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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No.: 2025-001553

Christina Olson Gecy, Trustee of the Battery Retreat Revocable Trust
dated May 28, 2021, and any amendments thereto, Appellant,

v.

Integra Wharf at Battery Creek, LLC, B. McNeal Partnership, L.P.,
Gasque & Associates, Inc., and Fifth Third Bank, N.A., Defendants,

of which Integra Wharf at Battery Creek, LLC,
and Gasque & Associates, Inc. are the..... Respondents.

BRIEF OF APPELLANT

John E. Parker, Jr.
PARKER LAW GROUP, LLP
Post Office Box 487
Hampton, SC 29924
Phone: (803) 903-1781
jayparker@parkerlawgroupsc.com

ATTORNEY FOR APPELLANT

E.W. Bennett, Jr.
148 S. Jefferies Blvd.
Post Office Box 693
Walterboro, SC 29488
Phone: (843) 549-9225
bop@lowcountry.com

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

Page:

TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE.....	5
STANDARD OF REVIEW	13
ARGUMENT	13
I. Statement of Facts.	14
II. The circuit court erred in granting summary judgment because regardless of whether an easement is granted, implied, or prescriptive, it is susceptible to the common law rule prohibiting unreasonable interference with the grantee's enjoyment of the easement, and there is evidence in the record creating a genuine dispute of fact as to whether Integra unreasonably interfered with the Highway 280 private road.	25
A. The common law applies to the terms of express easements.	25
B. Even if the 1984 easement agreement reserved the right for the servient estate to relocate the easement, Integra was precluded from doing so in a manner that unreasonably interfered with the Gecys' use of the easement.....	29
III. The circuit court erred in granting summary judgment because there is evidence supporting the creation of a prescriptive easement and that any easements were exclusive.	33
A. The record contains evidence that a prescriptive easement was created for the Belleview Bluff residents' use of the Highway 280 private road.....	33
B. There is evidence that the easements are exclusive, and the circuit court erred in failing to analyze the circumstances and language of the 1984 easement agreement.....	40

IV. There is a genuine dispute as to whether Gecy has suffered an irreparable injury as a result of Integra’s interference with the exclusive easement and permanent destruction of the Highway 280 private road.	43
V. The circuit court erred in granting the motion to strike.	45
A. The order should be reversed because the motion was untimely.	455
B. The order should be reversed or vacated because it does not specify which parts of the affidavits are being struck, and because Gecy did not have the opportunity to review or respond to Integra’s arguments prior the hearing, any specific arguments she could have made in a motion for reconsideration in response to Integra’s motion would not have been preserved.	47
CONCLUSION.....	488

TABLE OF AUTHORITIES

Cases

<i>Baughman v. Am. Tel. & Tel. Co.</i> , 306 S.C. 101, 410 S.E.2d 537 (1991)	38
<i>Boyd v. BellSouth Tel. Tel. Co.</i> , 369 S.C. 410, 633 S.E.2d 136 (2006)	34
<i>Bundy v. Shirley</i> , 412 S.C. 292, 772 S.E.2d 163 (2015)	34, 39
<i>Darlington Cnty. v. Perkins</i> , 269 S.C. 572, 239 S.E.2d 69 (1977)	34
<i>Davis v. Epting</i> , 317 S.C. 315, 454 S.E.2d 325 (Ct. App. 1994)	44
<i>Dedes v. Strickland</i> , 307 S.C. 152, 414 S.E.2d 132 (1992)	46
<i>Dunes W. Golf Club, LLC v. Town of Mt. Pleasant</i> , 401 S.C. 280, 737 S.E.2d 601 (2013)	39
<i>Goodwin v. Johnson</i> , 357 S.C. 49, 591 S.E.2d 34 (Ct. App. 2003)	13, 30
<i>Gooldy v. Storage Ctr.-Platt Springs, LLC</i> , 422 S.C. 332, 811 S.E.2d 779 (2018)	13
<i>Hancock v. Mid-S. Mgmt. Co.</i> , 381 S.C. 326, 673 S.E.2d 801 (2009)	39
<i>Highland Club of West Roxbury v. John Hancock Mut. Life Ins. Co.</i> , 327 Mass. 711, 101 N.E.2d 372 (Mass. 1951)	44
<i>Hodge v. UniHealth Post-Acute Care of Bamberg, LLC</i> , 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018)	37
<i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000)	41

<i>Hook v. Rothstein</i> , 275 S.C. 187, 268 S.E.2d 288 (1980)	13
<i>Howorka v. Harbor Island Owners Assoc.</i> , 292 S.C. 381, 356 S.E.2d 433 (Ct. App. 1987)	30
<i>Hunnicuttt v. Rickenbacker</i> , 268 S.C. 511, 234 S.E.2d 887 (1977)	44
<i>I'On, L.L.C. v. Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000)	47
<i>Johnson v. Sonoco Prods. Co.</i> , 381 S.C. 172, 672 S.E.2d 567 (2009)	47
<i>Kitchen Planners, LLC v. Friedman</i> , 440 S.C. 456, 892 S.E.2d 297 (2023)	39
<i>Lindsay v. Lindsay</i> , 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997)	29
<i>Mack v. Edens</i> , 306 S.C. 433, 412 S.E.2d 431 (Ct. App. 1991)	44
<i>Marion Cnty. Lumber Co. v. Tilghman Lumber Co.</i> , 75 S.C. 220, 55 S.E. 337 (1906)	1
<i>Morris v. Townsend</i> , 253 S.C. 628, 172 S.E.2d 819 (1970)	42
<i>Paine Gayle Props., LLC v. CSX Transp., Inc.</i> , 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012)	36
<i>Plott v. Justin Enters.</i> , 374 S.C. 504, 649 S.E.2d 92 (Ct. App. 2007)	26
<i>Romero v. Shih</i> , 15 Cal. 5th 680, 541 P.3d 1112, 317 Cal. Rptr. 3d 478 (Cal. 2024)	41
<i>S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.</i> , 275 S.C. 552, 273 S.E.2d 773 (1981)	26
<i>Shirley's Iron Works, Inc. v. City of Union</i> , 403 S.C. 560, 743 S.E.2d 778 (2013)	10

<i>Simmons v. Berkeley Elec. Coop., Inc.</i> , 419 S.C. 223, 797 S.E.2d 387 (2016)	34, 38
<i>Smith v. Comm’rs of Pub. Works</i> , 312 S.C. 460, 441 S.E.2d 331 (Ct. App. 1994)	40
<i>Snow v. Smith ex rel. Stoudenmire</i> , 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016)	31
<i>Steinke v. S.C. Dep’t of Lab., Licensing, & Regul.</i> , 336 S.C. 373, 520 S.E.2d 142 (1999)	45
<i>Stokes-Craven Holding Corp. v. McKenzie</i> , 416 S.C. 517, 787 S.E.2d 485 (2016)	13
<i>Transcon. Gas Pipe Line Corp. v. Porter</i> , 252 S.C. 478, 167 S.E.2d 313 (1969)	44
<i>Williamson v. Abbott</i> , 107 S.C. 397, 93 S.E. 15 (1917)	34
<i>Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime</i> , 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991)	31

Rules

Rule 6, SCRCP	46, 47
---------------------	--------

Other Authorities

Restatement (Second) of Contracts § 204 (Am. Law Inst. 1981)	29-30
Restatement (Third) of Prop.: Servitudes § 2.16 (Am. Law Inst. 2000)	38
Restatement (Third) of Prop.: Servitudes § 2.17	35, 37, 42
Restatement (Third) of Prop.: Servitudes § 4.1	passim
Restatement (Third) of Prop.: Servitudes § 4.2	29
Restatement (Third) of Prop.: Servitudes § 4.8	30-31, 32
Restatement (Third) of Prop.: Servitudes § 4.9	30, 42

INTRODUCTION

South Carolina's Lowcountry is experiencing unprecedented growth. From Charleston to Hilton Head, large-scale residential, commercial, and mixed-use developments are transforming coastal landscapes. For generations, historic communities of cultural value, private waterfront retreats, forested rural tracts, and modest, family-owned neighborhoods have occupied these settings. While economic and housing development stand to offer long-term benefits to the region when exercised responsibly, they must not come at the expense of settled private property rights. It is against this backdrop that this appeal arises.

At its core, this case concerns the balance between two fundamental principles deeply embedded in South Carolina law: the ability of property owners to rely on recorded plats, easements, and longstanding access rights, and servient estate owners' rights to develop their land as they see fit. When a property owner seeks to exercise the latter principle in an unfettered manner at the expense of the former, the right to develop land freely must give way to any access rights that are being unreasonably trampled upon by that development.

This is because for over a century, South Carolina courts have recognized that easement rights – whether created by plat, grant, or prescription – are property rights entitled to the same protection as fee ownership. *See Marion Cnty. Lumber Co. v. Tilghman Lumber Co.*, 75 S.C. 220, 223, 55 S.E. 337 (1906) (“It is true, the owners retained the soil and certain timber, but by their grant to plaintiff they must be held during the continuance of the easement to have abandoned every use of the land

except such as might be made consistent with the reasonable enjoyment of the easement granted.”). An easement is not a mere convenience to the owner of a dominant estate; it is a vested property interest.

However, in the Lowcountry private easement rights are increasingly being strained by fast-moving, expansive development. As development intensifies, access corridors that once served small residential subdivisions become integrated and swallowed by large-scale projects, and are often altered, relocated, and reconfigured in ways that fundamentally change their character and unfairly intrude upon the daily lives of their long-time users. What was once a quiet subdivision road can become surrounded overnight by heavy construction equipment and absorbed into the infrastructure of a busy, unsafe, high-density development project for years on end.

This case presents an important question for the Court. The question is not whether development may occur, but whether in this instance development pressures should have been allowed to substantially alter or burden existing access rights without a jury ever having the opportunity to decide whether those rights were materially impaired. The circuit court’s orders essentially hold that when an express easement contains language permitting relocation, the servient estate is permitted to exercise that relocation right *carte blanche* in connection with large-scale development, free from meaningful scrutiny from a factfinder as to reasonableness or the impact of the relocation on the easement holder. If allowed to stand, such an interpretation of a relocation provision would create a broad development tool capable

of unilaterally reshaping access rights without the possibility of jury review. Obviously, this interpretation carries implications well beyond this dispute.

