THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-In-Equity

Appellate Court Case No. 2026-000507
Circuit Court Case No. 2025-CP-10-03402

Laura Schaible and Russell Schaible ..... Respondents,

v.

Ilonka Sonja Taylor and David Abdo ..... Appellants.

Initial Brief of Respondents

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules and Statutes

STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE MASTER-IN-EQUITY HAD AUTHORITY TO PROCEED AFTER THE PARTIES CONSENTED TO RESTORATION, THE RESTORED ORDER EXPRESSLY REFERENCED THE PRIOR ORDER OF REFERENCE, AND APPELLANTS PARTICIPATED IN THE RESTORED PROCEEDINGS THROUGH TRIAL AND POST-TRIAL MOTION PRACTICE.

II. WHETHER THE MASTER CORRECTLY HELD THAT THE 1959 PALMER DEED FAILED TO CREATE THE CLAIMED EXPRESS APPURTENANT EASEMENT WHERE ITS OPERATIVE LOCATION LANGUAGE PLACED THE EASEMENT "BETWEEN LOT 4" AND "LOT 5" EVEN THOUGH LOTS 4 AND 5 SHARE ONLY A BOUNDARY LINE AND NO FIFTEEN-FOOT STRIP EXISTS BETWEEN THEM.

III. WHETHER THE MASTER CORRECTLY HELD, IN THE ALTERNATIVE, THAT ANY EASEMENT WAS PERSONAL TO REBECCA PALMER AND NOT TRANSFERABLE TO APPELLANTS.

IV. WHETHER THE MASTER CORRECTLY HELD, IN THE ALTERNATIVE, THAT APPELLANTS' ASSERTED USE EXCEEDED ANY PERMISSIBLE DRIVEWAY USE AND MATERIALLY BURDENED RESPONDENTS' LOT 5.

V. WHETHER APPELLANTS FAILED TO PROVE THEIR REFORMATION COUNTERCLAIM BY CLEAR AND CONVINCING EVIDENCE OF MUTUAL MISTAKE BY THE 1959 PARTIES TO THE PALMER DEED.

VI. WHETHER LACHES BARS RESPONDENTS' CLAIMS WHERE APPELLANTS FAILED TO ESTABLISH ABANDONMENT, UNREASONABLE DELAY, AND PREJUDICE SUFFICIENT TO DEFEAT AN ACTION CHALLENGING ONGOING AND ESCALATING INTERFERENCE WITH RESPONDENTS' PROPERTY.

VII. WHETHER THE INJUNCTION WAS AUTHORIZED BY THE DECLARATORY JUDGMENT, RESPONDENTS' PLEADINGS, THE PROOF AT TRIAL, AND THE MASTER'S FINDINGS THAT APPELLANTS HAD NO RIGHT TO ACCESS LOT 6 OVER LOT 5.

STATEMENT OF THE CASE

This appeal concerns neighboring lots in The Crescent subdivision in Charleston. Respondents Laura Schaible and Russell Schaible own Lot 5 at 31 Broughton Road. Appellants Ilonka Sonja Taylor and David Abdo own Lot 6 at 29 Broughton Road. The dispute concerns whether Appellants may use a driveway on Respondents' Lot 5 to access Lot 6.

Respondents commenced the action in 2018, seeking declaratory and injunctive relief regarding the existence, character, and scope of an alleged easement arising from a 1959 deed from

Charles S. Dwight to Rebecca M. Palmer. The case was referred to the Master-in-Equity by consent. It was later stricken under Rule 40(j), SCRCP, and restored by consent in 2025. The restored order expressly referenced the prior order of reference and directed that the case be restored to the Master-in-Equity's docket. Appellants proceeded before the Master, tried the case, filed post-trial motions before the Master, and only later sought to vacate the resulting orders on jurisdictional grounds.

After a trial on October 22, 2025, the Master entered a final order on January 13, 2026. The order held that the asserted easement was void ab initio because the 1959 deed described an impossible physical location: a fifteen-foot strip on Lot 5 "between" Lots 4 and 5, where no such strip exists. In the alternative, the Master held that any easement was an easement in gross, personal to Rebecca Palmer, nontransferable, and no longer in existence. In the further alternative, the Master held that Appellants' use exceeded any permissible scope. The Master enjoined Appellants from using the easement on Lot 5 to access Lot 6, awarded costs, and retained jurisdiction to enforce the order.

Appellants now ask this Court to vacate the judgment as void or, in the alternative, to reverse on the merits, dismiss Respondents' claims, and grant reformation of the Palmer deed. Their appeal should be denied.

Statement of Facts

A. The deed language and the physical impossibility found by the Master.

The alleged easement derives from the 1959 Palmer deed (Exhibit 15). Its easement language reads:

> TOGETHER with a permanent easement over a fifteen foot strip of land, a part of Lot 5, Block K, lying between Lot 4, Block K and Lot 5, Block K, as shown on the above referred to plat, for the purposes of ingress and egress to Lot 6, Block K, hereinabove described, from Broughton Road.

