

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Patrick J. Williams, Frank J. Wallmeyer)
 and Mary B. Wallmeyer,)
 Plaintiffs,)
)
 vs.)
 F. Carlisle Smith and First Citizens Bank)
 and Trust Company, Inc.,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NUMBER:2009-CP-38-1170

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 ORDER OF JUDGMENT
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 SC Court of Appeals

The Summons and Complaint commencing this litigation were filed in July, 2009. By Order of the Circuit Court filed in July, 2011, this case was referred to the undersigned, Richard B. Ness, as Special Referee. This case came before the Court for a trial on the merits on August 26, 2013, and continuing through August 28, 2013.

BACKGROUND, ANALYSIS, AND GENERAL FINDINGS OF FACT

This is a property line dispute. The Plaintiffs bought a parcel of real estate near Springfield, in Orangeburg County, South Carolina, in 1978. According to the property description in their deed, the Plaintiffs bought 1,050 acres. The Plaintiffs did not have their parcel surveyed. The property description in the Plaintiffs' deed identified the western boundary of their parcel, the boundary which is in dispute, as "Dean Swamp."

Defendant F. Carlisle Smith ("Mr. Smith") bought an adjacent parcel in 1986. The property description in Mr. Smith's deed indicated that he bought 400 acres. Defendant Smith did not have his parcel surveyed. The property description in Defendant Smith's deed identified the eastern boundary of his parcel, the boundary which is in dispute, as "the run of Dean Swamp Creek."

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Based on testimony and evidence, apparently there is no modern, definitive plat for either parcel. In recent years, the location of the property line has come into intense dispute, culminating finally in this litigation.

Over the course of the three-day trial, a total of ten witnesses testified for the Plaintiffs, including four witnesses who were qualified as experts, and including one of the Plaintiffs, Patrick J. Williams. (The other two Plaintiffs live out of state, and do not have any hands-on knowledge of the property or the dispute.) Three witnesses testified for Defendant Mr. Smith, consisting of two experts and the Defendant, Mr. Smith. (The other Defendant, First Citizens Bank and Trust Company, Inc., was named because of its status as mortgagee, and although First Citizens filed an Answer, it did not otherwise take an active part in this litigation.)

Through the Plaintiffs' witnesses, approximately 105 exhibits were entered into evidence, consisting of such things as:

1. Aerial photographs obtained from various government agencies, going back in time for decades;
2. Maps and drawings similarly obtained from various government and private agencies, also going back in time for decades;
3. Farming and hunting leases;
4. Documents evidencing sales of timber;
5. Numerous photographs depicting recent activity and conditions at, and in the vicinity of, the disputed property line;
6. Application materials submitted to the South Carolina Department of Natural Resources for doe tags by a hunt club with which Defendant Smith was associated, these

application materials including an acreage number (400 acres) and a property diagram of Defendant Smith's parcel, introduced by an officer of the South Carolina Department of Natural Resources;

7. A recent mortgage of record by which Mr. Smith mortgaged this subject parcel, which mortgage includes a property description indicating the parcel contains 400 acres;
8. Plats and deeds of several parcels surrounding the subject parcels belonging to the Plaintiffs and the Defendant; and,
9. The plat depicting the property line as claimed by the Plaintiffs, this plat having been prepared by the Plaintiffs' surveyor, Richard Stroman, who testified credibly and convincingly about his research and work that went into the survey and plat. (This property line as depicted on this plat has been consistently referred to as the "Stroman Line.")

Approximately 17 exhibits were entered into evidence through the Defendant and his witnesses. Defense exhibits included such things as:

1. Photographs allegedly depicting remnants of old liquor stills;
2. Photographs allegedly depicting a tree stump which marks a property corner;
3. Photographs of bridges on state highway number 39;
4. Copies of deeds in the Plaintiffs' chain of title; and
5. A drawing prepared by Defendant Smith's surveyor. (In his testimony, the surveyor acknowledged that he had not signed the drawing and was not willing to refer to it as a "plat." Rather, the surveyor testified candidly that the drawing was the result of Defendant Smith's instructions to him to find a thousand acres. The surveyor testified candidly that his drawing, which indicated a total of one thousand fifty-two



acres for Defendant Smith, did not reconcile with neighboring parcels of real estate, and did not reconcile with County tax maps, County tax records, or aerial photographs and maps generated in recent decades by various government and private agencies. Further, Defendant Smith's surveyor acknowledged that the plat prepared by the Plaintiffs' surveyor did, in fact, reconcile with neighboring parcels, County tax maps and records, aerial photographs and maps generated by government and private agencies. In short, Defendant Smith's surveyor did not meaningfully add support to Defendant Smith's claim.)