South Carolina has long recognized that property rights must be exercised reasonably and without a material increase in the burden upon a dominant estate. The common law has never permitted the servient estate to unilaterally redefine the nature of an easement in an unlimited manner. This appeal therefore implicates more than the interpretation of a single easement document. It concerns the procedural and substantive protections that safeguard private access rights in a moment of this State's history where coastal growth pressure is accelerating at a breakneck pace.

STATEMENT OF ISSUES ON APPEAL

Appellant Christina Olson Gecy's life was abruptly altered for the worse beginning one day in late 2021.¹ On that day, workers hired by Respondent Integra Wharf at Battery Creek, LLC suddenly began to swarm the quiet, forested access roads leading to her residential property in the Belleview Bluff subdivision on Battery Creek in Beaufort, South Carolina. For the next several years, as a result of Integra's efforts to encircle the seven small lots of the Belleview Bluff subdivision with parking lots, retention ponds, a waste disposal unit, and a 20-acre, 216-unit apartment complex, Gecy and her family endured an endless series of roadblocks, navigational hazards, and disruptions every time they attempted to engage in a routine task that most of us can perform with our eyes closed: the simple act of leaving or returning to

¹ For consistency, Appellant will be referred to as "Gecy," "she," "her," or "the Gecys." Prior to appeal her husband, Benjamin C. Gecy, became the trustee of the Battery Retreat Revocable Trust. (R. p. 731). Gecy's motion to amend her complaint to substitute plaintiffs is currently pending before the circuit court.

one's home. The circuit court found that it was permissible for Integra to unilaterally relocate the Gecys' private access road at least 20 times, including nine times over a six-month period, because of a 1984 easement agreement that reserved to the owner of the servient estate the right to change the location of the Gecys' access road. This finding ignored how severely those changes interfered with and burdened the Gecys and other families residing in the Belleview Bluff subdivision.

The issues presented are:

1.a. Interference with Easement Rights – Governing Law: Whether any relocation right reserved by the 1984 easement agreement must give way to the common law.

1.b. Interference with Easement Rights – Burden on Dominant Estate: Whether the record presents a genuine issue of material fact as to the reasonableness of Integra's interference with the location of the access route.

2.a. Declaratory Judgment – Prescriptive Easement: Whether the record presents a genuine dispute of material fact concerning the creation of a prescriptive easement arising from long-standing adverse use of the access road, independent of any express easement.

2.b. Declaratory Judgment – Exclusive Easement: Whether the 1984 easement agreement's language and historical use of the easement evince an intent to create an exclusive easement for use of the access route by Belleview Bluff residents.

3. Permanent Injunction: Whether the record presents a genuine dispute of material fact concerning whether Integra's interference with the access road is an irreparable harm entitling Gecy to a permanent injunction.

4.a. Motion to Strike – Notice: Whether Gecy had sufficient notice under the South Carolina Rules of Civil Procedure of Integra's motion to strike prior to the hearing.

4.b. Motion to Strike – Lack of Specificity: Whether the circuit court's order striking Gecy's affidavits in opposition to the motion for summary judgment lacked the requisite specificity.

STATEMENT OF THE CASE

On December 6, 2022, Gecy brought this case against Integra and Respondent Gasque & Associates, Inc. ("Gasque"), as well as Defendants B. McNeal Partnership, L.P., and Fifth Third Bank, National Association for declaratory relief, injunctive relief, and damages after Integra destroyed, relocated, encroached upon, and interfered with Gecy's property and easements providing her with land access to Belleview Bluff. (R. pp. 148-164). As to Integra, Gecy asserted eight causes of action for (1) a declaratory judgment regarding any easements acquired by Gecy over the three access roads leading to her home at 61 Belleview Bluff, (2) adverse possession, (3) permanent injunction, (4) intentional interference with easement rights, (5) trespass, (6) nuisance, (7) civil conspiracy, and (8) slander of title. (R. pp. 159-164). As to Gasque, Gecy asserted four causes of action: (1) permanent injunction, (2)

intentional interference with easement rights, (3) civil conspiracy, and (4) slander of title.² (*Id.*).

On March 13, 2023, Integra filed an amended answer and counterclaim to Gecy's complaint which for the most part denied Gecy's allegations.³ (R. pp. 184-203). By way of counterclaim, Integra alleged two causes of action for a declaratory judgment regarding (1) whether its efforts to relocate a specific access road were authorized and proper under a 1984 easement agreement and (2) whether the repeated relocations of the access road were proper under the common law, as well as a counterclaim for interference with contractual and business relationships. (R. pp. 199-201). Gecy filed her replies to the answer and amended answer on March 31, 2023. (R. pp. 204-08). On June 14, 2023, Gasque filed its answer and denied the allegations of those causes of action directed to Gasque. (R. pp. 212-27).

Gecy and Gasque filed a joint motion on January 19, 2024, with the circuit court to dismiss the permanent injunction claim against Gasque, which was granted by a consent order filed on January 22, 2024. (R. pp. 320-321; R. pp. 4-5). On December 17, 2024, Integra filed a motion for summary judgment. (R. pp. 322-24). This was followed by a motion for summary judgment filed by Gasque on February 12, 2025. (R. pp. 325-26). The hearing on Integra's and Gasque's motions was set for

² Gasque is a surveyor in Beaufort County who first began surveying properties in Belleview Bluff and neighboring Wrights Point in the early 1990s for Bennett McNeal, a previous owner of the servient estate. (R. pp. 614, line 25 - p. 615, line 22). Gecy has alleged that Gasque conspired with Integra to slander her title to 61 Belleview Bluff by creating and publishing misleading and false plats that do not accurately represent the access easements and property at issue in this appeal. (R. pp. 163-64).

³ Integra filed its initial answer and counterclaim on February 10, 2023. (R. pp. 165-183).

May 20, 2025. (R. p. 67). Integra filed its memorandum in support of summary judgment with accompanying exhibits on May 14, 2025. (R. pp. 400-570).

Instead of arguing for summary judgment for each cause of action as raised in its prior motion, in its memorandum Integra only argued for partial summary judgment on Gecy's declaratory judgment, permanent injunction, intentional interference with easement rights, nuisance, civil conspiracy, and slander of title causes of action. (R. pp. 409-423). As to its arguments concerning the declaratory judgment, permanent injunction, and intentional interference with easement rights claims, Integra strictly confined them to Integra's actions in relocating what has been referred to as the "Highway 280 private road" (also referred to herein as the "access route" or "private road"), without addressing whether these claims should be dismissed regarding two other access roads that are the subject of Gecy's complaint, Roberta Lane and the "North Branch".⁴ (R. pp. 409-419). Prior to the hearing, Integra withdrew its argument concerning the nuisance claim, leaving only its arguments concerning the declaratory judgment, permanent injunction, intentional interference with easement rights, civil conspiracy, and slander of title claims to be heard by the circuit court. (R. p. 16).

Gasque filed its supporting memorandum on May 16, 2025. (R. pp. 576-607). Gasque argued for summary judgment on each of the three remaining claims alleged by Gecy. (R. pp. 589-607). Gasque's arguments mirrored those of Integra for the most part and asserted that Gecy could not prove her intentional interference with

⁴ Integra's motion, and the circuit court's orders, also do not implicate any of the other types of conduct alleged to have interfered with Gecy's use of the access route.

easement rights claim because Integra had either reserved an absolute right to relocate the Highway 280 private road under an express easement, or in the alternative, if there was no valid express easement agreement, then there was no other easement over that section of access road. (R. pp. 589-596). Gasque also argued there was no evidence that it had interfered with the use of any easement or property, and that Gecy could not point to evidence supporting each element of her civil conspiracy and slander of title claims against Gasque. (R. pp. 596-605).

On May 17, 2025, Gecy filed her opposing memorandum with accompanying exhibits. (R. pp. 776-816). To support her claims, Gecy relied in part on an affidavit provided by her husband, which was filed on May 16, 2025, with exhibits, as well as an affidavit and amended affidavit she filed on July 11, 2023, and December 6, 2023, respectively, in support of a July 11, 2023 motion for temporary injunction.⁵ (R. pp. 780, 801-02; R. pp. 691-738; R. pp. 279-89; R. pp. 238-46; R. pp. 228-37). Gecy argued that the 1984 easement agreement was only signed by one cotenant of the servient estate, Lewis Hicks Wright. (R. pp. 789, 794-99).

Gecy pointed to evidence supporting that Gecy's predecessors-in-title's use of the Highway 280 private road for over 20 years was open, notorious, and adverse, such that Gecy would have acquired a prescriptive easement for its use, that there were implied and express easements over the three access roads, that the common law would prohibit Integra from unreasonably interfering with the Highway 280 private road, and that Integra's acts in repeatedly moving the Highway 280 private

⁵ The motion was subsequently withdrawn by Gecy. (R. pp. 318-19).

road and overloading it with construction equipment and other hazards unreasonably interfered with Gecy's use of the road. (R. pp. 780-83, 785-86, 788-92). Gecy also argued that the easement was exclusive. (R. pp. 781-84, 789, 791-92, 795-96, 798).

The hearing on Integra's and Gasque's motions occurred on May 20, 2025. The previous day, Integra filed a motion to strike the affidavits filed in opposition to summary judgment, arguing that they were sham affidavits or were inadmissible because they were based on hearsay or conclusory statements made without firsthand knowledge. (R. pp. 817-34). The circuit court permitted arguments to proceed on the motions for summary judgment as well as the motion to strike, to Gecy's objection. (R. pp. 73, line 23 - p. 74, line 12).

Gecy argued that there was no evidence that Lewis Wright had authority to sign the 1984 easement agreement on behalf of his cotenants. (R. p. 108, line 18 - p. 111, line 12). Gecy also argued that there was evidence the Highway 280 private road had been used for over 20 years, that Integra had unreasonably interfered with the easement by repeatedly relocating the access road without explanation, confusing the Bellevue Bluff residents and anyone needing to visit the subdivision, and that this entitled Gecy to a permanent injunction. (R. p. 105, line 20 - p. 106, line 17; R. p. 111, lines 17-24, R. p. 118, lines 13-17).

