THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

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 BRIEF OF RESPONDENTS

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STATEMENT OF THE ISSUES ON APPEAL

1. Did the circuit court properly grant summary judgment to Respondents as to Appellants' claim for prescriptive easement where there was no genuine issue of material fact that Appellants' use of the disputed areas was permissive?

2. Did the circuit court properly grant summary judgment to Respondents as to Lions Club Road by finding that an easement over Lion Clubs Road served no purpose and would be an "easement to nowhere?"

3. Did the circuit court properly grant summary judgment to Respondents where there was no evidence of any actions by Respondents to support equitable estoppel on either the fringelands or Lions Club Road?

STATEMENT OF THE CASE

Appellants commenced these two actions, which have been consolidated in this appeal, to assert an easement over property located at Lions Club Point in Newberry County. (R. pp. 634-642, 688-696). Appellants Lisa Summer Rice and Joseph F. Rice filed their original Complaint on March 3, 2018, seeking specific performance against The Newberry Lions Club (the "Lions Club"), and alleging that the Rices had a binding contract to purchase 5.5 acres of property owned by the Lions Club on Lions Club Point. (R. pp. 76-80). The Rices amended their Complaint on May 14, 2018, to add Ray C. Amick ("Mr. Amick") as a party because the Lions Club deeded the 5.5 acres (the "Amick Property") to Amick on February 22, 2018.[1] (R. p. 107 ¶ 4).

The Rices amended their Complaint a third time on July 26, 2019, in which the Rices asserted, for the first time, a claim for injunctive relief to prevent Mr. Amick from blocking access to a path that runs on the Amick Property down to the fringelands[2] and a beach and boat ramp area along Lake Murray. (R. pp. 212-217). The Third Amended Complaint also asserted easement by estoppel, easement by prior use, and a prescriptive easement over the Amick Property as an alternative theory of relief if the Rices were unsuccessful in their claims of ownership of the Amick Property. (R. pp. 212-217.). The Rices' easement claims were based on allegations that the Rices

[1] The Rices' original case against Mr. Amick sought specific performance to require the Lions Club to deed Mr. Amick's Property to the Rices. The circuit court ruled in favor of Mr. Amick, finding that the Rices failed to enter into a binding contract with the Lions Club to purchase the Amick Property. The Court of Appeals upheld the circuit court's order, finding the court properly declined to order specific performance. *See Rice v. Newberry Lions Club,* No. 2023-001162, 2025 WL 1179121, at *2 (S.C. Ct. App. Apr. 23, 2025). Having lost the right to own the Amick Property, the Rices, along with the Grays, sought easements over the Amick Property.

[2] The term "fringelands" as used in this suit and throughout the pleadings by the parties refers to the specific strip of land between the high-water mark of Lake Murray and the 365-foot boundary line. As explained in the Statement of Facts, the fringelands was owned by SCE&G/Dominion at all times relevant to this suit prior to 2019, when the fringelands were purchased by Amick.

and adjoining landowners, as members of the Lions Club, had been using the path along the Amick Property and Lions Club Road to access the fringelands for over 60 years. (R. p. 213, ¶ 76).

Meanwhile, Appellants A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert filed their complaint on May 22, 2019, seeking identical injunctive relief and an easement over the Amick Property as the Rices. (R. pp. 141-144).

Appellants filed a Motion for Temporary Injunction ("TRO") as to Mr. Amick, which was heard on June 12, 2019. (R. pp. 156-158). At the time of the Motion, Respondent Cheryl Littlejohn was not a party to either of the lawsuits. (R. pp. 107, 137.) On August 6, 2019, The Honorable Donald B. Hocker entered an Order Granting Temporary Injunction (the "TRO"), finding that Appellants had established a prima face case for (1) a prescriptive easement, (2) easement by estoppel, and/or (3) easement by prior use over the Amick Property to access the fringelands. Nothing in the TRO addressed whether or not the Appellants had a *right* to use the fringelands or any easement over the fringelands, but instead merely finds that the Appellants had used the fringelands for many years for recreational purposes.[3] (R. pp. 4-18). The TRO specifically notes that the fringelands were owned at the time by SCE&G, who was not at the time, and never has

[3] Appellants cite heavily to findings of fact in Judge Hocker's Temporary Restraining Order, even though at the time, the use of the fringelands was not an issue in the case and Ms. Littlejohn was not a party to the case. The issue of whether or not the Appellants had an easement over the fringelands arose later in the case and the first time it was ruled upon was by Judge Hayes in the orders giving rise to this appeal. Judge Hocker never considered whether Appellants had a right to use the fringelands, because at the time SCE&G owned the fringelands and freely allowed use of that "community property." Regardless, the findings and conclusions of law made by Judge Hocker in the TRO were never binding on Judge Hayes. *See S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 341, 878 S.E.2d 891, 895 (2022) (quoting *cf. Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L.Ed.2d 175 (1981) ("[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at a trial on the merits."); *S.A. v. Trump*, No. 18-CV-03539-LB, 2019 WL 990680, at *4 (N.D. Cal. Mar. 1, 2019) (a TRO finding is not binding where there are later developments in the case that provide clarity or provide new facts).

been, a party to this action. (R. p. 5). The emphasis of the order was the access ***to and from*** the fringelands, which Judge Hocker characterized as "community recreational property." (R. p. 5).

