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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2026-000031
Trial Court Case No. 2023-CP-32-03506

Alan J. Baumann and Kayla D. Baumann,
Respondents,

v.

Ivan Chernev and Ignatova Petia Chernev,
Appellants.

INITIAL BRIEF OF RESPONDENTS

Anna Williams Yonge (S.C. Bar No. 102407)
Williams, Stitely & Brink PC
200 East Main Street
Lexington, SC 29072
(803) 359-9000
ayonge@wsblegal.com

ATTORNEY FOR RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly granted a permanent injunction requiring Appellants to remove berms that caused continuing trespasses where its post-trial order identifies evidence of repeated wrongful conduct.
2. Whether the trial court properly denied Appellants' motion for JNOV on their nuisance counterclaim, where the order identifies conflicting evidence concerning the effect of Respondents' drainage improvements and the trial testimony is not before this Court.
3. Whether, as an additional sustaining ground under Rule 220(c), SCACR, the findings in the December 5 order support the equitable relief entered.

STATEMENT OF THE CASE

This case arises from a dispute between neighboring landowners concerning surface water. Respondents asserted claims for trespass and nuisance and sought damages and injunctive relief. (R. p. __.) Appellants denied liability and asserted a nuisance counterclaim. (R. p. __.) The case proceeded to a jury trial in August 2025. (R. p. __.)

The jury returned a verdict for Respondents on trespass, awarding \$350 in actual damages and \$10,000 in punitive damages, and on nuisance, awarding \$400 in actual damages and no punitive damages; it rejected Appellants' nuisance counterclaim. (R. p. __.) After the November 14, 2025 post-trial hearing, the trial court entered an order denying Appellants' motions for JNOV, new trial, and remittitur, and granting Respondents' request for injunctive relief ("December 5 order"). (R. p. __.) Respondents elected the trespass remedy; the order accordingly provides that their nuisance claim has no further force and effect. (R. p. __.)

On December 29, 2025, the circuit court entered the Permanent Injunction identifying three terms for removal, prohibiting structures that cast surface water back onto Respondents' property, and permitting drainage structures carrying water to a lower gradient subject to the order's terms. (R. p. __.) Appellants timely challenge the injunction and the denial of JNOV on their counterclaim.

STATEMENT OF FACTS

This case arises from a longstanding dispute between neighboring landowners concerning the management of surface water between their adjacent residential properties on Corley Mill Road in Lexington County, South Carolina. (R. p. __.) Respondents, Alan J. Baumann and Kayla D. Baumann (“Respondents”), purchased their property located at 937 Corley Mill Road in 2018. (R. p. __.) Appellants, Ivan Chernev and Ignatova Petia Chernev (“Appellants”), subsequently purchased the adjoining property located at 929 Corley Mill Road in October 2022. ((R. p. __.)

Because the parties’ properties lie at different elevations, surface water naturally flows from Respondents’ property toward Appellants’ lower-lying property. (R. p. __.) Like many homeowners, Respondents undertook various measures to improve drainage around their residence, including installing gutters, French drains, and underground piping designed to direct water away from the home’s foundation. (R. p. __.) Respondents testified that these measures, however, were ineffectual and did not work as intended. (R. p. __.) Appellants contended otherwise, maintaining that Respondents’ pipes concentrated water and discharged it toward Appellants’ septic drain field. (R. p. __.)

Appellants, with concerns about flooding their septic drain field, placed a wall and/or berm structure near the shared property line. (R. p. __.) Respondents observed that this structure obstructed the natural flow of surface water and redirected water back onto their property, causing repeated flooding on Respondents’ property. (R. p. __.) The location of these obstructions relative to the boundary was disputed, as was Appellants' intention in their placement, with evidence being submitted by Respondents that their behavior was surreptitious

and intentional. (R. p. __.) Furthermore, there was strong evidence that the trespasses caused by this water onto Respondents' property were continuing. (R. p. __.)

STANDARD OF REVIEW

The decision to grant a permanent injunction requires an exercise of equitable discretion and a balancing of the parties' interests. *Johnson v. Williams*, 238 S.C. 623, 638–40, 121 S.E.2d 223, 231-32 (1961). An abuse of discretion occurs when the circuit court's ruling is controlled by an error of law or, when based upon factual conclusions, is without evidentiary support. *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E.2d 290 (1981)

On appeal, the denial of a JNOV motion is reviewed under the same standard as the trial court, "viewing the evidence and all reasonable inferences in light most favorable to the nonmoving party." *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331–32, 732 S.E.2d 166, 171 (2012). "An appellate court will reverse the trial court's ruling only if no evidence supports the ruling below." *Id.* at 332, 732 S.E.2d at 171.

