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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.

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INTRODUCTION

Integra's brief rests on three mischaracterizations. It recasts the circuit court's orders as deciding only a narrow question about the completed roadway while defending a judgment that extinguishes Gecy's claims concerning the relocations themselves. It claims preservation defaults for issues that were briefed in opposition to summary judgment, argued at the hearing, expressly ruled upon in the orders on appeal, and pleaded by Integra itself as a counterclaim. And it faults Gecy's evidence for failing to recite the language of legal standards, demanding magic words where the law requires only facts.

What Integra's brief does not do is engage the facts that matter. It does not dispute that the access route serving Belleview Bluff was relocated at least 20 times, including nine times in one six-month period, without notice to the residents or to emergency services, or that Integra tore up the existing roadway years before any completed substitute existed. It does not dispute the nails in the roadway, the choke points narrower than 12 feet, the outdated 911 dispatch map, the refused deliveries, or the obstacles currently located within the 50-foot easement. Integra does not deny the character of the prior access road, that Gecy's predecessors-in-title utilized the Highway 280 access road for ingress and egress uninterrupted from the beginning of the subdivision, that the owners of the servient estate were aware the residents were using the roadway, and that there is no evidence a majority of the owners ever gave the residents express permission to use it. Integra instead asks the Court to treat

everything that came before the finished pavement as somebody else's lawsuit and to ignore everything factually relevant to the current access road.[1]

Nor does Integra defend the analytical gap at the center of the orders. The circuit court held that the 1984 easement agreement's relocation clause authorized what Integra did, but it measured Integra's conduct concerning the entire easement, and not just the pavement itself, against no standard at all, not the clause's own conditions, not this Court's precedent governing relocation of express easements, and not the Restatement factors, which it applied only to the roadway in an alternative prescriptive easement analysis. Under each of those standards, the record presents genuine issues of material fact that belong to a jury. The orders should be reversed.

ARGUMENT

I. Gecy's arguments are preserved, and they ask the Court to enforce the 1984 easement agreement as written.

A. Gecy raised the challenge to Integra's relocation authority below with specificity, and the circuit court ruled upon it, which is all preservation requires.

Integra leads with the assertion that Gecy failed to preserve her "principal argument" because it does not appear in her Rule 59(e), SCRCP motion. (Resp't's Br. 19). That misreads both the record and the rule. An issue is preserved if it was raised to and ruled upon by the circuit court with sufficient specificity. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007). A Rule 59(e) motion

[1]Integra acknowledges that because this appeal arises from a grant of summary judgment, "the facts are presented in the light most favorable to Gecy as the nonmoving party." (Resp't's Br. 4). As discussed below, the argument sections of Integra's brief repeatedly do the opposite.

is required only "when an issue or argument has been raised, but not ruled on . . . ." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). When the circuit court has ruled, the aggrieved party may appeal directly. *Id.* at 24-25, 602 S.E.2d at 780-81.

Both requirements are satisfied. Gecy's opposition memorandum denied that any source of law authorized Integra's relocations, arguing that Integra "had absolutely no legal or contractual or common law right or authority or justification whatsoever to eliminate and destroy and alter and modify and re-route and relocate and block and obstruct and impede and restrict and overburden" the two named private access roads. (R. p. 782). It enumerated among its "Disputed Factual Issues Requiring a Jury Determination" whether Integra "had the legal right and authority to eliminate and destroy and relocate and re-route the existing 50.0' feet wide S.C. Highway 280 Private Road Easement," whether Integra unlawfully blocked and obstructed the easement area from 2022 through 2024, and whether the apartment complex's traffic "will constitute an unlawful overburdening of such private access road." (R. pp. 789-92). Counsel pressed the same argument at the hearing, in direct response to Integra's assertion of a relocation right under the instrument and "the restatement . . . of servitude," answering that Integra "relocated it, which they had no right to do", and that "we'll need the jury to determine whether or not Integra had the right or authority, legally, to eliminate, destroy, relocate, and reroute the 50-foot wide Highway 280 private road easement." (R. p. 82, lines 5-7; R. p. 92, line 10 - p.

93, line 2; R. p. 111, lines 3-12; R. p. 113, line 14 - p. 114, line 3; R. p. 114, line 22 - p. 115, line 2).

And the circuit court ruled upon it. The Integra order holds that "Integra and its predecessors in title had a contractual right to move the access route," adjudges that the route "was properly relocated," and holds in the alternative that any prescriptive easement "would nonetheless be subject to" a common law relocation right under Restatement (Third) of Property: Servitudes § 4.8(3), finding "no evidence" on each of that section's three factors. (R. pp. 20-22, 26-29, 33-34).