After the TRO was entered, Appellants realized that the easement they sought encumbered property owned by Cheryl Littlejohn and added her to the action via a Fourth Amended Complaint in the Rice case filed on March 20, 2020, and a Second Amended Complaint in the Gray/Schumpert case filed on March 6, 2020. (R. p. 262, ¶ 3, pp. 280-281, ¶ 4).

In February 2021, Appellants surveyed the Littlejohn and Amick properties in order to identify where they sought an easement. (R. p. 689 ¶ 77). Surveyor Tad Abraham prepared a plat dated February 23, 2021, depicting the route of alleged easement, beginning on the "Existing Old Asphalt" on Littlejohn's Property and continuing on the "gravel drive" over Amick's property, and down into the fringelands. Although this survey depicts an easement into the fringelands, the easement sought in the pleadings by Appellants did not name SCE&G or specifically assert an easement over the fringelands, as use of the fringelands had always been permissive. (R. pp. 675, 716). Instead, all of the pleadings and the TRO referred to an easement ***to access*** the fringelands. Appellants filed a Third Amended Complaint in the Gray/Shumpert case, and a Fifth Amended Complaint in the Rice case on August 31, 2021, to add the Abraham complaint as an exhibit. (R. p. 641 ¶ 38, p. 689 ¶ 77). Despite having learned that Mr. Amick acquired the fringelands on October 15, 2019, from Dominion Energy Corporation, Appellants did not include any allegations in the final amended pleadings where they request or plead the existence of an easement over the fringelands. (R. pp. 641-644, 688-696).

Ms. Littlejohn and Mr. Amick filed Motions for Summary Judgment on August 14, 2020, and November 29, 2023, respectively. (R. pp. 357-359, 791-793). Mr. Amick subsequently died

on July 27, 2023, and his wife Betty S. Amick, Personal Representative of the Estate of C. Ray Amick, was substituted as a defendant on January 24, 2024. (R. pp. 47-48).

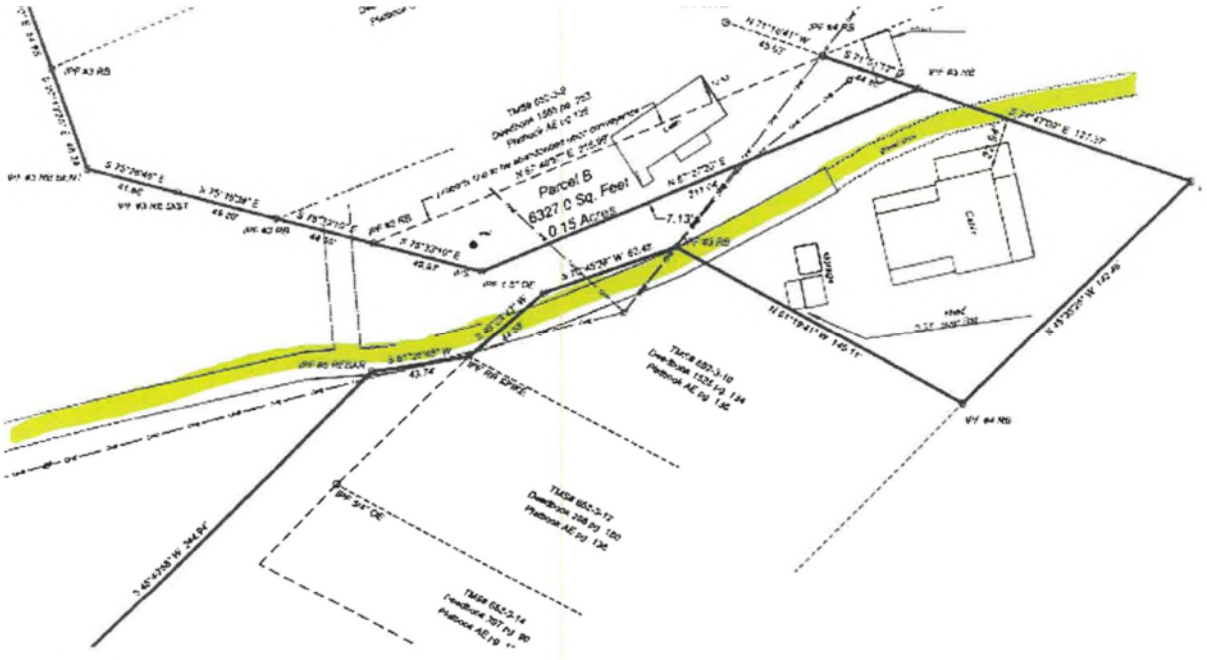
Appellants filed a Joint Motion for Summary Judgment in the consolidated cases on September 5, 2023. (R. pp. 789-790). Both sides filed memoranda in support and in opposition to the cross-motions. (R. pp. 794-940). The circuit court held a hearing on the cross-motions on December 6, 2023. (R. p. 57). On February 9, 2024, the circuit court granted Respondents' summary judgment as to the fringelands, finding that Appellants had not established an easement under any theory over the fringelands. (R. pp. 57-65). However, the circuit court denied the cross-motions as to whether or not an easement existed over Lions Club Road, the sole purpose of which would be to access the fringelands, finding genuine issues of material fact existed. (R. p. 63.)

