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Jun 22, 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Opinion No. 2026-UP-014
Appellate Case No. 2026-001310

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 Petitioners.

RETURN

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COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

- I. Is this case appropriate for review by way of issuance of a writ of certiorari?
- II. Did the Court of Appeals Correctly Construe the “Non-Exclusive” Easement in this Case?
- III. Did the Court of Appeals and the Master Correctly Apply the Term “Non-Exclusive” According to its Plain Meaning?
- IV. Did the Court of Appeals Correctly Affirm the Master’s Finding Regarding Petitioners’ Claims for Necessity to Build a Driveway Across Respondents’ Landscape Easement?
- V. Did the Court of Appeals Correctly Affirm the Master’s Finding That Petitioners “Constructed the Driveway with Knowledge That it Was Hostile to the POA’s Easement and Would Destroy the Existing Landscaping” and the Master’s Finding That Petitioners Unreasonably Interfered with the POA’s Rights?
- VI. Did the Court of Appeals Correctly Affirm the Master’s Finding That Petitioners’ Actions Constituted a Trespass or Nuisance?

COUNTER-STATEMENT OF THE CASE

Respondents agree with the Petitioners' Statement of the Case.

FACTS

In 2002, Crescent Communities S.C., LLC. ("Crescent"), recorded a Declaration of Covenants, Conditions, and Restrictions for Mountain View Pointe ("MVP" or "the Subdivision"). (R. p. 519). Crescent designated and assigned the powers and duties under the Declaration to Mountain View Pointe Owners Association ("POA"). (R. p. 519). Crescent had prepared and filed a Plat setting forth the lots, easements, and boundaries for the POA on November 12, 2002. (R. p. 593). The Declaration also specifically created and reserved non-exclusive perpetual easements for Crescent, the Association, and their successors and assigns, in the Monument Easement and the Landscape Easement. (R. pp. 542-543).¹ The Declaration was recorded at the Office of the Register of Deeds for Oconee County and contained the Articles of Incorporation for the POA and the Bylaws of Mountain View Pointe Owners Association, Inc. (R. pp. 562, 565). The POA formally came into existence in September 2002. (R. p. 562).

¹ Petitioners assert that (1) the Landscape Easement was not granted until April 2005 and was later reconveyed by Crescent and (2) the property records for Oconee County demonstrate the POA does not own the Landscape Easement. (Petition, p. 7). This assertion is not correct. The granting language of the Declaration provides Crescent "hereby grants, establishes, creates and reserves" both of the Easements (R. p. 542-543, Section 7.9); nothing in the language suggests that the Easements would be granted at some future date. The Master found as a fact that "[t]he Declaration organizing and establishing the Mountain View Pointe Subdivision and the covenants and restrictions placed thereon, are sufficiently clear and are not ambiguous, and constitute an unconditional deed of two non-exclusive perpetual easements from Crescent to the POA for the purpose of landscaping and maintaining the Entrance Monument area and an abutting twenty-five-foot wide (25') Landscape Easement Area on each side of Mountain View Pointe Drive extending from Doug Hollow Road, as state maintained roadway to the subdivision." (R. p. 8, ¶ 10).

The design of the subdivision and the areas around it are outlined in the 2002 Plat. (R. p. 593). The MVP subdivision has an entrance at the juncture of Doug Hollow Road and Mountain View Pointe Drive. (R. p. 593). This area contains an easement for the “Entrance Monument” into the subdivision. (R. p. 593; R. pp. 8-9). Additionally, Crescent designed the Landscape Easement so the POA would retain a landscaped area on either side of Mountain View Pointe Drive leading into the subdivision, designated as the 25’ “non-exclusive landscape easement” running on either side of the road. (R. p. 593). The Plat identified the metes, bounds, and measurements of the easement. (R. p. 593).

These easements burden the two parcels of land, Parcels A and B, on either side of Mountain View Pointe Drive. (R. p. 593).² Petitioners, as owners of Parcel A, contest only the Landscape Easement running along Mountain View Pointe Drive. (R. p. 8). The Landscape Easement runs from the entrance monument easement along the length of Mountain View Pointe Drive until it abuts the numbered lots of the POA. (R. p. 593).

The POA has maintained the property covered by the Landscape Easement from the Association’s inception in 2002 (19 years at the time of trial). (R. p. 9). The Landscape Easement contains areas maintained in a natural state and places where the POA maintained the property in a curated fashion with planted flowers and shrubs. (R. pp. 9-10). The POA has irrigated large

² Petitioners assert repeatedly that “[t]he Property is not part of the Subdivision and is not subject to the Covenants.” (Petition, p. 6; p. 8, n. 5; p. 9). In fact, while the property is not in the subdivision it most certainly is subject to the easements. The Declaration defines “Common Areas” to specifically include the “Landscape Easement Area” (R. p. 521), and the definition of “Property” in the Declaration specifically includes “Common Areas.” (R. p. 523). The Declaration’s Statement of Purpose provides “Declarant desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner.” (R. p. 519). The Master so found. (R. p. 9, ¶ 13).

portions and installed sod where necessary to maintain the landscape in the manner selected by the POA. (R. p. 9).