On July 2, 2025, the circuit court filed orders granting partial summary judgment to Integra and summary judgment to Gasque. (R. pp. 7-35; R. pp. 36-64). The Integra order finds that portions of the Gecy affidavits are made without personal knowledge, are conclusory legal assertions, or are based on hearsay, without

specifying any statements in any of the affidavits that are being struck. (R. pp. 17-19). It also finds that that the 1984 easement agreement was valid and gave Integra the right to relocate the easement, that it precluded the creation of a prescriptive easement, and that even if it did not there was no evidence supporting the elements required to establish a prescriptive easement. (R. pp. 20-26).

The order finds that even if a prescriptive easement had been established prior to the 1984 easement agreement that it would have been subject to a common law right to relocate the access route, and that there was no evidence in the record that Integra's relocation of the road unreasonably interfered with Gecy's use and enjoyment of it. (R. pp. 26-29). Finally, the order finds that the easement rights created by the easement agreement were not exclusive, and that Gecy's permanent injunction claim failed because Integra had the right to modify the easement and there was no evidence of irreparable harm. (R. pp. 29-30).

Thus, the order granted in part Integra's motion to strike, granted in part summary judgment on Gecy's first cause of action for declaratory relief as to the Highway 280 private road only, granted in part summary judgment on the third cause of action for a permanent injunction, and granted in part summary judgment on the fourth cause of action for intentional interference with easement rights as to relocation of the Highway 280 private road only. (R. pp. 33-34). It did so even though it found that a valid express easement agreement existed.⁶ (*Id.*).

⁶ Gecy is not appealing this finding of the circuit court's order, so it is now the law of the case. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance.").

The Gasque order similarly finds that Gecy could not survive summary judgment on her intentional interference with easement rights claim because Gecy had not produced evidence establishing a prescriptive easement and because the 1984 easement agreement gave Integra the right to relocate the access route by providing that the access route “would” be moved at a future time. (R. pp. 47-53). Again, similarly to the Integra order, the Gasque order finds that there was no evidence demonstrating that the 1984 agreement creating the express easement for use of the Highway 280 private road was invalid, and it is implicit from the order’s conclusions that an express easement would have been created for use of the road until a “suitable, usable, and well maintained” alternative roadway was established. (R. p. 51) (“There is no evidence that this promise made and recorded by the Wrights to provide Belleview Bluff homeowners access to Parris Island Gateway across the Wrights’ property is invalid.”).

Gecy does not appeal any portion of the Integra or Gasque orders holding or implying that an express easement was created by the 1984 agreement, but does appeal the remaining portions referenced above concerning (1) whether Integra had an unlimited right under the 1984 easement agreement to relocate the access route, even if such relocations were unreasonable, (2) whether there was evidence in the record creating a factual dispute as to whether Integra unreasonably interfered with any easement, (3) whether there was evidence in the record creating a factual dispute as to the creation of a prescriptive easement, (4) whether the 1984 easement agreement created an exclusive easement, (5) whether there was evidence in the

record sufficient for Gecy's permanent injunction claim to survive summary judgment, and (6) Integra's motion to strike.

On July 13, 2025, Gecy filed a motion to reconsider the circuit court's July 2, 2025 order granting Integra's motion to strike and granting Integra partial summary judgment. (R. pp. 874-907). The motion notes that the circuit court had not granted summary judgment to Integra on the issue of whether the 1984 easement agreement had created an express easement, and that it had only granted summary judgment to Integra on Gecy's intentional interference with easement rights cause of action as to Integra's relocation of the Highway 280 private road. (R. pp. 878-80). Gecy argued that the circuit court erred in granting the motion to strike because it was untimely and because it did not specifically identify which parts of the affidavits were being struck. (R. p. 881).

Gecy also reiterated her arguments that (1) there was a factual dispute as to whether Integra's relocation of the Highway 280 private road was improper, (2) that there was an express grant of an easement over the Highway 280 private road, (3) that the common law did not permit Integra to relocate the Highway 280 private road in an unreasonable manner, such as by placing the relocated route in a dangerous path with heavy equipment and machinery impeding access and by altering the route at least nine times in a six-month period without notice to Gecy or emergency services, and (4) that her arguments regarding the easement and Integra's interference also supported denying summary judgment as to her permanent injunction claim. (R. pp. 883, 890, 894, 896-902). The circuit court summarily denied

the motion without explanation or clarification of its prior orders. (R. pp. 65-66). Gecy appealed all three orders on August 1, 2025. (R. pp. 908-10).

STANDARD OF REVIEW

“The question of whether an easement exists is a factual question in an action at law.” *Gooldy v. Storage Ctr.-Platt Springs, LLC*, 422 S.C. 332, 338, 811 S.E.2d 779, 782 (2018). However, questions regarding the scope of an easement are equitable matters in which a reviewing court may take its own view of the evidence. *Goodwin v. Johnson*, 357 S.C. 49, 53, 591 S.E.2d 34, 36 (Ct. App. 2003). Regardless, the Court is required to review the grant of summary judgment *de novo*, with no deference to the circuit court and with all “ambiguities, conclusions, and inferences arising in and from the evidence” viewed in a light most favorable to the non-moving party. *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 524, 787 S.E.2d 485, 489 (2016). In determining whether there are issues that must be determined by the trier of fact, the Court should review the entire record. *See Hook v. Rothstein*, 275 S.C. 187, 189, 268 S.E.2d 288, 289 (1980) (“From a review of the entire record, we conclude that the trial judge erred in granting summary judgment.”).

ARGUMENT

Due to the nature of the circuit court’s partial disposition of the summary judgment motions and the complexity of the issues, it is important from the outset to clarify which issues Gecy is appealing. The circuit court has not granted summary judgment on Gecy’s first cause of action asking for a declaration that an express easement was granted over the Highway 280 private road. Instead, the circuit court

found that on Gecy's intentional interference with easement rights cause of action, even if an express easement was granted, the easement agreement reserved the right for the owner of the servient estate to relocate the access route (in presumably unlimited fashion) and there was no evidence that Integra's conduct unreasonably interfered with any easement. As to Gecy's declaratory judgment cause of action, the circuit court found that there was no evidence that a prescriptive easement was created or that any easement was exclusive. The circuit court also found that there was not a factual dispute as to whether Gecy had suffered an irreparable injury, and that parts of Gecy's affidavits should be struck because they were based on hearsay or were conclusory. The circuit court's orders must be reversed because these findings are either based on legal error or ignore facts in the record.

I. Statement of Facts.

In 1959, the Wright family subdivided five waterfront lots along Battery Creek into what became known as Bellevue Bluff. (R. p. 250). The recorded 1959 plat depicts five adjacent residential lots facing Battery Creek, numbered one through five, a 50-foot-wide easement for a private road labeled "Roberta Lane" running along the southwestern side of each lot before turning and running to the southern edge of the depicted property, and a reserved area of roadway existing along the southeastern side of lot 1. (*Id.*). The lots are all landlocked by their adjoining lots and Battery Creek. The Wrights owned the entire property depicted on the 1959 plat:

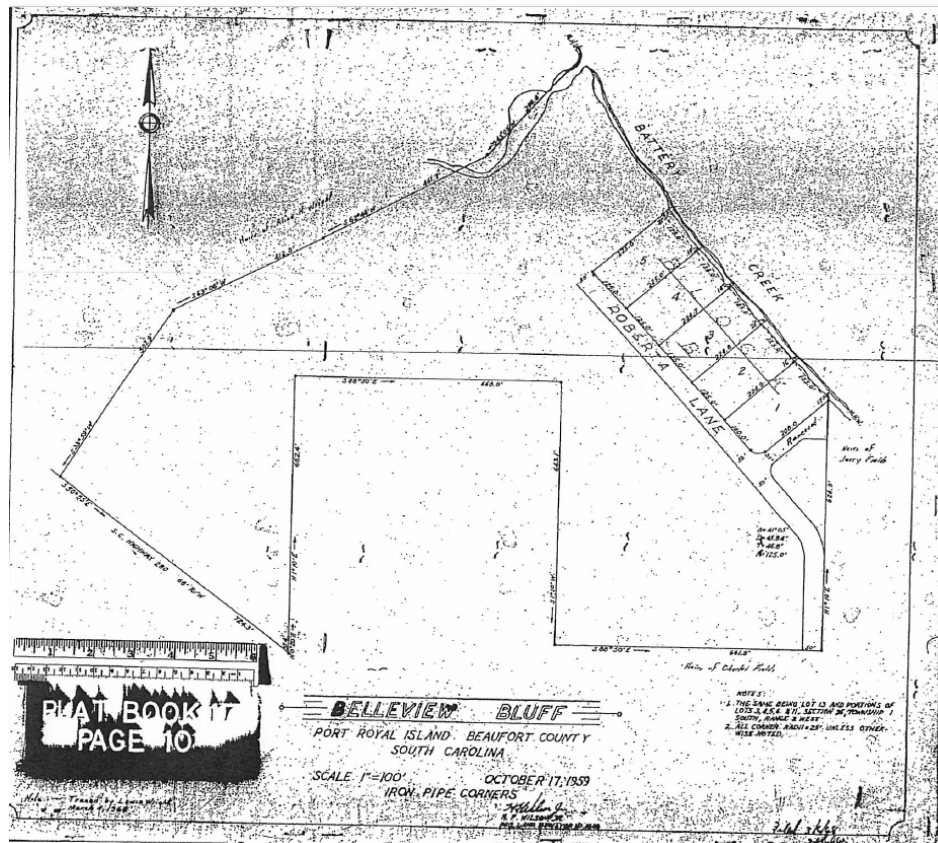


Fig. 1, 1959 Plat

Roberta Lane's inclusion in the plat was not incidental. It was the only land access to the five lots created in the subdivision depicted in the plat. (R. p. 250). From its creation, the 50-foot implied easement coinciding with Roberta Lane functioned as an access corridor for Bellevue Bluff lot owners.

In March of 1968, the Wright cotenants (Lewis H. Wright, John David Wright, Elizabeth Wright Williams, and Alice Wright Twigg) sold lot 4, which would come to be known as 61 Bellevue Bluff, to two of Gecy's predecessors-in-title, Milton L. Reynolds and Geraldine H. Reynolds, by deed recorded with the Beaufort County Register of Mesne Conveyances in book 153, page 125. (R. pp. 251-52). The deed describes that the property is bounded on the southwest by a road known as Roberta

Lane and references the 1959 plat depicting Roberta Lane. (*Id.*). It is undisputed that as of 1959 when the plat was recorded, there was no recorded right of access from the subdivided lots to a public road. All lots depicted in the 1959 plat were gradually sold.