I. LOCATION OF DEAN SWAMP CREEK

In light of the language of the property descriptions in the parties' deeds, much emphasis was placed on the location of Dean Swamp Creek. In his initial Answer and in his Amended Answer and Counterclaim, Defendant Smith expressly admitted that the disputed property line should be "the old run of Dean Swamp Creek." During the trial, many aerial photographs and maps from numerous sources were examined closely and entered into evidence, all purportedly showing the historic location of the Creek.

A substantial part of the Plaintiffs' case was devoted to demonstrating that the original run of Dean Swamp Creek has been deliberately altered by human efforts. Many of the Plaintiffs' photographs, and much of the testimony of Plaintiffs' witnesses were devoted to proving that the run of the Creek has been altered. The Plaintiffs presented numerous photographs depicting freshly disturbed dirt, recently-cut trees, debris seemingly piled in small streambeds, and similar. These photographs included pictures of two pieces of equipment which appeared to be in the vicinity of

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this activity - a tractor with a disc harrow attached, and a "Bobcat." Defendant Smith acknowledged his ownership of these pieces of equipment.

One of the primary items of contention was a sizeable barrier, dam or dike built across the Creek just feet upstream from the point at which Defendant Smith's property begins. There were photographs of this barrier, and a substantial amount of testimony was devoted to it. The barrier is made of concrete and metal, clearly visible from the photographs and consistent with the witnesses' testimony. There was uncertainty as to who put this barrier in place, but the Court is convinced that this barrier did, indeed, alter the run of the Creek. In fact, this conclusion is almost inescapable. The Court is convinced that this major barrier, combined with the other activity described above, downstream from this barrier, has resulted in an alteration of the original, old run of Dean Swamp Creek.

One of Defendant Smith's expert witnesses, Chris Daves, testified about the *present* run of the Creek. Mr. Daves and his team apparently went to considerable effort to chart the present flow of the Creek. The Court does not doubt that the Creek no longer follows its original flow, and, the location of the present run as presented by Mr. Daves may well be accurate. The Court is convinced, however, that the present flow is a result of deliberate, human alteration, and that but for the concrete and metal barrier and the other recent activity described in words and photographs, the Creek would continue to flow along the old Creek bed, as identified in the Plaintiffs' surveyor's plat. In his testimony, Mr. Daves was at first inexplicably resistant to the suggestion that the run of the Creek had been altered. He finally conceded, however, that the concrete and metal barrier "deflected" the flow of the Creek.

Also significant in the Court's analysis is the fact that testimony from all four of the

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Plaintiffs' expert witnesses supports the conclusion that the run of the Creek has been altered. One of the Plaintiffs' experts, for instance, whose expertise is in soil sampling, testified that dirt around the area of the barrier was brought there, and is not native soil. Another of the Plaintiffs' experts described in detail how he tested the bed of the old run of the Creek and the bed of the present run, to determine the approximate age of each run; his testimony strongly supports the conclusion that the run of the Creek has recently been altered. (Defendant Smith's expert, Mr. Daves, did not mention any such testing to determine the comparative ages of the creek beds, other than his visual observations.)

