

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 27 2011

APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. Supreme Court

Cynthia Howe, Master in Equity

Case No. 2009-CP-26-8278

Kenneth Dippel &
Kimber Fowler,

Petitioners,

v.

Claudius Eugene
Fowler,

Respondent.

APPENDIX

Kenneth Dippel
Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

INDEX

S.C. Court of Appeals' Decision.....	2
Petitioners' Motion for Reconsideration	4
S.C. Court of Appeals Decision on Motion for Reconsideration	13

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Kenneth Dippel & Kimber Fowler, Appellants,

v.

Claudus Eugene Fowler, Respondent.

Appeal From Horry County
Cynthia G. Howe, Master-in-Equity

Unpublished Opinion No. 2011-UP-109
Submitted March 1, 2011 – Filed March 16, 2011

AFFIRMED

Kenneth Dippel and Kimber Fowler, of Loris, pro se.

Claudus Eugene Fowler, of Loris, pro se.

PER CURIAM: Kenneth Dippel and Kimber Fowler, pro se, appeal the master-in-equity's order dismissing their actions for civil contempt and trespass against Claudus Eugene Fowler and finding Claudus has an easement by prior use. Dippel and Kimber argue the trial court erred in (1) finding an implied easement by prior use existed, (2) dismissing Dippel's claims for lack of standing, and (3) rescinding an earlier order enjoining Claudus from travelling on Dolly Lane and subsequently dismissing Kimber's claims as moot. We affirm^[1] pursuant to Rule 220(b) (1) and the following authorities:

1. As to whether the master erred in finding Claudus holds an implied easement by prior use: In re Estate of Timmerman, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (holding when a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal).

2. As to whether master erred in dismissing Dippel's trespass and contempt claims because he lacked standing: Ex parte Morris, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006) ("[T]o have

standing, a litigant must have a personal stake in the subject matter of the litigation. One must be a real party in interest, i.e., a party who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.").

3. As to whether master erred in rescinding a prior order enjoining Claudus from using Dolly Lane and subsequently dismissing Kimber's contempt and trespass claims: Timmerman, 331 S.C. at 460, 502 S.E.2d at 922 (Ct. App. 1998) (holding when a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal).

AFFIRMED.

FEW, C.J., KONDUROS, J., and CURETON, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY

Cynthia Howe, Master in Equity

Case No. 2011-UP-109

Kenneth Dippel & Kimber
Fowler,

Appellants,

v.

Claudius Eugene Fowler,

Respondent.

MOTION FOR REHEARING

Kenneth Dippel
Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

TABLE OF AUTHORITIES

Cases,

Holy Loch Distribs., Inc. v. Hitchcock
340 S.C. 20, 24; 531 S.E. 2d 282, 284 (2000).....3

Hynes Family Trust v. Spitz,
384 S.C. 625; 682 S.E. 2d 831 (Ct. App. 2009) 4

In re Estate of Timmerman,
331 S.C. 455, 460; 502 S.E. 2d 920, 922 (Ct. App. 1998) 3

Rules

Rule 59(e), SCRPC 1

Rule 205, SCACR.....4

Rule 221(a), SCACR 1

Citations to the Record on Appeal

R. at 5 – R. at 10 1

R. at 226- R. 229 1

R. at 126 – R. 140.....1

R. at 115 – R. 117.....1

R. at 108 – R. at 113.....1

R. at 223 – R. 225.....2, 3

R. at 6.....2

R. at 5 – R. 9.....3

R. at 219 – R. at 230.....5

Appellants, Kenneth Dippel & Kimber Fowler hereby pursuant to Rule 221(a), SCACR moves the Court for a rehearing with respect to its opinion issued on March 16, 2011. Appellants, Kenneth Dippel & Kimber Fowler respectfully must state the Court has misapplied Rule 59, SCRCF in its application to this case.

This Court in its order entered on March 16, 2011 held that the Appellants by not filing a Rule 59(e), SCRCF motion to alter or amend the lower Court's judgment, failed to preserve an issue or issues on appeal to this Court. Therefore, this Court declined to address Appellants' arguments on appeal with respect to an implied easement by prior use which was held to exist by the Master in Equity **(R. at 5 – R. at 10)**.

Appellants respectfully must state to this Court that a Rule 59(e), SCRCF motion was not required to be filed at the lower Court in this case because Rule 59(e), SCRCF only applies to cases in which an **issue or issues have not been ruled upon by the trial judge** nor raised in a post-trial motion, or **where the Court grants certain relief not previously contemplated**.

The Master in Equity in her ruling issued February 23, 2010 **(R. at 5 – R. 10)** **did not "sua sponte" rescind her earlier injunction order (R. at 226 – R. 229)**. The Master in Equity in lieu of the trespassing charges and contempt charges, and based on the pleadings by the parties (R. at 126 – R. 140); (R. at 115 – R. 117); (R. at 108 – R. at 113) revisited her earlier

injunction order issued on May 26, 2009 which pursuant to this Court's order determined there was no easement for Mr. Claudius E. Fowler (**R. at 223 – R. 225**).

Appellants would like to respectfully call the Court's attention to the obvious fact that **Appellants' trespassing and contempt charges levied against the Respondent, Claudius E. Fowler were intertwined with Respondent Claudius E. Fowler's continued claims of an easement and his continued claims he has a right to travel and use the so called alleged easement known as "Dolly Lane"**. It is even noted in the ruling by the Master in Equity:

"Plaintiffs are attempting to hold Gene Fowler in civil contempt of the order in 2007-CP-26-1782, and because Plaintiffs are attempting to hold Gene Fowler in civil contempt of the order in 2007-CP-26-1782, I conclude that these two actions should be consolidated". R. at 6.

Respondent, Claudius E. Fowler claimed at trial that he had a right to use Dolly Lane. This is even noted in the Master's Ruling which rescinded the earlier injunction order: *"Gene Fowler timely answered, generally denying the allegations, affirmatively asserting that he had K Fowler's permission to use Dolly Lane, the property at issue, and that he had implied permission. Moreover, Gene Fowler counterclaimed against Plaintiff Dippel, claiming that he had spent \$3000.00 of his own money to maintain the easement and that Plaintiff Dippel had promised to pay him \$1500.00".*

The Master in Equity based on the pleadings of the party which did specifically raise the issue or issues of Respondent's claimed easement and continued use of Dolly Lane, and based upon the testimony of the parties at a hearing on February 23, 2010 (R. at 23 – R. at 105), determined that Mr. Fowler has an easement by implied use. The Master as a result of this factual finding amended her earlier injunction order *nunc pro tunc*. **(R. at 5 – R. 9).**

Based on the foregoing, Appellants must respectfully state that the ruling *In re Estate of Timmerman*, 331 S.C. 455, 460, 502 S.E. 2d 920, 922 (Ct. App. 1998) is inapplicable in this case at bar because the questions about **Respondent's continued use of the so called Dolly Lane was previously contemplated by the parties and was properly presented by the parties to the lower Court**, and also to this Court by order issued on February 23, 2009 **(R. at 223 – R. at 225)**. See *Holy Loch Distribs., Inc. v. Hitchcock*, 340 S.C. 20, 24, 531 S.E.2d 282, 284 (2000) (noting to be preserved for appeal, an issue must have been raised to and ruled on by the trial judge).

The Master in Equity properly ruled on the issue on Respondent's continued use of a claimed easement known as "Dolly Lane" which was properly presented by the parties. The Master in Equity by holding Respondent, Claudius E. Fowler had an easement by implied use, dismissed the contempt charges and trespassing charges.

The Master in Equity in this case, clearly did not "sua sponte" issue her order. Therefore, in this case all that was required for the Appellants to do was to timely appeal to this Court to preserve the Appeal. Appellants did timely file an appeal to this Court, and the questions as to whether the Master erred by holding that Mr. Claudius E. Fowler has an implied easement was properly before this Court.

Therefore, this Court should issue a new ruling specifically determining whether the Master in Equity erred by ruling Mr. Claudius E. Fowler has an easement by implied prior use. If the Court grants reconsideration and issues a ruling specifically addressing as to whether the Master in Equity erred by holding Respondent, Claudius E. Fowler has an implied easement by prior use, it will bring finality to this case.

It is imperative for this Court to do as it has done on many other cases that have come before it similar to this case. For example, see Hynes Family Trust v. Spitz, 384 S.C. 625, 682 S.E.2d 831 (Ct. App. 2009). See also Rule 205, SCACR this Court shall have exclusive jurisdiction over an appeal.

With respect to the lower Court's holding that Appellant, Kenneth Dippel was not a real party in interest, this Court in its holding in affirming the lower Court order, inadvertently has overlooked the obvious fact that Appellant, Kenneth Dippel has more than a nominal or technical interest in this case.

Appellant, Kenneth Dippel owns real property which is the subject of the dispute and which is an issue preserved on appeal (whether the lower Court erred by holding Mr. Claudius E. Fowler has an implied easement by prior use). **See R. at 219 – R. at 230.** This Court in upholding the lower Court order never addressed as to whether this legally recorded deed gave Appellant, Kenneth D. Dippel standing.

In determining whether Appellant, Kenneth Dippel lacked standing this Court should have determined whether the lower Court properly determined what rights he has with respect to the property in question, and should have determined whether the lower Court properly determined whether there is a real interest relating to the property, and whether the lower Court's ruling holding Respondent, Claudius E. Fowler has an implied easement by prior effects his full use and enjoyment of his property.

Appellants respectfully assert rehearing is warranted in this case. Rehearing with respect to this case will ultimately bring finality on the issue advanced on appeal from the lower Court ruling which is whether the lower Court erred by holding Mr. Claudius E. Fowler has an easement by implied prior use.

CONCLUSION

Wherefore, based upon consideration of the foregoing, Appellants respectfully pray for this Honorable Court to grant reconsideration.

Wherefore, based upon consideration of the foregoing, Appellants

respectfully pray to this Court upon the grant of reconsideration to issue a new order specifically addressing as to whether the Master in Equity erred by ruling that Respondent, Claudius E. Fowler has an easement by implied prior use.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kenneth Dippel / Kimber Fowler", written over a horizontal line.

Date: 3/21/2011

Kenneth Dippel / Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

CERTIFICATE OF SERVICE (Proof of Service)

I, **Kenneth Dippel & Kimber Fowler**, hereby certify that a copy of the Appellant's reply to Respondent's pleadings was served and provided to the Respondent, Claudius Eugene Fowler on **March 21, 2011** by mailing a copy by first class US mail to the Respondents' last known physical mailing address addressed as follows:

Claudius Eugene Fowler
2042 G & B Lane
Loris, SC 29569

3-21-11 Kenneth Dippel / Kimber Fowler
(Date) (Signature)

Kenneth Dippel / Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

The South Carolina Court of Appeals

Kenneth Dippel and Kimber Fowler, Appellants,

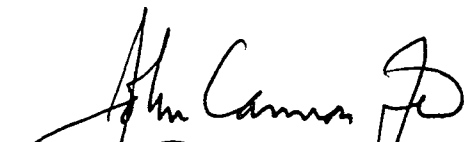
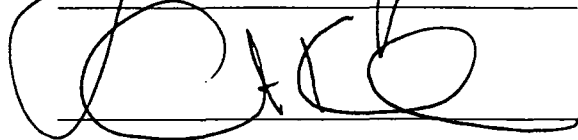
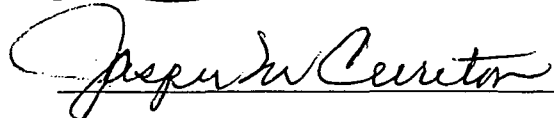
v.

Claudius Eugene Fowler, Respondent.

The Honorable Cynthia Howe, Master-In-Equity
Horry County
Trial Court Case No. 2009-CP-23-08278

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.


C.J.

J.

A.J.

Columbia, South Carolina

FILED
APR 22 2011

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

Cynthia G. Howe, Master In Equity

Case No. 2009-CP-26-8278

**KENNETH DIPPEL &
KIMBER FOWLER,**

APPELLANTS

v.

**CLAUDIUS EUGENE
FOWLER**

RESPONDENT.

RECORD ON APPEAL

Kenneth Dippel & Kimber Fowler, For Appellants
2145 Oakdale Road
Loris, SC 29569
Phone: (843) 716-0699

Claudius Eugene Fowler, For Respondent
2042 G & B Lane
Loris, SC 29569
Phone: (843) 756-9585

INDEX

Rule 210(g), SCACR Certification.....	v
Certificate of Service (Proof of Service).....	v
Appellants' Notice of Appeal	1
Appellants' Notice of Appeal Filed at the Lower Court.....	3
Master in Equity Order Filed on Filed on February 26, 2010	3
Hearing Transcript of Hearing Conducted on February 23, 2010	11
Order of Reference.....	106
Appellants' Reply to Defendant's Answer to Complaint.....	107
Respondent's Answer to Summons and Complaint.....	114
Proof of Receipt of Summons and Complaint.....	121
Civil Action Cover Sheet	124
Summons	125
Complaint.....	126
Hearing Transcript of Hearing Conducted on May 26, 2009.....	141
Master's Deed of Claudius Eugene Fowler.....	173
November 19, 1981 Plat of P.F. Fowler Estate.....	175
Inman Survey Plat Filed on July 9, 1999.....	176
Title to Real Dated August 9, 1999 Where Respondent Claudius Eugene Fowler Reserved Unto Himself and His Wife a Lifetime Right.....	177
Title to Real Dated June 28, 2000 Where Respondent Claudius Eugene Fowler Removed Him and His Wife's Lifetime Right.....	180
Deed Recorded on April 21, 2005 Where Timothy Fowler Conveyed to Appellant, Kimber Fowler Lot 1 and Home	186
Kenneth Dippel Title to Mobile Home	189

Respondent, Claudius Eugene Fowler's Affiliated Surveyor's Plat Recorded on May 16, 2005.....	190
Letter from Horry County Engineer David Helms dated April 9, 2009.....	191
Appellants' Crescent Moon Survey Plat dated June 9, 2009.....	192
Horry County Planning Decision Dated June 16, 2009.....	193
Air Photos of G & B Lane, 2042 G & B Lane, Dolly Lane, and relationship to Oakdale Road.....	194
Property Tax Records for Kimber Fowler 2000-2008, TMS #0400001122.....	197
Property Tax Records for Claudius Eugene Fowler Tract B of PF Fowler Estate, 2000-2008, TMS #0400001123.....	199
Property Tax Records for Claudius Eugene Fowler Tract A of PF Fowler Estate, 2000-2008, TMS #0400001173	201
Property Tax Records for Claudius Eugene Fowler Remainder of PF Fowler Estate, 2000-2008, TMS #0400001056	203
Article 1, Section 10: Appeals page 10 of the Horry County Land Development Regulations	205
Article 2, 4-9 (Easements) page 31 of the Horry County Land Development Regulations	206
Article 2, 4-15 (Easements to existing landlocked parcels) page 33, page 34 of the Horry County Land Development Regulations.....	207
Article 4, Section 2-6(Q) (Shared Driveways) page 71, page 72 of the Horry County Land Development Regulations	209
Article 4, Section 2-6(F) (Cul de sacs) page 71, page 64 of the Horry County Land Development Regulations	211
Article 4, Section 7-3 page 93 of the Horry County Land Development Regulations	213
Horry County Definitions of the Horry County Land Development Regulations page 133, page 135	215
Article III: Street Name and Numbering: Section 6-49	217

Article III: Street Name and Numbering: Section 6-65 (Guidelines for street name selection)	218
Title to Real Estate dated September 22, 2009 where Kimberly Fowler conveyed to Kenneth Dippel a half interest with survivorship rights	219
South Carolina Court of Appeals Decision filed February 23, 2009	223
Master in Equity Ruling Filed May 26, 2009.....	226

Rule 210(g), SCACR CERTIFICATION

Appellants, **Kenneth Dippel** and **Kimber Fowler** hereby certify that the Record on Appeal the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

4-20-2010
(Date)

Kenneth Dippel
(Signature)

(4-20-10)
(Date)

Kimber Fowler
(Signature)

CERTIFICATE OF SERVICE (PROOF OF SERVICE)

I **Kenneth Dippel** and **Kimber Fowler**, Appellants hereby certify that on _____ Respondent was properly served a copy of the Record on Appeal by mailing a copy by US first class certified restricted mail in an envelope with sufficient postage affixed to Respondent addressed as follows:

Claudius Eugene Fowler
2042 G & B Lane
Loris, SC 29569

4-20-2010
(Date)

Kenneth Dippel
(Signature)

(4-20-10)
(Date)

Kimber Fowler
(Signature)

FORM 1
NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Judge Cynthia Graham Howe, Master in Equity Horry County

Case No. 2009-CP-26-8278

**Kenneth Dippel & Kimber
Fowler,**

Appellants,

v.

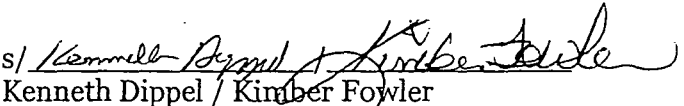
Claudius Eugene Fowler,

Respondent.

NOTICE OF APPEAL

Kenneth Dippel & Kimber Fowler, Appellants hereby in the above entitled case appeals an order issued by the Honorable Cynthia Graham Howe, Master in Equity filed on February 26, 2010 at the Horry County Court of Common Pleas. The order or judgment was signed by the Honorable Cynthia Graham Howe, Master in Equity for Horry County on February 25, 2010. Appellants received a copy of this order in the mail on February 27, 2010.

Date: March 1, 2010

s/ 
Kenneth Dippel / Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

CERTIFICATE OF SERVICE (Proof of Service)

I, **Kenneth Dippel & Kimber Fowler**, hereby certify that a copy of the Appellants Notice of Appeal to the South Carolina Court of Appeals was served and provided to the Respondent, Claudius Eugene Fowler on **March 1, 2010** by mailing a copy by first class US mail to the Respondents' last known physical mailing address addressed as follows:

Claudius Eugene Fowler
2042 G & B Lane
Loris, SC 29569

3-1-2010

(Date)

Kenneth Dippel / Kimber Fowler
(Signatures)

Kenneth Dippel / Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON
PLEAS

CIVIL CASE NO: 2009-CP-26-8278

KENNETH DIPPEL &
KIMBER FOWLER,

Plaintiff(s)

vs.

CLAUDIUS EUGENE FOWLER

Defendant,

PLAINTIFFS' NOTICE OF APPEAL

FILED
HORRY COUNTY
2010 MAR - 1 AM 8:53
MELANIE HUGGINS-WARD
CLERK OF COURT

Plaintiffs in the above entitled case pursuant to SCACR, Rule 201, SCACR, Rule 203 (b) (1) and SCACR, Rule 203 (d) (1) (B) hereby are providing notice to this lower Court that Plaintiffs have filed an appeal to the South Carolina Court of Appeals in response to an order dated February 26, 2010 issued by Judge Cynthia Howe, Master in Equity.

Plaintiffs in the above entitled case hereby appeal the February 26, 2010 order issued by Judge Cynthia Howe, Master In Equity.

Pursuant to SCACR, Rule 241 the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.

This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court.

March 1, 2010

s/ Kenneth Dippel / Kimber Fowler
Kenneth Dippel / Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

CERTIFICATE OF SERVICE (Proof of Service)

I, Kenneth Dippel & Kimber Fowler, hereby certify that a copy of the Plaintiffs foregoing Notice of Appeal was served and provided to the Respondent, Claudius Eugene Fowler on March 1, 2010 by mailing a copy by first class US mail to the Respondents' last known physical mailing address addressed as follows:

Claudius Eugene Fowler
2042 G & B Lane
Loris, SC 29569

FILED
Horry County
2010 MAR -1 AM 8:58
MELANIE HUGGINS-WARD
CLERK OF COURT

3-1-2010
(Date)

Kenneth Dippel / Kimber Fowler
(Signature)

Kenneth Dippel / Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO.: 09-CP-26-8278

KENNETH DIPPEL &)
KIMBER FOWLER,)

Plaintiffs,)

v.)

CLAUDIUS EUGENE FOWLER,)

Defendant.)

FINAL ORDER

FILED
HORRY COUNTY
2010 FEB 26 AM 10:47
MELANIE HUGGINS-WARD
CLERK OF COURT

KIMBER R. FOWLER)

Plaintiff,)

v.)

CLAUDIUS EUGENE FOWLER,)

Defendant.)

CIVIL CASE NO.: 07-CP-26-01782

1
CHH
TRIAL JUDGE:

Cynthia Graham Howe

PLAINTIFFS:

Self-represented

DEFENDANT:

Self-represented

COURT REPORTER:

Prestige Court Reporting, Inc.

DATE OF HEARING:

February 23, 2010

The matter in 2009-CP-26-8278 was referred to the Horry County Master in Equity pursuant to Rule 53, SCRCR by Order of the Honorable Larry B. Hyman, Jr. dated December 4, 2009. Plaintiffs Kenneth Dippel (Dippel) and Kimber Fowler (K Fowler) filed this action on August 25, 2009, for civil trespass to real property and to hold Defendant Claudius Eugene Fowler (Gene Fowler) in civil contempt of this Court's prior order dated and filed May 26, 2009 (Civil action 07-CP-26-1782). Gene Fowler timely answered, generally denying the allegations, affirmatively asserting that he had K Fowler's permission to use Dolly Lane, the property at issue, and that he had implied

permission to use it. Moreover, Gene Fowler counterclaimed against Plaintiff Dippel, claiming that he had spent \$3000.00 of his own money to maintain the easement and that Plaintiff Dippel had promised to pay him \$1500.00, or one-half of those monies.

Because common issues of fact and law are involved in both 2009-CP-26-8278 and 2007-CP-26-1782, and because Plaintiffs are attempting to hold Gene Fowler in civil contempt of the order in 2007-CP-26-1782, I conclude that these two actions should be consolidated pursuant to Rule 42(a), SCRPC.

After carefully considering the matters, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Dippel did not own an interest, nor did he claim an interest, in any real property at issue in this matter when this lawsuit was filed. The only interest claimed by Dippel when this lawsuit was filed was an interest in a mobile home on the real estate of his sister, K Fowler, located on Dolly Lane, the easement at issue in this lawsuit. Accordingly, I conclude that Dippel does not have standing to pursue a claim for civil trespass to real property in this matter. A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy. No justiciable controversy is presented unless the plaintiff has standing to maintain the action. A plaintiff must allege an actual controversy in which he has a personal stake. Lennon v. SC Coastal Council, 330 S.C. 414, 498 S.E.2d 906 (Ct.App. 1998). Moreover, Dippel was not a party to the Fowler v. Fowler matter, 07-CP-26-1782, and accordingly, Dippel has no standing to assert a claim for civil contempt against G. Fowler, for allegedly

~~2~~

7

Gene Fowler has several tenants who live along Dolly Lane. There is some confusion as to the address even of Dippel's mobile home. At one time that address was 2153 Dolly Lane. The address subsequently was changed, although the mobile home itself never moved. (Defendant's Exhibit #1).

3. Gene Fowler was the prior owner of K. Fowler's land, as well as the owner of Dolly Lane. He constructed Dolly Lane for the use of himself, his family members, and his tenants, so that they safely could travel from Oak Dale Lane to G & B Lane, without traveling on a paved secondary road. Without Dolly Lane, the mobile homes along Dolly Lane appear to be "land locked". See, Plaintiff's Exhibits #3, 4, & 5. Moreover, the 25 foot private easement, now known as Dolly Lane, was platted and recorded at Plat Book 163 at Page 228 in the Horry County Registrar of Deeds Office in 1999, well before K. Fowler was deeded her property.

4. Under the doctrine of easement by prior use, I find and conclude that G. Fowler has an easement in this matter as set forth in Boyd v. Bellsouth Telephone Telegraph Company, Inc., 369 S.C. 410, 633 S.E.2d 136 (2006). G. Fowler has established all 7 of the following: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior

use; and (7) the common grantor indicated an intent to continue the prior use after severance of title. See also, Crosland v. Rogers, 32 S.C. 130, 10 S.E. 874 (1890).

5. Accordingly, as I have found that G. Fowler has an implied easement (when the claimant has been in possession of both the dominant and the alleged servient tenement, and while in this possession he creates the easement, or what would have been an easement had it been over another's land, and he afterwards grants a portion of the land over which the alleged easement runs, reserving the easement either expressly or under circumstances which implied a reservation), or an easement implied by prior use, I find and conclude that he cannot be found liable for civil trespass, as he has every right to travel Dolly Lane. Moreover, Horry County has found that Dolly Lane should remain open for safety reasons. Gene Fowler should have the right to travel Dolly Lane to visit his tenants, including his son, daughter-in-law, and grandchildren, who live along Dolly Lane.

6. Based upon the above, I hereby amend my prior order in 2007-CP-1782 *nunc pro tunc*, pursuant to the findings of fact and conclusions of law of this Order, and hereby rescind the injunction against Defendant Claudius Eugene Fowler, his successors and heirs.

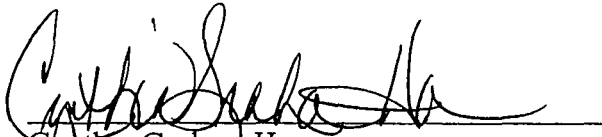
7. Based upon the above, K. Fowler's claim against G. Fowler for civil contempt is moot.

WHEREFORE, IT IS HEREBY ORDERED that Plaintiff Kenneth Dippel's claims against G. Fowler be dismissed, as he has no standing to prosecute these claims.

IT FURTHER IS ORDERED that an easement implied by prior use exists in favor of Defendant Claudius Eugene Fowler as to Dolly Lane.

IT FURTHER IS ORDERED that Plaintiff Kimber Fowler's claims against Defendant Claudius Eugene Fowler for civil trespass and civil contempt be dismissed.

AND IT IS SO ORDERED.


Cynthia Graham Howe
Horry County Master in Equity

Conway, South Carolina
Dated: February 25, 2010

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
)

Kenneth Dippel and
Kimber Fowler,

Plaintiff,

vs.

Claudius Eugene Fowler,

Defendant.

COPY

CIVIL ACTION NO:
2009-CP-26-8278

**THE HEARING HELD BEFORE THE
HONORABLE CYNTHIA GRAHAM HOWE, MASTER-
IN-EQUITY FOR HORRY COUNTY, SOUTH CAROLINA**

Tuesday, February 23, 2010
9:50 a.m. -- 11:02 a.m.

The following is the hearing held before The Honorable Cynthia Graham Howe, Master-In-Equity for Horry County, at the Horry County Government and Justice Center, located at 1301 Second Avenue, Conway, South Carolina, on Tuesday, February 23, 2010.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

APPEARANCES:

FOR THE PLAINTIFFS:
(Appearing Pro Se)

FOR THE DEFENDANT:
(Appearing Pro Se)

COURT REPORTER:

Stephanie R. Boyd
Verbatim Court Reporter

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

INDEX

EXAMINATION OF WITNESS: PAGE

CHRISTIAN FOWLER

Direct Examination by Ms. Kimber Fowler 13
Cross Examination by Mr. Gene Fowler 15

KENNETH DIPPEL

Direction Examination by Ms. Kimber Fowler 18
Cross Examination by Mr. Gene Fowler 26

JOE DALE FOWLER

Direct Examination by Mr. Gene Fowler 45
Cross Examination by Ms. Kimber Fowler 47

TERRY FOWLER

Direct Examination by Mr. Gene Fowler 52
Cross Examination by Ms. Kimber Fowler 54
Re-direct by Mr. Gene Fowler 61
Re-Cross by Ms. Kimber Fowler 62

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

CLAUDIUS EUGENE FOWLER

Cross Examination by Ms. Kimber Fowler	84
Certificate Page	95

EXHIBITS

Plaintiff's Exhibit Number 1	43
(Bill of sale)	
Plaintiff's Exhibit Number 2	58
(Ariel)	
Plaintiff's Exhibit Number 3	58
(Ariel)	
Plaintiff's Exhibit Number 4	58
(Ariel)	
Plaintiff's Exhibit Number 5	65
(Plat)	
Plaintiff's Exhibit Number 6	67
(Ariel)	
Defendant's Exhibit Number 1	38
(Certificate of title of a Flet, 1990 Mobile Home)	
Defendant's Exhibit Number 2	77
(Plat)	
Defendant's Exhibit Number 3	77
(Plat)	

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THE COURT: ALL RIGHT. THIS IS THE CASE OF
2 KENNETH DIPPEL AND KIMBER FOWLER
3 VERSUS CLAUDIUS EUGENE FOWLER. IT'S
4 CIVIL ACTION NUMBER 2009-CP-26-8278.
5 THERE IS AN ORDER REFERRING THIS
6 MATTER TO THE MASTER-IN-EQUITY AND
7 IT'S SIGNED BY THE HONORABLE LARRY
8 B. HYMAN, AND IT IS DATED DECEMBER
9 THE 4TH, 2009. TODAY IS A FINAL
10 HEARING PURSUANT TO A NOTICE OF
11 HEARING DATED DECEMBER 17TH, 2009,
12 AND ARE THE PARTIES READY TO
13 PROCEED?
14 MR. DIPPEL: YES, YOUR HONOR.
15 THE COURT: THANK YOU. AS AN INITIAL MATTER,
16 LET ME ADDRESS THE ISSUE OF STANDING
17 OF YOU, MR. DIPPEL.
18 MR. DIPPEL: YES, YOUR HONOR.
19 THE COURT: IF YOU WILL PLEASE STAND. STANDING
20 IS ALWAYS A THRESHOLD INQUIRY FOR
21 ANY COURT IN DETERMINING
22 JUSTICIABILITY. YOU MUST HAVE A
23 PERSONAL STAKE IN THIS ALLEGED
24 CONTROVERSY, AND AS I UNDERSTAND IT,
25 THERE ARE TWO CAUSES OF ACTION.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THERE'S A TRESPASS AND A CONTEMPT OF
2 COURT OF THIS COURT'S PRIOR ORDER
3 AND YOU ARE NOT A PARTY TO THAT
4 PRIOR ORDER. PLEASE TELL ME WHY YOU
5 WOULD HAVE STANDING, WHY YOU WOULD
6 HAVE A PERSONAL STAKE IN THIS
7 LAWSUIT, BECAUSE AS I UNDERSTAND IT,
8 THIS IS TRESPASS OF REAL PROPERTY,
9 AND AS I UNDERSTAND IT, YOU DO NOT
10 OWN ANY REAL PROPERTY AT ISSUE IN
11 THIS LAWSUIT; IS THAT CORRECT?

12 MR. DIPPEL: THAT IS NOT CORRECT.

13 THE COURT: IT'S MY UNDERSTANDING YOU ONLY OWN
14 AN INTEREST IN A MOBILE HOME.

15 MR. DIPPEL: THAT IS NOT CORRECT. KIMBER FOWLER
16 HAS DEEDED A 50 PERCENT INTEREST OUT
17 IN THAT PROPERTY.

18 THE COURT: DID YOU OWN A 50 PERCENT INTEREST IN
19 THAT PROPERTY WHEN THIS LAWSUIT WAS
20 FILED?

21 MR. DIPPEL: NO, I DIDN'T.

22 THE COURT: OKAY.

23 MR. DIPPEL: BUT I HAVE STANDING HERE IN THIS
24 CASE BECAUSE I AM A REAL PROPERTY
25 OWNER JUST LIKE MR. JOE DALE FOWLER

1 WHO IS SITTING IN THIS COURTROOM.
2 THE COURT: JUST AS WHO?
3 MR. DIPPEL: JUST AS MR. JOE DALE FOWLER WHO IS
4 SITTING IN THIS COURTROOM, I HAVE
5 STANDING.
6 THE COURT: MR. JOE DALE FOWLER IS NOT A PARTY
7 TO THIS LAWSUIT.
8 MR. DIPPEL: I UNDERSTAND. I, HAVE STANDING, YOUR
9 HONOR, BECAUSE I AM A 50 PERCENT
10 PROPERTY OWNER. MY SISTER AND I
11 RENT A TRAILER OUT THERE AND THIS
12 ---
13 THE COURT: WELL, NOW, AS I UNDERSTAND IT, THIS
14 IS A TRESPASS TO REAL PROPERTY AND
15 YOUR OWNING A 50 PERCENT INTEREST IN
16 A MOBILE HOME WOULD NOT GIVE YOU
17 STANDING IN THIS LAWSUIT TO SUE FOR
18 TRESPASS TO REAL PROPERTY.
19 MR. DIPPEL: YOUR HONOR, I MUST RESPECTFULLY
20 DISAGREE. HE'S COUNTER-SUED ME FOR
21 \$1,500. HE'S CONTINUING ---
22 THE COURT: NOW, WE'LL GET TO THAT IN A MOMENT.
23 I'M TALKING ONLY RIGHT NOW ABOUT
24 YOUR CLAIMS, YOUR CLAIMS FOR
25 TRESPASS TO REAL PROPERTY AND YOUR

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 CLAIM FOR CONTEMPT OF THIS COURT'S
2 PRIOR ORDER. NOW, THERE'S NO
3 QUESTION BUT THAT YOU WERE NOT A
4 PARTY TO THE PRIOR LAWSUIT.

5 MR. DIPPEL: THAT IS CORRECT, BUT, YOUR HONOR, I
6 AM A REAL PROPERTY OWNER NOW AND
7 THERE'S DAMAGE TO THAT PROPERTY.
8 IT'S WAY MORE THAN JUST A CONTEMPT.
9 IF YOU LOOK AT THE COMPLAINT, NUMBER
10 5, IT SAYS, "THE COURT RELEASES" ---

11 THE COURT: WELL, LET ME ASK YOU THIS.

12 MR. DIPPEL: --- "WHATEVER RELIEF IS EQUITABLE."

13 THE COURT: LET ME STOP YOU RIGHT THERE.

14 THERE'S NO QUESTION BUT THAT WHEN
15 YOU BROUGHT THIS LAWSUIT YOU WERE
16 NOT A REAL PROPERTY OWNER; IS THAT
17 NOT CORRECT?

18 MR. DIPPEL: THAT'S CORRECT, BUT I CAN -- I'M
19 ASKING FOR STANDING, AND THE RULES
20 OF SOUTH CAROLINA CIVIL PROCEDURE,
21 AS YOU ARE VERY AWEEL [SIC], DOES
22 ALLOW FOR STANDING, AND REAL
23 PROPERTY INTEREST ---

24 THE COURT: NO, SIR. NO, SIR. THAT'S NOT A
25 SOUTH CAROLINA RULE. STANDING IS A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CONSTITUTIONAL ISSUE.

MR. DIPPEL:

WELL, I DO HAVE A CONSTITUTIONAL
ISSUE HERE AND MY PROPERTY RIGHTS
ARE BEING CONTINUALLY VIOLATED, AND
I JUST WANT TO SAY RESPECTFULLY,
EVERY TIME THAT I TRY TO STAND UP
AND DEFEND MY PROPERTY, AND I'M NOW
A PROPERTY OWNER, I'M NOT GIVEN THAT
CONSTITUTIONAL RIGHT, AND I THINK
THAT IS WRONG.

THE COURT:

SIR, I'M GOING TO DENY YOUR RIGHT TO
BE A PLAINTIFF IN THIS LAWSUIT. I'M
DISMISSING YOU AS A PLAINTIFF IN
THIS LAWSUIT BECAUSE WHEN THE
LAWSUIT WAS BROUGHT YOU HAD NO
STANDING.

MR. DIPPEL:

YOUR HONOR, I MUST SAY RESPECTFULLY,
I WILL BE APPEALING THAT RULING.

THE COURT:

I UNDERSTAND THAT AND YOU HAVE EVERY
RIGHT TO APPEAL THAT AND YOU HAVE
EVERY RIGHT TO BE A WITNESS IN THIS
LAWSUIT, MR. DIPPEL, AND YOU CAN BE
HEARD AS A WITNESS.

MR. DIPPEL:

THERE'S A LOT OF THINGS GOING ON IN
THIS SUIT, YOUR HONOR, THAT YOU MAY

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 NOT BE AWARE OF ---

2 THE COURT: SIR, I UNDERSTAND THAT.

3 MR. DIPPEL: --- AND IT CONTINUES AND IT'S GOING
4 TO CONTINUE IF THIS COURT DOES NOT
5 TAKE DRASTIC ACTION.

6 THE COURT: SIR, THE LAWSUIT WILL CONTINUE WITH
7 YOUR SISTER AS A PARTY.

8 MR. DIPPEL: I KNOW IT WILL, BUT IF THIS COURT
9 DOES NOT TAKE DRASTIC ACTION, AND I
10 EMPHASIZED IT LAST TIME AND WITH THE
11 COURT ORDER PLATTING ACTION, THIS
12 THING HERE IS GOING TO CONTINUE. WE
13 WILL BE BACK IN THIS COURTROOM AGAIN
14 AND I WILL FILE ANOTHER COMPLAINT
15 AGAINST HIM.

16 THE COURT: THAT'S FINE, SIR.

17 MR. DIPPEL: AND THEN I AM A REAL PROPERTY ---

18 THE COURT: PLEASE BE SEATED. PLEASE BE SEATED,
19 SIR. BUT YOU UNDERSTAND MY RULING
20 IS THAT YOU DO NOT HAVE STANDING.

21 MR. DIPPEL: I DO NOT UNDERSTAND THAT.

22 THE COURT: SIR, I DIDN'T SAY YOU AGREE WITH IT.
23 YOU UNDERSTAND THE RULING IS THAT
24 YOU DON'T HAVE STANDING?

25 MR. DIPPEL: I WILL TELL YOU THIS. I'M, I'M

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 GOING TO SAY THIS RESPECTFULLY.
2 THAT VIOLATES MY CONSTITUTIONAL
3 RIGHT TO DEFEND THIS PROPERTY WHEN
4 HE IS SUING ME FOR \$1,500.
5 THE COURT: MS. FOWLER, WOULD YOU LIKE TO
6 CONTINUE WITH YOUR LAWSUIT, THEN?
7 MS. K. FOWLER: YES, I WOULD.
8 THE COURT: OKAY. WOULD YOU LIKE TO CALL YOUR
9 FIRST WITNESS?
10 MS. K. FOWLER: I DON'T REALLY HAVE A WITNESS, OTHER
11 THAN I'M HERE TODAY. I WILL SPEAK
12 ON MY BEHALF TODAY. AS YOU ALREADY
13 KNOW, WE WERE HERE BEFORE. THE
14 COURT OF COLUMBIA APPEAL DID RULE
15 THAT THERE IS NO, AN EASEMENT, AND
16 WHEN I CAME IN FRONT OF YOU, YOU
17 ALSO RULED THERE WAS NO, AN EASEMENT
18 OF ANY TYPE FOR MR. FOWLER, AND HE
19 HAS VIOLATED YOUR ORDER. YOU
20 PLAINLY MADE IT CLEAR TO HIM THAT
21 THERE WAS NO, AN EASEMENT AND YOU,
22 YOU ISSUED AN INJUNCTION FOR HIM NOT
23 TO GO THROUGH THERE AND HIS HEIRS,
24 AND WE'VE HAD CONTINUOUS TRESPASSING
25 OF HIM GOING THROUGH THERE AND ---

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THE COURT: WELL, MS. FOWLER, YOU NEED TO PROVE
2 YOUR CASE. I CAN'T JUST TAKE YOUR
3 WORD FOR IT. YOU NEED TO PROVE YOUR
4 CASE. YOU DON'T HAVE A WITNESS TO
5 PROVE YOUR CASE?

6 MS. K. FOWLER: MY, MY DAUGHTER IS HERE, YEAH.

7 THE COURT: WOULDN'T YOU LIKE TO PUT HER ON THE
8 WITNESS STAND AND QUESTION HER?

9 MS. K. FOWLER: CHRISTIAN, WOULD YOU, WOULD YOU GO
10 UP THERE, PLEASE?

11 THE COURT: MS. FOWLER, YOU UNDERSTAND I JUST
12 CAN'T TAKE YOUR WORD FOR IT.

13 MS. K. FOWLER: YES, MA'AM, I UNDERSTAND.

14 THE COURT: YOU NEED TO PUT SOMEONE ON THE
15 WITNESS STAND AND HAVE THEM SWEAR

16 ---

17 MS. K. FOWLER: YES, MA'AM. I HAVE A POLICE ORDER,
18 AS WELL, BUT I DON'T THINK I HAVE IT
19 HERE IN THE COURTROOM TODAY, BECAUSE
20 THE POLICE DID COME OUT AND THEY
21 TOOK A, THEY TOOK A NOTATION OF HIM
22 GOING THROUGH THERE, AND HE, HE
23 PLAINLY ADMITTED THAT HE'D BEEN
24 GOING THROUGH. HE SAID HIS EXCUSE
25 IS BECAUSE THE HORRY COUNTY PLANNING

1 DEPARTMENT SAID THAT DOLLY LANE IS
2 SUPPOSED TO REMAIN OPEN.

3 THE COURT: I THINK THAT WAS ATTACHED TO YOUR
4 COMPLAINT.

5 MS. K. FOWLER: YES, MA'AM.

6 CHRISTIAN FOWLER, AFTER HAVING BEEN CALLED TO THE
7 STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

8 THE COURT: ALL RIGHT. MS. FOWLER, YOU MAY
9 QUESTION THE WITNESS.

10 DIRECT EXAMINATION

11 BY MS. KIMBER FOWLER:

12 Q: Christian, I just want upon your admission.

13 Have, have not you seen Gene, his family members,
14 Terry, Gene, Timmy, everybody, going through the
15 Dolly Lane? You have seen him go through there,
16 right?

17 A: Yes, ma'am.

18 Q: Okay. Like I said, you know, we have, we have a,
19 you know, a trespassing charge and, of course, I
20 don't have it here with me today, but have not
21 you seen him go through there many a, many a
22 times, and then we had another argument out there
23 one night?

24 MS. K. FOWLER: KENNY AND, KENNY AND BRYANT, WHICH
25 IS THE GRANDSON, THEY GOT INTO A BIG

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 ARGUMENT OVER THAT, AND HIS GRANDSON
2 WAS OUT THERE SAYING THAT THERE
3 WASN'T AN EASEMENT, SO BASICALLY,
4 WHAT THIS IS COMING DOWN TO IS,
5 THEY'RE TRYING TO OVERRULE WHAT THE
6 JUDGES ARE SAYING.

7 THE COURT: MS. FOWLER, ASK YOUR WITNESS A
8 QUESTION. DON'T ARGUE TO ME. YOU
9 NEED TO ASK YOUR WITNESS A QUESTION
10 AND HAVE HER ANSWER.

11 MS. K. FOWLER: OKAY.

12 Q: Okay. Christian, have not you seen your
13 grandfather continuously going through the Dolly
14 Lane?

15 A: Yes, ma'am.

16 Q: And how many times -- approximately how many
17 times have you seen your grandfather go through
18 there?

19 A: I'm not sure. I don't, I don't count how many
20 times, but he's not like -- he didn't go through
21 there all the time. There's different -- like
22 everyone goes through there.

23 Q: And haven't you seen his grandson, Bryant, go
24 through there, his family members?

25 A: Yes, ma'am.

1 MS. K. FOWLER: OKAY. AND MAY I CALL, MAY I CALL MY

2 ---

3 THE COURT: ARE YOU THROUGH QUESTIONING HER?

4 MS. K. FOWLER: YES, MA'AM.

5 THE COURT: MR. FOWLER, WOULD YOU LIKE TO ASK
6 THE WITNESS SOME QUESTIONS?

7 MR. G. FOWLER: YES, I WOULD, YOUR HONOR.

8 THE COURT: CERTAINLY. YOU MAY CROSS-EXAMINE
9 HER.

10 MR. G. FOWLER: THANK YOU, YOUR HONOR.

11 THE COURT: MS. FOWLER, PLEASE BE SEATED. MR.
12 FOWLER, YOU MAY ASK THE WITNESS SOME
13 QUESTIONS AND YOU MAY CROSS-EXAMINE
14 HER. YOU MAY LEAD HER, BECAUSE YOU
15 ARE ON CROSS-EXAMINATION.

16 CROSS-EXAMINATION

17 BY MR. GENE FOWLER:

18 Q: Christian, you're aware of all the facts and
19 everything about Dolly Lane, which was the last
20 time we come to court? I do not have no easement
21 across your mother's property, I understand that.
22 Since we've been to court last time, you have not
23 seen me using that road now; would you tell the
24 court?

25 A: I have seen everybody using that road.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THE COURT: NO. THE QUESTION WAS, HAVE YOU SEEN
2 MR. FOWLER USE THE ROAD?

3 A: I think I did one time. I, I've seen your car.
4 I've seen the gold car go through there.

5 THE COURT: DID YOU SEE MR. FOWLER DRIVING THAT
6 CAR OR DO YOU KNOW WHO WAS DRIVING
7 THE CAR?

8 A: I'm not sure.

9 THE COURT: YOU'RE NOT SURE WHO WAS DRIVING THE
10 CAR? ALL RIGHT. THANK YOU.

11 Q: Christian, would you -- you stated that you
12 didn't see me driving the car, that you've seen
13 my car go through there. My wife drives my car
14 and me and her is the only one that drives my
15 car, and would it be fair to say that you have
16 not seen me or my wife driving since we've been
17 to court over this issue and I've told y'all I
18 have no easement no more on the property?

19 A: No, sir. I have seen y'all going through there
20 before. I have seen y'all.

21 Q: I know you have in the past. I'm talking about
22 since we've been to court, May of last year.

23 A: No. Yes, sir. I've seen everybody go up and
24 down the road.

25 THE COURT: THE QUESTION IS, HAVE YOU SEEN MR.

1 FOWLER DRIVE THE CAR MAY OF LAST
2 YEAR?
3 A: Yes, ma'am. Since last year, yes, ma'am, I have.
4 THE COURT: SINCE MAY OF 2009, YOU SAW MR.
5 FOWLER DRIVE DOWN DOLLY LANE?
6 A: Yes, ma'am.
7 THE COURT: DO YOU KNOW WHEN THAT WAS?
8 A: There, there's been different times since.
9 Everyone has used the road.
10 THE COURT: NO, MA'AM, NOT EVERYONE, MR. FOWLER.
11 THIS IS NOT EVERYONE. THIS IS MR.
12 FOWLER. WHEN DID YOU SEE MR. FOWLER
13 DRIVE DOWN DOLLY LANE?
14 A: I don't know the date.
15 THE COURT: OKAY. THANK YOU.
16 MR. G. FOWLER: THAT WOULD BE ALL, YOUR HONOR.
17 THE COURT: ALL RIGHT. THANK YOU.
18 MR. G. FOWLER: THANK YOU, YOUR HONOR.
19 THE COURT: DO YOU HAVE ANY RE-DIRECT, MS.
20 FOWLER?
21 MS. K. FOWLER: I WOULD -- MAY I CALL MY BROTHER,
22 KENNETH, AS A WITNESS?
23 THE COURT: YES, MA'AM, YOU CERTAINLY MAY.
24 MS. K. FOWLER: KENNETH, WOULD YOU PLEASE APPROACH
25 THE STAND?

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THE COURT: MR. DIPPEL, IF YOU'LL PLACE YOUR
2 LEFT HAND ON THE BIBLE AND RAISE
3 YOUR RIGHT HAND AND BE SWORN OR
4 AFFIRMED BY THE COURT REPORTER.

5 KENNETH DIPPEL, AFTER HAVING BEEN CALLED TO THE STAND
6 AND DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE COURT: ALL RIGHT. MS. FOWLER, YOU MAY ASK
8 YOUR BROTHER SOME QUESTIONS.

9 DIRECT EXAMINATION

10 BY MS. KIMBER FOWLER:

11 Q: Kenneth, it's the same question I'm going to ask,
12 okay? The last time we came to court, the judge
13 did issue an Injunction for him not to travel
14 through there. I would like for you to please
15 tell the judge about the night that you and Gene
16 had the argument when he went through Dolly Lane,
17 that the words that you and him spoke, and, and
18 how many times, approximately, have you seen him
19 travel through Dolly Lane?

20 THE COURT: AND BEFORE YOU ANSWER THE

21 ---

22 Q: Gene, only? We're not talking about Joe Dale or
23 anybody else, Gene, alone.

24 THE COURT: AND FOR THE RECORD, GENE IS CLAUDIUS
25 EUGENE FOWLER.

1 MR. DIPPEL: FIRST OFF, YOUR HONOR, I WILL ANSWER
2 THAT QUESTION IN A MINUTE. IF YOU
3 LOOK AT THE COMPLAINT, HE ---
4 THE COURT: NO, SIR, ANSWER THE QUESTION AND
5 THEN YOU CAN EXPLAIN.
6 MR. DIPPEL: WELL, IN, IN THE REPLY, HE HAS
7 ADMITTED THAT HE'S WENT THROUGH
8 THERE. HIS EXCUSE IS THAT, THAT
9 IT'S FOR 911 PURPOSES. YOU HAVE TO
10 LOOK AT HIS REPLY. HE'S ADMITTED.
11 THAT'S NOT A QUESTION AS TO WHETHER
12 HE HAS BEEN THROUGH THERE. HE, HE
13 ADMITS THAT IN, IN HIS REPLY ANSWER.
14 IT'S RIGHT THERE.
15 THE COURT: NO, SIR. THAT'S NOT WHAT HE SAID IN
16 THE REPLY. I'VE LOOKED AT HIS
17 REPLY. HE DIDN'T SAY HE WENT THERE
18 FOR 911 PURPOSES.
19 MR. DIPPEL: WELL, HE, HE ---
20 THE COURT: THAT'S NOT WHAT HE SAID.
21 MR. DIPPEL: THAT'S NOT WHAT I'M TRYING TO GET
22 AT. HE ADMITS THAT HE'S TRAVELED
23 THROUGH THERE. THAT'S WHAT HE'S
24 ADMITTING. NOW, AS FAR AS ME SEEING
25 HIM GOING THROUGH THERE, I'VE SEEN

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

HIM NO MORE THAN A DOZEN TIMES PASS
THROUGH THERE, AND I, I DON'T KNOW
THE EXACT DATES, BUT I KNOW THE
EXACT DATE. IT WAS ABOUT ONE WEEK
AGO AND IT WAS APPROXIMATELY ABOUT
ONE O'CLOCK HE COME THROUGH THERE.
SHORTLY AFTER THIS INJUNCTION ORDER
WAS ISSUED AND WE LEFT THE PLANNING
COMMISSION MEETING, HE WENT THROUGH
THERE TOOTING HIS HORN, BLOWING HIS
HORN LIKE HE'S THE MAYOR OF LORIS OR
SOMETHING, AND THAT'S NOT JUST THE
ONLY TIME. THERE'S NO LESS THAN --
THE NIGHT, IT WAS ABOUT 1:00 A.M. IN
THE MORNING, OKAY, AND THERE WAS
NOBODY IN HIS CAR. I WAS OUT THERE
AND I WAS AT MY SISTER'S HOUSE AND
IT WAS LATE AT NIGHT. I WAS DOING
SOME WORK FOR HER, AND I STOPPED
HIM, AND HE KNOWS HE REMEMBERS THIS.
WE HAD THIS CONVERSATION, MR.
FOWLER, AND YOU KNOW THAT'S TRUE.
SIR, ANSWER THE QUESTION. DO NOT
ADDRESS YOURSELF TO MR. FOWLER. DO
NOT ADDRESS YOURSELF TO MR. FOWLER.

THE COURT:

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 YOU ANSWER MS. FOWLER'S QUESTION.

2 MR. DIPPEL: I UNDERSTAND, YOUR HONOR, BUT I JUST
3 WANT TO SAY, AND I APOLOGIZE, BUT
4 THIS CASE IS EMOTIONAL AND THERE'S A
5 LOT AT STAKE HERE.

6 THE COURT: I UNDERSTAND THAT, AND LET'S KEEP
7 THE EMOTIONS DOWN, PLEASE, SIR.

8 A: Anyway, I stopped him that night and I asked him
9 and I told him, "Look, you're not supposed to be
10 going through here, there's a Court Order
11 Injunction," and it's plain on its face. It
12 specifically said that Mr. Claudius Gene Fowler,
13 his heirs and successors were not to trespass on
14 Plaintiff Kimber Fowler's property, including the
15 sole driveway known as Dolly Lane. Now, I
16 stopped him and we talked about 15 minutes there
17 and he was smoking a cigarette. He was by
18 himself. Now, his grandchild wasn't come, with
19 him. He was coming back from playing bingo that
20 night. That's one night that he did this. This
21 was shortly after the Planning Commission. There
22 was another, another incident. It was on a
23 Sunday, and this is approximately about four
24 weeks ago he traveled through there and he went
25 down through the Dolly, the so-called Dolly Lane

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 area. He had his wife with him. They past
2 through there and I happened to be outside then.
3 I was doing some work around my trailer, cleaning
4 up, and I seen him that time, but there's been
5 repeated -- Your Honor, they have repeatedly,
6 repeatedly trespassed through there.

7 THE COURT: NOT THEY, SIR, MR. FOWLER.

8 A: Well, Mr. Fowler. I will say it's not only that.
9 He has induced others to go through there. Let
10 me give you an example. He owns the entire, that
11 entire land up there. The other people that are
12 living on his land are nothing more than tenants.
13 Now, those tenants, they, they rent from him,
14 okay? Now, he sends, he tells his renter to go
15 through Kimberly Fowler's property. I've seen
16 Jim ---

17 THE COURT: LET ME STOP YOU RIGHT THERE. ARE
18 THE TENANTS LIVING ON DOLLY LANE?

19 A: They're not living on Dolly Lane. That's why the
20 plats are important. When you look at the
21 affiliated service plat, Dolly Lane supposedly
22 ends at the boundaries, the far northern
23 boundaries of Kimberly Fowler's property.