Crescent sold the two parcels bordered by Mountain View Pointe Drive to Christine and Graham Piper in August 2013, subject to the easements, covenants, restrictions, and conditions of record. (R. p. 610). In early September 2020, Petitioners approached the Pipers with a \$200,000.00 offer to purchase Parcel A. (R. p. 633, R. p. 70, R. pp. 181-82). Petitioners anticipated the purpose of the Landscape Easement in their inquiry to the Pipers, stating: "As I expect you want to preserve the view along this street." (R. p. 624; R. p. 181). Petitioners informed the Pipers of their concern related to the Landscape Easement running the length of Mountain View Pointe Drive because Petitioners wished to build a driveway through the area covered by the Landscape Easement. (R. pp. 70-71). The Pipers testified that the Landscape Easement existed on the tract being sold to Petitioners and that they communicated this to Petitioners. (R. pp. 184-85).

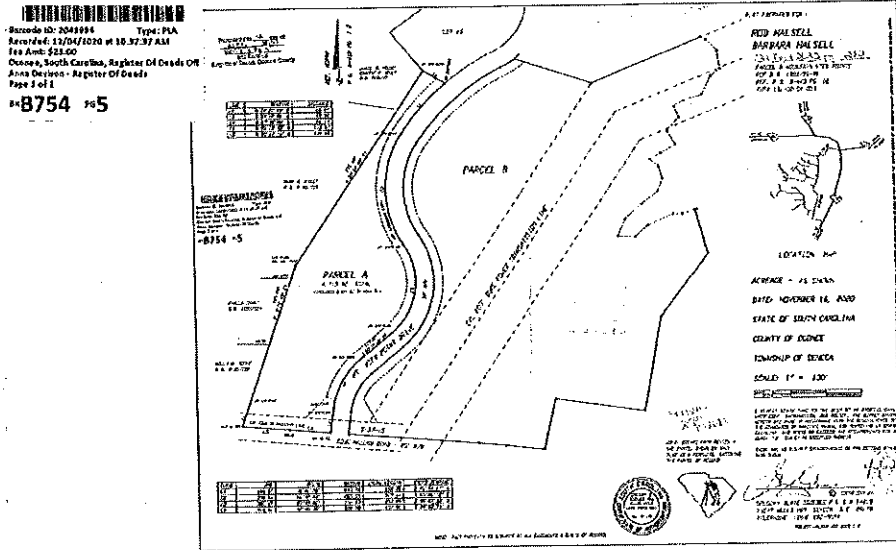
Petitioners notified the POA by letter of their desire to remove a portion of the property covered by the Landscape Easement for the proposed driveway. (R. p. 625). Petitioners also had the Pipers advocate on their behalf to the POA on September 7, 2020; Mr. Piper outlined the "Halsell Proposal." (R. p. 629). On September 28, 2020, the Pipers wrote to the Oconee County Planning Director regarding Petitioners' desire for assurance "that a driveway on Mountain View Pointe Drive will be allowed by Oconee County." (R. p. 650). Ultimately, on October 26, 2020, counsel for the POA notified the Pipers of the POA's position there was not a unanimous decision of the homeowners to grant Petitioners' the exception they sought. (R. p. 631).

As a result of the anticipated denial of permission to build the driveway and increased

costs to build a driveway off of Doug Hollow Road, Petitioners lowered their contract offer for Parcel A from \$200,000.00 to \$150,000.00. (R. p. 633, R. p. 641, R. pp. 185-86, R. pp. 202-03). Petitioners purchased the lot to build a garage for a car collection and wanted to build a driveway to Mountain View Pointe Drive. (R. p. 629, R. p. 633, R. p. 48, R. p. 182-83). The purchase was made subject to the April 3, 2013 plat, which indicated the existence of the Landscape Easement. (R. p. 650, R. pp. 188-89). The Pipers testified that each plat considered during the sale of Parcel A to Petitioners contained a reference to the non-exclusive Landscape Easement. (R. pp. 188-89).

On December 2, 2020, Petitioners acknowledged in the presence of two witnesses they had notice of “any and all restrictions, protective covenants, [and] easements ... imposed upon this property.” (R. p. 652). Petitioners recorded their title on December 4, 2020. (R. p. 617). Petitioners’ title to Parcel A identifies the property as being a portion of the property conveyed to the Pipers on July 16, 2013, and recorded August 26, 2013, in Deed Book 1982, at page 91, records of Oconee County, South Carolina. (R. p. 617). The referenced deed is the Special Warranty Deed conveying Parcels A and B to the Pipers from Crescent, which subjected the property conveyance to the easements, restrictions, and covenants of record, as may be apparent from an inspection of the property. (R. pp. 609-10).