II. ACREAGE CALCULATIONS

Yet another factor in the Court's analysis is the testimony offered by the witnesses as to the numbers of acres that various locations of the disputed property line will yield to the parties. At the extreme, the "drawing" prepared by Defendant Smith's surveyor will yield one thousand fifty-two acres to Mr. Smith. The surveyor acknowledged that this version of the property line would reciprocally reduce the Plaintiffs' historic acreage by roughly five hundred acres. (This drawing showing one thousand fifty-two acres for Defendant Smith includes one hundred fifty acres across a paved highway from the disputed property line, this one hundred fifty acres being owned by third parties who are not even parties to this suit.) (The surveyor was utterly unable to justify how his drawing could encompass this one thousand fifty-two acres, and repeatedly pointed out that he did not sign the drawing, but expected it to be revised by the Court.) Defendant Smith's surveyor acknowledged that, on the other hand, the plat submitted by the Plaintiffs and their surveyor will yield roughly four hundred acres to Mr. Smith and eight hundred fifty acres to the Plaintiffs, which

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acreage numbers are consistent with the numbers in the parties' deeds, consistent with County tax records, and consistent generally with all other evidence presented. Defendant Smith's other expert, Chris Daves, similarly acknowledged that the line proposed by the Plaintiffs and their surveyor would yield acreage numbers generally consistent with deeds and County records.

The Plaintiffs' surveyor, Richard Stroman, testified that he calculated the acreage numbers his proposed plat ("the Stroman Line") would yield to the parties, using recognized points and satellite and GPS-like technology. Mr. Stroman testified about the methods and accuracy of his calculations, and testified ultimately that his proposed plat will yield to Defendant Smith an acreage amount very close to the three hundred eighty acres stated in the L.B. Till deed, the deed of the owner who sold the parcel to Defendant Smith. Surveyor Stroman testified that per his calculations, his proposed plat will yield to the Plaintiffs an acreage amount very close to the eight hundred fifty acres they claim to own. The Court did not recognize any hesitation, weakness, or shortcoming in Surveyor Stroman's analysis and testimony.

III. DEFENDANT SMITH'S TIMBER HARVESTING

Aerial photographs and testimony from multiple witnesses demonstrate that in recent years Defendant Smith harvested timber from his parcel. The witnesses testified and the photographs confirm that Defendant Smith harvested his timber right up to the old run of Dean Swamp Creek. Defendant Smith acknowledged in his testimony that he harvested his timber right up to the old run of the Creek, but stated that this irregular, zig-zag line of the edge of his timber cutting was entirely coincidental, and had nothing to do with the run of the Creek. The Court is not convinced, but believes that the perimeter of Defendant Smith's timber harvesting, which so closely duplicates the

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old run of the Creek as depicted on the Plaintiffs' plat, is more than coincidence. The Court views this timber activity as another factor suggesting that in the recent past the old run of the Creek was recognized as the property line, another factor tilting the balance in favor of the Plaintiffs.

IV. ADVERSE POSSESSION - DEFENDANT SMITH'S COUNTERCLAIM

Defendant Smith brought a counterclaim on the theory of adverse possession. The Plaintiff, Patrick J. Williams, along with five fact witnesses for the Plaintiff testified credibly and convincingly about various and numerous activities in which the Plaintiffs, their families, guests, and farm and hunting lessees have engaged continuously since the time the Plaintiffs bought the property. One of the Plaintiffs' expert witnesses, who has assisted the Plaintiffs with forestry issues and timber sales since the Plaintiffs first purchased their parcel, testified about specific timber harvests on locations on the Plaintiffs' side of the creek, which locations Defendant Smith is claiming he owns on the theory of adverse possession.

Mr. Smith's testimony in support of his claim for adverse possession was largely vague and unspecific. Defendant Smith did testify about several deer stands which he has erected on the Plaintiffs' side of Dean Swamp Creek; however, Mr. Smith indicated a specific number of years each of these stands has been in place, and none has been in place long enough to satisfy the time requirement for adverse possession.

Testimony and evidence from both sides indicate a recent outburst of activity by Defendant Smith, such as posting of No Trespassing signs, erecting cables and barricades at locations on the Plaintiffs' side of Dean Swamp Creek, and removing Plaintiffs' deer stands and other hunting equipment from areas Defendant Smith is presently claiming. These activities, however, are very

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recent in time, and, are the very activities which prompted the Plaintiff to file this lawsuit. Under no circumstances would these recent activities justify Defendant Smith's ownership of these areas under the theory of adverse possession. Furthermore, the general, vague, and unspecific nature in which Defendant Smith described the areas he is claiming under the theory of adverse possession would by definition defeat his claim, as the requirements for a successful adverse possession case are specific and exacting.