Respondents and Appellants filed Motions to Alter or Amend the circuit court's summary judgment order on February 19, 2024, and February 20, 2024, respectively. (R. pp. 945-995). Mrs. Amick and Appellants also filed memoranda concerning the Motions to Alter or Amend on September 11, 2024, and a hearing was held by the Court on September 12, 2024. (R. pp. 996-1021). While Appellants requested that the Court revisit all of its findings in its summary judgment order, the crux of Respondent's Motion to Alter or Amend was that the Court's finding that Appellants had no easement on the fringelands was incompatible with a finding that there *might* be an easement over Lions Club Road. (R. pp. 945-950). The circuit court agreed and on February 19, 2025, issued its Order on Cross-Motions to Alter or Amend, holding that because Respondents had no right to an easement over the fringelands, they had no purpose for any easement over Lions Club Road. (R. pp. 70-75). This appeal followed.

STATEMENT OF FACTS

Ms. Littlejohn, Mr./Mrs. Amick, and the Appellants each own real property on either Lions Club Road or Lions Club Circle. (R. pp. 634-636, 676-677). This peninsula on Lake Murray is referred to as "Lions Club Point." (R. p. 638 ¶ 19, p. 689 ¶ 75) Appellants filed this suit seeking an easement right over Ms. Littlejohn's and Mr. Amick's properties, as shown by the highlighted below, in order to access the "fringelands" behind Mr. Amick's property. (R. p. 635 ¶ 4, p. 694 ¶ 101-105). The fringelands consist of a beach area and boat ramp. (R. p. 636 ¶ 10, p. 689 ¶ 77). SCE&G, and then Dominion, owned the fringelands from the 1920's to 2019, but Mr. Amick purchased the fringelands in 2019. (R. pp. 806-808).

A plat of Lions Club Point completed in 2017 shows the disputed easement area:



(R. p. 1477).

Respondents do not seek to limit the ability of any of the Appellants to use Lions Club Road to access their own properties. (R. pp. 357-362, 741 ¶ 10). However, Appellants seek an easement over Ms. Littlejohn's property as identified above, and on to Mr. Amick's property,

down to the fringelands, and apparently, across the fringelands themselves. (R. p. 635 ¶¶ 4-5, p. 694 ¶¶ 102-105, pp. 789-90).

Lions Club Membership & Use of Lions Club Road

The property located at Lions Club Point was originally owned by Mr. Amick's grandfather, W.N. Amick. (R. pp. 847-849,1485). In 1933, W.N. Amick sold the property to the Newberry Lions Club for $500. (R. pp. 847-849, 1485). In the 1950's and 1960's, the Lions deeded parcels out to Lions Club Members, but resolved that the parcels could not be deeded to non-members. (R. pp. 60, 807, 1485).

The Lions Club retained the property now owned by Amick, which has a cabin on it. The Newberry Lions Club used the cabin as a clubhouse for their meetings and social events. (R. p. 865, lines 13-19, pp. 887-889, 1127-1132, 1137-1138, 1146, lines 1-3, p. 1174, line 22, p. 1312, lines 15-18). The Lions Club property included a paved portion of Lions Club Road and then there is some evidence of a gravel path beginning where the paved portion of Lions Club Road ends (the "Gravel Path"). (R. pp. 936-938, 1077-78 ¶ 11, p. 1309, line 2-p. 1310, line 23). Lions Club Road and the pathway was used by Lions Club members to access the clubhouse, but also to access a boat ramp that had been installed on the fringelands and a beach area. (R. p. 856, lines 20-25 pp. 936-937 ¶¶ 4-6, 11, p. 1309, line 2-p. 1311, line 2). A gate was installed across Lions Club Road, approximately 600 feet from the clubhouse, to restrict access to the Lions Club property, and was labeled "Lions Club Property." (R. p. 1040 ¶¶ 5-6, p. 1127-1132, 1229, line 23-p. 1221, line 14). It is undisputed that Lions Club members' families used the fringelands throughout the late 1960s, 1970s, and/or early 1980s during the summer months when several families would spend their summers at their lake houses on Lions Club Point. (R. p. 1212, line 18-p. 1214, line 21, R. p. 1226, line 8-p. 1228, line 2). The fringelands were used for swimming, boating, picnicking, and a

