

5/8/14

Matthew H. Willimon, Jr. and Elizabeth Willimon
 PLAINTIFF(S)

Jake Gilstrap, et al.
 DEFENDANT(S)

Submitted by: James M. Robinson

Attorney for: Plaintiff Defendant
 or
 Self-Represented Litigant

- DISPOSITION TYPE (CHECK ONE)**
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
 - DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
 - ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
 - ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

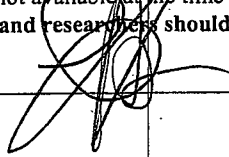
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ends does not end the case.
 Additional information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List name(s) below)
Jake Gilstrap, Thomas R. Gilstrap, Sr., John Gilstrap, Yvonne G. Smith, Jason A. Smith and Patricia Gilstrap	Matthew H. Willimon, Jr. and Elizabeth Willimon	\$
Matthew H. Willimon, Jr. and Elizabeth Willimon	Jake Gilstrap, Thomas R. Gilstrap, Sr., John Gilstrap, Yvonne G. Smith, Jason A. Smith and Patricia Gilstrap	\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

 5/7/14

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Jim Alexander

✓ CofCourt
box

✓ Jim Robinson

ATTORNEY(S) FOR THE PLAINTIFF(S)

MB

ATTORNEY(S) FOR THE DEFENDANT(S)

Hawelberry
CLERK OF COURT
MB

Court Reporter: _____

2014 MAR 7 PM 4 22
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

Matthew H. Willimon, Jr.)
and Elizabeth Willimon,)

ORDER on Motions to Amend
2012-CP-39-144

Plaintiffs,)

vs.)

Jake Gilstrap, Thomas R. Gilstrap, Sr.,)
John Gilstrap, Yvonne G. Smith,)
Jason A. Smith, and Patricia Gilstrap,)

Defendants.

2014 MAY 7 PM 4 22
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter is before the Court upon each party's motion to alter, amend, or reconsider the Final Order filed February 19, 2014.

After considering these motions and based upon the record before me, I find as follows:

1. The findings of fact made in the Final Order filed February 19, 2014, are incorporated herein, except as amended or modified by this Order.
2. Plaintiffs' motion requests that this Court reconsider its decision and then grant to Plaintiffs an exclusive easement over the entire length of Mustang Drive from Old Dacusville Road to Plaintiffs' property - not just an exclusive easement from the intersection of Mustang Drive and Ed Gilstrap Way, over Mustang Drive, to Plaintiffs' property as provided by the Final Order. By "exclusive", which is the language used in the original Agreement, Plaintiffs contend that only Plaintiffs may set foot upon or otherwise use Mustang Drive. Mustang Drive is a private road that is owned by certain of the Defendants.



3. Defendants' motion requests that this Court alter or amend its decision and allow Defendants to use the entire length of Mustang Drive for access to Defendants' adjacent property.

4. Together, Defendants own roughly 110 acres, which has been in the Gilstrap family since 1939. The Pickens County Tax Assessor's map attached to the Final Order shows that Defendants' property contains frontage on Old Dacusville Road, a public road, with Ed Gilstrap Way and Mustang Drive, both private, running through Defendants' property. The Court is also attaching to this Order as Exhibit A the same Assessor's map showing the location and ownership of the respective parties surrounding Mustang Drive.

5. Addie Gilstrap is the predecessor-in-title to all parties; she died in 2008. Addie Gilstrap executed the Easement Agreement in question on March 14, 1989 and it was recorded in the Pickens County ROD Office on March 17, 1989.

6. Mustang Drive is the most reasonably accessible road, public or private, which provides access to much of Defendants' property, including Defendants' homes, pastures, farmland, and timberland. At least some of the Defendants contend they don't currently have access to their properties except for Mustang Drive.

7. At the trial, Defendant Jake Gilstrap testified that he is 41 years old and that he and others in the Gilstrap family have used Mustang Drive on a regular basis for access to the Gilstrap property for as long as he can remember, specifically including both up to and after March 1989.

8. Plaintiffs' Complaint and Affidavit describe in detail the conflict and hostility which has occurred between the parties concerning the use of Mustang Drive. In large part, the present action is a result of harsh bullying and other unacceptable conduct towards the Plaintiffs by certain Gilstrap sons/grandsons as the Willimon's were lawfully and reasonably using the easement in question that runs along and is known as Mustang Drive.

After a careful review of the record and further research of applicable law, I conclude that:

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1. This Court has continuing jurisdiction over the parties and subject matter of this action. The conclusions of law set forth in the Final Order filed February 19, 2014, are incorporated herein, except as amended or modified by this Order.