Finally, on Defendant Smith's adverse possession claim, even if Defendant Smith has engaged in activities in areas on the Plaintiffs' side of the Creek, he has not demonstrated exclusivity. There was much undisputed testimony from the Plaintiffs' witnesses about their various, numerous, and frequent activities in and on the areas Defendant Smith is claiming.

In summary, the Court finds that Defendant Smith has fallen far short of proving his ownership of any land beyond the old run of Dean Swamp Creek (the Stroman Line) by way of adverse possession.

V. VAGUENESS OF DEFENDANT SMITH'S CLAIM

Another factor the Court recognizes is the overall vagueness of Defendant Smith's claim. That is, assuming for the sake of argument that the Court gives credence to Defendant Smith's position, the Court would nevertheless not know where to locate the property line. Defendant's expert, Chris Daves, testified about the present run of the Creek, implying that the Creek should be the property line. Defendant's surveyor, Mr. Steadman, testified about his drawing of one thousand fifty-two acres, but refused to commit to an opinion as to where the property line should be. Defendant Smith himself testified in a somewhat elusive manner about his belief that he owns a

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thousand acres, but he was not able to offer evidence to support that belief. (In fact, such things as his mortgages, his divorce affidavit, and doe tag applications and diagrams suggest that Mr. Smith has held a different belief.) There was no cohesion or consistency in Defendant Smith's camp as to where the property line should be. In truth, even if the Court were inclined in Defendant Smith's favor, the Court does not know where Defendant Smith would have the Court locate the property line. The Plaintiffs' proposed location of the line, on the contrary, is specific, and the testimony and evidence supporting the Plaintiffs' version is consistent and overwhelming.

SPECIFIC FINDINGS OF FACT

After listening to the testimony of the thirteen witnesses, after considering well over one hundred exhibits, after considerable deliberation and effort to mesh the testimony and exhibits for the most logical, sensible, and reasonable result, the Court makes the following findings of fact:

1. The Plaintiffs bought their parcel of real estate in 1978, and the property description in their deed indicated a total of 1,050 acres.
2. Defendant Smith bought his parcel in 1986, and his deed included a property description indicating 400 acres.
3. Only two days before Defendant Smith bought his parcel, the previous owner, L.B. Till, bought the identical parcel. However, the property description in Till's deed indicated 380 acres. None of the witnesses, neither Plaintiffs' or Defendants', was able to discover or explain how this parcel increased from 380 acres to 400 acres almost overnight.
4. Neither the Plaintiffs nor the Defendant had his parcel surveyed prior to this present controversy.

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5. No previous reliable plats for either parcel were discovered by either party. The item which most closely approaches a reliable modern plat is a plat which has been referred to as the old "Rosa Stroman Plat," and which is substantially lacking in specificity and detail. This Rosa Stroman Plat depicts parcels from which Defendant Smith's parcel is derived, at least in part. The Rosa Stroman Plat also depicts, at least in a crude fashion, the location of Dean Swamp Creek. This location of Dean Swamp Creek as depicted on the Rosa Stroman Plat is generally consistent with the location of Dean Swamp Creek as determined by the Plaintiffs' surveyor, Richard Stroman.

6. The property description in Defendant Smith's deed indicates that his eastern property line is "the run of Dean Swamp Creek." The property description in the Plaintiffs' deed indicates that the western property line of their parcel is "Dean Swamp." Previous deeds in the Plaintiffs' chain of title indicate the property line to be "Dean Swamp Creek."

7. In 2003 the Plaintiffs sold roughly 200 acres of their parcel, located on the far side of the property from the disputed property line, leaving a remaining acreage of roughly 850 acres. The Plaintiffs have paid real property taxes based on those acreage numbers since buying their property in 1978.

8. Defendant Smith similarly has paid real property taxes on 400 acres since buying his parcel in 1986.

9. The Orangeburg County tax map for the Plaintiffs' parcel is consistent with the property line depicted on the plat prepared by the Plaintiffs' surveyor.

