

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Jun 10 2026

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

S.C. SUPREME COURT

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

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

v.

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

Of Whom Rodney Halsell and Barbara Halsell are the Petitioners.

PETITION FOR A WRIT OF CERTIORARI

Richard Hunt McDuff
SC Bar No. 76242
Merrell & McDuff (MJM Law, LLC)
119-B Professional Park Drive
Seneca, South Carolina 29678
(864) 882-2466
rick@mjmlawsc.com

Sarah P. Spruill
SC Bar No. 68337
Haynsworth Sinkler Boyd, P.A.
One North Main Street, 2nd Floor
Greenville, South Carolina 29601
(864) 240-3220
sspruill@hsblawfirm.com
Attorneys for the Petitioner

Other Counsel of Record:

John S. Nichols
Bluestein Thompson Sullivan
PO Box 7965
Columbia, SC 29202
(803) 779-7599
john@bluesteinattorneys.com
Attorneys for the Respondents

INDEX

INDEX i

CERTIFICATE OF COUNSEL 1

QUESTIONS PRESENTED..... 2

INTRODUCTION 3

STATEMENT OF THE CASE..... 4

FACTS 5

 I. THE EASEMENT. 6

 II. THE DRIVEWAY. 7

ARGUMENT 8

 I. THE MASTER AND THE COURT OF APPEALS FAILED TO PERFORM THE REQUIRED
 REASONABLENESS ANALYSIS WITH RESPECT TO THIS NON-EXCLUSIVE EASEMENT AND INSTEAD
 APPLIED AN OVERLY RESTRICTIVE BRIGHT-LINE STANDARD THAT HAS PREVIOUSLY BEEN APPLIED
 ONLY TO INGRESS/ EGRESS EASEMENTS. 8

 II. THE COURT OF APPEALS ERRED IN IMPOSING A REQUIREMENT THAT THE DRIVEWAY BE
 “NECESSARY” AS OPPOSED TO “REASONABLY NECESSARY.” 13

 III. THE COURT OF APPEALS ERRED IN FINDING THAT THE HALSELLS CREATED A NUISANCE/
 TRESPASSED ON THEIR OWN PROPERTY..... 14

CONCLUSION..... 15

CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that a petition for rehearing was made on January 28, 2026 and finally denied by the court of appeals on May 13, 2026.

QUESTIONS PRESENTED

1. Did the court of appeals err in its construction of a non-exclusive landscape easement to effectively bar any use of the easement area by the servient estate holder?
2. Did the court of appeals err in failing to apply the term “non-exclusive” according to its plain meaning in the context of a non-exclusive landscape easement?
3. Did the court of appeals err in requiring that there be an absolute necessity for the Halsells to install a driveway crossing a non-landscaped portion of the easement area, rather than balancing the interests of the dominant and servient estates and considering the burden imposed?
4. Did the court of appeals err in stating “Appellants constructed the driveway with knowledge that it was hostile to the POA’s easement and would destroy the existing landscaping” and in finding that the Halsells unreasonably interfered with the rights of the POA?
5. Did the court of appeals err in finding that the Halsells’ actions constituted a trespass or nuisance?

INTRODUCTION

This appeal arises out of a dispute relating to a non-exclusive easement (“easement,” “Landscape Easement,” or “Landscape Easement Area”) located on property owned by Rodney and Barbara Halsell (the “Halsells”). The Respondents (collectively, the “POA”¹) are the property owners and the owners’ association for the Mountain View Pointe subdivision (“the Subdivision”). The easement derives from a subdivision plat recorded in connection with the Declaration of Covenants, Conditions and Restrictions (“Covenants”)² for the Subdivision and two plats recorded in the Halsells’ chain of title. (R. at 514-95, 609-15, 617-19). The Halsells installed a driveway covering a very small fraction (less than 3%) of the total easement area, which did not include any POA plantings. The POA objected.