On July 27, 1984, an “easement agreement” was signed by Lewis H. Wright, owner of a 5/8th interest in the property surrounding the Belleview Bluff subdivision.⁷ (R. p. 259). There is no evidence in the record that Lewis Wright was acting as agent for the remaining cotenants of the property other than his own representations within the easement agreement. The easement agreement recognized that as of 1984, two additional lots had been subdivided and sold out of the property. The agreement purports to bind the Wright family to providing an access easement to nearby Highway 280 from the north end of Roberta Lane 50 feet in width.⁸

The agreement also recognizes that prior to 1984, the subdivision residents had been using a dirt access road across the Wrights’ property to access Roberta Lane, the Belleview Bluff subdivision, the larger tract, and Highway 280. It states that the location of the easement had not been depicted on the 1959 plat, that if the location of the easement changed in the future it would be located in the northern and western areas of the property from Roberta Lane to Highway 280, and that the access road currently in use by the subdivision residents would remain open until a “substitute, usable, and well maintained roadway is located.”

⁷ The remaining three Wright owners each had an undivided 1/8th interest in the property.

⁸ Highway 280 is now called Parris Island Gateway/Highway 21.

The Highway 280 private road is depicted for the first time in a 1989 plat prepared for the Wright family, shown below highlighted in yellow. It is labeled as a “dirt access road.” Highway 280 is highlighted in green, and Roberta Lane is highlighted in red. (R. p. 610).

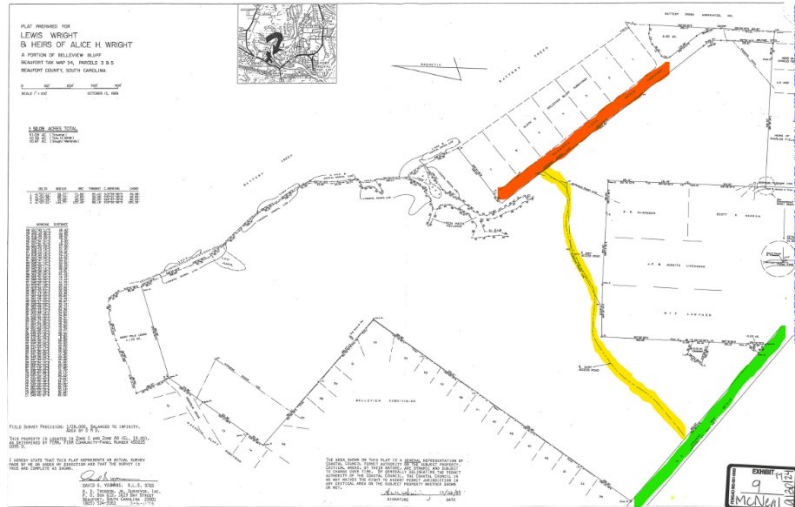


Fig. 2, 1989 Plat.

The totality of the evidence, including the 1984 easement agreement, supports that the Highway 280 private road has been used exclusively for ingress and egress to Bellevue Bluff since it was developed in 1959. (R. p 240). David Gasque, owner of Respondent Gasque & Associates, Inc., stated that the Highway 280 private road was the road being used by the owners at the time of the 1984 easement agreement. (R. p. 557, lines 6-22). Gecy, who is now 50 years old, stated that when she first visited the property over 20 years ago, the Highway 280 private road was the same road used to access the subdivision, and that it had not changed since. (R. p. 837, line 1 - p. 838, line 5).

Bruce Jackson, a resident of 73 Bellevue Bluff since 1979 and the first person to live in Bellevue Bluff, stated that he was using the road the entire time he lived there, and that everyone who moved into the subdivision had to use the road as well or “come by boat”, meaning that there was no other land route accessing the subdivision. (R. p. 254; R. p. 581; R. p. 690, lines 3-8). Jackson testified that the Wrights knew that the lot owners were using the road, that they never tried to stop or block the residents from accessing the route, and that they were aware it was the only way to access the subdivision. (R. p. 684, lines 15-25). Jackson stated that he “believed” he had permission to use the road. (R. p. 686, lines 1-18). When specifically asked if the subdivision owners had permission to use the dirt road, Jackson originally stated that they did have permission to exit the property but then clarified that “Yeah, at least They never told us *not* to use it. They never blocked it Left it open for years and years and years.” (R. p. 690, lines 13-23).

In 1999, Bennett McNeal and Defendant B. McNeal Partnership, L.P. began purchasing substantial acreage from the Wright family, including the land surrounding the Bellevue Bluff subdivision (parcels A, B, D, and Roberta Lane as depicted in Figure 3), with the intent of developing the property.⁹ (R. p. 669, lines 1-5; R. pp. 441-68; R. pp. 481-93; R. pp. 470-71). McNeal gave the residents of Bellevue Bluff permission to use the Highway 280 private road, which could only have occurred in 2002 when he purchased parcel A. (R. p. 669, line 21 - p. 670, line 3); *see supra* note 9.

⁹ The Highway 280 private road is depicted as being located in Parcel A. (R. pp. 470-71).

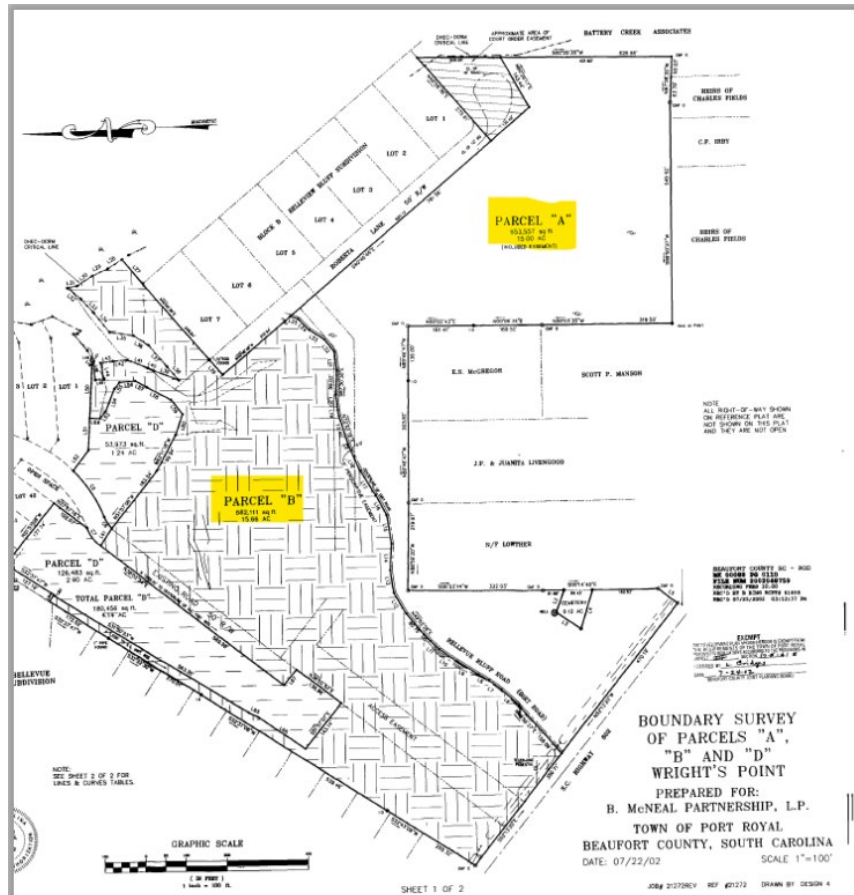


Fig. 3, 2002 Boundary Survey Plat, Parcels A, B, and D.

Portions of parcels A, B, and D, and Roberta Lane were then combined into an apartment parcel of 20.82 acres. (R. p. 501).

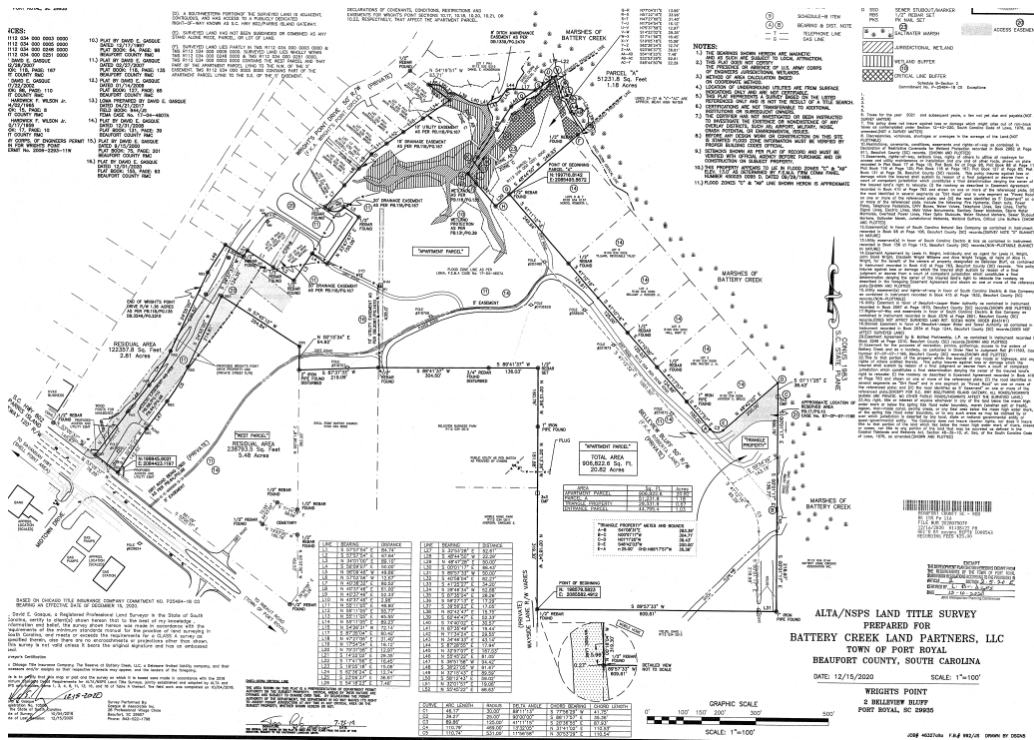


Fig. 4, 2020 ALTA/NSPS Plat.

