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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
The Honorable Thomas W. McGee, III, Circuit Court Judge

Appellate Case No.: 2025-002548
Trial Court Case No.: 2023-CP-12-00288

Mary Simpson Carpenter Crowder, by and through Michael Paul
Swearingen, as Special Administrator for the Estate of Mary Simpson
Carpenter Crowder,Appellant,
v.

Cedar Grove Baptist Church, Deacons of Cedar Grove Baptist Church,
a/k/a Cedar Grove Providence Church, SCBT, and South State Bank..... Respondents,
and
Cedar Grove Baptist Church, as Third-Party Plaintiff.....Respondent,
v.

James Wylie Crowder, III, as third-Party Defendant.....Appellant

Respondent's Initial Brief

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- B. Whether prescriptive easement claims asserted by an estate and by a beneficiary of that estate were barred by the statute of limitations, when this action was not filed within “one year after the making of entry and within ten years from the time when the right to make such entry descended or accrued.”

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Statement of Issues on Appeal

Some of the issues before this court relate solely to the trial court's directed verdict against James Wiley Crowder, III (Jim Crowder), who was the third-party defendant in the proceedings below. Other issues relate to both Appellants. To distinguish between those issues that relate solely to Jim Crowder and those that relate to both Appellants, Respondent's brief is divided into four sections. Section I pertains to Jim Crowder's appeal from directed verdict, while Sections II & III pertain to arguments and issues raised by both Appellants. Section IV sets forth additional sustaining grounds that this court should consider.

Section I – Jim Crowder's Appeal from Directed Verdict

- A. Whether a litigant is estopped from advancing an argument on appeal when he failed to make the argument at trial and failed to preserve the argument for appellate review.
- B. Whether the trial judge properly directed a verdict against a litigant on his claim for prescriptive easement when the litigant did not own the land benefitted by the purported easement and, consequently, the litigant could not establish that he had used the purported easement as "owner of a dominant tenement."
- C. Whether a litigant is judicially estopped from advancing an argument on appeal when that argument relies upon factual assertions that are wholly inconsistent with the litigant's own prior sworn testimony in the trial court and in other legal proceedings.
- D. Whether, as an additional sustaining ground, this court should affirm the trial court's directed verdict against a litigant who relied upon "tacking" to establish an easement's use for a prescriptive period, when the prior owner of the dominant estate ultimately failed to prove its entitlement to a prescriptive easement.

Section II – Appeal from the Denial of Appellants' Motions for JNOV, New Trial and New Trial Nisi Remittitur.

- A. Whether the trial court properly denied Appellants' motions for JNOV, new trial and new trial nisi remittitur when there is evidence in the record supporting the jury's verdict, where the grounds asserted as a basis for JNOV were not first asserted in a timely motion for directed verdict, where Appellants did not seek remittitur of the jury's actual damage award, and where a jury's award of damages is entitled to "substantial deference."

- B. Whether the trial court properly reviewed the jury's award of punitive damages to ensure that it did not violate due process and whether this court, through de novo review of the verdict, should also affirm and uphold the jury's award of punitive damages.

Section III - The Trial Court's Entry of Judgment on the Jury's Verdict

- A. Whether the trial court properly entered judgment on a jury's verdict where there is no evidence supporting Appellants' assertion of juror misconduct, where the jury followed the trial court's instructions during its deliberations and where the trial court treated surplus language on the verdict form in accordance with long-standing judicial precedent.

Section IV - Additional Sustaining Grounds

- A. Whether the use of a purported prescriptive easement was sufficiently interrupted by the prior owner's death that, as a matter of law, any prescriptive rights would have lapsed prior to the opening of a probate estate and the filing of this lawsuit.
- B. Whether prescriptive easement claims asserted by an estate and by a beneficiary of that estate were barred by the statute of limitations, when this action was not filed within "one year after the making of entry and within ten years from the time when the right to make such entry descended or accrued."

Statement of the Case

Mary Simpson Carpenter Crowder (“Mary Crowder”) died on March 16, 2016, owning a 74.42-acre parcel of land, designated as Chester County Tax Map Parcel 104-00-00-091-000 (the “Mary Crowder Tract”). The northwest corner of the Mary Crowder Tract abuts property Cedar Grove Baptist Church has owned and occupied since the late 1800s (the “Church Property”).

In April 2018, Mary Crowder’s sons, James Wylie Crowder, III (“Jim Crowder”) and William Randolph Crowder (“Randolph Crowder”), opened probate of their mother’s estate (the “Estate”) in Chester County Probate Court and were appointed co-personal representatives of the Estate. Pl. Ex. 20 & 21. On March 16, 2023, Jim Crowder, individually and as personal representative of the Estate, filed a complaint in probate court seeking appointment of a special administrator “for the purpose of bringing an action against Cedar Grove Baptist Church and it’s [sic] ruling authorities, along with its mortgagees, for an injunction, easement by prescription, and related declaratory relief of any kind.” Def. Ex. 8. On June 5, 2023, the Chester County Probate Court appointed Robert Swearingen as special administrator of the Estate (the Administrator”). Pl. Ex. 1.

A few days later, the Administrator, as nominal plaintiff,¹ filed this action seeking a judicial declaration that the Estate “has an easement by prescription” across the Church Property. Complaint ¶ 5, filed 6/8/2023. The Estate also sought an injunction “permanently barring [Cedar Grove] from interfering in any way with the Plaintiff’s use and enjoyment of the easement described above.” *Id.* ¶ 6. A GIS parcel map depicting the Church Property, as well as a portion of the Mary Crowder Tract, was attached as an exhibit to the complaint. Complaint Ex. A.

¹ At trial, the Administrator testified that he was “tasked with preserving a piece of property belonging to the estate [of Mary Crowder] by bringing a lawsuit to ensure legal access to that piece of property.” Trial Tr. at 64, l. 16-18.

Someone (presumably Plaintiff's Counsel) had drawn a hatch-marked area on the exhibit to denote the general location of the purported easement. Id. Ex. A.

Cedar Grove answered, denying the Estate's claims and asserting several affirmative defenses. Answer, Counterclaim and Third-Party Complaint, filed 7/17/2023. Cedar Grove also brought a third-party claim against Jim Crowder, and asserted claims for trespass, declaratory relief and permanent injunction against both the Estate and Jim Crowder. Id.

The Estate and Jim Crowder responded to Cedar Grove's claims, denying liability. Pl.'s Reply to Counterclaim, filed 9/6/2023; Third-Party Defendant's Answer and Counterclaim and Crossclaims, filed 9/6/2023. Jim Crowder's pleading included a "counterclaim and crossclaim" by which he asserted that he, too, was entitled to a prescriptive easement across the Church Property.² Id.

On March 26, 2024, Cedar Grove moved for summary judgment, arguing that, as a matter of law, the Estate could not establish a prescriptive easement because the Estate's use of its purported easement discontinued for at least two years, between Mary Crowder's death in March 2016 and the opening of the Estate in April 2018. *See* Motion for Summary Judgment, filed 3/26/2024 and Supporting Memorandum. Cedar Grove also asserted that the Estate's claim was barred by the statute of limitations codified at S.C. Code Ann. § 15-3-360 (Law. Co-op. 2005). The Estate and Jim Crowder filed several affidavits in opposition to that motion. *See* Affidavits of Jim Crowder, April Crowder, James Wiley Crowder IV and Paul Swearingen, all filed May 31, 2024. On June 17, 2024, the trial court issued a Form 4 order denying Cedar Grove's motion and directing the parties to mediate.

² At trial, Jim Crowder's attorney explained that Crowder brought an individual declaratory judgment claim "to just preserve his interest. . . and rights, whatever they might be." Trial Tr. at 386, l. 21 – 387, l. 11.

Mediation was unsuccessful. In February 2025, the parties' mediator filed a "Proof of ADR" declaring an impasse. *See* Proof of ADR, filed 2/4/2025. The case was then placed on the trial roster.

The case was called for trial on November 17, 2025, with the Honorable William Thomas McGee, III presiding. During jury selection, Appellants' trial counsel exercised their preemptory strikes in a manner that the trial court determined was discriminatory and improper. Trial Tr. at 19-22. After a successful Batson³ challenge by Cedar Grove, the first jury was disqualified, and a new jury was empaneled. Id.

The Estate and Jim Crowder called five witnesses during their case-in-chief; Cedar Grove called three. *See* Trial Tr. at 2-3. At the close of all evidence, the trial court granted a directed verdict against Jim Crowder on his claim for prescriptive easement. Trial Tr. at 411. The trial court determined that all other claims and counterclaims should be submitted to the jury and denied all other motions. Id. at 411 and 414.

On November 19, 2025, the jury returned its verdict, finding that the Estate had failed to establish its entitlement to a prescriptive easement. Verdict. The jury also found Jim Crowder (but not the Estate) liable for trespass and awarded Cedar Grove \$7,500 in actual damages and \$50,000 in punitive damages. Id. On its verdict form, the jury wrote "plus all legal fees" as part of its award against Jim Crowder. Id. At the request of Appellants' trial counsel, the jury was polled. Trial Tr. at 493. Every juror affirmed the verdict. Id. at 493-94.