2. The language of an easement determines its extent. The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it. The intention of the parties must be determined by a fair interpretation of the grant creating the easement. Simmons v. Berkeley Electric Cooperative, Inc., 744 S.E.2d 580 (S.C. App. 2013).

3. The unrestricted grant of an easement conveys all such rights as are incident or are necessary to its reasonable enjoyment, but the right to use the land and the space overhead remains in the owner of the fee so far as such right is consistent with the purpose and character of the easement. Typically, the right of an easement owner and the right of the landowner are not absolute, but are so limited, each by the other, that there may be a reasonable enjoyment of both. A grant of an easement is limited to a use reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated. Hill v. Carolina Power and Light Company, 28 S.E.2d 545 (S.C. 1943).

4. In determining what uses the servient tenement may make of the land within the easement, the court should look to the words of the deed or agreement creating the easement. In so doing, the court must construe the language in a manner consistent with the parties' intent, reason and common sense. Further, use of the easement after the agreement may also provide insight into what the parties intended. Generally, if there is any doubt as to the parties' intentions, an interpretation should be adopted which conforms more to the presumed meaning and one that does not produce an unusual or unjust result. To exclude the servient owner from using the property within the easement here would produce an unusual and unjust result since it would prohibit the Defendants use of the most practical and reasonable access to their respective properties. As such, the term "exclusive" should not, under the facts of this case, be interpreted so as to exclude the owner of the servient estate from using the property within the easement consistent with the purpose of the easement.



See, Hunley v. Michael, 413 S.E.2d 296 (N.C. App. 1992); Hine v. Blumenthal 80 SE 2d 458 (N.C. 1954).

Notwithstanding the above, in certain exceptional cases, there is authority that an "exclusive" easement may allow unfettered rights to the holder of the easement to the exclusion of the owner of the servient estate. See, Latham v. Garner, 673 P.2d 1048 (ID 1983); Gray v. McCormick, 167 Cal. App. 4th 1019 (CA 2008). However, these cases note that, because a grant of an exclusive easement eliminates the servient estate owners of the right to use his land for certain purposes, exclusive easements are generally not favored by courts.

While the Easement Agreement herein uses the word "exclusive", the Court declines to find that the easement is truly exclusive based upon the above law, the facts in the case establishing years of use of Mustang Drive by the Defendants both before and after the easement was granted, and the fact that the Court can address the concerns leading to this lawsuit without judicially eliminating the Defendants' use of Mustang Drive to access their property.

THEREFORE, the Final Order filed February 19, 2014, is amended to hold that the use of the word "exclusive" in the Easement Agreement shall not operate to prevent Defendants from using Mustang Drive for access to Defendants' property. Stated another way, Defendants shall have the limited right to use the entire length of Mustang Drive from Old Dacusville Road to Plaintiffs' property but only when reasonably necessary, and during reasonable hours, for access to Defendants' respective properties. "Mustang Drive" is defined as the road labeled as such on the Pickens County Assessor's map attached to the Final Order filed February 19, 2014 and also shown on Exhibit A attached to this Order. This recognizes the limits of the law as set forth above while also recognizing and enforcing the Easement Agreement that clearly gives Plaintiffs the "exclusive" use of the easement.

7. The restraining orders established in the Final Order filed February 19, 2014, are affirmed and shall be strictly enforced against any and all parties. Specifically, any violation of the language of this Order will result in a finding of contempt with the likelihood of a substantial monetary fine and jail time for the offending party or parties. The Court further reserves the right, upon a finding of



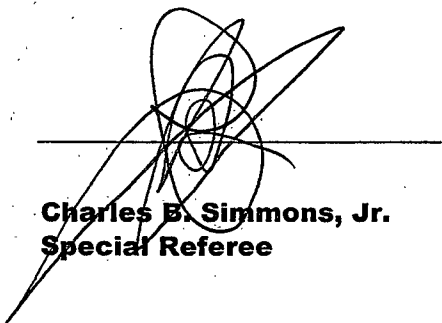
contempt by any Defendant or anyone operating on their behalf, to further limit and/or eliminate the right of that Defendant to use Mustang Drive.

In summary, for the reasons set forth above, Plaintiffs' motion for reconsideration is denied and Defendants' motion to alter or amend the Final Order filed February 19, 2014, is granted only to the extent as set forth above. All other relief requested by the Defendants is denied.

AND IT IS SO ORDERED.

