

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	Case No.: 2023-CP-45-00319
 Rogelio A. Smith,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Emily T. McClary and Jawran	)	
Arthur,	)	
	)	
Defendants.	)	

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Aug 24 2026
SC Court of Appeals

This matter came before me pursuant to a non-jury trial in Williamsburg County on April 17, 2026. The Plaintiff, Rogelio A. Smith, was represented by J. Thomas Thompson, Esquire, and the Defendants, Emily T. McClary, was represented by Regan Singletary, Esquire. The Defendant Jawran Arthur was ordered in default by the Honorable Charles J. McCutchen on February 12, 2025.

For the reasons listed below, this Court finds the Plaintiff has a valid and existing easement over and across the lands of the Defendants who obstructed the easement and shall be hereby restrained from any further blockage of the easement.

BACKGROUND

This case involves the Plaintiff's legal and physical access to his land located off of the Thurgood Marshall Highway (SC Highway 527) outside of Kingtree, in Williamsburg County. Rogelio A. Smith owns two adjacent lots that were part of his late wife Glinda A. Smith's family property. The property was originally partitioned by the Sam McClary family and surveyor J. D. Brockington, drew up a plat dividing the property. To equitably divide the property, the surveyor had to include an access road to the portions that were not adjacent to a public road, and the access

road is shown as a .76-acre Access Road on the 1975 Brockington Plat. The Plaintiff owns Parcels 7 and 5B on the 1975 Brockington Plat. (See Plaintiff's Exhibit 5).

After Mr. Smith's wife passed away in 2020, Plaintiff became interested in constructing a home on this property. He attempted to access his property in 2022 and found an abandoned inoperable motor vehicle placed within the access road. He wrote to the owner of the property attempting to resolve the dispute amicably multiple times to no avail.

He then hired Kevin Wilson, a licensed surveyor, to survey the 1975 access road to confirm his legal access to his property. Mr. Wilson surveyed the road in May of 2023 and located the Fifty (50) foot access easement in the location shown on the 1975 Brockington map. (See Plaintiff's Exhibit 5). Plaintiff then provided the new plat to the owner of the property blocking his access again attempting to resolve the dispute amicably.

Plaintiff's efforts to resolve the dispute were to no avail. He then verified the current legal owner of the land blocking his access to be that of the Defendants Jawran Arthur and Emily T. McClary who received deeds from Patricia Bettard recorded August 10, 2018, and July 7, 2023. Jawran Arthur received a deed for 1.5 acres, more particularly shown on a map made by surveyor Reid D. Huggins dated July 26, 2018, and recorded in Plat Book S1272 at page 7B. (See Plaintiff's Exhibit 4). Emily T. McClary received a deed for 2.7 acres, more particularly shown on a plat filed in Plat Book 24 at page 33.

The 2018 Huggins (See Plaintiff's Exhibit 4) survey was prepared for Defendant Jawran Arthur, was recorded by Defendant Jawran Arthur, and specifically shows and delineates the easement for ingress and egress. Both Defendants had distinct knowledge of this survey. Surveyor Kevin Wilson surveyed the easement, confirmed that the easement is the identical easement shown on the Huggins Plat, and that the easement was blocked with an inoperable vehicle. Despite the

Plaintiff's best efforts to resolve this matter amicably, he had to bring this action and has incurred a significant amount of damages, not only related to confirming his legal and physical access, but also specifically related to his inability to begin construction in a timely manner in having to create a new path to his property through neighboring properties at his own expense.

FINDINGS OF FACT

1. Pursuant to the May 17, 2023, plat of Kevin Wilson, recorded in the Office of the Clerk of Court for Williamsburg County at Plat Slide S1322 at page 1A. (See Plaintiff's Exhibit 7). Plaintiff has a 50' right of ingress and egress easement that runs to Plaintiff's property from the Thurgood Marshall Highway (SC Hwy 527).
2. That the easement has existed for nearly fifty (5) years, as evidenced by the J.D. Brockington of 1975. (See Plaintiff's Exhibit 5).
3. That the Defendants Emily T. McClary and Jawran Arthur received deeds from Patricia Bettard recorded on August 10, 2018, and July 7, 2023, in which Defendant Arthur received a deed for 1.5 acres, more particularly shown on a map made by surveyor Reid D. Huggins dated July 26, 2018 (See Plaintiff's Exhibit 4), and recorded in Plat Book S1272 at page 7B and Defendant McClary received a deed for 2.7 acres, more particularly shown on a plat filed in Plat Book 24 at page 33.
4. The subject property has been surveyed multiple times, including but not limited to:
 - a. Plat by J.D. Brockington, dated June 27, 1975, and recorded in the Office of the Clerk of Court for Williamsburg County on August 13, 1975, at Plat Slide 24 at page 33. (See Plaintiff's Exhibit 5)

