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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.

**REPLY BRIEF OF APPELLANT AS TO RESPONDENT GASQUE &
ASSOCIATES, INC.**

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TABLE OF CONTENTS

Page:

TABLE OF AUTHORITIES	iii
ARGUMENT.....	2
I. Gecy does not seek full reversal of the judgment dismissing Gasque and challenges only the discrete easement rulings within the Gasque order that mirror the Integra order and could otherwise bind her in the continuing litigation against Integra.	2
II. Gasque’s abandonment and two issue rule arguments answer a question this appeal does not present.	4
A. Gecy agrees that the judgment in Gasque’s favor may be affirmed on the unchallenged, independent grounds.	4
B. The two issue rule determines the ultimate fate of judgments, but it does not insulate from appellate review legal conclusions contained within those judgments that remain at the center of a live controversy.....	4
C. If the Court affirms the judgment as to Gasque, it should do so expressly upon the unchallenged grounds, while reversing or vacating the circuit court’s easement analysis.	6
III. Gecy’s prescriptive easement arguments are preserved, and her acknowledgment that the 1984 easement agreement created a valid express easement forecloses nothing.....	7
A. The circuit court ruled on the issue, so no Rule 59(e) motion was required to preserve it.....	7
B. Validity and adversity are different questions: the 1984 easement agreement is not evidence that the non-signing cotenants permitted the residents’ use.....	8
C. The only “permission” identified in the record came decades too late or was no permission at all.	10
IV. The 1984 easement agreement does not confer the unconditioned relocation right that Gasque defends, as Gasque itself ultimately concedes.	10

TABLE OF CONTENTS - cont'd

Page:

V. Gecy's silence as to the remainder of Gasque's brief is not acquiescence.....	12
CONCLUSION	13

TABLE OF AUTHORITIES

Page(s):

Cases

<i>Atlantic Coast Builders & Contractors, LLC v. Lewis</i> , 398 S.C. 323, 730 S.E.2d 282 (2012)	5
<i>Bundy v. Shirley</i> , 412 S.C. 292, 772 S.E.2d 163 (2015)	8
<i>Elam v. S.C. Dep’t of Transp.</i> , 361 S.C. 9, 602 S.E.2d 772 (2004)	7
<i>Goodwin v. Johnson</i> , 357 S.C. 49, 591 S.E.2d 34 (Ct. App. 2003)	12
<i>Herron v. Century BMW</i> , 395 S.C. 461, 719 S.E.2d 640 (2011)	6
<i>Hodge v. UniHealth Post-Acute Care of Bamberg, LLC</i> , 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018)	9
<i>Howorka v. Harbor Island Owners’ Assoc.</i> , 292 S.C. 381, 356 S.E.2d 433 (Ct. App. 1987)	12
<i>Martin v. Bay</i> , 400 S.C. 140, 732 S.E.2d 667 (Ct. App. 2012)	11
<i>Shirley’s Iron Works, Inc. v. City of Union</i> , 403 S.C. 560, 743 S.E.2d 778 (2013)	1
<i>Simmons v. Berkeley Elec. Coop., Inc.</i> , 419 S.C. 223, 797 S.E.2d 387 (2016)	10
<i>Skywaves I Corp. v. Branch Banking & Trust Co.</i> , 423 S.C. 432, 814 S.E.2d 643 (Ct. App. 2018)	5
<i>Thompson v. Killian</i> , 447 S.C. 177, 924 S.E.2d 606 (2025)	4,5

TABLE OF AUTHORITIES – cont’d

Page(s):

Rules

Rule 59, SCRCP	7
Rule 208, SCACR.....	4
Rule 220, SCACR	4

Other Authorities

Restatement (Third) of Property: Servitudes § 2.17	9
Restatement (Third) of Property: Servitudes § 4.8	11

Gasque’s brief mounts a spirited defense of a judgment that is not under attack. Gecy¹ does not ask this Court for full reversal of the circuit court’s order granting summary judgment to Gasque. She does not challenge the dismissal of her civil conspiracy and slander of title claims against Gasque, and she does not challenge the circuit court’s independent conclusion that there was no evidence that Gasque’s own conduct interfered with any easement or property right. If the only question presented by this appeal were whether the judgment dismissing Gasque should stand, there would be little left for the parties to discuss.