parade on the 4th of July between 1978 and the mid-1980s. (R. p. 856, line 7-p.858, line 4, R. pp. 1127-1132, 1137-1138, 1146, lines 1-3, p. 1174, line 22, p. 1312, lines 15-18). Many adjoining landowners also used the path alongside the property to access the boat ramp installed on the fringelands. (*Id.*). Since 1989, many Lions Club members who were property owners on Lions Club Point have passed their properties down to the next generation, and the fringelands are used less frequently. (*Id.*; *see* also R. p. 1039, ¶¶ 3-4, p. 1041 ¶¶ 3, 14).

Access to the fringelands was given to all Lions Club members. Many witnesses testified about the gate across Lions Club Road that restricted access to the property to Lions Club Members. Julie McSwain, Gene Crocker, Appellant A. Murray Gray, Neil McSwain, Doggett Whitaker, Joseph McCrackin, and Young Schumpert all testified that were given keys to the gate on Lions Club Road when they became members of the Lions Club. (R. pp. 408-425,864, lines 4-9, p. 896, lines 14-p. 897 line 2, p. 904, lines 3-10). As the keys were labeled with "Lions Club" and in many instances, these keys were passed down through the family as ownership of the lots adjacent to the Lions Club property changed hands. (*Id.*) When new members joined, they were given new keys to access the Lions Club property. (*Id.*) The gate was consistently locked between 1966-1986, but over the more recent years, it has been locked and unlocked at various times. (*Id.*). However, Mr. Shumpert admitted that as recently as 2010 or 2011, he had to use his key to unlock the gate. (R. p. 423).

Ownership and Use of the Fringelands

It is undisputed that the purpose for accessing the portion of Lions Club Road across Ms. Littlejohn's and Mr. Amick's property is to access the fringelands. Prior to Mr. Amick's purchase of the fringelands in 2019, SCE&G and its utility predecessor (Lexington Water Power Company) and successor (Dominion Energy), had owned the fringelands since the 1920's. (R. pp. 825-828,

917). In 1984, SCE&G applied for a license with the United States Federal Regulatory Commission ("FERC") to operate a dam and power plant at Lake Murray. FERC issued a license, which is set forth in FERC's Order dated June 1, 1984 (the "FERC License"). Notably, the FERC License makes reference to the various licenses issued to SCE&G and its predecessors that had been in place since 1927. (R. pp. 909-910). Article 18 of the License issued to SCE&G requires that SCE&G "**allow the public free access**, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of **full public utilization of such lands and waters** for navigation and for outdoor recreational purposes, including fishing and hunting." (R. p. 933 (emphasis added).) SCE&G abided by the terms of the license, allowing free use of the fringelands during SCE&G's ownership from the 1920's to 2019. (R. p. 1212, line 18-p. 1214, line 21, R. p. 1226, line 8-p. 1228, line 2). Mr. Amick revoked Appellants' permission to use the fringelands when he acquired the fringelands in 2019 and blocked access. (R. p. 639-640 ¶¶ 27-29, p. 689 ¶ 78).

STANDARD OF REVIEW

On appeal from a grant of summary judgment, this Court's standard of review is the same as that of the circuit court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any ***material*** fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts exist on which reasonable minds cannot differ." *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

This Court must view the facts and inferences in the light most favorable to the nonmoving party. *See, e.g., Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994). When the nonmoving party bears the burden of proof on an issue, the moving party is entitled to summary

judgment if "there is an absence of evidence to support the nonmoving party's case." *Richardson v. State-Record Co., Inc.*, 330 S.C. 562, 566, 499 S.E.2d 822, 825 (Ct. App. 1998). "[W]hen ruling on a summary judgment motion, a court must determine whether the plaintiff has established a prima facie case as to each element of a claim . . . ." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). If a plaintiff cannot establish facts on each element of the cause of action asserted, summary judgment is mandated by Rule 56(c), SCRCP. *Id.*

If a motion has been properly made and supported in accordance with Rule 56, the nonmoving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004). A nonmoving party cannot evade summary judgment by creating and relying on "an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ARGUMENT

The circuit court correctly ruled that there is no genuine issue of material fact as to whether the Appellants are entitled to an easement, whether implied, by estoppel, by prescription, or otherwise, over the property owned by and belonging to Respondents—Lions Club Road and the fringelands.[4] While the Appellants have identified a multitude of facts, Appellants have failed to identify genuine issues of ***material*** fact in dispute that would have supported their position on summary judgment.