This along with 1.18 acres remaining in parcel A were conveyed from the McNeal Partnership to The Reserve at Battery Creek, LLC (“RABC”) on December 15, 2020. (R. pp. 495-99). This property was sold with plans to convert the apartment parcel into a 200-plus unit apartment complex after the project went through an approval process with the Town of Port Royal while it was under contract. (R. p. 475, lines 3-23; R. p. 479, lines 1-19).

On May 28, 2021, Gecy purchased lot 4, 61 Bellevue Bluff from James R. Bellamy III after searching for about 20 years for a waterfront home to eventually retire in and leave to her children. (R. pp. 503-505; R. pp. 700-01). The deed refers to the 1959 plat depicting Roberta Lane and the reserved area as access routes for the home. At the time of the purchase, Roberta Lane and the Highway 280 private road

were functioning as private access routes for the Bellevue Bluff subdivision and were in active use, there was no construction or apartment buildings in the vicinity, and the character of the area was a quiet, forested, waterfront community of seven lots. (R. pp. 701-03). Gecy understood that that property would have highway access via the established access routes and even expended money to improve Roberta Land and the Highway 280 private road. (*Id.*).

RABC conveyed the property to Integra on April 28, 2022. (R. pp. 538-47). Prior to this conveyance, RABC recorded a plat on February 7, 2022, depicting a proposed access easement that would not coincide with the location of the Highway 280 private road, and instead would be located further to the north and west. (R. p. 549).

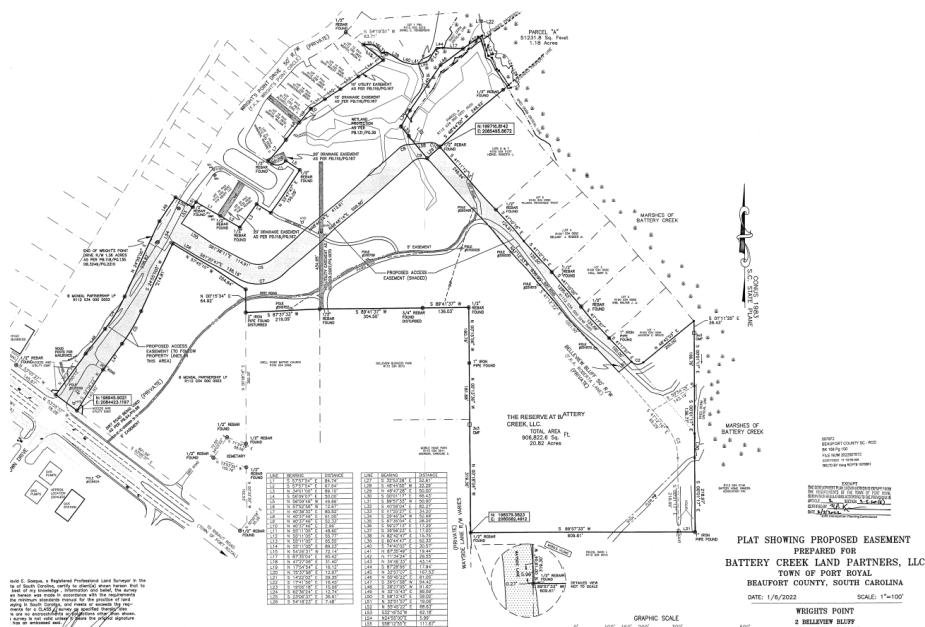


Fig. 5, 2022 Proposed Easement Plat (proposed easement in shaded area).

This was because Integra was planning to construct its 216-unit apartment complex, which would be called Integra Wharf at Battery Creek, directly on top of the Highway 280 private road.¹⁰ (R. p. 285; R. p. 721).

The first six months of the Gecy's occupancy of 61 Bellevue Bluff were peaceful and quiet. (R. p. 702). One day in November of that year, the residents of Belleview Bluff received an unexpected visit from an agent for Integra, who informed them that Integra was prepared to begin bulldozing and site preparation for the apartment complex. (R. p. 678, lines 1-17). After inquiring with the Town of Port Royal, the Gecys were led to believe that Integra would leave the currently existing access roads as they were and would not alter or change them without consulting with the residents of Belleview Bluff. (R. p. 285). This did not happen.

By winter, construction had commenced across Roberta Lane from the Belleview Bluff homes. (R. p. 284). Without any warning to the residents of Belleview Bluff, Integra began occupying their access routes and property. (R. pp. 706-07). As more and more Integra workers and equipment began to pour into and block the easements permitting access to Belleview Bluff, Gecy became alarmed and contacted the manager and planning administrator for the Town of Port Royal, both of whom assured the Gecys that the easements would be maintained, that they had not been terminated, and that Integra would only phase out any routes after input from and meetings with the Belleview Bluff residents. (R. pp. 707-09). A few weeks later, Integra began tearing up both Roberta Lane and the Highway 280 private road. (R. p. 711).

¹⁰ The apartment complex is now called Integra at Wrights Point.

During the construction of the apartment complex, Integra created a new access route through the middle of the construction project for use by the workers and the Belleview Bluff residents. (R. p. 711). Over the next two years, the location of this route was altered at least 20 times. (R. p. 285). During one six-month period, Integra changed the access route nine times. (R. p. 712). There is no explanation documented in the record of why these changes were made so frequently. These changes were made without any notice, instruction, or warning to the residents of Belleview Bluff. (*Id.*).

The Gecys and anyone visiting the subdevelopment were forced to navigate within an active construction site. Heavy construction equipment, machinery, and constructions workers obstructed ingress and egress to Belleview Bluff daily by clogging the roadway and narrowing its width to less than 12-feet in some areas. (R. pp. 717-18; R. p. 287). Due to the constant relocation of access routes, during a period of 2023 GPS services could not provide correct directions to 61 Bellevue Bluff, with many visitors becoming lost within the construction zone or being guided into areas that were not open to the public. (R. p. 712).

Ride shares and delivery services began refusing to provide service to 61 Bellevue Bluff, and on many occasions the postal service and trash collection would not visit the residence. (R. p. 286). The Beaufort County 911 Dispatch Office's access map reflected a route that had been closed by Integra without notice, such that if emergency services needed to reach any homes in the subdivision, their access would be blocked. (R. p. 285; R. pp. 717-18). Law enforcement and other public officials

would become confused when responding to calls to the residence regarding the construction project. (*Id.*). The Gecy family has experienced multiple flat tires because of nails left in the roadway by construction workers, and in June of 2023 Mr. Gecy collected over two dozen nails and screws in a 100-yard stretch of the access route. (R. p. 287; R. p. 719). Another visitor's vehicle was damaged when she could not fit through a space blocked by Integra workers. (R. p. 287).

Over time, the safety of the access routes continued to decline due to the conduct of Integra's workers within the roadways, which included operating heavy equipment in a threatening manner towards the Gecys. (R. pp. 286-87). The perilous nature of simply being located within the easements came to a head on September 12, 2023. (R. p. 287; R. p. 720). On that day, a construction worker who was in the process of building a privacy wall within the 50-foot easement of Roberta Lane was killed when a skid steer being operated by another worker flipped over and pinned him underneath it. (*Id.*).

Gecy has itemized a list of pecuniary damages that were directly caused in part by Integra's interference with the Highway 280 private road. These include the diminution in value of her home, loss of rental income during the period in which construction was ongoing, attorney fees and costs, monies expended in the improvement of the Highway 280 private road, waste disposal fees due to the inaccessibility of the home, and property damage to family vehicles. (R. pp. 727-30). As of today, the development project has been completed, and the Gecys now use a roadway created by Integra that contains curbing, parking pads, speed limit signs,

light poles, water lines, sewer lines, power lines, telephone lines, and utility cables within their easement, and they must share this roadway with hundreds of apartment residents. A 216-unit apartment complex sits where the quiet, forested dirt lane once led to the Belleview Bluff subdivision.

II. The circuit court erred in granting summary judgment because regardless of whether an easement is granted, implied, or prescriptive, it is susceptible to the common law rule prohibiting unreasonable interference with the grantee's enjoyment of the easement, and there is evidence in the record creating a genuine dispute of fact as to whether Integra unreasonably interfered with the Highway 280 private road.

The circuit court's order applies general contract principles and in effect finds that the 1984 easement agreement created an unlimited contractual right for Integra to relocate the Highway 280 private road regardless of whether any changes to the access route would burden or interfere with the easement holders' use of the road. (R. pp. 20-22, 33). The order granting summary judgment to Gasque makes a similar finding. (R. pp. 49-53). South Carolina law has never permitted such an unrestrained right for a servient estate to meddle with an easement. The orders are in error because they ignore the common law rule governing unilateral relocations of easements by the servient estate and ignore evidence in the record supporting that Integra unreasonably interfered with the easement.

A. The common law applies to the terms of express easements.

The 1984 easement agreement grants an exclusive, 50-foot express easement for the residents of Bellview Bluff subdivision to have access to Parris Island Gateway

over the Wright property depicted in the 1959 plat. The express easement provides that:

1. Seven (7) lots have been sold out of this property. There is no right of ingress and egress shown on said plat.
2. There is shown Roberta Lane as fifty (50) feet wide. We hereby bind ourselves that there will be an entrance from these lots from the Northern end of said Roberta Lane to SC highway # 280 fifty (50) feet wide.
3. That the location of said ingress and egress at this point in time is not designated on said plat, and firmly designated because of natural barriers and also in the future the location of this *may* change.
4. That it is agreed and understood that this right of way shall be on the Northern and Western portions of said property and shall be from Roberta Lane to SC Highway # 280.
5. That there is a roadway being used by the owners of said lots at this time and this roadway shall remain open until a substitute, usable, and well maintained roadway is relocated. That this right of ingress and egress shall be for the benefit of the present and future owners of the lots designated and any future lots developed in *this* subdivision.

THIS AGREEMENT is for the benefit not only for the owners of said lots in *this subdivision, but for any person, corporation, association, or lending institution that gives loans to any portions of this property.*

(R. p. 259) (emphasis added).

“Clear and unambiguous language in grants of easement must be construed according to terms which parties have used, taken, and understood in plain, ordinary, and popular sense.” *S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). “The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it.” *Plott v. Justin Enters.*, 374 S.C. 504, 514, 649 S.E.2d 92, 96 (Ct. App. 2007).