But the Gasque order does more than dismiss Gasque. Interwoven throughout it are legal conclusions concerning the scope and meaning of the 1984 easement agreement and the evidence supporting the creation of a prescriptive easement that are materially identical to the conclusions contained in the Integra order. Those conclusions sit at the heart of a live, ongoing controversy between Gecy and Integra in this Court, where Gecy seeks reversal of the Integra order, and in the circuit court, where several of Gecy’s claims against Integra remain pending.² Because “[a]n unappealed ruling is the law of the case and requires affirmance,” Gecy could not safely leave those overlapping rulings unchallenged in either order. *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). Had she

¹For consistency with her opening brief, Appellant is referred to herein as “Gecy,” “she,” “her,” or “the Gecys.” Respondent Gasque & Associates, Inc. is referred to as “Gasque,” and Respondent Integra Wharf at Battery Creek, LLC is referred to as “Integra.”

²Because the circuit court granted Integra only partial summary judgment, several of Gecy’s claims against Integra, including her claims concerning Roberta Lane and the North Branch, as well as her adverse possession, trespass, and nuisance claims, remain pending below. (R. pp. 33-34; Appellant’s Br. 7, 10-11).

appealed the circuit court's easement analysis only as it appears in the Integra order, she would today be confronting an argument that the identical, unappealed conclusions in the Gasque order had become the law of the case and required affirmance as to Integra. Gecy's challenge to those discrete rulings in the Gasque order is therefore protective and necessary. It is not, as Gasque supposes, a vague or half-hearted attempt to resurrect claims she has plainly released.

Once the limited scope of this appeal as to Gasque is brought into focus, most of Gasque's brief simply falls away. Its abandonment and two issue rule arguments defeat an appeal that Gecy has not taken. Its preservation and waiver arguments misread both the record and Gecy's position. And its merits arguments largely defend rulings that Gecy does not contest, while quietly conceding the very point that matters most: that the mere existence of the 1984 easement agreement "does not resolve the reasonableness of relocation or the alleged burden/interference dispute between Appellant and Integra." (Gasque Br. 26).

ARGUMENT

I. Gecy does not seek full reversal of the judgment dismissing Gasque and challenges only the discrete easement rulings within the Gasque order that mirror the Integra order and could otherwise bind her in the continuing litigation against Integra.

Gecy's opening brief stated precisely what she is, and is not, appealing. She is not appealing "any portion of the Integra or Gasque orders holding or implying that an express easement was created by the 1984 agreement." (Appellant's Br. 11). What Gecy is appealing, among other things, is "(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, [and] (3) whether there was evidence in the record creating a factual dispute as to the creation of a prescriptive easement” (*Id.*).

As those rulings appear in the Gasque order specifically, and with regard to Gasque’s arguments on appeal, Gecy challenges two of them: the conclusion that the 1984 easement agreement gave the servient estate an effectively unconditioned right to relocate the Highway 280 private road, and the conclusion that no evidence in the record creates a genuine factual dispute as to the creation of a prescriptive easement.³ (R. pp. 47-53). She does not challenge the circuit court’s rulings dismissing the civil conspiracy and slander of title claims and its independent conclusion that Gasque’s own conduct did not interfere with any easement.

The reason for this posture is not mysterious, and Gasque’s professed confusion about “what exactly is being appealed” is difficult to credit. (Gasque Br. 16-17). The circuit court issued two orders on the same day resting upon a shared easement analysis. The two orders interpret the same instrument, evaluate the same prescriptive use evidence, and reach the same conclusions in materially identical terms. Under the law of the case principle Gasque invokes throughout its brief, an erroneous easement ruling left unappealed in one order could be wielded against Gecy notwithstanding her successful challenge to the identical ruling in the other. Gecy therefore appealed the overlapping easement conclusions in both orders, not to revive

³ In its brief, Gasque does not argue that there is no evidence in the record supporting that Integra interfered with an easement.

her dismissed claims against Gasque, but to ensure that the circuit court's erroneous easement analysis does not survive in any form to prejudice the continuing litigation against Integra.

II. Gasque's abandonment and two issue rule arguments answer a question this appeal does not present.

A. Gecy agrees that the judgment in Gasque's favor may be affirmed on the unchallenged, independent grounds.

Gasque goes to considerable lengths to establish that Gecy has abandoned her civil conspiracy and slander of title claims and that she does not separately argue that Gasque's own conduct satisfied the elements of intentional interference with easement rights. (Gasque Br. 16-21). Those rulings are unchallenged by design, and the judgment dismissing Gasque may be affirmed upon them. *See* Rule 220(c), SCACR (the appellate court may affirm upon any ground appearing in the record on appeal). The concession costs Gecy nothing, because she does not ask this Court to disturb those parts of the judgment. Gasque's extended treatment of Rule 208(b)(1)(B), SCACR, and the abandonment cases it cites, answer a question that this appeal does not present.