Subject to its stated exceptions, Rule 210(h), SCACR, limits review to facts appearing in that record. An appellant bears the burden of supplying a record sufficient to decide the asserted error. *Germain v. Nichol*, 278 S.C. 508, 509, 299 S.E.2d 335, 335 (1983).

ARGUMENT

I. The trial court properly granted the permanent injunction.

South Carolina specifically recognizes injunctive relief as a proper remedy for a continuous trespass to land. *Mack v. Edens*, 306 S.C. 433, 437, 412 S.E.2d 431 (Ct. App. 1991). The trial court expressly found strong evidence of a continuing series of trespasses here. That finding supplies the essential distinction between compensation for completed harm and protection against recurring invasions of property.

The \$350 actual-damages award compensates adjudicated injury; it does not establish that money adequately protects Respondents against future trespasses. Requiring successive actions as the conduct recurs (i.e. every time there is runoff) would render moot the value of judicial economy. The injunction addresses that prospective injury by requiring removal of the identified obstructions and prohibiting their recurrence. This is the practical inadequacy of damages on which Respondents rely.

Appellants' reliance on the modest verdict must also be considered in light of *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995), which reviewed *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993). The Supreme Court rejected the premise that an award of damages is a prerequisite to injunctive relief. *Smith*, 318 S.C. at 456, 458 S.E.2d at 429. Likewise, *Johnson v. Williams* affirmed injunctive relief notwithstanding an award of only \$100 in nominal damages. 238 S.C. at 638–40, 458 S.E. 2d at 231-32. These authorities refute a categorical rule that the amount awarded for past injury makes prospective relief unavailable. The question remains whether the recurring invasion and the parties' competing interests justify the remedy entered.

Appellants cite *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004), a preliminary-injunction case. Here, the court acted after trial and adjudication of liability. That distinction resolves any need to predict success on the merits; it does not eliminate the requirements of irreparable injury, inadequacy of a legal remedy, or equitable balancing. Respondents satisfy those requirements through the continuing-trespass finding and the tailored prospective relief.

To the extent Appellants contend that Respondents failed to prove continuing injury, that damages adequately compensate any loss, that the jury should have found that the Respondents violated the common enemy rule, and that the septic-system hardship outweighs the need for relief - those arguments depend substantially on the evidence presented at trial. Yet the trial testimony is absent, and the trial court's order describes conflicting evidence and repeated wrongful conduct. Appellants' account of selected testimony cannot establish that the complete evidentiary presentation required a different result.

The November 14 transcript records the parties' post-trial arguments and the court's discussion of the case. It is not a transcript of the witnesses' trial testimony. Nor does its inclusion make every disputed characterization of testimony an established fact. This omission does not insulate a legal error apparent on the face of an order. It does, however, prevent Appellants from carrying their burden through a claim that the missing evidence conclusively disproved the need for equitable relief. *Germain*, 278 S.C. at 509, 299 S.E.2d at 335. The legal objections that Appellants raise likewise do not require reversal, for the reasons that follow.

The trial court did not overlook the septic-system concern. Its order specifically discusses the drain field and the evidence that a ditch or drain in the narrow space beside it could allow sewage effluent to escape. (R. p. __.) Respondents do not contend that the court found a

particular alternative technically feasible. The order's permission to employ lawful drainage structures preserves that option without proving that any specific design will work.

The competing interest is Respondents' right to be free of the continuing wrongful intrusions described in the order. The court identified evidence of intentional, surreptitious, and repeated conduct, and then directed relief against the structures involved. The septic concern is substantial, but it does not by itself establish a right to continue an adjudicated trespass. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 274–75, 363 S.E.2d 891 (1987), recognizes that hardship does not necessarily foreclose mandatory relief when that relief is needed to protect the prevailing party's rights.

In *Cedar Cove Homeowners Ass'n, Inc. v. DiPietro*, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2006), a case relied on by Appellants, the governing covenants, the association's informal approval practices, and its failure to act before completion supported a presumption of compliance by the appellant. The Court also found that the equities did not warrant removal of the patio. *Id.* at 261, 628 S.E.2d at 287. Here, the court's order identifies repeated wrongful conduct rather than permission or presumed compliance. The cases therefore present materially different equitable circumstances. *Cedar Cove* requires attention to those circumstances; it does not establish that the burden of removing an obstruction always outweighs protection against recurring trespass.