The common law did not enter this case as an abstraction. *See Level 4 Yoga, LLC v. CorePower Yoga, LLC*, C.A. No. 2020-0249-JRS, 2022 Del. Ch. LEXIS 49, at *32 n.150 (Del. Ch. Mar. 1, 2022) (noting that "contracting parties always bargain in the shadow of the common law, unless they choose to expressly disclaim it."). It reached the circuit court as Integra's own ground for judgment. Integra's counterclaim asked the circuit court to declare its repeated relocations proper under the common law, and its counsel argued at the hearing that "[w]e have the right to relocate the road, either contractually through the easement document" or under the very Restatement factors of utility, burden, and purpose that the orders would go on to apply. (R. pp. 200-01; R. p. 92, line 21 - p. 93, line 2; R. p. 124, lines 20-23). A nonmoving party who opposes summary judgment on the precise ground the movant presses has raised the issue with the requisite specificity, and the movant that framed the ground cannot claim surprise. The authorities Integra collects largely involve argument never made to the

trial court at all. *See, e.g.*, *Smith v. Phillips*, 318 S.C. 453, 455, 458 S.E.2d 427, 429 (1995).

Although *Elam* requires nothing more, Gecy's Rule 59(e) motion reasserted the same challenge in terms tracking the opposition memorandum nearly verbatim, repeating word for word that Integra "had absolutely no legal or contractual or common law right or authority or justification whatsoever" to eliminate, destroy, alter, modify, re-route, relocate, block, obstruct, impede, diminish, restrict, or overburden either road, and re-identifying the same jury questions enumerated there. (R. pp. 883-85, 893-99). A party who presses the identical challenge in her written opposition, at the hearing, and again on reconsideration has done everything our preservation rules ask.

B. Integra's relocation authority is exactly as broad as the words of the 1984 easement agreement, construed against the common law backdrop that governs and fills the gaps of every express easement.

Integra's merits response attacks a position Gecy has never taken. Gecy does not contend that the common law supersedes or displaces the 1984 easement agreement. (Resp't's Br. 19-20). She contends the agreement must be read as written, and that where the relocation clause is silent as to how the reserved right may be exercised and how it impacts the entire 50-foot easement, and not just the pavement, the background common law that governs every express easement fills the gap. The agreement provides when and where the access road and 50-foot easement could be relocated, but not how, or the extent to which the servient estate could burden the

entirety of the easement in doing so. The common law fills those gaps, as Gecy argued on summary judgment.

South Carolina law begins from the traditional rule that the location of an easement, once selected or fixed, cannot be changed by the servient owner without the dominant owner's express or implied consent. *Goodwin v. Johnson*, 357 S.C. 49, 53, 591 S.E.2d 34, 36 (Ct. App. 2003). In *Goodwin*, this Court favorably cited Restatement (Third) of Property: Servitudes § 4.8(3) as authority for unilateral relocation of an easement created by necessity, while reasoning that "it should be more difficult to relocate an express easement, as it is akin to a contract and is bargained for by the parties." *Goodwin*, 357 S.C. at 55-56, 591 S.E.2d at 37. And in *Sheppard v. Justin Enterprises*, this Court confronted precisely what happened here, a servient owner's unilateral relocation of an express access easement, held that the proper analysis is whether the relocation "increased the burden on the dominant estate" as a whole and not merely on its current owners, and affirmed an order requiring restoration of the easement to its original location. *Sheppard v. Justin Enters.*, 373 S.C. 518, 523, 646 S.E.2d 177, 179 (Ct. App. 2007); *accord Plott v. Justin Enters.*, 374 S.C. 504, 514 n.23, 649 S.E.2d 92, 97 n.23 (Ct. App. 2007).

Two consequences follow. First, any authority Integra holds to relocate the express easement arises from the words of the 1984 easement agreement, with Restatement § 4.8(3) and the common law rule against unreasonable interference and burdening operating as default rules that fill the instrument's gaps. (Appellant's Br. 26-33); Restatement (Third) of Prop.: Servitudes § 4.1 cmt. d. Those words grant a

conditional right, not an unconditional license. The agreement acknowledges that the location of the access route "may change," but it conditions any change. The roadway in use "shall remain open until a substitute, usable, and well maintained roadway is relocated," the right of way must be 50 feet wide, and it must run from the northern end of Roberta Lane to Highway 280 across the northern and western portions of the property. (R. p. 302). Integra's own counsel read these conditions to the circuit court and called them "the critical part" of the instrument. (R. p. 86, lines 17-20).