B. The two issue rule determines the ultimate fate of judgments, but it does not insulate from appellate review legal conclusions contained within those judgments that remain at the center of a live controversy.

Gasque's two issue rule argument fails for the same reason. Under that rule, "where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Thompson v. Killian*, 447 S.C. 177, 195, 924 S.E.2d 606, 616

(2025). The rule is, by its terms and in every application Gasque cites, a rule about the *affirmance of judgments*. In *Thompson*, the appellant sought reversal of a dismissal but appealed only one of the two grounds supporting it. The appeal was therefore dismissed regardless of the merits of the appealed ground. *Thompson*, 447 S.C. at 195-96, 924 S.E.2d at 615-16. In *Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 452, 814 S.E.2d 643, 654 (Ct. App. 2018), the appellant sought reversal of a summary judgment while leaving an independent supporting ground unchallenged. And in *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 284-85 (2012), an unappealed ground for liability barred consideration of the appellant's arguments against the judgment. In each case, the rule did exactly one thing: it precluded full reversal and required the judgment to stand.

Gecy accepts that result here. The judgment dismissing Gasque will stand whether or not this Court reaches the easement rulings she challenges, because the unchallenged, independent grounds support it. But nothing in *Thompson*, *Skywaves*, or *Atlantic Coast Builders* holds that an appellant who accepts a judgment is thereby barred from obtaining review of specific, independent, erroneous legal conclusions within the underlying order where, as here, those conclusions duplicate rulings in a companion order that *is* fully contested, and where leaving them unreviewed would hand the remaining adversary a law of the case argument it did not earn. The law of the case doctrine upon which the two issue rule rests is precisely *why* Gecy was

required to appeal the overlapping conclusions in both orders. Gasque cannot simultaneously invoke that doctrine and fault Gecy for taking it seriously.

Nor is there any merit to the suggestion that the challenged rulings were not fairly raised. “When an issue is not specifically set out in the statements of issues, the appellate court may nevertheless consider the issue if it is *reasonably clear* from an appellant’s arguments.” *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011). Issues 1.a, 1.b, and 2.a of Gecy’s statement of issues on appeal squarely present the interpretation of the 1984 easement agreement and the sufficiency of the prescriptive easement evidence, and her statement of the case expressly identified the portions of *both* orders being appealed. (Appellant’s Br. 4, 11-12). No one has been left to “grope in the dark”: Gasque’s own brief demonstrates, in considerable detail, that it understood exactly which rulings are challenged and why. (Gasque Br. 17-18, 21-26).

C. If the Court affirms the judgment as to Gasque, it should do so expressly upon the unchallenged grounds, while reversing or vacating the circuit court’s easement analysis.

Because the unchallenged grounds independently support the judgment, the Court need not, and should not, endorse or adopt the circuit court’s interpretation of the 1984 easement agreement or its prescriptive easement analysis in order to affirm as to Gasque. Gecy respectfully requests that any affirmance of the Gasque judgment expressly state that it rests upon the unchallenged, independent grounds: the abandonment of the civil conspiracy and slander of title claims and the unappealed conclusion that Gasque’s own conduct did not interfere with any easement, and that

any affirmance at minimum vacates the Gasque order's easement analysis, which remains fully contested in the appeal of the Integra order. Such a disposition affirms the judgment Gasque is entitled to defend while ensuring that the disposition as to Gasque carries no preclusive or law of the case consequence for the issues that remain in genuine dispute between Gecy and Integra.

III. Gecy's prescriptive easement arguments are preserved, and her acknowledgment that the 1984 easement agreement created a valid express easement forecloses nothing.

Gasque argues that Section III of Gecy's opening brief should be "ignore[d] . . . entirely" because her cotenant argument is unpreserved and because her acknowledgment of the circuit court's findings implying a valid express easement exists renders a prescriptive easement "impossible." (Gasque Br. 21-24). Both arguments fail.