Both the master and the court of appeals applied a bright line rule and failed to give any meaning to the term “non-exclusive,” finding that the POA had the right to “solely manage and control beautification, vegetation, landscaping, soil disturbance and grading” and cannot act in any way that would result in “removal of or damage to vegetation,” rather than applying the traditional balancing analysis employed by South Carolina appellate courts. In essence, the master and the court of appeals have conferred all the benefits of fee ownership in the Landscape Easement Area to the POA without any of the tax liability.

It is this broad finding that renders this decision in conflict with precedent. This case does not involve an ingress/ egress easement, and the master and the court of appeals erred in their rote application of *Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C.

¹ For ease of reference, “POA” also refers to the Mountain View Pointe Owners Association.

² The Covenants, which do not apply to the Halsells, define the “Landscape Easement Area” as the “twenty-five (25’) foot easement granted by Declarant along both sides of the main entrance road into the Subdivision . . .” (R. at 522, § 1.23).

170, 410 S.E.2d 580 (Ct. App. 1991). Pursuant to Rule 242, SCACR, the Halsells seek review by this Court in order to reaffirm case law requiring that easements be construed through a lens of reasonableness and in light of the terms used and to clarify that *Xanadu* did not create a bright line rule in all cases where there is a defined easement area.

STATEMENT OF THE CASE

The POA commenced this litigation on February 8, 2021, alleging that the Halsells had encroached or planned to encroach on the easement through the construction of a driveway without permission from the POA. (R. at 43-51). Following a trial on October 26-27, 2022, the master entered an order on March 13, 2023 finding “that the Easements vest in the POA sole management and control of beautification, vegetation, landscaping, soil disturbance and grading in the Landscape Easement Area which is necessary in order to insure [*sic*] the full use and enjoyment of the Landscape Easement and any interference with the same by the servient estate owners or anyone claiming through them is a violation of the POA’s rights in the Easements.” (R. at 27). The master further ruled “that the placement of a driveway or other permanent structure in the Landscape Easement Area unreasonably prohibits the POA from using the portion of the easement area obstructed thereby for the purpose for which it was granted and is a violation of the POA’s rights in the Landscape Easement.” (*Id.*). The master also ordered the Halsells to remove the driveway and restore the Landscape Easement Area to its former condition. (R. at 27-28). On March 23, 2023, the Halsells filed a motion to alter or amend. (R. at 146-49). The master entered a supplemental order on May 31, 2023. (R. at 33-42).

The Halsells appealed. The court of appeals affirmed the master’s order in an unpublished *per curiam* opinion filed on January 14, 2026. The Halsells sought rehearing, arguing that the court of appeals made factual errors, failed to perform the required reasonableness analysis and instead applied an overly restrictive bright-line standard that has previously been applied only to

(R. at 619). The Property is located at the intersection of Doug Hollow Road, a state road, and Mountain View Pointe Drive, a county road. (*See* R. at 7 ¶5). As testified by Mr. Halsell and shown on a topographical map, the Property loses roughly seventy-five feet in elevation between its northern and southern boundaries, ending in a sharp drop off at Doug Hollow Road. (R. at 443:9-12, 699-701). The instant dispute arises out of the Halsells’ construction of a short driveway that connects to Mountain View Pointe Drive near the north end of the Property.

I. The easement.

In November 2002, Crescent Communities S.C, LLC (“Crescent”), as declarant, recorded the Covenants and a subdivision plat showing the layout for the Subdivision (“Subdivision Plat”). (R. at 514-79, 593-95). When the Subdivision was created, Crescent also owned the Property. (*See* R. at 593-95, 205:16-19). The Property is not part of the Subdivision and is not subject to the Covenants. (R. at 199:23-200:4, 341:21-25). The only reference to the easement in the Halsells’ chain of title is by reference to two plats. (R. at 609-15, 617-19).