- b. Plat by Reid D. Huggins, PLS, dated July 26, 2018, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Slide S1272 at page 7B. (See Plaintiff's Exhibit 4)
 - c. Plat by Kevin Wilson, PLS, dated May 17, 2023, and recorded in the Office of the Clerk of Court for Williamsburg County at Plat Slide S1322 at page 1A. (See Plaintiff's Exhibit 7)
- 5. All of the above-referenced plats dating from 1975 to 2023 show the 50' access road easement leading from SC Highway 527 across the property now owned by the Defendants and continuing to the Plaintiff's Property.
 - 6. As established by testimony of the Plaintiff, the access road easement has been used continuously by Plaintiff or his predecessors in interest since the 1975 partition.
 - 7. As established by the testimony of the Plaintiff, the Defendant, Emily T. McClary, obstructed the easement by placing an inoperable vehicle directly in the middle of the 50' access for ingress and egress. The Defendant admitted to placing the vehicle in the easement via her testimony and by way of admittance in Plaintiff's First Set of Requests to Admit..
 - 8. Plaintiff also testified that he planned to construct a home on the property and has not been able to do so due to the obstruction of the Defendant. Plaintiff further explained that he never intended to abandon the easement, which would leave him without a legally established right to access his property.
 - 9. Plaintiff further testified that since the Defendant obstructed the easement and refused to remove her vehicle, Plaintiff had to create a new path through neighboring private properties at his own expense in order to enter his property. His damages include expenses

in the amount of Eight Thousand and 00/100 (\$8,000.00) Dollars for tree removal and One Thousand Six Hundred and 00/100 (\$1,600.00) Dollars in stump grinding, in order to clear a road into his property, to which he does not have legal access.

LAW AND ANALYSIS

I. EASEMENT AND TRESPASS

An easement is a right or privilege which one person has to use the land of another for a specific purpose. Douglas v. Medical Investors, Inc., 182 S.E.2d 720, 256 S.C. 440 (1971); Steele v. Williams, 28 S.E.2d 644, 204 S.C. 124 (1944). Express easements are those created by either an express written grant or reserved in a deed. Sandy Island Corp. v. Ragsdale, 143 S.E.2d 803, 246 S.C. 414 (1965). The easement must be executed with the same formalities as a deed and it must be recorded to give constructive notice. S.C. Code § 30-7-10, 1960-61 Op. Atty. Gen. 204.

“A trespass is any interference with ‘ones right to the exclusive, peaceable possession of his property.’ ” *Babb v. Lee Cnty. Landfill, LLC*, 405 S.C. 129, 139, 747 S.E.2d 468, 473 (2013). “The historical requirements for recovery under the common law action of trespass include ‘an invasion (a) which interfered with the right of exclusive possession of the land, and (b) which was a direct result of some act committed by the defendant.’ ” *Graham v. Town of Latta*, 417 S.C. 164, 192, 789 S.E.2d 71, 86 (Ct. App. 2016) (quoting *Prosser & Keaton on Torts* § 13). However, “to constitute actionable trespass, however, there must be an affirmative act, invasion of land must be intentional, and harm caused must be the direct result of that invasion.” *Hawkins v. City of Greenville*, 358 S.C. 280, 296, 594 S.E.2d 557, 565-66 (Ct. App. 2004).

Turning to the facts of this case, pursuant to testimony of Kevin Wilson, RLS, an express grant of easement over and across the lands of the Defendants or their predecessors in title, was established pursuant to the 1975 J.D. Brockington plat and all subsequent plats entered into

evidence. I find that the Defendant knew or should have known that there was an easement and continued to obstruct the easement after being asked to remove the inoperable vehicle which obstructed the Plaintiff's right of way.

Having found a valid easement was created, I find that the Defendants, Emily T. McClary and Jawran Arthur, obstructed that easement and deprived the Plaintiff of his exclusive peaceful possession of his property.

Although the Defendant, Emily T. McClary, suggested that the easement has been abandoned, I find that "mere non-use of an easement created by deed for a period however long does not amount to an abandonment of that easement". Carolina Land Company, Inc. v. Bland, 217 S.E.2d 16, 265 S.C. 98 (1975). I find here that the easement was not abandoned and that the Plaintiff intended to clear out the growth of the easement but was unable to do so, due to the Defendant's obstruction.

II. DEFENDANT ON NOTICE OF PLAINTIFF'S EASEMENT

As an additional ruling, I find the Defendant is equitably estopped from denying the existence of Plaintiff's easement. The law imputes to a purchaser who proposes to acquire title to real estate notice of the recitals contained in any properly recorded instrument of writing which forms a link in a chain of title to the property proposed to be acquired." The easement created through a sale by reference to a plat is irrevocable. Carolina Land Co. v. Bland, *Id.*

Both deeds and easements are valid to subsequent purchasers without notice when they are recorded. Steele v. Williams, 28 S.E.2d 644, 204 S.C. 124 (1944). S.C. Code Ann. Section 30-7-10. The purpose of the recording statute is to protect a subsequent buyer without notice.