The trial court denied the Estate's and Jim Crowder's post-trial motions for JNOV and for a new trial, as well as Jim Crowder's motion for remittitur of the punitive damage award. Trial Tr. at 498-500. The trial court determined that the jury's inclusion of "plus all legal fees" on its verdict

³ Batson v. Kentucky, 476 U.S. 79 (1986).

form was surplusage, of no legal effect. Post-Trial Order & Judgment, at 4 (filed 12/10/2025). On December 10, 2025, the trial court entered judgment on the remainder of the jury's verdict (\$7,500 in actual damages and \$50,000 in punitive damages) against Jim Crowder. Id. The court also issued a permanent injunction prohibiting the Estate and Jim Crowder, "as well as the Personal Representatives, Special Administrator, agents, beneficiaries, heirs, assigns or employees of either . . . from entering upon, crossing, transiting or accessing any real property owned by Cedar Grove Baptist Church. . . ." Id. at 8.

Statement of Facts

For more than 140 years, Cedar Grove Baptist Church ("Cedar Grove") has owned and occupied the same parcel of land in northern Chester County, South Carolina. Trial Tr. at 349, l. 3-7; Pl. Ex. 3-7. Cedar Grove made its first land acquisition in September 1886, when it purchased a single acre for six dollars. Pl. Ex. 3; Trial Tr. at 72, l. 2-10. In 1911, the church acquired another half-acre for use as a cemetery. Pl. Ex. 4.⁴ Over time, the church acquired additional land, bit by bit, until it eventually owned a total of 8.042 acres (the "Church Property") along a road that, today, is called Cedar Grove Church Road.⁵ Trial Tr. at 72 – 79 & Pl. Ex. 3-13.

As the church's congregation grew and aged, so did the church cemetery. As one Church officer testified, "[w]e buried a lot of people" in that cemetery. Trial Tr. at 349, l. 21. The cemetery's earliest graves were placed "to the north [of the sanctuary building] and coming around

⁴ A Plat recorded in September 1916 shows the original Cedar Grove land (1 acre), plus an additional half-acre, purchased in 1911, and contains the following note: "The above plat represents a lot of land situate in the State and County above mentioned, containing ½ acre, which William Neely has sold for a cemetery to Cedar Grove Baptist Church (Colored) and has such form, marks and boundaries as represented. Surveyed February 11th 1911." Pl. Ex. 4.

⁵ Cedar Grove eventually acquired more land, just to the south of the Church Property along S.C. Highway 72, for the construction of a new sanctuary. That land is not involved in this litigation.

to . . . the back of the church.” Id. at 350, l. 1-2. After the church “ran out of space” behind the sanctuary, it expanded the cemetery to the south, adding “probably 20” graves a year. Id., l. 13. The church’s long-term plan is to continue expanding its cemetery to the south, as additional burial space is needed. Trial Tr. at 313, l. 14-20.

In 1986, Mary Crowder purchased the Mary Crowder Tract. The northwest corner of that tract shares a common property line with the Church Property. An abandoned county road, Mills Road, runs along the eastern side of the Mary Crowder Tract. Trial Tr. at 301, l. 18 – 302, l. 15. To the south, an old logging road extends from Wooten Road (a public road), across the land of Wooten, to the Mary Crowder Tract. Trial Tr. at 300, l. 9-22; Def. Ex. 14-18. According to Timothy Dickerson, who has lived in the neighborhood “all [his] life,” that logging road was the primary means used to access the Mary Crowder Tract until “around 2015 [or] 2016.” Trial Tr. at 302, l. 16-22.

For years, the Mary Crowder Tract was mostly wooded. Trial Tr. 303-304 & Def. Ex. 14-18. Around the time of Mary Crowder’s death, Jim Crowder began clearing the Tract for crop planting. Id. at 305 & Def. Ex. 14-18. Soon thereafter, members of the church began noticing ruts “on the right-hand side of the [church] cemetery” leading from the church’s parking lot to the Mary Crowder Tract. Id. at 306. The church investigated and determined that Jim Crowder was creating the ruts by driving farming equipment across the Church Property to access the Mary Crowder Tract.

“Around 2017 [or] ‘18” a church official “called Mr. Jim [Crowder] and told him . . . everybody was complaining about him coming through the cemetery and asked him to stop.” Trial Tr. at 307, l. 9-14. Crowder did not stop. Id. at l. 24-25. The church placed a “no trespassing” sign and planted a row of trees to impede Crowder’s access. Trial Tr. at 307 – 08. Jim Crowder

“and his guys” ran over those trees with their equipment. Id.; Trial Tr. at 238, l. 17-21. Later, a church member placed an old utility pole across the route, to block Crowder’s access. Trial Tr. at 309, l. 25 – 310, l. 12. Crowder “moved the power pole” and continued coming across the Church Property. Id.

Both Jim Crowder and his wife testified that, several times each year, they drove large farming equipment across the Church Property to access the Mary Crowder Tract. Trial Tr. at 195-96; 136. In affidavits and at trial they both referred to their route across the Church Property as “the graveyard easement.” Trial Tr. at 145-146; 182, l. 23-25; Aff. of Jim Crowder, filed May 31, 2024; Aff. of April Crowder, filed May 31, 2024.

At trial, the evidence concerning the date on which the Crowders first began using the “graveyard easement” was disputed. Jim Crowder testified that he had and his father⁶ had used the “graveyard easement” to access the Mary Crowder Tract “since ’77 [or] ’78.” Trial Tr. at 189, l. 20-24. During cross-examination, though, Jim Crowder was confronted with his own prior testimony that he did “no farming” between 1993 and 2014. Trial Tr. at 225, l. 3 – 19. Crowder also admitted that, in a 2012 “sworn statement of [his] financial affairs,” he had declared under penalty of perjury that he owned no farming equipment or land and had no farming revenue (or loss).⁷ Trial Tr. at 226, l. 10 – 229, l. 4. Finally, Cedar Grove presented evidence that Jim Crowder’s farming company, Carolina Cotton, LLC, was not formed until 2015 and that most of that company’s equipment was acquired between 2018 and 2022. Def. Ex. 1 - 7. Timothy

⁶ Jim Crowder’s father died in September 1984, two years before Mary Crowder acquired the Mary Crowder Tract. Trial Tr. at 223, l. 19-23.

⁷ Jim Crowder moved in limine to preclude introduction of his 2012 bankruptcy filing. In response to that motion, the trial judge ordered that Crowder could be examined about his sworn statements in that proceeding, but that no reference to “bankruptcy” could be presented to the jury. Trial Tr. at 44.

Dickerson testified that, until 2015 or 2016, locals used the logging road crossing Wooten's property to access the Mary Crowder Tract. Trial Tr. at 302, l. 21-22; 324, l. 12 – 325, l. 14. When asked why the logging road was no longer used, Mr. Dickerson testified "I guess once they got all the bigger [farming] equipment . . . they couldn't go down [the logging road] so they started using our church" property. Id., l. 23 – 303, l. 1. Without a doubt, there were factual disputes regarding how long the so-called "graveyard easement" was used, and by whom. Witness credibility was very much an issue for the jury to consider.

Standard of Review

A claim for prescriptive easement is an action at law. Carolina Center Building Corp. v. Enmark Stations, Inc., 433 S.C. 144, 154, 857 S.E.2d 16, 21 (Ct. App. 2021). "In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record clearly discloses that there is no evidence which reasonably supports the jury's findings." Wright v. Craft, 372 S.C. 1, 17, 640 S.E.2d 486, 496 (Ct. App. 2006)(citing Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 629 S.E.2d 653 (2006)); R&G Constr., Inc. v. Lowcountry Reg'l. Transp. Auth., 343 S.C. 424, 540 S.E.2d 113 (Ct. App. 2000); Towns Assoc. Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976)). Furthermore, "a trial judge's order granting or denying a new trial upon the facts will not be disturbed on appeal unless his decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." Folkens v. Hunt, 300 S.C. 251, 254-55, 387 S.E.2d 265, 267 (1990).

When reviewing the trial court's ruling on motions for directed verdict or for JNOV, an appellate court employs the same standard as the trial court, "viewing the evidence and all reasonable inferences in a light most favorable to the nonmoving party." Elam v. S.C. Dept. of Transp., 361 S.C. 9, 27-28, 602 S.E.2d 772, 782 (2004). A directed verdict is appropriate "when

the case presents only issues of law.” RFT Mgmt. Co., LLC V. Tinsley & Adams, LLP, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012); Rule 50(a) S.C. R. Civ. P. An appellate court “will reverse the trial court’s ruling on a directed verdict motion only if no evidence exists to support the ruling, or if the decision was controlled by an error of law.” Wright v. Craft, 372 S.C. 1, 18, 640 S.E.2d 486, 496 (Ct. App. 2006)(numerous internal citations omitted).