Second, where the instrument does not define how the reserved right must be exercised, whether by twenty unannounced relocations, a detour through an active construction site, or a substitute filled with permanent impediments, the background common law supplies the rule. "The 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 Snow v. Smith ex rel. Stoudenmire*, 416 S.C. 72, 86, 784 S.E.2d 242, 249 (Ct. App. 2016). *Sheppard* asks whether the relocation increased the burden on the dominant estate, and the Restatement factors Integra urged below (utility, burden, and purpose) measure the same thing, so they serve at most as gap filling guidance whose application is quintessentially factual. Whichever yardstick applies, each inquiry is genuinely disputed on this record.

The orders never perform that analysis. The circuit court read the relocation clause as self-executing, held that it "clearly and unambiguously authorizes"

relocation, and declared "[t]his is exactly what happened." (R. p. 21). That is not construction of the instrument. It is fact finding at summary judgment on the very questions the clause makes material, whether each of Integra's twenty interim routes and its completed corridor was a "substitute, usable, and well maintained roadway" and whether the existing road remained open until a qualifying substitute existed. The only standard the orders apply to the relocations appears in the alternative prescriptive easement holding, which recited § 4.8(3) and found "no evidence" on each factor, but only as to the final paved roadway, and not the remainder of the easement. (R. pp. 26-29). Section II demonstrates the record contains exactly that evidence.

It is Integra, not Gecy, that asks a court to rewrite the instrument, transforming a conditional acknowledgement that the location may change, paired with an express promise that the existing road stay open until a qualifying substitute exists, into an unconditional license to reroute at will. South Carolina law forbids that. *See Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) ("The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort . . . contracts . . . .").

One further term independently precludes the judgment as entered. The agreement fixes the easement's width at 50 feet wherever the road runs. Where a grant is "specific in its terms as to the easement's width, length, and location . . . the easement cannot be constricted to any degree by the placement of parking spaces thereon." *Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 172, 410 S.E.2d 580, 581 (Ct. App. 1991); *see also Murrells Inlet Corp.*

v. Ward, 378 S.C. 225, 236, 662 S.E.2d 452, 457 (Ct. App. 2008) (affirming an order requiring removal of all encroachments from a 50-foot right-of-way). Even § 4.8 operates, by its opening clause, "[e]xcept where the location and dimensions are determined by the instrument or circumstances surrounding creation of a servitude." Restatement (Third) of Prop.: Servitudes § 4.8 (2000). The record contains evidence that the relocated access corridor is used by hundreds of tenants, guests, and vehicles and is filled with sewer lines, water lines, curbing, privacy walls, a retention pond, sidewalks, parking pads, dumpsters, light poles, and powerlines, depriving the Gecys of the full 50-foot easement area granted. (R. pp. 721-22, 724-26). Under *Xanadu*, that evidence alone precludes summary judgment.

II. The record presents genuine issues of material fact under the 1984 easement agreement's own standard, and under any other.

A. Integra cannot narrow the orders for purposes of appeal while defending them in full.

Integra frames this appeal as concerning only the completed roadway, dismissing everything else as temporary construction conditions belonging to claims pending below. (Resp't's Br. 3, 15, 22-25). The orders are not so modest. They grant summary judgment on Gecy's intentional interference, declaratory judgment, and permanent injunction claims as to the relocation of the Highway 280 private road, adjudging that the route "was properly relocated as allowed under the 1984 Easement" and "that any claim by Plaintiff related to interference with easement rights fails as a matter of law . . . ." (R. pp. 33-34). For the more than two years of construction, the shifting interim routes were the easement as relocated by Integra,

and Integra's own counterclaim placed the propriety of the repeated relocations squarely at issue. (R. pp. 199-201).

The hearing record confirms the construction period was litigated. Gecy's counsel asked the circuit court to recognize jury questions addressed to that period, including whether Integra "unlawfully blocked and obstructed, impeded, hindered, and restricted, from 2022 to 2024," the rights of the Gecy family and their guests to use the easement and described a route Integra "changed . . . at least a dozen times," such that residents "never knew from one day to the next where they were going," with "big equipment coming at them," "numerous flat tires," and a home invisible to "the navigation systems." (R. p. 106, lines 8-17; R. p. 116, lines 2-8; R. p. 790). Integra litigated the construction period on the merits, conceding that "during construction some things may have happened that upset the plaintiff" and arguing that any interference "was absolutely temporary and short," and the circuit court announced it would "consider any issues that arise during the motions." (R. p. 78, line 24 - p. 79, line 2; R. p. 94, lines 9-11, R. p. 99, lines 4-7). A judgment extinguishing every relocation-based interference claim, entered on that record, cannot be defended by pretending it adjudicated only the final pavement.