10. The Orangeburg County tax map for Defendant Smith's parcel is also consistent with the property line depicted on the plat prepared by the Plaintiffs' surveyor.

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11. In mortgage loan documents related to Defendant Smith's use of his parcel as security for mortgage loans, Defendant Smith indicated that his parcel contains 400 acres.

12. In an affidavit Defendant Smith provided to the Richland County, South Carolina, Family Court in relation to his divorce, Defendant Smith indicated his parcel contains 440 acres.

13. Defendant Smith's parcel was included with other parcels in an application submitted to the South Carolina Department of Natural Resources for an allotment of "doe tags" for deer hunting. This doe tag application indicated that Defendant Smith's parcel contains 400 acres. These application materials, which were introduced through an officer of the South Carolina Department of Natural Resources, also included a map of the several parcels listed in the application. The map, though certainly not precise, indicates a boundary for Defendant Smith's parcel which is entirely consistent with the boundary claimed by the Plaintiffs and depicted on the plat prepared by the Plaintiffs' surveyor.

14. Numerous aerial photographs and maps prepared by various government and private agencies show Dean Swamp Creek at a location consistent with the plat prepared by the Plaintiffs' surveyor. Many of these documents actually identify the property line; without material exception, all these historic documents show the Creek and the property line at a location consistent with the plat prepared by the Plaintiffs' surveyor.

15. The property line proposed by the Plaintiffs will yield an acreage amount to each party which is consistent with deeds in their chains of title, consistent with property descriptions in their deeds, consistent with property tax records and payments, and generally consistent with other evidence presented.

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16. Defendant Smith failed to present evidence which would allow the Court to identify a property line in his favor. Defendant Smith and his witnesses failed to identify with consistency or specificity a proposed location for the proposed property line. The possible locations for the property line which Defendant Smith seemed to propose are substantially without supporting evidence.

17. As to his adverse possession claim, Defendant Smith has failed to prove the required elements. Among other things, Defendant Smith has failed to demonstrate that he has maintained exclusive possession of the disputed areas.

18. The Court finds that the run of Dean Swamp Creek has been altered in recent years by a combination of deliberate human efforts, and that Defendant Smith is responsible for at least some, if not all, of the activities which have resulted in the altered run of the Creek.

19. The Court finds that the Plaintiffs' surveyor, Richard Stroman, conducted extensive, earnest research, both on site and of available historic documents, and that the plat prepared by Surveyor Stroman for the Plaintiffs accurately reflects the old run of Dean Swamp Creek, and accurately identifies the property line between the Parties' parcels.

CONCLUSIONS OF LAW

The Court reaches the following Conclusions of Law:

1. The real property which is the subject of this litigation is situated in Orangeburg County, South Carolina. This Court has jurisdiction for this case.
2. The Plaintiffs brought this suit as an action to quiet title. South Carolina's courts have made it clear that a boundary line dispute may be brought as a quiet title case. "Generally

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speaking, there are several ways a disputed boundary line may be judicially determined. It may be determined incidentally by an action in ejectment where the plaintiff is out of possession of property, or in trespass to try title where the plaintiff is in possession and believes the defendant has trespassed on his property. Additionally, disputed boundary lines may either be directly or indirectly judicially settled in actions to quiet title, actions for injunctions and declaratory judgment actions.” Knox v. Bogan, 322 S.C. 64, ___ 472 S.E.2d 43, 45 (Ct. App. 1996). See also Garrett v. Locke, 309 S.C. 94, 419 S.E.2d 842 (Ct. App. 1992); Bodiford v. Spanish Oak Farms, Inc., 317 S.C. 539, 455 S.E.2d. 194 (Ct. App. 1995); Tolbert v. Greenwood Cotton Mill, 213 S.C. 43, 48 S.E.2d 599 (1948).