Where, as here, a jury has awarded punitive damages, the appellate court “must conduct a *de novo* review [to evaluate] the constitutionality of a punitive damages award.” Abel v. Lack’s Beach Service, 446 S.C. 434, 472, 920 S.E.2d 283, 303 (Ct. App. 2025)(quoting Mitchell v. Fortis Ins. Co., 385 S.C. 570, 583, 686 S.E.2d 176, 183 (2009)). However, this court may not “usurp the jury’s function [to] set the amount” awarded. Hollis v. Stonington Dev., LLC, 394 S.C. 383, 405, 714 S.E.2d 904, 916 (Ct. App. 2011). Instead, the court is only required to ensure that the jury’s award falls within “the upper limit of what would be acceptable under due process.” Id.

Argument

Even though the Administrator was engaged to serve as a “nominal” plaintiff on behalf of the Estate, Jim Crowder instigated and orchestrated this litigation. Jim Crowder made the decision to sue Cedar Grove Baptist Church. Trial Tr. at 331, l. 17-18. Jim Crowder petitioned the probate court to appoint a special administrator for his mother’s Estate. Trial Tr. at 233-34. He took these actions - not for the benefit of his mother’s Estate - but for his own benefit.

Throughout the proceedings below, Jim Crowder and his attorneys repeatedly attempted to blur and conflate distinctions between Mary Crowder (who died seven years before this action was filed), Mary Crowder’s Estate, and Jim Crowder. They did so because Jim Crowder knew that he *needed* his mother’s estate to justify and advance his pursuit of a prescriptive easement across the Church Property. Throughout trial, Jim Crowder and his attorneys used phrases like “the Crowder family farm,” the “Crowder land,” and “our family’s farming operation” to create the impression

that Jim Crowder, Mary Crowder and the “Crowder family” were one-and-the-same. They attempted to convince the jury that Jim Crowder’s company, Carolina Cotton, LLC, formed in 2015, was merely a continuation of the “family” farming operation that began with Jim Crowder’s father in “’77 [or] ’78.” They asserted that, when Jim Crowder drove heavy farming equipment across the Church Property and through the church cemetery – years after Mary Crowder’s death - he did so pursuant to prescriptive rights that were, by then, “in the bank”⁸ for the use and benefit of Jim Crowder and other members of the “Crowder family.” The jury was not fooled.

As this court considers this appeal, it is important to remember that the Estate of Mary Crowder (the plaintiff below) and Jim Crowder (the third-party defendant below) are separate and distinct. Jim Crowder does not, nor has he ever, owned the Mary Crowder Tract. Mary Crowder did not own or operate any of the equipment that Jim Crowder and his wife testified they drove through the church cemetery to access The Mary Crowder Tract. Jim Crowder cannot use his late mother’s status as “owner of a dominant tenement” to secure prescriptive easement rights for himself and his farming business. This court should affirm, to preserve and protect the property rights that Cedar Grove has fought so hard, and so long, to defend.

Section I - Jim Crowder’s Appeal from Directed Verdict.

Appellants’ first line of attack on appeal takes aim at the trial court’s directed verdict against Jim Crowder, on his individual claim for a prescriptive easement. The trial court’s directed verdict was predicated upon the undisputed fact that Jim Crowder “has not been an owner and currently is not an owner” of the Mary Crowder Tract. Trial Tr. at 410. Because Jim Crowder held no ownership interest in the so-called “dominant tract,” the trial court properly concluded that his prescriptive easement claim failed as a matter of law.

⁸ Appellants’ trial counsel argued that the prescriptive easement was “in the bank after 2006.” Trial Tr. at 399, l. 8.

On appeal, Jim Crowder argues that “ownership of a dominant tenement” is immaterial to a claim of prescriptive easement. Appellants’ Br. at 15. There are two problems with that argument. First, it is not an argument that Jim Crowder ever presented to the trial court, so he is precluded from now making that argument on appeal. Even if he was not precluded from presenting the argument, he is wrong. For both reasons, this court should affirm the trial court’s directed verdict against Jim Crowder.

A. Jim Crowder is estopped from arguing that ownership of a dominant tenement is immaterial to his claim of prescriptive easement because he failed to make that argument at trial and, even if he had, he failed to preserve the argument for appellate review.

Jim Crowder first argues that the trial court erroneously focused upon Crowder’s lack of ownership of the Mary Crowder Tract, when it directed a verdict against him. Appellants’ Br. at 16. According to Jim Crowder, “ownership of a dominant tenement” is immaterial to his claim. Not only is that argument contrary to the well-established jurisprudence of this state, but it is wholly inconsistent with Jim Crowder’s theory and argument in the proceedings below.

Even in the complaint that Jim Crowder caused the Estate to file, “ownership of a dominant tenement” was alleged as the foundational basis of the Estate’s prescriptive easement claim. See Complaint ¶2 (“[The Estate] is the owner of the . . . DOMINANT TENEMENT TRACTS OF PLAINTIFF LOCATED IN CHESTER COUNTY”) (capitalization in original). Had Jim Crowder (and his trial counsel) believed that “ownership of a dominant tenement” was immaterial, the Estate would have omitted that factual allegation from its complaint. The Estate included the allegation of ownership because Jim Crowder and his attorneys knew – or at least believed - that “ownership of a dominant tenement” was an essential prerequisite to a claiming a prescriptive easement.

When Jim Crowder, individually, was drawn into the action as a third-party defendant, he continued to assert “a real interest in” a dominant tenement as an essential element of his claim. Third Party Def.’s Answer & Counterclaim, at 8-9, ¶ 28. In fact, much of the evidence and argument that Jim Crowder presented at trial was an attempt to establish *his* “de facto” ownership of the Mary Crowder Tract. *See, e.g.*, Trial Tr. at 211-12; 384, l. 14-18 (“Judge, the argument against [Cedar Grove’s] position is that Mr. Crowder *has an interest in the property* which devolved to him on the death of his mother.”); 385, l. 10-18 (“at the moment [Mary Crowder] breathed her last, the property [went] into the estate in trust for [Jim Crowder’s] benefit.”).

It is noteworthy that neither Jim Crowder nor the Estate objected when the trial court *twice* instructed the jury that a prescriptive easement claim depends upon the conduct of the “owner of the dominant estate.” *See* Trial Tr. at 460 (“[T]he **owner of the dominant estate** must . . .”) and *id.* at 461 (“The law . . . requires continual use by the **owner of the dominant estate.** . . .”); Trial Tr. at 473 (Q: “[A]re there any objections to any of the jury charges that I’ve just given . . .” A: “No, Your Honor.”). Jim Crowder did not object those instructions because he *and* his trial lawyers recognized that “ownership of a dominant tenement” was essential to the success of his – and the Estate’s – claim. Not once in the proceedings below did Jim Crowder assert the position that he now advances on appeal.

Having staked himself to the legal theory that “ownership of a dominant tenement” is essential to the success of a prescriptive easement claim, Jim Crowder cannot pursue a different theory on appeal. “It is well settled that one cannot present and try his case on one theory and thereafter advocate another theory on appeal.” White v. Livingston, 231 S.C. 301, 307, 98 S.E.2d 534, 537 (1957). McLeod v. Starnes, 396 S.C. 647, 657, 723 S.E.2d 198, 204 (2012) (appellant may not “argue one ground at trial and alternate ground on appeal.”) Nor, for that matter, may a

new legal argument be “raised for the first time on appeal.” Atlantic Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 330, 730 S.E.2d 282, 287 (2012).

Even if Jim Crowder *had* presented the theory he now advances, he failed to preserve the argument for appeal. “Issues and arguments are preserved for appellate review only when they are raised to and ruled upon by the lower court.” Caldwell v. Wiquist, 402 S.C. 565, 576, 741 S.E.2d 583, 589 (Ct. App. 2013)(quoting Elam v. S.C. Dep’t. of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004)). If a party has “raised an issue [to] the [trial] court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.” I’On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422 S.E.2d 716, 734 (2000). On appeal, Jim Crowder contends that the trial court “misunderstood or misinterpreted” South Carolina’s prescriptive easement law, but he never attempted to “correct” what he now contends was the trial judge’s “misunderstanding or misinterpretation”. See Trial Tr. at 473 (no objection to jury instructions); 497-498. See also Pl’s. and Third-Party Defendant’s Motion for JNOV, filed 11/25/2025 (no argument that the trial judge misunderstood or misinterpreted the law). Jim Crowder cannot resurrect his failed, and flawed, prescriptive easement claim by making an argument that he *never* presented to the trial court.

B. The trial judge properly directed a verdict against Jim Crowder on his claim for prescriptive easement because Mr. Crowder could not establish an essential element of that claim.

The trial court was correct when it determined, as a matter of law, that Jim Crowder could not claim a prescriptive easement because he “has not been an owner and currently is not an owner” of the Mary Crowder Tract. Trial Tr. at 410; see also Boyd v. Bellsouth Telephone Telegraph Co., Inc., 369 S.C. 410, 419-20, 633 S.E.2d 136, 141 (2006)(“A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner. . . .”); 12 S.C. Juris.