The Master found that Lots 4 and 5 share a common boundary line and that no fifteen-foot strip exists "between" them. Russell Schaible testified that the driveway actually claimed by Appellants lies between Lots 4 and 6, not between Lots 4 and 5 (Trial Tr. p. 26, line 20–p. 27, line 4; p. 28, lines 16–19). Appellants' own 2007 deed altered the language to describe the alleged access as located between Lot 4 and Lot 6—the correct physical location of the driveway—but that is not what the originating 1959 deed says (Defendants' Exhibit 22, Trial Tr. p. 154, lines 23-25).

B. Lot 6 has independent frontage and access.

The trial evidence showed that Lot 6 has more than ninety feet of frontage on Broughton Road (Trial Tr. p. 51, lines 14–25). Russell Schaible testified that an easement over Lot 5 was not necessary to access Lot 6 (Trial Tr. p. 29, lines 1–3; p. 30, lines 1–4). Appellant Taylor also acknowledged that she could access her yard from Broughton Road and that the driveway was not "essential" as Appellants now suggest (Trial Tr. p. 153, lines 17–21). The Master credited this evidence in finding that Appellants' claimed access was unnecessary.

C. The historical use was limited; Appellants' use was not.

Respondents presented testimony that Rebecca Palmer and her nurse used the driveway only in a limited way: to reach the concrete parking pad in front of the garage for 29 Broughton. (Trial Tr. p. 21, lines 17–22; p. 30, lines 12–21; p. 99, line 23–p. 100, line 22.) By contrast, Appellants' conduct expanded the burden substantially. Russell Schaible testified that since Appellants moved to 27 Broughton Road, "29 has essentially become a parking lot and storage lot for 27." (Trial Tr. p. 39, lines 8–9.) Laura Schaible testified that the driveway looked "overburdened" and compared it to a "7-Eleven" because of the number of cars. (Trial Tr. p. 104, lines 13–20.) Appellant Taylor admitted her husband is "a car guy," that the parking pad fits only two cars comfortably, and that they had more than two cars. (Trial Tr. p. 140, lines 10–17.)

The evidence also showed Respondents built and have maintained the driveway, and that Appellants paid nothing toward its construction or upkeep. (Trial Tr. p. 54, line 22–p. 55, line 3.) The Master found Appellants' proposed use expansive and undefined (Order and Judgment, para. 37): Taylor testified the access point could be "anywhere there," while also acknowledging the deed does not contain the word "unrestricted." (Trial Tr. p. 148, lines 10–24.)

STANDARD OF REVIEW

Declaratory judgment actions are reviewed according to the nature of the underlying issues. Because Appellants raise several different categories of issues, the standards should be delineated.

A. Subject-matter jurisdiction

Whether the Master-in-Equity had subject-matter jurisdiction or authority under the order of reference to enter the challenged orders is a question of law reviewed de novo. *S.C. Pub. Interest Found. v. Wilson,* 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022).

B. Deed construction

Construction of a clear and unambiguous deed is a question of law reviewed de novo. *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012). That standard applies to the legal interpretation of the Palmer deed's text.

C. Existence and location of an easement.

The existence and location of an easement are factual issues in a law action. When tried by a judge without a jury, those findings are reviewed under the deferential "any evidence" standard. *Slear v. Hanna*, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1997). That standard applies to the Master's factual finding that the 1959 Palmer deed describes an impossible location—there is no fifteen-foot strip between Lots 4 and 5—and his corresponding finding that the claimed easement location does not exist as described.

D. Scope, reformation, laches, and injunctive relief.

The scope of an easement is equitable and may be reviewed under the appellate court's preponderance-of-the-evidence standard. *Slear* 329 S.C. at 411, 496 S.E.2d at 635. Reformation, laches, and injunctive relief are also equitable in nature. Those standards apply to Appellants' arguments concerning scope/overburdening, reformation, laches, and the injunction. Even under equitable review, however, this Court may give weight to the Master's credibility determinations because the Master saw and heard the witnesses.

Argument

I. THE MASTER-IN-EQUITY HAD AUTHORITY TO PROCEED AFTER THE PARTIES CONSENTED TO RESTORATION, THE RESTORED ORDER EXPRESSLY REFERENCED THE PRIOR ORDER OF REFERENCE, AND APPELLANTS PARTICIPATED IN THE RESTORED PROCEEDINGS THROUGH TRIAL AND POST-TRIAL MOTION PRACTICE.

Appellants first seek to avoid the merits by arguing that the Master lacked subject-matter jurisdiction after the Rule 40(j) strike and restoration. Their argument fails because it treats the Rule 40(j) strike as if it permanently exhausted the existing reference. It did not. The strike was expressly subject to restoration within one year with tolling; the same parties consented to restoration; the restoration order expressly referenced the prior order of reference; the restoration order directed that the matter return to the Master-in-Equity's docket; and Appellants proceeded through trial and post-trial motion practice before the Master. On this record, the reference was held in abeyance pending restoration, not spent.