Ultimately, the fundamental facts before the circuit court that led to its correct ruling were:

(1) SCE&G/Dominion was the owner of the fringelands during all relevant times prior to 2019, and SCE&G granted permission for the public to use the fringelands, including the beach area and boat ramp beyond Lions Club Road; and

[4] Appellants originally claimed an easement by prior use, but abandoned that claim, admitting it did not apply to the fringelands. (*See* Appellants Initial Brief, n. 6.)

(2) The only purpose of the easement sought by the Plaintiffs was for use of the fringelands.

Because permissive use is undeniably fatal to any prescriptive easement claim,[5] the circuit court correctly ruled that Appellants' claim for any easement over Lions Club Road failed because regardless of the theory, an easement without a purpose cannot exist.

I. Appellants failed to prove with clear and convincing evidence that they were entitled to a prescriptive easement over the fringelands.

"A prescriptive easement is not implied by law but arises from a grant or by implication." Richard M. Unger, Esq., *Treatise on the Law of Easements in South Carolina* p. 39 (2017). "Rather, it is established by the conduct of the dominant tenement estate contrary to the fee simple interest of the owner of a servient estate." *Id*.; *see also Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 419, 633 S.E.2d 136, 141 (2006).

"In order to establish a prescriptive easement, one claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of 20 years." *See Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016); *see also Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015). The crux of the dispute between Appellants and Respondents is whether or not Appellants can meet the final element of a prescriptive easement—whether the use was adverse, under claim of right.

[5] The Court did not grant summary judgment in favor of Respondents by finding that the use of Lions Club Road was permissive, and therefore, could not support a prescriptive easement. The Court found no such determination was necessary because the purpose of the easements—to access the fringelands—was invalid where Appellants had no right to use the fringelands. Therefore, while Appellants cited a plethora of facts to the circuit court that Respondents believe show that the use of Lions Club Road was always permissive, such facts are not relevant as to whether or not there was a purpose to the easement over Lions Club Road.

When it appears that the Plaintiff has enjoyed such an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse. *Simmons,* 419 S.C. at 232-233, 797 S.E.2d at 391-392. However, a prescriptive easement may be defeated if the use is with the permission of the servient estate owner. *State v. Murphy*, 124 S.C. 274, 117 S.E. 529 (1923). Because "a prescriptive easement results in diminished rights of the property owner," a party claiming a prescriptive easement has the burden of proving all of the elements by clear and convincing evidence. *Bundy*, 412 S.C. at 306, 772 S.E.2d at 170. Therefore, the appropriate question at the summary judgment stage is whether the evidence in the record could support a reasonable jury finding that the plaintiff has proven the elements of a prescriptive easement by clear and convincing evidence.

A. The circuit court correctly concluded that prior to Amick's ownership of the fringelands in 2019, SCE&G granted permission to Appellants for use of the fringelands.

In their briefing, Appellants focus on facts they contend support the "open" and "notorious" use of the fringelands, arguing that the testimony before the Court created a genuine issue of material fact. However, the circuit court's order finding that Appellants had failed to prove a prescriptive easement over the fringelands was not based on whether or not Appellants had used the area "openly" or "notoriously," but instead, centered on a finding that the use of the fringelands was permissive—a finding fatal to a prescriptive easement claim.

1. SCE&G permitted Appellants to use the fringelands.

The language in the FERC license granted to SCE&G is clear and unambiguous, and was not misconstrued or misunderstood by the circuit court. The evidence before the circuit court was that SCE&G was obligated by the FERC license to allow "the public free access" and "full public utilization" of the fringelands. Appellants offered no evidence to rebut the plain language of the

FERC Order, of which the Court properly took judicial notice.

Permissive use, whether it begins at the time of the claimant's purchase or is granted during the claimed twenty-year period, "can ***never*** ripen into a prescriptive easement." *Bundy*, 412 S.C. at 310, 772 S.E.2d at 173 (emphasis added). Thus, "because use that is permissive cannot also be adverse or under claim of right[,] . . . when a claimant uses property with the permission of the owner, he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act toward the owner's rights." *Id*. Permissive use is merely a license which can be taken away at any time by the owner.

Here, there was no genuine issue of material fact as to whether or not SCE&G was the owner of the fringelands for the prescriptive time period relied upon by the Appellants, and no genuine issue of material fact that SCE&G permitted Appellants to use the fringelands. Therefore, the Court correctly granted summary judgment in favor of Respondents in finding that Appellants had failed to prove a claim for prescriptive easement over the fringelands.