Easements § 10 (“A prescriptive easement . . . is established by the conduct of the owner of the dominant tenement contrary to the fee simple interest of the owner of servient tenement.”). The trial court’s ruling was legally sound, and it is well supported by a long line of authority.

Our appellate courts have repeatedly stated that “a prescriptive easement . . . is established by the conduct of the *dominant tenement owner*. . . .” Bundy v. Shirley, 412 S.C. 292, 304, 772 163, 169 (2015); Boyd v. Bellsouth Tel. Tel. Co., 369 S.C. 410, 419, 633 S.E.2d 136, 141 (2006); Braswell v. Amick, 442 S.C. 618, 626, 900 S.E.2d 475, 479 (Ct. App. 2024); Kelley v. Snyder, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012). “Ownership” of a dominant tenement has been an essential prerequisite to claiming a prescriptive easement virtually since the birth of this state. *See Cuthbert v. Lawton*, 14 S.C. L. 194 (1825)(“[Plaintiff] proved that [a prescriptive easement] had been enjoyed by the former owners . . . from the year 1769 to 1800.”). Even our state’s “tacking” cases have looked to use “by prior owners” to determine whether the elements of a prescriptive easement have been satisfied. E.g., Carolina Ctr. Bldg. Corp. v. Enmark Solutions, Inc., 433 S.C. 144, 155, 857 S.E.2d 16, 22 (Ct. App. 2021)(“A party may ‘tack’ the period of use of prior owners . . . to satisfy the 20-year requirement.”). Our courts have never allowed third parties, who do not own a “dominant tenement,” to assert prescriptive easement rights.

In his brief, Jim Crowder cites two “utility” cases⁹ as support for his argument that ownership of a dominant tenement is “immaterial” to an asserted claim of prescriptive easement. Appellants’ Br. at 17-18. What Crowder misses, though, is that in each of those cases the utility companies *owned* a “dominant tenement.” In Simmons, the utility company’s “dominant

⁹ Simmons v. Berkeley Electric Cooperative, Inc., 419 S.C. 223, 797 S.E.2d 387 (2016) and Loftis v. South Carolina Electric and Gas, 361 S.C. 434, 604 S.E. 2d 714 (Ct. App. 2004), *overruled by Simmons*.

tenement” consisted of electric utility lines and a water main -- owned by the utility company, crossing the land of another. 419 S.C. at 227, 797 S.E.2d at 388. In Loftis, the “dominant tenement” was the utility company’s “facilities along, across and under property controlled by Customer.” 361 S.C. at 440, 604 S.E.2d at 717 (quoting language from SCE&G’s general service terms and conditions).

Though the terms “tenement” and “land” are sometimes used interchangeably, they are not synonyms.¹⁰ “In its proper, legal sense, [a tenement] signifies everything that may be *holden*, provided it be of a permanent nature.” BLACK’S LAW DICTIONARY (SIXTH ED. 1990)(italics in original). As the “utility” cases illustrate, permanent structures like utility poles, electric transmission lines and underground pipes are “tenements,” even though they are not land. An individual (or utility company) claiming a prescriptive easement need not own a dominant tract of land, but that individual (or utility company) *must* own a dominant tenement to claim a prescriptive easement because, as our cases make clear, “a prescriptive easement . . . is established by the conduct of the dominant tenement owner.” Bundy v. Shirley, 412 S.C. 292, 304, 772 163, 169 (2015).

Even in the so-called “public easement” cases that Jim Crowder cites in his brief, the parties’ disputes concerned a right of access to a *public* recreation area. *See, e.g., Cleland v. Westvaco*, 314 S.C. 508, 431 S.E.2d 264 (Ct. App. 1993) (“Cleland produced evidence that . . . members of the public have used the road . . . to reach an area of the Coosawachie River known as Mose Landing”); Darlington County v. Perkins, 269 S.C. 572, 239 S.E.2d 69 (“This action was

¹⁰ Some of our ancient statutes distinguish between “land” and “tenements,” making clear that the terms have different meaning. *See, e.g.,* The Act of Limitations, Pub. L. 101, 2 Stat. 583 (1712)(“If any person to whom any right or title to **lands, tenements or hereditaments**, shall descend or come . . .”).

brought by the County . . . to determine the right of the public to use a recreational area known as Whipple's landing . . . and a dirt road which connects a public road to the landing area."); Tyler v. Guerry, 251 S.C. 120, 160 S.E.2d 889 (1968)("Action to determine right to use roads which ran across defendants' land from public highway to recreational area at river."). In those cases, the *public* was the owner of the "dominant tenement" (the recreational area) and the courts considered whether the *public*'s long-term use of a road or trail to access that "dominant tenement" met the elements for a prescriptive easement. Cf. Hoyler v. State, 428 S.C. 279, 291, 833 S.E.2d 845, 852 (Ct. App. 2019)(discussing the public trust doctrine).¹¹ See Cleland v. Westvaco Corp., 314 S.C. 508, 511-12, 431 S.E.2d 264, 267 (Ct. App. 1993)("[U]se by the public of a road through unenclosed and unimproved woodland" does not give rise to a right-of-way by prescription" but "where the public character of the road is clearly established through additional evidence of long-term public maintenance," a public prescriptive easement may be created); see also Hutto v. Tindall, 40 S.C. L. 396 (Ct. App. 1853)("Public Roads of any kind, can be established only by public authority; or by dedication; or by long use, which though not strictly prescription, bears so close an analogy to it, that it may be expressed in that term.").

In every prescriptive easement case, "ownership of a dominant tenement" has been an essential prerequisite to asserting a claim. Because Jim Crowder "has not been an owner and

¹¹ The Public Trust Doctrine "has been part of the jurisprudence of South Carolina and many other states for centuries, even pre-dating the beginning of our republic." Hoyler v. State, 428 S.C. 279, 291, 833 S.E.2d 845, 852 (Ct. App. 2019).

The underlying premise of the Public Trust Doctrine is that some things are considered too important to be owned by one person. . . . Under this doctrine, everyone has the inalienable right to . . . recreate upon the high seas, territorial and navigable waters, as well as to land on the seashores and riverbanks.

Public trust lands are "presumptively owned by the State and held in trust for the benefit of the public. Id. (internal citations omitted).

currently is not an owner” of the Mary Crowder Tract (the purported “dominant tenement”), the trial court properly determined that he could not claim a prescriptive easement. Trial Tr. at 410, l. 16 - 411, l. 4. The Estate was the only proper claimant (though, as the jury ultimately found, the Estate was not entitled to a prescriptive easement, either). The trial court properly directed a verdict, dismissing Jim Crowder’s prescriptive easement claim as a matter of law.

C. This court should refuse to entertain Crowder’s “fallback” argument that he had “sufficient legal interest” in the Mary Crowder Tract to claim a prescriptive easement because Crowder is judicially estopped from making that argument.

As a “fallback” argument, Crowder asserts that, even if ownership of a dominant tenement is required, Jim Crowder “had a sufficient legal interest” in the Mary Crowder Tract to assert a claim for prescriptive easement. Appellants’ Br. at 20. As noted above, Crowder’s “fallback” argument cannot be reconciled with the case he alleged, presented and tried. See Complaint ¶ 2 (“Plaintiff [Estate] is the owner of the [Mary Crowder Tract]”). Nor can it be reconciled with the Inventory and Appraisement that Jim Crowder filed in probate court, as Personal Representative of his mother’s Estate (See Inventory and Appraisement - Pl’s. Ex. 22); or, for that matter, with Crowder’s admissions at trial. See Trial Tr. at 332, l. 1-5 (Q: “Do you currently own [the Mary Crowder Tract]?” A: “No.”; Q: “Have you ever owned [the Mary Crowder Tract]?” A: No.”).

Both in the probate court and in the proceedings below, Crowder swore under oath that his mother’s Estate – not he - “owned 100%” of the Mary Crowder Tract. Pl’s. Ex. 22. He is judicially estopped from taking a contrary position before this court. “When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.” Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 252, 489 S.E.2d 472, 477 (1997)(holding that a litigant was judicially estopped from asserting an ownership interest in real property because he “previously claimed [his] son owned the property.”). To preserve “the

integrity of the judicial process,” this court should refuse to entertain Crowder’s “fallback” argument. Hayne at 251, 489 S.E.2d at 477.

D. As an additional sustaining ground, Jim Crowder’s easement claim failed because the alleged “prior owner of the dominant tenement” failed to prove its entitlement to a prescriptive easement by clear and convincing evidence.

Even if Jim Crowder’s claim for prescriptive easement had survived directed verdict, it would have met the same fate as the Estate’s failed claim. Not only did Jim Crowder and the Estate rely upon the same witnesses, evidence and trial strategy, but Jim Crowder could only meet the twenty-year “continuous use” prong of a prescriptive easement claim by tacking *his* use of the purported easement to his mother’s prior purported use. If the Estate could not to prove its entitlement to a prescriptive easement, then Jim Crowder’s “tacked” claim stood no chance of success. “If tacking is used, ‘the use by the previous owners must also meet the requirements of a prescriptive easement.’” Morrow v. Dyches, 328 S.C. 522, 528, 492 S.E.2d 420, 424 (Ct. App. 1997). The jury’s verdict against the Estate forecloses any possibility that Jim Crowder could have “tacked” his use of the purported easement to his mother’s alleged prior use.