Integra's narrowing has consequences. If the circuit court decided nothing about the 20 interim relocations, the orders sweep far beyond what was actually decided and should at minimum be vacated and remanded for clarification. If they mean what they say, they were entered over a record rife with factual disputes and must be reversed.

B. The record contains direct evidence that Integra violated the 1984 easement agreement's conditions.

The 1984 easement agreement does more than describe the qualities of a replacement road. It sequences and situates the relocation. The roadway in use "shall remain open until a substitute, usable, and well maintained roadway is relocated." This describes a single, completed substitute, not a rolling series of interim detours, and the right of way "shall be on the Northern and Western portions of said property." (R. p. 431). The evidence, viewed favorably to Gecy, shows both conditions were violated. Integra began tearing up both Roberta Lane and the Highway 280 private road early in construction, then created a route through the middle of the construction project, not on the northern and western portions of the property, and altered its location at least 20 times over the following two years, nine of them within a single six-month span, without notice, instruction, or warning to anyone, including the Beaufort County 911 Emergency Services Department. (R. pp. 711-12; R. p. 285; R. pp. 896-97; R. p. 106, lines 8-17).

A jury could readily find that none of those interim routes was a substitute, usable, and well-maintained roadway. The routes were clogged and narrowed to less than 12 feet by equipment, machinery, and workers. (R. pp. 717-18). Mr. Gecy collected over two dozen nails and screws from a 100-yard stretch, and the family suffered repeated flat tires. (R. p. 287; R. p. 719; R. p. 106, lines 14-16). GPS services could not deliver visitors to the home. (R. p. 712). Ride shares, delivery services, the postal service, and trash collection refused or failed to serve the property. (R. p. 286). The 911 dispatch map reflected a route Integra had closed without notice, leaving

emergency access blocked. (R. p. 285; R. pp. 717-18). Integra's statement that this appeal "does not concern" such conditions concedes this evidence stands unrebutted. (Resp't's Br. 3). It is not a reason to affirm.

C. The law did not require any witness to recite the legal standard.

Integra's refrain is that no witness testified that the roadway "is not a substitute roadway, that it is unusable, or that it is not well maintained." (Resp't's Br. 13, 20-22, 25). The argument inverts the summary judgment framework twice. Integra, as the moving party, bore the burden of demonstrating the absence of any genuine issue of material fact, and the nonmoving party's obligation is to produce evidence from which a reasonable jury could find in her favor, not witnesses who parrot the operative legal phrase. *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). Testimony that a route was strewn with nails, choked to under 12 feet, invisible to GPS and the county's emergency dispatch system, and moved nine times in six months without warning is evidence that the route was not usable and not well maintained. Whether the routes satisfied the agreement's standard is exactly the kind of dispute that "require[s] the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

This Court's decisions demonstrate how modest a showing could have sufficed. In *Sheppard*, the entire increased burden was a relocation forcing the dominant owner to make four turns instead of two, such that he would no longer attempt the route with heavy equipment, and this Court affirmed an order compelling restoration of the easement. *Sheppard*, 373 S.C. at 522-23, 646 S.E.2d at 179. If two additional

turns established an increased burden after a trial on the merits, then twenty unannounced relocations, sub-twelve-foot choke points, roadway nails, refused deliveries, and a stale emergency dispatch map at the very least create a genuine issue of material fact at summary judgment.

The circuit court's treatment of the completed road repeats the precise error this Court reversed in *Xanadu*. The order finds that a winding dirt road was improved into a usable, paved, lit, and curbed road with proper drainage and pronounces it undisputed that the route provides "clear and unimpeded access." (R. pp. 13, 21). But at summary judgment a court does not find facts. In *Xanadu*, the trial judge likewise "recognized the parking spaces '[will] result in the present paved passage way on the easement being narrowed'" yet found no unlawful interference, and this Court reversed because where the grant fixes the easement's dimensions, the servient owner may not constrict it "to any degree." *Xanadu*, 306 S.C. at 171-72, 410 S.E.2d at 581. It is undisputed that the corridor now carries the traffic of a 216-unit apartment complex and contains curbing, parking pads, speed limit signs, light poles, and water, sewer, power, and telephone lines, and that a private forested lane serving seven residences has become the internal infrastructure of a large development. Whether those changes deprive Gecy of the full 50-foot easement, change its character, significantly lessen the utility of the easement, increase the burdens on its holder, or frustrate the purpose for which it was created are questions of fact. Restatement (Third) of Prop.: Servitudes § 4.8(3). On de novo review, all ambiguities, conclusions,

and inferences arising from the evidence must be resolved in Gecy's favor. *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 524, 787 S.E.2d 485, 489 (2016).