24 THE COURT: LET ME ASK YOU THIS. ARE THERE
25 OTHER PEOPLE WHO LIVE ON DOLLY LANE,

1 WHO ACTUALLY HAVE DOLLY LANE AS AN
2 ADDRESS?

3 A: Your Honor ---

4 THE COURT: ANSWER YES OR NO.

5 A: They have those addresses, but those addresses
6 are derived from a fraudulent plat that he has --
7 that is not a correct pictorial representation of
8 his plat. There's no cul-de-sac on that plat.

9 THE COURT: SIR, THERE ARE PEOPLE WHO ACTUALLY
10 LIVE ON DOLLY LANE WITH THAT
11 ADDRESS; IS THAT NOT CORRECT?

12 A: That's correct.

13 THE COURT: ALL RIGHT. ALL RIGHT.

14 A: But they don't necessarily live on Dolly Lane,
15 because if you look at the plat ---

16 THE COURT: THAT'S THEIR ADDRESS.

17 A: That's their address. The addressing is not an
18 issue. You issued an Order specifically last
19 time, you know, that it was clear on its face.
20 He was not supposed to be traveling down it, his
21 heirs and successors, and those tenants, they got
22 a way into their property.

23 THE COURT: SIR, THOSE TENANTS ALREADY LIVED ON
24 DOLLY LANE.

25 A: But they have a way in. They're renting from

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 him. They've got a way into their property.

2 THE COURT: SIR, I CAN'T KEEP ANYBODY ELSE WHO
3 LIVES ON DOLLY LANE FROM USING THAT
4 ROAD AND I'M NOT, I CANNOT CLOSE
5 DOLLY LANE. HORRY COUNTY PLANNING
6 COMMISSION ---

7 A: Well, I'm certainly going to file an appeal in
8 this thing, because -- I'll tell you that.

9 THE COURT: SIR, THAT'S FINE. THAT'S YOUR
10 RIGHT. THAT'S YOUR RIGHT TO APPEAL.

11 A: Because that's, that's -- I will tell you this,
12 Your Honor, with all due respect. It ignores,
13 that he has got, he, he has submitted to the
14 Horry County Planning office a fraudulent plat,
15 which there's no cul-de-sac on it.

16 THE COURT: SIR, THAT HAS ---

17 A: And those addresses, ---

18 THE COURT: SIR. .

19 A: --- Your Honor, ---

20 THE COURT: SIR.

21 A: --- are derived from that.

22 BAILIFF: WHEN A JUDGE TALKS, YOU LISTEN TO
23 HER.

24 THE COURT: THE HORRY COUNTY PLANNING COMMISSION
25 PLAT HAS NOTHING TO DO WITH THIS

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 PARTICULAR LAWSUIT OTHER THAN THE
2 HORRY COUNTY PLANNING COMMISSION HAS
3 SAID THAT ROAD CANNOT BE CLOSED, AND
4 I CANNOT MAKE THAT ROAD BE CLOSED.

5 A: I will be appealing this decision.

6 THE COURT: SIR, I UNDERSTAND THAT, AND THAT IS
7 YOUR RIGHT. I UNDERSTAND THAT.

8 A: Well, I will say this. I will say this. I'm
9 disappointed. If this man is -- this goes out
10 the door, this stuff is going to continue,
11 continue.

12 THE COURT: DO YOU HAVE ANY OTHER QUESTIONS FOR
13 MR. DIPPEL?

14 MS. K. FOWLER: NO, MA'AM, I DON'T. I JUST WANTED
15 HIM TO ADDRESS THE FACT ABOUT GENE
16 GOING THROUGH THE DOLLY LANE. I
17 THINK IT'S BEEN ADDRESSED NOW.

18 MR. DIPPEL: HE HAS WENT THROUGH THERE.

19 THE COURT: ALL RIGHT, SIR. I UNDERSTAND. MR.
20 FOWLER, DO YOU HAVE ANY CROSS-
21 EXAMINATION OF MR. DIPPEL?

22 MR. G. FOWLER: YES, I DO, YOUR HONOR.

23 THE COURT: ALL RIGHT, SIR. AND I UNDERSTAND
24 THAT THE EMOTIONS RUN HIGH, BUT IF
25 YOU COULD TRY TO KEEP THE EMOTIONS

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

DOWN, I'D APPRECIATE IT.

MR. G. FOWLER: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU, MR. FOWLER.

CROSS EXAMINATION

BY MR. GENE FOWLER:

Q: Mr. Dippel, you testified that you've seen me go
by there at one o'clock at night?

A: Yes, I did, and you remember it.

Q: Who was with me in my vehicle?

A: Nobody.

Q: How far away were you from my vehicle?

A: I come right to you. You pulled right down Dolly
Lane. You stopped on it, and I walked right up
to your car and you know it, and I asked you what
were you doing going through the driveway that
night, and you sat there and you stopped and you
smoked a cigarette, and what you told me was
this. I told you ---

Q: I want, I, I want you to tell me now ---

A: I'm refreshing your memory.

Q: Answer my question yes or no, please.

A: Yes, you were in the driveway.

Q: I was in the driveway, you say?

A: You were not in the driveway. You were on Dolly
Lane.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 Q: I was in the driveway ---

2 A: My car was parked ---

3 Q: --- known as Dolly lane, Mr. Dippel.

4 A: Mr. Fowler, my car was parked right in Mrs.
5 Fowler's yard. You went -- I'm going to tell
6 you, I'm going to tell you what you did. You
7 passed ---

8 Q: Answer my question.

9 A: You passed -- I'm trying to answer his question,
10 Your Honor.

11 THE COURT: LET'S HAVE ONE PERSON ANSWER, ONE
12 PERSON TALK ---

13 A: He won't let me answer it.

14 Q: My question to you, Mr. Dippel, is this right
15 here. You stated they were nobody in my car. Me
16 and my granddaughter, Kimberly's baby girl, seven
17 years old, I took her that Saturday night to the
18 go-cart race and I went to carry her home, to her
19 mother, 'cause she stated she wanted to go to her
20 mother's house, and I pulled up there at one
21 o'clock in the morning. What was your business
22 up there at her house at one o'clock in the
23 morning?

24 A: For one thing, Peyton was not with you then.
25 Peyton was with me. That's why I was at the

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 house. I was taking care of her. Peyton and
2 Christian were there, and I will tell you this.
3 There was nobody in that car other than yourself.
4 I stopped you and when -- I seen you go by. You
5 went up to your -- Merle, who's your sister's
6 house, then you come back down and you hung a
7 right, right onto Dolly Lane, which is Kimberly's
8 property, and when you pulled through, I hollered
9 to you and you heard me and you stopped right in
10 that area. I walked up to you and I asked you
11 what were you doing traveling down Dolly -- I
12 said, "You don't need to be going through there,
13 Mr. Fowler." And you remember that and you sat
14 there, smoked a cigarette, and I told you this.
15 I said, "Look, look, you" -- "There's an
16 Injunction Order out against you," and I said,
17 "The things that are going on with this thing
18 here is wrong." I said, you know, I said, "When
19 it comes to court decisions, that's when the
20 ballgame quits." And you told me that I needed
21 to leave it alone or else.

22 Q: Mr. Dippel, that's the night that the grandbaby
23 was with me. She was asleep ---

24 A: There was no grandbaby with you.

25 Q: --- in the back seat of my car.

1 THE COURT: ALL RIGHT. LET'S MOVE ON NOW. I
2 UNDERSTAND. MS. FOWLER, YOU JUST
3 STAY PUT. MR. FOWLER IS CROSS-
4 EXAMINING. ALL RIGHT. SO LET'S
5 MOVE ON.
6 MR. G. FOWLER: YOUR HONOR, THAT'S ALL I HAVE TO ASK
7 HIM ABOUT. I CAN GIVE YOU MY
8 ANSWER, WHAT EVERYTHING WAS, AND
9 HE'S, HE'S NOT TELLING THE TRUTH.
10 THE COURT: OKAY.
11 MR. G. FOWLER: THANK YOU VERY MUCH.
12 THE COURT: YOUR TURN WILL COME. NOW, MS.
13 FOWLER, WOULD YOU LIKE TO RE-DIRECT
14 MR. DIPPEL?
15 MS. K. FOWLER: I, I JUST WANTED TO ---
16 THE COURT: YOU NEED TO STAND WHEN ADDRESSING
17 THE COURT, MS. FOWLER.
18 MS. K. FOWLER: I JUST WANTED TO SAY THAT I'M NOT
19 OUT TO RE-DIRECT IT, BUT I DO HAVE A
20 POLICE REPORT WHERE HE TRESPASSED.
21 HE DID TRAVEL THROUGH THERE AND ---
22 THE COURT: NO. THE QUESTION IS, DO YOU WANT TO
23 RE-DIRECT MR. DIPPEL?
24 MS. K. FOWLER: NO. NO, I DON'T.
25 THE COURT: MR. DIPPEL, THEN YOU MAY STEP DOWN.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 DO YOU HAVE ANY MORE WITNESSES, MS.
2 FOWLER?

3 MS. K. FOWLER: NO.

4 THE COURT: I HAVE A FEW QUESTIONS OF YOU, MS.
5 FOWLER, IF YOU'LL PLEASE STAND. WHO
6 ELSE LIVES ON DOLLY LANE?

7 MS. K. FOWLER: I THINK THERE, THERE'S TWO. I THINK
8 IT'S TWO, MAYBE, POSSIBLY THREE
9 RESIDENTS.

10 THE COURT: WHO ARE THEY?

11 MS. K. FOWLER: ONE WOULD BE MY EX-HUSBAND, AND THEN
12 THERE'S A GUY NAMED JIM THAT STAYS
13 IN A TRAILER, I THINK, WHICH IS HIS
14 TENANT, AND THEN ---

15 THE COURT: DO YOU KNOW JIM'S LAST NAME?

16 MS. K. FOWLER: NO, I DON'T. NO.

17 THE COURT: SO YOUR EX-HUSBAND LIVES ON DOLLY
18 LANE ---

19 MS. K. FOWLER: UH-HUH (AFFIRMATIVE RESPONSE).

20 THE COURT: --- AND JIM, AND DO YOU KNOW ANOTHER
21 ONE?

22 MS. K. FOWLER: THE, THE OTHER DOLLY LANE ADDRESS IS
23 JOE DALE FOWLER'S TENANT.

24 THE COURT: SO THERE ARE THREE OTHER PEOPLE WHO
25 ACTUALLY LIVE ON DOLLY LANE, WHO

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 HAVE DOLLY LANE ADDRESSES?
2 MS. K. FOWLER: THREE.
3 THE COURT: IS THAT CORRECT? WHO HAS BEEN
4 PAYING FOR THE UPKEEP OF DOLLY LANE?
5 MS. K. FOWLER: THERE'S REALLY NOBODY THAT REALLY
6 DOES THAT, EXCEPT FOR, YOU KNOW,
7 SOMETIME. THERE'S NOBODY THAT, YOU
8 KNOW, DOES ANYTHING, OTHER THAN WE
9 GO OUT THERE AND WE DROP SOME ROCKS
10 OR SOMETHING LIKE THAT, BUT NOBODY,
11 BECAUSE, I MEAN, THAT'S NOT A PUBLIC
12 ROAD. THAT'S PRIVATE PROPERTY.
13 THAT'S MINE.
14 THE COURT: HAVE YOU DONE ANY MAINTENANCE ON
15 DOLLY LANE?
16 MS. K. FOWLER: I HAVE DONE SOME MAINTENANCE ON IT,
17 NOT A LOT, BUT SOME. I HAVE POURED
18 SOME ROCK AND WE'RE PLANNING ON
19 GOING OUT THERE AND POURING SOME
20 MORE, BECAUSE THROUGH ALL THIS
21 TRAFFIC GOING THROUGH DOLLY LANE,
22 THE HOLES ARE GETTING BIGGER IN THE
23 ROAD AND IT'S DUE TO THESE BIG
24 TRUCKS GOING THROUGH THERE.
25 THE COURT: JUST ONE MOMENT. AND, MS. FOWLER,

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 HAVE YOU EVER GIVEN MR. FOWLER
2 PERMISSION TO USE DOLLY LANE?

3 MS. K. FOWLER: NO, I HAVEN'T. MAY I BRING
4 SOMETHING TO YOU REAL QUICK I'D LIKE
5 TO GIVE TO YOU?

6 THE COURT: YES, MA'AM.

7 MS. K. FOWLER: THIS IS SOMETHING HERE THAT I WENT
8 UP AND I GOT BECAUSE I JUST WANTED
9 TO CONFIRM THAT ---

10 THE COURT: WHAT IS THIS?

11 MS. K. FOWLER: THIS IS JUST SOMETHING HERE SHOWING
12 THAT HORRY COUNTY, THEY DO NOT
13 MAINTAIN THIS ROAD. THIS IS PRIVATE
14 PROPERTY HERE. THIS IS MY PROPERTY.

15 THE COURT: I KNOW IT'S PRIVATE PROPERTY. I
16 KNOW IT'S PRIVATE PROPERTY.

17 MS. K. FOWLER: SO I JUST WANTED YOU TO SEE THAT, TO
18 SEE THAT THAT IS ---

19 THE COURT: I KNOW IT'S NOT A PUBLIC ROAD. ALL
20 RIGHT. YOU MAY BE SEATED. MR.
21 FOWLER, I HAVE DISMISSED MR. DIPPEL
22 AS A PARTY. IF YOU'LL PLEASE STAND,
23 SIR.

24 MR. G. FOWLER: YES, YOUR HONOR.

25 THE COURT: I HAVE DISMISSED MR. DIPPEL AS A

1 PARTY. IF YOU WANT TO SUE MR.
2 DIPPEL FOR THE \$1,500, YOU WILL NEED
3 TO DO THAT IN ANOTHER LAWSUIT.
4 MR. G. FOWLER: OKAY, YOUR HONOR.
5 THE COURT: AND YOU CAN DO THAT IN MAGISTRATE'S
6 COURT, ---
7 MR. G. FOWLER: OKAY, YOUR HONOR.
8 THE COURT: --- IF YOU'D LIKE TO DO THAT, ---
9 MR. G. FOWLER: THANK YOU.
10 THE COURT: --- UNLESS THERE'S SOME REASON THAT
11 YOU WANT TO DO THAT, IF YOU WANT TO
12 PROCEED SOME WAY IN THIS LAWSUIT,
13 BUT I HAVE ACTUALLY DISMISSED HIM IN
14 THIS LAWSUIT.
15 MR. G. FOWLER: I UNDERSTAND YOU HAVE, YOUR HONOR.
16 THE COURT: OKAY. BECAUSE I DO NOT FIND ---
17 MR. G. FOWLER: AND I, I WILL BE TAKING, I'LL, I'LL
18 TAKE THAT UP IN ANOTHER COURT, YOUR
19 HONOR. THANK YOU VERY MUCH.
20 THE COURT: THANK YOU, SIR.
21 MR. G. FOWLER: AND, YOUR HONOR, ---
22 THE COURT: YES, SIR.
23 MR. G. FOWLER: --- THERE ARE -- FOUR RESIDENTS
24 LIVES ON DOLLY LANE.
25 THE COURT: OKAY.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MR. G. FOWLER: THAT JIM LANE IS ONE OF THEM.

2 THE COURT: JIM LANE.

3 MR. G. FOWLER: TIMOTHY FOWLER, WHICH IS MY SON.

4 THE COURT: WHAT'S HIS NAME?

5 MR. G. FOWLER: TIMOTHY FOWLER.

6 THE COURT: TIMOTHY?

7 MR. G. FOWLER: WHICH IS HER EX-HUSBAND.

8 THE COURT: YES, SIR.

9 MR. G. FOWLER: WHAT IS YOUR PEOPLES' NAMES?

10 MS. TERRY FOWLER: SIMON.

11 MR. JOE FOWLER: SIMON. SIMON ---

12 MR. G. FOWLER: SIMON ---

13 MR. JOE FOWLER: --- AND HIS WIFE.

14 MR. G. FOWLER: --- AND HIS WIFE LIVES ON DOLLY
15 LANE. KENNY'S RENTERS LIVES ON
16 DOLLY LANE.

17 MS. K. FOWLER: NO. THAT'S THE 2153 OAK DALE
18 ADDRESS.

19 MR. DIPPEL: IT GETS CHANGED ALL THE TIME BY
20 SOMEBODY, YOUR HONOR, AND I'VE GOT A
21 COPY OF THE TRAILER THAT HE PULLED
22 OUT THAT SHOWS THE OAK DALE ROAD
23 ADDRESS.

24 THE COURT: WHAT DO YOU MEAN IT GETS
25 -- YOU MEAN, THE ADDRESS ONE TIME WAS

1 DOLLY LANE AND THEN IT WAS CHANGED
2 TO ANOTHER ONE?
3 MR. DIPPEL: OAK DALE ROAD. SOMEBODY'S BEEN
4 CHANGING IT. MY INSURANCE PAPERS
5 EVEN SAY OAK DALE ROAD.
6 THE COURT: SO SOMETIMES IT'S DOLLY LANE ADDRESS
7 AND SOMETIMES IT'S OAK DALE?
8 MS. K. FOWLER: NO, MA'AM, IT'S NOT. IT, IT'S 2153
9 OAK Dale ROAD. THAT'S THE TENANT AT
10 MY TRAILER THAT WE RENT OUT.
11 THE COURT: WAS ONE TIME THE ADDRESS DOLLY LANE?
12 MR. DIPPEL: MAY, MAY I SHOW YOU THIS?
13 THE COURT: MS. FOWLER?
14 MS. K. FOWLER: I'M, I'M UNSURE. I DON'T, I DON'T
15 REALLY KNOW.
16 THE COURT: WAS THE ADDRESS AT ONE TIME DOLLY
17 LANE FOR THAT PROPERTY?
18 MR. DIPPEL: NO.
19 MS. K. FOWLER: NO, MA'AM. MAY I BRING THIS TO YOU,
20 PLEASE?
21 THE COURT: WHAT IS THAT?
22 MR. DIPPEL: THAT'S THE TRAILER THAT HE HAD ON
23 KIMBER'S LAND.
24 THE COURT: THAT'S OKAY. I DON'T NEED TO SEE
25 THAT.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MR. DIPPEL: AND IT'S GOT A 2153 OAK DALE ROAD
2 ADDRESS.

3 THE COURT: MR. FOWLER, WOULD YOU LIKE TO TAKE
4 THE WITNESS STAND?

5 MR. G. FOWLER: YES, HE IS, YOUR HONOR, BUT I WAS
6 LOOKING FOR MY PAPER. HE CLAIMED
7 THEY GOT THE TITLE TO HIS MOBILE
8 HOME WHERE HE'S GOT A RENTER THERE
9 AND IT'S 2153 DOLLY LANE. I'VE,
10 I'VE GOT IT RIGHT HERE WHERE HE GOT
11 THE TITLE.

12 THE COURT: OKAY. WELL, WOULD YOU LIKE TO TAKE
13 A MOMENT AND FIND IT, SIR?

14 MR. G. FOWLER: YES, MA'AM, I WOULD, PLEASE, ---

15 THE COURT: OKAY.

16 MR. G. FOWLER: --- 'CAUSE THEY'RE TELLING STORIES
17 ABOUT THAT.

18 THE COURT: ALL RIGHT, SIR.

19 MS. K. FOWLER: MAY, MAY I CROSS-EXAMINE HIM ON
20 SOMETHING ABOUT THIS TRAILER?

21 THE COURT: NOT UNTIL HE TAKES THE WITNESS
22 STAND.

23 MS. K. FOWLER: OKAY. THANK YOU. I'M SORRY.

24 THE COURT: HE NEEDS TO TAKE THE WITNESS STAND
25 FIRST.

1 MR. G. FOWLER: YOUR HONOR, MAY I APPROACH THE
2 BENCH, PLEASE?
3 THE COURT: YES, SIR.
4 MR. G. FOWLER: YOUR HONOR, HERE'S THE PAPER RIGHT
5 HERE SHOWING MR. DIPPEL'S TRAILER
6 AND WHAT THE ADDRESS AND EVERYTHING
7 IS. IT'S -- IF YOU'LL READ IT,
8 YOU'LL SEE WHAT ADDRESS IT IS. THEY
9 TRY TO CLAIM THIS AND THAT.
10 THE COURT: IT'S KENNETH D. DIPPEL, FULL NAME OF
11 OWNERS, 2153 DOLLY LANE, LORIS,
12 SOUTH CAROLINA?
13 MR. G. FOWLER: YES. YES, MA'AM. THAT'S, THAT'S
14 WHERE HIS TRAILER IS SITTING RIGHT
15 THERE, AND HE CLAIMS IT AIN'T THAT
16 ADDRESS. IT'S ALWAYS BEEN THAT
17 ADDRESS.
18 THE COURT: THIS IS DATED JUNE 6, 2005?
19 MR. G. FOWLER: YES, MA'AM.
20 THE COURT: WE'LL MAKE A COPY OF THIS. WE'LL
21 ENTER IT AS DEFENDANT'S EXHIBIT 1.
22 WOULD YOU LIKE TO DO THAT?
23 MR. G. FOWLER: YES, I WOULD, YOUR HONOR.
24 THE COURT: ALL RIGHT. AND WE'LL MAKE A COPY
25 AND I WILL ENTER THE COPY AND I'LL

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 GIVE THIS BACK TO YOU.

2 MR. G. FOWLER: THAT'LL BE FINE, YOUR HONOR.

3 THE COURT: IF YOU'LL MARK THIS AS DEFENDANT'S
4 EXHIBIT 1.

5 THE COURT: MS. FOWLER, WOULD YOU LIKE TO SEE
6 DEFENDANT'S EXHIBIT 1?

7 MS. K. FOWLER: YES, I WOULD LIKE TO SEE THAT.

8 MR. G. FOWLER: YOU WANT ME TO JUST LEAVE THAT, YOUR
9 HONOR, AND PICK IT UP LATER?

10 THE COURT: I'M GOING TO SHOW IT TO MS. FOWLER.

11 MR. G. FOWLER: OKAY.

12 THE COURT: MS. FOWLER, I'M GOING TO SHOW YOU
13 WHAT MR. FOWLER WOULD LIKE TO
14 INTRODUCE AS DEFENDANT'S EXHIBIT 1.
15 IT APPEARS TO BE A CERTIFICATE OF
16 TITLE OF A MOBILE HOME FOR KENNETH
17 D. DIPPEL FOR 2153 DOLLY LANE,
18 LORIS, OF A -- THE MAKE IS F -- I
19 GUESS THAT'S FLET, F-L-E-T, A 1990
20 MOBILE HOME.

21 MS. K. FOWLER: KENNETH DIPPEL, DOLLY LANE. I'M NOT
22 EVEN SURE. WHAT IS THIS, I MEAN,
23 WHERE DID YOU GET THIS FROM?

24 MR. G. FOWLER: THAT'S HIS MOBILE HOME.

25 THE COURT: THAT'S THE CERTIFICATE OF TITLE,

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THAT PAPER.
2 MR. G. FOWLER: THAT'S THE ADDRESS WHERE HE PUT HIS
3 MOBILE HOME.
4 MS. K. FOWLER: I DON'T, I DON'T KNOW ANYTHING ABOUT
5 THIS HERE, I DON'T, BUT THE ONLY
6 THING -- I DON'T KNOW ABOUT WHY THAT
7 ADDRESS IS THAT, BECAUSE MY TENANTS,
8 I DID TRY TO GET THEM TO COME HERE
9 TODAY, BECAUSE IT HAS GOT A 2153 OAK
10 DALE LANE ADDRESS.
11 MR. G. FOWLER: THAT WAS THE OLD ADDRESS, THAT ---
12 MS. K. FOWLER: WAIT A MINUTE, LET ME FINISH. OKAY.
13 I UNDERSTAND WHAT YOU'RE SAYING.
14 THE COURT: IF Y'ALL WILL BOTH STEP BACK. BOTH
15 OF Y'ALL STEP BACK TO YOUR
16 RESPECTIVE TABLES, PLEASE.
17 MR. G. FOWLER: THANK YOU, YOUR HONOR.
18 THE COURT: I'M INTRODUCING OR I'M LETTING
19 DEFENDANT'S EXHIBIT 1 COME INTO
20 EVIDENCE.
21 DEFENDANT'S EXHIBIT NUMBER 1
22 ADMITTED INTO EVIDENCE.
23 MR. DIPPEL: YOUR HONOR, ---
24 THE COURT: MR. DIPPEL.
25 MR. DIPPEL: --- THAT'S MY TRAILER THERE.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THE COURT: MR. DIPPEL, YOU ARE NOT A PARTY.

2 MS. FOWLER WILL ADDRESS THIS ISSUE.

3 MS. K. FOWLER: WHAT I WAS GOING TO SAY THERE, I

4 DON'T KNOW -- THERE HAS BEEN

5 SOMEBODY CONTINUOUSLY. I WAS ---

6 THE COURT: IF YOU'LL STEP BACK TO THE TABLE.

7 MS. K. FOWLER: I JUST WANTED TO BRING SOMETHING TO
8 YOU.

9 THE COURT: ALL RIGHT.

10 MS. K. FOWLER: I DON'T KNOW WHO IT IS THAT KEEPS
11 GOING BEHIND OUR BACK AND CHANGING
12 THE ADDRESS. I DON'T KNOW.

13 SOMEBODY HAS BEEN DOING THAT, BUT
14 THE TENANTS ARE NOT HERE TODAY. IF
15 YOU NEED TO, YOU KNOW, HAVE A STAY
16 HERE WITH THIS SITUATION, I'D LOVE
17 FOR THEM TO COME, ---

18 THE COURT: NO, MA'AM. TODAY IS YOUR DAY ---

19 MS. K. FOWLER: --- BUT I WANT ---

20 THE COURT: TODAY IS YOUR DAY IN COURT.

21 MS. K. FOWLER: I'M SORRY.

22 THE COURT: IF YOU NEEDED THESE PEOPLE TO COME
23 TO COURT, YOU SHOULD'VE SUBPOENAED
24 THEM.

25 MS. K. FOWLER: OKAY.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THE COURT: AND YOU HAD EVERY RIGHT TO SUBPOENA
2 THEM TO BE HERE TODAY.

3 MS. K. FOWLER: YES, MA'AM, BUT I WANT TO SHOW YOU
4 MY EXHIBIT THERE. THAT IS BACK WHEN
5 THE TRAILER, THAT WAS BACK WHEN MY
6 HUSBAND AND I WERE MARRIED AND IT
7 SHOWS RIGHT THERE THE ADDRESS AT
8 THAT TIME WAS 2153 OAK DALE ROAD,
9 AND I DON'T KNOW WHO IT IS THAT'S
10 BEEN GOING BACK AND FORTH BEHIND OUR
11 BACKS, BUT SOMEBODY KEEPS GOING BACK
12 AND PLAYING WITH THOSE ADDRESSES,
13 CHANGING THEM BACK TO DOLLY LANE,
14 BUT THE ONLY THING I CAN SAY IS, MY
15 TENANTS DO LIVE THERE. I'VE RENTED
16 THAT TRAILER OUT FOR THE LAST,
17 PROBABLY SEVEN OR EIGHT YEARS NOW
18 AND, YOU KNOW, WE'VE HAD A PROBLEM
19 WITH, YOU KNOW, WE'LL CALL UP THERE,
20 THEN ALL OF A SUDDEN, I FIND OUT THE
21 ADDRESS HAS BEEN CHANGED TO DOLLY
22 LANE, AND I DON'T KNOW WHO'S DOING
23 IT, BUT I CAN TESTIFY AND TELL YOU
24 TODAY THAT THAT ADDRESS AT THAT
25 TRAILER RIGHT NOW IS 2153 OAK DALE

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 ROAD.
2 THE COURT: APPARENTLY, THERE'S A QUESTION AS TO
3 WHAT THE ADDRESS IS. IT KEEPS
4 CHANGING FROM DOLLY LANE TO OAK DALE
5 LANE.
6 MS. K. FOWLER: SOMEBODY KEEPS GOING BEHIND MY BACK
7 AND CHANGING IT BACK TO A DOLLY LANE
8 ADDRESS. I DON'T KNOW WHO.
9 THE COURT: HERE, LET ME GIVE YOU THIS BACK.
10 ARE YOU WANTING TO INTRODUCE THIS
11 INTO EVIDENCE FOR SOMETHING?
12 MS. K. FOWLER: YES, MA'AM. I WOULD LIKE TO ENTER
13 THAT IN, BECAUSE THAT'S ACTUALLY
14 BACK WHEN MY HUSBAND AND I WERE
15 STILL MARRIED. THAT'S THE FIRST
16 TRAILER THERE THAT WAS PUT ON 2153
17 OAK DALE ROAD. THAT WAS BACK YEARS
18 AGO, AND IT PLAINLY SHOWS THAT THAT
19 ADDRESS WAS 2153 OAK DALE ROAD.
20 THE COURT: BUT, MS. FOWLER, THIS IS NOT THE
21 SAME MOBILE HOME THAT DEFENDANT'S
22 EXHIBIT 1 IS.
23 MS. K. FOWLER: OKAY.
24 THE COURT: THEY'RE TWO ENTIRELY DIFFERENT
25 MOBILE HOMES. THEY'RE NOT THE SAME

1 MOBILE HOMES.

2 MS. K. FOWLER: NO. THAT'S BECAUSE -- THE REASON
3 WHY IT'S NOT, I NEED TO EXPLAIN,
4 THAT THAT'S BECAUSE MY HUSBAND AND I
5 DIVORCED. THEY MOVED THAT TRAILER
6 AND THEN I PUT ANOTHER TRAILER IN
7 PLACE OF THAT ONE. I KNOW IT'S
8 CONFUSING, BUT THAT'S WHAT HAPPENED
9 WITH THAT. THE SAME TRAILER, THE
10 TRAILER THAT'S THERE NOW IS IN THE
11 SAME PLACE AS WHAT WAS THERE BEFORE.
12 IT'S JUST WHEN WE DIVORCED, THE
13 JUDGE GRANTED HIM THE TRAILER AND IT
14 HAD TO BE MOVED, AND THEN I REPLACED
15 ANOTHER TRAILER IN PLACE OF THAT
16 ONE.

17 THE COURT: SO YOU'RE TRYING TO TELL ME THAT
18 THIS EXHIBIT THAT YOU WANT TO PUT
19 IN, THAT THIS TRAILER WAS PUT IN THE
20 SAME SPOT AS DEFENDANT'S EXHIBIT 1
21 AND THAT THE ADDRESS WAS CHANGED
22 WHEN DEFENDANT'S EXHIBIT 1 WAS PUT
23 IN?

24 MS. K. FOWLER: YES, MA'AM.

25 THE COURT: SO THE PROPERTY IS ACTUALLY ON DOLLY

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 LANE?

2 MS. K. FOWLER: NO. ARE WE, ARE WE TALKING ABOUT
3 THE TRAILER, THIS PARTICULAR TRAILER
4 HERE? NO. THE TRAILER IS ON 2153
5 OAK DALE ROAD ADDRESS, BUT LIKE I
6 SAID, SOMEBODY HAS BEEN CHANGING THE
7 ADDRESS AND I DON'T KNOW WHO.

8 THE COURT: WELL, LET ME ASK YOU THIS. CAN YOU
9 GET TO THIS PROPERTY FROM DOLLY
10 LANE?

11 MS. K. FOWLER: YES.

12 THE COURT: ALL RIGHT. DO THE PEOPLE WHO LIVE
13 AT THIS TRAILER CONSIDER DOLLY LANE
14 THEIR ADDRESS OR DO YOU KNOW?

15 MS. K. FOWLER: NO, I DO KNOW. THAT IS MY TENANTS.
16 THAT IS KENNY AND I'S TENANTS. THEY
17 LIVE THERE AT THAT TRAILER.

18 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.
19 NOW, YOU WANT THIS PIECE OF PAPER AS
20 PLAINTIFF'S EXHIBIT 1?

21 MS. K. FOWLER: YES.

22 THE COURT: ALL RIGHT. THANK YOU.

23 PLAINTIFF'S EXHIBIT NUMBER 1

24 MARKED FOR IDENTIFICATION.

25 THE COURT: MR. FOWLER, DO YOU WANT TO TAKE THE

1 WITNESS STAND?
2 MR. G. FOWLER: YOUR HONOR, I'D LIKE TO PUT MY
3 BROTHER ON THE WITNESS STAND.
4 THE COURT: ALL RIGHT, SIR.
5 MR. G. FOWLER: YOUR NAME IS JOE DALE FOWLER. WOULD
6 YOU PLEASE GO TO THE ---
7 THE COURT: MR. FOWLER, WOULD YOU PLEASE COME
8 AROUND AND PLACE YOUR LEFT HAND ON
9 THE RED BIBLE AND RAISE YOUR RIGHT
10 HAND AND BE SWORN OR AFFIRMED BY THE
11 COURT REPORTER?
12 JOE DALE FOWLER, AFTER HAVING BEEN CALLED TO THE
13 STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:
14 THE COURT: ALL RIGHT. MR. FOWLER, YOU MAY
15 QUESTION THE WITNESS.
16 MR. G. FOWLER: THANK YOU, YOUR HONOR. JOE DALE
17 FOWLER IS MY BROTHER AND EVERYTHING.
18 DIRECT EXAMINATION
19 BY MR. FOWLER:
20 Q: Joe, would you tell the Court who give you
21 permission to use Dolly Lane?
22 A: Kim Fowler, Kimberly there.
23 Q: Didn't you tell me that Kimber Fowler wrote a
24 paper to give you permission, that you could use
25 Dolly Lane any time you wanted to and when you

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 wanted to?

2 A: When this stuff started, she give me a paper.
3 She was mad with you. Y'all was having problems,
4 and she said, "I got a paper written up, you can
5 use this lane, road, you can go in and out any
6 time you want to, that Gene cannot stop you."
7 And I know that's the truth and she knows it's
8 the truth.

9 Q: Joe, have I ever told you that you could use
10 Dolly Lane?

11 A: No. You told me not to use it. Kim said I could
12 use it, 'cause it was her road.

13 Q: And, Joe, you know I told you I come to court
14 here and I, I told you that I have no easement
15 there no more, that the Court stated I have no
16 easement on the property there and that I did not
17 give you permission or I haven't give nobody else
18 permission at no time to use Dolly Lane. Have I
19 give you that permission to use it?

20 A: You, you told me that I couldn't use it there.
21 that you didn't have the right to give nobody
22 permission to use it, Gene.

23 MR. G. FOWLER: THAT'S ALL, YOUR HONOR.

24 THE COURT: ALL RIGHT. THANK YOU.

25 MS. K. FOWLER: MAY I CROSS-EXAMINE HIM?

1 THE COURT: YES, MA'AM, YOU CERTAINLY MAY.

2 CROSS EXAMINATION

3 BY MS. KIMBER FOWLER:

4 Q: Okay. Joe Dale, you did make a comment. You
5 said that I had give you permission, that you
6 could go through there and travel through there,
7 correct?

8 A: Yes, you said that, Kim.

9 Q: Did not we have words out there one day that the
10 judge had issued an Injunction for nobody to
11 travel through there and you plainly told me to
12 my face that you were going to travel that road
13 just as long as Dolly Lane remained open, is what
14 you told me, and then my words back to you were,
15 "Okay, then you do that for now until this
16 situation is over with." But I did not give you
17 permission. You basically told me that you were
18 going to use that road.

19 THE COURT: MS. FOWLER, ASK HIM A QUESTION.

20 DON'T BE TESTIFYING.

21 Q: Where is my -- you said that I give you a letter
22 that said that you had permission from me to go
23 through there, right? Didn't you say that I ---

24 A: No. I said you wrote a letter.

25 Q: Well, where's it at?

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 A: You said you weren't going to give it to me, Kim,
2 and you know you said it.

3 Q: Joe ---

4 A: You said you weren't going to give me the letter.
5 You said you would not give me the letter 'til
6 after this court was over and then you'd give it
7 to me.

8 Q: Well, then you shouldn't ---

9 A: That's what you said.

10 Q: --- have told the judge that I give you a letter,
11 'cause ---

12 A: No, I didn't say you give me -- I said you wrote
13 a letter.

14 MS. K. FOWLER: YOUR HONOR, I PUT TRESPASSING SIGNS
15 UP.

16 THE COURT: MS. FOWLER, ASK HIM A QUESTION.

17 MR. DIPPEL: ASK HIM ---

18 THE COURT: DON'T BE TALKING TO ME NOW.

19 MS. K. FOWLER: OKAY.

20 Q: Joe Dale, okay, my next question to you is this.
21 Have not you seen me put, after this judge
22 granted me the relief that I sought, I put
23 trespassing signs up on my property? I put them
24 up at the front and the back of my property, and
25 cannot you witness that somebody continuously

1 keeps pulling those signs up and throwing them
2 across the road?

3 A: I've seen ---

4 Q: Have not you seen them?

5 A: --- Kenny put signs up, not you, Kim. I've seen
6 Kenny put them up.

7 Q: Okay. But Kenny, Kenny is also a owner of that
8 property. He has put them up for me, but have
9 not you seen those signs come down, because when
10 I come home, my signs have been thrown away and
11 thrown across the ditch and everybody continues
12 to go through Dolly Lane?

13 THE COURT: MS. FOWLER, DON'T TESTIFY. ASK A
14 QUESTION AND LET HIM ANSWER.

15 Q: And my question is -- okay. Sorry, excuse me.
16 Have not you seen my trespassing signs up there?

17 A: Yes. I've seen your trespassing signs there.

18 Q: At the front of my property and the back?

19 A: Yes, and they have been runned [sic] over and
20 tore and runned [sic] over.

21 Q: Run over and tore up.

22 A: I've -- even your daughter, Peyton, I've seen her
23 run over them with the golf cart, Kim. I'm not
24 lying about it.

25 MR. DIPPEL: GIVE HIM THE PICTURE.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 Q: That is violating my constitutional rights as a
2 private property owner. I do ---

3 THE COURT: MS. FOWLER, DO NOT TESTIFY. ASK HIM
4 A QUESTION.

5 MS. K. FOWLER: I THINK I'M THROUGH WITH ASKING ALL
6 THE QUESTIONS I NEED TO ASK NOW.
7 MAY I PLEASE PRESENT THIS HERE TO
8 YOU, PLEASE?

9 THE COURT: DO YOU HAVE ANY MORE QUESTIONS OF --
10 -

11 MS. K. FOWLER: NO, MA'AM, I DON'T.

12 THE COURT: OKAY. MR. FOWLER, WOULD YOU LIKE TO
13 RE-DIRECT? DO YOU HAVE ANY ---

14 MR. G. FOWLER: YES, I WOULD, YOUR HONOR.

15 THE COURT: OKAY. DO YOU HAVE ANY FURTHER
16 QUESTIONS OF YOUR BROTHER?

17 MR. G. FOWLER: I DON'T HAVE NO FURTHER QUESTIONS.
18 I JUST WANT TO -- I ASKED MY BROTHER
19 WOULD HE COME TO COURT WITH ME
20 TODAY. THEY ALL TRYING TO SAY THAT
21 I GIVE PEOPLE PERMISSION TO USE THE
22 ROAD AND EVERYTHING AND I'VE NOT
23 GIVE NOBODY PERMISSION TO USE IT,
24 YOUR HONOR.

25 THE COURT: ALL RIGHT.

1 MR. G. FOWLER: BUT HE WAS JUST MY ONE WITNESS TO
2 BRING UP HERE TO TELL THAT TO, I
3 MEAN ---

4 THE COURT: MR. FOWLER, YOU MAY STEP DOWN.
5 THANK YOU, SIR.

6 MR. JOE FOWLER: THANK YOU, YOUR HONOR.

7 MR. G. FOWLER: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT. MR. FOWLER, DO YOU HAVE
9 ANY MORE WITNESSES?

10 MR. G. FOWLER: I'D LIKE TO PUT MY WIFE ON THE
11 STAND, YOUR HONOR.

12 THE COURT: WELL, DO YOU WANT TO PUT YOUR WIFE
13 ON THE STAND ---

14 MR. G. FOWLER: YES, MA'AM.

15 THE COURT: --- OR DO YOU WANT TO TAKE THE
16 STAND? YOU'RE WELCOME TO TESTIFY
17 YOURSELF, SIR.

18 MR. G. FOWLER: I WOULD, I'D LIKE TO CALL MY WIFE.

19 THE COURT: ALL RIGHT, SIR. MRS. FOWLER, IF
20 YOU'D LIKE TO COME AROUND AND TAKE
21 THE WITNESS STAND. PLEASE RAISE
22 YOUR RIGHT HAND AND PLACE YOUR LEFT
23 HAND ON THE RED BIBLE AND BE SWORN
24 OR AFFIRMED BY THE COURT REPORTER.
25 TERRY FOWLER, AFTER HAVING BEEN CALLED TO THE STAND

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 AND DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE COURT: PLEASE BE SEATED. ALL RIGHT, MR.
3 FOWLER.

4 DIRECT EXAMINATION

5 BY MR. GENE FOWLER:

6 Q: Terry, on August 8th when my granddaughter went
7 with me to the race track and everything, to the
8 go-cart track, I come home and I told you she
9 wanted to go to her mama's and I took her up
10 there?

11 A: Yes.

12 Q: Is that correct?

13 A: Yes.

14 Q: And I told you that Mr. Dippel come out there and
15 started fussing and stuff and I just went ahead
16 and left ---

17 A: Yes. You carried ---

18 Q: --- to keep from having problems?

19 A: Yes. You carried her on up to her daddy's house,
20 our son.

21 MR. G. FOWLER: I'M NOT -- WHAT I WANTED MY WIFE TO
22 TESTIFY TO IS WHAT I ---

23 Q: Did -- and I told you I went up there again to
24 take Peyton home one day to get some shoes and
25 stuff and her coat, that she was cold, her mother

1 was at work and Kenny was supposed to be watching
2 her and she didn't have no coat on, and I, I took
3 her up there to get her coat and shoes and
4 everything?

5 A: Right.

6 Q: I did drive down Dolly Lane on those two
7 occasions, and you know me, do I use that Dolly
8 Lane?

9 A: No. The only, the only time that you've used it
10 is when either Peyton was at the house and wanted
11 to go home and it was raining or something and we
12 carried her home in the car, the grandchild.

13 THE COURT: AND PEYTON IS MS. FOWLER'S ---

14 MS. TERRY FOWLER: MS. FOWLER'S ---

15 THE COURT: --- DAUGHTER?

16 MS. TERRY FOWLER: --- YOUNGEST CHILD.

17 THE COURT: ALL RIGHT. THANK YOU.

18 MR. G. FOWLER: PEYTON IS SEVEN YEAR OLD, YOUR
19 HONOR. SHE COMES TO MY HOUSE EVERY
20 DAY, PRACTICALLY. MAYBE SHE MIGHT
21 NOT MISS THREE DAYS A MONTH. SHE
22 COMES TO MY HOUSE, KENNY WON'T GIVE
23 THEM NOTHING TO EAT, AND ME AND MY
24 WIFE FEED HER, TAKE CARE OF HER.

25 THE COURT: ALL RIGHT, SIR.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MR. G. FOWLER: BUT THAT'S ALL THE QUESTIONS I HAVE
2 RIGHT NOW, YOUR HONOR.

3 THE COURT: ALL RIGHT. MS. FOWLER, ---

4 MS. K. FOWLER: MAY I CROSS-EXAMINE?

5 THE COURT: --- WOULD YOU LIKE TO CROSS-EXAMINE
6 HER?

7 MS. K. FOWLER: YES, MA'AM, I WOULD, I DEFINITELY
8 WOULD.

9 CROSS EXAMINATION

10 BY MS. KIMBER FOWLER:

11 Q: Terry, you did say -- of course, you know, Peyton
12 is thrown up into this court proceeding, but I do
13 want to say this. Would not you be fair to say,
14 okay, we brought Peyton into the picture going to
15 Timmy's house and from Timmy's house, which is
16 your husband's property? Do not you have a way
17 through G & B Lane to go up to your son's
18 property without having to use Dolly Lane? Yes
19 or no?

20 A: Yes. I can go that way.

21 Q: Yes or no?

22 A: Yes.

23 Q: Okay. And so, that's what I want to get at.
24 We're talking about ---

25 THE COURT: I UNDERSTAND THAT THERE'S ANOTHER

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 WAY TO GET THERE.
2 MS. K. FOWLER: YES, MA'AM. HE'S NOT LANDLOCKED IN.
3 THAT'S BEEN MADE CLEAR FROM THE
4 BEGINNING. IF HE WAS LANDLOCKED IN
5 AND THEY DIDN'T HAVE ANOTHER WAY IN
6 AND OUT OF THEIR PROPERTY, ---
7 THE COURT: OKAY. ASK ---
8 MS. K. FOWLER: --- BECAUSE ---
9 THE COURT: --- ANOTHER QUESTION, MA'AM, IF YOU
10 HAVE ANOTHER QUESTION OF MS. FOWLER.
11 Q: Okay. The night, the night that the police came
12 out to the house, you remember the night that
13 Timmy went through there and I had a problem with
14 him and I called Officer Kenneth Williams out to
15 the house?
16 A: Yes.
17 Q: He wrote the police report, okay. Timmy had
18 traveled through there, okay, and I do understand
19 he has the Dolly Lane address. I understand
20 that, but is it not fair to say that Timmy and
21 Jim, both live on Gene, your husband's property,
22 and they have ---
23 A: They live on Dolly Lane.
24 Q: --- another way in and out?
25 A: They live on Dolly Lane. That is the access ---

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 Q: But do they have another way in and out of the
2 property in question?

3 A: Dolly -- no.

4 Q: They don't?

5 A: No.

6 MS. K. FOWLER: OKAY. YOUR HONOR, I'D LIKE TO
7 PRESENT THIS RIGHT HERE. THIS
8 PLAINLY SHOWS RIGHT HERE ---

9 THE COURT: WELL, MA'AM, DO THEY LIVE ON DOLLY
10 LANE?

11 MS. TERRY FOWLER: YES.

12 MS. K. FOWLER: THEY DO.

13 MS. TERRY FOWLER: YES.

14 THE COURT: IF THEY LIVE ON DOLLY LANE, ---

15 MS. TERRY FOWLER: YES.

16 THE COURT --- THEY'VE GOT TO TRAVEL ON DOLLY
17 LANE.

18 MS. K. FOWLER: YES, BUT I'M JUST TRYING TO PROVE A
19 POINT, THAT THEY HAVE A WAY WITH OR
20 WITHOUT ---

21 THE COURT: OKAY. WELL, THEN SHOW ---

22 MS. TERRY FOWLER: THAT, THE OTHER WAY IS A PRIVATE
23 DRIVE. Horry COUNTY ---

24 THE COURT: WELL, SHOW THE ---

25 MS. TERRY FOWLER: --- ZONING HAS ALREADY ---

1 THE COURT: WAIT JUST A MOMENT. SHOW THE
2 WITNESS THE PICTURE AND THEN ASK HER
3 THE QUESTION.
4 MS. K. FOWLER: OKAY.
5 MR. DIPPEL: LOOK AT ALL THREE OF THEM.
6 Q: Here's all this right here, ---
7 THE COURT: MR. DIPPEL, ---
8 Q: --- that she wants you to ---
9 THE COURT: --- I DON'T WANT TO HEAR ANYTHING ELSE
10 FROM YOU.
11 Q: --- take a look at this, but it's the same
12 question I'm getting back to, and I don't know
13 why I'm having to answer that again. Would not
14 ---
15 THE COURT: YOU DON'T ANSWER THE QUESTION, MS.
16 FOWLER. THIS MS. FOWLER DOES.
17 Q: This right here is a clear view. It's plainly
18 showing ---
19 A: Exactly.
20 Q: --- that Mr. Fowler, your husband, is not
21 landlocked in. He clearly has a way in and out
22 all his property. If there was indeed a dead end
23 road or a cul-de-sac and there was no other way
24 in and out, I would understand that he has to go
25 through Dolly Lane to get my daughter to and from

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 your house or my house.

2 THE COURT: MS. FOWLER, ASK A QUESTION. DON'T
3 BE TESTIFYING.

4 Q: But the question is again, is not there the G & B
5 Lane that you and him and Timmy and Jim can
6 travel to get to and from your property?

7 A: No.

8 Q: There's not? And why would you say there's not?

9 A: Because their address is on Dolly Lane. We use
10 Dolly Lane to go to their address.

11 Q: But that -- I understand about the address. Now,
12 I understand that, but is not ---

13 A: Well, that's the access ---

14 Q: --- there another way in and out of there?

15 A: No.

16 Q: There's not?

17 A: The other is a private drive, ---

18 Q: That's right, but this right here ---

19 A: --- that 2042 G & B Lane.

20 THE COURT: MS. FOWLER, ASK -- I'M GETTING
21 CONFUSED, ---

22 MS. K. FOWLER: I THINK ---

23 THE COURT: --- BECAUSE THEY'RE TWO MS. FOWLERS
24 HERE. MS. KIMBER FOWLER, YOU ASK
25 MS. GENE FOWLER A QUESTION.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843)248-5252

1 MS. K. FOWLER: TERRY FOWLER. I'VE ALREADY ASKED
2 HER THE QUESTION THAT I NEED TO ASK.
3 THE QUESTION WAS, DID THEY HAVE
4 ANOTHER WAY IN AND OUT OF ---
5 THE COURT: AND SHE ANSWERED NO.
6 MS. K. FOWLER: --- ALL THAT PROPERTY? THAT'S WHAT
7 SHE SAID.
8 THE COURT: ALL RIGHT. THANK YOU. DO YOU HAVE
9 ANY MORE QUESTIONS? AND YOU WANT TO
10 INTRODUCE THIS AS AN EXHIBIT, MS.
11 FOWLER?
12 MR. K. FOWLER: I WOULD LIKE TO INTRODUCE THIS,
13 BECAUSE THERE IS ANOTHER WAY IN AND
14 OUT OF THAT PROPERTY. IT'S NOT A
15 DEAD END ROAD AND THERE IS NO CUL-
16 DE-SAC THERE.
17 THE COURT: THIS WILL BE PLAINTIFF'S EXHIBITS 2,
18 3 AND 4?
19 MS. K. FOWLER: YES.
20 THE COURT: ALL RIGHT.
21 PLAINTIFF'S EXHIBIT NUMBERS 2 THROUGH 4
22 ADMITTED INTO EVIDENCE.
23 THE COURT: DO YOU HAVE ANY MORE QUESTIONS?
24 MS. K. FOWLER: YES. I WOULD LIKE TO ASK ONE MORE
25 QUESTION.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 Q: With exemption of the so-called Dolly Lane
2 address and her people, whatever, this has
3 nothing to do with Gene. We're solely talking
4 about Gene, as everybody said. Okay. What is
5 your address?

6 A: My address is 2042 G & B Lane.

7 Q: Okay. So that means Gene does not even live on
8 Dolly Lane, does he?

9 A: No.

10 Q: Okay. So then why does he travel through there
11 and why do you travel through there?

12 A: To go to my son's address at 2167 ---

13 Q: You still have a way ---

14 A: --- Dolly Lane.

15 Q: --- from your property to his place.

16 A: 'Cause I have a private driveway ---

17 Q: It plainly shows it on Exhibit 3 and 4.

18 THE COURT: ANY OTHER QUESTIONS OF THIS MS.
19 FOWLER?

20 MS. K. FOWLER: NO, MA'AM, THAT'S ALL.

21 THE COURT: ALL RIGHT. MR. FOWLER, DO YOU HAVE
22 ANY RE-DIRECT OF YOUR WIFE?

23 MR. G. FOWLER: YES, I DO, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 RE-DIRECT

1 BY MR. GENE FOWLER:

2 Q: Ms. Fowler, she asked you a question about using
3 the other road. When I gave my son and Kimber
4 Fowler a acre of land and a house, I kept that 25
5 foot private easement through there because I had
6 more lots behind there that I rented mobile home
7 lots out, mobile homes was on. I didn't give
8 nobody no access through the rest of my property;

9 ---

10 A: No.

11 Q: --- is that correct?

12 A: That's right.

13 Q: And the reason I tied rocks into Dolly Lane was
14 the safety of my grandchildren. Instead of
15 driving around the highway with the go-cart, the
16 four-wheelers and everything, I tied into Dolly
17 Lane for their safety to keep them off of the Oak
18 Dale Road, which is a main highway?

19 A: That's right.

20 Q: Is that not the reason ---

21 A: That's right.

22 Q: --- me and you did this?

23 A: We did it so the children could travel on it with
24 the golf-carts and four-wheelers, to keep them
25 off the main highway.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MR. G. FOWLER: THANK YOU, YOUR HONOR, THAT'LL BE
2 ALL. THANK YOU.

3 MS. K. FOWLER: YOUR HONOR, MAY I ASK A QUESTION?

4 THE COURT: YOU WANT TO RE-CROSS? IT CAN ONLY
5 CONCERN WHAT MR. FOWLER JUST ASKED
6 MRS. FOWLER, THE LAST QUESTION.

7 MS. K. FOWLER: YES, MA'AM. I WANT TO DO THAT REAL
8 QUICK. IT'S IN REFERENCE TO WHAT HE
9 JUST SAID.

10 RE-CROSS

11 BY MS. KIMBER FOWLER:

12 Q: We're talking -- he was talking now about safety
13 of peoples' lives, so in other words, what you're
14 saying, we're talking about 911 reasons? Is that
15 what we're talking about?