Defendant Jawran Arthur obtained title to his 1.50 acres of land by warranty deed of Patricia A. Bettard dated August 19, 2018. In that warranty deed the property is described as 1.50

acres, more or less, as shown on a survey prepared for Jawran Arthur by Reid D. Huggins, dated July 26, 2018. (See Plaintiff's Exhibit 4). I find that the Huggins plat referenced in the deed reflects the 50' access road and Defendant took title by a plat that clearly depicts the access road going across Defendant Jawran Arthur's 1.50 acres. Therefore, Defendant Jawran Arthur took title with knowledge of and subject to the easement.

Defendant Emily T. McClary obtained title to her 2.70 acres of land by quitclaim deed of Patricia A. Bettard dated and recorded on July 5, 2023. (See Plaintiff's Exhibit 9). In that quitclaim deed, the property is described as 2.70 acres, more or less, being more fully shown on a plat recorded in the Office of the Clerk of Court for Williamsburg County in Plat and same is made a part and parcel of this description. This conveyance is subject to all conditions, covenants, **easements**, restrictions and rights-of-way indicated by instruments, including plats of records and restrictions of any political subdivision in which the subject property is situate. Although a specific plat is not referenced in the quitclaim deed from Patricia A. Bettard to Defendant Emily T. McClary, I find that this was the identical Tract No. 2 from the J.D. Brockington 1975 plat to be conveyed then to Nathaniel McClary. Therefore, Defendant Emily T. McClary took title with knowledge of and subject to the easement.

Further, I find the Defendants had both actual and constructive notice of Plaintiff's easement when Defendants acquired their properties. Therefore, I find Defendants took title subject to Plaintiff's easement and accordingly are estopped from now denying its existence, obstructing the Plaintiff's use of the easement, and/or committing trespass against Plaintiff's easement.

III. DAMAGES

Having found a valid easement exists for the Plaintiff it is necessary to determine whether Defendants' actions in denying Plaintiff access to his easement justifies an award of damages against Defendants. A possessor of land is entitled to damages for a trespass even if those damages be nominal or incapable of exact measurement. Green Tree Serv., LLC v. Williams, 377 S.C. 179, 184, 659 S.E.2d 193, 195-96 (Ct. App. 2008). Expert testimony is not required as a landowner may generally testify as to both the value of the property and the damages thereto. S.C. State Highway Dept. v. Wilson, 254 S.C. 360, 370, 175 S.E.2d 391, 397 (1970).

The Plaintiff testified that he has been denied use of the easement for several years and his ability to construct a house on the property has been impaired. His ability to access his property was restricted. He was unable to enjoy his property as intended after his wife's death. As explained by Plaintiff, he should not be responsible for expenses and losses incurred as a result of Defendants' actions in blocking the access road. The Plaintiff testified that the Defendants intentionally closed the road and restricted Plaintiff from using the access road. The Plaintiff also testified that the Defendants had knowledge of Plaintiff's easement. The Plaintiff repeatedly asked Defendants to open the road and the Defendants refused. The Plaintiff further testifies that he had to create a new path to access his road through neighboring property at his own expense in order to enter his property. The Plaintiff had no legal access to the alternate new path and wants to resume using the legal easement that he is entitled to. The expenses incurred by the Plaintiff includes Eight Thousand and 00/100 (\$8,000.00) Dollars for tree removal on the neighboring properties and One Thousand Six Hundred and 00/100 (\$1,600.00) Dollars in stump grinding on the neighboring properties to create a new temporary road to access his property since the Defendants obstruction and during the course of this litigation. Therefore, the unrefuted testimony of Plaintiff establishes that Defendants knowingly and intentionally blocked the road, thereby

denying Plaintiff access to his land and causing monetary damage to Plaintiff. I find Defendants' conduct is without justification, and award Plaintiff actual damages against Defendant in the amount of Nine Thousand Six Hundred and 00/100 (\$9,600.00) Dollars.

ORDER

After careful consideration of all of the testimony as well as a review of the exhibits, I Order as follows:

1. The validity and existence of Plaintiff's easement by grant is recognized. The fifty-foot (50') wide easement begins at SC Highway 527 (Thurgood Marshall Highway), crosses the Defendants' tracts of land, and continues to the lands of Plaintiff, all as shown on the above-referenced plats.
2. The Defendants and their successors in interest, having previously removed the inoperable vehicle obstruction during the course of the litigation, are now enjoined and restrained from any further blocking or obstructing said easement in any manner.
3. The Clerk of Court is authorized and directed to enter judgment against Defendants in the amount of \$9,600.00.

AND IT IS SO ORDERED.

Date: _____

S. Bryan Doby
Presiding Judge



Williamsburg Common Pleas

Case Caption: Rogelio A. Smith VS Jawran Arthur , defendant, et al

Case Number: 2023CP4500319

Type: Order/Other

So Ordered

S. Bryan Doby, Circuit Court Judge, No. 2784