The order's recitation of Gecy's purported lack of pre-purchase due diligence is legally irrelevant. (R. p. 12). "Subsequent purchasers are entitled to rely on recorded deeds and plats to determine their rights in respect to property," and the only recorded access instrument promised a 50-foot easement. *Murrells Inlet*, 378 S.C. at 236, 662 S.E.2d at 457. *Sheppard* rejected the identical argument, holding that purchasers who acquired the dominant estate "AS IS," after the relocation had occurred, could claim the full easement rights conveyed to their predecessors. *Sheppard*, 373 S.C. at 522-23, 646 S.E.2d at 179. And Integra's reliance on the agreement's references to "future owners" and "any future lots developed in this subdivision" is a textual argument that defeats itself. (Resp't's Br. 26). That language extends the easement's benefit to future lots developed in the Belleview Bluff subdivision, meaning the dominant estate. It says nothing about devoting the corridor to a 216-unit apartment complex constructed on the servient estate, and the drafters' decision to name a defined class of beneficiaries confirms that the burdens the parties anticipated were those of the seven-lot subdivision.

Integra's preservation objection to this evidence fails for the reasons given in Section I. (Resp't's Br. 23-25). The effect of Integra's relocations on Gecy's use of the easement was briefed in opposition, argued at the hearing, reasserted in the Rule 59(e) motion, and decided when the circuit court found "no evidence" on each Restatement factor. (R. pp. 724-25; R. pp. 782, 789-92; R. p. 103, line 9 - p. 104, line

2; R. p. 106, lines 1-17; R. p. 114, line 22 - p. 115, line 2; R. p. 115, lines 19-25; R. p. 116, lines 2-8; R. p. 118, lines 1-13; R. pp. 883-85, 894-99; R. pp. 26-29). Citing additional authority on appeal, including *Xanadu* and *Sheppard*, in support of that same preserved issue is argument, not a new issue.

III. The prescriptive easement claim presents genuine issues of material fact.

A. Alternative pleading is not a concession, and permission from one cotenant is not permission from four.

Integra's lead argument is rhetorical. Gecy supposedly "cannot rely on the 1984 Easement to establish her access rights while disregarding its legal effect when attempting to prove adversity." (Resp't's Br. 31). The Rules of Civil Procedure answer that. A party may plead claims alternately, regardless of consistency. Rule 8(e)(2), SCRCP. Gecy pleaded the prescriptive easement in the alternative for precisely the scenario in which the 1984 easement agreement proves ineffective as to the non-signing cotenants of the servient estate. (R. p. 160). That is the very scenario the circuit court hypothesized when it held, in the alternative, that even an invalid 1984 easement agreement would supply written, recorded, and unrevoked permission defeating adversity. (R. pp. 25 n.6, 33).[2]

That alternative holding is where the analysis fails, and Gecy's opening brief attacked it head on. (Appellant's Br. 36-39). The agency defect was a centerpiece of

[2]The circuit court also stated that Gecy was required to establish the elements of a prescriptive easement by clear and convincing evidence at the summary judgment stage. The formulation was Integra's. (R. p. 88, lines 20-23). Integra now declines to defend that formulation, arguing only that the ruling did not turn on it. (Resp't's Br. 29 n.6). Whatever the ruling turned on, the correct question was whether the evidence created a genuine issue of material fact, and it did.

Gecy's opposition, which argued that Lewis H. Wright signed alone, held no recorded power of attorney from his cotenants, and could not bind them as a self-proclaimed agent, and counsel renewed the argument in open court, noting that the instrument is "signed by one person," that Wright "only owned a 5/8 interest at the time he signed," and that although Wright recited that "he is signing it as their agent," "there is no power of attorney recorded in Beaufort County" authorizing him to act for his three cotenants. (R. pp. 794-800; R. pp. 890-93; R. p. 108, line 18 - p. 109, line 25).