Section 7.9 of the Covenants purports to establish “*non-exclusive* perpetual easements *for the purpose of landscaping and maintaining the property adjacent to the main entry road* for the Subdivision as ‘Landscaping Easement’ on the Map.” (R. at 543 (emphasis added)).³ As shown in the Subdivision Plat (R. at 593-95) and the Halsells’ plat (R. at 619), the easement is a 25-foot strip running the full length of the Halsells’ frontage on Mountain View Pointe Drive.⁴

³ Section 1.25 of the Covenants defines “Map” as the Subdivision Plat. (R. at 522). Section 1.23 of the Covenants defines the “Landscape Easement Area” as the “twenty-five (25’) foot easement” granted by Declarant along both sides of the main entrance road into the Subdivision . . .” (*Id.*).

⁴ As shown on the plats, the easement runs approximately 1,125 lineal feet along the edge of the Property and covers approximately 28,125 square feet (.645 acres). (R. at 593-95, 619, 416:11-417:7).

The Covenants also created the POA to own, maintain, and administer common areas, including the Landscape Easement Area, and enforce the Covenants. (R. at 520). However, the property records for Oconee County show that the POA does not own the Landscape Easement. (R. at 596-603). On April 8, 2005, Crescent deeded to the POA the property labeled as “COS,” “Common Open Space,” and “Access Area,” shown on the Subdivision Plat. (R. at 596-99). On June 16, 2005, by way of “Corrective Deed,” the POA reconveyed the “COS,” “Common Open Space,” and “Access Area” back to Crescent. (R. at 600-03). The Landscape Easement was never reconveyed to the POA.

II. The driveway.

On September 7, 2020, the Halsells met with the POA regarding their plan to construct a garage and driveway on the Property. (R. at 372:17-25, 373:3-376:14). The POA responded that it could not grant permission to construct a driveway through the easement without the unanimous vote of all property owners within the Subdivision. (R. at 620-21). In response, the Halsells stated that the purpose of the meeting was not to seek permission but to “avoid any conflicts before beginning the project.” (R. at 622-23). The Halsells further communicated to the POA that routing the driveway to Doug Hollow Road rather than Mountain View Pointe Drive would negatively impact the Subdivision because doing so would require the removal of more than 30,000 square feet of trees and vegetation as opposed to the very limited clearing required for their proposed driveway on Mountain View Pointe Drive. (R. at 625-28, 384:1-12, 400:5-17). The Halsells also addressed the logistical challenges posed by putting a driveway on Doug Hollow Road due to the topography of the Property, including elevation changes and an embankment at the roadway. (R. at 443:4-13, 440:17-22, 701).

After these discussions and after consulting with multiple attorneys regarding their rights with respect to the easement, the Halsells began work on their new garage and driveway in

February 2021. (R. at 396:20-23, 398:12-399:2). The Halsells obtained all required permits for the project, including a permit to place the driveway within the County’s right of way on Mountain View Pointe Drive. (R. at 411:4-7). The Halsells were careful to only remove naturally growing sapling pine trees and not to remove any landscaping installed by the POA. (R. at 374:10-25, 408:21-409:5, 411:8-25).⁵ The paved portion of the Halsells’ driveway within the easement covers only 750 square feet (.017 acres), and the cleared area on either side of the paving has been replanted. (R. at 418:8-24, 420:17-421:23, 697-98).

ARGUMENT

I. The master and the court of appeals failed to perform the required reasonableness analysis with respect to this non-exclusive easement and instead applied an overly restrictive bright-line standard that has previously been applied only to ingress/egress easements.