A. *Bunkum* and *Narruhn* do not control because the Master's duties had not finally "concluded" in the way those cases require.

Appellants rely on *Bunkum v. Manor Props.*, 321 S.C. 95, 99, 467 S.E.2d 758, 761 (Ct. App. 1996) and *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 340, 745 S.E.2d 90, 92 (2013) for the proposition that, once a master's duties under an order of reference have concluded, authority returns to the circuit

court. Respondents do not dispute that general rule. The problem for Appellants is that those cases turn on whether the referred duties had actually concluded. Here, they had not concluded in the relevant sense.

The Rule 40(j) strike was not an adjudication on the merits and did not finally resolve the referred dispute. It was expressly subject to restoration within one year, with tolling if restoration was sought in a timely manner. That structure matters. The reference was not consumed by a final adjudication disposing of the parties' easement dispute; it was suspended while the action was stricken, subject to restoration. When Respondents timely moved to restore and Appellants consented, the restored order returned the same dispute to the Master's docket and expressly referenced the prior order of reference. *Bunkum* and *Narruhn* therefore do not compel the conclusion that authority irrevocably returned to the circuit court.

B. Personal Care should be confined to its limitations and tolling context.

Appellants also rely on *Personal Care, Inc. v. Theos* for the statement that a Rule 40(j) restoration is, "in essence," equivalent to filing a new lawsuit. But *Personal Care* used that language in analyzing the procedural effect of Rule 40(j) for limitations and tolling purposes. *Pers. Care, Inc. v. Theos*, 426 S.C. 78, 86, 825 S.E.2d 281, 285 (Ct. App. 2019) (Where the plaintiff filed its motion to restore more than one year after the order striking the case from the active docket, the opposing party was no longer bound by the agreement not to challenge the timeliness of the claim). It did not hold that every feature of the prior action—including a standing reference expressly incorporated into a consent restoration order—evaporates for all purposes.

That distinction is decisive. Rule 40(j)'s tolling and restoration mechanism prevents limitations problems when a stricken action is timely restored (which this one clearly was). Treating restoration as sufficiently new for limitations analysis does not mean a prior reference cannot remain operative or be revived when the restoration order expressly returns the restored case to the Master's docket.

Appellants' reading would convert *Personal Care's* limitations rationale into a jurisdictional windfall for a party that consented to restoration before the Master and litigated the merits there.

C. The unappealed Order to Restore supplies the procedural vehicle Appellants now seek to avoid.

Appellants' own brief recognizes a dispositive procedural problem. In footnote 1, Appellants state that the Order to Restore "was not appealed by Appellants and is not an order on appeal." That concession matters. The Order to Restore is the order that restored the case, referenced the prior order of reference, and returned the matter to the Master's docket. If Appellants wanted to challenge that order, which is the source of the Master's authority, they needed a vehicle to do so.

They do not have one in this appeal. The orders on appeal are the Trial Order and the order denying post-trial relief. Appellants cannot obtain vacatur of those orders by collaterally attacking the unappealed restoration order that provided the procedural authority for the Master to proceed.

D. The Rule 60(b)(4) proceedings confirm that the issue is legal and record-based, not that jurisdiction was resolved on the merits.

Appellants previously sought leave to file a Rule 60(b)(4) motion and to stay or remand the appeal. Respondents do not contend the denial of leave was a merits adjudication of subject-matter jurisdiction; subject-matter jurisdiction can be raised at any time, and denial of leave to pursue collateral Rule 60(b) proceedings is not the same as an appellate merits ruling.

The relevance of that motion practice is narrower: it confirms that Appellants' jurisdictional theory is a legal, record-based issue. No factual development is needed. The Court can resolve the issue here from the order of reference, the Rule 40(j) strike, the motion to restore, the consent restoration order, Appellants' footnote 1 concession, and the docket history.

E. At most, any defect would warrant limited remand, not dismissal or merits reversal.

Finally, even if this Court concludes some additional circuit-court action was required to confirm the Master's authority after restoration, Appellants' requested remedy is overbroad. The

proper remedy would not be dismissal of Respondents' claims or entry of judgment for Appellants. At most, the appropriate remedy would be a limited remand for the circuit court to confirm the reference or otherwise address the procedural defect.

That fallback remedy is especially appropriate because the case was fully tried, the issues are record-based, and Appellants consented to restoration and participated before the Master. A curable reference defect should not become a merits windfall that extinguishes Respondents' property claims.