The 1984 easement agreement was signed by one man, Lewis H. Wright, owner of a 5/8 undivided interest. His three cotenants held the remaining interests, and there is no evidence beyond Wright's own recitals that he acted as their agent. "An 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). A dominant estate's use may be adverse as to one cotenant of the servient estate and permissive as to another, and if Wright's lone signature could not bind his cotenants to a grant, it could not manufacture their permission either. The Restatement makes the point in the prescription context, where one cotenant purports to grant an easement, the grantee's continued use may still be adverse, open, and notorious as to the non-consenting cotenant, creating circumstances for multiple easements. Restatement (Third) of Prop.: Servitudes § 2.17 illus. 29.

Felder v. Fleming, 278 S.C. 327, 295 S.E.2d 640 (1982), cited in Integra's brief for the proposition that the permission of one cotenant is the permission of all, holds

no such thing. (Resp't's Br. 32 n.8). *Felder* holds that the possession of one tenant in common is the possession of all, a rule that protects cotenants from adverse possession claims by one another. It does not hold that one cotenant may unilaterally license third parties to burden the common estate or act as the remaining cotenants agent, and Integra's own footnote concedes that any permission granted by a single cotenant would be "subject to the rights of other co-tenants." (*Id.*). At a minimum, whether the residents' use of the road was permissive as to all four Wright cotenants is an open question of fact that could not be resolved on summary judgment.

B. Gecy appealed the permission ground, so the two-issue rule does not apply.

Integra next argues that the circuit court's alternative permission holding is an unchallenged ground requiring affirmance under the two-issue rule. (Resp't's Br. 30-31). Section III.A of Gecy's opening brief is devoted to challenging that very holding, arguing that the 1984 easement agreement is evidence of permission from a single cotenant only, that the McNeal and Gasque testimony does not establish permission, and that the order conflates permission with acquiescence. (Appellant's Br. 36-39). The two-issue rule requires affirmance only where the appellant leaves a sustaining ground unappealed, *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010), and Gecy appealed every ground on which the prescriptive easement ruling rests.

C. The remaining evidence shows acquiescence, and permission granted after an easement vests comes too late.

Under *Bundy v. Shirley*, 412 S.C. 292, 310, 772 S.E.2d 163, 173 (2015), permissive use defeats prescription when permission is granted during the claimed twenty-year period. The corollary matters here: permission granted after the period has run cannot divest a right that has already vested. Once established, a prescriptive easement is an interest in land, lost only through doctrines such as abandonment, which requires far more than nonuse or the servient owner's later say so. *See* Restatement (Third) of Prop.: Servitudes § 7.4.

Viewed favorably to Gecy, the record supports vesting long before any arguable grant of permission. The 1984 agreement itself recites that "there is a roadway being used by the owners of said lots at this time," and Gasque confirmed that the Highway 280 private road was the road in use in 1984. (R. p. 557, lines 6-22). Jackson, a resident since 1979, testified that he used the road the entire time he lived there, that everyone who moved into the subdivision had to use it or "come by boat," and that the Wrights knew of the use, never blocked it, and never told anyone not to use it. (R. p. 684, lines 15-25; R. p. 690, lines 3-23). The lots are landlocked, and the road was the only land access from the time the Wrights conveyed Lot 4 in 1968. (R. pp. 250-52). Counsel argued below that the road had been in use "for at least 24 years, prior to this so-called easement agreement," and "24 years is certainly long enough . . . because it only requires 20 years." (R. p. 111, lines 17-24). On this record, continuous, open, and notorious use dates from at least 1968, the twenty-year period ran as to the non-signing cotenants by 1988, and by 1999 even resolving every inference against

Gecy, and after twenty years such use is presumed adverse. *Williamson v. Abbott*, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917).

The remaining permission evidence cannot carry Integra's burden. McNeal did not acquire parcel A, which contains the road, until 2002, after the prescriptive period had run. (R. pp. 304-09; R. p. 470). Gasque's testimony that residents used the road with an "understanding" that it would remain available describes the residents' subjective beliefs, and "a claimant's belief regarding the permissiveness of his use of property is irrelevant" to the existence of a prescriptive easement. *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 232, 797 S.E.2d 387, 392 (2016). To the extent that testimony recounts statements of others, it is inadmissible on summary judgment. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 111, 410 S.E.2d 537, 543 (1991). What the competent evidence actually describes is a family of owners who "never told us not to use it," "never blocked it," and left the road open "for years and years and years." (R. p. 690, lines 13-23). That is acquiescence, meaning the owner's failure to interrupt the use, and acquiescence is not permission. Restatement (Third) of Prop.: Servitudes § 2.16, Reporter's Note, cmt. f. *Bundy* itself turned on that distinction, finding prescription defeated because the owner "did not merely acquiesce" in the claimant's use but expressly granted permission that the claimant had sought. *Bundy*, 412 S.C. at 311-12, 772 S.E.2d at 173-74. There is no evidence that any resident of Belleview Bluff ever asked any Wright cotenant for permission, and no cotenant other than Lewis Wright is shown ever to have granted it.