A. The circuit court ruled on the issue, so no Rule 59(e) motion was required to preserve it.

Gasque contends that Gecy's argument concerning the non-signing cotenants is unpreserved because "the Circuit Court did not rule on or otherwise address this argument" and Gecy filed no Rule 59(e) motion as to the Gasque order. (Gasque Br. 24-25). But South Carolina requires a Rule 59(e) motion only "when an issue or argument has been raised, *but not ruled on*, in order to preserve it for appellate review." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis added). Here, the argument was raised in Gecy's opposition to summary judgment, as Gasque concedes, and the circuit court ruled on it. (Gasque Br. 23). The Gasque order expressly addressed and rejected any challenge to the enforceability

and validity of the 1984 easement agreement, finding that “[t]here 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.” (R. p. 51). The same order then relied upon the agreement as conclusive evidence of permission defeating adversity. (R. pp. 47-53). An issue raised to and ruled upon by the circuit court is preserved for appellate review. Nothing in *Elam* requires Gecy to ask the circuit court to repeat itself.

Gasque’s preservation argument also mischaracterizes the argument it seeks to bar. Gecy does not contend on appeal that the 1984 easement agreement is invalid, a contention that would matter only if she were attempting to undo the express easement, which she is not. Her point is narrower and entirely consistent with the agreement’s validity: a recorded writing executed by a single cotenant holding a 5/8 undivided interest is not evidence that the *three non-signing cotenants* permitted the residents’ use of the Highway 280 private road, and the adversity of that use as to those cotenants therefore remains a question for the jury. (Appellant’s Br. 36-37).

B. Validity and adversity are different questions: the 1984 easement agreement is not evidence that the non-signing cotenants permitted the residents’ use.

Gasque builds its waiver argument on a false equivalence: that because “evidence of permissive use defeats the establishment of a prescriptive easement,” the existence of a valid express easement makes a concurrent prescriptive easement “impossible,” citing *Bundy v. Shirley*, 412 S.C. 292, 310, 772 S.E.2d 163, 173 (2015). (Gasque Br. 23-24). *Bundy*’s rule presupposes permission from the owner against

whom the prescriptive claim is asserted. Where the servient estate is held by cotenants, permission granted by one cotenant says nothing about the adversity of the use as to the others. The Restatement makes the point directly:

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.

Restatement (Third) of Prop.: Servitudes § 2.17 illus. 29 (Am. Law Inst. 2000). And under South Carolina law, “[a]n agency may not be established solely by the declarations and conduct of an alleged agent.” *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 566, 813 S.E.2d 292, 304 (Ct. App. 2018). Lewis Wright’s recitals within the 1984 easement agreement are therefore incompetent to establish that he acted for his cotenants, and no other evidence in the record supplies that authority. (Appellant’s Br. 36-37). There is accordingly no contradiction, much less a waiver, in Gecy’s position. The 1984 easement agreement validly binds the interest of its signatory and his successors, including Integra. Whether the residents’ decades of use was adverse as to the remaining cotenants is a separate, unresolved factual question.

Gasque is in a poor position to complain about alternative theories in any event. Below, Gasque itself argued in the alternative: that 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.” (Appellant’s Br.

8; R. pp. 589-96). A plaintiff opposing summary judgment is entitled to the same latitude. Gecy's decision not to appeal the express easement holding reflects her acceptance of that ruling, not a surrender of her alternative prescriptive theory, which addresses a different question and different parties' interests.

C. The only “permission” identified in the record came decades too late or was no permission at all.

The remaining evidence of permission fares no better, for the reasons developed in Gecy's opening brief and incorporated here. (Appellant's Br. 17-18, 33-40). McNeal did not acquire Parcel A, the parcel containing the Highway 280 private road, until 2002, by which time the residents' use of the road had already been open, notorious, continuous, and uninterrupted for more than twenty years, dating from at latest 1979 and on this record from 1968. (Appellant's Br. 36-38). Whatever McNeal permitted in 2002 is not evidence of permission during the prescriptive period. And Jackson's testimony, that the Wrights “never told us not to use it,” “never blocked it,” and “[l]eft it open for years and years and years” describes acquiescence, not permission, and a claimant's personal belief about permission is “irrelevant when determining the existence of a prescriptive easement.” (R. p. 690, lines 13-23); *see Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 232, 797 S.E.2d 387, 392 (2016). On this record, and under the summary judgment standard requiring all inferences to be drawn in Gecy's favor, the creation of a prescriptive easement is a question for the jury in the dispute that remains: the one between Gecy and Integra.

IV. The 1984 easement agreement does not confer the unconditioned relocation right that Gasque defends, as Gasque itself ultimately concedes.