“A servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding creation of the servitude, and to carry out the purpose for which it was created.” Restatement (Third) of Prop: Servitudes § 4.1 (Am. Law Inst. 2000). This rule departs from the view that “servitudes should be narrowly construed to favor the free use of land.” *Id.* at § 4.1 cmt. a.

In interpreting expressly created servitudes, the expressed intention of the parties is of primary importance. Their intention is ascertained from the servitude’s language interpreted in light of all the circumstances. Relevant circumstances include the location and character of the properties burdened and benefited by the servitude, the use made of the properties before and after creation of the servitude, the character of the surrounding area, the existence and contours of any general plan of development for the area, and the consideration paid for the servitude

Because servitudes are interests in land, subject to the Statute of Frauds and the recording acts, heavy emphasis is placed on the written expressions of the parties’ intent. The fact that servitudes are intended to bind successors to interests in the land, as well as the contracting parties, and are generally intended to last for an indefinite period of time, lends increased importance to the writing because it is often the primary source of information available to a prospective purchaser of the land. The language should be interpreted to accord with the meaning an ordinary purchaser would ascribe to it in the context of the parcels of land involved. Searching for a particular meaning adopted by the creating parties is generally inappropriate because the creating parties intended to bind and benefit successors for whom the written record will provide the primary evidence of the servitude’s meaning. These factors lead to the conclusion that the same principles should be applied to interpret servitudes created by donative transfers and condemnation.

In many instances, ascertaining the intentions or reasonable expectations of the parties will not resolve all disputed questions as to the scope and terms of a servitude. Section 4.2 states that the default rules set forth in §§ 4.3 through 4.12 should be used to supplement the specific terms ascertained under this section.

Id. at § 4.1 cmt. d.

The circuit court's orders essentially interpret the 1984 easement agreement as reserving to the servient estate the right to unilaterally relocate the Highway 280 private road as it sees fit, even if relocating the route unreasonably interferes with and places a burden on the use of the easement, simply because it had a term providing that the location of the easement could potentially change in the future. This interpretation is in error because nowhere within the language of the agreement does it ever grant the owner of the servient estate such an expansive, indefinite right. The agreement acknowledges that there was no easement depicted on the 1959 plat creating access to Highway 280, that there was an access route being used by the residents, that there was an easement for use of that access route by the residents to reach Highway 280, that it was possible that the access route would be changed in the future, and that the easement would not be relocated until a "substitute, usable, and well maintained" roadway was created connecting the northern end of Roberta Lane to Highway 280.

The circumstances surrounding the creation of the easement were as follows: (1) the dominant estates were seven small residential lots that were landlocked and surrounded the servient estate, (2) the Highway 280 private road had been used for decades before and after the 1984 easement agreement exclusively by the Belleview Bluff residents and their visitors for ingress and egress to the lots, (3) the forested, undeveloped nature of the servient estate and the dirt access road, and (4) the lack of evidence of any further general plan of development of the servient estate at the time

of the agreement. When viewed in light of these circumstances and the 1984 easement agreement's plain language requiring relocations to be "usable" and "well maintained", it is evident that the drafters clearly intended that any relocation of the Highway 280 private road was to be done in a reasonable manner so as to avoid interfering with or burdening the residents' ability to use and enjoy the access route for ingress and egress. To the extent that the orders find that the 1984 easement agreement permitted Integra to alter the location of the subject road without condition, the orders are in error and must be reversed.

B. Even if the 1984 easement agreement reserved the right for the servient estate to relocate the easement, Integra was precluded from doing so in a manner that unreasonably interfered with the Gecys' use of the easement.

To the extent that the language of the 1984 easement agreement could be considered ambiguous in that it does not contain language explicitly permitting or prohibiting unlimited, unreasonable alterations in the location of the Highway 280 private road, any gaps in the terms of the 1984 easement agreement may be supplemented by a court or sections of the Restatement (Third) of Property: Servitudes. Restatement (Third) of Prop.: Servitudes § 4.1 cmt. d. ("Section 4.2 states that the default rules set forth in §§ 4.3 through 4.12 should be used to supplement the specific terms ascertained under this section."); *Id.* at § 4.2; *cf. Lindsay v. Lindsay*, 328 S.C. 329, 343, 491 S.E.2d 583, 590 (Ct. App. 1997) ("[W]here an agreement is silent as to a particular matter and because of the nature and character of the transaction an ambiguity arises, parol evidence may be admitted in order to supply a deficiency in the language of the contract."); Restatement (Second) of Contracts § 204

(Am. Law Inst. 1981) (“When the parties to a bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court.”).

South Carolina law provides that “[t]he grantor of an easement retains dominion and use of the servient land only to the extent his actions do not interfere with the grantee’s reasonable enjoyment of the easement.” *Howorka v. Harbor Island Owners Assoc.*, 292 S.C. 381, 385, 356 S.E.2d 433, 436 (Ct. App. 1987); *see also* Restatement (Third) of Prop.: Servitudes § 4.9. Additionally, this Court has favorably cited the Restatement (Third) of Property: Servitudes § 4.8 in determining whether the owner of a servient estate was permitted to unilaterally relocate an easement. *See Goodwin*, 357 S.C. at 55-56, 591 S.E.2d at 37 (“The approach adopted by the *Soderberg* court is consonant with the position adopted by the drafters of the Restatement (Third) of Property: Servitudes § 4.8 (2000), which provides that, in certain situations, the owner of the servient estate can relocate an easement unilaterally.”).

(3) Unless expressly denied by the terms of an easement, . . . the owner of the servient estate is entitled to make *reasonable* changes in the location or dimensions of an easement, at the servient owner’s expense, to permit normal use or development of the servient estate, but only if the changes do not

(a) significantly lessen the utility of the easement,

(b) increase the burdens on the owner of the easement in its use and enjoyment, or

(c) frustrate the purpose for which the easement was created.

Restatement (Third) of Prop.: Servitudes § 4.8(3) (emphasis added). This is consistent with South Carolina law providing that “the rights of the easement owner are paramount to those of the landowner as to the easement” *Snow v. Smith ex rel. Stoudenmire*, 416 S.C. 72, 86, 784 S.E.2d 242, 249 (Ct. App. 2016).

The 1984 easement agreement is indeterminate as to the location of the Highway 280 private road easement except that it provides its dimensions (50 feet), and its termini: the northern end of Roberta Lane and Highway 280. Therefore, Integra was permitted to relocate the access route, but only if the changes were reasonable and did not significantly lessen the utility of the easement or interfere with Gecy’s use and enjoyment of the easement. This Court has found that placing obstacles within an easement frustrates its purpose when they restrict the dominant estate’s use to less than the full easement area granted. *See Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 172, 410 S.E.2d 580, 582 (Ct. App. 1991) (“We agree with Xanadu’s contention that the grant of easement in issue here is specific in terms as to the easement’s width Since it is so, the easement cannot be constricted to any degree by the placement of parking spaces thereon.”).

The Integra order states that in opposing summary judgment, Gecy has confused “the legal concept of overburdening easements,” then appears to reason that the dominant estate can create an undue burden on the servient estate, but not vice versa. (R. p. 27) (“Overburdening pertains to situations where the *dominant estate owner* – in this case Plaintiff – excessively uses the easement or engages in actions

that create an undue burden on the servient landowner (here, Integra).”). This is confusing because in the same section of the order, the circuit court states that Restatement (Third) of Property: Servitudes § 4.8(3) is the rule, and that a servient estate is only entitled to make reasonable changes in the location of an easement if the changes do not “increase the burdens on *the owner of the easement*”. (R. p. 26).

There is evidence in the record supporting that Integra’s acts in unilaterally relocating the easement and rerouting it through an active construction site lessened its utility and increased the burdens on the dominant estate, even if the 1984 easement agreement reserved a limited right for Integra to relocate the easement. Integra altered the location of the easement at least *20 times* during the construction of the apartment complex. (R. p. 285). During one six-month period, Integra changed the access route nine times without notice or warning, with no valid explanation for this appearing in the record. (R. p. 712). Anyone visiting the subdevelopment was forced to navigate construction equipment, machinery, and constructions workers clogging the roadway and narrowing its width. (R. p. 717-18; R. p. 287).

Due to the constant relocation of access routes, GPS services could not provide correct directions to 61 Bellevue Bluff. (R. p. 712). Ride shares and delivery services began refusing to provide service to 61 Bellevue Bluff, and on many occasions the postal service and trash collection would not visit the residence. (R. p. 286). Law enforcement would even become confused when responding to calls to the residence regarding the construction project. (R. p. 717-18). The Gecy family has experienced multiple nails resulting in flat tires on their vehicles, and in June of 2023 Mr. Gecy

collected over two dozen nails and screws in a 100-yard stretch of the access route. (R. p. 287; R. p. 719). Another visitor's vehicle was damaged when she could not fit through a space blocked by Integra workers. (R. p. 287).

The easement is now filled with curbing, parking pads, and other infrastructure restricting the Gecy's ability to use its entire 50-foot width for ingress and egress to their property. (R. pp. 732-37). Even if the 1984 agreement permitted relocation, the reasonableness of twenty relocations during active construction is plainly a factual question for the jury. Because there is a genuine factual dispute as to whether Integra has burdened and interfered with the easement created by the 1984 agreement, it was error for the circuit court to grant summary judgment on this issue.

III. The circuit court erred in granting summary judgment because there is evidence supporting the creation of a prescriptive easement, and that any easements were exclusive.

The circuit court partially granted summary judgment on Gecy's declaratory judgment claim by finding that there was no evidence that a prescriptive easement had been established by use of the Highway 280 private road, and that any easements were non-exclusive. The orders must be reversed because the record is replete with evidence creating genuine factual disputes as to these issues.

A. The record contains evidence that a prescriptive easement was created for the Belleview Bluff residents' use of the Highway 280 private road.

Even if an express easement for use of the Highway 280 private road had not been created by the 1984 easement agreement, the circuit court's order is still

erroneous because there is a factual dispute as to whether a prescriptive easement was created by the Belleview Bluff residents' use of the road. "A prescriptive easement is not implied by law 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 establish a prescriptive easement, the claimant must prove "(1) the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use [was] adverse under claim of right." *Darlington Cnty. v. Perkins*, 269 S.C. 572, 576, 239 S.E.2d 69, 71 (1977).