16 THE COURT: WHO ARE YOU ASKING?

17 MS. K. FOWLER: HER. HIM.

18 MR. DIPPEL: A BIT CONFUSED.

19 MS. K. FOWLER: OKAY, 911. OKAY. HE SAYS FOR THE
20 SAFETY OF THEIR LIVES, OKAY. I'M --
21 MY QUESTION IS -- I DON'T KNOW
22 WHETHER I SHOULD BE ASKING HER OR
23 HIM.

24 Q: Is this saying that we're talking about 911
25 reasons when we're talking about the safety of

1 peoples' lives, 'cause you said that's right?

2 A: I said to keep your children from having to
3 travel on a public highway, we put rocks on --
4 connecting from Dolly Lane up to our driveway, so
5 those children could drive their, their four-
6 wheelers and golf carts on that.

7 Q: They have clear access on that road there. It's
8 a sole driveway just like that Dolly Lane is.

9 A: Right.

10 MS. K. FOWLER: BUT IF WE'RE GOING TO TALK ABOUT THE
11 SAFETY OF PEOPLES' LIVES, MY
12 QUESTION TO HER IS THIS. HE HAS A
13 PRIVATE SHARE DRIVEWAY UP THERE
14 WHERE HIS PROPERTY IS AT, WHICH
15 MEANS WHEN HE TURNED THAT INTO A
16 PRIVATE SHARE DRIVEWAY, HE BASICALLY
17 EXTENDEDLY TOOK DOLLY LANE OFF HIS
18 PROPERTY. WELL, MY QUESTION IS, IF
19 THIS IS FOR THE SAFETY OF PEOPLES'
20 LIVES, HOW IS 911 GOING TO GET
21 THROUGH THERE WHEN IT'S A PRIVATE
22 SHARE DRIVEWAY?

23 MR. DIPPEL: ASK HER.

24 Q: Okay. I'm going to ask you, I'm sorry. I have a
25 tendency to want to pay attention to the judge,

1 but that's the question that I need to ask right
2 there, is the fact that if it's the safety of
3 peoples' lives, my question is, how are they
4 going to get through your property when he has a
5 private share driveway there? He had ---

6 A: We do not have a private share driveway. Dolly
7 Lane goes from Oak Dale Road to the end of the
8 pond.

9 Q: Okay. You say that, right? Hold on, let me ---

10 A: Take a look at the plat. It shows the end of it.

11 MR. DIPPEL: PRIVATE SHARE DRIVEWAY.

12 MS. K. FOWLER: MAY I SHOW THESE TO HER RIGHT HERE?

13 MAY I PRESENT THESE TO HER?

14 Q: Okay. Here is this plat that Gene had done. Put
15 it right here. I'm sure you can see, it's big,
16 okay?

17 A: And you see the end right here where you turn
18 around.

19 Q: But take a look at this right here where it says
20 -- okay. You see where my property is at?

21 A: Right.

22 Q: Dolly Lane is right here. It ends at the very
23 end of my property. This is by his plat ---

24 A: No.

25 Q: --- that he did.

1 A: It just widens out.
2 Q: It says a private share driveway right here. How
3 is the safety of anybody's lives -- this is a
4 bunch of excuses I'm hearing here.
5 THE COURT: WAIT A MINUTE. MS. FOWLER ---
6 MR. DIPPEL: ENTER THAT AS EVIDENCE.
7 THE COURT: MR. DIPPEL, IF YOU SAY ONE MORE
8 WORD, I'M GOING TO HAVE YOU REMOVED
9 FROM THE COURTROOM.
10 MS. K. FOWLER: MAY I PRESENT THIS TO YOU, PLEASE?
11 THE COURT: MS. FOWLER, WOULD YOU LIKE TO FINISH
12 YOUR ANSWER?
13 MS. TERRY FOWLER: I WAS TELLING HER THAT IF YOU'LL
14 LOOK AT THAT, THERE'S A TURN-AROUND.
15 IT'S THE END OF DOLLY LANE. DOLLY
16 LANE EXISTS FROM THE OAK DALE ROAD
17 ACROSS HER PROPERTY TO THE END.
18 WE'VE GOT A FISH POND AND THAT'S THE
19 END OF IT, RIGHT THERE AT THE END,
20 AND IT SHOWS IT ON THE PLAT WHERE
21 DOLLY LANE ENDS. IT'S NOT CONNECTED
22 ALL THE WAY THROUGH TO OUR LAND. WE
23 JUST PUT THOSE ROCKS THERE FOR THOSE
24 CHILDREN TO BE ABLE TO TRAVEL
25 WITHOUT GETTING ON THE HIGHWAY, FOR

THE CHILDREN'S SAFETY.

THE COURT: YES, MA'AM. MS. FOWLER, WOULD YOU
LIKE TO INTRODUCE THAT AS AN
EXHIBIT?

MS. K. FOWLER: YES, MA'AM, BUT I'D LIKE TO CROSS-
EXAMINE HER ON WHAT SHE JUST SAID
ABOUT THAT.

Q: Right here on this plat, okay, this right here,
the Court of Columbia Appeal, when we had the
first case with Gene, they addressed the fact
that there was a cul-de-sac. Do you know what a
cul-de-sac is?

A: Yes.

Q: What is it? Tell me.

A: It's a turn-around, a end.

Q: What does it mean, a dead end road ---

A: Yes.

Q: --- that comes to a cul-de-sac, ---

A: Right.

Q: --- dead end road, right?

A: Right.

Q: Okay. What is that right there on this plat? It
says there's a cul-de-sac, ---

A: Right.

Q: --- but there is no cul-de-sac on that property

1 up there. There is no cul-de-sac. Why it's on
2 this plat, I have no idea. This plat went
3 through ---

4 THE COURT: MS. FOWLER.

5 MS. K. FOWLER: I JUST WANT TO INTRODUCE -- I WOULD
6 JUST LIKE TO INTRODUCE THIS TO YOU
7 AND I JUST -- I'LL LET YOU TAKE A
8 LOOK AT THIS.

9 THE COURT: PLAINTIFF'S EXHIBIT 4.

10 BAILIFF: THE NEXT ONE THAT SPEAKS OUT, ---

11 MS. K. FOWLER: OKAY. TAKE A LOOK HERE ---

12 BAILIFF: --- I'M GOING TO PUT YOU OUTSIDE THE
13 COURTROOM FOR ABOUT TEN MINUTES.

14 MS. K. FOWLER: --- WHERE HE SAYS PRIVATE SHARE
15 DRIVEWAY THERE.

16 COURT REPORTER: YOUR HONOR, IS IT 4 OR IS IT 5?

17 THE COURT: FIVE.

18 MS. K. FOWLER: IT'S EXHIBIT 5.

19 THE COURT: THAT'LL BE PLAINTIFF'S 5.

20 PLAINTIFF'S EXHIBIT NUMBER 5

21 ADMITTED INTO EVIDENCE.

22 MS. K. FOWLER: I WOULD LIKE TO ---

23 THE COURT: PLAINTIFF'S EXHIBIT 5. DO YOU NEED
24 THIS AGAIN TO CROSS-EXAMINE MS.
25 FOWLER?

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MS. K. FOWLER: NO, MA'AM, I DON'T. I WANTED TO, IF
2 I COULD, SHOW TERRY SOMETHING ELSE
3 HERE.

4 THE COURT: ALL RIGHT.

5 Q: I just wanted to show you this. This is another
6 exhibit here. This is showing about your pond,
7 about the pond.

8 A: Right.

9 Q: You were talking about that it, it goes, circles
10 into a, what? You're saying a dead end road? Is
11 that what you're saying it is?

12 A: Everybody that uses it knows that it ends there.

13 Q: Okay. But this is showing, it clearly shows an
14 access, that there is no cul-de-sac there. This
15 is showing that there is a clear way in and out
16 by all of Gene's tenants, himself and you. Here
17 it is right here. This is the pond.

18 THE COURT: MS. FOWLER, ASK THIS MS. FOWLER A
19 QUESTION. DON'T BE TESTIFYING FOR
20 HER.

21 MS. K. FOWLER: I'M, I'M, I'M THROUGH ASKING THE
22 QUESTION. THAT'S WHY I'M, I'M
23 BRINGING THIS TO YOU.

24 THE COURT: ALL RIGHT. JUST INTRODUCE THE
25 EXHIBIT. IT'S PLAINTIFF'S EXHIBIT

1 6, PLAINTIFF'S 6?

2 PLAINTIFF'S EXHIBIT NUMBER 6

3 ADMITTED INTO EVIDENCE.

4 THE COURT: MR. DIPPEL, YOU'RE GETTING REAL
5 CLOSE TO PRACTICING LAW WITHOUT A
6 LICENSE OVER THERE. ALL RIGHT. MR.
7 FOWLER, ANY QUESTIONS FURTHER FOR
8 MS. FOWLER, FOR YOUR WIFE?

9 MR. G. FOWLER: NO, YOUR HONOR, THAT WOULD BE ALL.
10 I'D LIKE TO SUBMIT MY ORIGINAL PLAT
11 WHEN I GAVE THEM THE LAND.

12 THE COURT: YES, SIR. ALL RIGHT. MS. FOWLER,
13 YOU MAY STEP DOWN. ALL RIGHT. MR.
14 FOWLER, YOU MAY TESTIFY AND YOU MAY
15 SUBMIT WHATEVER EXHIBITS YOU'D LIKE
16 TO SUBMIT.

17 MR. G. FOWLER: I'D LIKE TO TAKE THE STAND, YOUR
18 HONOR.

19 THE COURT: YES, SIR.

20 CLAUDIUS EUGENE FOWLER, AFTER HAVING BEEN CALLED TO
21 THE STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE COURT: ALL RIGHT, MR. FOWLER. NOW, YOU
23 DON'T HAVE ANYBODY TO DIRECT YOU, SO
24 WHAT WOULD YOU LIKE TO TELL THE
25 COURT?

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MR. G. FOWLER: YOUR HONOR, I'D JUST LOVE TO TELL
2 THE COURT THAT I HAVE MY TWO PLATS
3 WHEN I ORIGINALLY, WHEN I GAVE MY
4 SON AND HIS WIFE THE LAND, THAT I
5 DID KEEP A PRIVATE ENTRANCE THROUGH
6 THERE, AND I GOT THE TWO PLATS RIGHT
7 HERE TO PRESENT TO Y'ALL FOR
8 EVIDENCE.

9 THE COURT: YES, SIR.

10 MR. G. FOWLER: AND I'M SORRY THAT WE UP HERE TODAY
11 ABOUT ALL THIS STUFF AND WE
12 SHOULDN'T EVEN BE HERE. IT'S JUST A
13 MATTER OF GREED. THE EASEMENT I
14 KEPT IS ALL THE WAY ON THE NORTH
15 SIDE OF MS. FOWLER'S PROPERTY THAT I
16 GAVE HER, AND THERE'S NO ONE THAT I
17 EVER GIVE PERMISSION TO USE THAT
18 ROAD. I'M SAYING THAT AND I HAVE
19 NOT TRESPASSED ON THAT ROAD. I HAVE
20 BEEN UP THERE TWO OR THREE DIFFERENT
21 OCCASIONS TO CARRY MY GRANDDAUGHTER
22 UP THERE TO GET SHOES OR TO TAKE HER
23 HOME, AND I WOULD LIKE TO SAY THAT I
24 WOULD LIKE TO SEE THIS END MYSELF,
25 BUT WITH MR. DIPPEL, THERE'S NO

1 ENDING TO NOTHING. YOU CAN SEE HE,
2 HE CAN'T AGREE ON NOTHING. HE ACTS
3 AS AN ATTORNEY FOR HIS SISTER AND
4 EVERYTHING, BUT I'D LIKE TO SEE
5 EVERYTHING COME TO A CONCLUSION,
6 TOO, AND QUIT BEING -- THE LAW
7 HARASSED AND STUFF ABOUT THIS.

8 YOU READ MY ANSWER ABOUT
9 THE THINGS HE SAID TO MY WIFE AND
10 ABOUT WHAT SHE DID ABOUT THAT
11 EASEMENT, EVEN TO OUR FINE
12 COUNCILMAN AND TO A MAGISTRATE, USED
13 TO BE THERE IN LORIS, A FORMER
14 MAGISTRATE, THE THINGS HE SAID ABOUT
15 MY WIFE AND WHAT SHE DID, AND SAYING
16 THAT THE ROAD WOULD DONE AND BE
17 CLOSED IF IT WEREN'T FOR HER DOING
18 THIS AND DOING THAT, WHICH YOU READ
19 THE ANSWER. I HATE TO SAY IT IN
20 COURT, BUT YOU READ THE ANSWER THAT
21 I GIVE TO YOU AND EVERYTHING, AND
22 I'D LIKE TO SEE EVERYTHING BE
23 PEACEFUL. AND THE REASON I ADDED
24 THE ROCKS INTO DOLLY LANE WAS FOR
25 THE SAFETY OF MY GRANDCHILDREN, TO

1 KEEP THEM FROM DRIVING ON A PUBLIC
2 HIGHWAY, WHICH OCCASIONALLY, SHE
3 STILL GETS OUT THERE ON THE PUBLIC
4 HIGHWAY WITH THE GOLF CART, WHICH IS
5 SOLELY MS. FOWLER'S, AND A SEVEN
6 YEAR OLD CHILD SHOULDN'T BE ON THE
7 ROAD. WHEN SHE BE'S ON THERE, I
8 STOP AND TELL HER TO GO BACK HOME
9 AND STAY IN THE YARD, RIDE FROM HER
10 MAMA'S HOUSE TO MY HOUSE ON DOLLY
11 LANE AND ON MY PROPERTY. IT'S FINE
12 FOR HER TO DRIVE THERE, AND I HATE
13 TO, I HATE TO CALL THE LAW OUT THERE
14 ON MY GRANDDAUGHTER FOR BEING OUT ON
15 A PUBLIC ROAD WITH THE GOLF CART,
16 BUT SHE DOES IT A LOT, AND THEY
17 DON'T CARE, SEEM TO CARE WHAT
18 HAPPENS TO HER. I KNOW THEY LOVE
19 HER AND SHE LOVES THEM, BUT I'M JUST
20 TALKING ABOUT FOR THE SAFETY OF MY
21 GRANDCHILD, SEVEN YEARS OLD. THAT'S
22 REALLY THE REASON I PUT THEM ROCKS
23 ON UP THERE, TO THEIR, THEIR SAFETY.
24 THE COURT: YES, SIR. LET ME ASK YOU THIS. DO
25 YOU KEEP YOUR SEVEN-YEAR-OLD

1 GRANDDAUGHTER?

2 MR. G. FOWLER: YOUR HONOR, SHE STAYS WITH ME AND MY
3 WIFE OCCASIONALLY. SHE'S UP THERE
4 ABOUT EVERY DAY. WE FEED HER. WE
5 TAKE CARE OF HER. I KNOW MY
6 GRANDDAUGHTER LOVES ME. SHE LOVES
7 HER MAMA. SHE LOVES KENNY. THEY DO
8 A LOT FOR HER, BUT HER MAMA WORKS AT
9 WAL-MART, AND THEY CAN COME TO MY
10 HOUSE ON SUNDAY, EVEN THE OLDER GIRL
11 COME TO MY HOUSE TO EAT DINNER
12 'CAUSE THEY AIN'T GOT NOTHING TO
13 EAT. MY OLDER GRANDDAUGHTER,
14 CHRISTIAN, BACK THERE, SHE COME TO
15 MY HOUSE SUNDAY AND EAT. KENNY IS
16 SUPPOSED TO BE WATCHING THESE
17 CHILDREN WHILE KIM IS WORKING AND
18 PROVIDE THEM FOOD AND STUFF, BUT
19 THEY COME TO MY HOUSE AND EAT, WHICH
20 I DON'T, I DON'T CARE. THEY CAN
21 COME TO MY HOUSE. ANY TIME I GOT
22 FOOD, THEY CAN COME EAT. I DON'T
23 MIND THAT NARY BIT. THEY REALLY
24 SHOULD BE SOME SUPERVISION FOR THEM
25 CHILDREN, MY TWO GRANDCHILDREN,

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 'CAUSE IF THE TRUTH BE KNOWN, I BET
2 YOU CHRISTIAN AIN'T STAYED AT HER
3 HOME OVER, I'M GOING TO SAY, TWO
4 WEEKS IN THE LAST THREE OR FOUR
5 YEARS.

6 THE COURT: NOW, THE SEVEN-YEAR-OLD
7 GRANDDAUGHTER IS THE ONE WE'RE
8 TALKING ABOUT. WHAT IS HER NAME?
9 IS THAT PEYTON?

10 MR. G. FOWLER: PEYTON, YES, MA'AM.

11 THE COURT: PEYTON?

12 MR. G. FOWLER: PEYTON.

13 THE COURT: AND THAT'S PEYTON FOWLER?

14 MR. G. FOWLER: PEYTON FOWLER.

15 THE COURT: AND THAT'S THE ONE THAT YOU SAY YOU
16 WERE TAKING HOME ON THE NIGHT THAT
17 YOU AND MR. DIPPEL HAD WORDS; IS
18 THAT CORRECT?

19 MR. G. FOWLER: THAT'S CORRECT, YOUR HONOR.

20 THE COURT: AND YOU WERE TAKING HER HOME TO MS.
21 FOWLER?

22 MR. G. FOWLER: THAT'S RIGHT. WE, WE WAS AT THE
23 GOLF CART RACE WHEN WE, SHE, SHE GOT
24 COLD. SHE DIDN'T CARRY HER COAT
25 WITH HER AND IT STARTED GETTING

1 COOL. SHE SAID, "I WANT TO GO
2 HOME."

3 I SAID, "WELL, WE'LL GO ON TO THE
4 HOUSE, THEN." WE LEFT BEFORE THE
5 RACE WAS OVER. THE RACE USUALLY
6 GETS OVER ABOUT TWO OR TWO-THIRTY
7 OVER THERE, BUT IT STARTED GETTING
8 COOL THAT NIGHT. AFTER NIGHT, IT
9 STARTS TURNING COOL AND SHE DIDN'T
10 HAVE HER COAT WITH HER. SHE SAID,
11 "I WANT TO GO TO" HER MAMA'S. BUT
12 THAT'S WHEN I WENT TO HER MAMA'S
13 THAT NIGHT THAT THEY CAN SAY THAT I
14 WAS TRESPASSING AND EVERYTHING, BUT
15 I JUST WENT TO TAKE HER TO HER MAMA,
16 AND KENNY COME OUT THERE CUSSING
17 AND, AND FUSSING AND EVERYTHING, AND
18 PEYTON WAS LAYING RIGHT IN THE BACK
19 SEAT, ASLEEP IN MY CAR, AND I TOOK
20 HER ON TO MY HOUSE AND KEPT HER THAT
21 NIGHT. I, I PICKED HER UP. I
22 CARRIED HER, AND CARRIED HER AND PUT
23 HER IN MY BED, AND HE SAID THAT SHE
24 WAS WITH HIM. HE, HE'S, HE'S, HE'S
25 NOT TELLING THE TRUTH.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THE COURT: HOW MANY OTHER TIMES SINCE THE COURT
2 ORDER IN, I GUESS IT WAS THE END OF
3 MAY, HAVE YOU BEEN ON DOLLY LANE, AS
4 FAR AS YOU KNOW?

5 MR. G. FOWLER: I'VE, I'VE TOOK PEYTON UP THERE TO
6 GET HER COAT AND SHOES AND I'VE TOOK
7 HER UP THERE, MAYBE NOT OVER THREE
8 TIMES, YOUR HONOR, AND THEY, AND
9 THEY LAUED FOR TRESPASSING THEM
10 THREE TIMES, AND I, I -- THE COUNTY
11 POLICE COME AND TALKED TO ME AND
12 EVERYTHING AND I TOLD HIM THE
13 SITUATION. YOUR HONOR, SINCE I'VE
14 SEEN YOU LAST, THEY'VE HAD ME IN
15 COURT TWO MORE TIMES. THEY CARRIED
16 ME OVER THERE TO THE, BEFORE THE
17 COUNTY COUNCILMAN OVER THERE AND
18 EVERYTHING. WELL, THEY WOULDN'T
19 VOTE IN HIS FAVOR, AND HE GOT MAD
20 AND HE CARRIED IT BEFORE THE
21 PLANNING AND ZONING BOARD AND THEY
22 DIDN'T RULE IN HIS FAVOR, NOW HE'S
23 SUING THE COUNTY. NOW HE'S GOT A
24 LAWSUIT AGAINST THE COUNTY. HE, HE
25 DON'T WANT TO LET NOTHING REST. HE

1 DON'T WANT TO LEAVE NOTHING ALONE.
2 I GAVE THIS TO MY SON AND HIS WIFE.
3 I DIDN'T GIVE IT TO THEM. I GIVE
4 HIM THAT HOUSE AND ACRE OF LAND.
5 THE COURT: I UNDERSTAND. NOW, YOU'RE TALKING
6 ABOUT, YOU'VE BEEN TO COURT WITH THE
7 HORRY COUNTY PLANNING COMMISSION?
8 MR. G. FOWLER: YES, MA'AM, A HEARING, THE
9 COURTROOM. WE HAD TO GO ---
10 THE COURT: AND THAT'S STILL DEALING WITH DOLLY
11 LANE?
12 MR. G. FOWLER: YES, MA'AM, AND IT'S STILL RULING IN
13 COURT AND EVERYTHING, AND THEY, THEY
14 SAID THE PEOPLE THAT LIVED ON THERE,
15 FOR THEIR SAFETY, THAT THEY WAS NOT
16 CLOSING DOLLY LANE AND THE PEOPLE
17 THAT LIVED ON IT, AND ANYBODY THAT
18 WENT TO VISIT THEM COULD GO DOWN AND
19 USE IT, BUT I'VE NOT GIVE NOBODY
20 PERMISSION TO USE IT, YOUR HONOR.
21 I'VE NOT GIVE NOBODY PERMISSION TO
22 USE IT.
23 THE COURT: WERE YOU AT THE PLANNING COMMISSION
24 WORKSHOP IN JULY OF 2009?
25 MR. G. FOWLER: YES, MA'AM. I WENT TO BOTH

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MEETINGS.

2 THE COURT: OKAY. AND YOU UNDERSTAND THAT DOLLY
3 LANE HAS NOT BEEN CLOSED?

4 MR. G. FOWLER: YES, MA'AM, I UNDERSTAND THAT, BUT I
5 UNDERSTOOD THAT YOU -- WHEN YOU TOLD
6 ME BACK HERE LAST YEAR THAT THEY
7 WASN'T NO EASEMENT THERE, I SAID, "I
8 UNDERSTAND THAT." AND I DON'T GO
9 BACK ON -- I DON'T USE THAT ROAD NO
10 MORE. THE ONLYEST [SIC] TIME I GO
11 UP THERE IS TO TAKE MY GRANDDAUGHTER
12 UP THERE OR SOMETHING ANOTHER.

13 OTHER THAN THAT, I DON'T USE IT.

14 THEY CLAIM THIS AND THAT JUST TO TRY
15 TO -- IT WAS AFTER THAT. IT WAS IN
16 JUNE, SOMETIME. THE REASON I PUT
17 THE \$1,500 LAWSUIT, HE SAID, WELL,
18 HE WON THE CASE, HE SAID, BUT -- HE
19 SAID, "I TELL YOU, ME AND KIM, WE
20 FEEL KIND OF SORRY ABOUT IT, WE'RE
21 GOING TO GIVE YOU YOUR MONEY BACK
22 FOR PART THAT ROAD OUT THERE." THEY
23 AIN'T NEVER SPENT A DIME IN IT OR
24 NOTHING. HE MADE THAT REMARK THAT
25 NIGHT, AND I ASKED HIM SINCE THEN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR MY MONEY, "I AIN'T GIVING YOU
NOTHING, WE GOING TO WAIT TO SEE IF
IT'S CLOSED."

THE COURT: WHEN DID MR. DIPPEL TELL YOU HE WAS
GOING TO GIVE YOU SOME MONEY FOR THE
MAINTENANCE OF THE ROAD?

MR. G. FOWLER: YOUR HONOR, THAT WAS ALONG THE LAST
OF JUNE OF LAST YEAR. AFTER WE HAD
COURT UP HERE, THAT WAS ALONG IN
THEN.

THE COURT: ALL RIGHT, SIR.

MR. G. FOWLER: AND HE'S NEVER PAID ME A DIME. HE
SAID, "ME AND KIM WILL PAY YOU."
THEY PROMISED TO PAY ME. I KEPT
THAT ROAD UP. I SPENT ALL THE MONEY
IN THAT ROAD. I GOT OVER \$3,000 IN
IT MYSELF.

THE COURT: I UNDERSTAND. NOW, YOU HAVE SOME
DOCUMENTS IN YOUR HAND, SIR. ARE
THOSE DOCUMENTS YOU WANT TO
INTRODUCE INTO EVIDENCE?

MR. G. FOWLER: THIS IS THE ORIGINAL PLAT OF MY LAND
WHEN I GAVE MY SON AND HIS WIFE THE
ACRE OF LAND, AND AFTER THEN, 911
CALLED ME AND TOLD ME THAT I HAD TO

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 RE-SURVEY AND PUT THE MOBILE HOMES
2 ON HALF-ACRES LOTS, AND THIS IS THE
3 OTHER PLAT SHOWING THAT I DID THAT
4 WHEN I HAD IT RE-SURVEYED. I DID
5 EXACTLY WHAT THE PLANNING AND ZONING
6 TOLD ME THAT I HAD TO DO. MS. JANET
7 CARTER WILL TELL YOU FROM THE WORD
8 GO AND SHE'LL TESTIFY IN COURT UP
9 THERE, AND MR. DIPPEL KNOWS THAT
10 I'VE DONE EVERYTHING BY LAW DOWN
11 HERE WITH THE PLANNING AND ZONING.
12 NOW, THAT USED TO BE 2153 OAK DALE
13 ROAD, LIKE SHE SAID, BUT SEE, WHEN
14 THE EMERGENCY CAME OUT THERE, THE
15 911 ADDRESS AND ALL THAT, WELL, THEY
16 DID THAT. THEY TOLD ME I HAVE TO.

17 THE COURT: WHO'S THEY, SIR?

18 MR. G. FOWLER: THE PLANNING AND ZONING DEPARTMENT,
19 911, BUT THAT'S THE REASON IT'S
20 SUPPOSED TO BE CALLED DOLLY LANE
21 INSTEAD OF OAK DALE ROAD, THE, THE
22 TRAILER SHE'S TALKING ABOUT THAT'S
23 GOT TWO ADDRESSES, WHICH I SHOWED
24 YOU THE TITLE WITH HIS ONE.

25 THE COURT: THAT'S DEFENDANT'S EXHIBIT 1.

1 MR. G. FOWLER: RIGHT.

2 THE COURT: AND THEN PLAINTIFF'S EXHIBIT 1.

3 MR. G. FOWLER: THAT'S RIGHT, YOUR HONOR.

4 THE COURT: YES, SIR. WOULD YOU LIKE TO
5 INTRODUCE THE DOCUMENTS YOU HAVE IN
6 YOUR HAND INTO EVIDENCE?

7 MR. G. FOWLER: YEAH, I'D LIKE TO PUT THESE INTO
8 EVIDENCE AND Y'ALL CAN HAVE THEM,
9 KEEP THEM OR WHATEVER. I DON'T
10 CARE. I DON'T NEED THEM. I, I
11 DON'T NEVER HAVE TO GO BACK ACROSS
12 IT. UNLESS IT WAS MY GRANDCHILDREN
13 OR SOMETHING TO HELP THEM OR
14 SOMETHING ANOTHER, I DON'T USE THAT
15 ROAD.

16 THE COURT: WELL, WE'LL MAKE COPIES, SIR.. THAT
17 WILL BE DEFENDANT'S EXHIBIT 2 AND 3.
18 WOULD THAT BE CORRECT, MS. COURT
19 REPORTER?

20 COURT REPORTER: YES.

21 DEFENDANT'S EXHIBIT NUMBERS 2 AND 3
22 ADMITTED INTO EVIDENCE.

23 THE COURT: I INTERRUPTED YOU, SIR. IS THERE
24 ANYTHING ELSE YOU'D LIKE TO TELL THE
25 COURT?

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MR. G. FOWLER: YOUR HONOR, I JUST WANT TO SAY TO
2 THE COURT THAT I DO NOT APPRECIATE
3 KENNY DIPPEL, THE WAY HE'S TALKED
4 ABOUT MY WIFE. I MIGHT NEED TO
5 CARRY THIS TO ANOTHER COURT. I
6 DON'T KNOW WHERE YOU CAN HANDLE IT,
7 BUT YOU READ MY ANSWER. IF I, IF I
8 NEED TO CARRY THIS TO ANOTHER COURT,
9 I'D LIKE FOR YOU TO LET ME KNOW WHAT
10 I NEED TO DO ON IT. I KNOW IT'S A -
11 - THE TRESPASSING SHOULDN'T EVEN BE
12 IN THIS COURT NO WAY, I MEAN ---

13 THE COURT: WELL, THEY'RE TWO CLAIMS LEFT, SIR.
14 THERE'S MS. FOWLER'S CLAIM FOR
15 TRESPASS AND MS. FOWLER'S CLAIM FOR
16 CONTEMPT, AND YOUR COUNTERCLAIM FOR
17 THE \$1,500, YOU SAID YOU WILL BRING
18 THAT IN ANOTHER COURT.

19 MR. G. FOWLER: THAT'S RIGHT, YOUR HONOR.

20 THE COURT: THE ONLY CLAIMS LEFT ---

21 MR. G. FOWLER: IS THE WAY HE TALKED ABOUT MY WIFE?

22 THE COURT: NO, SIR.

23 MR. G. FOWLER: I CAN'T USE THAT.

24 THE COURT: NOT IN THIS COURT.

25 MR. G. FOWLER: OKAY, YOUR HONOR.

1 THE COURT: NOT IN THIS COURT.
2 MR. G. FOWLER: OKAY. I UNDERSTAND.
3 THE COURT: BECAUSE MR. DIPPEL IS NOT A PARTY
4 ANY MORE.
5 MR. G. FOWLER: THAT'S RIGHT. THAT'S RIGHT, YOUR
6 HONOR.
7 THE COURT: SO IS THERE ANYTHING ELSE YOU'D LIKE
8 TO TELL THE COURT?
9 MR. G. FOWLER: I JUST WOULD LIKE TO TELL THE COURT
10 I'D LIKE TO SEE EVERYTHING QUIT
11 BEING BROUGHT, TO THE LAW ON THIS
12 AND THAT ALL THE TIME AND
13 EVERYTHING, AND I'D LIKE TO TELL THE
14 COURT THAT, LIKE I SAID, THAT I'VE,
15 I'VE -- I DON'T GIVE NOBODY NO
16 PERMISSION TO USE THAT ROAD OR
17 NOTHING LIKE THAT RIGHT THERE, AND
18 I'M SORRY THAT WE'RE UP HERE
19 WORRYING AND AGGRAVATING YOU PEOPLE.
20 THAT'S ALL I HAVE TO SAY.
21 THE COURT: ALL RIGHT, SIR. WAIT JUST A MOMENT
22 NOW.
23 MR. G. FOWLER: OKAY.
24 THE COURT: MS. FOWLER HAS A RIGHT TO CROSS-
25 EXAMINE YOU.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MR. G. FOWLER: OKAY.

2 THE COURT: MS. FOWLER.

3 CROSS EXAMINATION

4 BY MS. KIMBER FOWLER:

5 Q: Okay. First of all, I am going to get to the
6 questions, but I do want to address the fact as
7 far as the Horry County Planning Department is
8 concerned. They did not send us no written
9 decision and this is into an appeal with Horry
10 County Planning Department, but the question,
11 there was a couple of things that you mentioned.
12 First of all, I want to talk about the fact I did
13 hear you talk about the fact that you did say
14 that the house or the property or whatever was
15 given to us, correct?

16 A: Kim, you know I gave you and my son that acre of
17 land and the house. Y'all didn't pay nothing for
18 that house.

19 Q: Okay. I have a receipt here, I mean, I, I want
20 to talk about this because ---

21 THE COURT: WELL, THAT'S NOT AN ISSUE IN THIS
22 LAWSUIT. LET'S DON'T GET INTO THAT.
23 THAT'S REALLY NOT ---

24 MS. K. FOWLER: YOU DON'T WANT TO GET ---

25 THE COURT: --- IN THIS LAWSUIT.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MS. K. FOWLER: OKAY. WELL, WE'LL LEAVE THAT OUT OF
2 IT, THEN. OKAY. BUT MY, MY
3 QUESTION TO GENE IS THIS, OKAY.

4 Q: My biggest question here is, as far as the postal
5 person goes, where is your mail delivered at?
6 What address is it delivered at for you? I'm not
7 talking about the tenants or Joe Dale or Kenny or
8 anybody. Where is your mail delivered to, what
9 address?

10 A: Ms. Fowler, you think you know everything. Did
11 you know my mail come to 2167 Dolly Lane, Loris,
12 South Carolina?

13 Q: It comes 2167. Would not that be your son's
14 address at the trailer?

15 A: That is correct.

16 Q: Where do you live at?

17 A: That is correct.

18 Q: Where do you live at?

19 A: I live right on Dolly Lane sometimes. Sometimes
20 I spend time with my wife.

21 Q: You do not live on Dolly Lane. You live on 2042
22 G & B Lane, is where you live.

23 A: You asked me the question, I give you the true
24 answer, Ms. Fowler. Don't tell me where I live,
25 where I don't live. I got my driver license. I

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 got my mail and I got my light bill.

2 Q: So now you're saying ---

3 A: It show -- and I can show it to the Court, if
4 they would like me to.

5 Q: So you have a driver's license that says you live
6 on Dolly Lane?

7 A: I sure do, Ms. Fowler.

8 Q: How would that be, because you ---

9 A: My light bill comes to Dolly Lane, Ms. Fowler,
10 you know so much.

11 Q: That's because you went up there and you changed
12 that, because you actually live on 2042 G & B
13 Lane.

14 A: 2042 was my old address. Yes, I do.

15 THE COURT: MS. FOWLER, ASK HIM A QUESTION NOW.
16 DON'T BE TESTIFYING.

17 MS. K. FOWLER: OKAY. THERE, THERE IS ANOTHER
18 QUESTION I WANT TO ASK HIM.

19 Q: Okay. You did say, you were talking about the
20 Dolly Lane and all that and you said that the
21 police had been up there and talked to you,
22 right, about the Dolly Lane?

23 A: That's correct.

24 Q: Well, if you hadn't been through there, okay,
25 you're basically denying the fact that you travel

1 through there, and that night that you came
2 through there at one o'clock in the morning, my
3 daughter was not even in that car at all. He has
4 come through ---

5 THE COURT: MS. FOWLER.

6 MS. K. FOWLER: OKAY.

7 THE COURT: MS. FOWLER, PLEASE ---

8 MS. K. FOWLER: SORRY.

9 THE COURT: --- ASK HIM A QUESTION.

10 Q: But you said -- if you haven't trespassed and you
11 haven't been going through there, then why has
12 the police been up there and they have told you
13 not to travel through there, I mean, why have
14 they been up there to see you?

15 THE COURT: MS. FOWLER, HE ADMITTED HE'S BEEN
16 THROUGH THERE.

17 A: Ms. Fowler, I admitted to you that I talked with
18 the County Police. They come up there and asked
19 me about that incident that night and I told them
20 what happened and everything and I told them it
21 was still in the Court's decision, that y'all had
22 the County sued for the trespassing of Dolly Lane
23 right now. It's still -- y'all have got the
24 County sued. You know, you know what's going on.
25 Kenny does. You don't know nothing.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 Q: That's right, but your mailing address, though,
2 your mail does go to 2042 G & B Lane.

3 A: 2167 Dolly Lane, Loris, South Carolina.

4 Q: When did you change that, how long ago?

5 A: Maybe a year and a half ago.

6 Q: A year and a half ago. So what are you saying
7 now? You're saying that you live on ---

8 A: I, I live on, I live on Dolly Lane, but for you
9 and your brother fussing and raising sand, I go
10 around through my other land to get home, but I
11 ain't give nobody else a right-of-way to go
12 through there.

13 Q: You haven't been doing that, because after, after
14 the Horry County Planning Department, we had that
15 meeting that day, it was like two days later and
16 I seen you. That, that was another time I've
17 seen you trespass. You've continuously been
18 going through there, Gene, because matter-of-fact
19 ---

20 THE COURT: MS. FOWLER, ASK HIM A QUESTION. DO
21 NOT ---

22 MS. K. FOWLER: OKAY.

23 THE COURT: --- BE FUSSING AT HIM.

24 Q: After the, after the Horry County Planning
25 Department meeting, did not you actually go

1 through there about a day or two later after
2 that? You went through there, 'cause you went to
3 your brother, Joe Dale Fowler's, house? You
4 beeped the horn and you waved your hand up in the
5 air when you went by.
6 A: No, I did not. I told you the times that I went
7 down there.
8 Q: Okay. Well, it's funny to me, because I've seen
9 ---
10 THE COURT: MS. FOWLER, ASK HIM A QUESTION,
11 PLEASE
12 MS. K. FOWLER: OKAY. I DON'T REALLY HAVE ANYMORE
13 QUESTIONS TO ASK HIM, BECAUSE HE'S
14 GOING TO KEEP ON SAYING SOMETHING
15 DIFFERENT.
16 THE COURT: MS. FOWLER, DO NOT, DO NOT BE
17 EDIFYING ANY OR DO NOT BE GIVING ANY
18 COMMENTS.
19 MS. K. FOWLER: YES, MA'AM, BUT I ---
20 THE COURT: YOU DON'T HAVE ANYMORE QUESTIONS OF
21 MR. FOWLER:
22 MS. K. FOWLER: NO.
23 THE COURT: ALL RIGHT, THEN PLEASE HAVE A SEAT.
24 MS. K. FOWLER: NO MORE.
25 THE COURT: ALL RIGHT. MR. FOWLER, YOU MAY STEP

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 DOWN.

2 MR. G. FOWLER: THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU. ALL RIGHT. I'LL TAKE
4 THIS UNDER ADVISEMENT, THEN. THANK
5 YOU VERY MUCH.

6 MS. K. FOWLER: I HAD ONE MORE QUESTION I'D LIKE TO
7 ASK HIM IF I COULD.

8 THE COURT: NO, MA'AM.

9 MS. K. FOWLER: OKAY. THAT'S FINE.

10 THE COURT: YOU SAID YOU WERE THROUGH.

11 MS. K. FOWLER: THAT'S FINE.

12 THE COURT: MR. FOWLER, YOU DON'T HAVE ANY MORE
13 WITNESSES, DO YOU?

14 MR. G. FOWLER: NO, MA'AM. THAT'S ALL I HAVE.

15 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

16 MS. K. FOWLER: MAY I INTRODUCE JUST SOMETHING ---

17 THE COURT: NO, MA'AM. YOU ARE THROUGH. YOU
18 WERE THE FIRST PARTY. THAT'S HOW
19 THAT GOES. DO YOU HAVE ANY MORE
20 WITNESSES? DO YOU HAVE ANY
21 WITNESSES IN REPLY?

22 MS. K. FOWLER: I WOULD LIKE TO -- MAY I CALL
23 KENNETH DIPPEL?

24 THE COURT: NO. HE'S ALREADY TAKEN THE WITNESS
25 STAND.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MS. K. FOWLER: THEN THERE'S NO OTHER WITNESSES.

2 THEN MAY I ENTER THIS AS AN EXHIBIT
3 AS FAR AS HIS ADDRESS GOES?

4 THE COURT: DO YOU HAVE A PARTY TO INTRODUCE
5 THAT BY, A WITNESS TO INTRODUCE THAT
6 BY?

7 MS. K. FOWLER: MY DAUGHTER, MY DAUGHTER, CAN I
8 INTRODUCE HER?

9 THE COURT: NO, MA'AM.

10 MS. K. FOWLER: OKAY.

11 THE COURT: I MEAN, YOU COULD'VE INTRODUCED IT,
12 YOU COULD'VE USED IT IN CROSS-
13 EXAMINATION OF MR. FOWLER, BUT YOU
14 DIDN'T DO IT THAT WAY.

15 MS. K. FOWLER: OKAY.

16 THE COURT: I MEAN, I UNDERSTAND THAT THERE IS A
17 QUESTION THAT YOU BELIEVE MR. FOWLER
18 LIVES AT ONE ADDRESS AND HE SAYS HE
19 LIVES AT ANOTHER ADDRESS. THERE'S
20 NO QUESTION BUT THAT HIS PHYSICAL
21 ADDRESS, I MEAN, HIS HOUSE IS AT THE
22 SAME PLACE. IT'S A MATTER OF, DOES
23 HE USE THE ADDRESS OF G & B OR DOES
24 HE USE THE ADDRESS OF DOLLY LANE,
25 THE SAME WAY IT IS WITH THE TRAILER,

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THE MOBILE HOME THAT BELONGS TO MR.
2 DIPPEL. APPARENTLY, SOME DAYS IT'S
3 USED OAK LANE AND SOME DAYS IT'S
4 USED DOLLY LANE. I DON'T KNOW WHO
5 KEEPS CHANGING IT, BUT THERE'S NO
6 QUESTION BUT THAT THE MOBILE HOME
7 DOESN'T MOVE, IT STAYS RIGHT THERE.
8 THE ADDRESS, FOR SOME REASON,
9 CHANGES; IS THAT NOT CORRECT?

10 MS. K. FOWLER: YES, MA'AM.

11 THE COURT: I UNDERSTAND. I HAVE THE PICTURE.
12 I UNDERSTAND. I UNDERSTAND. ALL
13 RIGHT. ANYTHING FURTHER? I'LL TAKE
14 THIS UNDER ADVISEMENT AND I'LL ISSUE
15 A -- MA'AM?

16 MS. K. FOWLER: I HAD, I JUST HAD SOMETHING HERE
17 THAT I WANTED TO, TO GIVE YOU IF I
18 COULD THAT SHOWS ---

19 THE COURT: WHAT IS THAT?

20 MS. K. FOWLER: ALL THIS IS, THIS IS JUST THE
21 ESTIMATED DAMAGES OF THE ROAD THERE
22 IN FRONT OF MY HOUSE, THAT I HAD
23 SOMEBODY COME OUT AND TAKE AN
24 ESTIMATE ON THAT.

25 THE COURT: WHO DO YOU THINK CAUSED THOSE

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 DAMAGES, MA'AM? THERE'S NO ---
2 MS. K. FOWLER: IT'S, IT'S THROUGH ---
3 THE COURT: YOU HAVE NO WITNESS TO SAY WHO
4 CAUSED THOSE DAMAGES. I'M NOT GOING
5 TO LET YOU JUST COME UP HERE AND PUT
6 IN A PIECE OF PAPER ---
7 MS. K. FOWLER: OKAY.
8 THE COURT: --- AND SAY, "THESE ARE DAMAGES AND
9 I WANT MR. FOWLER TO PAY FOR IT."
10 MS. K. FOWLER: OKAY.
11 THE COURT: YOU DON'T HAVE ANY EVIDENCE THAT MR.
12 FOWLER CAUSED THOSE DAMAGES, DO YOU?
13 I MEAN, I HAVEN'T SEEN ANY EVIDENCE
14 FROM THIS WITNESS STAND. THAT'S
15 JUST NOT THE WAY IT GOES IN COURT.
16 YOU JUST CAN'T SAY, "I'VE GOT A
17 PIECE OF PAPER AND IT'S \$1,500 OF
18 DAMAGES AND I THINK MR. FOWLER OUGHT
19 TO HAVE TO PAY FOR IT." YOU NEED
20 SOME TESTIMONY THAT MR. FOWLER
21 CAUSED THOSE DAMAGES, AND I DON'T
22 KNOW OF ANY EVIDENCE THAT YOU PUT UP
23 THAT MR. FOWLER CAUSED YOU \$1,500 IN
24 DAMAGES, DO YOU? MS. FOWLER, DO YOU
25 KNOW OF ---

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 MS. K. FOWLER: NO.

2 THE COURT: --- ANY EVIDENCE THAT YOU PUT IN
3 THAT MR. FOWLER CAUSED YOU \$1,500

4 ---

5 MS. K. FOWLER: NO. I DON'T HAVE ---

6 THE COURT: --- OR WHATEVER IT IS IN DAMAGES?

7 MS. K. FOWLER: I DON'T HAVE ANY WITNESSES TO PUT
8 UP, NO.

9 THE COURT: DO YOU HAVE ANY EVIDENCE OF THAT?

10 MS. K. FOWLER: NO. I DIDN'T, I DIDN'T BRING ANY TO
11 COURT TODAY.

12 THE COURT: AND TODAY IS YOUR DAY IN COURT,
13 ISN'T IT, I MEAN, YOU SCHEDULED THIS
14 HEARING? YOU OR MR. DIPPEL, ONE,
15 SCHEDULED THIS HEARING. THIS IS
16 YOUR FINAL HEARING. THIS IS YOUR
17 DAY IN COURT. ALL RIGHT. I'LL TAKE
18 THIS UNDER ADVISEMENT. THANK YOU
19 VERY MUCH. COURT IS ADJOURNED.
20 THANK YOU VERY MUCH.

21 (The hearing concluded at 11:03 a.m.)
22
23
24
25

CERTIFICATE

This is to certify that the foregoing transcript of the hearing held before the Honorable Cynthia Graham-Howe, Master-In-Equity, consisting of **NINETY-FIVE (95)** pages, is a true and correct transcript of the testimony given at said hearing. The hearing was reported by method of stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 10TH day of MARCH, 2010.

Stephanie R. Boyd

Stephanie R. Boyd
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires: 10/02/17

COPY

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

FILED
COUNTY
2009 DEC -9 AM 8:53

CASE #: 2009-CP-26-8278

MELANIE HUGGINS-WARD
CLERK OF COURT

Kenneth Dippel, et al

Claudius Eugene Fowler

VS.

PLAINTIFF(S)

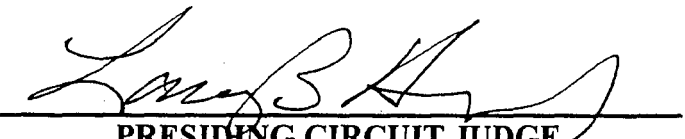
DEFENDANT(S)

**ORDER
DISPOSITION OF MOTIONS**

Plaintiff's Motion to Refer to Master is GRANTED.

All previously filed Motions shall be heard by the Master In Equity.

AND IT IS SO ORDERED.


PRESIDING CIRCUIT JUDGE

DATED AT CONWAY, SOUTH CAROLINA THIS 4th DAY OF DECEMBER, 2009.

Kenneth Dippel, Pro Se

Claudius E. Fowler, Pro Se

PLAINTIFF'S ATTORNEY(S)

DEFENDANT'S ATTORNEY(S)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

KENNETH DIPPEL & KIMBER FOWLER

☒ Plaintiff

v.

Claudius Eugene Fowler

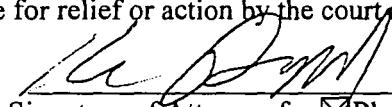
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-26-8278

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Kenneth Dippel & Kimber Fowler, Bar No. N/A Address: PO Box 622 Loris, SC 29569 phone: 716-0699 fax: e-mail: krf28472@yahoo.com other:	Defendant's Attorney: Claudius Eugene Fowler, Bar No. N/A Address: 2042 G & B Lane Loris, SC 29569 phone: 756-9525 fax: e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion To Strike, Dismiss, and to Amend Estimated Time Needed: 1 hour Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  _____ Signature of Attorney for ☒ Plaintiff / ☐ Defendant October 1, 2009 _____ Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instruction Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____

HORRY COUNTY
09 OCT - 1 PM 2:07
MELANIE HUGGINS
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO: 2009-CP-26-8278

KENNETH DIPPEL &
KIMBER FOWLER,

Plaintiffs,

vs.

CLAUDIUS EUGENE FOWLER

Defendant,

PLAINTIFF'S REPLY TO DEFENDANT'S
COUNTER CLAIM & ANSWER TO COMPLAINT &
MOTION TO STRIKE (Rule 12(F), SCRCF) &
MOTION TO DISMISS COUNTERCLAIM

HORRY COUNTY
CLERK OF COURT
JACQUELINE HUGGINS
1 PM 2:08

Here comes now the Plaintiffs in the above entitled case in reply to Defendant's counter claim and answer to Plaintiffs' complaint.

Plaintiffs respectfully move the Court to strike #2, #3, #4, and #7 on page 5 & 6 of Defendant's answer to the complaint pursuant to **Rule 12(f), SCRCF (the court may order stricken from any pleading any insufficient defense or any redundant immaterial, impertinent, or scandalous matter)**. The allegations Defendant made at #2, #3, #4, and #7 on page 5 & 6 are not relevant to this case which were initially plead as a rule to show cause why Defendant should not be found guilty of trespass and also contempt of a Court order. **Plaintiff, Kenneth Dippel is not on trial.**

It is Defendant, Claudius Eugene Fowler that is on trial for trespass and contempt of a Court order. Defendant, Claudius Eugene Fowler continues to trespass on Plaintiffs' property despite the posting of no trespassing signs. Furthermore, Plaintiff, Kenneth Dippel denies #2, #3, #4, and #7 of Defendant's allegations set forth on page 5 and 6 of Defendant's pleading.

Plaintiff, Kenneth Dippel denies any such claim by Defendant on page 7 whereby Plaintiff, Kenneth Dippel agreed to pay \$1500 to Defendant for up keep of "Dolly Lane". Defendant did not own "Dolly Lane" at the time Plaintiff's mobile home was set up on Plaintiff; Kimber Fowler's property nor does Defendant, Claudius Eugene Fowler own it now. Defendant does not have a legally enforceable easement as determined by the South Carolina Court of Appeals and the latest Master in Equity ruling. Defendant, Claudius Eugene Fowler is bared based on res judicata (claim preclusion) and collateral estoppel (issue preclusion) from re-litigating any kind of easement claim as well as any claimed right to use a private soiled driveway known as "Dolly Lane".

Defendant, Claudius Eugene Fowler stood before Judge Cynthia Howe, Horry County Master in Equity at a hearing in which he raised his hand, and swore that he never asked for Plaintiff, Kenneth Dippel to pay any money. Plaintiffs have obtained copies of the written transcript of the latest Master in Equity ruling and will offer this as evidence when a hearing is conducted by the Court. Defendant's exact words are transcribed in the official hearing transcript.

Plaintiffs respectfully move the Court to amend their original complaint to include as a third cause of action “perjury” against Defendant.

Plaintiffs are informed and believed Defendant, Claudius Eugene Fowler should be also found guilty of “perjury”. Plaintiffs are informed and believe Defendant committed perjury by stating at the May 2009 hearing before the Master in Equity that he never demanded for Plaintiff, Kenneth Dippel to pay money. Defendant, in his reply to the Complaint now appears to contradict himself and now demands money for alleged “up keep” of “Dolly Lane” which was not his property to begin with. As stated previously, Plaintiffs have a copy of the official written transcript of the latest Master in Equity hearing.

Plaintiffs pursuant to **Rule 12(b), SCRC**P; respectfully move the Court to dismiss Defendant’s counter claim on the grounds Defendant failed to state sufficient facts to constitute a legally viable counter claim.

Plaintiffs respectfully move the Court to dismiss Defendant’s alleged counter claim based on the statute of limitations. Defendant’s counter claim is time bared based on the three year statute of limitations pursuant to **Title 15, Chapter 3; Section 15-3-530**.

Defendant’s alleged counter claim should also be dismissed pursuant to the Statute of Frauds. **See Title 32, Chapter 3, Section 32-3-10(5) (agreements**

required to be in writing and signed; no action shall be brought whereby to charge any person upon agreement that is not performed within the space of one year from the making thereof).

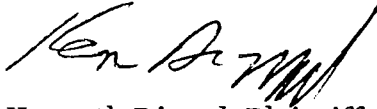
Defendant alleges on page 6 that his plats were done legally. Plaintiffs will prove at trial that Defendant's Affiliated Survey Plat should have never been approved for recording by the Horry County Planning Department. Plaintiffs will prove at trial that Defendant prior to recording of the Affiliated Plat did not comply with several Horry County Land Development Regulations which were required prior to getting approval for recording of the Plat. Plaintiffs will prove that Defendant's Affiliated Plat is a fraud or at the very least is a misrepresentation of Defendant's property.

Plaintiffs are informed and believe the mere recording of the Affiliated Plat at Record of Deeds and Plats at Horry County do not mean the Plat is legally enforceable and that is especially true when a Plat is a fraud or misrepresentation. Plaintiffs will show and prove that Defendant, Claudius Eugene Fowler has imposed a **fraud** or a **misrepresentation** on this Court and to the citizens of Horry County by signing a certificate of dedication, by recording this Plat, and also making a claim to this Court it was legal. **Plaintiffs respectfully move the Court to amend their original complaint to include a fourth cause of action (fraud) and also for a fifth cause of action (negligent misrepresentation).**

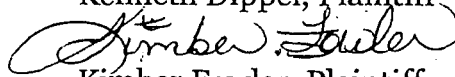
Conclusion

Whereby, based upon consideration the Plaintiffs pray to this Honorable Court to strike #2, #3, #4, and #7 on page 5 & 6 of Defendant's answer to the complaint pursuant to **Rule 12(f)**, dismiss Defendant's counter claim with prejudice, and to allow the inclusion of perjury, fraud, and misrepresentation as a cause of action in the original complaint submitted by Plaintiffs.