Date:

5/7/14



Charles B. Simmons, Jr.
Special Referee

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
13th JUDICIAL CIRCUIT

2014 FEB 19

CASE NO.: 2012-CP-39-144

Matthew H. Willimon, Jr. and Elizabeth Willimon

Plaintiff,

vs.

Jake Gilstrap, Thomas R. Gilstrap, Sr., John
Gilstrap, Yvonne G. Smith, Jason A. Smith, and
Patricia Gilstrap

Defendant:

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

R
2/20/2014

Plaintiff's Attorney: <u>James C. Alexander, Bar No. 317</u> Address: <u>P.O. Box 618 Pickens, SC 29671</u> Phone: <u>(864) 898-3208</u> Fax <u>(864) 898-3408</u> E-mail: <u>jaxalexander@thealexanderlawfirm.com</u> Other: _____	Defendant's Attorney: <u>James M. Robinson, Bar No. _____</u> Address: <u>P.O. Box 738 Easley, SC 29641</u> Phone: <u>(864) 859-7501</u> Fax <u>(864) 859-1129</u> E-mail: <u>rlfclosing@bellsouth.net</u> Other: _____
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- 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: _____
Estimated Time Needed: _____ 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.

James C. Alexander
Signature of Attorney for Plaintiff / Defendant

2-4-14
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)
- Rule to Show Cause in Child or Spousal Support
 - 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, SCRPC)
 - Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Bonnie Fal

Collected by: _____ Date Filed: _____

- MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

CASE NO. 2012 CP-39-144

Matthew H. Willimon, Jr.

Jake Gilstrap, Thomas R. Gilstrap, Sr., John Gilstrap

2014 FEB 19 A 11:58

and Elizabeth Willimon

Yvonne G. Smith, Jason A. Smith, and Patricia Gilstrap

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James C. Alexander	Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input checked="" type="checkbox"/> Self-Represented Litigant
----------------------------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
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- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Special Referee _____ Judge Code _____ Date 2/7/14

SCRPC Form 4C (10/2011)

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

James C. Alexander

PO Box 618

Pickens, SC 29671

ATTORNEY(S) FOR THE PLAINTIFF(S)

James M. Robinson

PO Box 738

Easley, SC 29641

ATTORNEY(S) FOR THE DEFENDANT(S)
Harold P. Williams

CLERK OF COURT



Court Reporter:

STATE OF SOUTH CAROLINA CLERK OF COURT
PICKENS COUNTY COURT OF COMMON PLEAS
SOUTH CAROLINA

COUNTY OF PICKENS) Case No.: 2012-CP-39-144

2014 FEB 19 A 11:58

Matthew H. Willimon, Jr.)
and Elizabeth Willimon,)

Plaintiffs,)

vs.)

FINAL ORDER

Jake Gilstrap, Thomas R.)
Gilstrap, Sr., John Gilstrap,)
Yvonne G. Smith, Jason A.)
Smith, and Patricia Gilstrap,)

Defendants.)

.....)

This matter comes before the Court by Virtue of a Summons and Complaint filed by the plaintiffs and counterclaims filed by the defendants. At the call of the case, the plaintiffs appeared being represented by James C. Alexander. Defendant Jake Gilstrap appeared. The remaining defendants did not appear. All defendants were represented by James M. Robinson. The Court has jurisdiction of the parties and subject matter.

The plaintiffs own real property in Pickens County which does not have road frontage on a public road. They request that the Court affirm an exclusive easement in their favor over what is now known as Mustang Drive in order to access their real property. Plaintiffs further allege that the defendants and others on their behalf have trespassed on their exclusive easement and are requesting a restraining order to prohibit the defendants from using Mustang Drive and a monetary judgment for

the alleged trespass actions. The defendants own or use real property that adjoins or on which Mustang Drive is located. The defendants deny that the plaintiffs have an exclusive easement over Mustang Drive, claim that the word "exclusive" in the plaintiffs' easement agreement was the result of a mistake and request reformation to allow them to use Mustang Drive, claim an easement by necessity or prescription or prior use, request monetary judgment against the plaintiffs for trespassing on their property by the installation of utilities, and request certain other relief.

The plaintiffs testified and presented documentary evidence. Plaintiffs also presented the testimony of James Surratt, who is a licensed attorney in South Carolina. Defendant Jake Gilstrap testified and defendants presented certain documentary evidence. Based on all evidence submitted, the following findings of fact are made:

1. Reba Gilstrap individually and as trustee, Thomas Gilstrap, Sr. as trustee, Sherry Lynn H. Gilstrap, Tyler Leigh Holder, and Andrew Austin Gilstrap are, by consent of counsel, added as party defendants. Jake Gilstrap is appointed as the guardian ad litem for any minor defendant. The parties stipulate that all necessary parties are before the Court for a complete resolution of the issues raised in the pleadings. The plaintiffs and defendants are residents of Pickens County, South Carolina.