D. Lot 4's continuous use of the access road is a matter of reasonable inference, and at this stage the inferences belong to Gecy.

Integra argues the record says little about Lot 4's use "during the key years between 2002 and 2022." (Resp't's Br. 33-34). If the easement vested by 1988 or 1999, those years are beside the point, because vested rights do not lapse with the calendar. Jackson testified that every resident had to use the road or arrive by boat, Lot 4 was continuously owned from 1968 forward by Gecy's predecessors in title in an unbroken chain, and the lot is landlocked, occupied, and reachable by land only over the private road. (R. p. 690, lines 1-23; R. pp. 251-52; R. pp. 247-49; R. pp. 692-94). The inference that Lot 4's owners used the only road to their property is the only sensible one the record permits, and at summary judgment reasonable inferences are drawn for the nonmoving party, not against her. Nor does *Bundy*'s tacking discussion help Integra. (Resp't's Br. 34).

Tacking failed there because the claimant relied on remote predecessors and offered no evidence that anyone used the road at all during a sixteen-year gap between ownerships. *Bundy*, 412 S.C. at 313-14, 772 S.E.2d at 175. Here there is no gap. The Reynolds, the Bellamys, and the Gecys were successive owners of an occupied home in privity of estate, which is exactly when tacking is allowed, the road was at all times the sole land access to that home, there is testimony that all residents of Belleview Bluff used the road as the sole land access to the subdivision, and there is testimony that the Wrights knew the residents were using it for that purpose.

Integra's extended attack on the Gecy affidavits ultimately proves harmless. (Resp't's Br. 32-36 & n.9). The showing summarized above rests on the Jackson, Gasque, and McNeal depositions (who were speaking from personal knowledge), the recorded plats and deeds, and the recitals of the 1984 agreement itself. Even if every challenged paragraph of the affidavits were disregarded, genuine issues of material fact would remain, and summary judgment was error.

IV. The exclusivity ruling and the injunction ruling rise and fall with the easement claims.

As to exclusivity, "the character of an express easement is determined by the nature of the right and the intention of the parties creating it," drawn from the instrument in light of the circumstances of its creation. *Smith v. Comm'rs of Pub. Works*, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994). Integra's argument that Gecy is bound to pleadings filed by her previous counsel is incorrect. The general rule is that parties to an action are judicially concluded and bound by their pleadings unless they are withdrawn or amended. *Curry v. Carolina Ins. Grp. of S.C., Inc.*, 428 S.C. 60, 71, 832 S.E.2d 760, 765 (Ct. App. 2019). However, South Carolina explicitly limits this preclusive effect to matters of fact rather than conclusions of law. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997).

The determination of whether an express easement is exclusive is treated as a question of contract interpretation, which constitutes a question of law in the first instance. *Snow*, 416 S.C. at 85, 784 S.E.2d at 249. Therefore, any admissions in Gecy's response to Integra's counterclaim concerning legal conclusions are nonbinding, and

they are no substitute for an interpretive analysis the circuit court never performed and Gecy's opening brief supplied. The 1984 easement agreement names a closed universe of beneficiaries, there is no evidence in the record that the Wrights ever used the road, and for decades the road served the subdivision alone. (Appellant's Br. 40-43).

The Court need not resolve the exclusivity label to reverse, however. "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." Restatement (Third) of Prop.: Servitudes § 4.9 cmt. d. Integra's own authority, quoted in the order itself, holds that the servient owner may use the easement area only for purposes "not incompatible" with those for which the easement was granted. *S. Ry. v. Beaudrot*, 63 S.C. 266, 269, 41 S.E. 299, 300 (1902). *Xanadu* reversed the denial of an injunction over a non-exclusive easement because the corridor could not be constricted by parking spaces placed within it. *Xanadu*, 306 S.C. at 172, 410 S.E.2d at 581-82. Whether submerging a residential access corridor for seven homes beneath the roadway infrastructure and daily traffic of a 216-unit apartment complex located on the servient estate is compatible with the easement's purpose is a factual question no order below answered. That question, too, was placed before the circuit court. The opposition memorandum enumerated as a jury issue whether the apartment traffic "will constitute an unlawful overburdening of such private access road," and counsel

argued that a corridor "designed for" perhaps "15, 20 vehicles . . . a day" now carries "hundreds of vehicles." (R. pp. 776-802; R. pp. 874-907; R. p. 118, lines 1-13).