Respectfully submitted,



Kenneth Dippel, Plaintiff



Kimber Fowler, Plaintiff

CERTIFICATE OF SERVICE

Plaintiffs, Kenneth Dippel and Kimber Fowler hereby certify that the foregoing pleading was mailed to Defendant by US certified mail addressed as follows:

Claudius E. Fowler
2042 G & B Lane
Loris, SC 29569

Kenneth Dippel
Kenneth Dippel, Plaintiff

10-1-2009
(Date)

Kimber Fowler
Kimber Fowler, Plaintiff

(10-1-09)
(Date)

9-21-09

The Court of Common Pleas
Civil Action Court
2009 CP 26-82

State of South Carolina
County of Horry

Kenneth Dippel & Kimber Fowler
Plaintiffs

VS

Claudus Eugene Fowler
Defendant

Claudus Eugene Fowler
2042 G & B Lane Loris, S.C. 29569
Phone # 843-756-9585

Defendant's Answer

First Cause - Trespassing

1. I Claudus Eugene Fowler have not trespassed on the Plaintiff's property. I have not told anyone to use Dolly Lane. The Plaintiff herself told people to use Dolly Lane and I have witnesses to prove this fact.
2. Horry County Planning and Zoning have said that Dolly Lane cannot be closed because there are four residents on the lane and this is their access to and from their residence. This is their access and anyone who is their guest to use.
3. I Claudus Eugene Fowler did use Dolly Lane to take my daughter-in-law home on Sunday afternoon on August 9, 2009. Her address is 2167 Dolly Lane. My wife was with me.
4. On August 8, 2009 I went to take my granddaughter Payton Fowler home after we had been to the go cart races and she was asleep when Kenneth Dippel came out harassing and cussing at me so bad I took her to her daddy's house.

Second Cause Willful Contempt

1. I Claudus Eugene Fowler do not feel that I have been in contempt of Court because Horry County Planning and Zoning said this is a legal access to the residence of the people who live on Dolly Lane.
2. I have not bothered neither one of the Plaintiff's nor has any of my heir's

Conclusion

1. I Claudus Eugene Fowler do not feel that I should be found guilty of any of the charges brought against me. I have not harassed or done anything against these people. Kenneth Dippel and Kimberl
2. Dolly Lane was established before the Plaintiff received her property, it was done exactly by the law and regulations of the Planning and Zoning Dept. and Addressing Dept. It should remain open for the resident of this address and their guest. It is also for all purposes. The safety of their lives. Everything is recorded at the Horry County Court House in Conway, S.C. (Fire Dept, Emergency Vehicles, and Utilities.)

Facts

1. I Claudus Eugene Fowler and my family are the ones being harrassed every time we turn around by Kenneth Dippel and Kimb Dippel Fowler as it is well noted by all the law suits we have been involved in. They constantly are causing trouble with every member of my family.
2. Kenneth Dippel gets in the yard yelling obscene language and vulgar language abo my wife Terry Fowler accusing her of suck Paul Prince and Harry McDowell's dick a why the County will not close Dolly Lar
3. Kenneth Dippel pulled time for beating I own daddy with a picture frame and he al bled to death. (Columbus County, N.C.)
4. Kenneth Dippel has been investigated by the FBI for threatening the President of U.S. (Columbus County Public Library, Whiteville, N
5. All this nonsense takes place in front of my 7yr. old granddaughter and it is ridiculous. Our neighbors 1/2 mile down the road call to see if

are alright.

6. I'm tired of this mess and wish there was some peaceful end to it. But until the Lord gets in and the demons get out I'm afraid this is it. All we can do is pray.

7. Kenneth Dippel also beat Kimber Fowler and broke her nose and filed a false police report. At this time he hit Kimber's oldest daughter Christian and she is the one who told us what happened.

8. I thank Horry County Planning and Zoning for stepping up and seeing that my Platt's were done legally as required by law and even they do not know how The Court of Appeals came to their decisio

Counter Suit

I Eugene Fowler have spent \$3,000.⁰⁰ in the up keep of Dolly Lane. When Kenneth Dippel placed a mobile home on Dolly Lane he said he would pay half \$1500.⁰⁰. I ask the court for my money.

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO: 2009-CP-26-8278

PROOF OF RECEIPT OF SUMMONS AND COMPLIANT

VS.)

Defendant,)

HONORARY COURT
09 AUG 28 AM 9:55
MELANIE HUBBARD
CLERK OF COURT

Respectfully submitted,

Kenneth D. Giff

Kenneth Dippel, Plaintiff

Kimber Fowler, Plaintiff

Timber Lake

CERTIFICATE OF SERVICE

Plaintiffs, Kenneth Dippel and Kimber Fowler hereby certify that a copy of the foregoing Proof of Service was provided to the Defendant, Claudius E. Fowler by mailing him a copy via US Certified Mail, Restricted Delivery addressed as follows:

Claudius E. Fowler
2042 G & B Lane
Loris, SC 29569

HORRY COUNTY
09 AUG 28 AM 9:55
MELANIE HUGGINS
CLERK OF COURT

(8-28-09)

Date

Kimber Fowler

Signature

8-28-2009

Date

Kenneth Dippel

Signature

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>X Charles E. Fowler</i> ☐ Agent ☐ Addressee	
1. Article Addressed to: <i>Claudio E. Fowler</i> <i>Loris, SC 29569</i>		B. Received by (Printed Name) <i>Fowler</i>	C. Date of Delivery <i>8/20</i>
		D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below:	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☒ Yes ☐ No	
2. Article Number (Transfer from service label)		<i>7009 0960 0001 0369 3614</i>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COUNTY OF HORRY

KENNETH DIPPEL & KIMBER FOWLER

Plaintiff(s)

vs.

CLAUDIUS EUGENE FOWLER

Defendant(s)

IN THE COURT OF COMMON PLEAS

ACTION COVERSHEET

2009 CP 24 8278

(Please Print)

Submitted By: KENNETH DIPPEL & KIMBER FOWLER

Address: PO BOX 622 LORIS, SC 29569

SC Bar #:

Telephone #: 843-716-0699

Fax #:

Other:

E-mail: krf28472@yahoo.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20 -CP- -	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☒ Other (499)
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture-Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799)		☐ Zoning Board (970)
Special/Complex /Other			☐ Administrative Law Judge (980)
☐ Environmental (600)	☐ Pharmaceuticals (630)		☐ Public Service Commission (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)		☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of State Depositions (650)		☐ Other (999)
☐ Other (699)	☐ Sexual Predator (510)		

Submitting Party Signature:

Date: 8-25-2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA,)
COUNTY OF Horry)
KENNETH DIPPEL & KIMBER FOWLER)
Plaintiff,)
vs.)
CLAUDIUS E. FOWLER)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO.

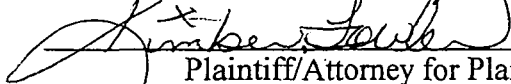
Horry County
09 AUG 25 AM 10:46
JULIE HUSKINS
CLERK OF COURT

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Horry, South Carolina

Dated: August 24, 2009



Plaintiff/Attorney for Plaintiff

Address: PO BOX 622, LORIS, SC 29569

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO: _____

KENNETH DIPPEL &)
KIMBER FOWLER,)
)
Plaintiffs,)
)
vs.)
)
CLAUDIUS EUGENE FOWLER,)
Defendant,)
_____)

**COMPLAINT
(NON JURY)**

HORRY COUNTY
09 AUG 25 AM 10:46
CLERK OF COURT
KIMBER FOWLER

Plaintiffs bring this action seeking a **Rule to Show Cause** in response to the Defendant, Claudius Eugene Fowler willfully violating a Court order issued on May 26, 2009 by the Master in Equity, the Honorable Judge Cynthia Howe. Judge Cynthia Howe on May 26, 2009 issued an injunction permanently enjoining the Defendant, Claudius E. Fowler, his heirs, and successors from continually trespassing on the property of Plaintiff, Kimber Fowler including a private twenty-five foot soiled driveway known as "Dolly Lane" which runs across the North side of Plaintiff, Kimber Fowler's property. Despite this order, the Defendant has continually trespassed on the Plaintiff, Kimber Fowler's property and has continually induced others including his family members, and the Defendant's tenants residing on Tract A and Tract B of the Defendant's property depicted on a survey Plat known herein as the Affiliated Surveyor's Plat to trespass on Kimber Fowler's private soiled driveway known as "Dolly Lane" with little or no regard to the May 26, 2009 Master in Equity ruling. Defendant by doing so

1 has willfully violated the May 26, 2009 court ordered injunction. The Plaintiffs
2 respectfully state the Court should find the Defendant guilty for two counts of willful
3 intentional trespass and also he should be found guilty of willful contempt of a Court
4 order.

5
6 **STATEMENT OF FACTS**

7
8 The Plaintiffs, Kimber Fowler and Kenneth Dippel are citizens residing in Horry
9 County, SC.

10
11 The Defendant, Claudius Eugene Fowler residing at 2042 G & B Lane, Loris, SC
12 29569 is a citizen residing in Horry County, SC.

13
14 The Plaintiff, Kimber Fowler owns .99 acres of land and a home (Deed Book 2897
15 at page 463, Plat Book 163 at page 228). **Please see the attached deed and plat.**

16
17 The Plaintiff, Kenneth Dippel owns a mobile home on his sister's property, the
18 Plaintiff, Kimber Fowler. The mobile home is jointly rented out by Plaintiffs to their
19 tenants. **Please see attached deed.** The mobile home sets back approximately six
20 feet off the **private** soiled driveway known as "Dolly Lane" belonging to Kimber Fowler,
21 Plaintiff.

22
23 On September 29, 1981 Defendant, Claudius E. Fowler acquired property known
24 as Tract D of the PF Fowler Estate by civil suit (Deed Book 740 at Page 312, Plat Book 73
25 at Page 27). **Please see the attached deed and plat.** There is no soiled driveway or
26 road between Tract C and D. There is no "Dolly Lane" on this Plat. There is no
27 easement of any kind on this Plat. The Defendant's deed does not reference any kind of
28 easement or to "Dolly Lane".

On June 17, 1999 Defendant, Claudius E. Fowler's property was surveyed and platted in preparation for conveyances the Defendant intended to make to his children. The plat prepared at this time (the Inman Plat) reflects an existing soil drive within a twenty-five foot private easement across the north side of the parcel. No street named "Dolly Lane" appeared on this Plat.

On August 16, 1999 the Defendant and his wife conveyed the easternmost .99 acres of land to their son, and Plaintiff, Kimber Fowler. The Defendant and his wife reserved a life estate in the conveyed land (Deed Book 2175 at Page 001, Plat Book 163 at 228). The Deed nor release document indicates any easement or makes reference to a "Dolly Lane". The Plat did not depict a street known as "Dolly Lane" running through the property. The western end of Defendant's property does not appear on the Plat. **Please see attached deed and plat.**

On June 28, 2000 the Defendant and his wife released their life time right and conveyed their remaining interest to their son and the Plaintiff, Kimber Fowler (Deed Book 2278 at page 0358, Plat Book 163 at page 228). Although the title references the Inman Plat, neither **the title nor release document indicates an easement** (emphasis added). A street named by the County as "Dolly Lane" is not indicated on the Plat or release document. **Please see attached deed and plat attached.**

On or about August 1, 2000 the Plaintiff, Kimber Fowler planted a total of eight Bradford Pear Trees approximately six feet from the existing private soil drive shown on the Inman Plat.

On January 19, 2005 Defendant's son and the Plaintiff, Kimber Fowler divorced.

On April 20, 2005 the Plaintiff, Kimber Fowler received title to the .99 acres and

1 the family home pursuant to the divorce decree (Deed Book 2897 at Page 463, Plat Book
2 163 at Page 228). The title document executed by the Defendant's son references the
3 Inman Plat but does not indicate an easement and does not indicate the property being
4 subject to a street known as "Dolly Lane". **Please see attached deed and plat.**

5
6 On or about April 5, 2005 the Defendant and his grandson destroyed one of the
7 Bradford Pear Trees on the Plaintiff, Kimber Fowler's property. Plaintiff, Kimber
8 Fowler filed criminal charges against them but later withdrew those charges in an effort
9 "to make peace with the family".

10
11 On or about April 18, 2006 the Defendant had the remainder of his property re-
12 surveyed which was previously known as Tract D of the PF Fowler Estate. The Plat
13 (Affiliated Surveyor's Plat) depicts three parcels of land (Tract A, Tract B, and the
14 Remainder of the PF Fowler Estate). The Plat prepared by Affiliated Surveyor's reflects
15 a "private access easement" identified as "Dolly Lane" across the north side of Plaintiff,
16 Kimber Fowler's property, and references the prior Inman Survey Plat. Dolly Lane
17 according to the Plat ended at the Plaintiff, Kimber Fowler's property. The Plat depicts a
18 private shared driveway extending from the **private soil driveway** known as "Dolly
19 Lane" belonging to the Plaintiff, Kimber Fowler. The Affiliated Surveyor's Plat also
20 depicts a cul-de-sac starting from Plaintiff, Kimber Fowler's private soiled driveway
21 known as "Dolly Lane", and extending across Tract B and Tract A of Defendant's two
22 parcels of land (Plat Book 214 at Page 212). The Plat does not show G & B Lane running
23 along side the southern part of Defendant's property. **Please see attached Plat.**

24
25 On May 16, 2006 the Defendant signed and recorded the Affiliated Plat at the
26 Horry County Register of Deeds. The Plaintiffs were never told by the Defendant or the
27 Horry County Planning Department about the preparation or recording of the Affiliated
28 Surveyor's Plat. This marked the first time that "Dolly Lane" was noted on a recorded

Plat. Plaintiff, Kimber Fowler's 2005 deed does not reference Defendant's Plat.

On February 8, 2007 Defendant and his grandson used a chainsaw to cut branches from the remaining Bradford Pear Trees of the Plaintiff, Kimber Fowler. Plaintiff posted no trespassing signs on and near the trees. When Defendant removed them, Plaintiff again filed criminal charges against the Defendant and a civil suit for trespass and malicious damage to the Plaintiff, Kimber Fowler's property.

On April 24, 2007 the civil case was referred to the Master in Equity, Judge J. Stanton Cross, Jr.

On April 15, 2007 the Master in Equity, Judge J. Stanton Cross Jr. issued a ruling favorable to the Defendant. The Master in Equity held the Defendant had an easement by dedication.

On August 20, 2007 the Plaintiff, Kimber Fowler appealed to the South Carolina Court of Appeals.

On February 23, 2009 the South Carolina Court of Appeals in a unanimous unpublished opinion issued a ruling reversing the ruling by Master in Equity, Judge Stanton Cross, Jr. The Court held the Defendant did not have an easement by dedication because any easement would only benefit a buyer. The Court also held the other issues raised on appeal including other easement claims by the parties did not have a bearing on the case because of this ruling. **Please see attached opinion.**

On May 26, 2009 a hearing was conducted by the Master in Equity, Judge Cynthia Graham Howe. Judge Howe repeatedly told all parties there was no easement Judge Howe also told the Plaintiff, Kimber Fowler to re-survey her property. **A copy of**

1 **the transcript will be issued at a later date.** Judge Cynthia Howe issued an
2 injunction which specifically prohibited the Defendant, his heirs, and successors from
3 trespassing on Plaintiff, Kimber Fowler's property including the twenty-five foot private
4 soiled driveway known as "Dolly Lane" (emphasis added). **Please see attached**
5 **order.**
6

7 On June 6, 2009 the Plaintiffs had the property surveyed by Crescent Moon
8 Surveyors. The Plat indicated the private access easement or private soiled driveway
9 known as "Dolly Lane" was to be deleted pursuant to the South Carolina Court of
10 Appeals decision issued on February 23, 2009 (Unpublished Opinion No. 2009-UP-
11 096).
12

13 On June 16, 2009 the Horry County Planning Department denied the approval of
14 the Plaintiffs, Crescent Moon Survey Plat. **Please see attached copy of the**
15 **decision.** The Horry County Planning Department held in part that the Plaintiff,
16 Kimber Fowler had to get the signature of Claudius E. Fowler to delete the private access
17 easement depicted on the previous Inman Survey Plat **(a copy of this Plat is**
18 **attached for reference)**. The Planning Department also held the Plaintiff, Kimber
19 Fowler had to provide an alternative route to the Defendant's three tracts of land which
20 are depicted on the Affiliated Survey Plat of the Defendant **(a copy of this Plat is**
21 **attached for reference)**. The Plaintiffs appealed this decision to the Planning
22 Commission.
23

24 On July 30, 2009 the Plaintiffs appeared and testified before the Planning
25 Commission in a Planning Workshop seeking for the Planning Commission to approve
26 their Plat, and for the County to honor the South Carolina Court of Appeals decision and
27 Master in Equity ruling issued on May 26, 2009 by Judge Cynthia Howe, Master in
28 Equity against the Defendant. The Defendant also was present at the workshop. He also

testified before the Planning Commission. The Planning Commission did not approve the new Plat of the Plaintiffs. Since this time Defendant, Claudius Eugene Fowler, his family members to include his brother, his grandson, Bryant Fowler; the Defendant's tenants residing on his land, and all Defendant's guess and invites have unlawfully trespassed on the Plaintiff, Kimber Fowler's private soil driveway known as "Dolly Lane" with total disregard to the South Carolina Court of Appeals decision and the injunction issued by Judge Cynthia Howe, Master in Equity which specifically prohibited the Defendant, his heirs, and successors from trespassing on the private soiled driveway known as "Dolly Lane".

On August 8, 2009 the Defendant was seen at approximately 1:00 a.m. by Plaintiff, Kenneth Dippel traveling through the soiled driveway known as "Dolly Lane". The Plaintiff, Kenneth Dippel stopped the Defendant and warned him that he was not suppose to be traveling any more through the Plaintiff, Kimber Fowler's property.

On August 9, 2009 the Defendant was seen again traveling through the private soil driveway known as "Dolly Lane" belonging to Plaintiff, Kimber Fowler. Approximately at around 6:00 pm that day the Horry County Police Department was called to report Defendant's trespassing. **Please see attached police reports.**

On August 18, 2009 the Plaintiffs went to the Chief Magistrate of Horry County, the Honorable Gerald Whitley in Little River, South Carolina to file criminal trespassing charges against the Defendant. Judge Whitely advised the Plaintiffs that the matter would have to go back to the Master in Equity, Judge Cynthia Howe.

FIRST CAUSE OF ACTION - Trespassing

Each and every statement of the facts is incorporated herein. The Plaintiffs are informed and believes the Defendant has willfully trespassed on Plaintiff, Kimber

1 Fowler's property. The Plaintiffs are informed and believes that Defendant's trespassing
2 has continually interfered with the Plaintiffs peaceful full use and enjoyment of their
3 property.

4 Trespassing is any intentional invasion of a the Plaintiff's interest in the exclusive
5 possession of his or her property. *Hawkins v. City of Greenville*, 358 S.C. 280, 296, 594
6 S.E. 2d 557, 565 (Ct. App. 2004) (quoting *Hedgepeth v. Am. Tel. & Tel. Company*, 348
7 S.C. 340, 356, 559 S.E. 2d. 327, 337 Ct. App. 201). Trespass is interference with the
8 property owner's right to the exclusive, peaceable possession of his or her property.
9 *Ravan v. Greenville County*, 315 S.C. 447, 463, 434 S.E. 2d 296, 306 (Ct. App. 1993).
10 The essence of trespass is the unauthorized entry onto the land of another. *Id.* At 464,
11 434 S.E. 2d at 306.

12 The order issued by Judge Cynthia Howe was very specific. The Defendant, his
13 heirs, and successors were **specifically ordered not to trespass on the Plaintiff,**
14 **Kimber Fowler's property including the private soil driveway known as**
15 **"Dolly Lane"** (emphasis). **Please see the ruling by Judge Cynthia Howe issued**
16 **on May 26, 2009 attached.** The Defendant chose to disregard that order, and on at
17 least two separate occasions did trespass again on the property belonging to Plaintiff,
18 Kimber Fowler, the private soiled driveway known as "Dolly Lane".

19 Defendant did this even when he was fully aware and knew that there were no
20 trespassing signs posted on or near the private soiled driveway known as "Dolly Lane"
21 warning all individuals: **"No Trespassing", "Violators will be prosecuted"**.

22 The Plaintiff, Kenneth Dippel who is the brother of Plaintiff, Kimber Fowler seen
23 the Defendant, Claudius Eugene Fowler at approximately 1:00 am in the early morning
24 hour of August 8, 2009 traveling on the private soiled driveway known as "Dolly Lane".
25 The Plaintiff, Kenneth Dippel stopped the Defendant and warned him that he was not
26 suppose to travel through his sister, Kimber Fowler's property. The very next day on
27 August 9, 2009 despite the warning, the Defendant, Claudius Eugene Fowler trespassed
28 again by traveling down "Dolly Lane" in a gold Chevrolet Malibu with his wife. As a

result of the Defendant's continued trespassing, the Plaintiffs had no other choice to call the Horry County police. **Please see attached incident reports.**

In addition, the Defendant has encouraged other individuals to include his family (grandson, son, brother, etc.), tenants living on his property, his guests and invites to continually trespass on the soiled driveway known as "Dolly Lane" which is part of the private property belonging to Plaintiff, Kimber Fowler. The Defendant's actions have resulted in the Plaintiffs being continually deprived the full peaceful use and enjoyment of their property.

The soiled driveway known as "Dolly Lane" is now damaged with pot holes and is directly attributable to unauthorized entry onto the Plaintiff, Kimber Fowler's property. The traffic ingress and egress down the so called **private soiled driveway** is a nuisance to the Plaintiffs. Motorcycles, farm equipment, loud noisy trucks pass through all day, late at night, and even into the very early morning hours. Plaintiff, Kenneth Dippel's tenants are being constantly awakened because of this. Individuals who do not even live on the so called "Dolly Lane" are illegally using the private soil driveway known as "Dolly Lane" for ingress and egress purposes to travel to and from the Defendant's property.

It should be noted by the Court that none of the three parcels of land Defendant owns are not land locked parcels. Please see Air Photos attached. The Air Photos plainly show Defendant, Claudius E. Fowler as well as his tenants living on Defendant's land, Tracts A and Tract B on Defendant's Affiliated Surveyor's Plat are not land locked parcels. Defendant as well as his tenants all have a way into their residence utilizing the shared private driveways which continues on to the Defendant, Claudius E. Fowler's driveway which links up to G & B Lane, a public road. **Please see Air Photos attached** and compare to the Affiliated Surveyor's Plat. It should be noted by the Court that the Affiliated Plat is either a fraudulent or at the very least is a total outright misrepresentation of the Defendant's property. **The Plat should have never been approved by the Horry County Planning**

1 **Department.** The Plat depicts a cul-de-sac ending on Tract A of the Defendant's
2 property. A cul-de-sac is a one way street with one way in and one way out. This cul-de-
3 sac has never existed and to date does not exist. **Please see Air Photos.** In addition,
4 the Plat fails to show the Defendant's interconnection of the private shared driveways
5 running along side Tract A and Tract B which links up to Defendant's driveway on the
6 Remainder of Tract D of the PF Fowler Estate belonging to the Defendant. The
7 Defendant owns all of this land and **the tenants living on Tract A and Tract B of**
8 **Defendant's property do not own any real property.** This driveway of the
9 Defendant continues on and links up to G & B Lane which is a public road. This is not
10 correctly shown on the Affiliated Plat along with the obvious fact G & B Lane on the
11 southern boundaries of Defendant's property is not properly depicted. Defendant's
12 continued trespass is directly linked to this *fraudulent Plat or Plat misrepresentation.*
13 Please see and compare the Air Photos and Affiliated Surveyor's Plat attached.

14 The illegal continued infinite trespassing will continue without a Court granting
15 **permanent injunctive relief** to Plaintiffs, and without the Court declaring the
16 Affiliated Plat is not legally enforceable. The Plaintiffs will also be continually harassed
17 and deprived full use and enjoyment of their property without any kind of **permanent**
18 **injunctive relief** by this Court. Plaintiffs herein are informed and believes they are
19 entitled to full **permanent injunctive relief.**

20 21 **SECOND CAUSE OF ACTION - (Willful Contempt)**

22
23 Each and every statement of the facts is incorporated herein. The Plaintiffs are
24 informed and believes that the Defendant, Claudius Eugene Fowler is guilty of willful
25 contempt of a Court order.

26 Contempt results from the willful disobedience of an order of the Court, and
27 before a court may hold a person in contempt, the record must clearly and specifically
28 demonstrates the acts or conduct upon which such finding is made. *Curlee v. Howle,*

1 277 S.C. 377, 382, 287 S.E. 2d 915, 918 (1982). A willful act is "one done voluntarily and
2 intentionally with the specific intent to do something the law forbids, or with the specific
3 intent to fail to do something the law requires to be done". *State v. Bevilacqua*, 316 S.C.
4 122, 129, 447 S.E. 2d 213, 217 (Ct. App. 1994).

5 Defendant in this case did voluntarily and intentionally disobey the injunction
6 order issued by Judge Cynthia Howe. That order specifically stated the Defendant,
7 Claudius E. Fowler was not to trespass on the Plaintiff, Kimber Fowler's property
8 including the private soiled driveway known as "Dolly Lane". The Defendant also
9 continues to willfully violate the injunction order by encouraging the tenants living on
10 his land on Tract A and Tract B depicted on the Affiliated Plat to travel through the
11 private soil driveway known as "Dolly Lane" belonging to Kimber Fowler.

12 The Defendant is acting in defiance of the Court's order apparently as a result of
13 the Horry County Planning Department's decision not to approve the Plats of the
14 Plaintiffs. **Please see the decision attached regarding the approval of the**
15 **Plaintiffs plat.** The Horry County Planning Department has no power to undo the
16 decisions rendered by the South Carolina Court of Appeals and the ruling issued by
17 Master in Equity, Judge Cynthia Howe. The Defendant, Claudius E. Fowler had his day
18 in Court and was given a full and fair opportunity to litigate all of his easement claims.
19 The Courts have found specifically there was no private easement for Mr. Claudius E.
20 Fowler. The Defendant, did not appeal any of those decisions. Defendant therefore,
21 should be collaterally estopped from raising any easement claims as a defense.

22 Those two Court decisions are now final and are binding on the Defendant as well
23 as the County concerning the question of any kind of **private easement existing for**
24 **the Defendant Claudius E. Fowler.** The principles of *res judicata* and *issue*
25 *preclusion* prohibits this Defendant as well as parties in privy including the Horry
26 County Planning Department from re-litigating the issue as to whether there is a legally
27 enforceable private easement for Mr. Claudius E. Fowler. **Defendant, Claudius E.**
28 **Fowler fails to understand that an administrative body of the Horry County**

1 **government cannot provide him any kind of remedy concerning his claimed**
2 **private easement**, and they do not have any legal authority to overturn the earlier
3 rulings issued against this Defendant. **Please see *Tobler v. Derwinski*, 2 Vet. App.**
4 **8 (1991); citing *Allegheny General Hospital v. NLRB*, 608 F. 2d. 965, 970**
5 **(3rd. Cir. 1979) (a lower tribunal has no legal authority to second guess or**
6 **ignore Court final orders issued by a higher Court).** If the Horry County
7 Planning Department did in fact give the Defendant permission to continually ignore the
8 injunction order issued by Judge Cynthia Howe, Master in Equity by encouraging the
9 Defendant to continually use "Dolly Lane" for ingress and egress to his property; they
10 themselves have committed a crime.

11 The willful contempt of the Master in Equity Ruling will continue without the
12 Court granting Plaintiffs **permanent injunctive relief**. The total disregard and
13 circumvention of the South Carolina Court of Appeals decision including the ruling by
14 Judge Cynthia Howe, Master in Equity Ruling will continue without some sort of order
15 addressing ***res judicata*** and ***issue preclusion***. The order by Master in Equity,
16 Judge Howe was issued to grant the Plaintiff, Kimber Fowler relief by keeping the
17 Defendant, his family, his tenants, successors, and assignees from continually
18 trespassing. It was also issued to keep the Defendant from continually using the so
19 called private soiled driveway known as "Dolly Lane" as a means to ingress and egress to
20 all of his property.

21 Defendant, willfully chose to violate Judge Cynthia Howe's order. Therefore, the
22 Defendant should be found guilty of contempt. Furthermore, **the Plaintiffs should**
23 **be granted permanent full injunctive relief herein**. This injunctive relief is
24 absolutely necessary to keep the Defendant, Claudius Eugene Fowler, his family
25 members, his heirs, his tenants residing on Defendant's two tracts of land on Tract A
26 and B, and his assignees including successors from continually using the private soiled
27 driveway known as "Dolly Lane" belonging to Kimber Fowler as a means to ingress and
28 egress to the Defendant's property.

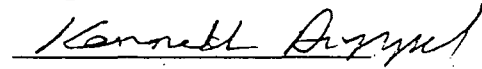
CONCLUSION

Having fully set forth their complaint herein, the Plaintiffs pray to the Court to grant the following relief:

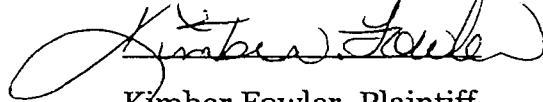
1. Enter an order finding the Defendant, Claudius Eugene Fowler guilty of **two counts of trespass.**
2. Enter an order finding the Defendant, Claudius Eugene Fowler guilty of **contempt of a court order.**
3. Issue an order finding the Defendant's parcels of land (Tract A, Tract B, and the Remainder of Tract D of the PF Fowler Estate) are not land locked parcels.
4. Issue a **permanent injunction prohibiting and enjoining the Defendant, his family members,** his guests, his invites, his **assignees,** and **the Defendant's tenants residing on Defendant's tracts of land, Tract A and Tract B depicted on the Affiliated Surveyor's Plat,** are forever prohibited from using the soiled driveway known as "Dolly Lane".
5. Issue an order granting the Plaintiffs costs of court including all costs of obtaining and providing the Court with all hearing transcript fees by Prestige Court reporting.

- 1 6. Issue a Court ordered platting action requiring the Defendant to resurvey his land
2 and to submit a new Plat to the Horry County Planning Department along with a
3 current updated deed to replace the old 1982 deed of Defendant's property.
4
5 7. Issue any other injunctive relief the Court deems equitable, just, and necessary
6 including granting **quiet title to quash all easement claims**.
7

8 Respectfully submitted,

9 

10 Kenneth Dippel, Plaintiff

11 

12 Kimber Fowler, Plaintiff
13

14 On this 24th day of August 2009
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Plainiffs, Kenneth Dippel and Kimber Fowler hereby certifies that a copy of the foregoing Complaint was provided to the Defendant, Claudius E. Fowler by mailing him a copy via US Certified Mail, Restricted Delivery addressed as follows:

Claudius E. Fowler
2042 G & B Lane
Loris, SC 29569

8-25-2009

Date

Kenneth Dippel

Signature

8-25-09

Date

Kimber Fowler

Signature

HORRY COUNTY
09 AUG 25 AM 10:46
MELANIE HIGGINS
CLERK OF COURT

141

APPEARANCES:

FOR THE PLAINTIFF:

Pro Se

FOR THE DEFENDANT:

Pro Se

COURT REPORTER:

Alice S. Nelson
Verbatim Court Reporter

ALSO PRESENT:

Kenneth Dippel

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29526
(843) 248-5252

INDEX

Hearing Begins	4
Certificate of Court Reporter	32

EXHIBITS

(No exhibits were marked during the hearing.)

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29526
(843) 248-5252

1 The Court: I'm Cindy Graham Howe. I'm the new
2 Master-in-Equity for Horry County. This is
3 civil action number 2007-CP-26-1782, Kimber
4 Fowler versus Claudius Eugene Fowler. This was
5 referred to the Master-in-Equity by Order of
6 Reference, dated April 30th, 2007, signed by
7 the Honorable Paula H. Thomas. The issues
8 before me today stem from a Court of Appeals
9 opinion, dated February the 23rd, 2009. Are we
10 ready to proceed?

11 All Parties: (Indicate affirmatively.)

12 The Court: And who is the proceeding party? Are
13 you Kimber Fowler?

14 Ms. Fowler: Yes.

15 The Court: Okay. You may proceed.

16 Ms. Fowler: I'm here today because I want to see
17 about getting all the easement claims squashed
18 across my property, because we did, we were
19 here in front of Judge Stanton (Judge Cross)
20 before, and so it was addressed, and then it
21 was appealed in the Court of Columbia appeal,
22 and so, you know, in to saying, I'm just
23 reading off the facts that was concluded by the
24 three judges. There is no easement. It does
25 say on September the 29th, 1981, Respondent

1 acquired 3.72 acres of the land through a civil
2 suit for partition of his father's estate. The
3 estate's real property was surveyed and platted
4 on November the 9th 1981. No ---

5 The Court: Okay. Ms. Fowler, I don't want to
6 interrupt you. I've read the Court of Appeals
7 opinion, I understand. There's no easement.
8 The only issues before me today should be your
9 request for damages for trespass.

10 Ms. Fowler: Yes, ma'am.

11 The Court: That should be the only issue. As I
12 understand it, you paid \$125.00 for a Bradford
13 pear tree.

14 Ms. Fowler: Yes, ma'am, but my main concern is
15 also squashing any easement claims across my
16 property.

17 The Court: There is no easement across your
18 property. The Court of Appeals has determined
19 that. So those are the only two issues before
20 me today, \$125.00 for the Bradford Pear Tree,
21 and there is no easement. The Court of Appeals
22 has determined that.

23 Mr. Dippel: Your Honor, may I speak?

24 The Court: You may stand, who are you?

25 Mr. Dippel: I'm Kenneth Dippel. I'm Kimber

1 Fowler's brother. I feel I have a
2 constitutional right to be able to speak in
3 this courtroom. I own a trailer that sits on
4 her property. We jointly rent that out.

5 Here's the problem with that. The plat ---

6 The Court: Mr. Dippel, you have a motion to
7 intervene. Please, would you like to be heard
8 on your motion to intervene?

9 Mr. Dippel: Yes, I do. Yes, I do.

10 The Court: Ms. Fowler, be seated, please. Mr.
11 Dippel, you may be heard on your motion to
12 intervene.

13 Mr. Dippel: Okay. I own a trailer, okay? I have
14 title to that, and it sits in this easement
15 there, about five feet off that road. Here's
16 my concerns, okay?

17 The Court: Well, let's be clear, the Court of
18 Appeals -- Are you saying there is an easement
19 or there is not?

20 Mr. Dippel: There is not, okay. That's a final
21 decision, but, here's the problem. The plat
22 the way it is, I am being deprived full use and
23 enjoyment of my property because of this area
24 here. He's got a Affiliated Surveyors plat
25 that depicts fifty feet across his property ---

1 The Court: Wait, for the record, let's say who
2 "he" is.
3 Mr. Dippel: The Respondent, okay?
4 The Court: Mr. Claudius Fowler?
5 Mr. Dippel: Yes. Yes. Now here's the problem,
6 okay? The ending survey plat, it does show a
7 25 foot easement but ---
8 The Court: Mr. Dippel, the motion before me today
9 is your motion to intervene.
10 Mr. Dippel: Right.
11 The Court: On what grounds are you moving to
12 intervene?
13 Mr. Dippel: I'm trying to explain it. Here's
14 what's going to happen with this ---
15 The Court: Let's back up. Your motion to
16 intervene is under Rule 24; is that ---
17 Mr. Dippel: And Rule 18.
18 The Court: Motion, Rule 24, the specific grounds
19 for a motion to intervene.
20 Mr. Dippel: I have a trailer there and it sits in
21 this area, and he's been claiming he has
22 easement right, and has been telling people
23 he's going to charge me a toll, and force me to
24 move the trailer, and you know, ---
25 The Court: Well, have you read the case of South

1 Carolina Department of Health and Environmental
2 Control versus Columbia Organic Chemical
3 Company?

4 Mr. Dippel: I haven't read that one, but I have
5 read an, a prescriptive easement. Here's the
6 thing, if the plats are left ---

7 The Court: Let me stop you right there. There
8 are four requirements to be able to intervene
9 in a case in South Carolina. Those
10 requirements are: a timely application to
11 intervene in a case, ---

12 Mr. Dippel: All right.

13 The Court: That you have to assert an interest
14 relating to the property or the transaction
15 which is part of the action.

16 Mr. Dippel: All right.

17 The Court: You have to demonstrate that without
18 an intervention in this case that the
19 disposition of the action may impair or impede
20 the ability to protect your interest, and that
21 you demonstrate an interest that the inadequate
22 representation by the other party involved in
23 the case. That means that you don't believe
24 that your sister can adequately represent your
25 interest in this lawsuit. Let me ask you this,

1 timely application to intervene, why did you
2 wait two years to move to intervene in this
3 lawsuit?

4 Mr. Dippel: Number one, I thought, pursuant to
5 Rule 18, there's no time limits. Rule 18
6 there's no time limits. I filed the
7 alternative, Rule 24, either one ---

8 The Court: Rule 18 is to join in a party. You
9 have to do both in this case. You can't just
10 move to intervene. Move to intervene is when a
11 party moves to intervene another party. You
12 are not already a party. You have to move to
13 intervene to become a party.

14 Mr. Dippel: Well, that's what I was trying to do.
15 But the reason why I've waited to today, the
16 first time we come before this Court I thought
17 that this matter would be resolved and I would
18 be able to speak. I wasn't even given the
19 opportunity to speak at all. I was gagged.

20 The Court: Because you're not a party. So, my
21 question, again, is why did you wait two years
22 to move to intervene?

23 Mr. Dippel: Precisely because I thought this would
24 be over with. I thought this was a relatively
25 simple case and that she would be able to

1 handle this, but it's clear, what's going on --
2 This has been going on over four and a half
3 years.

4 The Court: That's my point.

5 Mr. Dippel: Four and a half years.

6 The Court: It's being going on for four and a
7 half years, so why did you wait two years?

8 Mr. Dippel: Well, not the actual litigation, but
9 I'm saying the dispute, for four and a half
10 years. And see, I have a trailer that sits
11 there. We jointly rent this out. That
12 easement ---

13 The Court: Let me stop you there. You've not
14 really answered my question other than you
15 don't really know why you waited four and a
16 half years other than you thought it would be
17 over with.

18 Mr. Dippel: Well, I didn't actually wait four and
19 a half years. Counting the time the suit was
20 filed, which was about two years ago, two years
21 ago, okay? I didn't file that motion that time
22 because I thought that this would have been
23 over. It's a simple matter. She's a
24 legitimate property owner, that's why I didn't.

25 The Court: Okay, that's my next question. Why do

1 you not think your sister can adequately
2 represent your interest in this lawsuit?

3 Mr. Dippel: She don't have the amount of knowledge
4 that I have. I'm not an attorney, nor would I
5 try to be an attorney, but I feel that, since I
6 have property that lies in this area of
7 dispute, I have a constitutional right to be
8 able to defend that property, and, so, she
9 doesn't have the knowledge. Your Honor, I've
10 got a Master's Degree in public administration.
11 I've got way more knowledge than she does on
12 this topic, way more.

13 The Court: Well, I don't know about your
14 knowledge, sir, you may have a lot of
15 knowledge, but she did an adequate job with the
16 Court of Appeals.

17 Mr. Dippel: Yes, she has, considering the
18 circumstances in this case, but I just want to
19 be able to defend my property just like anybody
20 else does.

21 Ms. Fowler: She's telling you it's over, though,

22 ---

23 Mr. Dippel: I know that, but if you leave the
24 plats like they are, the problem with that is,
25 I know the South Carolina Court of Appeals held

1 there's no easement, but you've got a situation
2 where people are still going through there, and
3 you know about a prescriptive easement and what
4 happens with that. Because he's got 50 feet
5 depicted down there, he's going to extend this
6 out at a certain point in time, 50 feet, and
7 guess what's going to happen to the trailer
8 that I have? Well, I'm going to have to
9 appease him. I'm going to have to move it.
10 And that's why I'm standing here today. I
11 should have a right to be able to put a stop to
12 that, and that's why, in this case, quiet title
13 is essential. Each party should be ordered to
14 resurvey their plat, because he's created these
15 illegal easements at a time when he owned that
16 entire tract.

17 The Court: Well there's nothing that says, Mr.
18 Dippel, that you can't bring your own action.
19 There's nothing that precludes you from
20 bringing your own action. You just -- Unless
21 you satisfy all four of these requirements that
22 I just went through, you are not allowed to
23 intervene in this particular lawsuit that's
24 been going on since 2007.

25 Mr. Dippel: Let me just make a statement. If I'm

1 not able to intervene, I am confident, though,
2 that you will be able to see through this, see
3 through this issue a fair and equitable
4 decision that protects my sister's property
5 rights.

6 The Court: Well, the Court of Appeals has already
7 held there's no easement, Mr. Dippel.

8 Mr. Dippel: I understand that.

9 The Court: The Court of Appeals has already held
10 there's no easement. So the only issue today
11 is, how much is the Bradford pear tree worth,
12 and to issue some sort of injunction to keep
13 her, keep her property rights ---

14 Ms. Fowler: It was \$125.00 for the tree.

15 The Court: Ms. Fowler, I am talking to Mr.
16 Dippel. Do not talk when The Court is talking,
17 please. Do you understand, Mr. Dippel?

18 Mr. Dippel: Yes, I had a feeling it was that way,
19 but let me say this. The main thing, the main
20 thing, yes, that's true, but also before you,
21 you have -- I don't know if you're aware of it,
22 but the South Carolina Court of Appeals granted
23 her court costs, pursuant to Rule ---

24 The Court: I understand that, yes, sir, I know
25 that, and that will be a judgment. That is a

1 judgment here.

2 Mr. Dippel: And I think that, you know, that she
3 should be able to be compensated for the court
4 costs. She didn't ask for this, nor did I.

5 The Court: She is compensated. That is a
6 judgment.

7 Mr. Dippel: Right.

8 The Court: Those court costs have become a
9 judgment.

10 Mr. Dippel: Right. Anyway, I am confident you
11 will issue a fair and equitable decision ---

12 The Court: I plan to do that.

13 Mr. Dippel: And will stop all -- Will issue an
14 order, asking them, him and his family was to
15 refrain from all nuisance behavior which have,
16 in the past, continuously infringed upon her
17 constitutional rights as a property owner under
18 the United States Constitution.

19 The Court: I certainly plan to do that, Mr.
20 Dippel.

21 Mr. Dippel: This has been a long -- I'm just going
22 to say, it's been a very, very emotional,
23 emotional issue that's been going on ever since
24 she divorced his son four and a half years.
25 It's time. Let's put this thing to bed so we

1 all can go on. In summary, she should be able
2 to have the same rights, like anybody -- like
3 he does. He can exclude people from his
4 property, but she can't. That, my position on
5 that, that's a blatant violation to the Equal
6 Protection Clause. She should be able to have
7 the same right. If someone comes on your land,
8 you should be able -- and does damage to your
9 property -- you should be able to call the law
10 and ask the officer to remove that individual.

11 The Court: All right. Thank you, Mr. Dippel.
12 I'm going to deny your motion to intervene,
13 based on the case law, not based on any
14 constitutional right ---

15 Mr. Dippel: I understand.

16 The Court: --- but based on the case law. And
17 the case is, if you want to look this up, the
18 case is South Carolina Department of Health and
19 Environmental Control versus Columbia Organic
20 Chemical, and the site is 427 SE2d 661.

21 Mr. Dippel: I've read that case. I remember now.
22 Yes, I have.

23 The Court: All right. Thank you, Mr. Dippel.
24 All right. Ms. Fowler, back to the Bradford
25 pear, do you want to put up any evidence today

1 on your damages? Are you prepared to go
2 forward with your damages?

3 Ms. Fowler: I didn't, I didn't bring any papers on
4 my damage. That was actually a tree that he
5 had just actually run over with the truck, you
6 know, and so I don't have any of my papers
7 showing that's what it was.

8 The Court: Would you please stand for The Court
9 while you're directing The Court. You don't
10 have any evidence on the value of the Bradford
11 pear tree?

12 Ms. Fowler: Not the value of the tree, no.

13 The Court: Do you have any evidence as to any
14 other damages?

15 Ms. Fowler: No.

16 The Court: All right. Thank you, Ms. Fowler. Do
17 you have anything further to address to The
18 Court?

19 Ms. Fowler: No.

20 The Court: All right. Thank you. Mr. Fowler, do
21 you need to come forward for The Court?

22 Mr. Fowler: Yes, I would, Your Honor.

23 The Court: All right. Please come forward.

24 Mr. Fowler: Your Honor, my name is Claudius Eugene
25 Fowler.

1 The Court: Yes, sir.

2 Mr. Fowler: The only thing I can say about this
3 case, is I did give my son and his wife an acre
4 of land and a house, and I did keep the 25 foot
5 private easement. I had it surveyed before I
6 gave it to them. I have the deed here. It's a
7 true deed, and it was recorded in Conway in the
8 courthouse in the public records just like they
9 told me I had to do and everything, and I have
10 it right here. And that's all I have to go by,
11 and, really, this case, I've never told him he
12 had to move his trailer. I've never told him
13 he had to do nothing. The only place I ever
14 been up there on the Bradford pear tree, I told
15 my daughter-in-law when she planted them, if I
16 had to remove one of them or cut the limbs off
17 for traveling in and out the easement that I
18 would do so and she said it would be fine. And
19 I did remove one Bradford pear tree, and that
20 one Bradford pear tree that I did remove was
21 really on the State's property. I had them to
22 go out there and measure it for 33 feet from
23 the center of the highway from where the tree
24 was planted, and the Bradford pear tree that
25 she was trying to charge me with was on the

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29526
(843) 248-5252

1 State's property, and I went and asked them and
2 they said I could take it down.

3 The Court: I see. I understand.

4 Mr. Fowler: And I'm being truthful about it. He
5 weren't even around when my son and Ms. Fowler
6 were married. She knows the case. She's knows
7 everything, that I'm telling the truth about
8 this here. I gave them land and the house, and
9 before I give it to them, I kept a 25 foot
10 private easement across there, not no dedicated
11 easement or nothing, they had a private
12 easement.

13 The Court: I see.

14 Mr. Fowler: And that was for my daughter, because
15 I got more land behind it, and that was for her
16 way to her mobile home, my granddaughter, I
17 give each one of them a half acre behind her
18 land. Well, to start with my son and his wife
19 wanted a half acre, but I went ahead and give
20 them a acre to try to divide the land out where
21 each one of my grandchildren would have a place
22 to live when we passed on. My granddaughter
23 would have a lot, one there, and my other
24 granddaughter, which is her two girls, each one
25 of them would have had a half acre lot there,

1 and I got two more grandchildren, each one of
2 them would have a half acre lot, and that's all
3 I got to say about the case. I'm being honest
4 with you. I've done nothing wrong. The only
5 thing that I did do, like I said, I did go up
6 there and move the branches off the trees
7 because they run out their easement, in the
8 road, and I didn't hurt the tree or do no
9 damage to the tree. In fact, we went to Court
10 about all this. And it was all over. I won
11 all the cases. They took four warrants out on
12 me on this here same mess here, and I won every
13 one of them, thank the good Lord, people can
14 realize what's going on. And that's all I have
15 to say. Thank you very much.

16 The Court: Thank you, Mr. Fowler. What I have to
17 say is, I am bound by the Court of Appeals.

18 Mr. Fowler: Yes, ma'am.

19 The Court: There's nothing I can do about the
20 Court of Appeals decision.

21 Mr. Fowler: Right. I understand that.

22 The Court: And I've read it, I've read it more
23 than once.

24 Mr. Fowler: Right.

25 The Court: As I understand it, you gave the

1 property -- deeded the property to your son and
2 your former daughter-in-law.

3 Mr. Fowler: Right.

4 The Court: You initially reserved an easement, a
5 life estate.

6 Mr. Fowler: Right.

7 The Court: And then you deeded it outright.

8 Mr. Fowler: Right.

9 The Court: And apparently you thought that you
10 had reserved an easement.

11 Mr. Fowler: Right.

12 The Court: It went up to the Court of Appeals.

13 The Court of Appeals disagreed with what Stan
14 Cross had decided.

15 Mr. Fowler: Right.

16 The Court: The Court of Appeals has said there is
17 no easement. I will issue an opinion, issue an
18 order determining what the damages are.

19 Because, Ms. Fowler, you have not put up any
20 evidence, whatsoever, as to how much the
21 Bradford tree is worth, you are bound by the
22 \$125.00 that you put in your prayer for relief
23 in your Complaint. And that is all that you
24 have put in your Complaint, so that's what you
25 are bound by. If, in fact, the Bradford tree

1 goes over onto, the trees grow over onto Mr.
2 Fowler's property, though, he is allowed to cut
3 branches if they grow over onto his property.
4 So, just make sure they don't grow over onto
5 his property. You can trim them yourself.
6 That would be my suggestion to you so that you
7 don't have to worry about him damaging your
8 property. You can't charge -- I'm not saying
9 that you have threatened to charge tolls. Mr.
10 Dippel says that you have. I don't know that
11 you have. You can't do that.

12 Mr. Fowler: I haven't, Your Honor. I raise my
13 hand to God, I've never told him that.

14 The Court: I'm not saying that you have.

15 Mr. Fowler: Well, thank you.

16 The Court: But the Court of Appeals has said that
17 there is no easement. Whether there was, ---

18 Mr. Fowler: Right.

19 The Court: --- or was not, that is what we call
20 the law of the case, now.

21 Mr. Fowler: Right.

22 The Court: So you're going to have to live with
23 it.

24 Mr. Fowler: Okay.

25 The Court: And y'all are just going to have to

1 learn to get along.

2 Mr. Fowler: Right.

3 The Court: And I will issue an order based on the
4 \$125.00 prayer for relief. Mr. Dippel, if you
5 want to bring another lawsuit based on your
6 interest in a trailer on the land, you're
7 certainly welcome to do that. But, based on
8 this case that says you have to meet all four
9 requirements to intervene as a matter of right,
10 I don't believe that you have met those, all
11 four of those requirements. I believe your
12 sister did an adequate, more than adequate job
13 of representing any interest at the Court of
14 Appeals. And I believe that the two year delay
15 in moving to intervene was not appropriate in
16 this case. But I don't know that it matters,
17 because I think your interests are met here,
18 based on my order.

19 Mr. Dippel: May I speak just one second?

20 The Court: Certainly.

21 Mr. Dippel: You -- I'm not -- I just want this
22 stuff to get over with today, just be done.
23 I've never bothered him. I don't even go on
24 his property. I don't bother anybody. I just
25 want to be left alone.

1 The Court: I think it will be.

2 Mr. Dippel: And for her to be able to have the
3 same rights like anybody else does, to be able
4 to own their own land. His brother, in the
5 past, has now started up. That's why I
6 recommend that she re -- He's claiming he owns
7 the road and has access to the road.

8 The Court: I don't think we need to rehash it
9 now. I think we just need to stop.

10 Mr. Dippel: You mentioned, you mentioned that,
11 something about he could cut the leaves. His
12 property is nowhere near where these Bradford
13 ---

14 Ms. Fowler: It's over. It's over.

15 Mr. Dippel: --- pear trees, he doesn't live --
16 He's about a block up the road.

17 The Court: Well, you can tell I don't know a
18 whole lot about Bradford pear trees, I don't
19 know how big they get. Just don't let them get
20 too big.

21 Mr. Dippel: Well -- But she should have the right
22 to trim them, you know? I mean, she's not
23 going to let them ---

24 The Court: She will.

25 Mr. Dippel: --- grow over, overboard, you know?

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29526
(843) 248-5252

1 She'll do it. You know, I help her out. I've
2 been helping her out ever since ---

3 Ms. Fowler: What the problem has been -- I don't
4 mean to ---

5 The Court: Stand.

6 Ms. Fowler: I'm sorry.

7 The Court: If you're going to address The Court,
8 you must stand.

9 Ms. Fowler: What the problem has been -- Okay,
10 once again, he is right. He doesn't live
11 beside me on either direction. He lives on G &
12 B Lane. Okay. He has another way in and out
13 of his property. And so, actually, coming
14 through my property is an actual alternative
15 route for him to go in and out to his. And the
16 only thing he's trying to say, the reason why
17 we're talking about these trees so much, is
18 because there's been a lot of problems. Like,
19 with him, when he comes up and talks about
20 pruning trees, we did go to a case before, you
21 asked for a jury trial. But that doesn't
22 always mean just because somebody's innocent in
23 the civil part of it---

24 Mr. Dippel: Criminal.

25 Ms. Fowler: Criminal, they're not, you know.

1 they're not innocent in the civil. Because
2 when somebody comes up, takes a truck and runs
3 your tree completely over ---

4 The Court: He's not ---

5 Ms. Fowler: You know?

6 The Court: Ms. Fowler, we do not need to rehash
7 that. He is not ---

8 Ms. Fowler: Right. I just want other make sure
9 that my trees are protected. That's all I'm
10 saying.

11 The Court: They are protected. You do not need
12 to rehash that.

13 Ms. Fowler: Okay.

14 The Court: He is not going to touch your trees
15 unless they come over, unless they grow over
16 onto his property. You do not need to rehash
17 that now and make any tempers flare today.
18 There is no need for that.