Importantly, on December 4, 2020, Petitioners recorded a plat that shows the Landscape Easement. (R. p. 619). The plat is as follows:



This plat demonstrates the Landscape Easement from just above the monument easement from Doug Hollow Road along the entire length of Parcel A bordering Mountain View Pointe Drive. The Plat was prepared for “Rod Halsell” and “Barbara Halsell.”³

The Pipers attached to the Special Warranty Deed an Exhibit A, identifying the specific tracts of land conveyed by the deed. (R. p. 611). Exhibit A identifies the conveyed land as being a portion or all of that land conveyed to Crescent Communities S.C., LLC, recorded September 9, 2002, in Deed Book 1239, at page 155. (R. p. 609, R. p. 678). The Special Warranty Deed sets forth the property derivation from 1965. (R. p. 609, R. p. 92).

Petitioners recorded a prepared Plat for Parcel A on December 4, 2020, in Plat Book 754,

³ Petitioners included a copy of this Plat in their Petition but they cut off the entire right side of the document, which demonstrates Petitioners commissioned the recorded Plat. The right side also references Mountain View Pointe and a plat depicting Parcels A and B recorded in Plat Book B-443, Page 2, that was filed in connection with the acquisition of those parcels by South Carolina Land and Timber Corp (which subsequently became Crescent).

at page 5. (R. p. 619). The Halsell Plat explicitly references “Parcel A Mountain View Pointe,” Deed Book 1982, pages 91-96. (R. p. 619). In 2013, Crescent recorded a prepared Plat for Parcels A and B before sale to the Pipers, Plat Book 443, at page 2. (R. p. 615). The 2013 Crescent Plat references Deed Book 1982, pages 91-96. (R. p. 615). This appeal centers around Parcel A, identified as S-Tract 7149.02, containing 4.715 acres, as set forth in the 2020 chain of title. (R. p. 609).

Mr. Halsell applied for an encroachment permit on December 2, 2020, to build a “[p]ersonal driveway on 4.7 acre property ... where it meets Doug Hollow[Road].” (R. p. 653). The entrance would be “on the right/north side of Doug Hollow [Road].” (R. p. 653). The permit contained pictures illustrating that the driveway would attach to Doug Hollow Road, not Mountain View Pointe Drive. (R. p. 656, R. p. 662). The permit contained an illustration indicating the driveway would intersect with only Doug Hollow Road. (R. p. 656). This illustrated the sole purpose of the permit as permitting a driveway from Doug Hollow Road with references to Doug Hollow Road’s “Posted Speed Limit” and the designation of State Road S45. (Id.). The roadway was marked with “small white lines ... to make it easy to see.” (R. p. 653). The permit contained pictures indicating the driveway site as being located on Doug Hollow Road and not on Mountain View Pointe Drive. (R. p. 660). The permit further contained a Google Maps picture of the permitted site located on Doug Hollow Road, State Road S-37-15. (R. p. 661). The plat attached to the permit contains two black lines indicating the driveway site to intersect with “Doug Hallow (sic) Road.” (R. p. 662). Mr. Halsell applied for the permit on the day of closing. (R. p. 191).

The S.C. Department of Transportation issued a permit on January 7, 2021, allowing the

construction of a driveway on “the right/north side of Doug Hollow” Road. (R. p. 663). The roadway was marked with “small white lines ... to make it easy to see.” (R. p. 663).

Petitioners did not construct a driveway on the right side or north side of Doug Hollow Road. Instead, Petitioners constructed a dirt and gravel driveway running directly across the Landscape Easement. (R. p. 653, R. pp. 666-70). The driveway tore through the POA’s Landscape Easement. (R. pp. 672-73). In the three months prior to trial, despite the pending litigation, Petitioners widened the driveway, poured concrete curbing, and paved the driveway. (R. pp. 12-13). Petitioners constructed their garage complex at the end of the driveway, connected to Mountain View Pointe Drive. (R. pp. 674-77).

The only evidence in the record that Petitioners ever obtained an encroachment permit to connect to Mountain View Pointe Drive came from Petitioners. (App. Br. 7; R. p. 663). Mr. Halsell testified his builder obtained a permit to connect to Mountain View Pointe Drive (R. p. 411); however, this is not corroborated by the record. Mr. Halsell also testified there was a white stake the county had placed in the Landscape Easement (R. pp. 410-11); however, this is also not corroborated by the record.

The Master held a two-day hearing on the merits from October 26 through 27, 2022. (R. p. 6). At the commencement of the hearing, Petitioners moved to be heard on an additional claim of an easement by necessity, which was unopposed. (R. p. 6; R. p. 166). After the hearing, the Master conducted a site visit of the Subdivision, Parcel A, and Parcel B. (R. p. 6; R. pp. 512-13). The parties were given leave to file post-trial briefs which they submitted to the Master. (R. p. 6).