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

The Court must construe an unambiguous grant of easement in accordance with the terms used by the parties. *Plott v. Justin Enterprises*, 374 S.C. 504, 512–12, 649 S.E.2d 92, 96 (Ct. App. 2007). When an easement is shown on a plat incorporated into a deed, any restriction on the use

⁵ The opinion is in a Rule 220, SCACR format and contains little factual discussion. The last sentence of section 1 of the opinion incorrectly recites, “Appellants constructed the driveway with knowledge that it was hostile to the POA’s easement and would destroy the existing landscaping.” This finding was incorrect based on the facts recited here. The POA does not own the Landscape Easement. (R. at 596-603). The Property is not part of the Subdivision and is not subject to the Covenants. (R. at 199:23-200:4, 341:21-25). Before starting work, the Halsells were advised by counsel that they could proceed with their driveway plans. (R. at 396:20-23, 398:12-399:2). The Halsells obtained all required permits for the project. (R. at 411:4-7). During construction, the Halsells did not remove any landscaping installed by the POA. (R. at 374:10-25, 408:21-409:5, 411:8-25). Thus, the Halsells did not believe the driveway was hostile to the easement and did not destroy any existing landscaping.

of the is to be strictly construed and “all doubts resolved in favor of the free use of the property.” *Hamilton v. CCM, Inc.*, 263 S.E.2d 378, 380, 274 S.C. 152, 157 (1980).

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

Here, the Property is not subject to the terms of the Covenants because it is not in the Subdivision. (R. at 15 ¶42). Nor does the POA own the Landscape Easement Area. (R. at 596-603). The master and the court of appeals erred by construing the terms of the Covenants to preclude any use of the non-exclusive Landscape Easement by the Halsells, effectively giving the POA the fee interest in the area. (R. at 14-15 ¶¶14-17, 21-22 ¶¶14-17, 27 ¶¶1-4). Nowhere do the plats in the Halsells’ chain, the Subdivision Plat, or the Covenants state or imply that the owners of the Property would have no rights to the Landscape Easement Area or that there is an exclusive right conveyed to the POA with respect to “beautification, vegetation, landscaping, soil

disturbance and grading” within the Landscape Easement Area as found by the master. (R. at 27 ¶4). To the contrary, the Covenants state that the easement is non-exclusive.

Like the master, the court of appeals failed to engage in a reasonableness analysis and instead found that the easement provides the POA with the sole right to manage and control landscaping within the easement notwithstanding the “non-exclusive” description. The opinion references a “significant restriction” on the Halsells’ rights, but it has not provided any explanation of what remaining use there is if the Halsells cannot act in any respect to “beautification, vegetation, landscaping, soil disturbance and grading” and cannot act in any way that would result in “removal of or damage to vegetation.”⁶

The master’s ruling, as affirmed by the court of appeals, is much broader than the question of a single driveway. Under this ruling, if the Halsells break a blade of grass or crush a leaf anywhere within the entire easement (.645 acres), they have violated the letter of the master’s order. The Halsells have repeatedly sought an explanation of what rights remain in the Landscape Easement Area and have received none from the POA or any court. That is because there is no use remaining, rather than the “free use” discussed in *Hamilton*.

The Halsells have not argued for “equal rights” as stated in section 2 of the opinion, but have argued that they are entitled to reasonable use and enjoyment of property they own and pay taxes on, especially where the POA had not endeavored to landscape the area in question. The bright line rule imposed by the master and the court of appeals does not take into account the reasonable enjoyment of both estates and the facts and circumstances of this case.

⁶ Counsel for the POA was unable to articulate any remaining use when directly asked at oral argument. This is because there is none.

In addition, section 2 of the opinion fails to give any meaning to the term “non-exclusive.” Although there are no reported South Carolina cases expressly defining the term “non-exclusive easement,” Black’s Law Dictionary provides: “[a]n easement allowing the servient landowner to share in the benefit of the easement, - Also termed *nonexclusive easement*.” EASEMENT, Black’s Law Dictionary (11th ed. 2019). In contrast, an exclusive easement is “[a]n easement that the holder has the sole right to use.” *Id.* These definitions are consistent with the South Carolina cases applying a reasonableness standard and a balancing test cited above. If the right is non-exclusive, both the dominant and servient estates should be able to landscape the area. In refusing to give the term “non-exclusive” any meaning, the court of appeals reversed the analysis and construed the easement in favor of no use for the servient estate rather than “all doubts resolved in favor of the free use of the property.”