As a matter of discretion and judicial economy, this court may affirm the trial court’s directed verdict “upon any reason appearing in the Record on Appeal.” Rule 220(c) S.C. App. Ct. R; *see also I’on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419-20, 526 S.E.2d 716, 723 (2000)(“[A] respondent – the ‘winner’ in the lower court – may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.”). Jim Crowder should not get a “second chance” to present his fatally flawed prescriptive easement claim that, necessarily, relied upon the failed claim of his mother’s Estate. Because the Estate failed to meet its burden of proof

by clear and convincing evidence, Jim Crowder's "tacked" claim also fails. Nothing that Jim Crowder or the Estate has argued in this appeal changes that result.

Section II – Appellants' Motions for JNOV, New Trial and New Trial Nisi Remittitur.

- A. The trial court properly denied the Estate's and Jim Crowder's motions for judgment notwithstanding the verdict, new trial and remittitur because there is evidence in the record supporting the jury's verdict, and that verdict is entitled to "substantial deference."

1. *Appellants' assertion that Cedar Grove "presented no evidence" of actual damages was not timely raised, was not preserved for appellate review and, in any event, is demonstratively false.*

Appellants assert that the trial court erred in denying *their*¹² motions for "judgment notwithstanding verdict, new trial or remittitur" because "Cedar Grove presented no evidence from which [the jury's award of actual damages] could be reasonably calculated." Appellants' Br. at 27. There are procedural and substantive fallacies with that argument.

First, Appellants never actually *sought* remittitur of the jury's actual damage award, so they cannot now complain that the judge failed to "grant" that motion. *See* Trial Tr. at 499-508. Neither the motions Jim Crowder and the Estate argued following discharge of the jury, nor their subsequently filed written motions sought remittitur of the jury's actual damage award.¹³ Certainly, the trial court could not be expected to rule upon a motion for remittitur that Appellants did not make.

¹² Here again, Appellants attempt to blur the distinctions between the Estate and Jim Crowder. The Estate would have had no reason to make post-trial motions objecting to the jury's award of actual or punitive damages because no damages were awarded against the Estate.

¹³ In their written post-trial motions, Appellants erroneously state that, following discharge of the jury, "Crowders also moved for remittitur of both actual and punitive damage awards." *See* Written Motions, filed 11/25/2025, at 2. However, a review of the trial transcript reveals that Appellants made no motion to reduce the jury's award of actual damages. *See* Trial Tr. at 497-508.

Furthermore, as a procedural matter, Appellants would have been precluded from seeking JNOV based upon Cedar Grove's purported "failure to present evidence" of actual damages because neither Jim Crowder nor the Estate sought directed verdict on those grounds prior to submission of the case to the jury. *See* Trial Tr. at 412-414. As our appellate courts have recognized, "[a] motion for JNOV is merely a renewal of [a] directed verdict motion." Abel v. Lack's Beach Service, 446 S.C. 434, 456, 920 S.E.2d 283, 294 (Ct. App. 2025). "Therefore, 'only the grounds raised in the directed verdict motion may properly be reasserted in a JNOV motion.'" *Id.* (quoting RFT Mgmt. Co. v. Tinsley & Adams, LLP, 399 S.C. 322, 331, 732 S.E.2d 166, 171 (2012)).

That leaves only the trial court's denial of Appellants' motion for new trial absolute for this court to consider. Fundamentally, there is an unfairness to Appellants' waiting until *after* the jury returned its verdict to assert, for the first time, that Appellants were entitled to a new trial based upon an assertion that Cedar Grove "never presented any evidence . . . of [actual] damages." *See* Written Motions, filed 11/25/2025, at 7. Had either the Estate or Jim Crowder timely raised an issue regarding Cedar Grove's actual damage claim – or the purported "lack of evidence" supporting that claim - the matter could have been considered and ruled upon by the trial judge prior to submission of the case to the jury. If appropriate, the trial judge could have instructed the jury that it could only consider awarding nominal and punitive damages. Nominal damages - like actual damages – will support an award of punitive damages. McGee v. Bruce Hosp. System, 344 S.C. 466, 470, 545 S.E.2d 286, 287 (2001). Appellants did not raise the issue in a timely manner at trial, and they made no objection to the submission of actual damages to the jury. Therefore, they were precluded from seeking a new trial on those grounds after a verdict was returned.

Appellants' assertion that the trial court "erred" when it denied their motion for new trial is meritless.

In any event, it is "well settled in this State that the granting or refusal of a motion for a new trial . . . is addressed to the sound discretion of the trial judge, and his ruling thereabout will not be disturbed unless it be demonstrated that there was an abuse of discretion amounting to an error of law." Watson v. U.S. Rubber Co., 260 S.C. 129, 132, 194 S.E.2d 395, 396 (1973). It is also well settled that "the court must give 'substantial deference' to the jury's determination of damages." Jolly v. Fisher Controls, LLC, 443 S.C. 511, 523, 905 S.E.2d 380, 387 (2024). This is because "every party to a civil jury trial 'is entitled to the constitutional privilege of the fair judgment of a jury' and a court must 'not interfere with the verdict of a jury simply because it is greater [or less] than its own estimate.'" Id. at 524, 905 S.E.2d at 387 (quoting Brabham v. Southern Asphalt Haulers, Inc., 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953)). It is through this prism that the trial court's entry of judgment upon the jury's verdict must be examined.

Our courts have never required proof of damages "with mathematical certainty" but have only required presentation of "such [evidence] that a court or jury can reasonably determine an appropriate amount" of damages. Yadkin Brick Co., Inc. v. Materials Recovery Co., 339 S.C. 640, 646, 529 S.E.2d 764, 767 (Ct. App. 2000). Cedar Grove met that standard. Its witnesses testified that Jim Crowder "left ruts" that the "trustees . . . had to go and fill in." Trial Tr. at 354. They testified that he "ran over trees" that the Church had planted to prevent his trespass. Id. They testified that Jim Crowder "would turn [trucks] around in our church yard . . . and tear up our asphalt." Trial Tr. at 357. They testified that the church was required to "put . . . gates up" to deter Jim Crowder's repeated trespasses. Id. They testified that Jim Crowder interfered with the church's use of land dedicated to its cemetery. Id. at 337; 351. Cedar Grove also introduced

photographs of the missing trees that Jim Crowder had destroyed. Def. Ex. 10 and Trial Tr. at 309. Cedar Grove's treasurer testified that "a few thousand dollars went into the planting of the trees and prepping the land from the ruts that was created." Trial Tr. at 371. The witnesses also testified that they were relying upon the jury to award "fair damages" to compensate those losses. Trial Tr. at 372; 355. The jury did just that.

In their brief, Appellants cite a "jury note" as indicia of an "absence of evidence" supporting Cedar Grove's claim for actual damages.¹⁴ Appellant's Br. at 32. What Appellants appear to overlook, though, is the trial judge's response to that note. The trial judge directed the jury to "rely upon [its] best recollection of the testimony and evidence" to reach a verdict. Trial Court Ex. 3. We must presume that the jury followed that directive and considered all the evidence during its deliberations. That evidence would have included witness testimony, as well as photographs that would have enabled the jury to determine (or at least estimate) the number of trees that Jim Crowder destroyed. Based upon the totality of the evidence in the record, the jury "reasonably determined" that \$7,500 was "an appropriate amount" of compensation. Yadkin Brick Co., Inc. v. Materials Recovery Co., 339 S.C. 640, 646, 529 S.E.2d 764, 767 (Ct. App. 2000). "The jury's determination of damages . . . is entitled to substantial deference." Rush v. Blanchard, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993)(citing Brabham v. Southern Asphalt Haulers, Inc., 223 S.C. 421, 76 S.E.2d 301 (1953)).

Cedar Grove's evidence of actual damages was not speculative or unsupported. Cedar Grove's witnesses testified about the nature and extent of the church's damages, including testimony that the church had spent "a few thousand dollars" to plant trees that Jim Crowder later

¹⁴ During deliberations, the jury sent a note asking, "how many trees were destroyed?" Court Ex. 3.

destroyed. Based upon the evidence presented, the jury found Jim Crowder, but not the Estate, liable for \$7,500 (i.e. - a few thousand dollars) in actual damages. The trial court properly entered judgment on that verdict and properly denied Appellants' post-trial motions for JNOV and for new trial.