II. THE MASTER CORRECTLY HELD THAT THE 1959 PALMER DEED FAILED TO CREATE THE CLAIMED EXPRESS APPURTENANT EASEMENT WHERE ITS OPERATIVE LOCATION LANGUAGE PLACED THE EASEMENT "BETWEEN LOT 4" AND "LOT 5" EVEN THOUGH LOTS 4 AND 5 SHARE ONLY A BOUNDARY LINE AND NO FIFTEEN-FOOT STRIP EXISTS BETWEEN THEM.

Appellants' second issue is the core of the case. Appellants contend the Palmer deed validly created an express easement and that the Master focused too narrowly on the phrase "between Lot 4" and "Lot 5." But the Master did exactly what deed-construction law required: he read the deed, identified its operative grant language, and declined to rewrite a recorded instrument whose language described an impossible location.

A. The Palmer deed's granting language fails at the point of location.

The Palmer deed purports to grant "a permanent easement over a fifteen foot strip of land, a part of Lot 5, Block K, lying between Lot 4, Block K and Lot 5, Block K." Appellants' problem is not a minor typo in an otherwise complete description. The phrase identifying where the easement lies places it between two lots that share a common boundary. Russell Schaible testified there is no strip of land between Lots 4 and 5—only a boundary line. (Trial Tr. p. 28, lines 14–19.) The Master found that fact and concluded the deed described an impossible physical location.

That finding is fatal to Appellants' case and is entitled to deference. Appellants frame this as a pure deed-construction issue, but the Master's impossibility ruling also includes a factual finding on location: no fifteen-foot strip exists between Lots 4 and 5. Under *Slear*, the existence and location of

an easement are factual issues in a law action, reviewed under the any-evidence standard when tried by a judge without a jury. *Slear*, 329 S.C. at 411, 496 S.E.2d at 635 (the determination of the existence of an easement is a question of fact and subject to any-evidence review).

The record contains evidence supporting the Master's impossibility finding: the deed says the easement lies between Lots 4 and 5, while the testimony established that Lots 4 and 5 share only a boundary line and no fifteen-foot strip exists there. That is enough under *Slear*'s deferential any-evidence standard. The alleged easement burdens Respondents' land. The law does not impose servitudes by inference, assumption, or after-the-fact correction where the recorded grant fails to identify the burdened location with sufficient certainty. A purchaser of land is entitled to rely on the recorded instrument as written. Courts interpret deeds; they do not supply a different easement in a different location.

B. Appellants' "read the deed as a whole" argument asks this Court to replace the deed's words.

Respondents agree that deeds should be read as a whole. See *Springob v. Farrar*, 334 S.C. 585, 590, 514 S.E.2d 135, 138 (Ct. App. 1999), citing *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987). But reading a deed as a whole does not authorize a court to change "Lot 5" to "Lot 6" in the location clause. Appellants' argument works only if the Court treats the words "between Lot 4" and "Lot 5" as if they read "between Lot 4" and "Lot 6." That is reformation, not interpretation.

The other language Appellants emphasize does not cure the defect. The deed states that the strip is "a part of Lot 5," which identifies the servient parcel generally but not the strip's location. The deed states that the easement is for ingress and egress to Lot 6, which describes the purpose but not the physical location. The deed references a plat, but the Master was entitled to conclude that the deed's specific location language still fails because it identifies a non-existent strip between Lots 4 and 5.

C. The 2007 deed confirms the 1959 deed was wrong; it does not rewrite it.

Appellants' 2007 deed describes the access easement as located between Lot 4 and Lot 6. The Master found that significant because it shows the difference between the driveway Appellants want and the location described in the 1959 deed. But Appellants' 2007 deed cannot retroactively amend the 1959 Palmer deed or impose a greater burden on Respondents' Lot 5. A later deed in Appellants' chain cannot create an easement over Respondents' land if the originating grant failed.

D. Appellants' plat argument fails because the grant's text still controls the burden imposed.

Appellants argue the 1929 plat shows a fifteen-foot portion of Lot 5 between Lots 4 and 6. But the Palmer deed did not say "between Lot 4 and Lot 6." It said, "between Lot 4 and Lot 5." Where a deed specifically identifies the location and that location cannot exist, the court need not use a plat to rewrite the deed.

The plat also does not do what Appellants need it to do. Respondents' trial counsel observed that the word "easement" is not drawn anywhere on the plat. (Trial Tr. p. 131, lines 12–13.) Thus, the plat may show lot geometry, but it does not itself label, create, or locate the claimed easement. It cannot replace the Palmer deed's invalid location language.

Appellants' own argument underscores why the Master's ruling is correct: they repeatedly characterize the deed language as a "scrivener's error." If that is so, their remedy was reformation, and reformation required clear and convincing proof of mutual mistake. Appellants did not plead that cause of action, and their proof offered at trial does not meet that burden.

E. Appellants' ambiguity and extrinsic-evidence fallback is foreclosed by their position below and fails on the record in any event.