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

Xanadu does not compel a different analysis or result. There, the court of appeals considered the express language of multiple easements for ingress and egress over the same area and found that one of the easement holder’s proposed uses infringed on the specific terms of the

other's easement. 306 S.C. at 171–72, 410 S.E.2d at 581. In that case, the proposed uses were mutually exclusive: parking spaces were inconsistent with an easement for “ingress and egress” through the easement area. Here, on the other hand, the Halsells’ driveway did not interfere with any landscaping placed by the POA and it is reasonably necessary to the Halsells’ enjoyment of the Property given the minimal nature of the encroachment and the topography of the Property. Unlike in *Xanadu*, the Halsells have not restricted the POA’s access to any portion of the Landscape Easement Area. The POA is still free to access all portions of the easement and to install landscaping as they see fit. It is the POA that has sought to use the non-exclusive easement as a cudgel to deprive the Halsells of any use of a portion of their property.

By applying *Xanadu* outside the context of an ingress/ egress easement, the court of appeals has ignored the precedent cited above requiring a reasonableness analysis. In *Metro. Water Dist. of Salt Lake & Sandy v. Sorf*, 2023 UT App 146, ¶ 34, 542 P.3d 87, 95 (2023), the Utah Court of Appeals provided a comprehensive look at this issue nationwide before ultimately settling on a rule of reasonableness rather than a bright line approach at least in the context of easements other than those for ingress/ egress. As set forth there:

The bright-line rule advocated by the District has been adopted—at least in the context of ingress/egress easements—in a number of other jurisdictions. *See, e.g., Johnson v. Highway 101 Invs., LLC*, 156 Idaho 1, 319 P.3d 485, 487–88 (2014) (compiling cases); *see also* 25 Am. Jur. 2d *Easements and Licenses* § 76 (2023) (“A permanent physical obstruction placed in an express easement created by grant, in the absence of an agreement or surrounding circumstances to the contrary, interferes as a matter of law with the dominant easement holder’s right to the use of all of the express easement.”). As justification for adopting this bright-line approach, courts have posited that it “will avoid costly and time-consuming litigation concerning whether the servient estate owner’s use of the easement area is reasonable,” *see Johnson*, 319 P.3d at 488, and have reasoned that a contrary rule would give dominant estate owners “license to retake the easements in a piecemeal fashion,” *see Lamb v. Wyoming Game & Fish Comm’n*, 985 P.2d 433, 438 (Wyo. 1999).

Other courts, however, have expressly declined to adopt this bright-line exception to the rule of mutual reasonableness. *See, e.g., Skow v. Goforth*, 618 N.W.2d 275, 278–81 (Iowa 2000). These courts have emphasized the “aggregate utility” that the rule of mutual reasonableness promotes, *see id.* at 280 (quotation simplified), and they have noted the absurdity of a rule that would require a servient estate owner to remove a structure that encroaches on the easement in only a de minimis manner, *see id.* at 281, or that is located in a part of the easement that is entirely “unused” by the dominant estate holder, *see D’Abbracci v. Shaw-Bastian*, 201 Or.App. 108, 117 P.3d 1032, 1041 (2005).

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

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

Id. at ¶ 48, 542 P.3d at 99–100.

Here, the easement is a non-exclusive landscape easement and the Halsells only seek to install a driveway across a de minimis portion of the Landscape Easement Area. The Halsells contend that the master and the court of appeals erred in applying a bright-line rule applying to the entire easement on these facts. When the required reasonableness analysis is applied and the term “non-exclusive” is given its usual meaning, the Halsells believe the scales tip in their favor with respect to the driveway.

II. The court of appeals erred in imposing a requirement that the driveway be “necessary” as opposed to “reasonably necessary.”

