p. 617, line 1 – R. p. 619, line 5).

Browning respectfully submits Bryan delayed in asserting her claim to Moonlight Drive Extended from no later than 1988 until the filing of this lawsuit in 2021, a period of 33 years, during which Bryan was well aware of her claim. Given Browning Ex. 3, Bryan was certainly aware of her claim by 2001, 21 years before this lawsuit was filed. Finally, Browning has

[13] Browning paid $419,000.00, for the .72-acre tract in 2007 (JE Ex. 6, R. p. 641), and estimated her property is now valued at $850,000.00 to $890,000.00 (R. p. 619, lines 3 - 4).

established prejudice resulting from Bryan's delay - she bought her home relying on the 2007 Whetstone Plat, she spent between $8,000.00 and $10,000.00 clearing the overgrown and abandoned Moonlight Drive Extended area when Browning lost her original access to her property, and losing the 15 foot strip claimed by Bryan would significantly affect the rest of her property.

This Court should consider this additional sustaining ground.

Conclusion

Bryan sought "a declaration of the ownership and status of [Moonlight Drive Extended] and the enforcement of Title 57." (Bryan Complaint, Prayer for Relief, R. p. 43).

As to Issue I, Bryan claimed Moonlight Drive Extended ran from its southern terminus shown on the 1950 Subdivision Plat over the fringe land owned by SCE&G to the waters of Lake Murray. Judge McLeod correctly determined that Moonlight Drive Extended did not extend beyond its 1950 Subdivision Plat southern terminus and declared that Browning owned the .72-acre tract she bought in 2007 free and clear of Bryan's claims.

As to Issue II, regarding the part of Moonlight Drive Extended described in the County's quit claim deed, Judge McLeod correctly determined that the County's quitclaim deed to Browning was proper and correctly denied Bryan's claim that this part of Moonlight Drive Extended should be closed under S.C. Code §§ 57-9-10, et seq.

As to Issue III, Bryan knew of her claim that a public road ran through part of Browning's property as early as 1988, 33 years before this lawsuit was filed. She certainly knew of her claim to this effect in 2001, 21 years before this lawsuit was filed, when she sought the advice of an attorney on that very subject. In the intervening years, from 2007 when Browning bought her 0.72-acre tract as her home, she spent thousands of dollars clearing and landscaping Moonlight Lane Extended to use as her sole access to her property. Browning also testified that the loss of

the property claimed by Bryan would have a significantly deleterious impact on her remaining property. Bryan's delay in bringing her claim is unreasonable, it is unexplained and Browning has been prejudiced by that delay.

Judge McLeod's Order, as amended, should be affirmed in its entirety.

Respectfully Submitted,

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May 4, 2026

CERTIFICATE OF COUNSEL

I hereby certify that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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