Instead, the evidence demonstrates that SCE&G did exactly as it was required, and allowed the Appellants, who accessed the fringelands via Lions Club Road, "free access" and utilization of the fringelands. (*See, e.g.*, R. p. 1251, lines 15-19, p. 1252, lines 16-25, p. 1254, lines 9-13, p. 1255, lines 1-4, p. 1264, lines 8-18, p. 1274, lines 3-13 (noting that the fringelands were "usable by everybody" and were mainly used b Lions Club member and adjacent property owners during the summer months, but that SCE&G never required permitting or license fees to access the fringelands); R. p. 1135 ¶ 5 ("Use of the former Lions Club Property, including the roads, the gravel area people used to launch their boats and the beach area always required permission." (R. p. 933).) Therefore, any use of the fringelands prior to 2019 was purely permissive and "cannot also be adverse or under a claim of right." *Bundy*, 412 S.C. at 310, 772 S.E.2d at 173; *Murphy*,

124 S.C. 274, 117 S.E. 529 (a prescriptive easement is defeated if the use is with the permission of the servient estate owner). Ultimately, the circuit court correctly ruled that Appellants failed to meet their burden of proof for a prescriptive easement over the fringelands.

2. A private citizen cannot acquire a prescriptive easement on property owned by a public utility, where the property is being used for a public purpose.

Appellants argue that regardless of the free public use that SCE&G was required to provide by the FERC license, they are entitled to a prescriptive easement over the utility's property. However, even if that were true, "no prescriptive right can be acquired in property affected with a public interest or dedicated to a public use." *Norfolk and Western Railway Company v. Waselchalk*, 421 S.E.2d 424 (Va. 1992) (quoting *Preshlock v. Brenner*, 362 S.E.2d 696, 697 (1987)); *A&M Properties, Inc. v. Norfolk Southern Corporation*, 506 S.E.2d 632 (1998). There can be no doubt that the fringelands and area owned by SCE&G from the 1920's to 2019 was for public use, and therefore, Appellants could never be entitled to such an easement.

II. The circuit court properly held Appellants had no easement over Lions Club Road because such an easement had no purpose.

The FERC license has no bearing on whether or not the Appellants have a right to use Lions Club Road, as mistakenly argued by Appellants. (App Brief, at p. 37.) The import of the FERC license solely relates to whether Appellants proved a prescriptive easement over the fringelands.

Because there was no prescriptive easement over the fringelands, there was no reason for the Court to consider whether or not an easement existed over Lions Club Road because it would have been an easement over a "road to nowhere." Such a use cannot be the basis for an easement. *See Jimmie Luecke Children P'Ship, Ltd. V. Pruncutz*, No. 03-10-00840-CV, 2013 WL 4487541, at *5 (Tex. Ct. App. Aug. 16, 2013) (nothing that "[a]n implied easement cannot arise across lands

owned by third parties that were never owned in conjunction with the partitioned tract" such that, without access to a third parties' property, "the easement the [plaintiff] seeks to imply would be a road to nowhere").

It is undisputed that the easement over Lions Clubs Road is tied to Plaintiffs' use of the fringelands. All of the evidence submitted by the Plaintiffs concerns the historical use of Lions Club Road to use the beach and boat ramp located beyond the fringelands, and the purported need of the Plaintiffs to use the boat ramp. In support of their Motions for Summary Judgment, Plaintiffs submitted the excerpts of 12 depositions taken after Judge Hocker's order that provided testimony on the use of Lions Club Road to access the beach area and boat ramp beyond the fringelands. Use of the fringelands is cited as the *exclusive* purpose of the easement in Plaintiffs' cause of action for an easement in these cases, and no other purpose for the use of Lions Club Road has ever been cited. (R. p. 858, line 15-p. 859, line 25, pp. 887-889, 894-901, 902-907, 1127-1132, 1137-1138). Further, the easement sought by Plaintiffs is an ingress/egress easement, and serves no purpose without an exit point at the end of the Gravel Path off Lions Club Road.

An easement must have a particular purpose. "An easement is the right of one person to use the land of another for a specific purpose." *Snow v. Smith*, 416 S.C. 72, 84, 784 S.E.2d 242, 248 (Ct. App. 2016) (citing *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009)). When the purpose for an easement ends, so does the easement. *See Francis L. Austin Family Limited Partnership v. City of Highpoint*, 630 S.E.2d 37, 40 (N.C. App. 2006). In *Francis L. Austin Family Limited Partnership v. City of Highpoint*, the Plaintiff's predecessor-in-interest granted an express sewer easement to the City of Highpoint "forever." However, the City abandoned the sewer lines, removing the need for the easement. In holding that the easement was extinguished, the Court

relied on reasoning from the Supreme Court of North Carolina in the case of *Atlantic and NCRR v. Way*, 172 NC 774, 778, 90 S.E. 937, 939 (1916):

> When the purpose, reason, and necessity, for an easement cease, within the intent for which it was granted, the easement is extinguished. Hence, if an easement is not granted for all purposes, but for a particular purpose only, the right continues while the dominant tenement is used for that purpose, and ceases when the specified use ceases.

