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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas The Honorable Courtney Clyburn Pope, Circuit Court Judge

Appellant Case No. 2026-001628  
Civil Action Case No. 2024-CP-23-05724

Ann Louise Gibbs-Hunter and Raymond D. Gibbs, Jr..... Appellant(s)

v.

Rilion Gracie Greenville, LLC and TNB Financial Services, as Trustee of Gene Mark Brown's Trust B-2  
under the Doris P. Brown Revocable Trust Agreement dated February 9, 2006, as Amended  
..... Respondent(s)

INITIAL BRIEF OF RESPONDENT RILION GRACIE GREENVILLE, LLC

Respectfully submitted,

s/ Wendell L. Hawkins

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October 8th, 2026  
Greenville, South Carolina

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### **STATEMENT OF ISSUES ON APPEAL**

- I. DID THE COURT ABUSE ITS DISCRETION WHEN IT DENIED PLAINTIFF'S MOTION TO AMEND ITS COMPLAINT PURSUANT TO SCRCF, RULE 15(a) SINCE THE REQUESTED AMENDMENT WAS SUPPORTED BY EVIDENCE DEVELOPED IN DISCOVERY AND RILION GRACIE GREENVILLE, LLC'S PRODUCED NO EVIDENCE OF PREJUDICE.

### **COUNTER-STATEMENT OF THE CASE**

Respondent, Rilion Gracie Grenville, LLC ("RG" or "Rilion") adopts and reiterates Respondent, TNB Financial Services, as Trustee of Gene Mark Brown's Trust B-2 under The Doris P. Brown Revocable Trust Agreement Dated February 9, 2026, as Amended's ("TNB") Statement of the Case and Procedural History.

### **STANDARD OF REVIEW**

#### **A. The Rule 15(a) Standard**

SCRCF, Rule 15(a) provides, "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." "[T]he Second [Federal] Circuit has held that a "motion to amend should be denied only for such reasons as 'undue delay, bad faith, futility of the amendment, and perhaps most important, the resulting prejudice to the opposing party.' " Resorts & Motel Advancement Dev. Agency, Ltd. v. Sloan, 160 F.R.D. 449, 451 (S.D.N.Y. 1995) citing Richardson Greenshields Securities, Inc. v. Lau, 825 F.2d 647, 653 n. 6 (2d Cir.1987), quoting, State Teachers Retirement Board v. Fluor Corp., 654 F.2d 843, 856 (2d Cir.1981); see also Arbitron Co. v. Tropicana Product Sales, Inc., 1993 WL 138965 (S.D.N.Y.). It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice."

Foggie v. CSX Transportation, Inc., 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998). “Determining whether an easement exists is a question of fact in a law action, and when tried by a judge without a jury, is subject to an ‘any evidence’ standard of review.”); Paine Gayle Props., LLC v. CSX Transp., Inc., 400 S.C. 568, 589, 735 S.E.2d 528, 539 (Ct. App. 2012)

A denial of a motion to amend under Rule 15 or a motion under Rule 60(b) is within the sound discretion of the circuit court. *See* Bowman v. Bowman, 357 S.C. 146, 151, 591 S.E.2d 654, 656 (Ct. App. 2004) (holding a Rule 60(b) motion is subject to abuse of discretion review); Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 153, 723 S.E.2d 835, 840 (Ct. App. 2012) (holding a Rule 15 motion is subject to abuse of discretion review). Because both motions are subject to the sound discretion of the circuit court, they “will rarely be disturbed on appeal. The [circuit court's] finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred.” Sullivan, 397 S.C. at 153, 723 S.E.2d at 840 (quoting Berry v. McLeod, 328 S.C. 435, 450, 492 S.E.2d 794, 802 (Ct. App. 1997)). Oulla v. Velazques, 427 S.C. 428, 435, 831 S.E.2d 450, 453 (Ct. App. 2019)

## **ARGUMENT**

I. THE COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED PLAINTIFF’S MOTION TO AMEND ITS COMPLAINT PURSUANT TO SCRPC, RULE 15(a) BECAUSE THE REQUESTED AMENDMENT WAS NOT SUPPORTED BY EVIDENCE DEVELOPED IN DISCOVERY AND RILION GRACIE GREENVILLE, LLC’S PRODUCED EVIDENCE OF PREJUDICE.

A. The court had a substantial reason to deny the Appellant’s request to amend as the court made a decision upon factual conclusions based on evidentiary support and to allow an amendment would be futile.

