

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Master-in-Equity

Maite Murphy, Master-in-Equity

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71320

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Case No.: 2009-CP-18-3315

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LARRY E. KINARD,.....Appellant,

vs.

DOUGLAS S. RICHARDSON AND JULIE D. RICHARDSON,.....Respondents.

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PETITION FOR REHEARING

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P. Brandt Shelbourne, Esquire  
131 E. Richardson Ave.  
Summerville, SC 29483  
(843) 871-2210  
SC Bar # 15143  
ATTORNEY FOR THE RESPONDENTS

John R. Polito, Esquire  
106 Aldrich Place  
Goose Creek, SC 29445  
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SC Bar #4491  
ATTORNEY FOR THE APPELLANT

February 13, 2014

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SC Court of Appeals

Petitioner respectfully asserts that the Court of Appeals overlooked or misapprehended the following material facts from the Court below.

- I. The Court failed to recognize that Judge Dickson, in his Order on the parties' cross motions for summary judgment, ruled in Respondent's favor that the Amendment to Restrictions applied to Respondents' property.

The Court of Appeals quoted part of Judge Dickson's Order stating that Respondents' property was "'subject to any covenants and restrictions that applied to the original Tract L ....'" The actual sentence from Judge Dickson's Order states that "[t]he Court finds that Tracts A and B [Respondents' property] are part of the original Tract L and are subject to any covenants and restrictions that applied to the original Tract L which include the covenants and restrictions known as Amendment to Restrictions filed on March 18, 1998." See R. p. 13. (emphasis added). Judge Dickson, in so ruling, ruled for Respondents on Respondents' motion for summary judgment and their contention that the Amendment to Restrictions applied to their property. The Court of Appeals opinion ignores the full finding of Judge Dickson's Summary Judgment Order and goes on to rule that the Amendment to Restrictions does not apply to Respondents' property.

- II. The Court failed to recognize that there was no covenant or restriction on Respondents' property until the owner placed the restriction entitled "Amendment to Restriction" on that property.

Prior to the Barnes' sale of the property to Respondents' predecessor Steve Hill, there were no restrictions or covenants on the property. (R. p. 202, l. 20 – p. 204, l. 2.) No evidence was presented that there were any restrictions on Respondents' property prior to the sale to Hill. The Amendment to Restrictions states that Hill is about to purchase the property at the time of sale of Tract "L" from Barnes to Hill. (R. pp. 355-357.) This language clarifies the developer's intent to place this restriction on the property, prior to

it being conveyed. It was after placing this restriction on the property that the developer included the additional language of the original covenants. The developers deed to Hill for Tract "L" states that the Amendments to Restrictions are being recorded simultaneously with the deed. (R. pp. 352-354.) These Restrictions were negotiated between Respondents and Barnes. (R. p. 294, l. 15-p. 295, l. 17.) From the express language used in the deed and the restrictions, it is apparent that Barnes, Respondents and Hill agreed to place the restrictions specified in the Amendment to Restrictions on property prior to it having any restrictions on it whatsoever. This was done prior to the actual deed of the property that subjected the property to the original Covenants. Since it previously had no restrictions, both Judge Dickson and Judge Murphy were correct in finding that the document entitled Amendment to Restrictions was original in that it did not change an existing restriction, and the Court of Appeals should amend its Opinion to recognize that this restriction allowing Respondents' to have up to six (6) horses on their seven (7) acre property is valid and enforceable.

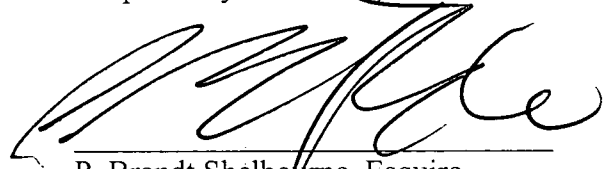
III. The Court failed to consider the full nature of the original development of this property in finding that a general scheme of development applied.

The total property was originally owned by the developer. Barnes sold off property to Madison to allow Madison to have a stable with horses on part of the original property. Barnes then developed in 1997 the subdivision known as Senrab Farms. This property contained different restrictions than those placed on the Madison property. The property Respondents subsequently purchased was listed as "residual property" and not part of the Senrab Farms original development. Then when Barnes sold Respondents their property, he subdivided the "residual property" and placed the "amendment to restrictions" on it along with subsequently subjecting it to the original Senrab Farms

Covenants. Barnes' sale of his properties does not evidence a general plan or scheme of restrictions on the totality of the properties, other than that those properties could have horses.

Further, the Court of Appeals Opinion appears to ignore the express language of the original Covenants that apply to Appellants' property that specifically allow residences to have a horse or horses so long as the requisite square footage is met. The Court of Appeals Opinion can be interpreted to prohibit anyone having horses at all which would clearly be contrary to all of the Covenants filed on these properties.

Respectfully Submitted,



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SC Bar # 15143

ATTORNEY FOR THE RESPONDENTS

February 13, 2014

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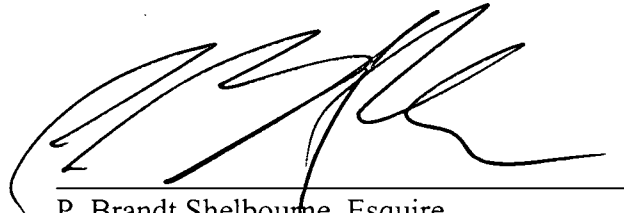
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PROOF OF SERVICE

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I certify that I have served a copy of the Petition for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on February 13, 2014 addressed to the following:

John R. Polito, Esquire  
106 Aldrich Place  
Goose Creek, SC 29445



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February 13, 2014  
Summerville, South Carolina

ATTORNEY FOR RESPONDENTS

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February 13, 2014

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Larry E. Kinard vs. Douglas Richardson, et al.  
Case No.: 2009-CP-18-3315  
Appellate Case No.: 2013-162  
Our File No.: 3938-001

Dear Madam Clerk:

Enclosed please find the original and six (6) copy of Respondents' Petition for Rehearing. The unbound copy has an original signature. I have also included an additional copy along with a self-addressed stamped envelope and would appreciate you returning that copy to me as a clocked in copy. I also include a Proof of Service and copies thereof for return. By copy of this letter to opposing counsel, I am copying him with a copy of the Petition for Rehearing along with copies of the additional documents. Thank you for your assistance in this matter.

With best regards, I am

Sincerely yours

  
P. Brandt Shelbourne

PBS/jeb  
Enclosures  
cc: Client  
John R. Polito, Esquire

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**SC Court of Appeals**

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SHELBOURNE LAW FIRM  
131 EAST RICHARDSON AVENUE  
SUMMERVILLE, SC 29483

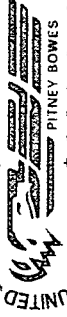
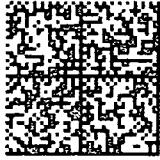
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