The court of appeals added a requirement that the proposed use of the easement be strictly necessary. This finding was error. Yes, a longer driveway connecting to Doug Hollow Road is possible at great expense and with the clear cutting of multiple acres of property immediately

adjacent to the easement, but that should not be outcome determinative. The sole authority provided for this ruling by the court of appeals is *Thomas v. Mitchell*, 287 S.C. 35, 37–38, 336 S.E.2d 154, 155 (Ct. App. 1985). *Thomas*, however, does not stand for this proposition. To the contrary, *Thomas* preserves the servient estate’s use of its property as is necessary for its “efficient use” as long as there is not an unreasonable burden on the dominant estate. The reasonable necessity is illustrated by comparing the minimal (around 750 square feet) area for the existing driveway to the area that would be required to connect to Doug Hollow Road (around 30,000 square feet).

Again, the Halsells did not destroy the Landscape Easement. Instead, they added a driveway over a very small portion of the easement (less than 3%) that had never been landscaped by the POA. Given the large size of the easement, the driveway over a very small, unlandscaped area is a minimal burden of the type contemplated in *Thomas*. At the very least, the Halsells are entitled to have a court perform the required reasonableness analysis rather than the bright-line approach rigidly applied by the master and the court of appeals.

III. The court of appeals erred in finding that the Halsells created a nuisance/ trespassed on their own property.

The court of appeals erred in finding that the Halsells “substantially and unreasonably interfered with the POA’s specific use and enjoyment of its landscape easement” so as to support a finding of nuisance.⁷ Again, the POA does not own the easement, and the Halsells acted on the advice of counsel and took steps to avoid removing any plantings in the Landscape Easement Area. Thus, the POA has no record interest in the easement, and the Halsells’ actions were neither substantial nor unreasonable.

⁷ The POA did not respond to this issue in its respondent’s brief before the court of appeals.

The Halsells cannot trespass on their own property. *See Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 357, 559 S.E.2d 327, 337 (Ct. App. 2001). Nuisance, on the other hand, “is a substantial and unreasonable interference with the plaintiff’s use and enjoyment.” *Ravan v. Greenville Cnty.*, 315 S.C. 447, 464, 434 S.E.2d 296, 306 (Ct. App. 1993). To prevail on a nuisance claim, the POA was required to prove that the Halsells substantially and unreasonably interfered with their ownership and possession of the land. *Id.*

The Halsells have neither destroyed nor relocated the Landscape Easement Area; instead, they have constructed a driveway through a small fraction of it on property they own. For all the reasons above, the Halsells have not interfered with the POA’s ownership or possession of land. The POA has no rights to own or possess the Halsells’ property. Nor was the POA “using” the area in question as it had never been landscaped. Again, at most, the POA has a non-exclusive and unexercised right to landscape the Landscape Easement Area. For this reason, there is no actionable trespass or nuisance here, and the master and the court of appeals erred in finding otherwise.

Lastly, a change in the ruling on the easement issues would require a different result on the trespass/ nuisance ruling.

CONCLUSION

This case presents a unique opportunity for this Court to address *Xanadu* and the rights of the servient estate and to provide the bench and bar with guidance in cases like this one, which does not arise in the context of a road or ingress/ egress easement. For all the reasons presented here and in their briefings before the court of appeals, the Halsells ask that this Court grant review as to the questions presented and consider this appeal fully on its merits.

Respectfully submitted,

s/ Sarah P. Spruill

Richard Hunt McDuff
SC Bar No. 76242
Merrell & McDuff (MJM Law, LLC)
119-B Professional Park Drive
Seneca, South Carolina 29678
(864) 882-2466
rick@mjmlaws.com

Sarah P. Spruill
SC Bar No. 68337
Haynsworth Sinkler Boyd, P.A.
One North Main Street, 2nd Floor
Greenville, South Carolina 29601
(864) 240-3220
sspruill@hsblawfirm.com

Attorneys for the Petitioners

June 10, 2026