As to the injunction, Integra concedes that the claim rises or falls with the underlying easement claims. (Resp't's Br. 40). Because those claims should not have been dismissed, neither should the injunction claim, which Gecy identified below, at the hearing and on reconsideration, as relief requiring factual determinations. (R. p. 118, lines 13-17; R. pp. 899-901). Integra's imagery of dismantled apartment buildings goes to remedy, not the rights at issue in Gecy's easement claims. (Resp't's Br. 41; R. p. 95, lines 19-22, R. p. 123, lines 11-16, R. p. 125, lines 12-14). The scope of any equitable relief is a matter for the circuit court after the facts are found. What matters now is that the permanent physical occupation of an easement corridor is the paradigm of an injury that damages alone cannot remedy, and South Carolina courts may order encroaching structures removed in a proper case. *Compare Hunnicutt v. Rickenbacker*, 268 S.C. 511, 515-16, 234 S.E.2d 887, 889 (1977), *with Davis v. Epting*, 317 S.C. 315, 318-19, 454 S.E.2d 325, 327-28 (Ct. App. 1994).

V. The order granting the motion to strike cannot stand.

Integra responds that the label of its motion is irrelevant because Rule 56(e), SCRCP, obligated the circuit court to disregard incompetent evidence in any event. (Resp't's Br. 42-45). That answers an argument Gecy never made and ignores the two she did, both raised at the first opportunity the timing of Integra's motion allowed, in open court at the hearing itself. (R. p. 73, line 23 - p. 74, line 12; R. p. 881).

The first is notice. Integra's filing was a written motion that could not be heard ex parte, and Rule 6(d), SCRCP, required it to be served "not later than ten days before the time specified for the hearing." *Dedes v. Strickland*, 307 S.C. 152, 154, 414 S.E.2d 132, 133-34 (1992). Integra served the motion at 5:15 p.m. on the evening before the hearing, and Gecy's counsel told the circuit court before the motions were heard that he had just been served, that he "hadn't had time to research or respond to that," and that the late filing "would justify continuance." (R. p. 881; R. p. 73, line 23 - p. 74, line 12). Integra's counsel confirmed that the affidavit "filed Friday evening" prompted him "to file a motion to strike for the Court[] to consider," and the circuit court denied the continuance and proceeded. (R. p. 78, lines 2-10; R. p. 78, line 20 - p. 79, line 2). Integra's brief never mentions Rule 6(d) or *Dedes* and never accounts for the timing of its own motion, although it concedes that affidavits must be struck by motion. (Resp't's Br. 43). The prejudice was concrete. Gecy had no opportunity to respond, to amend her affidavits, or to supplement the record, and any argument she could have raised for the first time in her Rule 59(e) motion was barred by the preservation rules the moment she made it. *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009).

The second is specificity. The order strikes "those parts of the affidavit that include" five categories of statements without identifying a single paragraph. (R. pp. 17-19). Integra insists the stricken material is readily ascertainable from the record, but its own brief demonstrates otherwise, characterizing different and shifting portions of the affidavits as stricken or incompetent as each argument requires.

(Resp't's Br. 45). Neither Gecy, nor the circuit court going forward, nor this Court can meaningfully review an evidentiary ruling that never identifies the evidence ruled upon. *Steinke v. S.C. Dep't of Lab., Licensing, & Regul.*, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999). And the order's statement that summary judgment was "not reliant upon the striking" only confirms where the striking's real consequence lies. Because the orders grant only partial summary judgment, the striking order will govern the evidence available to Gecy on her still pending claims, including nuisance, trespass, and adverse possession. If the summary judgment rulings can be reviewed without regard to the striking order, the Court should at minimum vacate that portion and remand with instructions to specify which parts of the affidavits have been struck.

CONCLUSION

For the foregoing reasons, and those advanced in Appellant's initial brief and before the circuit court, Appellant respectfully requests the Court reverse the orders granting partial summary judgment to Integra on Appellant's first, third, and fourth causes of action, granting Integra's motion to strike, and denying Appellant's motion for reconsideration, or in the alternative vacate those orders and remand with instructions.

Respectfully submitted,

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