See also Shaw v. Williams, 332 S.W.2d 797, 800 (Tex. Civ. App. 1960), *writ refused NRE* (May 25, 1960) ("An easement granted for a particular purpose terminates as soon as such purpose... is rendered impossible of accomplishment."); *Shaw v. Pyramid Development, LLC v D&J Assocs.*, 262 V.A. 750, 553 S.E. 2d 725, 728 (Va. 1958) ("If the particular purpose for which [an] easement is granted is fulfilled or otherwise ceases to exist . . . the easement falls to the ground.") (Citation omitted).

Therefore, while all parties have submitted deposition testimony concerning whether or not the use of Lions Club Road was permissive or not, the circuit court did not weigh or even consider any of that evidence in its ruling that Appellants had failed to prove a prescriptive easement over Lions Club Road. Instead, based on its finding that Appellants had no right to use the fringelands, the circuit court looked only at evidence as to the purpose of the Appellants' claimed easement over Lions Club Road. It was undisputed and undeniable that the only purpose was to access the fringelands, and therefore, the circuit court correctly ruled that Appellants had failed to prove a claim for a prescriptive easement over Lions Club Road.

III. Even if the easement over Lions Club Road had a legitimate purpose, the use of Lions Club Road was always permissive.

In this case, the undisputed evidence before the court establishes that any use by Appellants or their predecessors of the Gravel Path and the fringelands prior to Amick purchasing the properties in 2018 and 2019, respectively, was permissive. With respect to the Gravel Path, R. Doggett Whitaker, Jr. stated in his affidavit that the "property was never open to the general public,

but was used by Lions Club members and their guests and by adjoining property owners and their guests with permission of the Lions Club." (R. p. 885 ¶ 4) Similarly, Clyde Eugene Crocker averred that "[a]ny use of the property during its ownership by the Newberry Lions Club was permissive to members of the Club and adjacent property owners." (R. p. 889 ¶ 9, p. 893 ¶ 9, *see also* R. p. 1134 ¶ 9 (same).)

Additionally, the record establishes that there has been a gate on the Road since at least 1978 and that the gate was locked for many years. (*See* R. p. 854, lines 7-11, p. 863, lines 15-23 (his family bought their property in 1978 and the gate has been there as long as he can remember and was often locked); R. p. 896, lines 8-16, p. 896, line 25-p. 897, line 2 (stating the gate was always locked in 1986 and for many years after).) "Although the presence of the locked [gate] [is] not dispositive of permissive use, it is strong evidence of permissive use of the disputed road." *Bundy*, 412 S.C. at 311, 772 S.E.2d at 173. In this case, the only reasons Appellants and their predecessors were able to access the Road and the Gravel Path was because the Lions Club provided them with keys to the gate. (*See* R. p. 889 ¶ 8 ("[F]or many years the gate was always locked and the property was only accessible to Newberry Lions Club members and adjacent property owners to whom the Newberry Lions Club provided keys."); R. p. 864, lines 2-9 (noting the Lions Club gave all of the adjacent landowners keys to the gate that were labeled "Lions Club"); R. p. 904, lines 3-10, p. 905, lines 13-14 (when asked whether permission was required to use the Road, he stated that the only permission was when he joined the Lions Club, "[he] was given a key to unlock the gate before you got to Lions' Club property" and the gate "was usually locked," but "the only thing [he] knew is you had to have a key to get through that first gate").)

Likewise, Appellants have adduced no evidence whatsoever that their use was "adverse or under a claim of right." *Bundy*, 412 S.C. at 304, 772 S.E.2d at 169–70. Appellants themselves

concede that use of the Lions Club Property and, specifically, the Gravel Path, was common to all property owners on Lions Club Point, and was acknowledged by all Lions Club members. (App. Brief at 31-32.) This assertion flies in the face of any claim that Appellants' use was "contrary to the true property owner's rights." Rather, their use was in conjunction with the use of the Lions Club. They were sympatico. Appellants or their predecessors were not using any property in conflict with the rights of the Lions Club. Appellants and their predecessors cannot be adverse, hostile, or in conflict with the Lions Club because they are the Lions Club. It is a legal fiction to argue that Appellants and their predecessors were using the alleged easement (whatever that may be) contrary to the rights of the Lions Club because they were themselves the Lions Club.

Plaintiffs' alleged use was never contrary to the Lions Club's use, and there is no evidence that Plaintiffs' use or enjoyment was adverse to the Lions Club or under a claim of right. *See Bundy*, 412 S.C. at 304, 772 S.E.2d at 169–70. (*See also* R. p. 938 ¶ 11 ("Both the Lions Club and Mr. Amick *acquiesced* in our free use of the road for all those years." (emphasis added)); R. p. 906, lines 9-19 (noting that "all members in good standing are *allowed* access to all of the lake property at all times" (emphasis added)).)