Appellants alternatively contend that if the deed is ambiguous, extrinsic evidence overwhelmingly supports their interpretation. That fallback is not available. In response to the Master's questioning at trial, Appellants' counsel stated, "I do not think that it's ambiguous." (Trial Tr. p. 130, lines 23–24.) To be clear, Respondents do not overstate that concession: Appellants'

counsel argued in context that the deed unambiguously created the easement by incorporating the plat. But the concession still matters. Having told the trial court the deed was unambiguous, Appellants cannot pivot to ambiguity as a gateway to extrinsic evidence.

That leaves a four-corners question: does the Palmer deed, as written, create the easement Appellants claim? It does not. The deed's operative location language places the easement between Lots 4 and 5, where the Master found no fifteen-foot strip exists. The plat does not draw or label an easement, and the Court should not use extrinsic evidence to replace "Lot 5" with "Lot 6."

Even if the Court reaches extrinsic evidence, the evidence was not one-sided. The Master heard testimony that the deed's stated location is impossible; that Lot 6 has independent frontage; that the alleged access was not necessary; that the actual historical use was limited; and that Appellants' later use expanded materially. The Master was not required to accept Appellants' theory that surrounding documents and course of use prove a perpetual appurtenant burden on Respondents' property.

In any event, ambiguity does not automatically favor the party seeking to burden another's land. It underscores why Appellants needed reformation proof. They did not produce testimony from the 1959 parties, a drafting attorney, surveyor, or any other direct evidence of mutual mistake by Dwight and Palmer. The Master properly declined to reform the deed through "interpretation."

III. THE MASTER CORRECTLY HELD, IN THE ALTERNATIVE, THAT ANY EASEMENT WAS PERSONAL TO REBECCA PALMER AND NOT TRANSFERABLE TO APPELLANTS.

If this Court concludes that the Palmer deed created some easement, the judgment should still be affirmed because the result—that any easement was not a transferable appurtenant easement—is sustainable on this record. Appellants' best argument is that the Master cited *Jowers* and discussed necessity in terms Appellants say apply to implied easements. Even if that criticism were accepted, it would not require reversal. Under Rule 220(c), SCACR, this Court may affirm on any ground

appearing in the record. On de novo review of the character and scope of any easement, the in-gross result is supported by *Tupper* and the trial evidence.

A. Tamsberg does not help Appellants because necessity fails even at creation.

Appellants rely principally on *Williams v. Tamsberg*, 425 S.C. 249, 821 S.E.2d 494 (Ct. App. 2018), arguing that necessity for an express appurtenant easement is measured at the time of creation, not at the time of trial. Respondents do not argue waiver on that point; Appellants preserved the objection at trial. (Trial Tr. p. 29, lines 6–22.) But *Tamsberg* still does not carry Appellants' burden because the record shows the claimed easement was not essential even when the Palmer deed was executed in 1959.

Lot 6's independent Broughton Road frontage is a physical fact of the lot, not a modern development. The property has more than ninety feet of frontage on Broughton Road. (Trial Tr. p. 30, lines 3–4.) Appellants identify no evidence that this frontage did not exist in 1959, that Lot 6 was landlocked in 1959, or that Lot 6 could not be enjoyed without crossing Lot 5. Thus, even using *Tamsberg's* creation-date focus, the easement was not necessary to the enjoyment of Lot 6.

The current-access evidence confirms the same physical reality. Russell Schaible testified that an easement over Lot 5 was not necessary to access Lot 6. (Trial Tr. p. 29, lines 1–3.) The property at 27 Broughton has its own access: testimony established that it has its own driveway and a three-to-four-car paved area, and that the Abdos can pull directly off Broughton Road. (Trial Tr. p. 105, lines 14–24.) Appellant Taylor likewise acknowledged she could access her yard from Broughton Road. (Trial Tr. p. 153, lines 17–21.) Those facts are inconsistent with Appellants' theory that access across Lot 5 was essential to Lot 6's enjoyment. The current vacancy of 29 Broughton, and testimony that the driveway traffic over Lot 5 is now for "storage, or to visit 27 Broughton," further undercuts any claim that the asserted right is essential to Lot 6. (Trial Tr. p. 105, lines 6–13.)

B. Rule 220(c) converts any Jowers error into harmless error.

Appellants argue the Master used the wrong legal standard by citing *Jowers*. But this Court reviews the character of the easement and the equitable issues de novo and may affirm on any ground in the record under Rule 220(c), SCACR. The question therefore is not whether every sentence of the Master's order used Appellants' preferred formulation. The question is whether the record supports the result.

It does. Under *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997), an appurtenant easement must inhere in the land, concern the premises, have a terminus on the land of the party claiming it, and be essentially necessary to the enjoyment of that land. If those elements are not present, the easement is in gross. The record affirmatively negates essential necessity: Lot 6 had substantial direct frontage, and Appellants have not shown the frontage was unavailable in 1959. Accordingly, the in-gross result is independently sustainable under *Tupper*.