3. In its Findings of Fact, the Court determined the property line to be the old run of Dean Swamp Creek. The Court offered its varied reasoning for this finding, including, in addition to overwhelming evidence, the important observation that the Defendants admitted in their Answer that the boundary line should be the old run of Dean Swamp Creek. The Court notes that such an admission in a pleading is conclusive as to the fact admitted. “It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.” Skull Creek Club Ltd. Partnership v. Cook and Book, Inc., 313 S.C. 283, ___, 437 S.E.2d 163, 166 (Ct. App. 1993). Even without this admission, the Court would have reached the same result, based on the evidence.

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4. Closely related to this issue is the testimony of the Defendants' expert, Chris Daves, who testified as to the present run of Dean Swamp Creek, notwithstanding the substantial evidence that the run, or flow, of the creek has been altered. South Carolina courts have established the general rule that "a change in the location of a stream or way that is a boundary between adjacent owners does not change the location of the boundary." Ivester v. Fowler, 109 S.C. 424, ___, 96 S.E. 154, 156 (1918). See also Ex Parte Keller, 189 S.C. 26, 199 S.E. 909 (1938). The Court is convinced that the run of Dean Swamp Creek has been deliberately altered, and that Defendant Smith is at least partly responsible. However, regardless of how, or by whom, the run of the Creek was changed, the changed, or new, run of the creek does not create a new boundary line.

5. Relatedly, the Court notes Defendant Smith's testimony suggesting that the boundary line should be defined somehow by the edge of the swamp, or the high-water line on the Plaintiffs' side of the Creek, because the Plaintiffs' deed identifies the property line as "Dean Swamp," rather than "Dean Swamp Creek," as indicated in other deeds in both chains of title. In addition to the reasons explained elsewhere in this Order, the Court notes that this very question has arisen apparently with some frequency in South Carolina, and our Courts have determined that when a property line is defined as a "swamp," the literal placement of the line is meant to be the middle of the creek or primary flow of water that runs through the swamp: "Under the law of this state, where a swamp is given as the boundary, unless a contrary intention is clearly disclosed, the center of the run of the creek of the swamp is the boundary line, and not the margin of the swamp area." Ex Parte Keller, 189 S.C. 26, ___, 199 S.E. 909, 913 (1938). Accordingly, in light of this precedent, as well as for the other reasons

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p 15

discussed, the Court concludes that consistent with all deeds in both chains of title, the boundary line between the parcels is Dean Swamp Creek.

6. The Court notes the importance of a surveyor's work in this boundary line case. Bodiford v. Spanish Oak, 317 S.C. 539, 455 S.E.2d. 194 (Ct. App. 1995), is illustrative on this issue. The Court of Appeals stated, "As an expert in land surveying, Smith [the surveyor] was qualified to review the relevant deeds and plats, and to render his opinion as to the location of the boundary." The Court went on to say, "We find no error by the referee in allowing Smith to render his opinion as to where the boundary line is, and in using Smith's opinion to make that factual finding." Bodiford, 455 S.E.2d at 196. These statements by the Bodiford Court are critically important to our instant case, in that the Plaintiffs have submitted a plat prepared by an seasoned, expert surveyor, along with all his supporting testimony and documentation. Defendant Smith, on the other hand, offered a surveyor whose work was unsubstantiated, a surveyor who refused to sign his "drawing" or call his drawing a "plat," and a surveyor who would not or could not tell the Court where he earnestly believed the property line should be located. The Court concludes that the Stroman Plat is the result of the very work described in the Bodiford opinion, and that since the Stroman Plat in practical terms is unopposed, the Stroman Plat is the law of this case.

7. The Court looks next at the significance of acreage calculations. The Court recognizes South Carolina authority which instructs that acreage numbers in deeds are, in fact, of great importance when determining a disputed property line. Brunson v. Graham, 259 S.C. 298, 191 S.E.2d 713 (1972). The Court recognizes that Surveyor Stroman addressed the reconciliation of acreage numbers as part of his overall work. Other witnesses, including

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Defendant Smith's witnesses, also testified about the acreage numbers; the testimony of the various witnesses on this issue was remarkably similar. The Court concludes that this reconciliation is an important factor in this case, a factor which further reinforces the strength of the Richard Stroman Plat.