The Master issued a Supplemental and Amended Order, filed May 31, 2023, pursuant to Petitioners’ motions for “modification and clarification” pursuant to Rules 52 and 59, SCRCF,

and pursuant to the POA's motion to amend the pleadings to conform to the evidence pursuant to Rule 15(b), SCRCF for a mandatory injunction. (R. pp. 34-35).

The Master found Petitioners unreasonably violated the rights held by the POA in the non-exclusive Landscape Easement when Petitioners reduced the easement by constructing the driveway. (R. p. 27). The Master further held Petitioners damaged the POA's limited interest in the easement by constructing the driveway and this violation of the POA's right constituted a trespass. (R. pp. 27-28). The Master ordered Petitioners to "restore all areas disturbed in conjunction with the construction of their driveway or related thereto, up to the westernmost border of the Landscape Easement Area, to the condition existing prior to their disturbance." (R. p. 28, ¶ 8). The Master added:

Such restoration shall include, without limitation, removal of all concrete and other existing structures, and restoring the contour of the land and replacement of the trees removed with plants approved by the POA to provide screening comparable to those destroyed.

R. p. 29, ¶ 8). The Master ordered the Halsells to restore the property within the easement within forty-five (45) days (R. pp. 28-29); however, this was modified to sixty (60) days by supplemental order. (R. pp. 38-39).

Petitioners appealed. Following oral argument, the Court of Appeals affirmed. *Mountain View Pointe Owners Association, Inc. v. Halsell*, 2026-UP-014 (S.C. Ct. App. filed Jan. 14, 2026). This Petition follows.

STANDARD OF REVIEW

“The determination of the existence of an easement is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury.” *Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (2006), citing *Slear v. Hanna*, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998). However, the determination of the scope of the easement is a question in equity. *Hardy*, citing *Tupper v. Dorchester County*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997). Petitioners do not contest the existence of the easement; instead, the underlying action sought injunctive relief due to Petitioners’ violation of the easement terms and required the Master in Equity and the Court of Appeals to determine the scope of the easement. Accordingly, this Court’s scope of review is *de novo*. *Hardy*.

Despite this broad standard of review, this Court is not required to disregard the trial court’s findings of fact, and is mindful the trial court sits in a better position to assess witness credibility. *Stoneledge at Lake Keowee Owners’ Assoc. v. IMK Development, LLC*, 435 S.C. 109, 866 S.E.2d 542 (2021). In addition, Petitioners were not relieved of their burden of convincing the Court of Appeals and this Court that the trial court committed error in its findings. *Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d 631 (2020).

ARGUMENTS

Introduction

This case involves landowners (Petitioners Halsells) who purchased their property with actual knowledge as well as constructive (record) notice that the property they were buying was subject to a landscape easement favoring an adjacent development's Property Owners' Association (POA), and that the easement ran the entire length of the property they intended to buy along Mountain View Pointe Drive. Because of that knowledge, prior to closing the purchase Petitioners and the property's sellers (Defendants Pipers) asked the POA for permission for Petitioners to build a driveway through the POA's easement onto Mountain View Pointe Road, but the POA (the dominant estate holder) said no. Petitioners then negotiated a 25% reduction in the purchase price (from \$200,000 to \$150,000) from the Pipers because of the existence of that easement and the POA's refusal to waive its enforcement. Despite being told "no," however, Petitioners then tore up the area within the easement and built the driveway anyway. They then asked the court of equity to sanction their misconduct.

Neither the Master in Equity nor the Court of Appeals were sympathetic to their pleas. *Mountain View Pointe Owners Association, Inc. v. Halsell*, 2026-UP-014 (S.C. Ct. App. filed Jan. 14, 2026). Neither should this Court be. Instead, the Court should deny this Petition and permit the judgments below to stand.

I. THIS CASE IS NOT APPROPRIATE FOR REVIEW BY WAY OF ISSUANCE OF A WRIT OF CERTIORARI

As a threshold matter, Petitioners have not presented a persuasive case for this Court to exercise its discretion and issue a writ of certiorari to review the unpublished opinion of the

Court of Appeals. The Court should deny this petition and permit the Court of Appeals to remit the matter to the circuit court for further proceedings consistent with its mandate.

Certiorari to the Court of Appeals is governed by Rule 242, SCACR, which provides:

(b) Considerations Governing Review. A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242(b), SCACR.