There were no facts developed in discovery that would warrant the amendment of the pleadings to add causes of action for a prescriptive easement or an easement by necessity. It is logically irrational that the Appellant could argue that the trial court's determination that there was a hostility or exclusivity element to a prescriptive easement required the examination of facts discovered only through the discovery process. The Appellant's entire case is based on facts that were only available to Appellants. No other litigants knew anything about the history of Appellant's ancestral lineage or the historical ownership facts of the Appellants' property. All of this information had to be gleaned from the excruciatingly painful series of depositions wherein Appellants provided all the information necessary to allow RG to prevail on summary judgment. Even as late as the time of the hearing of the Motion for Summary Judgment and Motion to Amend, RG still had a pending Motion to Compel. That Motion to Compel was rendered moot by the court because of the dispositive nature of the court's granting of RG's Motion for Summary Judgment. The review of the court's ruling is governed by an abuse of discretion standard. "An abuse of discretion occurs when the [circuit court]'s ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

Appellants cite Patton, Alexia L v. Gregory A. Miller, M.D., Rock Hill Gynecological & Obstetrical Assocs. P.A., 420 S.C. 471, 804 S.E.2d 252 (2017) for the proposition that "a court's failure to exercise discretion is itself an abuse of discretion," but Patton is distinctly different than the case at hand. The Patton court never considered Rule 15(a). The Supreme Court wrote,

"[u]nder Rule 15(a), the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it. Instead, the circuit court denied the motion to amend based solely on its mistaken belief that the amendments could not relate back under Rule 15(c). The circuit court thus denied the motion to amend the complaint on its perception of the merits of the amended claims, not under the criteria for

amendment the court was required to consider under Rule 15(a).” Patton v. Miller, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017).

Furthermore, Patton itself suggests that the court may deny the request for an amendment of the pleadings for “some other substantial reason.” Through Respondent’s Memorandum in Support of its Motion for Summary Judgment the lower court had the opportunity to review the Deposition of Appellant Annie Gibbs-Hunter, the Deposition of a neighbor Mary Morrison, the Deposition of a neighbor Alice Jasper, and the Deposition of Raymond D. Gibbs, Jr. who was ultimately dismissed as a party because he never even lived around the property in question and could not claim by direct descent. (Memo in Supp., R. pp.\_\_\_\_). The lower court also had for its review Plaintiff’s Motion to Amend (Motion to Amend, R. pp\_\_\_\_) which cited no case law in support of its amended claims or any new factual bases for Appellants’ proposed new causes of action.

1. The Prescriptive Easement could not be established under the facts presented to the court.

“An easement may arise in three ways: (1) by grant; (2) from necessity; and (3) by prescription.” Bundy v. Shirley, 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015) citing Kelley v. Snyder, 396 S.C. 564, 572, 722 S.E.2d 813, 817 (Ct.App.2012). To establish a prescriptive easement, one must show: (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; and (3) use or enjoyment which is either adverse or under claim of right. Bundy v. Shirley, 412 S.C. 292, 304, 772 S.E.2d 163, 169–70 (2015) citing Pittman v. Lowther, 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005).

“The party claiming a prescriptive easement has the burden of proving all elements.” *See, e.g.,* Morrow v. Dyches, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct.App.1997) ; [A] claimant ha[s] the burden of proving adverse possession by clear and convincing evidence

Davis v. Monteith, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986)); “A prescriptive easement is analogous to adverse possession.” *See* 12 S.C. Jur. *Easements* § 10 (Supp.2015).

Bundy v. Shirley, 412 S.C. 292, 304, 772 S.E.2d 163, 170 (2015).

a. Continued and Uninterrupted Use for Twenty (20) years

The element of “continued and uninterrupted use” is easily defeated by the fact that during the lifetime of Appellant, Ann Louise Gibbs-Hunter’s (d.o.b. 3/11/61) mother (Thelma Ollie Bell Gibbs Father William J. Smith) (depo od Annie Gibbs Hunter p. 22) someone made them tear up a concrete walkway that was placed on the claimed easement area. Furthermore, Annie Gibbs Hunter knew nothing about her mother and father’s claim of right or the timing of any claim of right other than, someone made them tear up a concrete walk that her family had constructed on the property.

11 Q. Okay. Did you ever have any conversations with  
12 your -- I would say, predecessors in title, but I'm  
13 trying to think of a better way.  
14 Your ancestors, did you ever have conversations  
15 with them about what they thought they owned on this  
16 property?  
17 A. No, not really.  
18 Q. Okay. And had your family ever had those types of  
19 conversations?  
20 A. I can recall that my mom had said something about --  
21 because it used to be like a walkway across our way to  
22 where 203 was built. And that somebody had stopped by,  
23 I don't know who, saying that that walkway was going to  
24 have to be pulled up because that was like an access  
25 road.