C. Rhett's presumption favoring appurtenance in inapplicable.

Appellants cite *Rhett* for the principle that easements in gross are disfavored and an easement will not be presumed personal when it can fairly be construed as appurtenant. *Rhett v. Gray*, 401 S.C. 478, 492, 736 S.E.2d 873, 880 (Ct. App. 2012). Respondents do not dispute that general principle. But *Rhett*'s presumption does not create an appurtenant easement when the grant fails, when the location described does not exist, or when an essential element of appurtenance is affirmatively negated by the record.

Here, the Palmer deed first fails at the threshold because it describes an impossible location. If the Court nevertheless assumes some easement existed, the record negates essential necessity. Lot 6's independent frontage and direct access prevent a fair construction that the claimed right across Lot 5 was essential to Lot 6. *Rhett* therefore does not overcome *Tupper;* it simply states a tie-breaking principle for cases fairly construable either way. This is not such a case.

D. The historical use supports, at most, a personal and limited accommodation.

The evidence showed Rebecca Palmer's use was personal and limited. Palmer and her nurse used the driveway to reach a parking pad, not to exercise a broad, transferable, unrestricted right to use Lot 5 for access to any point along Lot 6. (Trial Tr. p. 21, lines 17–22; p. 30, lines 12–21; p. 99, line 10–p. 100, line 22.) There was no evidence of broad, transferable access over Lot 5 for all future owners in the manner Appellants now assert. The Master reasonably concluded that, at most, the circumstances reflected a personal accommodation, not a perpetual servitude enforceable by Appellants.

IV. THE MASTER CORRECTLY HELD, IN THE ALTERNATIVE, THAT APPELLANTS' ASSERTED USE EXCEEDED ANY PERMISSIBLE DRIVEWAY USE AND MATERIALLY BURDENED RESPONDENTS' LOT 5.

Even if the Court finds a transferable easement, the judgment should still be affirmed because Appellants' asserted use exceeds any permissible scope. The issue is not merely aesthetics on Lot 6. The record shows traffic and use over Respondents' Lot 5 for purposes beyond ingress and egress to the supposed dominant estate.

A. The claimed dominant estate is vacant, so the driveway is no longer being used for ingress and egress to Lot 6.

The deed language Appellants invoke is limited to "ingress and egress to Lot 6." But 29 Broughton—Lot 6, the supposed dominant estate—has been vacant for years. The trial testimony established that the driveway use over Lot 5 is now for "storage, or to visit 27 Broughton," not to access an occupied Lot 6. (Trial Tr. p. 105, lines 3–13.) That fact is central. If the alleged easement exists at all, its purpose is access to Lot 6. Using Respondents' Lot 5 for storage-related traffic or to visit 27 Broughton is not use for ingress and egress to Lot 6.

This vacancy point also reinforces the in-gross analysis. A claimed appurtenant right supposedly essential to Lot 6 is not being used to access Lot 6 as a residence; instead, Appellants use the burdened driveway for other purposes connected to storage, 27 Broughton, vehicles, and the dock.

B. The record shows actual burdens on Lot 5.

The evidence showed Appellants' use burdened Respondents' servient estate. Russell Schaible testified that 29 Broughton had become "a parking lot and storage lot for 27." (Trial Tr. p. 39, lines 8–9.) He testified the Abdos' three cars were "parked parallel to the property line." (Trial Tr. p. 42, lines 13–14.) The testimony also showed guests and a boat/trailer using the driveway to reach the 29 Broughton dock. (Trial Tr. p. 40, lines 9–21.)

The record also includes use of a large Sprinter van. Russell Schaible testified about that use at Trial Tr. p. 105, line 5, and Taylor acknowledged the Sprinter van use at Trial Tr. p. 144, lines 11–14. These are not abstract complaints about how Lot 6 looks. They are concrete uses of the driveway over Lot 5 that increase traffic, intensity, and burden beyond any limited access right.

C. The deed, at most, permits ingress and egress; it does not grant unrestricted use.

Appellants emphasize that the deed states "ingress and egress to Lot 6." Yet they ask the Court to treat that language as authorizing use of the driveway for storage-related access, access to 27 Broughton, guest and trailer dock access, Sprinter van traffic, and unrestricted movement along the driveway. The deed does not say that.

Appellant Taylor's own testimony confirms the breadth of Appellants' claimed use. She testified there was "no restriction on where you could go." (Trial Tr. p. 144, lines 9–10.) She also testified that the access point could be "anywhere there," while acknowledging the deed does not contain the word "unrestricted." (Trial Tr. p. 148, lines 14–24.) That asserted use is broader than a limited ingress-and-egress easement and materially burdens Lot 5.