There was no dissent in the Court of Appeals' decision; the members were unanimous, as further evidenced by the "*per curiam*" nature of the opinion. Rule 242(b)(2). *Compare Alexander v. Delaware County Bd. of Elections*, 334 A.3d 888, 889 (Penn. 2025) ("'*Per curiam*' is a Latin phrase that literally translates to 'by the court.' A *per curiam* decision is unsigned because, as its translation suggests, it is intended to be institutional rather than individual — it is attributable to the court as an entity, not any single jurist. In short, when an appellate court ... rules *per curiam*, whether in the form of an order or an opinion, that necessarily means it is 'attributed to the entire panel of judges who' considered the matter, even though it is 'not signed by any particular judge on the panel.'") (*citing* Black's Law Dictionary (12th Ed. 2024) at 1369 ("*per curiam*")); *Id.*

(“The ability to issue a ruling *per curiam* is a critical tool for any appellate court and serves many ends, not least of which is judicial efficiency. But the critical point is that a *per curiam* decision, though unsigned, still represents the collective judgment of the whole appellate body.”).

This matter also does not involve any novel issues of law, substantial constitutional issues, or federal questions. Rule 242(b)(1), (4) and (5). Lastly, neither the master in equity’s order nor the Court of Appeals’ opinion conflict with a prior decision of this Court. Rule 242(b)(3).

Rule 242(b) “emphasizes the discretionary authority of the Court to review decisions of the court of appeals....” *South Carolina Dept. of Soc. Servs. v. Benjamin*, 430 S.C. 235, 236, 844 S.E.2d 373, 373 (2020). This Court “will grant certiorari to the court of appeals only where special reasons justify the exercise of that discretion.” *Id.*

Petitioners do not present any “special reasons” as set forth in Rule 242 for this Court to exercise its discretion and issue a writ of certiorari to the Court of Appeals to review that decision. Although Petitioners contend the decisions are “in conflict with precedent,” the Court of Appeals’ rulings are fully consistent with decisions from this Court and the Court of Appeals.

This Court should deny the Petition and instruct the Court of Appeals to issue the remittitur to the trial court.

II. THE COURT OF APPEALS CORRECTLY CONSTRUED THE “NON-EXCLUSIVE” EASEMENT

Petitioners contend the Master’s finding that the POA has the exclusive right to landscape is inconsistent with the “non-exclusive” nature of the easement, and they fault the Master for

failing to “perform the required reasonableness analysis” with respect to the easement. (Petition, pp. 8-9). Petitioners’ arguments ignore the overriding principle in the construction of easements that a “grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments.” *Snow v. Smith*, 416 S.C. 72, 84, 784 S.E.2d 242, 248 (Ct. App. 2016). “In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy.” *Id.*, at 85, 784 SE.2d at 248. See also Order, p. 20, ¶¶ 7-10 (setting forth the rules governing construction of easements and the balance between the free use of property versus the obvious purpose of a restriction).

After determining the Grantor’s intent (R p. 21, ¶¶ 14, 15) , the Master found, “that Crescent intended that, to ensure the cohesiveness and attractiveness of the Landscape Easement Area as a whole, the management and control of all vegetation, landscaping, and grading in the Easement areas would be vested in the POA.” (R. p. 22, ¶ 17).⁴

Petitioners assert the portion of their property that is subject to the easement “is not subject to the terms of the Covenants because it is not in the Subdivision.” (Petition, p. 9). As

⁴ Section 3.1 of the Declaration, provides, “On or before ten (10) years from the date this Declaration is recorded, Declarant shall convey fee simple title by limited warranty deed (or grant an easement) to the Common Areas to the (POA), to be owned and maintained by the (POA).” (R. p. 525, Section 3.1). That Section added:

Declarant reserves the right to construct (i) the Entrance Monument(s) to be located at the entrance of the Development; (ii) appropriate landscaping in the Landscape Easement Area; and (iii) the Public Roads, as reflected on the Map, for the use and benefit of the Owners who are entitled to use such Common Areas as provided in this Declaration.

(R. p. 525, Section 3.1). This language explains the “non-exclusive” nature of the Landscape Easement. It also defeats Petitioners’ claim of being able to landscape within the Landscape Easement Area at all.

noted above, this is incorrect. (See footnote 2, above). The easement is described in the Covenants and every plat in the chain of title from Crescent to the Pipers and then to Petitioners reflects the Landscape Easement's existence and scope. Through counsel, Petitioners "recognized the landscape easement from the beginning and approached the (POA) about their plans in an effort to accommodate its interests under the easement." (R. p. 622).

Petitioners contend the rulings below "preclude *any* use of the non-exclusive Landscape Easement by [Petitioners], effectively giving the POA the fee interest in the area." (Petition, p. 9) (emphasis added). This is a mischaracterization of the rulings below. What the Master held was that the Petitioners "and anyone claiming through them may use the Easement areas only in ways that do not interfere with [the POA's] full use and enjoyment of the Easements." (R. p. 21, ¶ 13; see also ¶ 15). The Master held that Petitioners' "construction of a driveway or other permanent structure in the Landscape Easement Area is impermissible because it would totally preclude the [POA] from using portions of the Easement Areas obstructed by the driveway or other permanent structure for the intended use and therefore unreasonably interferes with the use and enjoyment of the Landscape Easement." (R. p. 22, ¶ 16). The Master noted "in the case of a non-exclusive easement, the servient estate owner retains ownership of the fee, and may use the property for any purpose that does not interfere with the easement owner's use and enjoyment of the easement." (R. p. 23, ¶ 20). Thus, the Master did not preclude Petitioners from using the property that is subject to the easement so long as the use they seek does not interfere with the POA's ability to the use and enjoyment of the easement. Nothing in the Master's ruling affects Petitioners' fee simple ownership, nor does it state or imply that Petitioners "would have *no* rights to the Landscape Easement Area...." (Petition, p. 9) (emphasis added).