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1 Q. Are you talking about when there was either asphalt or  
2 concrete between the 203 and 207? Is that what you're  
3 talking about?  
4 A. That's when -- yeah.  
5 Q. So your mom told you that somebody made them tear that  
6 up?  
7 A. Yeah. It was a concrete walk.  
8 Q. Okay. And ---  
9 A. Like a sidewalk.  
10 Q. So that was actually a sidewalk, not a driveway that got  
11 tore up?  
12 A. Yes.  
13 Q. Okay. And -- all right. And was it made of concrete or  
14 asphalt?  
15 A. What?  
16 Q. Do you know if it was made of concrete or asphalt?  
17 A. The sidewalk?

18 Q. Uh-huh.  
19 A. Concrete.  
20 Q. Okay. So that's the only thing you were ever asked to  
21 tear up, to your knowledge?  
22 A. To my knowledge.

(Depo of Ann Gibbs Hunter pp. 13 lines 20-25 – 14 lines 1-22 R. \_\_ pp.)

b. The Identity of the Thing Enjoyed

It is also uncertain what exactly what portion of the Property the Appellant was claiming, but this issue is not on appeal.

c. Use or Enjoyment Which is Either Adverse or Under a Claim of Right

Appellant argues that the lower court erred in an application of a hostility requirement to establish the prescriptive easement, but the words “hostility” and “adverse” are often used interchangeably by the courts. In Simmons v. Berkeley Elec. Coop., Inc., 419 S.C. 223, 797 S.E.2d 387 (2016), the Supreme Court used the words interchangeably. The Supreme Court, in essence, adopted the position of the Court of Appeals citing Jones v. Daley, 363 S.C. 310, 316, 609 S.E.2d 597, 600 (Ct. App. 2005) (emphasis added) which stated, “[t]o establish an easement by prescription, one need only establish *either* a justifiable claim of right *or* adverse and hostile use.” Simmons at 390. One of the bases of the Appellant’s appeal is that hostility is not required, but with the words “adverse” and “hostile” being mere synonyms, Appellant’s argument is severely flawed. Appellants’ use of the Property was not adverse and Appellant never claimed a prescriptive easement under a “claim of right.” There is evidence on the record that, even as late as 2023, Raymond Gibbs was trying to purchase the property. (Deposition of Ramond Gibbs p R. p. \_\_) In Williamson v. Abbott, our Supreme Court stated:

“It is the well-settled rule that *use by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since user as of right, as distinguished from permissive user, is lacking, **if permissive in its inception**, such permissive character will continue of the same nature, and no adverse user can arise, until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him.*”

Williamson v. Abbott, 107 S.C. 397, 400–01, 93 S.E. 15, 16 (1917)

“The asking and obtaining of permission, whether from the tenant or owner of the servient estate, stamps the character of the use as *not having been adverse, or under claim of right*, and, therefore, as lacking that essential element which was necessary for it to ripen into a right by prescription. Williamson v. Abbott, 107 S.C. 397, 400–01, 93 S.E. 15, 16 (1917) (citation omitted) (emphasis added). Williamson stands for the general proposition that permissive use defeats the acquisition of a prescriptive easement. If the permissive use begins at inception or the time of purchase and continues, this permissive use can never ripen into a prescriptive easement.

The lower court also considered argument of RG’s counsel wherein counsel argued, “I asked her, [Annie Gibbs-Hunter], if she ever confronted people and tell them not to walk through the Property, she testified, “No, I didn’t.” (Tr. P. lines 8 -10 R. p. 360 Lines -10). Because “adverse use” and “hostile use” are synonymous, the lower court properly analyzed the information before it and applied the information to the law without error.

Secondly, when Appellant’s ancestors were told to remove the sidewalk, which they did, the actions of the owner constituted permission to use the property, but without any permanent structure or improvement. Bundy v. Shirley, spoke at great lengths about the law of permissive use stating,

“Williamson also provides that permissive use, which is granted during the claimed twenty-year period, will defeat the establishment of a prescriptive easement, i.e., once permission is granted by the landowner there is no longer adverse use or use under a claim of right. Accordingly, we find the Court of Appeals correctly cited Williamson as supporting authority for its decision. Rooted in Williamson, the law is well-established that evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse or under a claim of right. *See Paine*, 400 S.C. at 586, 735 S.E.2d at 538 (quoting Williamson and recognizing that a claimant's permissive use of landowner's property cannot begin to ripen into a prescriptive easement until the claimant makes a distinct and positive assertion of right

hostile to the landowner); Horry Cnty. v. Laychur, 315 S.C. 364, 434 S.E.2d 259 (1993) (holding evidence, which established that use of property was permissive, showed use of property was not adverse); Williamson, 107 S.C. at 401, 93 S.E. at 16 (stating that permissive use of property “stamps the character of the use as not having been adverse, or under claim of right”); *see also* 12 S.C. Jur. *Easements* § 10 (Supp. 2015) (“Use with the permission of the owner is not adverse.”). Stated another way, when a claimant uses property with the permission of the owner, he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act toward the owner's rights.