This free use of Lions Club Road is further evidenced by the Resolution passed by the Lions Club on February 7, 1933. (R. p. 1485). In that Resolution, the Lions Club members resolved that future transfers of Lions Club property would only to be to Lions Club members. This Resolution was recorded with the Register of Deeds and supported the Lions Clubs' intentions as to the use of the Lions Club properties. *Of course* the Lions Club members had permission to use Lions Club Road——they were Lions Club members who sold the lots to themselves and gave themselves permission to access the clubhouse and the fringelands.

Based on the foregoing, Appellants failed to satisfy burden to prove a prescriptive easement

with clear and convincing evidence, and the circuit court correctly granted summary judgment in favor of Respondents.

IV. The circuit court correctly held that Appellants were not entitled to easements by equitable estoppel on either the fringelands or Lions Club Road.

As an alternative theory to their prescriptive easement claim, Appellants argue they are entitled to an easement by equitable estoppel over the fringelands and Lions Club Road. However, Appellants failed to offer any evidence that SCE&G, its successor, Dominion, or either of the Respondents, engaged in conduct that could support such an easement.

To establish a claim for easement by equitable estoppel, the party claiming estoppel must show the following elements as to the party sought to be estopped: (1) conduct that amounts to false representation or concealment of material facts, or at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts. *Boyd,* 369 S.C. at 423; 633 S.E.2d at 142. "A properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it." *Id.*

Simply, Appellants presented **no** evidence of conduct by Respondents that they acted in any way inconsistent with their position in this case. Respondents have always maintained the position that there was no easement over their properties and Appellants have no right to use their properties without permission. Importantly, "[a] properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it." *Id.* (quoting *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn,* 348 S.C. 58, 71, 558

S.E.2d 902, 909 (Ct. App. 2001)). It is undisputed that the properly recorded title to the fringelands establishes that no easement has ever existed or been granted over that land. The same is true for the portions of Lions Club Road that cross over Respondents' properties.

Appellants argue that whether or not a recorded easement exists is only the first step of the inquiry on an equitable estoppel claim, and that Ms. Littlejohn and Mr. Amick are bound by the silence of the Lions Club as to Appellants using Lions Club Road up to 2019. This conclusion is nonsensical in light of the permission granted to Appellants to use the fringelands and Lions Club Road. "Estoppel by silence arises where a person owing another a duty to speak refrains from doing so and thereby leads the other to believe in the existence of an erroneous state of facts." *Southern Development Land and Golf Company, Ltd. v. South Carolina Public Service Authority*, 311 S.C. 29, 426 S.E.2d 748 (1993) (citing *Ridgill v. Clarendon County*, 192 S.C. 321, 6 S.E.2d 766 (1939)). "Silence, when it is intended, or when it has the effect of misleading a party, may operate as equitable estoppel. *Id*. (citing *Welch v. Edisto Realty Co.*, 170 S.C. 31, 169 S.E.2d 766 (1939)).

First, as to SCE&G, the evidence in the record is that use was permissive, as explained above. SCE&G never revoked that permission, and the Lions Club members had the ability to use the fringelands until they were sold to Mr. Amick in 2019. There would be no reason for SCE&G to vocalize anything, as permission to use the fringelands was granted and relied upon by Appellants. Simply, there is no evidence that any silence by SCE&G under these circumstances was done to mislead Appellants. When he became the owner in 2019, Mr. Amick immediately revoked permission and made it clear he did not believe any of the Appellants had the right to use any portion of his property.

As to Lions Club Road, the evidence is that the Lions Club granted permission to its

members to cross its property to get the fringelands. Like with the fringelands, there was no need for the Lions Club to oppose the very use that it offered to its members. There is no reasonable jury that would conclude that the Lions Club placing a gate and offering keys to its members is anything other than permission to access. Because it had already granted access, it would not oppose the very use it allowed Appellants to have over Lions Club Road. As with SCE&G, there is no evidence that any silence by Lions Club under these circumstances was done to mislead Appellants.

Even if the Court were to find that there were genuine issues of material fact as to whether or not the use of Lions Club Road was permissive, there are none as to the fringelands and SCE&G. Therefore, for the same reasons that prescriptive easement fails, easement by equitable estoppel fails too: an easement over Lions Club Road serves no purpose where Appellants are not entitled to use the fringelands. The easement becomes a "road to nowhere."

CONCLUSION

Based on the above, the circuit court did not err by granting summary judgment in favor of the Respondents on the claims asserted by Plaintiffs. For these reasons, the Court should affirm the circuit court's ruling.

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