South Carolina law limits an easement holder to uses reasonably necessary and convenient for the contemplated purpose and prohibits materially increasing the burden on the servient estate. *Snow v. Smith ex rel. Stoudenmire*, 416 S.C. 72, 86, 784 S.E.2d 242, 249 (Ct. App. 2016). The Master applied that principle and found Appellants' use excessive.

D. Appellants' same-location argument ignores intensity, purpose, and burden.

Appellants argue that their use is necessarily within scope because the driveway would remain in the same location. But the scope of an easement is not measured solely by whether the pavement stays in the same place. Purpose, frequency, intensity, the number and size of vehicles, trailer and dock use, storage use, and use to visit another property all matter. Those uses burden Respondents' Lot 5 in ways that exceed any limited ingress-and-egress right to Lot 6.

The Master properly rejected Appellants' expansive claim.

V. APPELLANTS FAILED TO PROVE THEIR REFORMATION COUNTERCLAIM BY CLEAR AND CONVINCING EVIDENCE OF MUTUAL MISTAKE BY THE 1959 PARTIES TO THE PALMER DEED.

Appellants' reformation argument seeks to obtain through equity what the deed does not give them at law. They ask the Court to reform "between Lot 4 and Lot 5" to "between Lot 4 and Lot 6." But reformation is an extraordinary remedy that requires clear and convincing evidence of mutual mistake. *Kiawah Resort Assocs., Ltd. P'ship v. Kiawah Island Cmty. Ass'n*, 421 S.C. 538, 544, 808 S.E.2d 521, 524 (Ct. App. 2017). Appellants produced no direct proof of mutual mistake by Dwight and Palmer.

A. Appellants produced no direct proof of mutual mistake by Dwight and Palmer.

Appellants correctly state that the relevant mutual mistake would be a mistake by the parties to the 1959 Palmer deed—Dwight and Palmer. But that statement exposes the weakness in their proof. Appellants presented no testimony from Dwight or Palmer, no testimony from the drafter, no drafting file, no contemporaneous correspondence, no surveyor testimony from the transaction, and no direct evidence that both 1959 parties agreed to "Lot 6" but mistakenly wrote "Lot 5."

At most, Appellants rely on inferences drawn from surrounding documents and later use. That is not clear and convincing proof of a mutual mistake by the 1959 parties. A court of equity cannot

reform a recorded deed burdening Respondents' land based on speculation that the grantor and grantee must have meant something else.

B. *Appellants' later knowledge and constructive notice were relevant to equitable relief.*

Appellants argue that the Master improperly focused on their knowledge and sophistication. The Master's point was not that Appellants personally made the 1959 mistake. Rather, the point was that Appellants—an attorney and an experienced real estate investor—took title with constructive notice of the recorded chain and the deed language. Purchasers are charged with notice of recorded instruments in their chain of title. *Carolina Land Co. v. Bland*, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975).

Appellants' sophistication and notice weighed against granting them extraordinary equitable relief that would rewrite a decades-old recorded deed, thereby burdening their neighbors' property.

C. Reformation would prejudice Respondents by creating a servitude the recorded deed did not create.

Appellants insist they do not seek a better contract. But they do. They seek to transform an impossible or personal deed provision into a perpetual, appurtenant, transferable, broadly usable easement over Respondents' land. That is not a ministerial correction. It materially changes Respondents' property rights. Reformation is not available to make a new or better instrument for Appellants where the necessary proof is absent.

D. The Court should not reform an instrument without all affected interests clearly before it.

The record also counsels against appellate reformation because Appellants' theory depends on the chain of title for Lots 4, 5, and 6, including the Murray and Stehmeyer deeds. Appellants' own brief acknowledges that not all recorded instruments may have been introduced into evidence, although they were discussed. A sweeping reformation of a 1959 deed affecting multiple parcels should not be ordered on an incomplete and disputed evidentiary record.

VI. LACHES DOES NOT BAR RESPONDENTS' CLAIMS WHERE APPELLANTS FAILED TO ESTABLISH ABANDONMENT, UNREASONABLE DELAY, AND PREJUDICE SUFFICIENT TO DEFEAT AN ACTION CHALLENGING ONGOING AND ESCALATING INTERFERENCE WITH RESPONDENTS' PROPERTY.

Appellants argue Respondents waited too long to challenge the driveway use. The Master did not accept that defense, and the record does not support it.

A. Appellants failed to prove abandonment, unreasonable delay, and prejudice.

Laches requires more than the passage of time. It requires unreasonable delay under the circumstances and prejudice to the party asserting the defense. It also requires circumstances showing that the claimant abandoned or surrendered the right now asserted. Appellants cannot satisfy those elements.

Respondents did not sleep on a known claim while Appellants materially changed position in reliance on silence. The dispute escalated as Appellants' use intensified. Respondents' claims address ongoing interference and overburdening, not merely a historical use frozen in 2007. The evidence showed that Appellants' later use turned the area into a parking and storage burden for 27 Broughton Road (Lot 7), with increased vehicles, expanded claimed access, and development-related concerns. A property owner is not barred from seeking relief against an intensifying encroachment merely because some limited historical use was tolerated.