Bundy v. Shirley, 412 S.C. 292, 309–10, 772 S.E.2d 163, 172–73 (2015)

B. The Respondent did argue to the court that it would be prejudiced by the proposed amendment

One of the considerations in granting or denying the request to amend is the expense of litigation and delay. In Buie v. Charter Communications, the U.S. District Court denied Plaintiff's motion to amend stating,

“Based on the record in this case, the Court concludes that it would be prejudicial to allow amendment at this stage of the litigation. Plaintiff moved to amend the Complaint ***over one year after filing this action***. Defendant has focused its discovery efforts solely on Plaintiff's claims that she was terminated for opposing alleged violations of the ADA and FMLA with respect to other employees. The Court agrees that Defendant would be entitled to conduct additional discovery related to Plaintiff's own FMLA leave if amendment were allowed, but ***to force the parties to re-visit written discovery and re-open depositions would add to the expense of litigation in this already-year-old case***. *See JPS Elastrometrics Corp.*, 2013 WL 12158591, at \*2 (finding that granting a motion to amend would prejudice the defendant even though time remained in the discovery process and the case had not been set for trial because the case was already fifteen months old, amendment would change the scope and direction of the case, ***and defendant would have to revise and re-visit discovery***); *Pure Fishing, Inc.*, 2012 WL 3062683, at \*8 (concluding that allowing amendment ***would be prejudicial because reopening discovery “would delay resolution of this already-two-year-old case and add to the expense of the litigation”***). Accordingly, the Court concludes that Plaintiff cannot satisfy Rule 15(a)'s requirements for amending pleadings.” Buie v. Charter Commc'ns, No. 617CV03007DCCJDA, 2018 WL 11357530, at \*4 (D.S.C. Dec. 14, 2018) (***emphasis added***).

The case at had was filed by the Appellant, on September 20, 2024. The parties engaged in extensive discovery and Rilion was required to take numerous depositions to get to the point

where it had sufficient evidence to file its motion for summary judgment on the Plaintiff's claims. Rilion was successful on that motion which was filed on October 21, 2025 (Motion for Summary Judgment R. pp. \_\_\_\_). Appellants' Motion to Amend was filed on October 29, 2025; over a year after the filing of the Complaint and at great expense to Respondent which is not recoverable except on motion for frivolous proceedings under S.C. Code of Laws § 15-36-10 et seq.. Any potential frivolous proceedings action is now stayed as a result of this appeal. Rilion assumes that Appellants learned through the depositions of their own witnesses that their claims under adverse possession and presumptive grant were so weak that they had to amend their pleadings to keep Rilion in court in an attempt to further squeeze Rilion into submission to avoid the expense of litigation. Appellants' counsel argued to the lower court, "[a]fter depositions and looking at the facts that we're developing, I felt that my client (inaudible) the best way to represent them was to give them an alternative cause of action." (Transcript p. \_\_\_\_, lines 8-12 R. 279 lines 8-12). In short, Plaintiffs initiated this case half-cocked and once they realized it wasn't going to work, they then tried to take a lesser approach. RG believes that this was a dilatory tactic designed to prolong the case and outspend the RG.

Respondent raised the issue of prejudice to the lower court several times. Respondent argued to the court, "[t]hat is the reason we filed a motion [for Summary Judgment] directly after depositions so we could get rid of this case because it's costing my clients a lot of money, a lot of money to keep their property. And it's not fair that that they have to go any further, and we can we can get into the motion to amend, but it's just not fair that my clients should have to fight this any more than we already have." (Transcript R. p. 277, lines 13-19). Appellants even agreed that it was not fair. Appellant's counsel stated to the court, "I agree with Mr. Hawkins. I don't think it's fair to his clients." (Transcript R. p. 278, lines 1-3).

### CONCLUSION

Because the lower court had good reason to deny Appellant's Motion to Amend based on the information before it at the hearing and RG would be prejudiced by an amendment, the Court should dismiss Appellant's appeal.

Respectfully submitted,

s/ *Wendell L. Hawkins*

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