Petitioners claim “Counsel for the POA was unable to articulate any remaining use when directly asked at oral argument.” (Petition, p. 10, n. 6). The Court may decide on its own if this is the case. At the 6:00 to 5:45 mark of Respondents’ argument Judge Paula Thomas asked the undersigned “what are some examples of ways the [Petitioners] may use the Landscape Easement?” Counsel responded “we know a driveway is not one. A concrete driveway.” Counsel added “I suppose they can walk on it. They can do whatever but whatever they do just can’t unreasonably interfere.” Counsel added that they could possibly run pipes or other things so long as they restored the property and did not unreasonably interfere with the Landscape Easement. (Respondent’s Argument, 4:55 to 4:45).⁵ Perhaps the articulation is not perfect, but it is there.

Simply because the servient estate holders cannot use their property in every imaginable way does not impact the nonexclusive nature of the easement held by the dominant estate holder. This Court made that observation in *Gulfstream Café, Inc. v. Georgetown County*, 447 S.C. 1, 923 S.E.2d 632 (2025). In *Gulfstream*, the easement provided Gulfstream, a restaurant, with “joint and non-exclusive use” of a parking lot and its 62 parking spaces along with a marina store and restaurant created as part of a planned development. Another entity eventually purchased and razed the marina store and restaurant. This changed the prior way each entity split use of the parking lot - Gulfstream had used it primarily at night while the marina had used it primarily during the day, but the new entity (a new restaurant) began competing with Gulfstream for nighttime use. Gulfstream sued but lost, as the Court observed that the presence of the new

⁵ In response, Petitioners’ counsel claimed “I don’t think we can throw a shovel” or do anything in that area. (Reply argument, 3:45). Counsel asserted the ruling reserves “no ability to use for the servient estate.” (Reply argument, 2:50-2:42). Those characterizations of the order are not borne out by the language in the order itself.

restaurant did not deprive Gulfstream of its nonexclusive property right.

The same is true in this case. Both the POA and Petitioners have nonexclusive use of the easement. However, neither may use it in such a manner as to interfere with the other's permitted use. That is the nature of a "non-exclusive" easement. *See Xanadu Horizontal Property Regime v. Ocean Walk Horizontal Property Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991), *cert. denied* Jan. 7, 1992) (where grant of nonexclusive easement of ingress and egress was specific in its terms as to the easement's width, length, and location, the easement could not be constricted to any degree by the placement of parking spaces thereon by other party who obtained similar easement over portion of the same property; trial judge had held that narrowing of the easement did not unlawfully interfere with dominant holder's right, but the Court of Appeals reversed). *Cf. Johnson v. Highway 101 Investments, LLC*, 319 P.3d 485, 487-488 (Idaho 2014) (joining a majority of states or commonwealths that "recognize a caveat to the general rule of reasonableness: a permanent structure is *per se* unreasonable if it diminishes an easement with definite location and dimensions," citing to numerous cases including *Xanadu*; Idaho Supreme Court added "[p]ermanent structures that do not interfere with the right to use the entire dimension of the easement, such as an underground pipeline, may be lawfully located within the boundaries of the easement because they do not encroach on the dominate owner's easement rights.").

Petitioners cite to a Utah Court of Appeals case that criticizes *Johnson*. (Petition, pp. 12-13). *Metro Water Dist. of Salt Lake v. Sorf*, 542 P.3d 87 (Utah 2023), *cert. denied* 550 P.3d 992 (Utah 2024). The Utah Court of Appeals declined to follow the "bright line" rule set forth in *Johnson* on a universal basis, finding "[o]n balance, Sorf has the better of the argument (a rule of

mutual reasonableness), *at least on the facts of this case....*” *Id.* at 98. The *Sorf* Court observed:

A permanent structure built within the boundaries of an easement is likely to have a negative impact on a dominant owner’s ability to use the easement for ingress and egress; after all, it is not possible to drive a car through a building. Only in cases involving de minimis encroachment, or encroachment on a completely unused part of the easement, can it be argued that a permanent structure built within the easement has no impact on ingress and egress. Thus, in a context in which many, if not most, permanent structures built within an easement are going to be problematic, *it may make sense to adopt a bright-line rule declaring all such structures unreasonable per se*. Such a rule would negatively affect servient owners in the de minimis cases, but—assuming that those cases are the rarer ones—there may be some measure of collective societal efficiency to be gained by adopting the bright-line rule in that context.