8. The Court next examines the key elements of adverse possession. In short, to prove a case of adverse possession, a party must demonstrate: 1) actual possession, 2) the possession must be open and notorious, 3) possession must be continuous, 4) and possession must be exclusive and hostile. Jones v. Leagan, 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009); Getsinger v. Midlands Orthopedic Profit Sharing Plan, 327 S.C. 424, 489 S.E.2d 223 (Ct. App. 1997); Butler v. Lindsey, 293 S.C.466, _____, 361 S.E.2d 621 at 624 (Ct. App. 1987); South Carolina Code Ann., Section 15-67-210 (Law. Co-op. 1976, as amended). Another factor often mentioned in South Carolina adverse possession cases is whether or not the party claiming ownership by adverse possession has paid taxes on the property. Harrelson v. Reaves, et al, 219 S.C. 394 at 481, 65 S.E.2d 478 (1951). For the reasons discussed above in its Findings of Fact, the Court concludes that Defendant Smith has failed to prove ownership of the disputed areas by adverse possession.

CONCLUSION

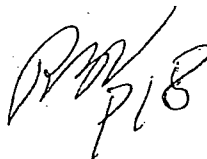
Having made its Findings of Fact and reached its Conclusions of Law, this Court hereby rules in favor of the Plaintiffs, both as to the Plaintiffs' causes of action and as to the Defendants' counterclaims, terminating any and all interests of the Defendants, as well as any and all interests of the Defendants' heirs, devisees, successors, assign, or anyone or anything in the whole world

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claiming under them, regardless of the nature of that interest or claim, in and to the property on the Plaintiffs' side of the property line as depicted on surveyor Richard Stroman's plat, and barring any future claims that may be asserted by any person or entity.

Specifically, the Court rules that the boundary line marked on-site by, and the corresponding plat prepared by, surveyor Richard L. Stroman (the "Stroman Plat" or "Stroman Line"), reflect the boundary line between the Parties' parcels. (Surveyor Stroman's plat was attached as an exhibit to the Plaintiffs' Complaint.) Specifically, the Stroman Plat identifies the boundary between the Plaintiffs' parcel, which the Plaintiffs obtained by deed dated April 13, 1978, and recorded in Orangeburg County Deed Book 443, at Page 135, and Defendant F. Carlisle Smith's parcel, which Defendant Smith obtained by deed dated December 31, 1986, and recorded in Orangeburg County Deed Book 521 at Page 685. The Court hereby directs that Surveyor Stroman is to modify the plat, to remove any and all notations that express uncertainty or controversy as to the indicated line, and to add an appropriate notation indicating that the plat has been determined by, and is recorded at, the direction of the Court. The modified plat is to be recorded with the Orangeburg County Register of Deeds. This Richard Stroman plat is the law of this case.

The Defendants, and particularly Defendant F. Carlisle Smith, are to remove all personal property, including, but not limited to, no-trespassing signs, deer stands, cables, barricades, and similar, from the Plaintiffs' side of the boundary line within fifteen (15) days of the date of this Order, and to otherwise immediately and absolutely respect the Stroman Plat and the boundary line as marked on-site by Surveyor Stroman as the boundary line separating his parcel from the Plaintiffs' parcel. Except for the purpose of removing his personal property within the next fifteen (15) days, Defendant Smith is not to go onto the Plaintiffs' lands for any reason, unless the Plaintiffs have

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given their express permission.

The claims, if any, of the Defendants herein and all who claim title under them, in and to the subject property are without any right, and the Defendants and Claimants, if any, have no estate, right, lien, or interest in or to the property on the Plaintiffs' side of the Stroman Line. The Defendants herein and all who claim title under them are permanently barred and enjoined from asserting any estate, right, title, lien, or interest in the subject property or any part thereof. The Plaintiffs herein, Patrick J. Williams, Frank J. Wallmeyer and Mary B. Wallmeyer, are the owners of the property on the their side of the Stroman Line, "free and clear," in fee simple absolute.