19 Ms. Fowler: Okay. I just want to make sure that
20 my trees are fine, but he does not ---

21 The Court: Your trees are fine.

22 Ms. Fowler: --- live beside me.

23 The Court: Your trees ---

24 Ms. Fowler: He doesn't live beside me.

25 Mr. Dippel: Who owns that .99 acres, though, so we

1 can settle that today? Because see, ---
2 The Court: It's been decided by the Court of
3 Appeals, Mr. Dippel.
4 Mr. Dippel: Well, see everyone's been saying, his
5 family's been saying that she doesn't own it.
6 She doesn't own it.
7 The Court: It doesn't matter ---
8 Ms. Fowler: It doesn't matter what people say.
9 The Court: --- who says it, the Court of Appeals
10 has decided. I'm not rehashing it.
11 Mr. Fowler: Your Honor, I'd just like to say this
12 right here to Ms. Fowler and her brother there.
13 Y'all don't want me to use that thing, am I
14 correct?
15 Ms. Fowler: To use it?
16 Mr. Fowler: You don't want me to use it no more,
17 am I correct?
18 Ms. Fowler: Not if you're going to cut on my trees
19 ---
20 Mr. Fowler: I'm not going to bother your trees no
21 more.
22 Ms. Fowler: --- that's the only thing about it.
23 Because, I mean, there's been chain saws and
24 everything else taken out. It's just
25 disrespectful.

1 Mr. Fowler: Well, I'll say this. All I want to do
2 is ask you again, and y'all don't want us to
3 use that no more, am I correct? If y'all -- If
4 I'm correct, tell me

5 Ms. Fowler: I don't know, why are you bringing us
6 ---

7 Mr. Fowler: Do you mind if we use it right on or
8 you don't want us to use it no more?

9 Mr. Dippel: All she wants to have ---

10 Ms. Fowler: I think I'm just going to go by what
11 the judge says. I just want to make sure that
12 my property's protected, my trees are
13 protected, and, you know, that's all I got to
14 say. But as far as the property being given to
15 us, I don't think this really matters, but I've
16 got my receipts here. He was paid for that
17 property. And, what the problem has been is,
18 to me, I mean, I could be wrong. It just seems
19 to me like you're not wanting to let that .99
20 acres go. You're wanting to have more say so
21 on what's going to be done with my trees, how
22 they're supposed to be cut. This is what I
23 always told them. And I just want you to hear
24 what I have to say. To me, this is very
25 important. Number one, once again, he lives

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29526
(843)-248-5252

167

1 nowhere near my property. He's approximately a
2 block up the road. I'm on Oakdale Road, you
3 know that already, he's on G & B Lane. But I
4 always told, like my neighbor next door, which
5 is his brother, that if he ever had any
6 problems with the trees, if the limbs protruded
7 or anything like that, I told them just to come
8 to me and let me know, that I'd be more than
9 happy to cut them. But the thing of it is, I
10 don't want them coming up and taking chainsaws,
11 because if you seen the video of what was done
12 to my trees before, it was very far from a
13 pruning job. It come from the top of the trees
14 all the way down to the bottom of the trees,
15 big old places taken out with his chainsaw.
16 And that's the reason why I'm very protective
17 when it comes to my property and my trees,
18 because I don't go up on his property. I don't
19 do things like that, and I just want to have
20 the same respect that he has. That's all I
21 ask. And if there's any pruning that needs to
22 be done ---

23 The Court: Today was your day to have brought
24 that evidence, Ms. Fowler. Today was your day
25 to come to a hearing. There will be no more

1 hearings. Today was your hearing.

2 Ms. Fowler: That's right, but my main thing was, I
3 wasn't so much concerned about the \$125.00 over
4 a tree. That's all I was saying ---

5 The Court: That's what you sued for. It was in
6 your Complaint.

7 Ms. Fowler: But my more concern was what I had
8 said about the squashing any easements, right,
9 but I think you've already told me the case is
10 over with. You're telling me that that ---

11 The Court: It couldn't have been any clearer.

12 Ms. Fowler: By this decision, there's nothing else
13 to say.

14 The Court: It could not have been any clearer.

15 Mr. Dippel: Why can't she have her property
16 resurveyed? Horry County, I've talked to them
17 folks ---

18 Ms. Fowler: She didn't say I couldn't.

19 The Court: I didn't say you couldn't.

20 Mr. Dippel: They're not going to approve the plat
21 if they submit. They say they're going to go
22 by the plats last time.

23 The Court: Mr. Dippel, that is not up to me.

24 Ms. Fowler: That's a separate issue.

25 The Court: That is not up to me. I am not going

1 to order a resurvey. That is up to you. It is
2 your property. You pay for a survey if you
3 want one.

4 Mr. Dippel: Thank you. Let me ask this question

5 ---

6 Ms. Fowler: I know that already. I don't have to
7 have nobody tell me that.

8 Mr. Dippel: Hold on. What she's wanting here is
9 simply this. We're not saying she's going to
10 close the road down and all that stuff here.
11 She wants to have the right to exclude just
12 like you do.

13 Mr. Fowler: Okay.

14 Mr. Dippel: Or anybody else. If someone comes
15 down there and is revving their engine and
16 raising Cain, she wants to be able to call the
17 law and say, "Hey, come get this guy off my
18 property," not come there with plats and show

19 ---

20 Ms. Fowler: Our big problems we've had ---

21 Mr. Dippel: --- and then law enforcement just
22 comes up and he shows the plat and he gets off
23 Scott free. And this goes on, on and on and
24 on. These games here, of calling Horry County
25 Planning ---

1 Ms. Fowler: What it is, the Horry ---

2 The Court: This hearing is over. I will issue a
3 ruling. It is your property. The Court of
4 Appeals has said it. Call the law if you need
5 to. Mr. Fowler has his property, if somebody
6 upsets his property, he may call the law.

7 Mr. Dippel: That's right, if I go up there, then
8 he calls.

9 The Court: This hearing is over.

10 Mr. Dippel: Thank you.

11 Mr. Fowler: Thank you, Your Honor.

12 The Court: I will issue an order. Thank you,
13 Deputy Hemingway.

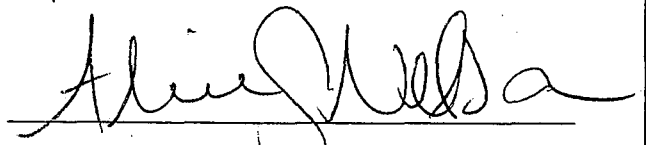
14 (THE HEARING CONCLUDED AT 11:38 A.M.)
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

This is to certify that the foregoing transcript of the hearing before The Honorable Cynthia Graham Howe, consisting of THIRTY-TWO (32) pages, is a true and correct transcript of the testimony given at said hearing. The hearing was reported by method of stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 1st day of September, 2009.



Alice S. Nelson
Verbatim Court Reporter
Notary in and for the State of
South Carolina
My Commission Expires: 7-26-16

COPY

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29526
(843) 248-5252

STATE OF SOUTH CAROLINA,

MASTER'S DEED

COUNTY OF Horry

WHEREAS, Nicky Gene Fowler, et al., on or about the 29th day of December in the year of our Lord one thousand, nine hundred Eighty did file Complaint in the Court of Common Pleas for the County of Horry State of South Carolina against Jennie Bell Fowler, et al.

AND WHEREAS, the action being at issue, was heard by the Honorable the said Court on the 29th day of September in the year of our Lord one thousand, nine hundred Eighty-One whereupon the Judge of said Court, after full hearing thereof and mature deliberation in the premises, did ORDER, ADJUDGE, AND DECREE that the premises particularly set forth and described hereinafter, should be sold by John L. Breeden, Jr.,

as Master, hereinafter called party of the first part, on the terms and for the purposes mentioned in said Decretal Final Order, all of which will more fully appear by reference to the registry of the said Court, Judgement Roll No. 52515, and the order of the first part after having duly advertised the premises for sale at public outcry on the 29th day of September, 1981, in the year of our Lord one thousand, nine hundred Eighty-One, and after the manner of auction, offer the said premises for sale, and John L. Breeden, Jr., as Master, as provided by law, did then sell the same unto Eugene Fowler, Route 2, Loris, South Carolina 29569 Box 36

of the County of Horry, State aforesaid, hereinafter called parties of the second part, whether one or more, for ~~xxxxxx~~ Partition of Porter F. Fowler Estate (\$xxxxxx Dollars, being that was the highest bidder for the same.

NOW KNOW ALL MEN BY THESE PRESENTS That the said party of the first part, in consideration of the premises and the sum of Five (\$5.00) Dollars paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell, and release, unto the said parties of the second part

Eugene Fowler, his heirs and assigns:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Simpson Creek Township, Horry County, South Carolina and being shown and designated at Tract D on a plat prepared for the estate of P. F. Fowler by S. D. Cox Surveyors, Inc., dated November 9, 1981, and recorded in Plat Book 73 at Page 26, Office of the Clerk of Court for Horry County.

This being a portion of the property conveyed to P. F. Fowler by deed of Minnie Ward Hewett recorded in Deed Book 14 at Page 48, Office of the Clerk of Court for Horry County.

FILED
HORRY COUNTY
1982 AUG 16 PM 4:34
CLERK OF COURT

Together with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also the estate, right, title, interest, dower, possession, property, benefit, claim and demand whatsoever of all the parties to the said suit, as well as of all other persons rightfully claiming or to claim the same or any part thereof by, from, or under them or through either of them.

TO HAVE AND TO HOLD the said premises, with its hereditaments, privileges, and appurtenances; unto the said parties of the second part, his heirs and assigns, forever.

IN WITNESS WHEREOF, I, the said John L. Breeden, Jr. as Master, under and by virtue of the said Decretal Final Order, have hereunto set my Hand and Seal, this the 15th day of March in the year of our Lord one thousand nine hundred Eighty-Two, and in the two hundred and Fifth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Kathy G. Ward
Mary Alice Cox

John L. Breeden, Jr. (L. S.)
Master for Horry County.

THE STATE OF SOUTH CAROLINA

by John L. Breeden, Jr. Master,

TO

Eugene Fowler

Rt 2 Box 30

L.C.S. SC. 29569

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA,

County of

I hereby certify that the within Deed was

filed for record in my office at M.

o'clock on the 15 day of March,

1982, and immediately entered on the prop-

er indexes and duly recorded in Deed Book

440 at Page 313

Billie G. Ridgeman

Clerk of Court of Common Pleas and General

Sessions, Register of Meane and

Recorded this day of

1982, in Book Page

Fee \$

Auditor County.

NO. 34
Timesaver Publishing Co.
Conway, S. C.

TIMESAVER
LOG-BOOK

THE STATE OF SOUTH CAROLINA,

County of Horry

PROBATE

PERSONALLY appeared Kathy G. Ward
deponent saw John L. Breeden, Jr. as Master, sign, seal and as his
and that deponent, together with Mary Alice Cox
thereof and signed their names as witnesses thereto.

and made oath that the de-
act deliver the within deed;
witnessed the due execution

SWORN to before me, this 15th

day of March 1982

Mary Alice Cox (L. S.)

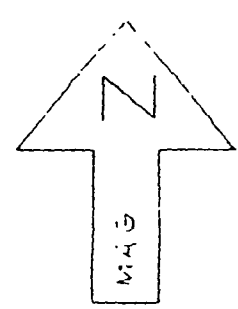
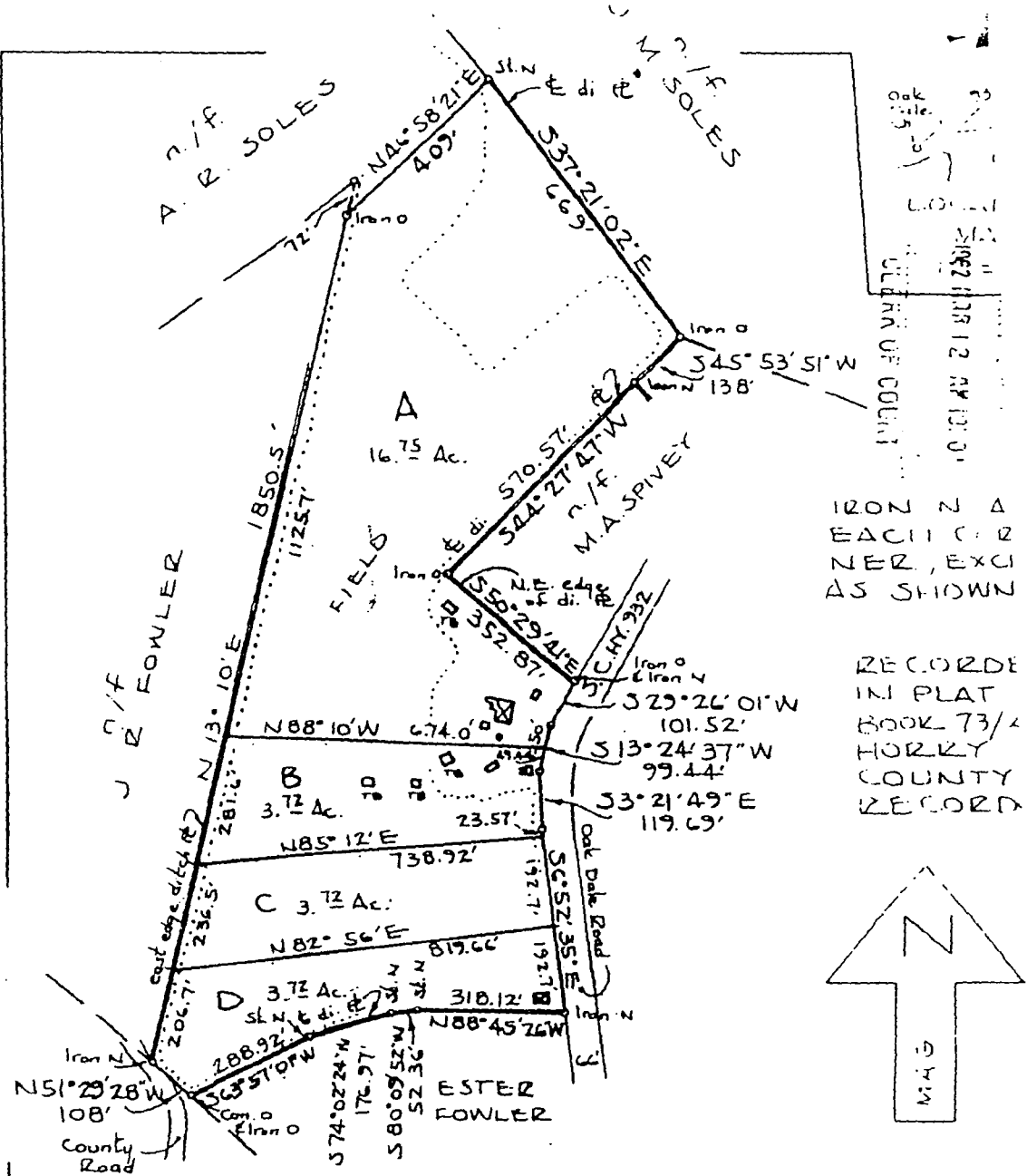
Notary Public for South Carolina

11-15-89

My commission expires

740 PAGE 313

Kathy G. Ward

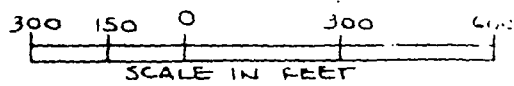


- MAP -
 OF 27.92 ACRES OF LAND IN SIMPSON CREEK
 TOWNSHIP, HORRY COUNTY, S.C. OWNED BY
 EST. of P. F. FOWLER.

RE: MAP BY S. D. COX, JR. DATED FEBRUARY 2, 1942
 FOR P. F. FOWLER (E-242).

RE: DEED FROM MINNIE WARD HEWETT TO P. F.
 FOWLER RECORDED IN BOOK 14/48, HORRY COUNTY
 RECORDS.

NOVEMBER 9, 1981



S. D. COX SURVEYORS, INC.
 300 4th Ave. Conway, S.C. 29526
 "Ratio 1: 2500+, D.M.D. Calculation"

BY *[Signature]*

2145 Gate Road Rel

319198

1637

I hereby state to the best of my knowledge, information and belief, the survey shown hereon was made in accordance with the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class B survey as specified therein.

Robert D. Inman
Robert D. Inman, RLS 6675

NOTE: These lots are for conveyance to immediate family members.
Eugene Fowler - Father
Timothy Fowler and Kimberly R. Fowler - Son and wife
Angela Fowler - Daughter
Amanda D. Fowler - Granddaughter

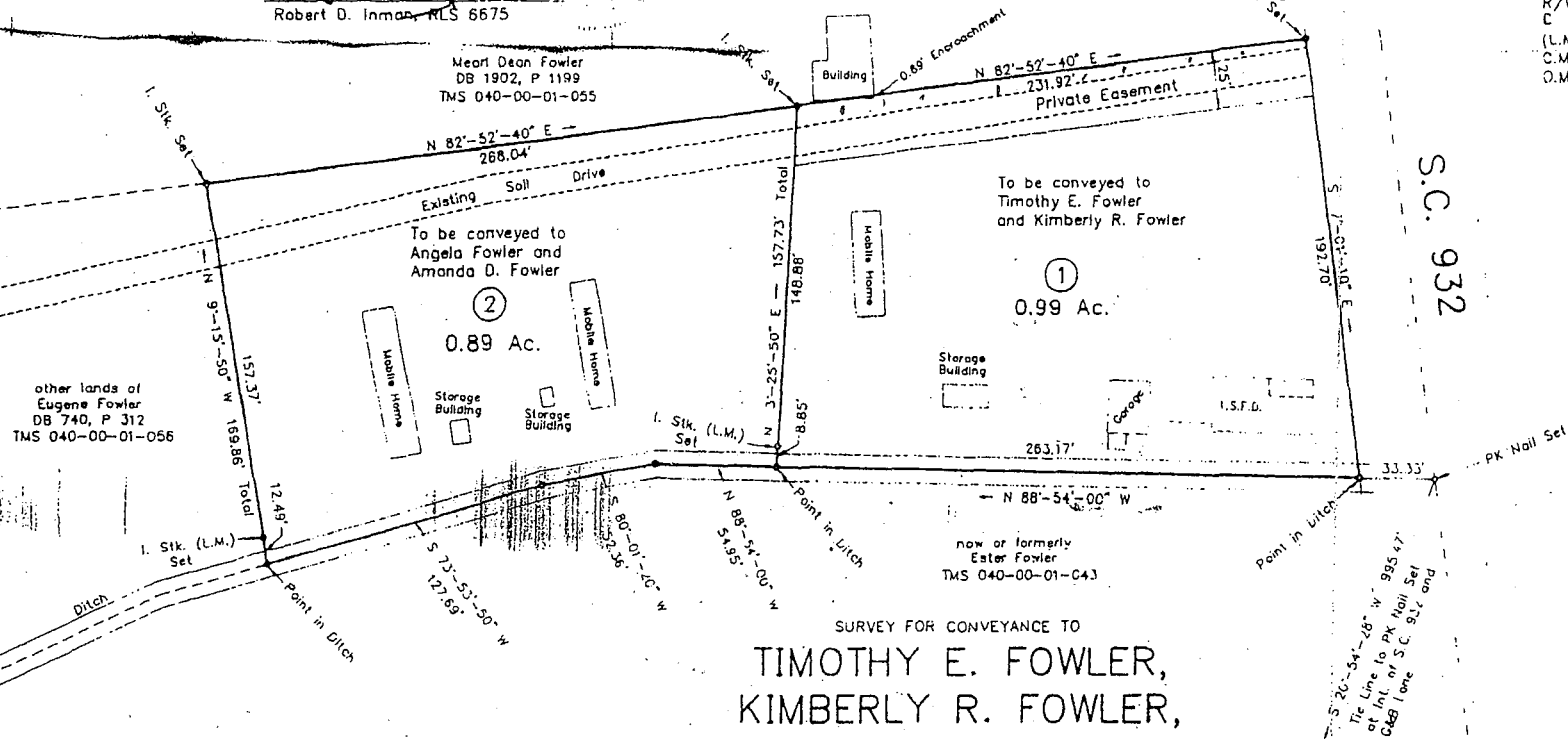
FILED
HORRY COUNTY

99 JUL 19 AM 9:50

R.M.C.

LEGEND

I.P. = Iron Pipe
I.Stk. = Iron Stake
L.W. Stk. = Lightwood Stake
Stp. = Stump
R.R.Sp. = Railroad Spike
Fd. = Found
R/W = Right of Way
C = Centerline
(L.M.) = Line Marker
C.M. = Concrete Monument
O.M.L. = Old Marked Line



REF: These lots being a part of
DB 740, P. 312
TMS 040-00-01-056

SURVEY FOR CONVEYANCE TO
TIMOTHY E. FOWLER,
KIMBERLY R. FOWLER,
ANGELA FOWLER and
AMANDA D. FOWLER

LOCATED IN
SIMPSON CREEK TOWNSHIP
HORRY COUNTY, SOUTH CAROLINA
DATE OF SURVEY - 17 JUNE, 1999

SCALE - 1" = 60'
0 30 60 120

INMAN SURVEYING AND MAPPING
P. O. BOX 637, TABOR CITY, NC 28463

APPROVED
for filing as an
Exempt *family* transfer
Neil Veron 7-19-99

TF1536A

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

688552
FILED
HORRY COUNTY, S.C.

99 AUG -9 PM 3:51

TITLE TO REAL ESTATE

REGISTER OF DEEDS

HORRY COUNTY ASSESSOR

040-00-01-122

Map

Blk

Parcel 8-10-99

KNOW ALL MEN BY THESE

PRESENTS,

That I, Eugene Fowler A/K/A Claudus E. Fowler in the state aforesaid for and in consideration of the sum of One and No/100 (\$1.00) DOLLAR LOVE AND AFFECTION

to me paid by Timothy E. Fowler and Kimberly R. Fowler

2145 Oak Dale Road

446-8544
(n) 716-0699

Loris, SC 29569

in the State aforesaid, (Receipt whereof is hereby acknowledged) I

have granted, bargained, sold and released; and by these presents do grant, bargain, sell and

release unto the said Timothy E. Fowler and Kimberly R. Fowler, their heirs and assigns

forever, reserving unto myself and my wife, Terry H. Fowler, a life time right:

All and Singular, all that certain piece, parcel lot of land lying, situate and being in Simpson Creek Township, County and State aforesaid shown and designated as Lot Number One containing 0.99 acres, more or less on that certain map of survey by Inman Surveying and Mapping dated June 17, 1999 and recorded in the ROD Office for Horry County in Plat Book 163 at Page 228, which is incorporated herein by reference and becomes part and parcel hereof.

Said lot is bounded on the North by lands of Mearl Dean Fowler; on the South by lands now or formally Ester Fowler; on the East by South Carolina Highway Number 932; and on the West by Lot Two as shown on said plat.

DERIVATION: DEED BOOK 740 AT PAGE 312.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the

BOOK 2175 PAGE 001

EXEMPT

THIS INSTRUMENT PREPARED BY
WILLIAM V. JOSEPH, JR. ATTY.
WITH NO CERTIFICATE OF TITLE

177

said Timothy E. Fowler and Kimberly R. Fowler, their heirs and assigns forever,
reserving unto myself and my wife, Terry H. Fowler, a life time right.

And I do hereby bind myself and my Heirs and Executors and Administrators, to
warrant and forever defend all and singular the said premises unto the said: Timothy E.
Fowler and Kimberly R. Fowler, their heirs and assigns forever, reserving unto myself
and my wife, Terry H. Fowler, a life time right, Heirs and Assigns, against me and my
Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part
thereof.

Witness the execution hereof by grantor this 10th day of August

in the year of our Lord one thousand nine hundred and NINETY NINE

and in the TWO HUNDREDTH AND TWENTY THIRD year of the Sovereignty

and Independence of the United States of America.

Eugene Fowler
EUGENE FOWLER A/K/A

CLAUDUS E. FOWLER

Claudius E. Fowler

Signed, Sealed and Delivered
in the Presence of

Wm J. Wade
Tracy Lynn Wade

THIS INSTRUMENT PREPARED BY
WILLIAM V. JOSEPHS, JR., ABOOK 2175 PAGE 002
WITH NO CERTIFICATE OF TITLE

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

PERSONALLY appeared before me, Tracy Lynn Wade and made oath that she saw the within named Eugene Fowler A/K/A Claudus E. Fowler Sign, Seal and as his Act and Deed deliver the within written Deed; and that she with William V. Josephs, Jr. witnessed the execution thereof.

Sworn to before me this 10th

day of August A.D. 1999

WVJ
Notary Public for South Carolina

My Commission Expires: 9-29-2008

Tracy Lynn Wade

THIS INSTRUMENT PREPARED BY
WILLIAM V. JOSEPHS, JR., ATTORNEY
BOOK 2175 PAGE 003
WITH NO CERTIFICATE OF TITLE

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at **Simpson Creek Township**, bearing **Horry County Tax Map**
Number _____, was transferred by **Eugene Fowler A/K/A Claudus E.**
Fowler to **Timothy E. Fowler and Kimberly R. Fowler** on August 16, 1999.

The transaction was (Check One):

_____ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$

XXXXXX not an arm's length real property transaction and the fair market value of the property is \$ 75,000.00

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et.seq. because the deed is transferring to a family member

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Eugene Fowler Charles E. Fowler
Purchaser, Legal Representative of the Purchaser, or
other Responsible Person Connected with the Transaction

SWORN to before me this 10th

day of August, 1999

Notary Public for South Carolina

My Commission Expires: 10/10/2001

BOOK 2175 PAGE 004

THIS INSTRUMENT PREPARED BY
WILLIAM V. JOSEPHS, JR., ATTY.
WITH NO CERTIFICATE OF TITLE

180

343684

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

FILED
HORRY COUNTY, S.C.
TITLE TO REAL ESTATE
(No Title Examination Performed)
JUL 8 AM 11:20

REGISTER OF DEEDS

WHEREAS, by that certain Deed dated August 6, 1999, and recorded on the 9th day of August, 1999, in Deed Book 2175, at Page 1, in the Office of the Horry County R.O.D., I, Eugene Fowler, a/k/a Claudus E. Fowler, conveyed the below-described property unto Timothy E. Fowler and Kimberly R. Fowler, reserving unto myself and my wife, Terry H. Fowler, a lifetime right thereto; and

WHEREAS, the purpose of the within deed is to convey the above mentioned lifetime right unto Timothy E. Fowler and Kimberly R. Fowler, NOW, THEREFORE

KNOW ALL MEN BY THESE PRESENTS, that Eugene Fowler, a/k/a Claudus E. Fowler and Terry H. Fowler, of the County of Horry, in the State aforesaid for and in consideration of the sum of FIVE AND NO/100 (\$5.00) DOLLARS, to us paid by Timothy E. Fowler and Kimberly R. Fowler in the State aforesaid, receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents does grant, bargain, sell and release all of our right, title and interest, the same being a life estate, unto the said Timothy E. Fowler and Kimberly R. Fowler, their heirs and assigns forever, in and to the following described property:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION.

Together with all and singular, the Rights, Members, Hereditament and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

EXEMPT

DEED
2278 0358

358

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Timothy E. Fowler and Kimberly R. Fowler, their Heirs, Successors and Assigns forever.

And the Grantors herein hereby bind themselves and their heirs and/or assigns to warrant and forever defend all and singular the said premises unto the said Timothy E. Fowler and Kimberly R. Fowler, their Heirs and Assigns against themselves, and their heirs and/or assigns, and all persons whomsoever lawfully claiming, or claim the same or any part thereof.

WITNESS the execution hereof by grantors this 28 day of June, in the year of our Lord Two Thousand and in the two hundred and twenty-third year of independence of the Sovereignty and Independence of the United States of America.

WITNESSES:

Lorina R Cagle

Hazel Dew

Eugene Fowler
Eugene Fowler, a/k/a Claudus
E. Fowler

Terry H. Fowler
Terry H. Fowler

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

P R O B A T E

PERSONALLY appeared before me, the undersigned witness and made oath that (s)he saw the within named Eugene Fowler, a/k/a Claudus E. Fowler and Terry H. Fowler, sign, seal and as their act and deed, deliver the within written deed and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Hazel New

SWORN to me this 28
day of June, 2000.

Regina R. Cagle
Notary Public for South Carolina
My Commission Expires: 8/12/02

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

A life estate in the property described as Lot Number One containing 0.99 acres was transferred from Eugene Fowler, a/k/a Claudus E. Fowler and Terry H. Fowler to Timothy E. Fowler and Kimberly R. Fowler.

The transaction was (check one):

_____ An arm's length real property transaction and the sale price paid or to be paid in monies worth _____

_____ Not an arm's length real property transaction and the fair market value of the property is \$_____

XXXX The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann., §12-24-10 et. seq. because the deed is: Exception 1 - consideration is less than \$100.00

As required by §12-24-70, I state that I am a responsible person who was connected with the transaction as Purchaser.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand and NO/100 (\$1,000.00) Dollars, or imprisoned more than one (1) year, or both.

Timothy E. Fowler
Timothy E. Fowler

SWORN to before me this 28
day of June, 2000.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 12-15-05

EXHIBIT "A"

ALL AND SINGULAR, all that certain piece, parcel and lot of land situate, lying and being in Simpson Creek Township, County and State aforesaid, shown and designated as Lot Number One, containing 0.99 acres, more or less on that certain survey prepared by Inman Surveying and Mapping, dated June 17, 1999, and recorded in the Office of the Horry County R.O.D. in Plat Book 163 at Page 228, which is incorporated herein by reference as a part and parcel hereof.

BOUNDED on the North by lands of Mearl Dean Fowler; on the South by lands now or formerly of Ester Fowler; on the East by South Carolina Highway Number 932; and on the West by Lot Two as shown on said plat.

BEING the identical property conveyed to Timothy E. Fowler and Kimberly H. Fowler by Eugene Fowler, a/k/a Claudus E. Fowler by Deed recorded in Deed Book 2175 at Page 1, Office of the Horry County R.O.D. on August 9, 1999, wherein Eugene Fowler, a/k/a Claudus E. Fowler reserved a life estate unto himself and his wife, Terry H. Fowler.

TMS NUMBER: 040-00-01-056

HORRY COUNTY ASSESSOR

040-00-01-122

Map

Blk

Parcel

7-70075

FILED
HORRY COUNTY, S.C.
STATE OF SOUTH CAROLINA
COUNTY OF HORRY 2005 APR 21 AM 11:23

TITLE TO REAL ESTATE

BALLERY V. SKIPPER
REGISTRAR OF DEEDS
ALL MEN BY THESE PRESENTS,

That I, **TIMOTHY E. FOWLER**, in the State aforesaid for and in consideration of the sum of One Dollar and No/100 (\$1.00) Dollar and pursuant to that certain Final Order in the Family Court for the Fifteenth Judicial Circuit in Case No. 04-DR-26-1603, to me paid by **KIMBERLY FOWLER, 2145 OAK DALE ROAD, LORIS, SC, 29569** (Receipt whereof is hereby acknowledged) have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said, **KIMBERLY R. FOWLER**, her heirs and assigns forever the following below described property to wit:

ALL AND SINGULAR, all that certain piece, parcel and lot of land situate, lying and being Simpson Creek Township, County and State aforesaid, shown and designated as Lot Number One, containing 0.99 acres, more or less on that certain survey prepared by Inman Surveying and Mapping, dated June 17, 1999, and recorded in the Office of the Horry County R.O.D. in Plat Book 53 at Page 228, which is incorporated herein by reference as a part and parcel hereof.

BOUNDED on the North by lands of Mearl Dean Fowler; on the South by lands now or formerly of Ester Fowler; on the East by South Carolina Highway Number 932; and on the West by Lot Two shown on said plat.

BEING the identical property conveyed to Timothy E. Fowler and Kimberly H. Fowler by Eugene Fowler, a/k/a Claudus E. Fowler by Deed recorded in Deed Book 2175 at Page 1, Office of the Horry County R.O.D. on August 9, 1999, wherein Eugene Fowler, a/k/a Claudus E. Fowler reserved a life estate unto himself and his wife, Terry H. Fowler.

this being the same tract or parcel of land conveyed by deed recorded July 6, 2000 and recorded in Deed Book 2278 at Page 358, office of the Register of Deeds for Horry County, South Carolina.

MS NUMBER: 040-00-01-056

TOGETHER with all and singular, the Rights, Members, Hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said **KIMBERLY R. FOWLER**, her heirs and assigns forever.

And I do hereby bind myself and my Heirs and Executors and Administrators, to Warrant and forever defend all and singular the said premises unto the said **KIMBERLY R. FOWLER**, her heirs and assigns forever, against me and my heirs, and all persons whomsoever lawfully claiming,

or to claim the same or any part thereof.

Witness the execution hereof by grantor this 20th day of April, 2005 in the year of our lord two thousand and four in the two hundredth and twenty-eighth year of the Sovereignty and Independence of the United States of America.

Timothy E. Fowler (Seal)
TIMOTHY E. FOWLER

SIGNED, SEALED and DELIVERED
IN THE PRESENCE OF:

Lisa Spivey
Witness

Janet Hausman
Witness

STATE OF NORTH CAROLINA

COUNTY OF Columbus

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named **TIMOTHY E. FOWLER**, Sign, Seal and as his Act and Deed deliver the within written Deed; and that (s)he with the undersigned notary witnessed the execution thereof.

Sworn to before me this 20th
day of April, 2005.

Jane L. Edge (L.S.)
Notary Public for North Carolina
My Commission Expires: 10/3/2005

Lisa Spivey
Witness

AFFIDAVIT

188

STATE OF SOUTH CAROLINA
CERTIFICATE OF TITLE
OF A VEHICLE

VEHICLE ID NUMBER
VAFLK19A25173SP

YEAR
1990

MAKE
FLET

MODEL
VAFLK1

NEW/USED
USED

BODY STYLE DATE
MBH 06/06/2005

ODOMETER
0

WEIGHT
0

TITLE NUMBER
770260143951945

VEHICLE BRAND(S)
EXEMPT

FULL NAME OF OWNER(S)
DIPPEL KENNETH D
IN

CUSTOMER NUMBER: 30914308

LORIS SC 295695484

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE
PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE
VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

MARK SANFORD
GOVERNOR

KEEP IN A SAFE PLACE. ANY ALTERATION OR ERASURE VOIDS THIS TITLE

36370458

I, JAMES E. HAYES, JR. HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THE SURVEY AS SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS 2 SURVEY AS SPECIFIED THEREIN.

JAMES E. HAYES, JR. P.L.S. # 13527
4957 MAIN STREET
LOUIS, S.C. 29569

LEGEND:

REB. S. REBAR SET
REB. P. REBAR FOUND
I.P.S. IRON ROD SET
I.R.F. IRON ROD FOUND
I.P.S. IRON PIPE SET
I.R.F. IRON PIPE FOUND
P.K.S. P.K. NAIL SET
P.K.F. P.K. NAIL FOUND
C.P. CORNER POINT
R/R S. RAILROAD SPIKE SET
R/R F. RAILROAD SPIKE FOUND
CONC. S. CONCRETE MONUMENT SET
CONC. F. CONCRETE MONUMENT FOUND
L.W.S. LIGHTWOOD STAKE FOUND

NOTES:

- 1) THIS PARCEL IS LOCATED IN FLOOD ZONE "X" AS SHOWN ON PANEL NO. 45C-1-C0250 H. DATED AUGUST 28, 1990 - FEDERAL INSURANCE ADMINISTRATION FLOOD INSURANCE RATE MAPS.
- 2) PARENT TAX MAP NO. TALS. C40-00-01-123 & 058
- 3) DATE OF FIELD SURVEY: APRIL 18, 2006
- 4) THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS AND/OR RIGHT-OF-WAYS OF RECORD.
- 5) OWNER OF RECORD: EUGENE FOWLER
- 6) LAND USE: RESIDENTIAL
- 7) TOTAL ACREAGE: 1.00 ACRES
- 8) NO S.C. GEODETIC CONTROL FOUND WITHIN 2000'
- 9) REFERENCE: PLAT BOOK 183 PAGE 228
DEED BOOK 740 PAGE 312

CERTIFICATE OF OWNERSHIP AND DEDICATION

THE UNDERSIGNED HEREBY ACKNOWLEDGE THAT I AM (WE ARE) THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREIN AND THAT I (WE) HEREBY ADMIT THIS (THIS PLAN OF DEVELOPMENT/PLAT) WITH MY (OUR) FREE CONSENT AND THAT I (WE) HEREBY DEDICATE ALL RIGHTS AS SPECIFICALLY SHOWN OR INDICATED ON SAID PLAT.

NAME: Eugene Fowler SIGNATURE: _____ DATE: 5-16-06
NAME: _____ SIGNATURE: _____ DATE: _____

CERTIFICATION OF APPROVAL FOR ON-SITE SEWAGE DISPOSAL SYSTEMS

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL HAS REVIEWED AND EVALUATED THE LOTS SHOWN HEREIN AND FIND THAT THE FOLLOWING LOTS _____ HAVE SUFFICIENT AREA FOR THE PLACEMENT OF A SINGLE ON-SITE SEWAGE SYSTEM.

DATE: _____ NAME: _____ OF: _____ SIGNATURE: _____

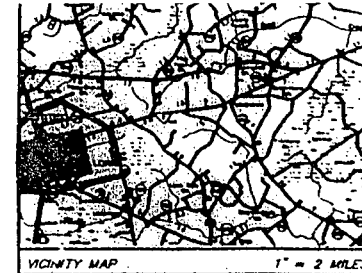
AFFILIATED SURVEYORS

LICENSED IN NORTH CAROLINA, SOUTH CAROLINA, & GEORGIA
JAMES E. HAYES, JR. PROFESSIONAL LAND SURVEYOR
4957 MAIN STREET POST OFFICE BOX 122
LOUIS, SOUTH CAROLINA 29569
P.L.S. # 13527

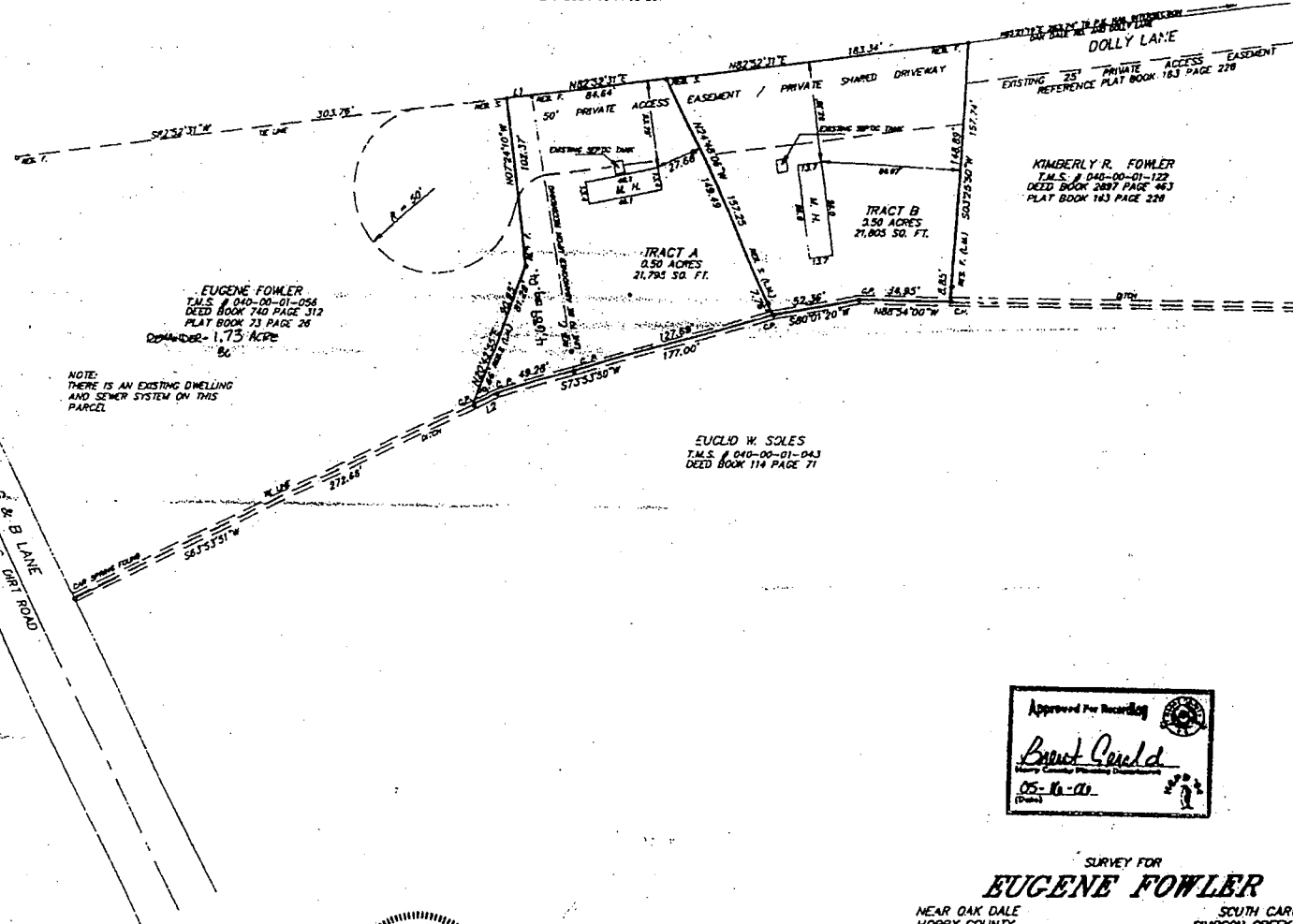


2006 MAY 16 AM 9:53
REGISTRAR OF DEEDS

LINE	BEARING	LENGTH
1	N82°52'31"E	16.00'
2	S63°54'21"W	16.47'



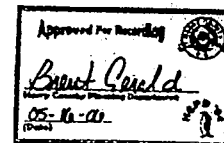
JOE DALE FOWLER
T.M.S. # 040-00-01-055
DEED BOOK 2384 PAGE 72
PLAT BOOK 73 PAGE 26



EUGENE FOWLER
T.M.S. # 040-00-01-054
DEED BOOK 740 PAGE 312
PLAT BOOK 73 PAGE 26
COMMANDED - 1.75 ACRES

NOTE: THERE IS AN EXISTING DWELLING AND SEWER SYSTEM ON THIS PARCEL

EUGENE W. SOLES
T.M.S. # 040-00-01-043
DEED BOOK 114 PAGE 71



SURVEY FOR
EUGENE FOWLER
NEAR DAK DALE
HORRY COUNTY
SCALE 1" = 50'
SOUTH CAROLINA
SIMPSON CREEK TWP.
APRIL 18, 2006

GRAPHIC SCALE



(IN FEET)
0 10 20 30 40 50 60 70 80 90 100



HORRY COUNTY ENGINEERING DEPARTMENT

P.O. Box 1236, Conway, SC 29528

Office 843-915-5160

Fax 843-365-2170

April 9, 2009

Ken Dippell

RE: Dolly Lane

To Whom It May Concern:

Horry County records have Dolly Lane located off of OakDale Drive as not being maintained by Horry County.

If I can be of any further assistance in this matter please do not hesitate to contact me or my office.

Sincerely

David Helms

David Helms
Engineering Tech

DWH/dh

13. EASEMENT ESTABLISHED PER INMAN SURVEYING AND MAPPING PLAT DATED JUNE 17, 1999 FOR TIMOTHY E. FOWLER, KIMBERLY R. FOWLER, ANGELA FOWLER, AND AMANDA D. FOWLER (PB;163 PG;228) TO BE DELETED PER STATE OF SOUTH CAROLINA COURT OF APPEALS UNPUBLISHED OPINION NO. 2009-UP-098 (FILED FEBRUARY 23, 2009) KIMBERLY FOWLER vs. CLAUDIUS EUGENE FOWLER

NOT TO SCALE

SC HWY .932 (66' R/W)

N 82°52'42" E
EXISTING 25' PRIVATE EASEMENT TO BE ABANDONED UPON RECORDING
(SEE NOTE 13)

N/F EUGENE FOWLER
TMS# 040-00-01-123

PUMP HOUSE (IN RIGHT-OF-WAY)

ONE STORY FRAME NARRATIVE

N/F EUCLID W. & EDITH C. SOLES (LE)
TMS# 040-00-01-043

L.P.S. IRON PIPE SET
 L.P.F. IRON PIPE FOUND
 U.R.S. IRON ROD SET
 U.R.F. IRON ROD FOUND
 R.B.S. NIBAR SET
 R.B.F. NIBAR FOUND
 P.J.S. P.J. NAIL SET
 P.J.F. P.J. NAIL FOUND
 C.P. COMPUTED POINT
 R/R S. RAILROAD SPIKE SET
 R/R F. RAILROAD SPIKE FOUND
 CONC. S. CONCRETE MONUMENT SET
 CONC. F. CONCRETE MONUMENT FOUND
 L.W.R. LIGHTWOOD STAKE PLYNO.

LINE	BEARING	DISTANCE
L1	S 77°16'39" E	33.61'
L2	N 88°54'52" W	32.41'
L3	S 03°25'50" W	8.85'

THE UNDERSIGNED HEREBY ACKNOWLEDGE THAT I AM (WE ARE) THE OWNERS OF THE
PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPT THIS
(PLAN OF DEVELOPMENT/PLAT) WITH MY (OUR) FREE CONSENT AND THAT I (WE) HEREBY
DEDICATE ALL ITEMS AS SPECIFICALLY SHOWN OR INDICATED ON SAID PLAT

GRAPHIC SCALE

0' 50' 100' 150'



(IN FEET)
1 inch = 50 ft.

NAME: _____ SIGNATURE: _____ DATE: _____

NAME: _____ SIGNATURE: _____ DATE: _____

NAME: _____ SIGNATURE: _____ DATE: _____

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE "MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA", AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY.

BARRY W. SUGGS P.L.S. # 25438

DATE _____

RESURVEY
FOR:

KIMBERLY R. FOWLER

DATE: 6/08/09

SCALE: 1"=50'

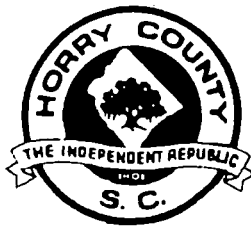
JOB# 0906-02
FIELDWORK : JB & SS
DRAWN BY : JB
CHECKED BY: BS
OFFICE LOCATION
3007 MAIN STREET
LOUIS, S.C. 29500
PHONE: (843) 718-8021

CRESCENT MOON SURVEYING

SIMPSON CREEK TOWNSHIP

HORRY COUNTY

SOUTH CAROLINA



PLANNING DEPARTMENT PLAT REVIEW CHECKLIST

DATE 6/16/09 NAME ON PLAT: Kimberly R. Fowler

1. TMS (Art. III, Sec. 4) 040-00-01-122

2. LOT SIZE & NUMBERS (Art. III, Sec. 4) _____

3. OWNER OF RECORD (Art. III, Sec. 4) 040-00-01-122 (Kimberly R. Fowler) 040-00-01-123, 040-00-01-173 and 040-00-01-056 (Eugene Fowler)

4. MINIMUM LOT SIZE (Art. IV, Sec. 3-2(c)) _____

5. FLOOD ZONE INFORMATION (Art. III, Sec. 4 & Art. IV, Sec. 4) _____

6. ROAD (Art. III, Sec. 3 & Art. IV, Sec. 2) (a.) Please label the existing roadway "Dolly Lane" appropriately, provide road name, total width and indicate whether public or private Table 3-B App. A (23)

(b.) the appropriate documentation (road closure or court order) will need to be supplied to the Planning Dept. before the roadway can be abandoned

7. EASEMENTS (Art. II, Sec. 3-10 & Art. IV, Sec. 2-6(q)) to abandon the "existing 25-foot private easement":

(a.) the plat will need to be signed by all affected property owners (which include parcels 040-00-01-122, 040-00-01-123, 040-00-01-173 & 040-00-01-056) Art. 2 Sec. 4-9 and

(b.) adequate access will need to be provided for the interior parcels (040-00-01-123 and 040-00-01-173) via an alternative easement or right-of-way which will provide the required frontage Art. 4 Sec. 3-2 (B) & Sec. 510 and meet any applicable

improvements and/or setback requirements

8. WATER/SEWER AVAILABILITY (Art. II, Sec. 3-4 & Art. III, Sec. 7-3) _____

9. OWNERSHIP CERTIFICATE (Art. III, Sec. 4 & Appendix B) _____

10. SCALE, VICINITY MAP & NORTH ARROW (Art. III, Sec. 4) _____

11. SURVEYORS SEAL (Art. III, Sec. 4 & Appendix B) _____

12. DISTANCE & BEARINGS ON PLAT BOUNDARIES (Art. III, Sec. 4) _____

13. DISTANCE & BEARINGS TO NEAREST INTERSECTION (Art. III, Sec. 4) _____

14. ADJACENT PROPERTY OWNERS (Art. III, Sec. 4) _____

15. DEED & PLAT BOOK REFERENCES (Art. III, Sec. 4) _____

16. TRACT REMAINDER ROADWAY FRONTAGE (Art. II, Sec. 3-1.2) _____

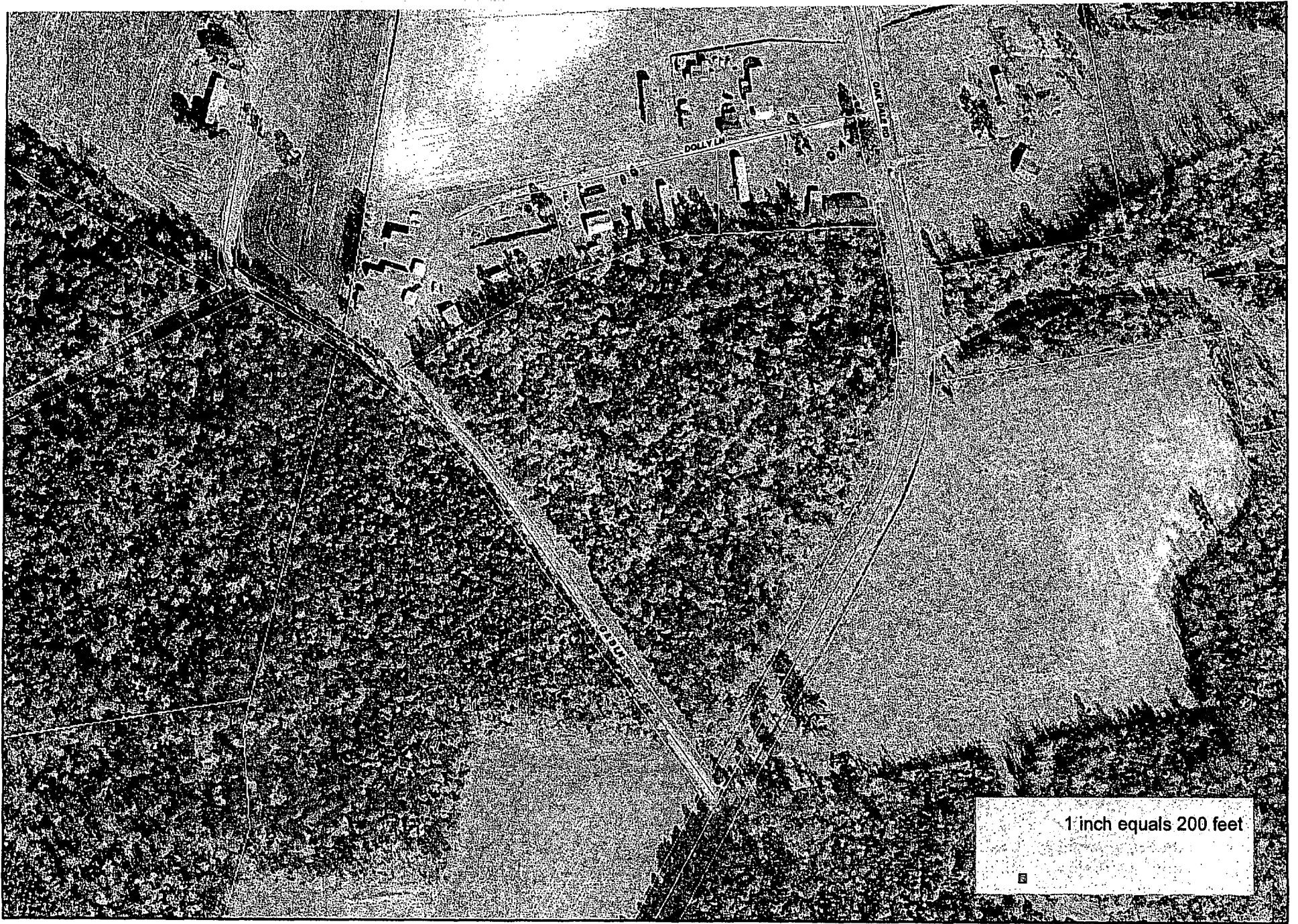
Reviewer: Brent Gerald

Title: Plan Reviewer

Comply.