[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterrupted, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse." *Williamson v. Abbott*, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917). The test for a prescriptive easement is therefore simplified as follows: "In order to establish a prescriptive easement, the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years." *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016).

Successive uses of land by different persons may be tacked, or added together, to satisfy the prescriptive period. Tacking is permitted when the successive adverse users are in privity of estate. Although the requirement of privity has been variously defined, the prevailing view is that there must be some relationship whereby the successive users have come into possession under or through their predecessors in interest.

Bundy v. Shirley, 412 S.C. 292, 313, 772 S.E.2d 163, 175 (2015).

“‘Open’ generally means that the use is not made in secret or stealthily. It may also mean that it is visible or apparent.” Restatement (Third) of Prop.: Servitudes § 2.17(h). “‘Notorious’ generally means that the use is actually known to the owner, or is widely known in the neighborhood.” *Id.* The Gecy affidavits attest that the Gecys’ use of the Highway 280 private road was open and notorious. (R. pp. 694-695, 699). Jackson’s testimony establishes that since he purchased his property in 1979, the residents of Belleview Bluff, which would necessarily include Gecy’s predecessors-in-title, were using the road the entire time, and that everyone who moved into the subdivision had to use the road as well or “come by boat.” (R. pp. 253-57; R. p. 581; R. p. 690, lines 3-8). Jackson testified that the Wrights knew that the lot owners were using the road, that they never tried to stop or block the residents from accessing the route, and that they were aware it was the only way to access the subdivision. (R. p. 684, lines 15-25).

Gasque stated that the Highway 280 private road was the road being used by the owners at the time of the 1984 easement agreement. (R. p. 557, lines 6-22). Gecy, who is now 50 years old, stated that when she first visited the property over 20 years ago the Highway 280 private road was the same road used to access the subdivision, and that it had not changed since. (R. p. 837, line 1 - p. 838, line 5). Not only does the totality of evidence create a genuine dispute of material fact as to whether the use was open and notorious, it also creates a dispute as to whether the evidence establishes continuous use by the residents, including Gecy’s predecessors-in-title, for over 20 years dating back to 1968, and at least to 1979.

Gecy's predecessors-in-title, the Reynolds, purchased the property in 1968. (R. pp. 428-29). Jackson stated that as of 1979, all the owners in Belleview Bluff were using the Highway 280 private road. The 1984 easement agreement documents that the owners were already using the private road, and that its use was open and notorious to the Wright family. Jackson's and Gecy's testimony, as well as the recorded plats, demonstrate that the private road continued in existence and was the sole means for owners to access the lots at Belleview Bluff up until the time that it was destroyed by Integra. This means that as of 1988, and if resolving all inferences *against* Gecy, 1999, the use of the private road had been continuous, open, and notorious for at least 20 years.

Thus, the burden shifted to Integra to point to undisputed evidence in the record demonstrating that the Belleview Bluff residents' use of the Highway 280 private road was not adverse. 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. *Paine Gayle Props., LLC v. CSX Transp., Inc.*, 400 S.C. 568, 584, 735 S.E.2d 528, 537 (Ct. App. 2012). The circuit court's order erroneously finds that the 1984 easement agreement was undisputed evidence of permission. The circuit court's order fails to account for the fact that while the 1984 easement agreement is evidence that one cotenant of the servient estate gave permission for it to be used to access Highway 280, it is not evidence that the residents' continued use of the private road after 1984 was permissive as to the remaining three cotenants.

There is no evidence in the record that Wright was acting as an agent for his cotenants at the time he signed the 1984 easement agreement. *See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 566, 813 S.E.2d 292, 304 (Ct. App. 2018) (“An agency may not be established solely by the declarations and conduct of an alleged agent.”). Therefore, there are still unresolved factual questions concerning whether the residents’ use of the private road was adverse, open, and notorious as to the remaining cotenants, and so long as the use was open, notorious, and continuous for over 20 years, it is presumed that a prescriptive easement was created. Restatement (Third) of Prop.: Servitudes § 2.17 illus. 29 (“Baker and Charlie are cotenants of Happyacre. Baker granted an easement to Echo Charlie then fenced in Happyacre Echo then removed the gate In the absence of other facts or circumstances, the conclusion would be justified that Echo’s use is adverse and open and notorious as to Charlie.”).

The Integra order also finds that McNeal gave the residents permission to use the Highway 280 private road. (R. p. 24). However, McNeal did not own parcel A, which contains the access route, until 2002. (R. pp. 461-64; R. p. 470). This was at least 23 years after Jackson’s testimony demonstrated use of the road dating back to 1979 at the latest. Additionally, the orders find that the testimony of Gasque and Jackson establish that the residents’ use was permissive. However, Gasque’s testimony only indicates that others told him that they were “just using that easement,” which is not probative of whether such use was permissive. (R. p. 553, lines 2-25, R. p. 556, lines 1-18, R. p. 559, line 6 - p. 560, line 4).

Any hearsay evidence is not admissible for the purpose of a summary judgment motion. *See Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 111, 410 S.E.2d 537, 543 (1991) (stating that materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence.). And even if the evidence were admissible, Gasque provided an important qualification of the hearsay statements concerning permission: it was always “understood” by the residents that they could use the road. (R. p. 560, lines 3-4). This testimony is not undisputed evidence establishing that the residents’ use of the access road was permissive. Instead, the circuit court’s order conflates the difference between “permission” and “acquiescence.”

“In most states . . . acquiescence simply means the owner failed to interrupt the use by legal or physical means,” which implies passive assent as opposed to a grant of permission. Restatement (Third) of Prop.: Servitudes § 2.16, Reporter’s Note *Adverse uses, Comment f*. A personal belief regarding permissiveness is “irrelevant when determining the existence of a prescriptive easement.” *Simmons*, 419 S.C. at 232, 797 S.E.2d at 392. Gasque’s qualification of his testimony concerning the resident’s belief of permissive use, in which he states that they understood or believed they were permitted to use the road, is reinforced by Jackson’s testimony that the Wrights never tried to stop or block the residents from accessing the route, that he “believed” he had permission to use the road, and that in fact “[t]hey never told us *not* to use it. They never blocked it Left it open for years and years and years.” (R. p. 684, lines 15-25, R. p. 686, lines 1-18, R. p. 690, lines 13-23). There is no direct

or circumstantial evidence that any of the cotenants of the Wright property ever gave permission to any of the residents of Bellview Bluff to use the Highway 280 private road to cross their property, and there is no evidence that any of the residents of Bellevue Bluff ever asked permission to use the access road. The evidence only permits the inference that at best, the cotenants acquiesced to its use.

The circuit court also erred in stating that Gecy at the summary judgment stage was required to prove the elements of a prescriptive easement claim by clear and convincing evidence. In a trial on the facts, a prescriptive easement must be proven by clear and convincing evidence. *Bundy*, 412 S.C. at 306, 772 S.E.2d at 170-71. However, this only increases the quantum of evidence required to defeat a motion for summary judgment to “more than a mere scintilla of evidence.” *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009) (“[I]n cases requiring a heightened burden of proof or in cases applying federal law, we hold that the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment.”); *see also Dunes W. Golf Club, LLC v. Town of Mt. Pleasant*, 401 S.C. 280, 298, 737 S.E.2d 601, 610 (2013) (applying “more than a mere scintilla” standard for denying summary judgment in a case requiring a showing of clear and convincing evidence to the trier of fact). This standard has not been overruled by the Supreme Court. *See Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 464, 892 S.E.2d 297, 301 (2023) (“To the extent what we said in *Hancock* is inconsistent with our decision today, *Hancock* is overruled.”).

To the extent that the circuit court's order also finds that even if there was a prescriptive easement, Integra did not abuse any common law right to relocate the access route, this finding is in error for all the reasons previously discussed. There is evidence that the relocated access route significantly reduced the utility of the easement, increased the burden on Gecy in her use and enjoyment of the easement, and frustrated the purpose for which the easement was created. Since the Respondents did not carry their burden of pointing to any undisputed evidence establishing that the use of the private road was permissive and not adverse, there is a genuine dispute as to whether a prescriptive easement was created.

B. There is evidence that the easements are exclusive, and the circuit court erred in failing to analyze the circumstances and language of the 1984 easement agreement.

The circuit court's order also finds that the 1984 easement agreement did not create an exclusive easement for use of the Highway 280 private road by the Belleview Bluff residents which would have precluded Integra from using the easement to provide ingress and egress to its apartment complex. The order states that "[a]bsent an express provision in a grant or a reservation, an easement is not an exclusive interest in the burdened land." (R. p. 29). However, "the general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it." *Smith v. Comm'rs of Pub. Works*, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994).

An exclusive easement exists when created by express grant and the written instrument either explicitly provided or clearly implied a right to exclusive use of the

easement area. *Romero v. Shih*, 15 Cal. 5th 680, 691, 541 P.3d 1112, 1117, 317 Cal. Rptr. 3d 478, 484 (Cal. 2024). The 1984 easement agreement specifically states that it is providing an entrance from the lots of the Belleview Bluff subdivision with a 50-foot wide easement, that the Highway 280 private road was being used by the owners of Belleview Bluff, that in the event a relocation was necessary that it was to remain open until a substitute, usable, and well maintained roadway was relocated, and vitally, that the easement was “for the benefit of the present and future owners of the lots designated and any future lots developed in *this* subdivision”, as well as “any person, corporation, association, or lending institution that gives loans to any portions of *this* property.”

There is no contrary language contained within the agreement and no language purporting to create an easement for anyone other than the owners of Belleview Bluff, their invitees, their guests, or financial institutions with an interest in property within the subdivision. By specifically choosing to incorporate language restricting the benefits of the easement solely to owners within the Belleview Bluff subdivision and their lenders, the easement agreement implies that this use is to the exclusion of others. *Cf. Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“The canon of construction ‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’”).

The order states that an exclusive easement is an “unusual right,” suggesting that such easements are disfavored by South Carolina law without citing any

authority for this proposition. To the contrary, South Carolina case law simply provides that an exclusive agreement may be created when the language of an easement evinces such an intention.