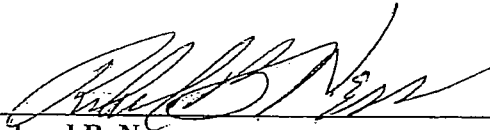
A copy of this Order shall be recorded and properly indexed in the Office of the Register of Deeds for Orangeburg County, South Carolina. Specifically, the Orangeburg County Register of Deeds shall index this Order under the Plaintiffs' names, in the Grantee and Grantor indices, and under the name of Defendant F. Carlisle Smith, also in the Grantee and Grantor indices.

The Sheriff of Orangeburg County, South Carolina, and/or Officers of the South Carolina Department of Natural Resources are hereby ordered and directed to eject and remove from the lands on the Plaintiffs' side of the Stroman Line the occupant(s), if any, of the herein described property, together with all personal property remaining thereon after fifteen (15) days of this Order, and to put the Plaintiffs and their agents, employees, and representatives or assigns in full, quiet and peaceable possession of the property described herein without delay, and to keep the Plaintiffs, their agents, employees, and representatives or assigns in such full, quiet and peaceful possession.

This Court retains jurisdiction of this case to address issues of possession and trespass generally, as needed, and for the purpose of issuing a Writ of Assistance, or similar, if needed.

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AND IT IS SO ORDERED, ADJUDGED AND DECREED.


Richard B. Ness
Special Referee for Orangeburg County

Oct 1, 2013
Bamberg, South Carolina

P 20

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	CIVIL ACTION NUMBER:2009-CP-38-1170
)	
Patrick J. Williams, Frank J. Wallmeyer and Mary B. Wallmeyer,)	
)	
Plaintiffs,)	ORDER DENYING DEFENDANTS'
)	RULE 59(E) MOTION TO ALTER OR
)	AMEND
)	
vs.)	
F. Carlisle Smith and First Citizens Bank and Trust Company, Inc.,)	
)	
Defendants.)	

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 OF COURT
 ORANGEBURG, SC
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THIS MATTER CAME BEFORE THE COURT for hearing on November 25, 2013, on Defendants' Motion To Alter Or Amend Judgment Pursuant To SCRCF, Rule 59(e). Attorney Andrew English was present for Movants, Defendants, and Gregory Williams was present for Plaintiffs. (Plaintiff Patrick J. Williams was also present.)

Attorney English argued, consistent with the Defendants' Motion, that the Court should alter or amend its Order dated October 1, 2013, and entered on October 3, 2013. Specifically, Mr. English argued that the Court should alter or amend its Order because the Plaintiffs brought the case as a quiet title action, rather than a trespass-to-try-title case, because the deeds in the Plaintiffs' chain of title indicate the subject property line should be located as proposed by Defendant F. Carlisle Smith, because there was insufficient evidence to support the Plaintiffs' contention that the run of Dean Swamp Creek has been altered, because acreage calculations are irrelevant, and because Defendant Smith proved his ownership of the disputed real property by way of adverse possession.

Attorney Williams argued in opposition, consistent with the Plaintiffs' Return to the Motion. Specifically, Mr. Williams reiterated the Plaintiffs' position on the quiet-title vs. trespass-to-try-title issue, he reviewed the Plaintiffs' position as to the deeds in the chain of title, he noted the overwhelming nature of evidence supporting Plaintiffs' position that the run of the Creek has been altered, he argued for the relevance of acreage calculations, and he noted Defendant Smith's shortcomings in proving the elements of adverse possession. Attorney Williams also appropriately mentioned the cumulative effect of the several components of the evidence, all in favor of the Plaintiffs.



ATTEST: TRUE COPY
Wingji B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

The Court earnestly considered the Defendants' Motion and arguments of Defendants' attorney. The Court does not, however, recognize any new issues, evidence or legal arguments previously overlooked or misinterpreted. The Court is convinced that its Order of October 1, 2013, is entirely consistent with the evidence in this case, that it is soundly in line with applicable law, and that it accurately reflects the reasoning and decision of the Court.

Accordingly, the Defendants' Motion To Alter Or Amend is denied.

AND IT IS SO ORDERED.



Richard B. Ness
Special Referee for Orangeburg County

December 20, 2013

Orangeburg, South Carolina

PR

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