1 inch equals 200 feet

5

Ownership & Location Information:

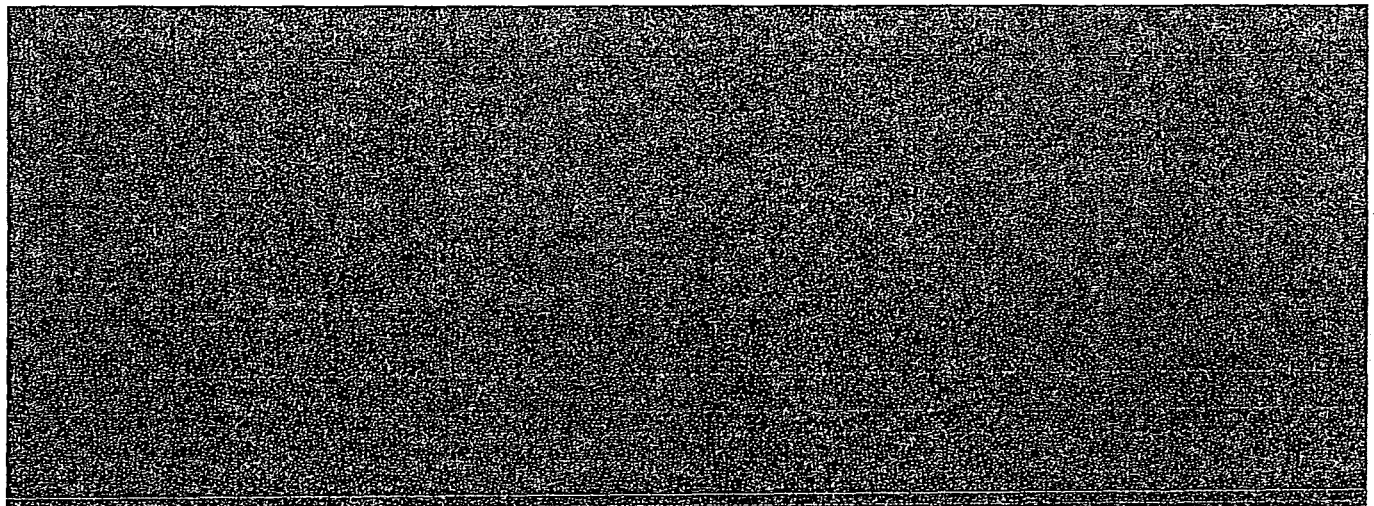
Parcel #: 0400001122
Tax Bill Mailing Address: 2145 OAK DALE RD
Legal Description: LT 1 OF TRACT D
Current Owner: FOWLER KIMBERLY R
Deed Book/Page: /
Lender Identification: 0
District: 200
Of Lots: 0
Of Buildings: 0

back to top

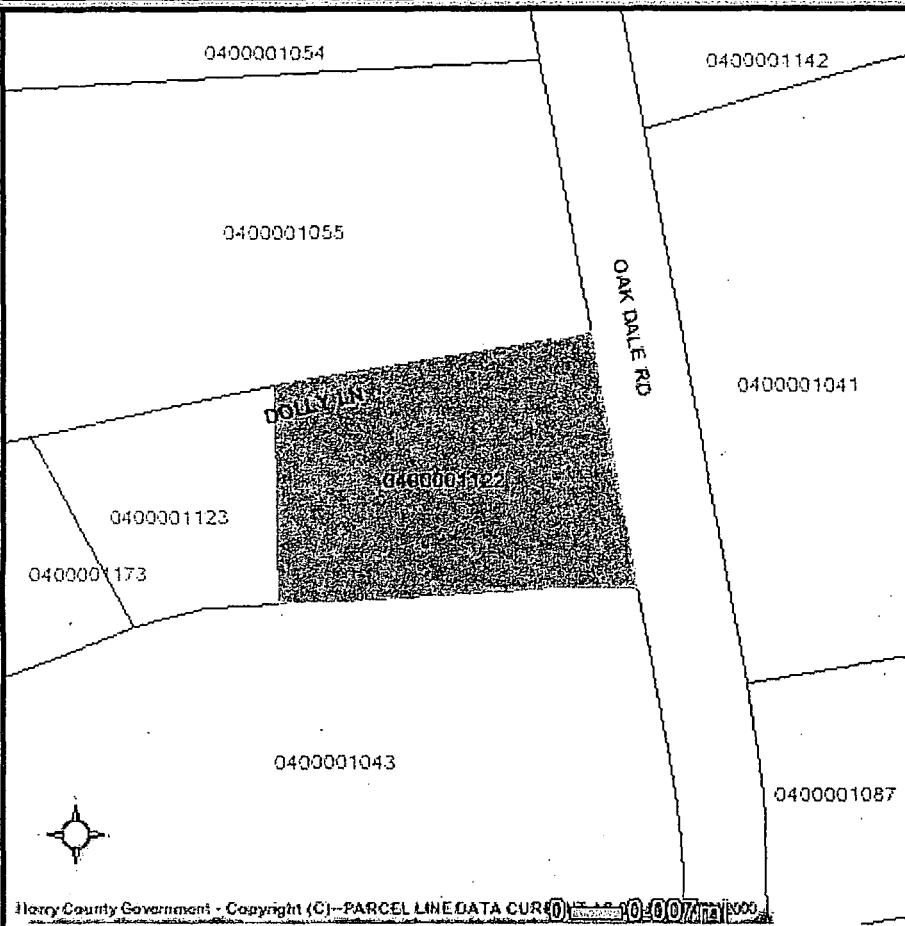
Tax Information:

Current Fair Market Value: 33,300.00
Residential Value: 33,300.00
Farm Use Value: 0.00
Other Value: 0.00
Farm Market Value: 0.00
Last Appraisal Date:

Tax Year	Receipt Number	Assessed Value	Taxes Owed	Taxes Paid	Post Date	Collection Status	Paid Status
2008	70777	1332	159.94	163.86	10/01/2008	NONE	FULL
2007	69259	1332	159.94	159.94	10/01/2007	NONE	FULL
2006	63195	1332	204.56	204.56	10/02/2006	NONE	FULL
2005	56338	1332	197.10	213.87	10/01/2005	NONE	FULL
2004	56756	992	149.04	149.04	10/01/2004	NONE	FULL
2003	54874	992	147.05	147.05	10/01/2003	NONE	FULL
2002	53683	992	141.59	141.59	10/01/2002	NONE	FULL
2001	51128	908	129.83	129.83	10/01/2001	NONE	FULL
2001	51128A	84	38.70	38.70	01/15/2002	NONE	FULL
2000	48753A	908	111.03	111.03	01/02/2001	NONE	FULL



Kimber Fowler Property



- Legend**
- Highlighted Feature
 - Streets
 - COUNTY
 - MAJORROADS
 - PARCELS

Horry County Government - Copyright (C) - PARCEL LINE DATA CUR 10-007-1000



gateway

[home](#) | [gateway](#) | [ePay](#) | [real property](#)

You are Here: [homepage](#) > [gateway](#) > [real property search](#) > [assessor info](#)

Assessor Ownership, Location, and Tax Information

The below information represents all pertinent assessor data based upon the parcel number that you selected. To view the real property with Mapping interface simply click the "Map/Assess.Info" button.



 Ownership & Location Information

 Tax Information

[Map/Assess. Info](#)

Ownership & Location Information:

Parcel #: 0400001123
Tax Bill Mailing Address: 2042 G AND B LN
LORIS SC 29569-5485
Legal Description: TRACT B
Current Owner: FOWLER EUGENE
Deed Book/Page: /
Lender Identification: 0
District: 200
Of Lots: 0
Of Buildings: 0

[back to top](#)

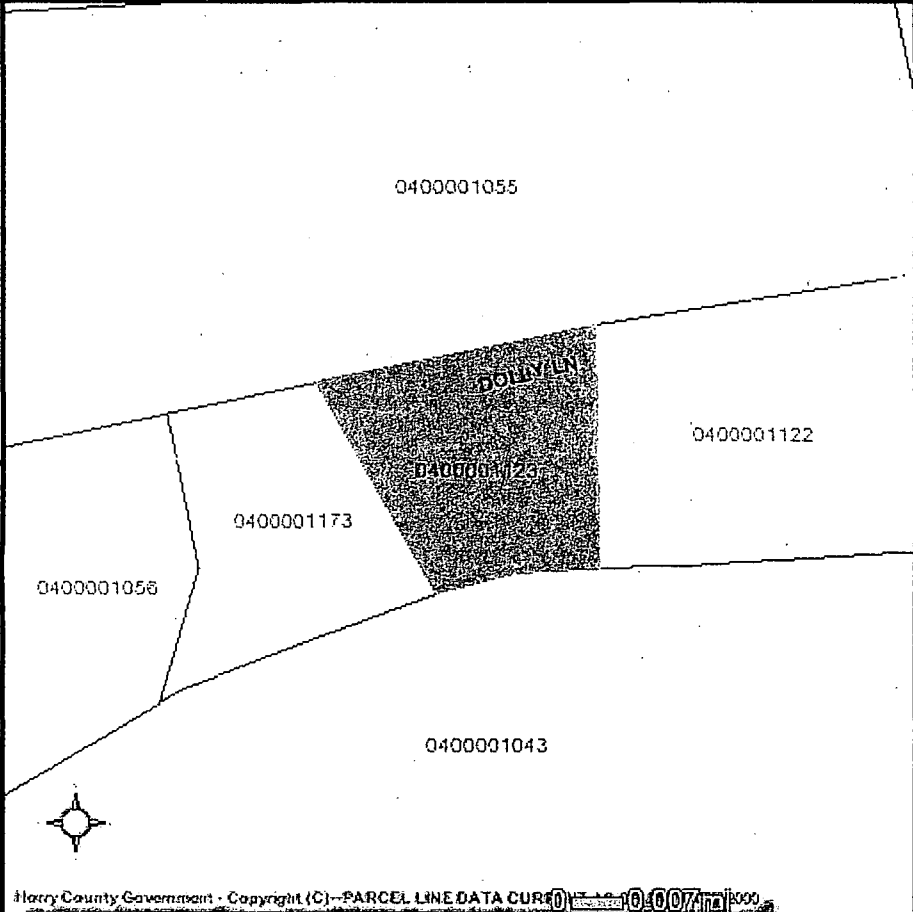
Tax Information:

Current Fair Market Value: 8,100.00
Residential Value: 0.00
Farm Use Value: 0.00
Other Value: 8,100.00
Farm Market Value: 0.00
Last Appraisal Date:

Tax Year	Receipt Number	Assessed Value	Taxes Owed	Taxes Paid	Post Date	Collection Status	Paid Status
2008	70665	486	133.06	143.43	10/01/2008	NONE	FULL
2007	69149	486	133.06	148.61	10/01/2007	NONE	FULL
2006	63081	600	151.98	155.66	10/02/2006	NONE	FULL

<http://www.horrycounty.org:8080/EGSV2Horry/RP.do?prclno=0400001123&map...> 7/8/2009

Tract B: Claudius E Fowler (Rental Mobile Home)



- Legend**
-  Highlighted Feature
 -  Streets
 -  COUNTY
 -  MAJORROADS
 -  PARCELS



gateway

[home](#) | [gateway](#) | [ePay](#) | [real property](#)

You are Here: [homepage](#) > [gateway](#) > [real property search](#) > [assessor info](#)

Assessor Ownership, Location, and Tax Information

The below information represents all pertinent assessor data based upon the parcel number that you selected. To view the real property with Mapping interface simply click the "Map/Assess.Info" button.



Ownership & Location Information



Tax Information

[Map/Assess.Info](#)

Ownership & Location Information:

Parcel #: 0400001173
Tax Bill Mailing Address: 2042 G AND B LN
LORIS SC 29569-5485
Legal Description: TRACT A
Current Owner: FOWLER EUGENE
Deed Book/Page: /
Lender Identification: 0
District: 200
Of Lots: 0
Of Buildings: 1

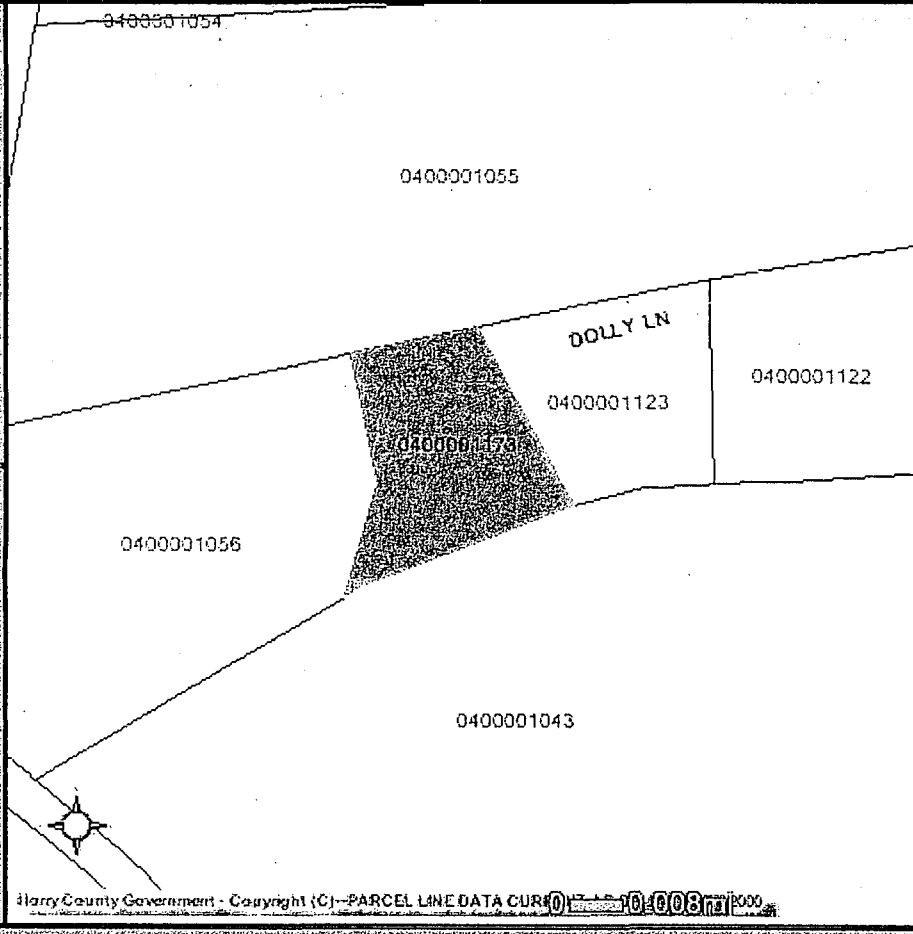
[back to top](#)

Tax Information:

Current Fair Market Value: 21,000.00
Residential Value: 0.00
Farm Use Value: 0.00
Other Value: 21,000.00
Farm Market Value: 0.00
Last Appraisal Date:

Tax Year	Receipt Number	Assessed Value	Taxes Owed	Taxes Paid	Post Date	Collection Status	Paid Status
2008	70666	486	133.06	143.43	10/01/2008	NONE	FULL
2007	69150	486	133.06	148.61	10/01/2007	NONE	FULL

Tract A: Claudius E Fowler



Legend

-  Highlighted Feature
-  Streets
-  COUNTY
-  MAJORROADS
-  PARCELS

Horry County Government - Copyright (C) PARCEL LINE DATA CURRENT TO 10-08-2009



gateway

[home](#) | [gateway](#) | [ePay](#) | [real property](#)

You are Here: [homepage](#) > [gateway](#) > [real property search](#) > [assessor info](#)

Assessor Ownership, Location, and Tax Information

The below information represents all pertinent assessor data based upon the parcel number that you selected. To view the real property with Mapping interface simply click the "Map/Assess.Info" button.



[GO](#) Ownership & Location Information

[GO](#) Tax Information

[Map/Assess.Info](#)

Ownership & Location Information:

Parcel #: 0400001056
Tax Bill Mailing Address: 2042 G AND B LN
LORIS SC 29569-5485
Legal Description: REMAINDER OF TRACT
D
Current Owner: FOWLER EUGENE
Deed Book/Page: /
Lender Identification: 0
District: 200
Of Lots: 0
Of Buildings: 0

[back to top](#)

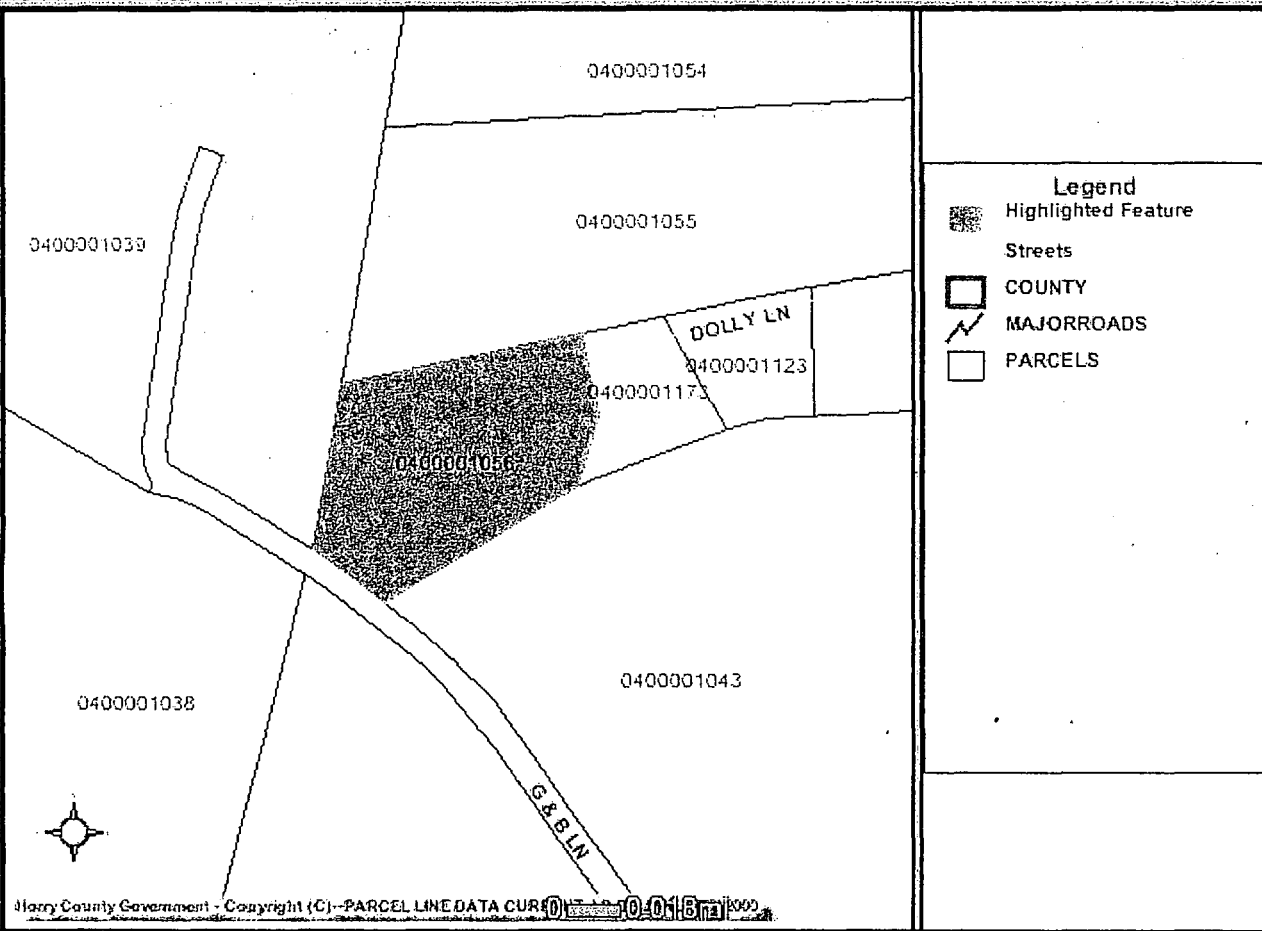
Tax Information:

Current Fair Market Value: 47,700.00
Residential Value: 47,700.00
Farm Use Value: 0.00
Other Value: 0.00
Farm Market Value: 0.00
Last Appraisal Date:

Tax Year	Receipt Number	Assessed Value	Taxes Owed	Taxes Paid	Post Date	Collection Status	Paid Status
2008	70664	1844	29.40	29.40	10/01/2008	NONE	FULL
2007	69148	1844	29.40	29.40	10/01/2007	NONE	FULL

<http://www.horrycounty.org:8080/EGSV2HorryCountySearch.do?prclno=0400001056&map...> 7/8/2009

Claudius E. Fowler: Remainder of Tract D



Article 1 - Applicability

SECTION 9: AMENDMENTS

The Horry County Council may amend these regulations after a public hearing and three readings of County Council. The time and place of the public hearing will be duly advertised in a newspaper of general circulation in the County at least 30 days before the hearing.

No amendment shall become effective unless it shall have been submitted to the Planning Commission for review and recommendation. The Planning Commission shall have 45 days to submit its report. The County Council may waive these requirements and grant an extension of time. If the Planning Commission fails to submit a report within 45 days, the amendment shall be deemed approved.

The Planning Commission will review these regulations annually

SECTION 10: VIOLATIONS AND PENALTIES

No subdivision plat or other land development plan within Horry County may be filed in the Register of Deeds Office nor shall a building permit be issued until the plat or plan bears the stamp of the Planning Commission or signature of designated authority as stated within these regulations.

The owner or agent of the owner of any property being developed within Horry County may not transfer title to any lot(s) or part(s) of a land development unless a land development plan or subdivision has been approved by the Planning Commission or designated authority and such approved plan or plat is recorded in the Register of Deeds Office. A description by metes and bounds in the deed or other document used in the process of transfer does not exempt the transaction from the penalties cited herein.

Any person, firm, corporation, owner, or agent of the owner of any land to be developed who violates any of the provisions of these regulations or submits an unapproved plat for recording shall be guilty of a misdemeanor. Nothing herein prevents Horry County from taking other lawful action as is necessary to prevent or remedy any violation.

SECTION 11: APPEALS

Questions arising from the enforcement of these regulations by the Planning Department may be appealed to the Planning Commission for consideration. The Planning Commission will render a decision on the appeal within 60 days and the applicant will be notified, in writing, of such decision within seven business days. Any party aggrieved by a decision of the Planning Commission regarding the standards enumerated in these regulations or a ruling on a requested variance may appeal the decision to the Circuit Court of Horry County. The aggrieved party shall file a petition with the clerk of court within 30 days after a Planning Commission decision is rendered.

Article 2 - Procedures

4-7. Lot Reconfigurations.

A lot reconfiguration occurs when a lot line is changed from a previously recorded plat. Lot reconfigurations shall meet the standards of a platting action as shown in Article 3 provided the survey also shows or is accompanied by the following information:

1. Common lot lines to be deleted shall be dashed on the plat, and a note shall specify that the common lot lines are to be "deleted upon recording of the plat";
2. The owner(s) of the affected properties shall sign a certification of ownership and dedication on the plat agreeing to the lot alteration (See Article 3, Section 5);
3. Authorization from the applicable utility provided or DHEC that the reconfigured lots can be serviced with water/sewer or septic or the "Certificate of Non-Evaluation" is signed by the property owner (See Article 3, Section 5); and
4. Portions of lots affected by the reconfiguration shall be clearly identified and indicate which tax map parcel it shall be combined with.

(Ord. 08-04, § 4-7, 2-17-04)

4-8. Mortgage Plats and Land Contract Sales Parcels.

All plats of parcels or portions of parcels prepared for mortgage or land contract sales shall meet the standards of a re-survey, parcel split, or a minor or major development whichever is applicable.

(Ord. 79-02, § 4-8, 5-21-02)

4-9. Easements.

Easement plats are used to record easements across a property or properties. Easement plats shall meet the standards of a platting action as shown in Article 3, except that the plat shall also show or be accompanied by the following information. Plats prepared by local utility providers for the purpose of installing or maintaining access to utility services on existing parcels shall be not be considered a platting action and are exempt from the platting requirements of Article 3.

1. Easements (existing or proposed) shall be clearly delineated with dashed lines marking the boundaries;
2. The statement, "This is not a subdivision. This _____ foot easement is being (created, relocated, altered) for the purpose of _____ and will be owned by _____"; or, "This is not a subdivision. This _____ foot easement is being (abandoned, conveyed) to _____";
3. When multiple easements are being created/abandoned each easement may be numbered instead of providing the statements required in item 2, above. If numbered, a table shall be created that references each number which includes the dimensions, purpose and ownership of the easement; and
4. All affected property owners must sign the plat.
5. Easements shall be labeled appropriately as to indicate the type of easement, easement width, and whether the easement is public or private.

Article 2 - Procedures

4-13. Cemetery Lots.

Development of new or additions/expansions to existing cemeteries or the creation of burial/cemetery lots shall require that a plat be prepared in accordance to the standards of a platting action as shown in Article 3. In addition, the plat shall conform to the design requirements for cemeteries as specified in Article 6.

DHEC or water/sewer authority approval is not required for cemetery plats that show only individual burial plots, mausoleums or similar areas for the deceased. However, if structures such as administrative offices, chapels, or similar facilities are shown such approval shall be required.

In addition to the platting requirements of Article 3 and the design standards of Article 6, plats showing new or expansions/additions to exiting cemeteries or burial/cemetery lots shall include the following:

1. A title identifying the plat as a cemetery plat or for the addition of burial/cemetery lots to an existing parcel;
2. The following statement: "This plat is to document the (creation or expansion) of a cemetery or individual burial/cemetery lots and shall not be used for the sale of individual sites for building purposes except the construction of mausoleums, crematories, monuments or other facilities (not including residential units) serving to maintain or otherwise guarantee the perpetual care of individual burial plots shown hereon."; and
3. When internal access easements are utilized, the following statement shall be placed on the plat: "The access easements shown on this plat are non-exclusive and appurtenant. The easements will be privately maintained and are not the responsibility of Horry County. Maintenance and upkeep of those portions of the access drive encroaching within the (county, state, or private) road right-of-way shall be the sole responsibility of those owning land within the cemetery or their designated agent."

(Ord. 08-04, § 4-13, 2-17-04)

4-14. Plats prior to 1984

Plat prepared prior to 1984; however, never recorded may be authorized for recording without meeting the standards of these regulations provided that:

1. The plat does not involve the subdivision of land;
2. The plat is not a compilation plat of other plats (recorded or not); or
3. The plat shows property that has not undergone modifications since its preparation due to roadway improvements, easements crossings, etc.

4-15. Easements to existing landlocked parcels

Right-of-ingress/egress easements may be created, upon Planning Department approval, to allow for legal access to existing landlocked or topographically constrained parcels of record provided that:

Article 2 - Procedures

1. The easement shall provide access to only one property with a single land use. Upon subdivision of the property or establishment of more than one land use the easement shall be upgraded to the applicable public or private roadway or shared private driveway as show in Article 4, Section 2-6(Q);
2. The plat showing such easement shall met the platting standards of this Article 3 and include the following statement:

“The easement show hereon is for the purposes of providing access to an existing (landlocked or topographically constrained) parcel as authorized by the Planning Commission. The owner of said easement acknowledges that if future subdivision or improvement of the property occurs the easement shall be upgraded to minimum standards required by the Horry County Land Development Regulations”.

Footnote: A twenty (20) foot wide access easement may be required to construct a residence on the parcel.

(Ord. 08-84, § 4-15, 2-17-04)

SECTION 5: REVIEW PROCEDURE FOR LEASE PARCEL DEVELOPMENTS

5-1 General

The following standards shall apply to land developments where lots, building sites, or other land divisions are created for the purpose of lease or rental only. All other land developments shall meet the platting requirements of a minor or major development or a platting action as required by these regulations.

5-2 Submission

A. Master/Sketch Plan

A sketch plan of the proposed land development shall be provided to the Planning Department in accordance with the requirements of Article 2, Section 2 of these regulations.

(Ord 08-04, § 5-2, 2-17-04)

B. Development Plan Plat.

A development plan plat depicting the location of proposed lots, building sites, or other land divisions shall be reviewed by the Planning Department prior to the issuance of building permits. Development plans shall substantially adhere to the approved sketch plan. Minor shifting of road alignments and lot configuration due to site constraints may be allowed. In such instances when site constraints require that the sketch plan be modified, the Planning Department shall be supplied with a revised sketch plan. A development plan may be a phase of the approved sketch plan. Phases shall not extend beyond the exterior boundaries of the approved sketch plan.

Article 4 – Design Standards

Table 4-G
Driveway Throat Lengths^a

Type of Development	Throat Length (In Feet) ^a
Major Development (non-residential)	64'
Residential Developments ^b	40'-60'

a. Throat length measured from the edge of pavement of an existing public or private road.

b. Except for single-family residential driveways located on an access or sub-collector street.

Q. Shared driveways.

Single-family developments containing three or fewer residential lots may utilize a shared private driveway as access to the lots. Shared private driveways shall be designed as shown in Figure 4-F, Appendix F. Lots having frontage on an existing County or State roadway and can obtain an encroachment permit from Horry County or SCDOT shall not be counted as part of the maximum 3 lots that access the shared private driveway. If an encroachment permit cannot be obtained such lot(s) shall be counted toward the maximum 3 lots permitted to access the shared driveway.

Residential developments containing four or more lots as well as non-residential developments shall not be permitted to utilize a shared private driveway for access. Such development's shall access their sites by public rights-of-way, private rights-of-way/easements, or utilize joint/cross-access easements.

A shared private driveway is not required to be improved with asphalt or concrete paving rather the developer may utilize a base course of their choosing for the traveled way. Such base course shall consist of an all-weather surface capable of supporting emergency apparatus.

The traveled portion of a shared private driveway shall be no less than 20 feet in width and shall have no obstructions within 5 feet of the edge of such traveled way. The shared private driveway shall be shown on the plat presented for recording and shall be located within a non-exclusive and appurtenant easement that is either 30 feet wide (when on-site septic will service the lots) or 50 feet wide (when the lots will be served by public water/sewer). Larger easements may be provided to accommodate future development needs.

* The notation below shall be shown on the plat presented for recording: *

* "Access is provided to lots (lot numbers) through the use of a (insert easement size)-foot non-exclusive and appurtenant easement. The access easement and driveway shall be owned and maintained collectively by the property owner(s) of the adjacent lots. Horry County shall not be responsible for the maintenance of or the improvement to the easement." *

Shared private driveways 150ft or greater in length are required to show a cul-de-sac on at the terminus of the easement. No shared private driveway may be longer than 1800ft in length without receiving a design modification from the Planning Commission. No shared private driveway shall originate from another shared private driveway. They may access off an existing

Section 7.6(2): Shared driveways

Article 4 – Design Standards

or proposed improved access easement. A shared private driveway may not be used as access for a commercial lot.

Except as provided for in Article 7, Section 1-9, a shared private driveways shall serve a maximum of three lots. Further subdivision of the parcels fronting along the shared private driveway, beyond three lots, shall require that driveway be upgraded to the right-of-way requirements shown in Table 4-D. Shared private driveways are not eligible for dedication to Horry County.

(Ord. 155-02, § 2-6(Q), 12-17-02, Ord. 28-05, § 2-6(Q), 04-05-05) 

R. Encroachment permits.

All curb cuts on existing County maintained streets require the submittal and approval of an Horry County Encroachment Permit application before site development begins. A copy of such permit shall not be required prior to approval of a development plat provided that:

1. The proposed subdivision or platting action creates residential lots greater than 50 feet in width
2. The proposed subdivision or platting action creates commercial lots greater than 64 feet in width.

If a proposed subdivision or platting action creates lots with widths less than those indicated above, staff shall obtain written confirmation that an access to the proposed subdivision or platting action may be obtained from Horry County Engineering upon detailed review of development plans for the proposed parcel.

All construction is the responsibility of the applicant.

(Ord. 155-02, § 2-6(R), 12-17-02)

S. Reserve Strips.

Reserve strips controlling access to streets may be approved by the Planning Commission when an adjacent property use is incompatible with a proposed development. Where an adjacent property is undeveloped, a reserve strip shall only be allowed where the adjacent zoning district is incompatible with a residential development.

2-7 Sidewalks.

Sidewalks shall be required along streets as shown in Table 4-D. Alignment of the sidewalk shall be determined on a case-by-case basis. Sidewalks shall continue to the point where the proposed street pavement terminates at an intersecting street's pavement edge and shall continue to where a street stub terminates or temporary cul-de-sac begins. If sidewalks are provided, ADA compliant sidewalk ramps shall be provided at all roadway intersections with adjacent sidewalks. Where sidewalks are not required, graded areas shall be provided along the roadway shoulder.

Article 4 – Design Standards

stormwater drainage standards. See Appendix G for criteria regarding the required installation of underdrains.

(Ord. 08-04, § 26-(E), 2-17-04)

~~X~~ F. Cul-de-sacs. ~~X~~

All permanent public or private dead-end streets longer than 150ft shall terminate in a paved turnaround with a minimum radius of 40 feet. The right-of-way shall have a minimum radius of 50 feet. The center radius of the cul-de-sac pavement and centerline of right-of-way shall be coincidental and the entrance to the curve to the cul-de-sac shall have a 25-foot radius. (See Figure 4-A, Appendix F)

Shared private driveway easements that have a permanent dead-end shall terminate at a cul-de-sac. The cul-de-sac easement shall have a minimum radius of 30 feet and improved turn-a-round radius of 20 feet. If the shared private driveway easement is increased to 50 feet in width, to accommodate a future public or private roadway, the cul-de-sac improvement and overall radii shall be the same as those for permanent public or private roads.

When an internal circle or traffic control island is utilized in a cul-de-sac, the pavement shall have an inside radius of 18 feet for residential streets or a radius of 23 feet for non-residential streets. Cul-de-sacs may be designed as a circular turnaround or as an off-center turnaround as shown in Figure 4-A, Appendix F. Cul-de-sacs constructed for transit access, shall meet the geometric design criteria for nonresidential streets. Cul-de-sacs shall not be used on alleys.

~~X~~ (Ord. 155-02, § 2-6(F), 12-17-02, Ord. 08-04, § 2-6(F), 2-17-04) ~~X~~

G. Alternative cul-de-sacs.

In approved cluster or Planned Development District (PDD) developments, the Horry County Engineering Department may permit the use of T and Y cul-de-sacs upon streets that will have a permanent dead-end. When allowed, T and Y cul-de-sacs may service 15 or fewer lots or units.

T and Y cul-de-sacs shall be designed to have a minimum pavement edge turnaround of 60' by 20' as shown in Figure 4-B, Appendix F. The radius of the entrance curve shall be 25 feet. In all instances, the right-of-way shall extend 10' from the edge of street pavement and be coincidental. T and Y cul-de-sacs cannot be used as temporary cul-de-sacs.

H. Temporary cul-de-sacs.

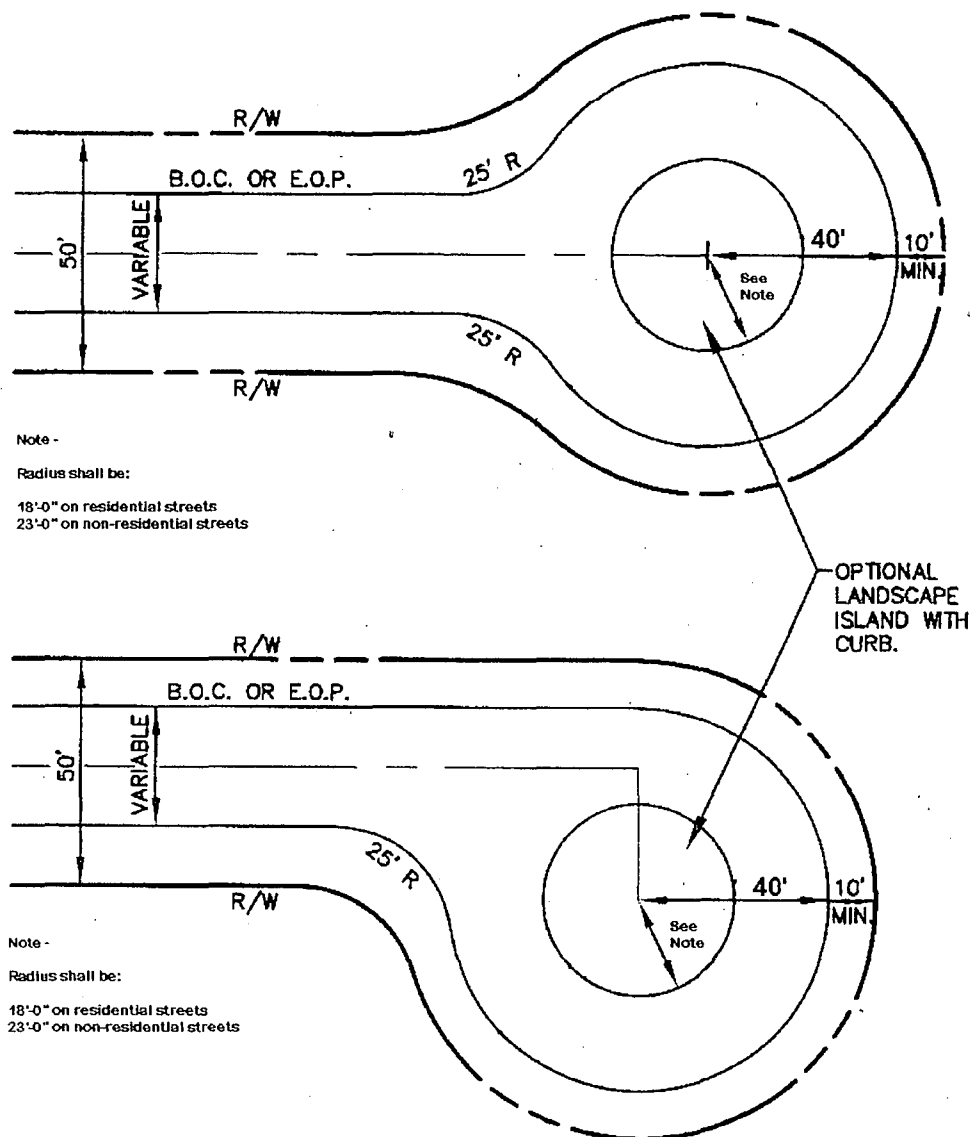
When a stub-out or temporary dead end street is created, as a result of development phasing, a temporary cul-de-sac shall be required when the stub-out or temporary dead end street:

1. Provides one or more lots with sole access; and,
2. Exceeds a length of 150 feet.

Section 2-6 (F): Cul De Sacs

APPENDIX F – Article 4 Figures

Figure 4-A
Cul-de-sacs



MINIMUM CUL-DE-SAC DESIGN STANDARDS

N.T.S.

Article 4 – Design Standards

7-3 Uniform Naming System

The uniform naming system uses the following as guidelines for the naming of all streets and easements that meet the following:

A. A street is defined as any right-of-way or access where:

1. Three (3) or more residences or businesses are located along the street;
2. The street is a thoroughfare to another street; or
3. The street is publicly maintained

Note: Shared driveways, as defined in the Horry County Land Development Regulations, shall not be assigned an official street name.

B. Street name duplications shall be declared inconsistent with this article and such street name and numbering system shall be changed to conform to the provisions of this article. A street name shall be declared a duplication when:

1. The proposed name is given a suffix (Street, Road, Way, etc.) to an existing street name;
2. The proposed name is phonetically similar to that of an existing street name; or
3. Spelling of the proposed street name is similar to the spelling of an existing street name.

C. Guidelines For Street Naming are as follows:

- ① All unpaved rural residential lanes having more than 1 access point shall use lane, path or trail
2. All residential streets having more than 1 access point shall use street, way, or drive.
3. Any street that begins and ends on the same road shall use loop.
4. All collector streets shall have the suffix avenue or road.
5. All arterial streets shall use boulevard, parkway or highway.
- ⑥ All cul-de-sacs and/or streets with only 1 access point with a terminus shall use court; or place
7. A street with 1 access point that circles around and back to itself shall use circle.
8. Alleys may be named, however they shall have the suffix alley. All properties accessed via an alley shall be addressed off the higher order street that provides frontage to the property.
9. Family names or names reflecting a religious, ethnic, or philosophical viewpoint should not be used. Exceptions may be made for names of historical significance.
10. Short, simple names are recommended.
11. Use of a naming theme in a particular area is recommended to help promote community identity, and to simplify locating a particular street.
12. Street names used within county municipalities should be extended into the unincorporated areas as far as possible and practical to help establish continuity between the two areas.
13. Names commonly used by residents are recommended as they provide easily recognized and remembered street names. Names that describe the streets location or locale are also recommended.

Article 4 – Design Standards - (7-8)

- D. Design and placement of traffic control signs shall follow the requirements specified in the most current edition of the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration.
- E. At least two street name signs, at opposing intersections, shall be placed at each four-way street intersection, and one at each "T" intersection. Signs shall be installed free of visual obstruction.
- F. Street identification signs shall indicate ownership and maintenance by way of the following required background colors: Private roads shall be indicated using blue colored signs and all public roads shall be indicated using green colored signs. All letters and numbers shall be white. The signs must meet the reflective requirements stated in the above referenced manual. In addition, a sign shall be posted at the entrance of all private road developments that state: "Private Road. Not maintained by Horry County".
- G. Where a public or private road right-of-way enters a floodplain or floodway adequate signage shall be provided as required by Article 4, Section 4.
- H. The developer must install and maintain a PUBLIC or PRIVATE DEVELOPMENT INFORMATION SIGN AT ALL ENTRANCES TO DEVELOPMENT. This sign will be designed and produced by Horry County Engineering Department. These will be sold to developer at cost. Sign must be installed prior to the issuance of the Stormwater Permit and remain in place until the end of the warranty period for Public ownership or until acceptance by the HOA for private developments.

(Ord. 08-04, § 2-12, 2-17-04)

SECTION 8: OFF SITE IMPROVEMENTS

8-1. Applicability

Horry County requires all developments subject to Horry County Land Development Regulations to design and construct to Horry County and/or State Standards all required improvements (or proportionate amount thereof) that are related both in nature and extent to the proposed use of the property.

This policy applies, but is not limited to surfacing, grading, and aggregate base of a roadway or alleyway, completion of traffic area impact studies, or financial contribution towards the cost thereof, traffic control devices and signalization, construction or repair of concrete sidewalks abutting the property, installation of fire hydrants to service the property, construction or repair of curb and gutter which abuts the property, dedication of right of way, utility upgrades to adequately service the property and on and/or off site drainage facilities or improvements

If the Horry County determines, that off site improvements are applicable, but should not be constructed by the property owner, the County may waive actual construction of said improvements and require, in their place, a deposit in cash by, or on behalf of, the applicant

Article 8 – Definitions

SECTION 1: GENERAL

Except as specifically defined herein, all words used in these regulations have their customary dictionary definitions. For the purposes of these regulations certain words or terms used herein are defined as follows:

Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.

~~The word “shall” is always mandatory.~~

The word “may” is permissive.

The word “lot” includes the word “plot”, “parcel”, or “tract”.

The word “person” includes a firm, association, organization, partnership, trust company, or corporation as well as an individual.

The term “Planning Commission” includes “Commission” refers to the Horry County Planning Commission.

The term “Planning Department” includes “staff” and refers to the Horry County Planning Department.

The terms “Engineer”, “Engineering Department”, or “Department (Article 7 only)” refers to the Horry County Engineering Department.

SECTION 2: DEFINITIONS

AASHTO. American Association of State Highway and Transportation Officials.

ADT (Average Daily Traffic). The average number of vehicles per day that pass over a given point.

Access - A way or means of approach to provide vehicular or pedestrian entrance or exit to a property.

Access Classification - A ranking system for roadways used to determine the appropriate degree of access management. Factors considered include functional classification; the appropriate local government’s adopted plan for the roadway, subdivision of abutting properties, and existing level of access control.

Access Connection - Any driveway, street, turnout or other means of providing for the movement of vehicles to or from the public roadway system.

Article 8 – Definitions

and setback the appropriate distance as required by the zoning district in which the lot is located from street right-of-way lines, street center lines, or other boundary lines.

Cemeteries. Land that is set apart and used for the interment of the dead or in which bodies (human or other) have been buried. A cemetery may include a structure for the purpose of cremation of remains (human or other) and may include facilities for storing ashes of said remains that have been cremated or interment of the dead in sealed crypts or compartments.

Collector Street. Link local streets with the arterial street system. They collect traffic in local areas and provide the connection to arterial streets. They may also directly serve abutting land uses.

Common Area. (See open space- common).

Connection Spacing. The distance between connections, measured from the centerline of the first connection to the centerline of the second connection along the edge of the traveled way. (See Article 7)

Corner Clearance. The distance from an intersection of a public or private road to the nearest access connection, measured from the centerline of the closest edge of the pavement of the intersecting road to the centerline of the closest edge of the pavement of the connection along the traveled way. (See Article 7)

Cross Access Easement. A non-exclusive easement in which a service drive is located that provides vehicular access between two or more contiguous sites so the driver need not enter the public street system.

 Cul-de-sac. A local street with only one access point and having the other end designed for the reversal of traffic movement. 

Culvert. A structure designed to convey a watercourse, not incorporated in a closed drainage system, under a road, railway, or pedestrian walk.

Curb. A vertical or upward sloping edge of a roadway usually made of concrete or paving materials.

 Dedication. An act of transmitting property or interest thereto. 

Deed. A legal document conveying ownership of real property.

Density. The permitted number of dwelling units per acre of land to be developed.

Design Standards. Standards that set forth specific improvement requirements as well as layout criteria.

Sec. 6-49. Uniform naming system.

(a) Street name duplication within the unincorporated areas of the county shall be declared inconsistent with this article and such street name and numbering system shall be changed to conform with the provisions of this article. All new street names shall be unique and no new street name shall be a duplication based solely on the street prefix (North, South, East, etc.) or suffix (Street, Drive, Way, etc.).

A street name shall be declared a duplication when:

- (1) The proposed name is given a prefix (North, South, East, etc.) or a suffix (Street, Road, Way, etc.) to an existing street name;
- (2) The proposed name is phonetically similar to that of an existing street name; or
- (3) The proposed name is similarly spelled to an existing street name.

A street is defined as any right-of-way or access where:

- (1) Three (3) or more residences or businesses are located along the street;
- (2) The street is a thoroughfare to another street; or
- (3) The street is maintained by the State of South Carolina or Horry County.

Note: Shared driveways, as defined in the Horry County Land Development Regulations, shall not be assigned an official street name.

(b) Horry County Council hereby authorizes the Horry County Planning Commission to name all presently unnamed roads in the unincorporated sections of Horry County following the criteria set forth division 3, section 6-66 of this article.

(c) Horry County Council hereby authorizes the Horry County Planning Commission to identify streets whose names are declared to be inconsistent with this article and provide a recommendation to the Horry County Council on the renaming of the street. The decision as to which street(s) shall be renamed shall be based on the criteria set forth in division 3, section 6-66 of this article.

(d) The Horry County Planning Commission shall recommend to the Horry County Council the renaming of previously named streets when property owners instigate the name change. Street naming procedures shall follow the criteria set forth in division 3, section 6-66 of this article.

(Ord. No. 14-88, § 1.4, 4-19-88; Ord. No. 68-89, § 3, 8-1-89; Ord. No. 125-99, § 1.4, 1-17-00; Ord. No. 25-00, § 1, 4-18-00;

ec. 6-65. Guidelines for street name selection.

(a) New street names cannot duplicate existing street names within the county. Names that are similar in spelling or phonetically similar will be considered duplicates and declared inconsistent with this article. Street names that are unique based solely on a different suffix or prefix shall also be considered inconsistent with the intent of this article.

~~✱~~ (b) ~~All unpaved rural residential lanes having more than one (1) access point shall use one (1) of the following suffixes: lane, path, trail, or way.~~ ✱

(c) All residential streets having more than one (1) access point shall use one (1) of the following suffixes: street, or drive.

(d) All collector streets shall have the suffix avenue.

(e) All arterial streets shall use one (1) of the following suffixes: road, boulevard, parkway, or highway.

~~✱~~ (f) ~~All culs-de-sac and/or streets with only one (1) access point shall use one (1) of the following suffixes: court, place, or circle.~~ ✱

(g) Alleys may be named, however they shall have the suffix alley. All properties accessed via an alley shall be addressed off the higher order street that provides frontage to the property.

(h) Where no name is suggested, use of family names or names reflecting a religious, ethnic, or philosophical viewpoint should not be used. Exceptions may be made for names of historical significance.

(i) Names with exotic or difficult spellings, or that have lengthy or unusual names should be avoided. Short, simple names are recommended as costs for providing street signs are reduced, and recognition time for drivers searching for a street by reading street signs is reduced.

(j) Use of a naming theme in a particular area is recommended to help promote community identity, and to simplify locating a particular street.

(k) Street names used within county municipalities should be extended into the unincorporated areas as far as possible and practical to help establish continuity between the two areas.

(l) Names commonly used by residents are recommended as they provide easily recognized and remembered street names.

(m) Names that describe the streets location or locale are also recommended. Names that are associated with the beach should only be used east of U.S. 17.

(n) When names are not suggested, potential street names may be obtained by requesting and/or referencing the following sources:

- (1) Post office;
- (2) Residents;
- (3) Community/civic groups;
- (4) Church groups;
- (5) Service agencies;
- (6) Local history books;
- (7) Atlas;
- (8) Other reference books.

(Ord. No. 125-99, § 3.1, 1-17-00)

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

**TITLE TO REAL ESTATE
NO CERTIFICATION OF TITLE**

WHEREAS, there is an easement shown on Plat Book 163 at Page 228; and

WHEREAS, the Court of Appeals and the Master-in-Equity have ruled that the easement does not exist and is not legally held by the adjoining land owner Claudius Eugene Fowler as evidenced by the attached decisions; and

WHEREAS, the purpose of this deed is to show that the easement does not legally exist on the above cited plat and to convey a half interest in the property to Kenneth Dippel,

NOW,

KNOW ALL MEN BY THESE PRESENTS,

That **Kimberly R. Fowler**, in the State aforesaid for and in consideration of the sum of FIVE and No/100 ----- (\$5.00) DOLLARS to me paid by **Kimberly R. Fowler and Kenneth Dippel** in the State aforesaid, (Receipt whereof is hereby acknowledged) have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said **Kimberly R. Fowler and Kenneth Dippel**, as joint tenants with the right-of-survivorship, and not as tenants-in-common, the following described property to wit:

SEE PROPERTY DESCRIPTION RIDER

Grantees Address:

2145 Oak Dale Rd.

Loris, SC 29569

**Instrument#: 2009000101122, DEED BK:
3421 PG: 1862 DOCTYPE: 001 09/22/2009
at 10:31:14 AM, 1 OF 4, EXEMPT,
BALLERY V. SKIPPER, HORRY COUNTY,
SC REGISTRAR OF DEEDS**

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said **Kimberly R. Fowler and Kenneth Dippel**, as joint tenants with the right-of-survivorship, and not as tenants-in-common, their Heirs and Assigns forever.

And I do hereby bind myself and my Heirs and Executors and Administrators, to Warrant and forever defend all and singular the said premises unto the said **Kimberly R. Fowler and Kenneth**

Dippel, as joint tenants with the right-of-survivorship, and not as tenants-in-common, their Heirs and Assigns, against me and my Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

Witness the execution hereof by grantor this 22nd day of September in the year of our Lord Two Thousand and Nine and in the Two Hundred and Thirty-Third year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Misty J. Nolan
Jen. W. Lusk

Kimberly R. Fowler (L.S.)
Kimberly R. Fowler

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

PERSONALLY appeared before me the undersigned witness, and made oath that (s)he saw the within named **Kimberly R. Fowler**, Sign, Seal and as her Act and Deed deliver the within written Deed; and that (s)he with the undersigned notary, witnessed the execution thereof.

Sworn to before me this 22nd
day of September A.D. 2009.

Jen. W. Lusk (L.S.)
Notary Public for South Carolina
My Commission Expires: 5-1-13

Misty J. Nolan

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in Simpson Creek Township, Horry County Tax Map Number #040-00-01-122, and was transferred by Kimberly R. Fowler to Kimberly R. Fowler and Kenneth Dippel on September 22nd, 2009.
3. Check one of the Following: The Deed is
 - (a) _____ Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) XX Exempt from the deed recording fee because (See Information section of this affidavit): DEED OF GIFT: CONSIDERATION LESS THAN \$100.00

(If exempt, please skip items 4-7, and go on to item 8 of this affidavit.)

If exempt under exemption # 14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase realty? Check Yes _____ or No _____

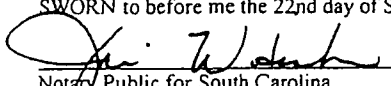
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (b) _____ The fee is computed on the fair market value of the realty which is _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____
5. Check Yes or No XX to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

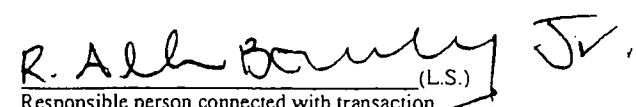
6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: _____
- (b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
- (c) Subtract line 6(b) from line 6(a) and place result here: _____

7. The deed recording fee due is base on the amount listed on Line 6(c) above and the deed recording. fee due is:
8. As required by Code Section, 12-24-70, I state I am a responsible person who was connected with the transaction as Attorney.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me the 22nd day of September, 2009

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 5-1-13

 (L.S.)
Responsible person connected with transaction

R. Allen Beverly, Jr., Attorney
print or type name here

PROPERTY DESCRIPTION RIDER

ALL AND SINGULAR, all that certain piece, parcel and lot of land situate, lying and being in Simpson Creek Township, County and State aforesaid, shown and designated as Lot Number One, containing 0.99 acres, more or less on that certain survey prepared by Inman Surveying and Mapping, dated June 17, 1999, and recorded in the Office of the ROD in Plat Book 163 at Page 238, which is incorporated herein by reference as a part and parcel hereof.