B. Appellants' alleged prejudice is simply the loss of a right they never proved.

Appellants argue they will be prejudiced if they cannot use the driveway because they bought Lot 6 in reliance on the alleged easement. But prejudice for laches cannot be established by assuming the merits of the disputed right. If the 1959 deed did not create the easement, or created only a personal right for Palmer, Appellants did not purchase an enforceable access right over Lot 5. Their disappointment at losing a claimed right is not the kind of detrimental change in position that bars Respondents' claims.

C. Respondents' knowledge of recorded documents does not establish laches.

Appellants emphasize that Respondents' deed referenced the easement language and that Respondents knew the driveway had been used. That evidence does not establish laches. Knowledge that a driveway has been used in some way is not knowledge that Appellants would claim unrestricted, appurtenant, transferable rights to access any point along Lot 6, to park and stage multiple vehicles, and to intensify the burden on Lot 5.

Nor does Respondents' tolerance of Palmer's limited use—or even of Appellants' early use—waive Respondents' right to challenge an invalid deed description, an asserted appurtenant right, or an expanded use that materially burdens Lot 5.

D. Equity does not favor Appellants.

Appellants ask the Court to apply laches while simultaneously seeking reformation of a 1959 deed based on events nearly seven decades old. Equity does not favor a party seeking extraordinary reformation of a stale instrument while using delay to bar Respondents' defense of their property rights. The Master correctly declined to let laches defeat Respondents' claims.

VII. THE INJUNCTION WAS AUTHORIZED BY THE DECLARATORY JUDGMENT, RESPONDENTS' PLEADINGS, THE PROOF AT TRIAL, AND THE MASTER'S FINDINGS THAT APPELLANTS HAD NO RIGHT TO ACCESS LOT 6 OVER LOT 5.

Appellants' final argument is that the injunction exceeds the declaratory relief. That argument fails because the injunction directly enforces the Master's declarations.

A. The injunction follows from the declaration that Appellants have no right to access Lot 6 over Lot 5.

The Master declared that the asserted easement was void ab initio and that Appellants have no right to access Lot 6 over Lot 5. The injunction prohibits Appellants from accessing the easement located on Lot 5 to access 27 Broughton Road. That is not broader than the declaratory judgment; it is the practical enforcement of it.

Under S.C. Code Ann. § 15-53-120, further relief based on a declaratory judgment may be granted whenever necessary or proper. The Supreme Court has recognized that coercive relief may accompany declaratory relief where supported by the pleadings and proof. *Bank of Augusta v. Satcher Motor Co.*, 249 S.C. 53, 60, 152 S.E.2d 676. 679 (1967). Respondents pleaded injunctive relief, tried the issue, and proved that Appellants' claimed access was invalid or, alternatively, excessive.

B. The injunction was necessary because Appellants claimed continuing access rights.

A bare declaration would not have resolved the practical dispute. Appellants maintained they could continue to use the driveway and asserted an expansive interpretation of access rights. Taylor testified that the access point was undefined and could be "anywhere there." (Trial Tr. p. 148, lines 14–17.) The Master was entitled to enter an injunction preventing continued access over Lot 5 to Lot 6 after determining that no enforceable right existed.

C. Appellants cannot avoid the injunction by speculating about unpleaded rights.

Appellants argue the injunction might affect implied or prescriptive easement rights not adjudicated. But Appellants' case at trial and on appeal rests on the Palmer deed and its reformation. The injunction addresses the asserted "easement located on Lot 5" to access Lot 6—the right litigated in this case. Appellants cannot preserve a right to continue the same conduct by gesturing toward hypothetical theories they did not prove.

D. The injunction is supported by the Master's alternative findings as well.

Even if this Court disagrees with the Master's primary void-ab-initio ruling, the injunction is supported by the alternative holdings. If any easement was in gross and expired, Appellants have no current right to use it. If any easement survived but was limited, Appellants' expansive use exceeded its scope and warranted injunctive relief. The injunction should be affirmed.

CONCLUSION

Appellants ask this Court to vacate or reverse a judgment entered after trial because the recorded deed does not say what Appellants need it to say. The Master correctly held that the Palmer deed describes an impossible location and does not create the claimed easement. Alternatively, the Master correctly held that any easement was personal to Rebecca Palmer, nontransferable, and no longer existed. Further alternatively, the Master correctly found that Appellants' use exceeded any permissible scope. Appellants failed to prove reformation by clear and convincing evidence, failed to establish laches, and failed to show that the injunction exceeded the relief supported by the pleadings and proof.

For these reasons, Respondents respectfully request that this Court affirm the January 13, 2026 Trial Order and the order denying post-trial relief, and grant Respondents such other and further relief as the Court deems appropriate.

Respectfully submitted,

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