*2. Appellants Erroneously Assert that Punitive Damages
"Cannot be Awarded" in the Absence of Actual Damages.*

Presupposing that their argument to vacate the jury's award of actual damages will prevail, Appellants next assert that the jury's award of punitive damages "should also be vacated." App. Br. at 33. According to Appellants, "there can be no punitive damages without actual damages." *Id.* Appellants slightly, but critically, misstate our "general rule" governing punitive damage awards. "The rule in South Carolina is that there must be an award of actual **or nominal damages** for a verdict of punitive damages to be supported."¹⁵ McGee v. Bruce Hosp. System, 344 S.C. 466, 470, 545 S.E.2d 286, 287 (2001)(bold type added). Here, Appellants' omission of the words "or nominal damages" from their recitation of the "general rule" matters because, as discussed above, Appellants raised no objection to the submission of actual damages to the jury. *See* Discussion in § 2. A. 1, *supra*. Had Appellants' timely, and successfully, argued against the submission of actual damages to the jury, the jury still could have considered awarding nominal damages. Nominal damages would support the jury's award of punitive damages.

Punitive damages may be awarded, in the absence of actual damages, "when it is clearly shown that a legal right has been willfully or recklessly invaded, and that nominal actual damages were merged in the verdict for punitive damages." Cook v. Atlantic Coast Line R. Co., 183 S.C. 279, 190 S.E. 923 (1937); *see also* Hinson v. A.T. Sistare Const. Co., 236 S.C. 125, 134, 113 S.E.2d

¹⁵ Our state's "general rule" is "premised on the fact that liability must be established before a plaintiff can seek punitive damages." McGee at 466, 470 S.E.2d at 288.

341 (1960), *overruled on other grounds*, McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985). In those cases, the court “presumes that nominal damages are merged” into the punitive damage award. Liberty Mut. Fire Ins. Co. v. JT Walker Industries, Inc., 554 Fed. Appx. 176, 189 (4th Cir. 2014)(applying South Carolina law)(“Where a jury finds a willful or reckless invasion of a legal right, a court presumes that nominal damages are merged into a punitive award.”).

Here, the question of whether punitive damages may be awarded in the absence of actual damages is largely academic because Cedar Grove proved its entitlement to both actual and punitive damages. But even if the jury had found Crowder liable for trespass and had *not* awarded actual damages, it could *still* award punitive damages. See Hollis v. Stonington Dev., LLC, 394 S.C. 383, 398, 714 S.E.2d 904, 912 (2011)(“Reckless disregard for the property rights of others can be sufficient misconduct to support an award of punitive damages.”). Had that occurred, there would be a presumption “that nominal damages [were] merged into [the] punitive award.” Liberty Mut. Fire Ins. Co. v. JT Walker Industries, Inc., 554 Fed. Appx. 176, 189 (4th Cir. 2014)(applying South Carolina law).

- B. The jury’s punitive damage award was appropriate, and the trial court properly conducted a post-verdict review of that award to ensure it did not violate due process.

Appellants next argue that the jury’s award of punitive damages was “excessive” and that the trial court failed to conduct an appropriate review of that award before entering judgment on that award. They are wrong on both points.

1. *The trial court’s review of punitive damages was appropriate and, if not, this court could easily correct any alleged error through*

de novo review of the jury's punitive damage award.

Appellants contend that the trial court committed “reversible error” because it conducted its post-verdict review of punitive damages utilizing the factors first enunciated in Gamble v. Stevenson, without articulating its consideration of the so-called “*Gore* guideposts.” There are several fallacies with that contention.

First, there is no evidence in the record that Appellants ever raised this argument to the trial judge, through motion for reconsideration or otherwise. “A trial judge will not be reversed for failing to act on a matter that was not submitted to him.” Roche v. South Carolina Alcoholic Bev. Control Comm’n, 263 S.C. 451, 455, 211 S.E.2d 243, 244 (1975).

Furthermore, our Supreme Court has never mandated that a court’s review of punitive damages must be performed – or documented – in a particular form. Instead, the Court has only required that the “record clearly shows that the trial court reviewed” the award to ensure that it was “within reasonable limits.” Kinard v. Crosby, 315 S.C. 237, 433 S.E.2d 835 (1993); *see also* Hansel v. National States Ins. Co., 313 S.C. 266, 272, 437 S.E.2d 159, 163 (Ct. App. 1993)(“The trial judge’s brevity in his stating his findings does not invalidate his review. . . .”). Here, the trial court conducted the appropriate analysis, even if its post-trial order did not expressly discuss each of the *Gore* guideposts. Trial Tr. at 503-04; Post-Trial Order and Judgment, at 5-7.

Appellants’ apparent reliance upon S.C. Code Ann. §15-32-520(F) is also misplaced. Section 15-32-520 prescribes the procedure to be followed where a “defendant against whom punitive damages are sought” has requested a bifurcated trial. Subsection (F) of that statute (the subsection that Appellants discuss in their brief) references “the factors identified in subsection (E)” which, in turn, enumerates the factors that a jury must consider “in the second stage of a bifurcated trial.” S.C. Code Ann. § 15-32-520 (E) and (F). Had Appellants (or either of them) requested a bifurcated trial, then § 15-32-520 would apply. Because they did not, the statute does

not apply. It is disingenuous for Appellants to suggest that they were deprived of statutorily prescribed “safeguards” that they never requested.

In any event, the trial court’s post-verdict review of punitive damages is merely a precursor to this court’s review. Regardless of the trial court’s determination, this court “must conduct a *de novo* review when evaluating the constitutionality of a punitive damages award.” Abel v. Lack’s Beach Service, 446 S.C. 434, 472, 920 S.E.2d 283, 303 (Ct. App. 2025)(quoting Mitchell v. Fortis Ins. Co., 385 S.C. 570, 583, 686 S.E.2d 176, 183 (2009)). Therefore, even if the trial court had failed to conduct *any* post-verdict review of punitive damages, that omission could easily be corrected by this court through its *de novo* review. Any error in that regard would be harmless.

2. *The jury’s award of punitive damages was within prescribed constitutional limits and, therefore, the trial court’s entry of judgment on that award was proper and should be affirmed.*

While Mitchell and its progeny require this court to conduct a *de novo* review “of the constitutionality of punitive damages” awarded by the jury, neither the trial court nor this court may “usurp the jury’s function [to] set the amount” awarded. Hollis v. Stonington Dev., LLC, 394 S.C. 383, 405, 714 S.E.2d 904, 916 (Ct. App. 2011). Instead, this court – like the trial court - is only required to ensure that the jury’s award falls within “the upper limit of what would be acceptable under due process.” Id. The punitive damages awarded in this case were appropriate, and well within constitutional limits. The trial court’s entry of judgment on that award should, therefore, be affirmed.

i. Jim Crowder's Conduct was Reprehensible.

As the record reflects, Jim Crowder's conduct was reprehensible.¹⁶ The question before this court, though, is whether Jim Crowder's conduct was sufficiently reprehensible to justify the jury's award of punitive damages. Hollis at 397, 714 S.E.2d 911. The answer is yes.

Crowder attempts to justify (or trivialize) his repeated and recurring trespasses through the Church's cemetery by claiming that he "believed he had a legal right" to trespass. App. Br. at 34. The record tells a very different story. Jim Crowder admitted that he repeatedly brought heavy equipment through the church cemetery, knowing that he had no right to do so, to access land that he *did not own*. Trial Tr. at 212. He admitted that he ignored or circumvented the Church's efforts to stop his repeated trespasses. Trial Tr. at 238, l. 17 – 239, l. 2. He admitted that he made no effort to explore access to his mother's fields via other available routes. Trial Tr. at 208, l. 20-209, l. 10; 217, l. 8-16. He admitted that he knowingly destroyed church property, including trees that he knew the Church had planted to impede his passage. Trial Tr. at 238, l. 17 – 239, l. 2. In short, he demonstrated "a reckless disregard for the property rights" of Cedar Grove and its congregants. Hollis v. Stonington Dev., LLC, 394 S.C. 383, 398, 714 S.E.2d 904, 912 (Ct. App. 2011)(citing Harris v. Burnside, 261 S.C. 190, 199 S.E.2d 65 (1973)). Jim Crowder did not commit an "innocent mistake." He repeatedly and callously trampled upon the Church's rights. Rightfully, the jury punished him for that conduct.

¹⁶ In its post-judgment review of punitive damages, this court should consider several factors to assess the reprehensibility of Crowder's conduct: (1) Was the harm physical or economic? (2) Did Crowder's conduct evidence an indifference to or reckless disregard for the health or safety of others? (3) Was the target of his conduct financially vulnerable? (iv) Was the conduct an isolated incident? (v) Was the harm the result of intentional malice, trickery or deceit, rather than mere accident? Mitchell v. Fortis Ins. Co., 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009).

Also germane to the court's "reprehensibility" analysis is the fact that Jim Crowder was a recidivist. Cedar Grove introduced evidence that Crowder had previously been found liable for trespass in another court, by another jury, arising from similar conduct. Trial Tr. at 221, l. 24 – 222, l. 10. As the United States Supreme Court has recognized, "repeated misconduct is more reprehensible than an individual instance of malfeasance." State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408, 423 (2003).

While Crowder's conduct caused no personal injury to church members, Cedar Grove's witnesses testified that they suffered emotional distress and anxiety, knowing that the graves of their ancestors were viewed by Crowder as a convenient short cut to his mother's fields. Trial Tr. at 310; 355; 370. Certainly, if physical injury heightens a court's calculus of what is "reprehensible" then, so too, must emotional injury.