BOUNDED on the North by lands of Mearl Dean Fowler; on the South by lands now or formerly of Ester Fowler; on the East by South Carolina Highway Number 932; and on the West by Lot Two as shown on the plat.

THIS BEING the identical property conveyed to Kimberly R. Fowler by Deed of Timothy E. Fowler recorded April 21st, 2005 in the Office of the ROD for Horry County in Deed Book 2897 at Page 463.

TMS#040-00-01-122

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Kimber R. Fowler a/k/a Kimberly R. Fowler,
Appellant,

v.

Claudius Eugene Fowler, Respondent.

Appeal From Horry County
J. Stanton Cross, Jr., Master-in-Equity

Unpublished Opinion No. 2009-UP-096
Submitted November 1, 2008 – Filed February 23, 2009

REVERSED

Kimber Fowler, of Loris, for Appellant.

Claudius Eugene Fowler, of Loris, for
Respondent.

PER CURIAM: Kimber Fowler (Appellant) planted Bradford pear trees along an easement Claudius E. Fowler (Respondent) claimed across Appellant's land. When Respondent cut limbs from those trees, Appellant filed an action for trespass and property damage. She now appeals from the master-in-equity's order finding Respondent had an easement across Appellant's land. We reverse.[1]

FACTS

I. Land Conveyances

On September 29, 1981, Respondent acquired 3.72 acres of land through a civil suit for partition of his father's estate. The estate's real property was surveyed and platted on November 9, 1981. No easement appeared either in Respondent's title or on that plat.

On June 17, 1999, Respondent's land was surveyed and platted in preparation for

<http://www.judicial.state.sc.us/opinions/displayUnPubOpinion.cfm?caseNo=2009-UP-096> 7/5/2009

conveyances Respondent intended to make to his children. The plat prepared at this time (the Inman Plat) reflects an "existing soil drive" within a twenty-five-foot private easement across the north side of the parcel. On August 6, 1999, Respondent and his wife conveyed the easternmost 0.99 acres of their land to their son and Appellant, their daughter-in-law. Respondent and his wife reserved a life estate in the conveyed land. On June 28, 2000, they released this right and conveyed their remaining interest in the land to their son and Appellant. Although the title references the Inman Plat, neither the title nor the release document indicates an easement.

Respondent's son and Appellant divorced in January 2005. On April 20, 2005, Appellant received title to the 0.99 acres solely in her name pursuant to the divorce decree. The title document executed by Respondent's son references the Inman Plat but does not indicate an easement.

On April 18, 2006, the land was surveyed again at Respondent's request. The plat prepared following this survey reflects a "private access easement" identified as "Dolly Lane" across the north side of Appellant's land and references the prior plat. Furthermore, this plat appears to indicate a proposed driveway and cul-de-sac extending from Dolly Lane across half of Respondent's property. Both the 1981 and 2006 plats show a county road either touching or defining a portion of the western boundary of Respondent's property.[2]

II. Background and Procedural History

In August 2000, Appellant planted eight Bradford pear trees approximately six feet from the existing soil drive shown on the Inman Plat. On April 5, 2005, Respondent and his grandson destroyed one of those trees. Appellant filed criminal charges against them but later withdrew those charges in an effort to "make peace with the family." On February 8, 2007, Respondent and his grandson used a chainsaw to cut branches from the remaining Bradford pear trees, leaving marks across the trunks of several of those trees. Subsequently, Appellant posted "no trespassing" signs on and near the trees. When Respondent removed them, Appellant again filed criminal charges against him and a civil suit for trespass and malicious damage to her property.

Appellant's civil suit was referred to the master, who ruled in favor of Respondent and found Respondent had "by dedication a private easement . . . for travel purposes of ingress and egress" across Appellant's land. This appeal followed.

LAW/ANALYSIS

I. Easement by Dedication

Appellant asserts the master erred in finding Respondent possessed an easement by dedication across her land. We agree.

"The determination of the existence of an easement is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury." Hardy v. Aiken, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006).

The master erred in concluding Respondent possessed an easement by dedication. South Carolina law presumes a buyer of a lot in subdivided property has a dedicated property right in

<http://www.judicial.state.sc.us/opinions/displayUnPubOpinion.cfm?caseNo=2009-UP-096> 7/5/2009

any easements or roads shown on the plat. Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism, 377 S.C. 86, 92, 659 S.E.2d 151, 154 (2008); see also Murrells Inlet Corp. v. Ward, 378 S.C. 225, 233, 662 S.E.2d 452, 455-56 (Ct. App. 2008). While an easement by dedication may be described in a plat prepared prior to conveyance of subdivided property, no easement legally exists until the seller conveys ownership of a part of that property to a buyer. Inlet Harbour, 377 S.C. at 92, 659 S.E.2d at 154. To create this implied easement, the deed must reference the plat. Id. Once created, the easement benefits the buyer. Id.; see also Murrells Inlet Corp., 378 S.C. at 233, 662 S.E.2d at 455-56; McAllister v. Smiley, 301 S.C. 10, 12, 389 S.E.2d 857, 859 (1990).[3]

Here, Respondent prepared a plat describing the way he intended to subdivide his property into three lots, two of which were to go to his children. He ultimately conveyed ownership of only one lot and now claims an easement by dedication across it. However, because an easement by dedication benefits the buyer, this presumption is unavailable to Respondent, the seller. Consequently, Respondent does not possess an easement by dedication across Appellant's land.

II. Other Issues

Appellant additionally asserts the master erred in violating her due process rights and in failing to rule on her motions for summary judgment. Due to our disposition of Appellant's first issue, we need not address the remaining issues on appeal. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

As to the issue of Respondent's easement, we find Respondent does not have an easement by dedication across Appellant's land. Therefore, we reverse the master's order on this issue.

Accordingly, the master's order is

REVERSED.

HEARN, C.J., KONDUROS, J., and GOOLSBY, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

[2] The western end of Respondent's property does not appear on the Inman Plat.

[3] Our supreme court explored the policies underlying implied public and private easements by dedication in Cason v. Gibson, 217 S.C. 500, 61 S.E.2d 58 (1950).

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL CASE NO.: 07-CP-26-01782

KIMBER R. FOWLER,)

Plaintiff,)

v.)

CLAUDIUS EUGENE FOWLER,)

Defendant.)

ORDER ON REMAND FROM
THE SOUTH CAROLINA COURT OF
APPEALS

TRIAL JUDGE:

PLAINTIFF:

DEFENDANT:

COURT REPORTER:

DATE OF HEARING:

CYNTHIA GRAHAM HOWE
KIMBER R. FOWLER, pro se
CLAUDIUS EUGENE FOWLER, pro se
PRESTIGE COURT REPORTING SERVICE
MAY 26, 2009

2009 MAY 26 PM 2:46
FILED
CLERK OF COURT

This matter was referred to the Horry County Master in Equity by Order of the Honorable Paula H. Thomas dated April 30, 2007. This case concerns an alleged easement across Plaintiff Kimber Fowler's land. She alleges that Defendant Claudius Eugene Fowler removed a Bradford pear tree planted along the alleged easement and cut limbs and damaged several trunks of other Bradford pear trees planted along it.

In August 2007, The Honorable J. Stanton Cross issued an order holding that Defendant had an "easement by dedication" over the .99 acres of property which is the subject of this action. On appeal by unpublished opinion issued on February 23, 2009, the South Carolina Court of Appeals reversed Judge Cross, holding that Defendant "does not have an easement by dedication across" Plaintiff's land.

This matter is before me on two matters: (1) Plaintiff's Notice of Remedies Hearing dated April 1, 2009, and Kenneth Dippel's motion to intervene pursuant to Rule 24, SCRCF and/or to join as a plaintiff pursuant to Rule 18, SCRCF. Mr. Dippel appeared at the May 26, 2009, hearing and argued his motion to intervene/join as a party.

No attorneys appeared at the hearing. After carefully considering Mr. Dippel's motion, I deny the motion.

On April 1, 2009, Kenneth Dippel, Plaintiff's brother, moved to be joined as a plaintiff and/or to intervene in the lawsuit as a plaintiff. Mr. Dippel owns a trailer on his sister's property and jointly rents the trailer with his sister, the Plaintiff. He asserts he is a necessary plaintiff because the Defendant "continually claims he has an easement right", . . . , he "cannot help maintain the private driveway of [his] sister's as long as [Defendant] continually persists by claiming he actually owns this road passing by [his] trailer and by him continually persisting he has an easement through my sister' property, and the [Defendant] has in the past threatened to charge me a toll for using my own sister's driveway that leads to this trailer [he] own[s]." He asserts he has a constitutional right to defend his property against Defendant's unlawful easement claims. I disagree that Mr. Dippel should be allowed to intervene as a matter of right pursuant to Rule 24(a)(2), SCRPC, and accordingly, I deny his motion.

SC DHEC v. Columbia Organic Chemical Co., Inc., 310 S.C. 495, 427 S.E.2d 661 (1993) provides that a party moving to intervene under Rule 24(a)(2), SCRPC must (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

Mr. Dippel was unable to adequately explain the two-year delay in moving to intervene. Moreover, Mr. Dippel was unable to demonstrate that his interest was

inadequately represented by his sister, the Plaintiff, in this matter. In fact, just the opposite appears to be true. Plaintiff more than adequately has demonstrated her ability to represent her interests (i.e., that there was no easement) in this matter. Plaintiff's interests appear to be the same or similar as Mr. Dippel's interests, and I find that Plaintiff adequately has represented those interests during the course of this lawsuit. A failure to satisfy any one of the four requirements precludes intervention. *SC DHEC v. Columbia Organic Chemical Co., Inc.*, 310 S.C. 495, 427 S.E.2d 661 (1993).

Mr. Dippel's motion to join under Rule 18, SCRCF also fails him. Rule 18 is appropriate when a party, who has asserted a cause of action as an original claim, counterclaim, cross-claim, or third-party claim, seeks to join independent or alternate claims. Until Mr. Dippel is a party, either initially or by intervention, he may not be allowed to join his claims pursuant to Rule 18, SCRCF. Since I have concluded that Mr. Dippel should not be allowed to intervene, Mr. Dippel's motion to join under Rule 18, SCRCF also should be denied.

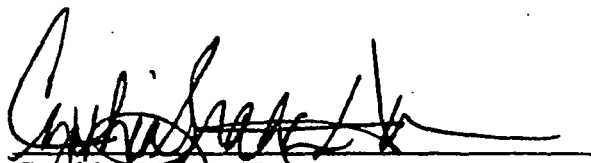
As to Plaintiff's claims, in her original complaint, Plaintiff prayed for an injunction, enjoining Defendant from using the 25 foot driveway which had been alleged to be an easement, enjoining Defendant from cutting the Bradford Pear trees planted along the 25 foot driveway, and for \$125 dollars for a Bradford Pear Tree previously planted along the 25 foot driveway, which tree Plaintiff alleged that the Defendant destroyed.

Plaintiff did not offer any evidence at the hearing on remand, nor did Defendant dispute the prayer, that the Bradford Pear Tree was worth \$125.00. Plaintiff did not seek pre-judgment interest. Accordingly,

IT IS HEREBY ORDERED THAT Plaintiff be granted judgment against Defendant in the amount of \$125.00.

IT FURTHER IS ORDERED that Plaintiff be granted an injunction, enjoining Defendant, his successors, and heirs, from trespassing on Plaintiff's property, more specifically shown on Exhibit "A" attached to this Order, including a twenty-five foot soil driveway known as Dolly Lane across the north side of Plaintiff's property.

AND IT IS SO ORDERED.


Cynthia Graham Howe
Horry County Master in Equity

Conway, South Carolina
Dated: May 26, 2009

4

EXHIBIT "A"

ALL AND SINGULAR, all that certain piece, parcel and lot of land situate, lying and being in Simpson Creek Township, County and State aforesaid, shown and designated as Lot Number One, containing 0.99 acres, more or less on that certain survey prepared by Inman Surveying and Mapping, dated June 17, 1999, and recorded in the Office of the Horry County R.O.D. in Plat Book 163 at Page 228, which is incorporated herein by reference as a part and parcel hereof.

BOUNDED on the North by lands of Mearl Dean Fowler; on the South by lands now or formerly of Ester Fowler; on the East by South Carolina Highway Number 932; and on the West by Lot Two as shown on said plat.

BEING the identical property conveyed to Timothy E. Fowler and Kimberly H. Fowler by Eugene Fowler, a/k/a Claudus E. Fowler by Deed recorded in Deed Book 2175 at Page 1, Office of the Horry County R.O.D. on August 9, 1999, wherein Eugene Fowler, a/k/a Claudus E. Fowler reserved a life estate unto himself and his wife, Terry H. Fowler.

TMS NUMBER: 040-00-01-056

HORRY COUNTY ASSESSOR

040-00-01-122

Map

Blk

Parcel

7-7-0077

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia G. Howe, Master in Equity

Case No. 2009-CP-26-8278

Kenneth Dippel &
Kimber Fowler,

Appellants,

v.

Claudius Eugene
Fowler,

Respondent.

BRIEF OF APPELLANTS

Kenneth Dippel
Kimber Fowler

Loris, SC 29569
(843) 716-0699

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii-v
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE	1
FACTS	3

ARGUMENTS

KENNETH DIPPEL IS A REAL PARTY IN INTEREST	9
THE MASTER VIOLATED THE FINALITY DOCTRINE AND RES JUDICATA	12
AN EASEMENT BY IMPLIED PRE-EXISTING USE IS ONLY AVAILABLE ONLY TO A SUBSEQUENT GRANTEE OR BUYER OF A LOT	15
THERE WAS NOT ANY <u>LEGAL</u> PRIOR USE IN EXISTENCE BY RESPONDENT, CLAUDIUS EUGENE FOWLER OF DOLLY LANE AT THE TIME RESPONDENT HELD TITLE TO THE ENTIRE PF FOWLER ESTATE	18
THERE IS NO REASONABLE NECESSITY FOR AN IMPLIED PRE-EXISTING EASEMENT ACROSS APPELLANTS' PROPERTY	24
THE MASTER'S ORDER VIOLATES THE STATUTE OF FRAUDS.....	32
THE MASTER'S RULING VIOLATES FUNDAMENTAL CONSTITUTIONAL PROPERTY RIGHTS OF APPELLANTS.....	33
CONCLUSION	36
CERTIFICATE OF SERVICE (PROOF OF SERVICE)	36

TABLE OF AUTHORITIES

Cases

<i>Blue Ridge Realty Co.</i> , 247 S.C. at 118, 145 S.E. 2d at 924-25 (1965)	17
<i>Bowman v. Bowman</i> , 357 S.C. 146, 152, 591, 657 S.E. 2d 654 (Ct. App. 2004)	13
<i>Boyd v. BellSouth Tel. Telegraph Co.</i> , 359 S.C. 209, 597 S.E. 2d 161 (Ct. App. 2004)	16, 18
<i>Boyd v. Bellsouth Telephone Telegraph Company, Inc.</i> , 369 S.C. 410, 633 S.E. 2d 136 (2006)	15, 17, 18, 24
<i>Cash v. Maddox</i> , 265 S.C. 480, 220 S.E. 2d 121 (1975)	32
<i>Charleston County Sch. Dist. v. Charleston County Election Comm'n</i> , 336 S.C. 174, 181, 519 S.E. 2d 567, 571 (1999)	9
<i>Dreher v. Dreher</i> , 370 S.C. 75, 634 S.E. 2d 646 (2006)	13
<i>Haselden v. Schein</i> , 167 S.C. 534, 539, 166 S.E. 634, 635 (1932)	19
<i>Hidalgo County Water Control and Imp. Dist No. 16 v. Hippchess</i> , 233 F. 2d 712 (C.A. 5. Tex 1956)	19
<i>Inlet Harbour v. S.C. Dep't of Parks Recreation & Tourism</i> . 377 S.C. 86, 92, 659 S.E. 2d 151, 154 (2008)	14, 16, 17
<i>Laughon v. O'Braitis</i> , 360 S.C. 520, 527, 602 S.E. 2d 108, 112 (Ct. App. 2004)	15
<i>McLeod v. Baptiste</i> , 315 S.C. 246, 247, 433 S.E. 2d 834, 835 (1993)	20
<i>Murrells Inlet Corp. v. Ward</i> . 378 S.C. 225, 233, 662 S.E. 2d 452, 455-56 (Ct. App. 2008)	14
<i>Nollan v. California Coastal Commission</i> , 483 U.S. 825 (1987)	33

<i>Plott v. Justin Ent.,</i> 374 S.C. 504, 511, 649 S.E. 2d 92, 95 (Ct. App. 2007)	13
<i>Plum Creek Dev. Co. v. City of Conway,</i> 334 S.C. 30, 34, 512 S.E. 2d 106, 109 (1999)	13
<i>Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. South Carolina Dep't of Natural Res.,</i> 345 S.C. 594, 550 S.E. 2d 287 (2001)	9
<i>Shaw v. Hardy,</i> 270 S.C. 298, 300, 241 S.E. 2d 906, 907 (1978)	20
<i>Town of Mt. Pleasant v. Jones,</i> 335 S.C. 295, 298-99, 516 S.E. 2d 468, 470 (Ct. App. 1999)	13
<i>Townsend v. Townsend,</i> 356 S.C. 70, 73, 587 S.E. 2d 118, 119 (Ct. App. 2003)	31
<i>Windham v. Riddle,</i> 370 S.C. 415, 635 S.E. 2d 558 (Ct. App. 2006)	19
<i>Windham v. Riddle,</i> 381 S.C. 192, 201, 672 S.E. 2d 578, 582-83 (2009)	19
<u>Statutes</u>	
S.C. Code Ann. § 14-8-200	3
S.C. Code Ann. § 14-11-85	3
S.C. Code Ann. § 32-3-10(4)	32
S.C. Code Ann. § 32-3-10(5)	32
<u>Horry County Land Development Regulations</u>	
Article 1, Section 10 (Violations and Penalties) page 10	20-21, 28
Article 2, Section 4-9 (#4) page 31	20, 27
Article 2, Section 4-15, page 33	28 - 29
Article 4, Section 2.6(f) (Cul-de-sacs), page 64	26
Article 4, Section 2.6(Q) (Shared driveways) page 71	26 - 27
Article 4, Section 7-3(A), page 93	29, 30

Horry County Ordinance

Article III - Street Naming and Numbering, Section 6-49(a) of the Horry County Ordinance.....	30

Other Authority

S.C. Const. art. I, § 3	10, 33
S.C. Const. art. I, § 13.....	33
S.C. Const. art. I, § 22	10, 33

STATEMENT OF THE ISSUES

1. Whether the order issued by Judge Cynthia G. Howe, Master in Equity holding that Kenneth Dippel, Appellant did not have standing and the dismissal of Kenneth Dippel's claims against Respondent, Claudius Eugene Fowler is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law.
2. Whether the rescinding of the previous injunction order against Respondent, Claudius E. Fowler is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law.
3. Whether the order issued by Judge Cynthia G. Howe holding that an easement by prior use exists in favor of Respondent, Claudius Eugene Fowler as to "Dolly Lane" is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law.
4. Whether Judge Cynthia G. Howe, Master in Equity's order dismissing the civil contempt and civil trespass claims against Mr. Claudius E. Fowler is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law.

STATEMENT OF THE CASE

Appellant, Kenneth Dippel who is the brother of Appellant, Kimber Fowler owns a mobile home (**R. at 189**) on the property where there has been a continuous dispute regarding Respondent, Claudius Eugene Fowler's use of "Dolly Lane" across Appellants' property. Appellants are joint owners of the property where there is a continued dispute regarding the use by Respondent, Claudius Eugene Fowler's of a private access easement or soiled driveway known

as “Dolly Lane” across their property. The recorded deed notes there is no legally enforceable easement for Mr. Claudius E. Fowler pursuant to this Court’s ruling and the Master in Equity Ruling (**R. at 219 – 230**).

Respondent, Claudius Eugene Fowler has continued to trespass on the so called “Dolly Lane” despite this Honorable Court’s final ruling (**R. at 223 – 225**) and an injunction order that was issued by the Honorable Judge Cynthia G. Howe (**R. at 226- 230**). Appellants as a result of Respondent’s actions filed a complaint against Respondent, Claudius Eugene Fowler (**R. at 126 – 140**) and an amended complaint for fraud and negligent misrepresentation (**R. at 111**). On February 23, 2010 a final hearing was held before the Honorable Judge Cynthia G. Howe, Master in Equity in Horry County. Judge Cynthia G. Howe, Horry County Master in Equity determined that Mr. Kenneth Dippel lacked standing (**R. at 6-7**). Therefore, she dismissed all of Appellant, Kenneth Dippel’s claims against the Respondent, Claudius Eugene Fowler (**R. at 10**).

Judge Cynthia G. Howe, Master in Equity in Horry County also rescinded her earlier injunction order and also determined that Respondent, Claudius Eugene Fowler held an easement by prior use (**R. at 8 – 9; R. at 10**). Therefore, she dismissed Appellant, Kimber Fowler’s civil trespass and civil contempt claims against Mr. Claudius Eugene Fowler (**R. at 10**).

On March 1, 2010 the Appellants, Kenneth Dippel and Kimber Fowler jointly filed a timely appeal to this Honorable Court (**R. at 1**), and on that very same day a Notice of Appeal was also served and filed at the Court of Common Pleas in Horry County which was the lower Court who previously had original jurisdiction over this case (**R. at 3**). This Honorable Court now has exclusive

jurisdiction over the Appellants' appeal pursuant to **S.C. Code Ann. § 14-8-200** and **S.C. Code Ann. § 14-11-85**.

FACTS

On September 29, 1981 Respondent, Claudius E Fowler acquired land by civil suit (Tract D of PF Fowler Estate) **(R. at 173 – 174)**. The 1981 plat did not show any kind of soiled driveway or road between tract C and D. No easement is depicted on this Plat and no easement is noted in the deed or release papers. No private or public street named Dolly Lane is noted on this Plat **(R. at 175)**.

On August 6, 1999 Respondent, Claudius E. Fowler surveyed his property. The Inman Survey Plat was recorded at the Horry County Register of Deeds. **The Inman Survey Plat did not depict “Dolly Lane” running through any property (R. at 176)**. G & B Lane **(R. at 196)** which is a public road bordering and touching the far southern boundaries of Respondent, Claudius E. Fowler's property was not properly depicted on the Inman Survey Plat. Respondent, Mr. Claudius E. Fowler reserved unto himself and his wife a lifetime right. The deed nor release papers did not contain any reference to a private easement or any private access easement known as “Dolly Lane”. Respondent, Claudius E. Fowler did not convey any property out **(R. at 177 – 179)**.

On June 28, 2000 Mr. Claudius E Fowler removed his lifetime right and conveyed the entire .99 acres of Lot 1 to Timothy E. Fowler (Claudius E Fowler's son) and to the Appellant, Kimber Fowler who at that time was married to Claudius E. Fowler's son. **Deed Book 2278, Page 0358 (R. at 180 – 185) and Plat Book 163 at Page 228 (R. at 176)**. The deed nor release documents did not contain any reference to a private or public access easement known as

"Dolly Lane". **The Inman Survey Plat (R. at 176) did not depict a private or public street named "Dolly Lane" running through any property.**

Respondent, Claudius E. Fowler retained Lot #2 and the remainder of the PF Fowler Estate.

On April 21, 2005 the Appellant, Kimber Fowler was granted a divorce from Claudius E Fowler's son, Timothy Fowler. As a result of the divorce Timothy Fowler conveyed the entire .99 acres of Lot 1 and the home to Appellant, Kimber Fowler. **Deed Book 2897 at Page 463 (R. at 186 – 188), Plat Book 163 at Page 228 (R. at 176). No public or private access easement known as Dolly Lane is noted in the deed or release papers.**

On May 16, 2006 Respondent, Claudius E Fowler re-surveyed the remainder what was previously known as Tract D of the PF Fowler Estate. Respondent, Claudius E. Fowler divided his property into three tracts of land (Tract A, Tract B, and the Remainder of the PF Fowler Estate). The Plat herein known as the Affiliated Surveyor's Plat depicted a 50 foot private easement and a private shared driveway running through Tract A and Tract B of Respondent, Claudius E. Fowler's property which culminated into a cul-de-sac **(R. at 190)**. The public road G & B lane touching the southern boundaries of Respondent, Claudius E. Fowler's property **(R. at 196)** and Respondent's interconnecting driveway linking his property up to his driveway **(R. at 195 – 196)** and G & B Lane were not properly depicted.

The Plat depicted "Dolly Lane" running through the Appellant, Kimber Fowler's property **(R. at 190)**. According to the Affiliated Surveyors' Plat, Dolly Lane ended at the western boundary line of Appellants' property. Dolly Lane

according to this Plat did not run through any of Mr. Claudius E Fowler's property. **This marked the first time that Dolly Lane was officially recognized and approved by the Horry County Planning Department for recording plat purposes concerning the PF Fowler Estate.** Respondent, Claudius E. Fowler did not at the time own the property in which "Dolly Lane" was depicted on the Affiliated Surveyor's Plat. Respondent, Claudius E. Fowler did not get the signature of the legal owner of the property (Kimber Fowler, Appellant) when "Dolly Lane" was drawn up across Appellant, Kimber Fowler's property. Respondent, Claudius E. did not convey any property out.

On March 21, 2007 Appellant, Kimber Fowler brought an action for trespass and damage to personal property to the Court of Common Pleas in Horry County against Respondent, Claudius E. Fowler. On April 24, 2007 the case was transferred to the Master-In-Equity. On August 15, 2007 Judge J. Stanton Cross Jr., the Master-In-Equity ruled Mr. Claudius Eugene Fowler had an individual private dedicated easement. On August 20, 2007 the Appellant, Kimber Fowler appealed to the SC Court of Appeals.

On February 23, 2009 this Court in a unanimous unpublished opinion reversed Judge Stanton J. Cross's decision (**R. at 223 – 225**). This Court found that Respondent, Claudius Eugene Fowler did not have an easement by dedication. This Court also found that he ultimately only conveyed property to Appellant, Kimber Fowler (the grantee or buyer). This Court held an easement by dedication or implication would only benefit the buyer. Mr. Claudius E.

Fowler did not file a timely appeal. A remitter was subsequently issued by the SC Court of Appeals.

On April 9, 2009 the Horry County Engineer David Helms sent a letter out to Appellant, Kenneth Dippel. The letter notes that Horry County does not maintain "Dolly Lane" **(R. at 191)**.

On May 26, 2009 a hearing was conducted by the new Master in Equity, Judge Cynthia Graham Howe. The Master in Equity at this hearing repeatedly told all parties there was no easement **(R at 145, Lines 17 -22); (R. at 153, Lines 9 – 13); (R. at 161, Lines 16 -17)**. Judge Cynthia Graham Howe subsequently issued an order as follows:

"IT FURTHER IS ORDERED that Plaintiff be granted an injunction, enjoining Defendant, his successors, and heirs, from trespassing on Plaintiff's property, more specifically shown on Exhibit "A" attached to this "Order", including a twenty-five foot soil driveway known as Dolly Lane across the north side of Plaintiff's property". (R. at 229 – 230).

Respondent, Claudius Eugene Fowler did not appeal the injunction order. The property of Appellant, Kimber Fowler was subsequently resurveyed by Crescent Moon Surveyors as a result of the Master in Equity Ruling. The Plat herein known as the Crescent Moon Survey Plat depicts the removal of a private access easement known as "Dolly Lane" pursuant to this Court's order **(R. at 192)**. The Crescent Moon Survey Plat was submitted by Appellants to the Horry County Planning Department for approval for recording.

On June 16, 2009 the Horry County Planning Department denied the approval of the Crescent Moon Survey Plat. The Horry County Planning Department held in part Appellant, Kimber Fowler had to get the signature of Claudius E. Fowler to remove "Dolly Lane" off her property and also held in part she had to continually provide an **alternative access** to all of Claudius E. Fowler's land (R. at 193). **There is nothing in this decision that specifically stated that "Dolly Lane" had to stay open for safety reasons.**

On July 30, 2009 the Appellants appeared before the Planning Commission. The Planning Commission apparently voted to deny Appellants' appeal. The Planning Commission never mailed out any written decision to Appellants nor did Appellants ever receive any written decision. A timely appeal to the Circuit Court followed challenging the actions of the Horry County Planning Department and the Horry County Planning Commission.

Respondent, Claudius Eugene Fowler subsequently continued his unlawful trespassing on Appellant, Kimber Fowler's property. On August 25, 2009 Appellants filed a lawsuit against Respondent, Claudius Eugene Fowler for willful contempt of a court order and civil trespass (R. at 126 – 140).

On September 21, 2009 Respondent, Claudius Eugene Fowler submitted a reply. Respondent's reply to Appellant's complaint was littered with offensive language and also was loaded with unsubstantiated allegations against Appellant, Kenneth Dippel. Respondent, Claudius Eugene Fowler claimed in his response that the creation of "Dolly Lane" was legal. Respondent, Claudius Eugene Fowler

counter sued Appellant, Kenneth Dippel \$1500 for alleged up keep of "Dolly Lane" **(R. at 114 – 120)**.

On September 22, 2009 Appellant, Kimber Fowler conveyed a half interest in the property to Appellant, Kenneth Dippel with joint survivorship rights. The deed notes:

"Whereas, there is an easement shown on Plat Book 163 at Page 228; and

Whereas, the Court of Appeals and the Master in Equity have ruled the easement does not exist and is not legally held by the adjoining land owner Claudius Eugene Fowler as evidenced by the attached decisions; and

Whereas, the purpose of this deed is to show that the easement does not legally exist on the above cited plat and to convey a half interest in the property to Kenneth Dippel". (R. at 219 – 230).

On October 1, 2009 Appellants, Kenneth Dippel and Kimber Fowler filed a response to Respondent, Claudius Eugene Fowler's counter claim, a motion to strike pursuant to Rule 12 (f), SCRCP, and a motion to dismiss Respondent Claudius Eugene Fowler's counter claim **(R. at 107 – 113)**. Appellant, Kenneth Dippel denied the allegations in Respondent, Claudius Eugene Fowler's reply to the Appellant's complaint. Appellants in response and as a counter claim to Respondent, Claudius Eugene Fowler's contention that his plats were legal, and the creation of "Dolly Lane" was legal, asserted a claim of fraud and negligent misrepresentation. Appellants asserted that the creation of the Affiliated Surveyor's Plat by Respondent, Claudius Eugene Fowler constituted fraud or negligent misrepresentation **(R. at 111)**.

On December 9, 2009 the entire case was referred to the Master in Equity by the Honorable Judge Larry B. Hyman **(R. at 106)**.

On February 25, 2010 the Honorable Cynthia G. Howe, Master in Equity issued an order against Appellants, Kenneth Dippel and Kimber Fowler (**R. at 3 – 11**). The order was subsequently filed on February 26, 2010. This timely appeal by Appellants followed.

ARGUMENTS

KENNETH DIPPEL IS A REAL PARTY IN INTEREST

On February 23, 2010 a final hearing was conducted on Appellants' case against Respondent, Claudius E. Fowler by Judge Cynthia G. Howe, Master in Equity of Horry County. The Master from the very start of the hearing went out on a rampage by insisting that Appellant, Kenneth Dippel did not have standing to intentionally insure that Appellant, Kenneth Dippel would never have any opportunity to defend his **real property**. Judge Cynthia G. Howe, Master in Equity later erroneously concluded in her order that Mr. Kenneth Dippel, Appellant lacked standing because he was not a real party in interest (**R. at 6 – 7**).

To have standing, one must have a personal stake in the subject matter of the lawsuit. *Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. South Carolina Dep't of Natural Res.*, 345 S.C. 594, 550 S.E. 2d 287 (2001). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. *Charleston County Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 181, 519 S.E. 2d 567, 571 (1999). With respect to this case at bar, Mr. Kenneth Dippel, Appellant was a real party in interest and was a necessary party.

Appellant, Kenneth Dippel clearly had a real, material, or substantial interest in the subject matter of the action that extended well beyond claims of civil contempt and trespass against Mr. Claudius E. Fowler. The Master gave Mr. Claudius E. Fowler, Respondent an implicit easement by prior use across joint real property owner Kenneth Dippel's property as a defense and as a reward in her order even when the Respondent never claimed as a defense an easement by prior use, and even when the Respondent never appealed this Honorable Court's well reasoned ruling and the Master's injunction order.

The Respondent, Claudius E. Fowler in fact stated he knew that he did not have an easement (**R. at 25, Lines 18 – 24; R. at 26, Lines 11 – 18; R. at 56, Lines 13 – 18**). Appellant, Kenneth Dippel now as a result of this ruling, without ever having his day in Court to defend his property, has to be unduly indefinitely burdened with an easement by prior use across his real property. The Master by doing what she did at the February 23, 2010 hearing blatantly violated Mr. Dippel's fundamental constitutional due process rights as a real property owner. **See S.C. Const. art. I, § 3 and S.C. Const. art. I, § 22.**

Appellant, Mr. Kenneth Dippel and Appellant, Kimber Fowler are joint property owners of real property where there has continually been an on going dispute regarding Respondent, Claudius E. Fowler's continued illegal use of a private driveway herein known as "Dolly Lane" across Appellants' property. The recorded deed notes that Appellant, Kenneth Dippel has a half interest with survivorship rights. The deed makes reference to this Honorable Court's decision and also to the Master in Equity injunction ruling. Also, the deed notes there is no easement for Mr. Claudius E. Fowler. This deed was submitted to the lower

Court by Appellants and was made part of the lower Court record long before the February 23, 2010 final hearing conducted by the Master (**R. at 219 – 230**).

Furthermore, this Honorable Court should note that the mobile home of Kenneth Dippel (**R. at 189**) the Master refers to in her order is **permanently fixed to the land** because the axles and wheels to the mobile home have been permanently removed. The mobile home cannot ever be moved. Mr. Dippel's mobile home is situated approximately six feet off the private driveway so called "Dolly Lane".

The private driveway known as "Dolly Lane" which is jointly privately owned by Appellants is the only way to ingress and egress to Mr. Dippel's mobile home and to Appellants' real property to get to the sole public road known as "Oakdale Road". Mr. Dippel without the use of the driveway and without being able to properly maintain it is "land locked" in. Respondent, Claudius E. Fowler continues to intentionally interfere on Kenneth Dippel's peaceful use of this driveway by continually harassing him and by trying to continually extort money (\$1500) for the alleged up keep of the Appellant's own driveway by Respondent. Mr. Fowler at the hearing even told the Master he intended to sue Mr. Dippel for \$1500 in magistrate court. The Master in turn encouraged Respondent, Claudius Eugene Fowler to do so (**R. at 43, Lines 1- 6**). Yet, in an earlier hearing between the parties conducted on May 26, 2009 she told the Respondent, Claudius Eugene Fowler the following: *"I am not saying that you threatened to charge tolls. Mr. Dippel says you have. I don't know you have. You can't do that"*. (**R. at 161, Lines 8 – 10**).

Furthermore, the Master in a previous hearing conducted on May 26, 2009 between the same parties acknowledged that Mr. Dippel, Appellant had standing to bring a separate action against Respondent, Mr. Claudius E. Fowler as a real party in interest based solely on the mobile home. She noted the following: *"Well there's nothing that says Mr. Dippel, that you can't bring your own action". "There's nothing that precludes you from bringing your own action". (R. at 152, Lines 17 – 20).* The Master then told Mr. Dippel at the May 26, 2009 hearing that "there was no easement". **(R. at 153, Lines 6 – 13).** The Master then in the February 23, 2010 hearing does a "miraculous 180" and flip flops by telling Appellant, Kenneth Dippel he does not have standing, and then does the unthinkable by unjustly rewarding Mr. Fowler an easement by prior use without ever giving Mr. Dippel a chance to defend his real property as a joint real property owner with survivorship rights.

Appellants respectfully must state to this Honorable Court the Master erred in her ruling. Appellants must respectfully state the order issued by Judge Cynthia G. Howe, Master in Equity holding that Kenneth Dippel, Appellant did not have standing, and the dismissal of Kenneth Dippel's claims against Claudius Eugene Fowler is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law.

THE MASTER VIOLATED THE FINALITY DOCTRINE AND RES JUDICATA

The Master rescinded the injunction order in 2007-CP-1782 *nunc pro tunc* and granted Mr. Fowler an easement by implied pre-existing use across Appellant's property. Appellants must respectfully state to this Honorable Court

that the Master erred by issuing a *nunc pro tunc* order. Appellants must respectfully state to this Honorable Court that the Master's *Nunc pro tunc* order violated the finality doctrine and the doctrine of res judicata by rescinding the injunction order. The South Carolina Courts have embraced a strong policy against setting aside a final judgment. See *Bowman v. Bowman*, 357 S.C. 146, 152, 591, 657 S.E. 2d 654 (Ct. App. 2004) (holding South Carolina's strong policy towards finality of judgments trumps setting aside a final judgment), *Town of Mt. Pleasant v. Jones*, 335 S.C. 295, 298-99, 516 S.E. 2d 468, 470 (Ct. App. 1999) (finding an unappealed ruling becomes the law of the case, and the appellant court must assume the ruling was correct); *Dreher v. Dreher*, 370 S.C. 75, 634 S.E. 2d 646 (2006) (an unappealed ruling becomes the law of the case).

Res judicata known as claim preclusion bars parties and their parties in privy from bringing subsequent actions or subsequent claims on either the adjudicated issues or any issues that might have been raised in the former suit. *Plott v. Justin Ent.*, 374 S.C. 504, 511, 649 S.E. 2d 92, 95 (Ct. App. 2007); *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E. 2d 106, 109 (1999). "To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *Id.*

With respect to this case at bar before this Honorable Court, this case involves essentially the same parties (Appellant, Kimber Fowler and Respondent, Claudius Eugene Fowler). The same subject matter jurisdiction is essentially the same as before which is whether Mr. Claudius E. Fowler has a legally enforceable easement across Appellant, Kimber Fowler's property. The Courts previously

adjudicated Respondent, Claudius Eugene Fowler's easement claims across Appellant, Kimber Fowler's property.

This Court in a well reasoned and written decision determined that Mr. Claudius E. Fowler did not have an easement by dedication across Appellant, Kimber Fowler's property. This Honorable Court relying upon *Inlet Harbour v. S.C. Dep't of Parks Recreation & Tourism*. 377 S.C. 86, 92, 659 S.E. 2d 151, 154 (2008) and *Murrells Inlet Corp. v. Ward*. 378 S.C. 225, 233, 662 S.E. 2d 452, 455-56 (Ct. App. 2008), held that Mr. Claudius E. Fowler as a seller (a grantor) could not be benefited by an easement by dedication, and also noted an easement would only benefit a buyer (grantee). This Honorable Court also noted that the other issues raised by the parties were not dispositive. **(R. at 223 – 225).**

The Master in Equity, the Honorable Cynthia G. Howe subsequently conducted a hearing on May 26, 2009. The Master repeatedly told Appellant, Kimber Fowler there was no easement. The Master also told the Respondent, Claudius E. Fowler that he did not have an easement across Appellant, Kimber Fowler's property. The Master also told Mr. Claudius E. Fowler that he had no easement and stated that the S.C. Court of Appeals decision was the "*law of the case*". **(R. at 161, Lines 16 – 20).** Respondent, Claudius E. Fowler acknowledged this. **(R. at 161, Line 24).** The Master subsequently in an order dated May 26, 2009 issued an injunction order which specifically prohibited Respondent, Claudius E. Fowler, his heirs, and successors from trespassing on Appellant, Kimber Fowler's property including the private soiled driveway known as "Dolly Lane". **(R. at 229 – 230).** Mr. Fowler did not appeal the decision.

Res judicata prohibited the Master re-adjudicating any claims of an easement across Appellant, Kimber Fowler's property even if Respondent, Claudius E. Fowler did not raise an easement by implied pre-existing use in the former suit. Res judicata bars issues that might have been raised in the former suit. Further, the fact that the parties were not represented by Attorneys in the former suit does not preclude barring res judicata. See *Laughon v. O'Braitis*, 360 S.C. 520, 527, 602 S.E. 2d 108, 112 (Ct. App. 2004) ("It is a fundamental principle of jurisprudence that material facts or questions which were directly in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form that the issue may take in the subsequent action").

Wherefore, based upon consideration of the foregoing, Appellants respectfully must state to this Honorable Court that the rescinding of the Masters' Injunction order *nunc pro tunc* is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law.

AN EASEMENT BY IMPLIED PRE-EXISTING USE IS ONLY AVAILABLE ONLY TO A SUBSEQUENT GRANTEE OR BUYER OF A LOT

The Master relied on *Boyd v. Bellsouth Telephone Telegraph Company, Inc.*, 369 S.C. 410, 633 S.E. 2d 136 (2006) as a basis to conclude that Respondent, Claudius Eugene Fowler held an implied easement by pre-existing use. The *Boyd* case does not stand for the proposition that a grantor automatically has an implied easement by pre-existing use nor does the ruling in *Boyd* stand for the

proposition that an *original grantor* automatically has rights to continued use of an easement by implied pre-existing use when conveying property to a *grantee* (a buyer of a lot).

The ruling in *Boyd* was a very narrow ruling in which in that case Carolyn Boyd who was a subsequent grantee claimed to have an easement by pre-existing use over an *original grantor* Bell South's pre-existing driveway providing access to the rear of Carolyn Boyd's antique store. Prior to the conveyance to Carolyn Boyd the driveway was previously used by Bell South a *common grantor* to access the rear doors of the building. Bell South (*the original grantor or seller*) conveyed the front lot to the City of Denmark (*a buyer or grantee*). The City of Denmark continued to use the driveway belonging to Bell South to access the rear of the building. Three years later the City of Denmark (*subsequent grantor or seller*) sold the lot and building to Boyd's husband (*a subsequent grantee*) who in turn transferred it to Carolyn Boyd (*the final grantee*) to use as a retail store.

Following this purchase, Bell South (the original grantor or seller) gave Boyd (**the final grantee or buyer**) access to their driveway by allowing her **to have a lock and key** to the gate located at the street fronting on Bell South's property. Boyd used this driveway to accept deliveries from tractor-trailers carrying large furniture. **The driveway used by Boyd provided the only means of access to the rear door of Carolyn Boyd's antique furniture store for unloading furniture and was used as an access to the rear doors for a period of at least fifty years.** See *Boyd v. BellSouth Tel. Telegraph Co.* 359 S.C. 209, 597 S.E. 2d 161 (Ct. App. 2004) in which the reversal

of summary judgment on Boyd's pre-existing easement claim was affirmed by our South Carolina Supreme Court in *Boyd v. Bellsouth Telephone Telegraph Company, Inc.*, 369 S.C. 410, 633 S.E. 2d 136 (2006).

This Court's ruling and our State's Supreme Court ruling in *Boyd* was predicated upon a presumption that an easement by implication or pre-existing use arises when an owner subdivides his land and has the land platted into lots and streets, and when an owner (*a grantor*) conveys subdivided lots and references the plat in the deed, the owner (*a grantor*) grants the lot owners (*subsequent grantee*) an easement over the streets appearing in the plat. See *Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 92, 659 S.E. 2d 151, 154 (2008) citing *Blue Ridge Realty Co.*, 247 S.C. at 118, 145 S.E. 2d at 924-25 (1965). If a grantor (a seller) has pre-existing use of a street or driveway and then later conveys out to a grantee (a grantee), the grantee may gain access to that street or driveway by implied pre-existing use. See *Boyd v. Bell South Tel. Tel. Co., Inc.*, 369 S.C. 410, 633 S.E. 2d 136 (2006) (extensively discussing implied easements by pre-existing use).

With respect to this instant case at bar before this Honorable Court, Respondent prepared a plat describing the way he intended to subdivide his property into three lots, two of which were to go to his children. He ultimately conveyed ownership of only one lot which was to the Appellant, Kimber Fowler. An easement by implication or prior use would only benefit a grantee or buyer. The presumption of implied pre-existing use is unavailable to Respondent, the grantor or seller. Thus, Respondent cannot possess an easement by implied pre-existing use across Appellants' land.

Furthermore, the Court should note that the private driveway known as "Dolly Lane" belongs exclusively to the Appellants. It has never been dedicated to the County for public use (**R. at 191**) and has never been legally created for Respondent, Claudius Eugene Fowler's use. The private driveway is the only means to access Appellant, Kenneth Dippel's mobile home and it is the only means for Appellants to ingress and egress to the nearest public road which is Oakdale Road. An easement by pre-existing use if indeed it legally exists belongs to the Appellants and not to Respondent, Claudius Eugene Fowler (the grantor or seller).

Based upon consideration of the foregoing, Appellants respectfully must state that the Master erred by holding that Respondent, Claudius Eugene Fowler has an implied easement by pre-existing use. Based upon consideration of the foregoing, Appellants respectfully must state the Master's ruling is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law.

THERE WAS NOT ANY LEGAL PRIOR USE IN EXISTENCE BY RESPONDENT, CLAUDIUS EUGENE FOWLER OF DOLLY LANE AT THE TIME RESPONDENT HELD TITLE TO THE ENTIRE PF FOWLER ESTATE

Boyd v. BellSouth Tel. Telegraph Co. 359 S.C. 209, 597 S.E. 2d 161 (Ct. App. 2004); affirmed in part 369 S.C. 410, 633 S.E. 2d 136 (2006) is factually distinguishable compared to Appellant's case before this Honorable Court. In *Boyd*, Bell South (the original *grantor* or seller) gave Carolyn Boyd (**the final grantee or seller**) access to their driveway by allowing her **to have a lock and key to the gate**. This Honorable Court should note that Respondent,

Claudius E. Fowler was never given **legal** implicit consent to continually use “Dolly Lane” prior to the conveyance nor subsequent to the conveyance.

Respondent, Claudius Eugene Fowler acquired the PF Fowler Estate on September 29, 1981 by civil suit. There is nothing in this deed or the plat noting any kind of road, street, or easement in existence. (R. at 173 – 174). No “Dolly Lane” is on this Plat (**R. at 175**). Respondent, Claudius Eugene Fowler on August 6, 1999 surveyed his property. **The Inman Survey Plat did not depict “Dolly Lane” running through any property.** (**R. at 176**). None of the deeds (**R. at 180 – 185; R. at 186 – 189; R. at 219 – 230**) refer to the Appellants’ property being subject to a 25 foot access easement nor do they state there is a pre-existing access easement known as “Dolly Lane” for Respondent, Claudius Eugene Fowler.

The Inman Survey Plat does depict a 25 foot easement running through Appellants’ property. However, the mere depiction of a 25 foot access easement on the Inman Survey Plat does not in this case automatically mean there is a **legal** easement implied by prior use for Respondent. The Common Law forbids a grantor creating a legal enforceable easement for a Grantor when both the dominant and servitude tracts of land are owned by the Grantor. *Hidalgo County Water Control and Imp. Dist No. 16 v. Hippchess*, 233 F. 2d 712 (C.A. 5. Tex 1956) (recognizing that for an easement to exist the dominant and servient estates must be held by different owners); *Windham v. Riddle*, 370 S.C. 415, 635 S.E. 2d 558 (Ct. App. 2006) (citing *Haselden v. Schein*, 167 S.C. 534, 539, 166 S.E. 634, 635 (1932)); affirmed *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E. 2d 578, 582-83 (2009).

With respect to this instant case at bar, Respondent, Claudius Eugene Fowler at the time of the creation of the Inman Survey Plat did not convey any property out. Both the dominant and servitude estates were lodged to Respondent, Claudius Eugene Fowler. Respondent because of this did not possess the legal authority as the owner of the entire PF Fowler Estate at that time to grant an easement over his own property. He also could not create an easement on his own land over one parcel in favor of an adjacent parcel.

It was only until May 16, 2006 when Respondent resurveyed his property did the so called "Dolly Lane" appear across Appellants' property (**R. at 190**). This was done long after Respondent conveyed his entire interests out to Lot 1 of the PF Fowler Estate to Appellant, Kimber Fowler and was done only after Appellant; Kimber Fowler obtained exclusive rights to the entire Lot 1 of the PF Fowler Estate through divorce of Respondent's son, Timothy E. Fowler. Respondent, Claudius Eugene Fowler at the time of creation of the Affiliated Surveyor's Plat did not possess sole legal ownership of Lot 1 of the PF Fowler Estate.

Respondent, Claudius Eugene Fowler without legal ownership of Lot 1 of the PF Fowler Estate at the time of creation of the Affiliated Surveyor's Plat had no legal authority to chalk up "Dolly Lane" across Appellants' property. Please see *McLeod v. Baptiste*, 315 S.C. 246, 247, 433 S.E. 2d 834, 835 (1993) ("grantor lacks standing to enforce a covenant against a remote grantee when the grantor no longer owns real property which would benefit from the enforcement of that restrictive covenant") and *Shaw v. Hardy*, 270 S.C. 298, 300, 241 S.E. 2d 906, 907 (1978). Respondent, Claudius E. Fowler essentially gave up all rights he may

have had in the property in question by conveyance to Appellant, Kimber Fowler on June 28, 2000.

The Master erred by relying upon the Affiliated Surveyor's Plat as a basis to award Respondent, Claudius E. Fowler an implied pre-existing use easement. A close review of the Affiliated Surveyor's Plat submitted to the Horry County Planning Department further indicates that Respondent, Claudius Eugene Fowler had no legal authority to draw up "Dolly Lane" solely across Appellants' property. Respondent, Claudius E. Fowler failed to obtain the legal signature of Appellant, Kimber Fowler on the Affiliated Surveyor's Plat as required by **Article 2, Section 4-9 (#4)** page 31 of the Horry County Land Development Regulations. **Article 2, Section 4-9 (#4)** page 31 of the Horry County Land Development Regulations, states that all effected property owners must sign the Plat (**R. at 206**). Appellant, Kimber Fowler in this case was certainly considered an effected property owner. There was no written signature obtained by Respondent before the recording of the Affiliated Surveyor's Plat. **Article 1, Section 10 (Violations and Penalties)** page 10 of the Horry County Regulations provides as follows:

"Any person, firm, corporation, owner, or agent of the owner of any land to be developed who violates any of the provisions of these regulations or submits an unapproved plat for recording shall be guilty of a misdemeanor. Nothing herein prevents Horry County from taking other lawful action as is necessary to prevent or remedy any violation". (R. at 205).

Respondent, Claudius Eugene Fowler did not submit any evidence at all to substantiate that he spent \$3000 building "Dolly Lane" to support any kind of claim of pre-existing easement by implied use nor was there any evidence to

substantiate any claim by Respondent, Claudius Eugene Fowler that Kenneth Dippel said he would pay \$1500 to Respondent, Claudius Eugene Fowler for alleged use or up keep of "Dolly Lane" when Appellant, Kenneth Dippel moved a mobile home on Appellants' property.

In fact, there is evidence to substantiate that Respondent was lying under oath about this claim. In a May 26, 2009 earlier hearing between the same parties the very same Master told Respondent that he could not charge Appellant, Kenneth Dippel for use of "Dolly Lane" (**R. at 161, Lines 8 – 10**). This very same Respondent at this hearing raised his hand and swore to God and stated "*I haven't*". "*Your Honor*". "*I raise my hand to God*". "*I've never told him that*". (**R. at 161, Lines 12 – 13**). The Respondent, Claudius Eugene Fowler then very cleverly to cater to the situation in the February 23, 2010 hearing did an about face by stating Appellant, Kenneth Dippel agreed to pay him \$1500 for use of "Dolly Lane" (**R. at 88, Lines 1 – 25; R. at 89, Lines 1 – 3**).

The Master arbitrarily took every word at face value of Respondent, Claudius E. Fowler even when the testimony he provided was misleading and was not creditable. For example, Respondent, Claudius Eugene Fowler claimed he now lived at "2167 Dolly Lane" and that his mailing address was "2167 Dolly Lane" (**Cross examination of Respondent, Claudius Eugene Fowler by Appellant, Kimber Fowler, R. at 95, Lines 8 – 15**). The proof of service by Appellants shows that in August 2009 Respondent, Claudius E. Fowler's mailing address was 2042 G & B Lane (**R. at 121 – 123**). The current tax records from the Horry County Tax office clearly show his current physical mailing address is "2042 G & B Lane" (**R. at 199 – 204**). The wife of Claudius Eugene Fowler,

Terry Fowler even testified that they both lived at "2042 G & B Lane" (**Cross examination of Terry Fowler wife of Claudius Eugene Fowler by Appellant, Kimber Fowler, R. at 70, Lines 1 – 9**).

The point Appellants are trying to make to this Honorable Court is the obvious. How could this Master even believe any claims of an easement by implied pre-existing use when this Respondent lied under oath about his \$1500 claim against Appellant, Kenneth Dippel and when Respondent, Claudius Eugene Fowler obviously lied about where he currently resided or what his current mailing address was?