If a railroad company acquires an easement to lay tracks and to operate a railroad across land it would hardly be argued that the landowner was privileged to use the train. If a telephone company acquired an easement to erect poles and wires for the transmittal of telephone messages it would hardly be argued that the landowner acquired the right to connect a telephone. By a like token, in this case the defendant acquired an easement to extend the waters of his lake onto the property of the adjoining landowners, and it cannot be logically argued that the landowners have acquired the right to use of the water and the lake it composes for their own benefit. The gist of the creation of the easement in this case is in order that the defendant may have and operate his own lake. He acquired an interest in plaintiffs' land; the plaintiffs have acquired no interest in defendant's water. If in these examples cited the landowner is to acquire an interest in the railroad track or in the telephone lines or in the lake waters, the rights would have to appear in the instruments creating the easements.

Morris v. Townsend, 253 S.C. 628, 635, 172 S.E.2d 819, 822 (1970). Additionally, a prescriptive easement is exclusive if prior use of the easement was exclusive. Restatement (Third) of Prop.: Servitudes § 2.17 cmt. a.; *see also id.* at § 4.9 cmt. d. ("The type of easement and the use made of the easement area before and after the creation of the servitude will often indicate whether the servient owner's use of the improvements is reasonably within the uses contemplated by the parties.").

In this case, the 1984 easement agreement clearly states that the purpose of the easement is to provide the residents of Belleview Bluff (and only a few other specified parties) access to the public highway from the subdivision. There is no evidence that the Wrights ever used the easement road during the years after the agreement was made, and the evidence only indicates that the Highway 280 private

road was an undeveloped dirt track leading through a forest for decades prior to and after the 1984 easement agreement, and that this road was used by the residents of Belleview Bluff as well as their guests. This evidence further supports that Integra interfered with the easement because its relocation efforts and alteration of the access route frustrated the purpose for which the easement was created. Because the circuit court's orders fail to analyze the language of the agreement or even attempt to discern the purpose of the easement or the drafter's intent in light of all the relevant circumstances, the orders must be reversed, or at minimum, vacated and remanded to the circuit court with instructions.

IV. There is a genuine dispute as to whether Gecy has suffered an irreparable injury as a result of Integra's interference with the exclusive easement and permanent destruction of the Highway 280 private road.

The circuit court's order also granted Integra's motion for summary judgment as to Gecy's permanent injunction cause of action, stating that because Gecy could not prove any theory to support a claim for an easement, and because she had not identified an irreparable harm, she was not entitled to an injunction. Because the record contains evidence demonstrating that an express or prescriptive easement had been established, and that Integra repeatedly interfered with the easement by obstructing it with physical structures, changing its route, encroaching upon it, and permanently altering the nature of its use, Gecy has demonstrated a genuine issue of fact as to whether an easement was created and whether Integra interfered with the easement.

And as to whether the evidence is sufficient to create a genuine dispute as to whether Gecy can demonstrate irreparable harm and the absence of an adequate remedy at law with regards to Integra's interference with the Highway 280 private road, "[t]here is no doubt that the court has the power to restrain the erection or require the removal of buildings or structures which permanently encroach on land over which another has such an easement where such encroachment will interfere with the use of the easement." *Highland Club of West Roxbury v. John Hancock Mut. Life Ins. Co.*, 327 Mass. 711, 714, 101 N.E.2d 372, 375 (Mass. 1951); *see Davis v. Epting*, 317 S.C. 315, 318-19, 454 S.E.2d 325, 327-28 (Ct. App. 1994) (finding that the circuit court did not err in granting a permanent injunction enjoining the defendant from impeding the plaintiff's easement). An injunction may "properly issue to protect rights acquired under an easement." *Transcon. Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969); *cf. Mack v. Edens*, 306 S.C. 433, 437, 412 S.E.2d 431, 437 (Ct. App. 1991) ("Injunction is a proper remedy for a continuous trespass to land. Because of the permanent and recurring nature of the injury, which cannot otherwise be prevented, the courts should enjoin the continuous trespasser to protect the landowner's property rights from hurt or destruction."). South Carolina case law recognizes that injunctive relief is not limited to preventing future violations; in an appropriate case, a court may issue a mandatory injunction requiring a defendant to remove a structure already erected. *Hunnicut v. Rickenbacker*, 268 S.C. 511, 515, 234 S.E.2d 887, 889 (1977).

If Integra's relocation of the easement destroyed the Gecys' exclusive use of the easement, lessened its utility, burdened its use, and permanently precluded them from using the full extent of the granted easement area, then it renders the Gecys' easement useless, defeats the purpose of the easement, and causes irreparable harm that damages cannot remedy. This fits into the category of disputes where the only relief that fully restores the property right is equitable relief directed at the interfering conduct and obstruction itself. Since Integra's interference with the easement is irreparable in that it is permanent, substantial, and ongoing, and the only adequate remedy is for the circuit court to enjoin the interference with the easement, it was error to partially dismiss Gecy's claim for a permanent injunction on summary judgment.

V. The circuit court erred in granting the motion to strike.

The circuit court's order regarding Integra's motion to strike should be reversed for two reasons. First, the motion should have been continued or denied without prejudice for being untimely. Second, the circuit court's order strikes "statements made without personal knowledge, hearsay, conclusory facts, conclusory allegations, and legal assertions," but one can only speculate as to which specific statements the circuit court found to be inadmissible. A motion to strike is reversible if the circuit court abuses its discretion in granting the motion. *Steinke v. S.C. Dep't of Lab., Licensing, & Regul.*, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999).

A. The order should be reversed because the motion was untimely.

Integra filed its motion on 5:15 p.m. on May 19, 2025, the day before the hearing on Integra's and Gasque's motions for summary judgment. Rule 6(d), SCRPC, provides that "[a] written motion other than one which may be heard *ex parte*, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules or by an order of the court." "[W]e construe the rule to require that specific notice of the day certain fixed for the hearing must be furnished not later than ten days prior to such hearing unless the exceptions stated in Rule 6(d), SCRPC, apply." *Dedes v. Strickland*, 307 S.C. 152, 154, 414 S.E.2d 132, 134 (1992). The circuit court did not fix a shortened time for service of the motion by order.

This issue was raised by counsel for Gecy at the hearing in which he argued for a continuance: "Also I got served this morning by Attorney Koutrakos on behalf of Integra with a motion to strike my client's affidavit that I filed in opposition, the motion for summary judgment. And I didn't get it. I printed it off the case record site about 9:15 this morning. So I hadn't had time to research or respond to that." (R. p. 73, line 23 - p. 74, line 3). Integra's untimely filing of the motion violated the spirit of Rule 6(d) and prejudiced Gecy because it left her with no time to consider the arguments raised by Integra or amend her affidavits to address the concerns regarding personal knowledge, hearsay, and legal conclusions. As such, the motion should have been continued or denied without prejudice to refile, and to the extent that it formed a basis for the circuit court's summary judgment orders, the motions for summary judgment should have been continued as well to permit Gecy time to file

responsive, amended affidavits and arguments in response to those raised by the motion to strike.

B. The order should be reversed or vacated because it does not specify which parts of the affidavits are being struck, and because Gecy did not have the opportunity to review or respond to Integra's arguments prior the hearing, any specific arguments she could have made in a motion for reconsideration in response to Integra's motion would not have been preserved.

As outlined above, because Integra waited until after close of business on May 19, 2025, to move to strike the affidavits, Gecy did not have an opportunity to respond to the arguments raised within the motion.¹¹ The circuit court's July 2, 2025 order granting the motion to strike only provides that the motion is granted as to "those parts of the affidavit that include" "statements made without personal knowledge, hearsay, conclusory facts, conclusory allegations, and legal assertions." (R. p. 19). It does not specify which specific paragraphs of the affidavits are being struck.

Because Gecy did not have the opportunity to respond by argument or with amended affidavits prior to the circuit court's hearing and order due to the lateness of the motion, it was imperative that she raise any arguments concerning the admissibility of any specific statement in her motion for reconsideration. "[A]ll parties should raise all necessary issues and arguments to the lower court and attempt to obtain a ruling." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000). However, "[a]n issue may not be raised for the first time in a motion to reconsider." *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570

¹¹ While Benjamin Gecy's affidavit was not filed until May 16, 2025, as permitted by Rule 6(d), SCRPC, his affidavit is parallel in substance and content to Christina Gecy's affidavits, which were filed on December 6, 2023, and July 11, 2023.

(2009). Thus, by refusing to continue or deny the motion to strike, the circuit court's order placed Gecy in the impossible position of trying to advance arguments that were already barred under issue preservation rules by the time she had the opportunity to present them.

Gecy could only speculate as to what was being struck, what arguments needed to be made for the circuit court to reconsider the order, and what could have been done to amend any affidavits to cure any objectionable content. Because the orders only grant partial summary judgment, this action will continue as to Integra, and by striking unspecified paragraphs of the Gecy affidavits the orders could have a material impact on the evidence in this case as well as Gecy's remaining causes of action against Integra and the remaining Defendants. If the Court finds that the untimely motion was not meaningfully prejudicial to Gecy, it should at minimum vacate the portion of the order striking Gecy's affidavits and remand to the circuit court with instructions for it to specifically provide which parts of the affidavits have been struck.¹²

CONCLUSION

For the foregoing reasons, and those advanced by Appellant before the circuit court, Appellant respectfully requests the Court reverse the orders granting partial summary judgment to Respondents on Appellant's first, third, and fourth causes of

¹² To be clear, the circuit court's order also provides that "the granting of summary judgment by the court in this matter is not reliant upon the striking of portions of the aforementioned affidavits. The court finds that regardless, there are no genuine issues of material fact as to the issues upon which summary judgment is granted" (R. p. 19).

action, granting Integra's motion to strike, and denying Appellant's motion for reconsideration.

Respectfully submitted,

By: /s/John E. Parker, Jr.
John E. Parker, Jr.
PARKER LAW GROUP, LLP
Post Office Box 487
Hampton, South Carolina 29924
Phone: (803) 903-1781
Fax: (803) 903-1793
jayparker@parkerlawgroupsc.com

AND

E.W. Bennett, Jr.
148 S. Jefferies Blvd.
Post Office Box 693
Walterboro, SC 29488
Phone: (843) 549-9225
bop@lowcountry.com

ATTORNEYS FOR APPELLANT

October 23, 2026
Hampton, South Carolina