Considering the totality of the evidence, Crowder cannot credibly claim that he made an "innocent" or "isolated" mistake. His conduct was reprehensible. The jury recognized as much when it awarded punitive damages, and the trial court recognized as much when it conducted a post-verdict review of that award.

ii. Ratio of Punitive Damages to Actual Damages

While the ratio of punitive damages to actual damages is a relevant consideration, our courts have never applied a "hard and fast" rule or formula. In fact, "the [United States] Supreme Court has made clear that 'there are no rigid benchmarks that a punitive damages award may not surpass' as long as 'the measurement of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and the general damages recovered.'" Mitchell v. Fortis Ins. Co., 385 S.C. 570, 588, 686 S.E.2d 176, 185 (2009). Here, the jury awarded \$7,500 actual damages and \$50,000 punitive damages – a ratio of 1 to 6.67. That ratio is well within the range of what our courts have required to "satisfy due process." See State Farm Mut. Auto Ins. Co. v. Campbell,

538 U.S. 408, 425 (2003)(“[I]n practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”). As the trial court recognized, the jury’s award fell within statutory guidelines, and it did not “shock the conscience.” Trial Tr. at 503.

iii. Comparative penalty awards

The third *Gore* guidepost for this court to consider is “the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in similar cases.” Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 54, 691 S.E.2d 135, 152 (2010). “To identify comparable cases ‘a court may consider the type of harm suffered by the plaintiff; the reprehensibility of the defendant’s conduct, the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors that the court may deem relevant.’” Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 54, 691 S.E.2d 135, 152 (2010). “In their brief, Appellants cite two cases that they contend are appropriate comparators. They are not.

The first case, Landford v. McConnell, arose from a property line dispute between neighbors. Each party accused the other of “crossing” the property line and trespassing. At some point during the litigation, the plaintiff moved for summary judgment. The plaintiff’s motion was supported by an affidavit which established, among other things:

- 1) Defendant had been photographed driving a tractor on Plaintiff’s property;
- 2) Two trees on the property line had been cut down without Plaintiff’s permission;
- 3) An “unidentified person” removed ‘no trespassing signs’ placed by Plaintiff; and
- 4) Someone had moved “dirt, rock and other debris onto Plaintiff’s property,” blocking a drainage ditch.

See Affidavit filed 9/29/2016 in C/A No. 2015-CP-42-05181. Apparently, the defendant submitted no countering evidence. The trial judge entered summary judgment in favor of the plaintiff.

Following a damages hearing, the judge awarded \$8,100 in actual damages and \$8,100 in punitive damages (a ratio of 1:1).

The second case cited by Appellants, Berry v. Reichardt, also involved a dispute between neighboring landowners. In that case, the defendant mistakenly crossed the property line and cut timber on his neighbor's land. The plaintiff sued for trespass, and the defendants failed to answer. They were held in default. Following a damages hearing, the trial court awarded \$ 4,193.90 in actual damages and \$20,969.00 in punitive damages (a ratio of 1:5). On appeal, the Court of Appeals affirmed in an unpublished, per curiam opinion, noting that a "trial court is vested with considerable discretion over the amount of punitive damages." *See Unpublished Op. 2015-UP-441 (S.C. App. Aug. 26, 2015).*

Both Landford and Berry involved a scenario in which a landowner mistook the location of his property line and trespassed on his neighbor's land. Even in that scenario, though, our courts have allowed punitive damages. Here, Jim Crowder has no such excuse. He knew that he did not own the land he was attempting to access. He also knew that he did not have permission to cross the Church Property. Certainly, he cannot claim that he made a "mistake" when he destroyed trees planted by the Church to impede his access.

This case is closer to the scenario presented by Hollis v. Stonington Development, 394 S.C. 383, 714 S.E.2d 904 (2011). In Hollis, a developer trespassed when its development work caused a neighboring "landowner's ponds [to fill] with sediment" and "inhibited access" to the neighbor's property. *Id.* at 392. A jury awarded \$400,000 in actual damages and \$3.5 million in punitive damages (a ratio of 1:8.75). On appeal, the South Carolina Court of Appeals reduced the award of punitive damages to \$2 million (1:5 ratio).

Among these cases, Lanford (1:1 ratio) is the clear outlier. In both Berry and Hollis our Court of Appeals found a punitive damage ratio of 1:5 was constitutionally sustainable. Here, the ratio of actual to punitive damages was 1 to 6.67. Of course, neither Berry nor Hollis involved another factor that this case uniquely presents. Jim Crowder did not merely trespass upon the Church Property – he repeatedly drove large farming equipment through land that, over a century earlier, the Church had purchased and set aside for use as a cemetery. Crowder even callously referred to his route across the Church Property as his “graveyard easement” – terminology that he attempted to minimize as a “nickname” at trial. Trial Tr. at 182, l. 23 – 183, l. 4. The jury heard that testimony which, undoubtedly, had an impact on its deliberations.

Long ago, our Supreme Court recognized that “a cemetery plot where one has his close kith and kin buried occupies an entirely different status from that of any other plot or piece of land which one could own, and from time immemorial, has been looked upon as hallowed land.” Lanford v. West Oakwood Cemetery Addition, Inc., 223 S.C. 350, 75 S.E.2d 350 (1953). Given the unique and “hallowed” nature of the land on which Crowder repeatedly trespassed, and his deliberate destruction of Church property placed to prevent his access, the punitive damages awarded by the jury were reasonable and appropriate.

Section III - The Trial Court Properly Entered Judgment on the Jury's Verdict

I. The Jury Returned a Verdict in Accordance with the Instructions Given by the Judge, There is no Evidence of Juror Misconduct and The Judge Properly Disregarded Surplusage in the Verdict.

In a post-verdict filing, Appellants accused the jury of “misconduct” because Jim Crowder and his trial counsel were unhappy with the verdict. Motion for JNOV and for New Trial, at 7 (filed 11/25/2025). On appeal, Appellants are somewhat more restrained, asserting only that the jury “disregarded” the trial court’s instructions when it attempted to award “legal fees” as part of its verdict. App. Br. at 39. Even that is a mischaracterization of what occurred. The jury did not disregard any instruction it was given, as it was never instructed regarding the availability (or non-availability) of attorney’s fees. *See* Jury Charge, filed as Ct. Ex. 1.

Evidently, the jury wanted Jim Crowder to reimburse the legal fees that Cedar Grove was required to pay in defense of this litigation, but none of the instructions provided to the jury addressed “legal fees” – one way or the other. In the absence of express instruction, the jury did what it should have done – it asked the judge, “[d]oes punitive damages include legal fees?” Trial Court Ex. 3, dated 11/19/25. After consulting with counsel about how best to respond, the trial judge provided a one-word response - “No.” *Id.*; *see also* Trial Tr. at 486-91. The judge directed the jury to “refer to jury charge on punitive damages” for further clarification. *Id.*

Perhaps, in hindsight, the jury wanted to know whether it was *allowed* to award attorney’s fees. However, the jury did not ask that question and, consequently, that question was not answered. Courts, “like well-behaved children . . . do not answer questions they are not asked.” State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991)(Sanders, C.J.). Certainly, the judge did not instruct the jury that it was prohibited from awarding attorney’s fees, and the jury’s inclusion of the words “plus all legal fees” on its verdict form is not evidence that the jury

“disregarded” instructions it was given. Nor is it evidence that the jury’s deliberations were guided by “prejudicial, extra-judicial considerations.”

Appellants do not contend that the trial court erred when it treated the jury’s inclusion of the words “plus all legal fees” on the verdict as mere surplusage, having no legal effect. *See* App. Br. at 40 (“After the trial, the parties agreed that the award of [‘all legal fees’] was clearly erroneous, and it was omitted from the final judgment.”). Nonetheless, they contend that the jury’s mere *attempt* to award attorney’s fees required a new trial. *Id.* The trial judge’s treatment of surplusage in the verdict was consistent with long-standing precedent. *See, e.g., Westbrook v. Hutchison*, 195 S.C. 101, 10 S.E.2d 145 (1940)(holding that jury’s inclusion of the words “plus costs” on its verdict form “has no legal effect and is mere surplusage.”). The fact that the jury tried to award “all legal fees” as part of its verdict is not evidence of juror misconduct. At most, it is evidence of juror ignorance regarding the limits of the jury’s authority.

Appellants’ remaining arguments have no merit and can easily be disposed. On a motion for new trial, the trial judge is required to view all evidence and reasonable inferences in a light that is most favorable to the non-moving party. The “thirteenth juror” doctrine “is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict.” *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990). The “thirteenth juror” doctrine has sometimes been referred to as “granting a new trial on the facts.” *Id.* “A trial judge’s order granting or denying a new trial on the facts will not be disturbed [on appeal] unless his decision is wholly unsupported by the evidence, or the conclusion was controlled by an error of law.” *Id.* (citing *State Highway Dept. v. Clarkson*, 267 S.C. 121, 226 S.E.2d 696 (1976)).