This Honorable Court should note that this very same Master in Equity previously in a prior hearing told all the parties there was no easement (**R at 145, Lines 17 -22**); (**R. at 153, Lines 9 – 13**); (**R. at 161, Lines 16 -17**). The Master in Equity, Judge Cynthia G. Howe even told Respondent, Claudius E. Fowler she was bound by this Court's earlier decision and that there was nothing she could do about the decision (**R. at 159, Lines 16 – 17**). She noted that this was what we call is "the law of the case" and that Respondent, Claudius Eugene Fowler was going to have to live with the decision (**R. at 161, Lines 16 – 23**). If there was a legal enforceable easement by implied pre-existing use for Mr. Fowler why did this very same Master in an earlier hearing tell the parties there was no easement?

The order by the Master totally disregarded the legally recorded enforceable deed by Appellants which noted there was no easement for Mr. Claudius E. Fowler. There certainly was not a legally implied easement by prior use by Respondent prior to this conveyance when Kenneth Dippel, Appellant was

conveyed a half interest in the property with survivorship rights. That legally recorded deed noted there was no easement for Respondent, Claudius E. Fowler **(R. at 219 – 230)**.

Wherefore, based upon consideration of the foregoing, Appellants must respectfully state the Master erred by concluding Respondent, Claudius Eugene Fowler has an implied pre-existing use easement across their property. Wherefore, based upon consideration of the foregoing, Appellant must respectfully state the decision by the Master is arbitrary, capricious, an abuse of discretion, or is other wise not in accordance with the law.

THERE IS NO REASONABLE NECESSITY FOR AN IMPLIED PRE-EXISTING EASEMENT ACROSS APPELLANTS' PROPERTY

The Master in relying upon *Boyd v. Bellsouth Telephone Telegraph Company, Inc.*, 369 S.C. 410, 633 S.E. 2d 136 (2006) erred by concluding Mr. Claudius E. Fowler's use of "Dolly Lane" was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use. The Boyd case is factually distinguishable in that the rear entrance and loading docks were accessible by using Bell South's driveway and had been used to deliver large items to the basement of Boyd's antique store. The front entrance did not provide access to the basement for the delivery of large items. The use of the alternative driveway to Boyd's antique store was determined to be infeasible, impractical, and very costly.

The so called "Dolly Lane" with respect to this instant case at bar is not the only way into Respondent, Claudius Eugene Fowler's property which provides a safe, feasible, unimpeded, and inexpensive way to ingress and egress through

Respondent, Claudius Eugene Fowler's property (see **Cross examination of Terry Fowler wife of Claudius Eugene Fowler by Appellant, Kimber Fowler, R. at 64, Lines 11 – 24; see Court's statement, R. at 64, Lines 25 and R. at 65, Line 1; Cross examination of Respondent, Claudius Eugene Fowler, by Appellant, Kimber Fowler, R. at 98, Lines 1 - 12).**

Respondent, Claudius Eugene Fowler and the tenants living on his land are not land locked in (see **Court's statement, R. at 64, Lines 25 and R. at 65, Line 1; see also R. at 65, Lines 2 - 7).** Respondent, Claudius Eugene Fowler and his tenants already had in place an alternative safe feasible, unimpeded, and inexpensive way to ingress and egress utilizing his private shared driveway which connects to Respondent's driveway that hooks up to "G & B Lane". "G & B Lane" which is a gravel county maintained road hooks up to "Oakdale Road". The Air Photos plainly show this (**R. at 194, R. at 195, and R. at 196**). The Master ignored the Air Photos submitted by Appellants when she determined the Respondent; Claudius Eugene Fowler's property appeared to be land locked in.

The Master in making the determination that Respondent, Claudius Eugene Fowler's property appeared to be land locked relied upon the Affiliated Surveyor's Plat which depicts three tracts of land belonging to Respondent, Claudius Eugene Fowler (**R. at 190**). This Honorable Court should note that this plat should have never been approved when it was submitted to Horry County Planning and this Honorable Court should note the Affiliated Surveyor's Plat is either a fraud or at the very least is a blatant misrepresentation of Respondent, Claudius Eugene Fowler's property. Appellants at the lower Court prior to the Master's decision in reply to Respondent's answer to their Complaint

submitted this as a counter claim (**R. at 111, Paragraph #2 and #3**). The Horry County Planning Department relied upon this plat when it approved Respondent, Claudius Eugene Fowler's Affiliated Surveyor's Plat.

The Plat shows a fifty foot access easement with a private shared driveway culminating into a cul-de-sac. A cul-de-sac is a road with one way in and one way out. The cul-de-sac depiction on Respondent's Affiliated Surveyor's Plat is greater than 150 feet. The problem with Respondent's plat is the obvious fact there never has been a **paved cul-de-sac and to date there is not a paved cul-de sac**. The Air Photo of Respondent's driveway plainly shows there never was a **paved cul-de-sac**. (**R. at 194, R. at 195, and R. at 196**).

Further, the Affiliated Surveyor's Plat did not properly depict the obvious fact that the driveway going through Tract A and Tract B of Respondent's property continues on into the driveway of the remainder of Respondent's property. Respondent's driveway at "2042 G & B Lane" links up to "G & B" lane which is a county maintained gravel road. "G & B" Lane in turn hooks up to "Oakdale Road" which is a state maintained road. (**R. at 194, R. at 195, and R. at 196**).

It is obvious as to why Respondent at the time of submitting the Affiliated Surveyor's Plat depicted a 50 foot private easement with a shared driveway culminating into a cul-de-sac. **Article 4, Section 2.6(f) (Cul-de-sacs)**, page 64 of the Horry County Land Development regulations provided: "*All permanent public or private dead-end streets longer than 150ft shall terminate in a **paved turnaround** with a minimum radius of 40 feet*" (**R. at 211**). **Article 4, Section 2.6(Q) (Shared driveways)** page 71, in part provided: "*Shared*

private driveways 150ft or greater in length are required to show a cul-de-sac on at the terminus of the easement” (R. at 209).

Respondent, Claudius Eugene Fowler without depicting a cul-de-sac on his Affiliated Plat would have never been able to get the Plat approved by the Horry County Planning Office. Respondent, Claudius Eugene Fowler would not be able to continually have an alternative access through Appellants’ property without the cul-de-sac on the Affiliated Plat (**R. at 190**) and without the proper depiction of the private shared driveways linking up to his driveway at “2042 G & B Lane” which connects to “G & B Lane” a county maintained gravel road.

Respondent, Claudius Eugene Fowler intentionally had the cul-de-sac sketched up on the Plat to make it appear the three tracts of land he owned were land locked parcels. Respondent, Claudius Eugene Fowler intentionally sketched up the cul-de-sac so that he could have an alternative route traveling through Appellants’ property. This is even more apparent by the obvious fact when “Dolly Lane” was platted across Appellants’ property and prior to the recording of Respondent’s Affiliated Surveyor’s Plat (**R. at 190**) he did not obtain the signature of Appellant, Kimber Fowler which was required pursuant to **Article 2, Section 4-9 (#4)** page 31 of the Horry County Land Development Regulations (**R. at 206**).

Respondent, Claudius Eugene Fowler by signing the certificate of dedication claimed that he was the owner of what was depicted on the Affiliated Plat. The problem is Respondent; Claudius Eugene Fowler did not own the driveway running through Appellants’ property when he chalked up “Dolly Lane” running through Appellants’ property. He had no legal right to have “Dolly Lane”

platted across Appellants' property. The so called Dolly Lane has never been a county or public road and has never been maintained by the County (**R. at 191**).

Article 1, Section 10 (Violations and Penalties) page 10 of the Horry County Regulations provides it is a misdemeanor for a person to violate any of the provisions in the Horry County Lane Development Regulations and also provides that Horry County may take lawful action to remedy any violation of the Horry County Land Development Regulations (**R. at 205**).

Further evidence that Respondent, Claudius Eugene Fowler and his tenants living along his land are not land locked in is clearly apparent by the fact that the Affiliated Surveyor's Plat in the note section does not contain any reference to Respondent's three tracts of land being land locked in pursuant to **Article 2, Section 4-15, page 33** of the Horry County Land Development Regulations. **Article 2, Section 4-15, page 33** of the Horry County Land Development Regulation in effect at the time the Affiliated Plat was prepared provided:

4-15. Easements to existing landlocked parcels

Right-of-ingress/egress easements may be created, upon Planning Department approval, to allow for legal access to existing landlocked or topographically constrained parcels of record provided that:

1. The easement shall provide access to only one property with a single land use. Upon subdivision of the property or establishment of more than one land use the easement shall be upgraded to the applicable public or private roadway or shared private driveway as show in Article 4, Section 2-6(Q);
2. The plat showing such easement shall meet the platting standards of this Article 3 and includes the following statement:

"The easement show hereon is for the purposes of providing access to an existing (landlocked or topographically constrained) parcel as authorized by the Planning Commission. The owner of said easement acknowledges that if future subdivision

or improvement of the property occurs the easement shall be upgraded to minimum standards required by the Horry County Land Development Regulations”.

Footnote: A twenty (20) foot wide access easement may be required to construct a residence on the parcel. **(R. at 207 and R. at 208).**

(Ord. 08-84, § 4-15, 2-17-04)

The Master’s finding that there are residents living along the so called “Dolly Lane” are clearly erroneous. This was used by the Master as a basis in giving Respondent, Claudius Eugene Fowler an implied pre-existing use easement across Appellants’ property. Review of the Affiliated Surveyor’s Plat shows that “Dolly Lane” does not run through any of Mr. Claudius Eugene Fowler’s property. “Dolly Lane” according to the Plat runs along the Northern boundaries of Appellants’ property and it ends on the far western boundary of the Appellants’ property. The Plat shows a private shared driveway running through Tract A and Tract B of Mr. Claudius E. Fowler’s property **(R. at 190).**

Article 4, Section 7-3(A), page 93 of the Horry County Land Development Regulations in effect the time the Affiliated Plat was prepared provided:

7-3 Uniform Naming System

The uniform naming system uses the following as guidelines for the naming of all streets and easements that meet the following:

A. A street is defined as any right-of-way or access where:

1. Three (3) or more residences or businesses are located along the street;
2. The street is a thoroughfare to another street; or
3. The street is publicly maintained

Note: Shared driveways, as defined in the Horry County Land Development Regulations, shall not be assigned an official street name. (R. at 213).

The Court should also refer to **Article III - Street Naming and Numbering, Section 6-49(a)** of the Horry County Ordinance (**R. at 217**).

The problem with the Master's factual finding is the fact that the Affiliated Surveyor's Plat (**R. at 190**) clearly shows that there is only one residential household living on "Dolly Lane". Those residences are the tenants of Appellant, Kenneth Dippel. The so called "Dolly Lane" has never met the definition of a street as required by **Article 4, Section 7-3(A)**, page 93 of the Horry County Land Development Regulations (**R. at 213**) and **Article III - Street Naming and Numbering, Section 6-49(a)** of the Horry County Ordinance (**R. at 217**). There never has been three residential houses living along it and the street has never been maintained by the County (**R. at 191**).

The Affiliated Plat shows that there are three residents living along Respondent, Claudius Eugene Fowler's private shared driveway (**R. at 190**). Two of these households are Respondent, Claudius Eugene Fowler's tenants. The other residential household is tenants of Mr. Joe Dale Fowler, brother of Respondent, Claudius Eugene Fowler.

Neither Mr. Joe Dale Fowler nor his tenants have held unity of title of the PF Fowler Estate. The individuals living in the other two residential mobile homes living along Respondent, Claudius Eugene Fowler's private shared driveway are tenants of Respondent, Claudius Eugene Fowler. These tenants have not held unity of title of the PF Fowler Estate. These tenants also are not real parties in interests because they do not own the land. The tenants living along the private shared driveway of Respondent, Claudius E. Fowler cannot hold an implied easement by pre-existing use.

The Master's finding that the Horry County Planning Commission determined that "Dolly Lane" must remain open for safety and because people live along it is also clearly erroneous. The Master cited to no evidence supporting this unsubstantiated finding. The Horry County Planning Commission simply voted to deny Appellant's appeal concerning the denial of approval by the Horry County Planning Department of Appellants' Crescent Moon Survey Plat. Appellants received no written decision from the Planning Commission.

There was no evidence or any Horry County Planning Commission determination that was ever submitted by Respondent, Claudius Eugene Fowler that proved that the Horry County Planning Commission determined that "Dolly Lane" must remain open for safety and because people live along it. The Horry County Planning Department in their decision only held that Appellant, Kimber Fowler needed to obtain the signature of Respondent, Claudius Eugene Fowler and also determined an alternative route needed to be provided to Respondent, Claudius Eugene Fowler's property (**R. at 193**). There is nothing in this decision specifically holding that "Dolly Lane" had to stay open for safety reasons.

Wherefore, based upon consideration of the foregoing, Appellants must respectfully state that the Master's decision is arbitrary, capricious, an abuse of discretion, or is other wise not in accordance with the law. See *Townsend v. Townsend*, 356 S.C. 70, 73, 587 S.E. 2d 118, 119 (Ct. App. 2003) ("An abuse of discretion occurs either when the court is controlled by some error of law or where the order, based upon findings of fact, lacks evidentiary support.).

THE MASTER'S ORDER VIOLATES THE STATUTE OF FRAUDS

The Master in determining that Respondent, Claudius Eugene Fowler holds an implied easement by pre-existing use violated the statute of frauds. S.C. Code Ann. § 32-3-10(4) and S.C. Code Ann. § 32-3-10(5) requires all real estate transactions to be in writing and requires a parties signature to be legally enforceable. *Cash v. Maddox*, 265 S.C. 480, 220 S.E. 2d 121 (1975).

There is nothing in writing prior to any conveyance of any property evidencing there was legal prior use of the so called "Dolly Lane" when Respondent, Claudius Eugene Fowler held title to the entire PF Fowler Estate. There is nothing in writing indicating that Respondent; Claudius Eugene Fowler indicated any intent to continue use of "Dolly Lane" after any conveyance to Appellant, Kimber Fowler.

There is nothing in writing indicating that there was an implied easement by pre-existing use for Mr. Claudius Eugene Fowler when Kenneth Dippel acquired joint ownership with survivorship rights. There is nothing in writing in this deed express or implicit indicating that Respondent, Claudius Eugene Fowler intended to continue use of "Dolly Lane". This deed in fact notes that there is no easement for Mr. Claudius E. Fowler **(R. at 219)**.

Wherefore, based upon consideration of the foregoing, Appellants must respectfully assert the Master's decision is arbitrary, capricious, an abuse of discretion or is otherwise not in accordance with the law.

THE MASTER'S RULING VIOLATES FUNDAMENTAL CONSTITUTIONAL PROPERTY RIGHTS OF APPELLANTS

The Constitution of this State (Art. 1, Sec. 13) provides *"private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property"*.

Our United States Supreme Court in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), held that the right to exclude is one of the most essential rights among the bundle of property rights. In *Nollan*, our Supreme Court noted that when the right to exclude is taken away from a property owner absent a showing of a substantial public benefit an unconstitutional taking of private property occurs.

The Constitution of this State (Article 1, Section 22) provides:

"No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review".

The Constitution of this State (Article 1, Section 3) provides:

"The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws".

The Master by holding that Respondent, Claudius Eugene Fowler has an implied easement by pre-existing use and by dismissing the trespassing charges against the Respondent, Claudius Eugene Fowler violated Appellant's constitutional rights to have peaceful enjoyment and full use of their property.

Prior the February 23, 2010 hearing there was no legally enforceable easement in place for Respondent, Claudius E. Fowler.

This very same Master in a May 26, 2009 hearing told the parties that Respondent, Claudius E. Fowler did not have an easement **(R at 145, Lines 17 - 22); (R. at 153, Lines 9 - 13); (R. at 161, Lines 16 -17)**. The Master by rescinding the earlier order **(R. at 229 - 230)** blatantly violated Appellant's Kimber Fowler's constitutional rights. The injunction order **(R. at 229 - 230)** which was not appealed by this Respondent was issued to put a stop to all the madness by Respondent, Claudius Eugene Fowler continually pilfering and trespassing on her land. As a result of this Master's latest ruling, Appellant, Kimber Fowler's constitutional right to have full peaceful use and enjoyment of her property has been forever unlawfully stripped away from her.

Respondent, Claudius Eugene Fowler at the hearing never claimed that he had an implied easement by pre-existing use and he did not formally claim as a defense to the civil contempt charges and trespassing charges an implied easement by pre-existing use in his written pleadings **(R. at 114 - 120)**. This Master arbitrarily took it upon herself to give this Respondent, Claudius Eugene Fowler an implied easement by pre-existing use as a means to combat the civil contempt and trespassing charges. Appellant, Kimber Fowler nor Appellant, Kenneth Dippel were never provided judicial notice of any implied easement by pre-existing use. The Appellants were not allowed or given an opportunity to present an adequate defense at the February 26, 2010 hearing in response to any implied easement by pre-existing use.

Finally, this Honorable Court should note that this case is a blatant tragedy and a miscarriage of justice. The Master in her latest order did not explain, because she could not explain, or she did not want to explain why “Dolly Lane” as depicted on Respondent’s Affiliated Plat was effectively removed of Respondent, Claudius E. Fowler’s property (**R. at 190**). If there was as this Master stated in her ruling a reasonable necessity based on safety reasons for an implied pre-existing use easement for Mr. Claudius E. Fowler why does not “Dolly Lane” extend all the way through Mr. Fowler’s property? If there was an implied easement by prior use or continued use by Mr. Claudius E. Fowler why then was the so called “Dolly Lane” removed off his property?

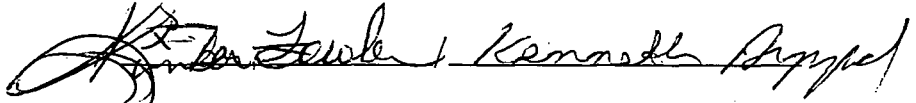
This holding by the Master is unconstitutional because it does not allow Appellants peaceful full use and enjoyment of their property and at the same time Respondent, Claudius E. Fowler is never burdened with a “Dolly Lane” running across his property. This order by doing this violates the equal protection clause of our State’s constitutional as well as the United States Constitution.

Wherefore, based upon consideration of the foregoing, Appellants respectfully must state the Master’s order is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law.

CONCLUSION

Appellants respectfully pray to this Honorable Court to vacate and reverse the Master's February 25, 2010 order.

Respectfully submitted,



Date: 4-21-10

Kimber Fowler / Kenneth Dippel
2145 Oakdale Road
Loris, SC 29569
Phone: (843) 716-0699

CERTIFICATE OF SERVICE (PROOF OF SERVICE)

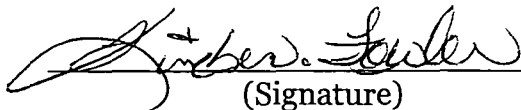
I **Kenneth Dippel** and **Kimber Fowler**, Appellants hereby certify that on 4-21-2010 Respondent was properly served a copy of the Appellants' final brief by mailing a copy by US first class, certified, and restricted delivery via the United States Post Office in an envelope with sufficient postage affixed to Respondent addressed as follows:

Claudius Eugene Fowler
2042 G & B Lane
Loris, SC 29569

4-21-2010
(Date)


(Signature)

(4-21-10)
(Date)


(Signature)

The State of South Carolina
In the Court of Appeals

Appeal From Horry County
Court of Common Pleas

Cynthia G. Howe, Master in Equity
Case No. 2009-CP-26-8278

Kenneth Dippel & Kimber Fowler

Appellants

V.

Claudus Eugene Fowler

Respondent

Amended Final Brief of Respondent

Claudus Eugene Fowler

Loris SC 29569
843-756-9585

Table of Contents

Statement of Fact.....	1
Conclusion.....	2
Certificate of Service.....	3

Statement of Fact

The fact that Dolly Lane existed before the Appellant acquired the .99 acre of land is documented. The Appellant's did not state to the court that there was four residents that reside on Dolly Lane and that this is their way of access to and from their residence.

The fact that the Appellant was told he would have to get the Respondent to sign off his signature to produce a deed without the 25ft easement should be proof that the easement is documented as required by law.

The Appellant Kenneth Dippel was not a joint owner of the real property at the time of the charges brought against the Respondent Claudus Eugene Fowler for trespassing and contempt of court therefore the Master in Equity, Cynthia G. Howe, did not err in her not allowing Kenneth Dippel to participate in the court proceedings.

The Master in Equity found that the Respondent used the access of Dolly Lane to visit the residents and to take his grandchild, Payton Fowler, home. (Payton Fowler is the daughter of Appellant, Kimber Fowler.) This Dolly

Lane is the access to and from Timothy Fowler's, (the Respondent's son, and the Appellant's ex-husband) home.

Conclusion

After considering the facts of the case the Master in Equity rescinded her order. I feel that the Master in Equity in Horry County knows the legal aspects of the case and that her ruling should be final judgment. The Appellants just want to keep on and on over the same nonsense. No one wants anything that belongs to them. I pray that this Court will uphold the ruling of the Master in Equity, Cynthia G. Howe.

I feel that this Dolly Lane should be left open for the residence, which is the purpose that it was created for.

I Claudus Eugene Fowler would like to be present when this case comes up for review.

Certificate of Service
(Proof of Service)

I Claudus Eugene Fowler hereby certify that on 5-25-10

Appellants Kimber Fowler and Kenneth Dippel was properly served a copy of the Amended Final Brief of Respondent by mailing a copy by US Mail via the United States Post Office in an envelope with sufficient postage to Appellant's address as follows:

Kenneth Dippel & Kimber Fowler
2145 Oak Dale Rd
Loris SC 29569

5-25-10
Date

Claudus Eugene Fowler
Signature

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia G. Howe, Master in Equity

Case No. 2009-CP-26-8278

Kenneth Dippel &
Kimber Fowler,

Appellants,

v.

Claudius Eugene
Fowler,

Respondent.

APPELLANTS' REPLY BRIEF

Kenneth Dippel
Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

TABLE OF CONTENTS

INTRODUCTION	1

ARGUMENTS

THE MASTER ERRED BY DISMISSING KENNETH DIPPEL FROM THE CASE.....	1

RES JUDICATA PREVENTED FURTHER LITIGATION ON ANY EASEMENT CLAIMS FOR RESPONDENT, CLAUDIUS EUGENE FOWLER	3

DOCRINE OF LACHES BARRED THE MASTER FROM RELITIGATING EASEMENT CLAIMS	8

RESPONDENT HAS A SAFE AND INEXPENSIVE ALTERNATIVE ROUTE TO ALL OF HIS PROPERTY	11

THERE IS NO EVIDENCE CLEARLY INDICATING AN INTENT RESPONDENT WAS TO HAVE CONTINUED USE OF "DOLLY LANE"	14

HORRY COUNTY PLANNING HAS NO LEGAL AUTHORITY TO OVERTURN RULINGS ISSUED BY THIS COURT AND INJUNCTION ORDERS ISSUED BY THE COURTS	14

THERE IS NO CUL-DE-SAC ON RESPONDENT'S PROPERTY	18

THERE ARE NOT FOUR RESIDENTS LIVING ALONG "DOLLY LANE"	18

CONCLUSION	21

PROOF OF SERVICE	22

TABLE OF AUTHORITIES

Cases

<i>Allegheny Gen. Hosp. v. NLRB</i> , 608 F. 2d. 965, 970 (3 rd Circuit 1979)	16
<i>Bowman v. Bowman</i> , 357 S.C. 146, 152, 591, 657 S.E. 2d 654 (Ct. App. 2004)	11
<i>Boyd v. Bellsouth Telephone Telegraph Company, Inc.</i> , 369 S.C. 410, 633 S.E. 2d 136 (2006)	11
<i>Campbell v. Carr</i> , 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004)	13 – 14, 18, 19
<i>Charleston Lumber Co. v. Miller Housing Corp.</i> , 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000)	9
<i>Clark v. S.C. Department of Public Safety</i> , 362 S.C. 377, 608 S.E. 2d. 573 (2005)	9
<i>Foggie v. General Electric</i> , 376 S.C. 384, 390 n. 2, 656 S.E.2d 395, 399 n.2 (Ct. App. 2008).....	7-8
<i>Hallums v. Hallums</i> , 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988)	8
<i>Hynes v. Spitz</i> , Opinion No. 4594 filed on July 21, 2009	11 - 13
<i>Inlet Harbour v. S.C. Dep't of Parks Recreation & Tourism</i> . 377 S.C. 86, 92, 659 S.E. 2d 151, 154 (2008).....	16
<i>Kelley v. Kelley</i> , 368 S.C. 602, 606, 629 S.E.2d 388, 391 (Ct. App. 2006)	8
<i>Kennedy v. Bedenbaugh</i> , 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002)	20-21
<i>Kimber Fowler v. Claudius Eugene Fowler</i> , Unpublished Opinion No. 2009-UP-096 (February 23, 2009)	15
<i>Knotts v. South Carolina Dep't of Natural Resources</i> , 348 S.C. 1, 558 S.E.2d 511 (2002)	17

<i>ML-Lee Acquisition Fund L.P. v. Deloitte & Touche,</i> 327 S.C. at 241, 489 S.E.2d at 472 (1997)	8, 9
<i>Murrells Inlet Corp. v. Ward,</i> 378 S.C. 225, 233, 662 S.E. 2d 452, 455-56 (Ct. App. 2008)	16
<i>Plott v. Justin Ent.,</i> 374 S.C. 504, 511, 649 S.E. 2d 92, 95 (Ct. App. 2007)	4
<i>Plum Creek Dev. Co. v. City of Conway,</i> 334 S.C. 30, 35 n.3, 512 S.E.2d 106, 109 n.3 (1999)	4
<i>Riedman Corp. v. Greenville Steel Structures, Inc.,</i> 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992)	3
<i>Richburg v. Baughman,</i> 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986)	5
<i>Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. South Carolina Dep't of Natural Res.,</i> 345 S.C. 594, 550 S.E. 2d 287 (2001)	1
<i>Spruill v. Richland County Sch. Dist. 2,</i> 363 S.C. 61, 65, 609 S.E.2d 524, 256 (2005)	7
<i>Steinke v. South Carolina Dep't of Labor, Licensing and Regulation,</i> 336 S.C. 373, 520 S.E.2d 142 (1999)	17
<i>Sub-Zero Freezer Co. v. R.J. Clarkson Co.,</i> 308 S.C. 188, 190-91, 417 S.E.2d 569, 571 (1992)	3
<i>Video Gaming Consultants. Inc.. v. South Carolina Dep't of Revenue,</i> 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000)	17
<i>Wyndham v. Lewis,</i> 292 S.C. 6, 8, 354 S.E.2d 578, 579 (Ct. App. 1987)	6

Rules

Rule 60(b), SCRCP	5, 7, 9

Horry County Land Development Regulations

Article 4, Section 7-3(A), page 93	19, 20

Other Authority

S.C. Const. art. I, § 3	2-3
S.C. Const. art. I, § 8	17

INTRODUCTION

Here comes now Appellants Kimber Fowler and Kenneth Dippel in reply to Respondent's brief. "AB" will designate Appellates' Final Brief, "RB" will designate Respondent's brief, and "R" will designate the Record on Appeal. For the reasons set forth in Appellants' final brief and for the reasons set forth herein, it is undisputed that the Master in Equity's latest ruling is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law. For the reasons set forth herein and based upon consideration of the Appellants' final brief, this Honorable Court should vacate and reverse all of the Master's latest ruling.

THE MASTER ERRED BY DISMISSING KENNETH DIPPEL FROM THE CASE

As stated in Appellants' brief (**AB. 9 – 12**) Appellant, Kenneth Dippel is a real party in interest. The Master's rationale for excluding Appellant, Kenneth Dippel from this case on the grounds he was not a party to the prior lawsuit is not in accordance with the law because **the Master never applied the proper legal test for determining standing**. The test is not whether a party was or was not a party to the prior lawsuit; it is **whether one has a personal stake in the subject mater of the lawsuit**. See *Pines Ass'n for the Prot. Of Wildlife, Inc. v. South Carolina Department of Natural Resources*, 345 S.C. 594, 550 S.E. 2d 287 (2001).

Appellant, Kenneth Dippel clearly had standing and that is made even clearer by the Master sub silentio awarding an easement for the Respondent,

Claudius Eugene Fowler across Appellant, Kenneth Dippel's property (**R. at 219 – R. 230**). Appellant, Kenneth Dippel now has to be continually unlawfully deprived of his constitutional right to exclude others from using his property and at the same time can never have his day in Court to defend his property (**R. at 219 – R. 230**) against any easement claims by Respondent.

The Master sub silentio rewarded the Respondent for his trespassing and for his blatant contempt of her court order by giving the Respondent an easement across Appellant, Kenneth Dippel's property while never ever allowing him an opportunity to have his day in Court to defend his property, and then at the same token exposes Appellant, Kenneth Dippel to be forever sued by Respondent in the future for \$1500 in another lawsuit for Respondent's alleged up keep of "Dolly Lane". Further, it is axiomatic to assume this case was just about trespassing, contempt of a Court order, and a counter claim for \$1500 against Appellant, Kenneth Dippel.

How could this Master **legally** go from these claims, use them as a basis to dismiss Appellant, Kenneth Dippel from the case, and later sub silentio in her ruling boot strap awarding Respondent, Claudius Eugene Fowler an easement across Appellant, Kenneth Dippel's property without ever giving Appellant, Kenneth Dippel any opportunity to defend against an easement across his property? The Master's ruling is a blatant miscarriage of justice and is not in accordance with **Article 1, Section 3 of the S.C. Constitution** (*"The privileges and immunities of citizens of this State and of*

the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws").

RES JUDICATA PREVENTED FURTHER LITIGATION ON ANY EASEMENT CLAIMS FOR RESPONDENT, CLAUDIUS EUGENE FOWLER

The re-litigating of any easement across Appellants' property in favor of the Respondent, Claudius Eugene Fowler was barred by the doctrine of res judicata. Res judicata bars subsequent actions by the same parties and parties in privity from bringing subsequent actions on either the adjudicated issues or any issues that might have been raised in the first suit when the claims arise out of the same transaction or occurrence that was the subject of a prior action. *Plott v. Justin Ent.*, 374 S.C. 504, 511, 649 S.E.2d 92, 95 (Ct. App. 2007); see also *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 190-91, 417 S.E.2d 569, 571 (1992).

Res judicata requires three elements are met: (1) a final, valid judgment on the merits; (2) identity of the parties; and (3) the second action involves matters properly included in the first suit. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992).

South Carolina courts use various tests in determining whether a claim should have been raised in a prior suit: (1) when there is identity of the subject matter in both cases; (2) when the cases involve the same primary right held by the plaintiff and one primary wrong committed by the

defendant; (3) when there is the same evidence in both cases; and, (4) when the claims arise out of the same transaction or occurrence. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 35 n.3, 512 S.E.2d 106, 109 n.3 (1999). Indeed, even a suit involving a different remedy does not alter the fact that the claims are identical in both actions. *Id.* at 35, 512 S.E.2d 109.

Each of the elements needed for the doctrine of res judicata are present in this case. First, Respondent, Claudius Eugene Fowler previously litigated his easement claim before this Court. This Court held that Respondent, Claudius Eugene Fowler did not have an easement across Appellant, Kimber Fowler's property. This Court noted that an easement would only benefit the buyer, not Respondent, Claudius Eugene Fowler the seller **(R. at 223 – 225)**.

Respondent, Claudius Eugene Fowler did not appeal this decision. Respondent, Claudius Eugene Fowler also got another bite at the apple to make his easement claims before the Master in Equity. The parties were told by the Master that there was no easement for Respondent, Claudius Eugene Fowler:

"Ms. Fowler: Yes, ma'am, but my main concern is also squashing any easement claims across my property". (R. at 145, Lines 14 -16).

"The Court: There is no easement across your property; The Court of Appeals has determined that". (R. at 145, Lines 17 -19).

"The Court: The Court of Appeals has said there is no easement". (R. at 160, Lines 16 -17).

The Master also told Appellant, Kimber Fowler this case was over with and by doing so assured her that her property was protected **(R. at 169, Lines 7 – 14)**. The Master in Equity following a hearing issued an injunction order barring Respondent, Claudius Eugene Fowler, his successors, and heirs from trespassing on Appellant, Kimber Fowler's property ever again including the soiled driveway known as "Dolly Lane" **(R. at 229 – R. 230)**. Respondent, Claudius Eugene Fowler did not appeal this decision nor did he ever file a timely **Rule 60(b), SCRPC** motion prior to the issuance of the latest Master in Equity Ruling **(R. at 5 – 10)**.

Second, the parties in the proceedings giving rise to this appeal are the same parties as was before in the previous cases with the exception of Appellant, Kenneth Dippel. Appellant, Kenneth Dippel is a legal property owner of the same property which was the same dispute of the same subject matter jurisdiction litigated before in this Court previously and before the Master in Equity. Therefore, he should be considered a party in privy. In the context of res judicata, the term privy does not refer to "relationships between persons or entities, but rather it deals with a person's relationship to the subject matter of the litigation." *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986). The term can also refer to a person so identified in interest with another that he represents

the same legal rights. *Wyndham v. Lewis*, 292 S.C. 6, 8, 354 S.E.2d 578, 579 (Ct. App. 1987).

Further, in looking at other pertinent considerations, this Court should find this suit is barred by res judicata. For example, the evidence is essentially the same in both this proceeding and the previous case that was before this Court and the Master in Equity, the events arise out of the same occurrence—Respondent, Claudius Eugene Fowler’s trespassing across Appellant, Kimber Fowler’s property, and Respondent Claudius Eugene Fowler’s claim that he has an easement across Appellant, Kimber Fowler’s property, and the remedy that Appellants seek is essentially the same (a permanent end to Respondent’s trespassing, and to put a permanent end to Respondent’s ingress and egress across their property).

The prior ruling by this Court (**R. at 223 – R. 225**) and the Master in Equity (**R. at 229 – R. 230**) resulted in the Respondent, Claudius Eugene Fowler’s easement claims which solely relied on the Inman Survey Plat and the Affiliated Survey Plat being void ab initio. As noted above, during the prior adjudication before this Honorable Court and the Master in Equity, Respondent, Claudius Eugene Fowler had more than an enough opportunity to fully and fairly litigate any easement claims. The fact that he is dissatisfied with those prior rulings does not give him a right to re-litigate his easement claim.

Respondent, Claudius Eugene Fowler had every opportunity to appeal this Honorable Court's decision and the Master in Equity ruling. Respondent, Claudius Eugene Fowler did not appeal these decisions. Respondent, Claudius Eugene Fowler also never filed a timely **Rule 60(b), SCRPC** motion asking that the unappealed final Master in Equity injunction order (**R. at 229 – R. 230**) be set aside. The ruling by this Court (**R. at 223 – R. 225**) and the Master's injunction order (**R. at 229 – R. 230**) is the law of the case now and this Honorable Court must presume those rulings are correct no matter whether they are right or wrong. The fact that the parties are not attorneys does not prevent this Court from applying res judicata in this case.

Respondent's subsequent claims and the Master's finding of an easement across Appellants' property are or were barred by the doctrine of res judicata because Respondent failed to file a timely appeal, and also because Respondent did not ever file a timely **Rule 60(b), SCRPC motion**. The Master in her latest ruling was precluded from raising any alternative easement claims across Appellants' property in an attempt to continually give Respondent, Claudius Eugene Fowler a "fourth bite of the apple." *See Spruill v. Richland County Sch. Dist. 2*, 363 S.C. 61, 65, 609 S.E.2d 524, 256 (2005) (barring litigant's attempt to raise issues that should have been raised in prior similar proceeding arising out of same factual occurrences). *See also Foggie v. General Electric*, 376 S.C. 384, 390 n. 2, 656 S.E.2d 395, 399 n. 2

(Ct. App. 2008) (piecemeal litigation is not favored by the court and should be avoided).

The Master in Equity in her latest ruling erred by giving this Respondent an infinite bite of the apple by holding Respondent, Claudius Eugene Fowler had an easement across Appellants' property by prior use and by using this as a basis to get Respondent, Claudius Eugene Fowler "off the hook" for trespass and willful contempt of a court order. *See ML-Lee Acquisition Fund L.P. v. Deloitte & Touche, 327 S.C. at 241, 489 S.E.2d at 472 (1997) (holding an unappealed ruling by a master in equity becomes the law of the case no matter whether it is right or wrong).*

DOCTRINE OF LACHES BARRED THE MASTER FROM RELITIGATING EASEMENT CLAIMS

Any claims of an easement by a different theory by Respondent are or were barred by the doctrine of laches. "Laches" is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988).* In order to establish laches as a defense, a defendant must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the defendant. *Kelley v. Kelley, 368 S.C. 602, 606, 629 S.E.2d 388, 391 (Ct. App. 2006).*

There is no factual dispute that Respondent; Claudius Eugene Fowler never appealed this Court's ruling and also the Master's injunction order. There is no factual dispute that Respondent; Claudius Eugene Fowler never filed a timely **Rule 60(b), SCRCP** motion requesting to set aside the injunction order. Appellants relied upon the final Master in Equity injunction order (**R. at 229 – R. 230**) which clearly voided any subsequent easement claims by Respondent, Claudius Eugene Fowler. The Master in Equity even told Appellant, Kimber Fowler that there was no easement across her property (**R. at 145, Lines 17 -19**).

That injunction order was a final decision and was the law of the case. *See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling is the law of the case and cannot later be challenged); *Charleston Lumber Co. v. Miller Housing Corp.*, 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (stating an unchallenged or unappealed ruling, right or wrong is the law of the case); see also *Clark v. S.C. Department of Public Safety*, 362 S.C. 377, 608 S.E. 2d. 573 (2005) (an unappealed ruling becomes the law of the case and precludes further consideration).

Respondent, Claudius Eugene Fowler was fully aware of the consequences of his actions by not appealing this Court's decision and the Master's injunction order. He was fully aware that if he was dissatisfied with the decisions he should have appealed. Respondent, Claudius Eugene Fowler

is fully aware of this Honorable Court's decision and the Master's injunction order. Yet, he wants this Honorable Court to ignore these final decisions by tossing these final Court orders in the waste basket. Respondent, Claudius Eugene Fowler could not provide any explanation in his brief (**RB at 1-2**) nor could he provide any answer in his brief (**RB 1-2**) as to why these rulings should not be considered the law of the case. Furthermore, no explanation was provided by the Master in Equity in her ruling (**R. at 5 – 10**). Where is the beef?

Appellants have been substantially prejudiced by this Respondent's deceit and willful failure to Appeal these final Court orders. Respondent, Claudius Eugene Fowler's circumvention of this Honorable Court's unappealed final order and the Master's final unappealed injunction order have prejudiced the Appellants. The latest Master in Equity order rescinding the injunction order has forced Appellant, Kimber Fowler to re-litigate yet again the very same issue (the same subject matter jurisdiction: claimed easement by Respondent, Claudius Eugene Fowler and trespassing) that was previously before this Honorable Court and which resulted in an injunction order (**R. at 229 – R. 230**).

There is no case law ever in American Jurisprudence that has allowed a Respondent such as this one to continually evade the finality of unappealed judgments and which has legally allowed a Respondent such as this one to infinitely litigate easement claims while at the same time willfully be in

contempt of those orders. As this Honorable Court is aware, there is a presumption of finality in our State's Courts. The purpose of this presumption is to finally put an end to continuous litigation. *See Bowman v. Bowman*, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct. App. 2004) ("South Carolina's strong policy towards finality of judgments trumps a party's ability to set aside a judgment").

Based upon consideration of the foregoing, Appellants must respectfully assert the Master erred by not correctly applying the doctrine of laches. Based upon consideration of the foregoing, Appellants must respectfully assert any subsequent alternative easement claims litigated on behalf of the Master for Respondent; Claudius Eugene Fowler were precluded by the "doctrine of laches".

RESPONDENT HAS A SAFE AND INEXPENSIVE ALTERNATIVE ROUTE TO ALL OF HIS PROPERTY

Appellants pointed out in their final brief that Respondent's property was not land locked parcels and also pointed out that Respondent; Claudius Eugene Fowler had a safe and inexpensive alternative route to all of his property ("**AB**" 24 – 31). Appellants respectfully would like to call this Honorable Court's attention to this Court's ruling in *Hynes v. Spitz*, Opinion No. 4594 filed on July 21, 2009 (citing Boyd v. Bellsouth Tel. Telegraph Co., 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006); and explaining a party must prove all six factors established by our State

Supreme Court to establish the right to an easement implied by prior use).

Hynes involved a claimed easement by prior use for the purposes of drainage. This Court held that Hynes failed to prove the location of the drainage system was necessary to his enjoyment of his property and no other reasonable locations were available. This Court also noted: *"Evidence in the record indicates Hynes could have discharged his gutter water onto his own property without unreasonable burden or expense"*.

With respect to this instant case at bar which is now before this Honorable Court for review, "Dolly Lane" is not the only safe and inexpensive means for Respondent, Claudius Eugene Fowler, his family members, and tenants to ingress and egress to and from all of Respondent's property. In fact, Respondent along with Respondent's wife (Terry Fowler) admitted they have another way into their property. Respondent's own words during the latest Master hearing prove this: *"I live on Dolly Lane, but for you and your brother fussing and raising sand, I go through my other land to get home"*.

(Cross examination of Respondent, Claudius Eugene Fowler by Appellate, Kimber Fowler: R. at 98, Lines 8 – 12).

Please see also Appellant, Kimber Fowler's Cross examination of Terry Fowler, wife of Respondent, Claudius Eugene Fowler: Q.
"Do not you have a way through G & B Lane to go up to your son's property without having to use Dolly Lane? Yes or No?" (R. at 64, Lines 16 -19).

Respondent's wife's answer was "Yes. I can go that way". (**R. at 64, Line 20**).

The Master in Equity then admitted she understood there was another way to get to Respondent's property (**R. at 64, Line 25 and R. at 65, Line 1: "I UNDERSTAND THERE IS ANOTHER WAY TO GET THERE"**) which clearly contradicts the Master's finding that Respondent's property appeared to be land locked parcels. The Air Photos (**R. at 194, R. at 195, and R. at 196**) also contradict the Master's finding that Respondent's property is land locked in without the use of "Dolly Lane".

Furthermore, this Court noted in its prior ruling that there were public roads bordering all of Respondent's property: *"Both the 1981 and 2006 plats show a county road either touching or defining a portion of the western boundary of Respondent's property* (**R. at 224, Paragraph #3**). Just like in **Hynes**, the Master's latest ruling finding Respondent has an easement by prior use fails because the evidence indicates clearly that there is another safe and inexpensive way for Respondent, Claudius Eugene Fowler to ingress and egress to Respondent's property without unreasonable burden or expense. Based upon consideration of the foregoing, this Court should find that the Master's latest factual finding that Respondent has an easement by prior use is erroneous. *See Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004) (this Honorable Court may reverse a factual finding

by the trial court when the appellant satisfies the finding is against the greater weight of the evidence).

THERE IS NO EVIDENCE CLEARLY INDICATING AN INTENT RESPONDENT WAS TO HAVE CONTINUED USE OF "DOLLY LANE"

The easement by prior use referenced in the latest Master in Equity Ruling (**R. at 5-10**) also fails because there is no evidence that substantiates Respondent; Claudius Eugene Fowler was to have continuous use of the so called "Dolly Lane" after severance of title. None of the deeds (**R. 173 – R. 175; R. 180 – R. 185; R. 186 – R. 188; R. at 219 – R. 230**) in this case indicate any intent on behalf of the parties that Respondent, Claudius Eugene Fowler was to have continued use. In fact, the legally recorded deed approved by Horry County in which Appellant, Kenneth Dippel was deeded a 50 percent stake in the property with survivorship rights, notes there is no easement for Respondent, Claudius Eugene Fowler (R. at 219). This Court even noted the following in its order: *"On June 28, 2000 they (referring to Respondent and his wife) released this right and conveyed their remaining interest in their land to their son and Appellant (Kimber Fowler). Although the title references the Inman Plat, neither the title nor release document indicates an easement" (R. at 224, Paragraph 1).*

Appellant, Kimber Fowler certainly did not intend on Respondent, Claudius Eugene Fowler to continually ingress and egress through her property. No trespassing signs were posted repeatedly which Respondent, Claudius Eugene Fowler willfully ignored. Respondent's

brother, Joe Dale Fowler even testified at trial under cross examination by Appellant, Kimber Fowler that he saw the no trespassing signs posted (**R. at 59, Lines 15 – 20**).

Finally, this Court should take note to the fact that Appellant, Kimber Fowler previously took a civil suit against Respondent, Claudius Eugene Fowler for damage to personal property and trespass. This Court ruled on appeal that Respondent, Claudius Eugene Fowler did not have a legally enforceable easement via dedication across Appellant, Kimber Fowler's property because any easement would benefit only **the buyer** and not the seller, the Respondent; Claudius Eugene Fowler (**R. at 225, Paragraph 2**). For the same well reasoned rationale set forth in this Court's previous ruling, Respondent, Claudius Eugene Fowler does not have a legally enforceable easement by prior use because an easement by implication would only benefit a buyer, and not the seller Respondent, Claudius Eugene Fowler. **Note: An easement by prior use is a type of easement that is predicated upon implication** (emphasis added).

"Where land is subdivided, platted into lots, and sold by reference to the plats, the buyers acquire a special property right in the roads shown on the plat. If the deed references the plat, the grantee acquires a private easement for the use of all streets on the map." See Kimber Fowler v. Claudius Eugene Fowler, Unpublished Opinion No. 2009-UP-096 (February 23, 2009) citing to Inlet Harbour v. S.C. Dep't of

Parks, Recreation & Tourism, 377 S.C. 86, 92, 659 S.E.2d 151, 154 (2008); see also *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 233, 662 S.E.2d 452, 455-56 (Ct. App. 2008).

HORRY COUNTY PLANNING HAS NO LEGAL AUTHORITY TO OVERTURN RULINGS ISSUED BY THIS COURT AND INJUNCTION ORDERS ISSUED BY THE COURTS

The Master in Equity in her latest ruling cites to a Horry Planning Commission determination as a basis to support Respondent, Claudius Eugene Fowler has an easement by prior use (**R. at 7, see #2: "*Since then the Horry County Planning Commission has determined that Dolly Lane must remain open*"**). There is no determination decision ever issued by the Planning Commission that says that. Where is that evidence? Furthermore, nowhere within the Master's latest ruling is there any case law or any law cited which clearly allows for a local government planning commission to overrule final Court orders. **See *Allegheny Gen. Hosp. v. NLRB*, 608 F. 2d 965, 970 (3rd Circuit 1979) (for an agency to act on its own view of the law and to reject final decisions rendered by our Courts is "to operating outside the law")**.

Respondent never provided any legal support that the Horry County Planning Department and Horry Planning Commission have been given discretionary authority to overrule final unappealed Court orders. Where is the case law to support this? The bottom line is the Horry County Planning Department or the Horry County Planning Commission has not and has never

been given Article 3 power to overrule this Court's final unappealed ruling or the unappealed Master injunction order.

In fact our State's Constitution explicitly prohibits this under **Article I, Section 8** (*"In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other"*).

Our Courts have held this very same practice relied upon in this latest Master in Equity Ruling by which a Horry County Planning Commission determination negates final unappealed Court orders with respect to this case violates the separation of powers doctrine. *See Knotts v. South Carolina Dep't of Natural Resources*, 348 S.C. 1, 558 S.E.2d 511 (2002); *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) (holding legislature lacked authority to retroactively overrule Court's interpretation of a statute); and *Video Gaming Consultants, Inc. v. South Carolina Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) (Administrative Law Judges (ALJs) come under the executive branch and must follow the laws as written; Allowing ALJs to rule on the constitutionality of a statute would violate the separation of powers doctrine).

This case should have been over a long time ago and it could have been if the Master in Equity would have properly upheld this Court's prior final ruling and her final unappealed injunction order. The rescinding of the

Master's previous injunction order nunc pro tunc relying upon a Horry County Planning determination as the ultimate fact finding body was not in accordance with the law and was erroneous.

THERE IS NO CUL-DE-SAC ON RESPONDENT'S PROPERTY

Appellants in their final brief (**AB at 26 – 27**) noted there was no cul-de-sac on Respondent, Claudius Eugene Fowler's property which was depicted on Respondent's Affiliated Surveyor's Plat (**R. at 190**). This is important because a cul-de-sac is defined as a one way road with one way in and one way out. The Air Photos (**R. at 194, R. at 195, and R. at 196**) clearly prove the "fictitious invisible" cul-de-sac sketched up by "the Wizard of Fraud" on the Affiliated Plat (**R. at 190**) has never existed and to date does not exist. The Air Photos also clearly prove there is an alternative safe and inexpensive means for Respondent, Claudius Eugene Fowler to ingress and egress to all of his property and further prove none of Respondent's property are land locked parcels. *See Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004) (this Honorable Court may reverse a factual finding by the trial court when the appellant satisfies the finding is against the greater weight of the evidence).

THERE ARE NOT FOUR RESIDENTS LIVING ALONG "DOLLY LANE"

The Master's finding that there are at least four people living along Dolly Lane is not supported by the evidence in this case nor does the evidence support Respondent's argument in his reply (**RB**) that there are

four residents living along "Dolly Lane". *See Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004) (this Honorable Court may reverse a factual finding by the trial court when the appellant satisfies the finding is against the greater weight of the evidence).

The Affiliated Surveyor's Plat (**R. at 190**) clearly proves that "Dolly Lane" does not extend all the way through Respondent's property. The so called two household residents supposedly living along the so called "Dolly Lane" are tenants of Respondent, Claudius Eugene Fowler and the other household residents are tenants of Mr. Joe Dale Fowler, Respondent; Claudius Eugene Fowler's brother. **These tenants according to the Affiliated Survey Plat live along Respondent, Claudius Eugene Fowler's private shared driveway.** A private shared driveway according to the Horry Land Development Regulations at **Article 4, Section 7-3(A)**, page 93 prohibits a private shared driveway being named a street (**R. at 213**).

The Master in her latest ruling and this Respondent want to have both their cake and ice cream too by relying on the Affiliated Plat as the "golden goose" as a means to prove there are four residents living on "Dolly Lane" while at the same time ignoring a private shared driveway shall not be named a street, and also ignoring that Respondent and his tenants according to the Affiliated Plat (**R. at 190**) have a private shared driveway and their own easement for Respondent and his tenants, to safely and inexpensively ingress

to and from G & B Lane which is a public road (**see Air Photos: R. at 194, R. at 195, and R. at 196**).

There is only one household resident living along the so called "Dolly Lane" when examining the Affiliated Plat. These are the tenants residing in Appellant, Kenneth Dippel's mobile home and upon Appellants' property. This Honorable Court should note when closely scrutinizing the Affiliated Plat (**R. at 190**) it is clear that there is not enough residential households for Dolly Lane to be classified as a street. The so called "Dolly Lane" is not a thoroughfare or public road to another street. The so called "Dolly Lane" is not publicly maintained by Horry County (**R. at 191**). Appellants would like to also refer this Honorable Court to **Article 4, Section 7-3(A)**, page 93 of the Horry County Regulations (**R. at 213**). Respondent does not own "Dolly Lane", the so called tenants do not own it, and Horry County does not own it. **It is a private driveway legally owned by the Appellants (R. at 219 – 230) for which the Appellants have a legally recorded deed approved by Horry County.**

Furthermore, the so called tenants relied upon by the Master in her latest ruling and by Respondent, Claudius Eugene Fowler have nothing at all to do with **Respondent, Claudius Eugene Fowler's legal individual use** of "Dolly Lane". These tenants living along the private shared driveway have not even ever held unity of title and do not own real property. *See Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002) (stating the

legal requirements of an easement by necessity are unity of title, severance of title, and necessity).

CONCLUSION

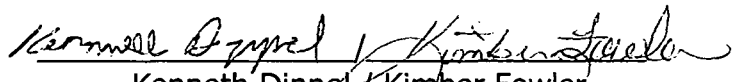
Wherefore, based upon consideration of the foregoing, Appellants pray for this Honorable Court to address all arguments presented in Appellants' final brief including this reply brief.

Wherefore, based upon consideration of the foregoing and upon consideration of the Appellant's final brief, Appellants pray to this Honorable Court to vacate and reverse the latest Master ruling.

Wherefore, based upon consideration of the foregoing, Appellants pray to this Honorable Court to issue written instructions for the lower Court to do the following: (1) Issue a Court ordered platting action on Appellants' property and an order granting quiet title to Appellants; (2) Issue an order that Respondent, Claudius Eugene Fowler does not legally own "Dolly Lane"; and to (3) Issue an order finding Respondent, Claudius Eugene Fowler guilty of willful contempt and trespassing.

DATE: 6-1-2010

Respectfully submitted,


Kenneth Dippel / Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699

CERTIFICATE OF SERVICE (Proof of Service)

I, Kenneth Dippel & Kimber Fowler, hereby certify that a copy of the Appellant's reply to Respondent's brief was served and provided to the Respondent, Claudius Eugene Fowler on 6-1-2010 by mailing a copy by first class US mail to the Respondents' last known physical mailing address addressed as follows:

Claudius Eugene Fowler
2042 G & B Lane
Loris, SC 29569

6-1-2010
(Date)

Kenneth Dippel / Kimber Fowler
(Signature)

Kenneth Dippel / Kimber Fowler
2145 Oakdale Road
Loris, SC 29569
(843) 716-0699