Id. at 98. The Court then specifically limited its holding:

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 99-100 (emphasis added). *Sorf* is not contrary to the holding by the Master in this case, nor does it advance Petitioners’ argument.

The Master did not construe the easement in such a way as to convey fee simple title to the POA. The Court should not be persuaded by Petitioners’ contention to the contrary. The Court should deny this Petition and permit the Court of Appeals to remit the matter to the trial court.

III. THE COURT OF APPEALS DID NOT ERRONEOUSLY APPLY THE TERM “NON-EXCLUSIVE”

Petitioners contend the Court of Appeals “added a requirement that the proposed use be strictly necessary.” (Petition, pp. 13-14). The Court should not be persuaded by this argument.

First, the words “strictly necessary” do not appear in the opinion. Instead, the Court found the driveway Petitioners built onto Mountain View Pointe Drive “was not necessary to the enjoyment of their land” in light of the facts of this case. Those facts included Petitioners’ knowledge prior to closing the purchase of their property that a driveway had to connect to Doug Hollow Road, and Petitioners “were able to purchase the property at a reduced price in consideration of having to build a longer driveway to Doug Hollow Road.” *Mountain View*, at 2.

Petitioners are critical of the Court of Appeals citing to *Thomas v. Mitchell*, 287 S.C. 35, 39, 336 S.E.2d 154, 156 (1985). (Petition, p. 14). They claim the Court of Appeals cited *Thomas* for a rule of strict necessity, but that simply is not so. The Court described *Thomas* as follows: “the court found that a servient estate’s placement of a locked cable over an easement area was necessary to the servient estate’s use and enjoyment of their property because it did not impose an *unreasonable* burden on the dominant estate.” *Mountain View*, at 2. The Court noted the *Thomas* Court “held that ‘the locked cable is necessary for the [servient estate’s] efficient use of their land and does not impose an *unreasonable* burden upon [the dominant estate’s] use of the easement.’ *Id.* at 39, 336 S.E.2d at 156 (emphasis added). In addition, the Court found that ‘only minimal inconvenience will be suffered by [the dominant estate] having to unlock and open one more gate before entering his property.’ *Id.*” *Mountain View*, at 2.

Even so, the Master noted “[t]here was conflicting testimony as to whether the

topography of Parcel A left [Petitioners] no choice but to build their building where they did and whether the driveway off of Doug Hollow Road was unreasonable.” (R. p. 16, ¶ 48). The Master concluded Petitioners “failed to prove necessity by a preponderance of the evidence.” (R. p. 16, ¶ 48). The Master also found the Petitioners and the parties from whom they purchased failed to establish necessity regarding the presence of power lines and the fact that Mountain View Pointe Drive had never been used to access either parcels bordering that road. (R. p. 16, ¶¶ 49-51). The Master cited *Paine Gayle Props., LLC v. CSX Transp., Inc.*, 400 S.C. 568, 745 S.E.2d 528 (Ct. App. 2012) for the rule that “necessity required for easement by necessity must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible.” (Order, p. 24, ¶ 24). Accordingly, the Master analyzed the case through the correct lens. So did the Court of Appeals.

This Court should not be persuaded by Petitioners’ arguments that the Master and the Court of Appeals applied a test for necessity that was absolute. The Court should deny this Petition and remit this matter to the circuit court.

IV. THE COURT OF APPEALS CORRECTLY AFFIRMED THE MASTER'S FINDING THAT PETITIONERS "CONSTRUCTED THE DRIVEWAY WITH KNOWLEDGE THAT IT WAS HOSTILE TO THE POA'S EASEMENT AND WOULD DESTROY THE EXISTING LANDSCAPING" AND THE MASTER'S FINDING THAT PETITIONERS UNREASONABLY INTERFERED WITH THE POA'S RIGHTS

The Court of Appeals found that Petitioners "constructed the driveway with knowledge that it was hostile to the POA's easement and would destroy existing landscaping." *Mountain View Pointe Owners Assoc. v. Halsell*, slip at 1-2, ¶ 1. This finding accords with the Master's finding that Petitioners "proceeded with the purchase of Parcel A and, with Graham Piper's willful promotion, proceeded with the construction of the driveway with full knowledge that consent had not been received to breach the Landscape Easement and with willful disregard of the rights of [Respondents]." (R. p. 13, ¶ 33; see also p. 25, ¶ 26).