Clearly, there were disputed issues of fact presented to the jury. In evaluating that conflicting evidence, the jury was the “sole and exclusive judge of the facts,” considering factors

such as witness credibility, bias, and even “the way the witness acts on the stand.” Trial Tr. at 459. As the judge instructed, the jury was entitled to “believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.” We must presume that the jury followed those instructions.

Appellants presented the case they wanted to present. They called the witnesses they wanted to call. They introduced the evidence they wanted to introduce. On appeal, they do not contend that any of their evidence was improperly excluded. Nor do they contend that Cedar Grove was allowed to present evidence that should have been kept out. Appellants had their day in court, and they lost. A jury’s verdict should not be disturbed “if any evidence exists that sustains the factual findings implicit in its decision.” Smalls v. South Carolina Dep’t. of Educ., 339 S.C. 208, 217, 528 S.E.2d 682, 686 (Ct. App. 2000). Here, there is ample evidence in the record to support the jury’s verdict. The trial judge properly denied Appellant’s post-trial motions for JNOV and for new trial and entered judgment on the verdict. That judgment should be affirmed.

Section IV – Additional Sustaining Grounds

There are additional grounds for this court to sustain the trial court’s judgment. An appellate court may affirm “upon any reason appearing in the Record on Appeal.” Rule 220(c) S.C. App. Ct. R; *see also I’on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419-20, 526 S.E.2d 716, 723 (2000)(“[A] respondent – the ‘winner’ in the lower court – may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.”). Here, there are at least two additional reasons this court should affirm.

A. Even if the Estate had established that Mary Crowder satisfied each of the essential elements of a prescriptive easement claim during her lifetime, “use” of the alleged easement necessarily terminated upon Mary Crowder’s death and did not resume until at least two years later, when the Estate was opened.

Under South Carolina law, “a prescriptive easement is not implied . . . but is established by the conduct of the dominant tenement owner.” Boyd v. BellSouth Tel Tel. Co., 369 S.C.410, 419, 633 S.E.2d 136, 141 (2006). To acquire a prescriptive easement, a claimant must “identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner’s right for a period of twenty years.” Simmons v. Berkley Electric Coop., Inc., 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016). Once prescriptive rights are acquired, “our case law regarding prescriptive easements . . . refers to and requires ‘continual use’ for the easement to remain viable to subsequent claimants.” Bundy v. Shirley, 412 S.C. 292, 312, 772 S.E.2d 163, 174 (2015). While mere “diminishment in the frequency of use does not necessarily nullify [an] established right by prescription,” the continued use “must . . . be of a reasonable frequency as determined by the nature and needs of the claimant.” Id. at 312-13, 772 S.E.2d at 174.

Here, the Estate did not use the purported easement *at all* between Mary Crowder’s death on March 16, 2016 and the opening of her probate estate in April 2018. Pl.’s Answers to Int. ¶ 7, 10 & 11; *see also* S.C. Code Ann. § 62-3-701 (Supp. 2020)(“The duties and powers of a personal representative commence upon his appointment.”). That two-year lapse necessarily extinguished any prescriptive rights that would have been “earned” by Mary Crowder during her lifetime. The parties maintaining prescriptive easement claims at trial – the Estate and Jim Crowder – would have been required to “start over” to establish their own prescriptive period of use. When this case went to trial, neither the Estate nor Jim Crowder could satisfy the twenty-year requirement of

“continuous use.” That fact is fatal to the prescriptive easement claims asserted by both the Estate and by Jim Crowder, and it provides additional sustaining grounds to affirm the result of trial.

B. This action was time-barred because the Estate failed to file suit within the time required by South Carolina Code Ann. § 15-3-360.

On three occasions, Cedar Grove asked the trial court to find that the Estate’s prescriptive easement claim was time-barred because the Estate failed to bring its claim within the time required by S.C. Code Ann. § 15-3-360 (Law. Co-op. 2005).¹⁷ Each time, the court declined to find the Estate’s claim was barred. But the Estate’s claim was filed too late, and the statute of limitations provides an additional sustaining ground for this court to consider.

Initially, this court must decide whether claims for prescriptive easement are governed by the statute of limitations codified at § 15-3-360 or, instead, the statute of limitations codified at § 15-3-340. Throughout these proceedings, the Estate has argued that the statute of limitations of § 15-3-340 governs, asserting that is the “only” statute of limitations that has “ever been applied” in a prescriptive easement action. *See* Estate’s Mem. in Opp. to Mot. for S.J., at 9-10 (filed 5/31/2024). However, the only case cited by the Estate as support for that assertion, Bowen v. Team, 40 S.C.L. 298 (1853), was decided seventeen years prior to the enactment of § 15-3-360.

There is a strong presumption that, when the legislature enacted S.C. Code § 15-3-360 in 1870, it did so to prescribe a new statute of limitations for actions related to “entry upon real estate.” Section 15-3-340, first enacted in 1737 and applied in the 1853 opinion Bowen v. Team, governed (at that time) the “prosecut[ion]” of an action for any “right or title to lands, tenements or hereditaments.” The current version of § 15-3-340 prescribes the limitations period in actions

¹⁷ Cedar Grove first raised the statute of limitations through its motion for summary judgment, filed March 26, 2024. At trial, it renewed the issue through its motions for directed verdict at the close of the plaintiff’s case and, again, at the close of all evidence. *See* Trial Tr. at 275, 403.

“for the recovery of real property or for the recovery of possession of real property.” S.C. Code Ann. § 15-3-340 (Law. Co-op. 2005). A prescriptive easement action is not an action “for the recovery of real property.” Rather, it is an action for “entry upon real estate.” As our courts have recognized, “[g]enerally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation.” Langley v. Pierce, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993). Section 15-3-360, not § 15-3-340, is the statute of limitations that should apply to prescriptive easement claims.

Under §15-3-360, the Estate’s claim for prescriptive easement was time-barred when this action commenced. Section 15-3-360 provides:

No entry upon real estate shall be deemed sufficient or valid as a claim unless an action be commenced thereupon within one year after the making of such entry and within ten years from the time when the right to make such entry descended or accrued.

S.C. Code Ann. § 15-3-360 (Law. Co-op. 2005). To meet the statute of limitations, Mary Crowder would have been required to file her action within ten years “from the time when the right to make such entry descended or accrued” *and* “within one year after the making such entry.” Assuming Mary Crowder “always” used the “graveyard easement” to access her property (as the Estate alleged, and as Jim Crowder testified) her prescriptive easement rights would have “descended or accrued” in 2006 – after she had used the alleged easement for twenty consecutive years. As the Estate’s trial counsel phrased it, by 2006 “the prescriptive easement was in the bank.” Trial Tr. at 399. To “perfect” her prescriptive easement through a judicial declaration, Mary Crowder would have been required to file suit by 2016 - within ten years after the prescriptive right “descended or accrued” *and* within one year of the last date that she last “entered” the church property pursuant to her alleged prescriptive right. This action, which was not filed until 2023, was too late. As an

additional sustaining ground, this court should find that the Estate's action was barred by the statute of limitations set forth in S.C. Code Ann. § 15-3-360 (Law. Co-op. 2005).

Conclusion

Cedar Grove Baptist Church rightfully, and successfully, defended its property rights against Appellants' unwarranted attack. The trial court properly directed a verdict against Jim Crowder because he could not satisfy an essential prerequisite to bringing and maintaining a prescriptive easement claim – "ownership of a dominant tenement." Ultimately, based on the totality of evidence presented at trial, the jury found that the Estate had also failed to prove its entitlement to a prescriptive easement. The jury found Jim Crowder liable for trespass, awarding appropriate amounts of actual and punitive damages. That verdict is entitled to substantial deference. The trial judge properly entered judgment on the jury's verdict and denied Appellants' myriad post-trial motions.

There are also additional sustaining grounds for this court to affirm the result of trial. Not only did any alleged easement "rights" lapse between Mary Crowder's death in 2016 and the opening of her probate estate two years later, but she – and her Estate – waited too long to file this suit after Mary Crowder's alleged rights "descended or accrued." For each of the reasons set forth in this memorandum, the judgment should be affirmed.

October 26, 2026.



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ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

The Honorable Thomas W. McGee, III, Circuit Court Judge

Appellate Case No.: 2025-002548
Trial Court Case No.: 2023-CP-12-00288

Mary Simpson Carpenter Crowder, by and through Michael Paul
Swearingen, as Special Administrator for the Estate of Mary Simpson
Carpenter Crowder, Appellant,

v.

Cedar Grove Baptist Church, Deacons of Cedar Grove Baptist Church,
a/k/a Cedar Grove Providence Church, SCBT, and South State Bank.....
..... Respondents,

and

Cedar Grove Baptist Church, as Third-Party Plaintiff.....Respondent,

v.

James Wylie Crowder, III, as third-Party Defendant..... Appellant

CERTIFICATE OF SERVICE

The undersigned, attorney for Respondent, certifies that the Respondent's Initial Brief and Designation of Matter to be Included in Record on Appeal were served upon Appellant by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

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