

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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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. 2023-001310

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 the Petitioners.

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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No court has applied the correct analysis to this case, which requires consideration of the rights of the dominant and servient estates based on the terms used to create the easement. *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.”). Court must balance the interests of the respective estates based on the facts and circumstances of each case. *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, courts will not find unreasonable interference. *Id.*

No balancing has been conducted here. Instead, the master found and the court of appeals affirmed that because the non-exclusive landscape easement covered a defined area, the POA has the right to “solely manage and control beautification, vegetation, landscaping, soil disturbance and grading” within the Landscape Easement Area. This result is inconsistent with the non-exclusive nature of the easement, and this bright-line rule is inconsistent with South Carolina case law. This Court should grant the Petition to address these errors and provide guidance on the novel issue presented.

ARGUMENTS IN REPLY¹

Without rehashing all of the facts, the Halsells acted on the advice of counsel (R. at 396:20-23, 398:12-399:2) and were careful not to destroy any landscaping within the easement (R. at 374:10-25, 408:21-409:5, 411:8-25) in constructing their driveway. The POA had not cultivated

¹ Terms used in this reply have the same meaning assigned in the Petition.

or planted the area in question. Thus, the court of appeals erred in finding, “Appellants constructed the driveway with knowledge that it was hostile to the easement and would destroy the existing landscaping.”

On the merits, the master ruled and the court of appeals affirmed that a non-exclusive landscape easement conferred rights on the POA to “solely manage and control beautification, vegetation, landscaping, soil disturbance and grading” and prevented the Halsells from acting in any way that would result in “removal of or damage to vegetation” as to the entirety of the Landscape Easement Area. The Halsells have argued that this ruling, which essentially deprives them of all use of their property within the easement and is a *de facto* grant of the fee to the POA, flies in the face of existing precedent that requires courts to consider the respective interests of the dominant and servient estate such that there is “a due and reasonable enjoyment of both.” *Hill*, 204 S.C. at 96, 28 S.E.2d at 549. The Halsells contend their driveway should be permitted because it is reasonably necessary for the “efficient use” of their property and results in only a de minimis inconvenience to the POA similar to that approved in *Thomas*, 287 S.C. at 39, 336 S.E.2d at 155.

At a basic level, an order vesting the dominant estate holding a non-exclusive easement with “sole” control over the entire easement area, with no balancing, cannot be reconciled with this Court’s precedents or the grant of the easement. Given this backdrop, the Petition squarely raises the novel legal question of whether *Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991) created a bright-line rule beyond ingress/ egress cases, extending to any case where the easement in question is one of defined metes and bounds.² The Halsells contend that the lower court rulings directly conflict with *Hill* and the other cited precedent. For these reasons, this Court should grant the Petition and

² No reported South Carolina case has applied *Xanadu* outside the ingress/ egress context.

provide clarity to the bench and bar about the applicable standards and analysis to be applied in cases like this one that do not involve ingress/ egress easements.

The Halsells do not contend that the easement does not exist, nor do they seek to reduce the size of the easement. Instead, they argue that the driveway they installed covering a tiny fraction (less than 3%) of the total easement area, which did not include any POA plantings or improvements, is reasonable considering the facts and circumstances of this case. To date, no court has performed the required reasonableness review or considered the respective interests of the servient estate.

The orders of the master and the court of appeals, rather than considering the specific issue raised by the Halsells, went well beyond the question of the single driveway and foreclosed the Halsells from any activity involving “beautification, vegetation, landscaping, soil disturbance and grading,” without any consideration of the specific facts and circumstances. Rather than granting non-exclusive use, the lower courts have given the POA sole use in direct contradiction of the easement language. Proving this point, the POA still has not provided any examples of what use remains for the Halsells after the orders from the master and the court of appeals. It is difficult to envision any use that would not disturb soil or potentially damage vegetation as directly forbidden by the master’s order.

Contrary to the arguments in the POA’s return, *Gulfstream Cafe, Inc. v. Georgetown Cnty.*, 447 S.C. 1, 13, 923 S.E.2d 632, 638 (2025), supports the Halsells’ argument. There, this Court flatly rejected Gulfstream’s arguments that it had exclusive use of a parking lot during evening hours, finding that “the clear limitations in the easement establish Gulfstream has never had a reasonable expectation that its easement rights are anything other than nonexclusive.” Similarly, the POA here is not entitled to any exclusive use or landscaping in the easement area. That use is

expressly “non-exclusive.” Nor is there any basis for expanding the opinion in *Xanadu* beyond the ingress/ egress context in light of the general rules requiring a balancing of the interests of the dominant and servient estates based on the facts and circumstances of each case. The Halsells have cited *Metro. Water Dist. of Salt Lake & Sandy v. Sorf*, 2023 UT App 146, ¶ 34, 542 P.3d 87, 95 (2023) precisely because it considered whether a bright-line test might be preferable before applying a reasonableness analysis similar to that historically applied in South Carolina.

With respect to trespass and nuisance, it follows that there would not be any trespass or nuisance if the driveway is permissible. In addition, 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 in an area that had not been landscaped by the POA. As such, there was no substantial or unreasonable interference with the easement and the court of appeals erred in affirming the master’s nuisance finding.

CONCLUSION

South Carolina courts have long declined to apply a one size fits all analysis to easement questions. Instead, they consider the respective interests of the parties on a case-by-case basis. The Halsells have yet to have a court consider their interests and make a determination on the narrow issue of whether a single driveway is permissible. Instead, the master and the court of appeals found that the POA had exclusive rights in a non-exclusive Landscape Easement Area that effectively prevents any use by the Halsells over the entire easement. The Halsells ask that this Court grant their Petition perform the required analysis and to clarify the analysis to be applied in cases like this one.

Respectfully submitted,

s/ Sarah P. Spruill

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July 1, 2026