Petitioners do not claim they acted without knowing that their construction of the driveway through the Landscape Easement was not permitted. Instead, as the Master noted, they asked for permission and then, when it was denied, acted anyway. As the Master observed:

It is unfortunate that [Petitioners] elected to proceed as they did. The old saying sometimes relied upon is that it is better to seek forgiveness than ask permission. In this case [Petitioners], with the assistance of Pipers, did seek permission from the POA, but it was denied. [Petitioners] then elected to take their chances of asking for forgiveness after the fact, which was also denied as evidenced by the current litigation. It is clear that [Petitioners] and Pipers both were well aware of the Landscape Easement and that placing a paved driveway over it would require permission. [Petitioners] successfully negotiated a \$50,000 price reduction from Piper based on the knowledge that, very likely, [Petitioners] ultimately would be forced to access their property via Doug Hollow Road. [Petitioners] further prepared for that possibility by procuring the necessary permit from SCDOT to do so. Certainly, access via Doug Hollow Road will be more costly and perhaps not as convenient to [Petitioners], but that does not allow them to ignore the Landscape Easement as they have done.

(R. p. 25, ¶ 26).

Petitioners do not challenge this finding by the Master or the Court of Appeals' ruling that they had knowledge that their construction of the driveway across the easement was "hostile" to the POA's use and enjoyment of the easement. Nor could they since the only evidence in the case supports that finding.

Asking forgiveness instead of permission itself involves risk. But asking forgiveness after permission has been expressly denied is another matter. Petitioners' callous disregard for the POA's rights under the Landscape Easement and Petitioners' act of ignoring the denial of Petitioners' requests to waive the easement undermines any claim to equity they may assert in this case. *See Wilson v. Gandis*, 430 S.C. at 308, 844 S.E.2d at 645 ("The doctrine of unclean hands 'precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.'"); *Burch v. Burch*, 395 S.C. 318, 331, 717 S.E.2d 757, 764 (2011) ("one who seeks equity must do equity").

The Master and the Court of Appeals both declined to assist Petitioners' disregard of the POA's rights in the Landscape Easement. This Court should do the same and deny this Petition.

V. THE COURT OF APPEALS CORRECTLY AFFIRMED THE MASTER'S FINDING THAT PETITIONERS' ACTIONS CONSTITUTED A TRESPASS OR NUISANCE

The gist of Petitioners' argument here is that the Court of Appeals' ruling is tantamount to finding Petitioners trespassed on their own property. (Petition, pp. 14-15). They cite to *Hedgepath v. American Tel & Tel. Co.*, 348 S.C. 340, 357, 559 S.E.2d 327, 337 (Ct. App. 2001). The Court should not be persuaded by this argument.

First, *Hedgepath* does not state that principle of law. *Hedgepath* is a statute of limitations

case involving claims of environmental pollution and application of the theory of continuing trespass.

Second, the servient estate holder may not unreasonably interfere with the dominant estate holder's use and enjoyment of the easement. To do so amounts to a trespass. *E.g., Chicago Title Land Trust Co. v. JS II, LLC*, 977 N.E.2d 198 (Ill. App.1st Dist. 2012) (holding owner of servient interest committed trespass by interfering with rights of dominant interest holder in use and enjoyment of the easement by excavating a trench along the right-of-way); *Roaring Fork Club, L.P. v. St. Jude's Co.*, 36 P.3d 1229, 1234 (Colo. 2001) (Colorado Supreme Court expressly stated that an easement holder may be entitled to economic damages for trespass when the owner of the servient estate obstructs an easement; Court concluded that the servient estate owner had trespassed on the plaintiff's easement by altering it, and, as a result, the dominant estate owner "may well be entitled to damages").

Next, Petitioners claim the Court of Appeals erred in affirming the finding that their interference with the POA's easement supported the Master's finding of nuisance. (Petition, p. 15). The upshot of Petitioners' claim is that because the POA does not own or possess the property subject to the easement, there is no actionable nuisance claim. (Petition, p. 15). The law, however, is contrary. *See, e.g., Brooks v. Council of Co-Owners of Stones Throw Horiz. Prop. Reg.*, 315 S.C. 474, 477, 445 S.E.2d 630, 632 (1994) (noting "[t]he tendency of the American courts is to break away from the early common law, which required a plaintiff in a writ of nuisance action to own a freehold estate in the premises. The modern trend does not require ownership or possession of land to state a valid nuisance claim. Rather, any person who has a sufficient interest in the land may bring a nuisance action.") (citations omitted).

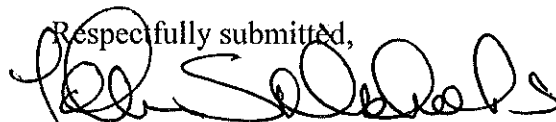
The Court of Appeals relied upon *Brooks* in its ruling. The Court also cited favorably to 58 Am. Jur. 2d *Nuisances* § 192 (finding “owners of easements” may bring an action for private nuisance). These are correct statements of the law and apply in this case.

The Court should deny the Petition and permit the Court of Appeals to remit the matter to the circuit court.

CONCLUSION

For the reasons stated this Court should deny the Petition and permit the Court of Appeals to remit this case to the circuit court for further proceedings consistent with that Court’s mandate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John S. Nichols", is written over the typed name and address.

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