The December 5 and December 29 orders should be read together. The first identifies the conflicting drainage evidence, the septic-system problem, and the continuing trespasses; the second specifies the structures to be removed and preserves permissible drainage measures. (R. p. __.) Together they disclose the factual basis and remedial choice sufficiently to sustain the injunction. At the post-trial hearing, Appellants argued that an injunction would be inequitable,

and the trial court rejected that position after hearing it. (R. p. __.) The court was not required to use the phrase “balance of equities” or to make separate findings on every argument raised. Its order identifies the competing considerations: the evidence of continuing harm with Appellants’ septic-system concerns.

2. The trial court properly denied Appellants’ motion for JNOV.

Appellants bore the burden of proving their counterclaim. To obtain JNOV after the jury rejected it, they must establish that the evidence, viewed with all reasonable inferences favoring Respondents, permitted no contrary result. *RFT*, 399 S.C. at 331–32, 732 S.E.2d at 171. They cannot establish that proposition by omitting the trial testimony and relying on their own account of its effect. The inadequate-record principle in *Germain* provides an independent reason to affirm this evidence-dependent ruling.

The record that is available also contradicts the premise that the material facts were undisputed. The trial court recounted testimony that Respondents’ pipes and berm did not contribute to the casting of water onto Appellants’ property, and it expressly found conflicting evidence concerning the counterclaim. (R. p. __.) That is the issue the court left to the jury. The post-trial transcript does not supply a basis to disregard the contrary testimony identified in the written order.

Furthermore, Respondents’ acknowledgment that drainage pipes existed is not an admission of every element of Appellants’ counterclaim. The relevant distinction is between the existence of an artificial drainage system and the system’s collection and discharge of water onto neighboring land in the manner prohibited by South Carolina law. See *Irwin v. Michelin Tire Corp.*, 288 S.C. 221, 341 S.E.2d 783 (1986) (declining to adopt the New Jersey rule which prohibits the installation of an artificial drain system by an upper landowner.)

Respondents do not argue that a system's failure to solve drainage problems on their own property would excuse an otherwise proven concentrated discharge onto Appellants' land. The order recites more than ineffectiveness: it identifies testimony that the pipes and berm did not contribute to the casting of water onto Appellants' property. (R. p. __.) That disputed connection matters. Appellants' argument would require treating their description of the system's effect as conclusive despite the contrary evidence identified by the trial judge.

Whether water would have reached the same general low area naturally does not, standing alone, resolve whether an artificial system unlawfully concentrated its discharge. Conversely, the mere use of gutters, drains, or pipes does not resolve that question in Appellants' favor. The circuit court recognized this factual dispute, and the jury rejected the counterclaim. Without the trial testimony, Appellants have not shown that only their proposed inference was permissible. The denial of JNOV should be affirmed.

3. The December 5 findings provide an additional sustaining ground for the injunction.

Rule 220(c), SCACR, permits affirmance on a ground appearing in the Record on Appeal. Rule 208(b)(2), SCACR, permits a respondent to advance that ground in its brief. Under *I'on, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420–22, 536 S.E.2d 716 (2000), the ground need not have been separately ruled upon below, but consideration remains discretionary and its basis must appear in the record.

To the extent the trial court's injunction discussion is deemed incomplete, Respondents specifically rely on the factual determinations elsewhere in the December 5 order: the evidence of repeated wrongful intrusions, the court's finding of strong evidence of a continuing series of trespasses, its express consideration of the septic drain field, and its direction preserving lawful drainage measures. (R. p. __.) Applied to the equitable principles discussed above, these findings

support relief preventing recurrent injury for which successive damages actions would be inadequate.

The front stick berm also warrants separate attention if the Court concludes that further findings are needed concerning the boundary berms adjacent to the septic drain field. The December 5 order separately identifies the higher driveway entrance and the wall alleged to increase water onto Respondents' property, and paragraph 1(a) of the injunction separately identifies the front berm. (R. p. __.) A concern about the boundary drain-field conditions does not itself resolve the propriety of relief directed to that separate structure. Respondents request that any corrective disposition distinguish those provisions rather than vacate all relief on the assumption that the same factual concern controls each.

Respondents request affirmance. If the Court nevertheless concludes that fuller equitable findings are required, Respondents alternatively request modification or a limited remand directed to those matters under Rule 220(a), SCACR.

CONCLUSION

For these reasons, Respondents respectfully request that this Court affirm the denial of Appellants' motion for judgment notwithstanding the verdict and affirm the Permanent Injunction entered December 29, 2025, together with the challenged rulings in the December 5 order. Alternatively, if additional findings or clarification of the injunction are required, Respondents request relief limited to those matters while affirming the denial of JNOV.

Respectfully submitted,
s/Anna W. Yonge
Anna W. Yonge (S.C. Bar No. 102407)
Williams, Stitely & Brink PC
200 East Main Street
Lexington, SC 29072
(803) 359-9000
ayonge@wsblegal.com

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