Gasque defends the circuit court’s conclusion that because the 1984 easement agreement “explicitly contemplated relocating the dirt access road,” the agreement “foreclose[d]” any interference theory premised upon the relocations. (Gasque Br. 24-26). That reading treats paragraph 5 of the agreement as though it ended with the words “shall remain open until it is relocated.” It does not. The roadway “shall remain open *until a substitute, usable, and well maintained roadway is relocated.*” (1984 Easement Agreement) (emphasis added). Under Gasque’s own authority, “[t]he language of an easement determines its extent,” and clear language “must be construed according to terms which parties have used, taken, and understood in plain, ordinary, and popular sense.” *Martin v. Bay*, 400 S.C. 140, 149, 732 S.E.2d 667, 672 (Ct. App. 2012). In its plain and ordinary sense, the instrument conditions any closure or relocation of the existing roadway upon the provision of a qualifying substitute that is usable and well maintained. In other words, any relocations must be reasonable. It nowhere licenses the servient owner to relocate the route twenty times through an active construction site, nine times in a single six-month span, without notice, explanation, or any pretense of a usable substitute. (Appellant’s Br. 23-24, 32-33).

The common law supplies the same limitation. This Court has favorably cited Restatement (Third) of Property: Servitudes § 4.8(3), under which the servient owner may make only *reasonable* changes to an easement’s location, and only if the changes do not significantly lessen the easement’s utility, increase the burdens on the easement holder, or frustrate the purpose for which the easement was created.

Goodwin v. Johnson, 357 S.C. 49, 55-56, 591 S.E.2d 34, 37 (Ct. App. 2003); *see also Howorka v. Harbor Island Owners' Assoc.*, 292 S.C. 381, 385, 356 S.E.2d 433, 436 (Ct. App. 1987) (the servient owner “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”). Whether the relocations here satisfied either the instrument or the common law is quintessentially a jury question, for the reasons set out at length in Gecy’s opening brief. (Appellant’s Br. 25-33).

Gasque ultimately concedes the point. After arguing that the relocation language defeats any interference claim against Gasque, Gasque acknowledges that the agreement “does not resolve the reasonableness of relocation or the alleged burden/interference dispute between Appellant and Integra.” (Gasque Br. 25-26). That concession is dispositive of the only portion of the relocation analysis Gecy challenges. If the 1984 easement agreement does not resolve the reasonableness of the relocations as between Gecy and Integra, then the circuit court’s broader conclusion, that the agreement permitted the servient estate to alter the location of the subject road without condition, cannot stand, and it certainly cannot be permitted to harden into the law of the case against Gecy in her continuing dispute with Integra. Whatever the relocation language may mean for Gasque’s own liability, a question Gecy no longer presses, the interpretation embedded in both orders is erroneous and should be corrected.

V. Gecy’s silence as to the remainder of Gasque’s brief is not acquiescence.

Gecy does not respond to Sections III.A.iii, III.B, and III.C of Gasque’s brief, which argue that Gasque’s own conduct did not interfere with any easement and that the civil conspiracy and slander of title claims fail on their merits. Those sections defend rulings Gecy does not challenge, and a reply addressed to them would waste this Court’s time. Gecy notes only that her non-response should not be mistaken for agreement with Gasque’s characterizations of the record, including its repeated assertions that the plats at issue were in all respects accurate, that the residents’ use of the access roads was permissive, that Gecy’s claims rest upon a “fundamental misunderstanding” of surveying practice, and that Gecy has no evidence of manipulation or conspiratorial conduct by Respondents or actual damages resulting from disparagement of title. (Gasque Br. 6, 7, 15, 29, 32). Those characterizations remain disputed, and to the extent they bear upon the issues pending against Integra, they are addressed in Gecy’s opening brief, were argued to the circuit court, and need not be repeated here.

CONCLUSION

For the foregoing reasons, and those advanced in her opening brief, Gecy respectfully requests that the Court: (1) to the extent it affirms the judgment dismissing Gasque, do so expressly upon the unchallenged, independent grounds identified above, without adopting the circuit court’s interpretation of the 1984 easement agreement or its prescriptive easement analysis, (2) reverse or vacate the portions of the Gasque order concluding that the 1984 easement agreement conferred an unconditioned right to relocate the access route and that no genuine issue of

material fact exists as to the creation of a prescriptive easement, and (3) make clear that its disposition as to Gasque carries no preclusive or law of the case effect upon the issues remaining in dispute between Gecy and Integra.

Respectfully submitted,

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