Mustang Drive and the real property on which it is located is situate in Pickens County, South Carolina.

2. The plaintiffs entered into a document dated July 8, 1986 entitled "Purchase and Sales Contract" to buy certain real property from Addie T. Gilstrap. Addie Gilstrap owned 114.20 acres of real property in Pickens County and the acreage purchased by plaintiffs was part of that larger tract. The real property being purchased by plaintiffs did not have frontage on or to any public road. Therefore, this document also provided that the seller would grant to purchaser an easement of egress and ingress to the County Road. When the purchase price was paid in full, Addie T. Gilstrap executed and delivered a deed to the plaintiffs for 26.30 acres dated March 14, 1989 and recorded in Book 60 at page 70 in the Register of Deeds Office for Pickens County on March 17, 1989. Simultaneously therewith, Addie Gilstrap executed and delivered an easement agreement, prepared by Attorney Sarratt, dated March 14, 1989 which was recorded in Book 60 at page 71 in the Register of Deeds Office for Pickens County on March 17, 1989. This easement agreement granted plaintiffs an exclusive easement of ingress and egress over the remaining property owned by Addie Gilstrap in order for plaintiffs to access a public road from the property they purchased from Addie. The agreement allowed the plaintiffs "to construct a twenty (20) foot road from property to be deeded to



Matthew H. Willimon, Jr. and Elizabeth Willimon by deed of even date through the property above described to give access to Old Dacusville Road" and granted to them "the exclusive right to use the road constructed by and maintained by" plaintiffs. Mustang Drive, which is the area of the easement given by Addie to plaintiffs, as it currently exists is set forth on the tax map attached to this Order. Mustang Drive was a rough road-area in existence at the time plaintiffs purchased their property.

3. The defendants own or use real property that they either received directly from Addie Gilstrap or which originally came from Addie Gilstrap; this real property either adjoins Mustang Drive or Mustang Drive is located on this real property. Addie Gilstrap is the common grantor for the plaintiffs and all defendants and the defendants received their real property by deeds which were recorded subsequent to the recording of plaintiffs' deed and easement agreement. Addie Gilstrap is now deceased.

4. After the execution of the deed and the separate easement agreement to the plaintiffs, plaintiffs eventually moved to their real property and constructed a more formal road over their 20 foot exclusive easement. The road was in the same area as the existing road and is now known as Mustang Drive. Defendant Thomas Gilstrap, Sr. is a nephew of Addie Gilstrap and he acted as an agent for her to arrange the original purchase by

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the plaintiffs. At Addie's request and consent, Mr. Willimon made the loan payments to Thomas Gilstrap, Sr. Once plaintiffs paid for the property, Mr. Willimon discussed the placement of the "easement" road with Gilstrap. As noted, there was an old dirt trail/road already leading from the public road to the plaintiffs' property. Mr. Willimon placed the "easement" road over the existing dirt trail with the permission and consent of defendant Thomas Gilstrap, Sr. In fact, defendant Thomas Gilstrap, Sr. did part of the construction work for plaintiffs road and was paid by plaintiffs as shown by a receipt written by him which was admitted into evidence.

An easement is a right which one person has to use the land of another for a specific purpose. Frierson vs. Watson, 636 S.E.2d 872 (S.C.App. 2006). In interpreting any document, the primary concern of the Court is to ascertain and give effect to the intention of the parties. Worley v. Yarborough Ford, Inc., 452 S.E.2d 622 (S.C.App. 1994) Whether a grant in a written instrument creates an easement and the type of easement created are to be determined by ascertaining the intention of the parties as gathered from the language of the instrument, the grant should be construed so as to carry out that intention. Smith v. Commissioners of Public Works of the City of Charleston, 441 S.E.2d 331 (S.C.App. 1994). The deed and the

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terms of the easement agreement signed by Addie Gilstrap to the plaintiffs were clearly stated and are unambiguous. It was the clear intent of Addie Gilstrap and the plaintiffs that an exclusive easement for plaintiffs was a significant part of the transaction relating to plaintiffs purchase of the property. This was likewise established by the testimony of Attorney Sarratt. The property did not have any frontage on a public road and plaintiffs needed an easement to access the property they purchased from Addie. While testimony did reveal that plaintiffs are temporarily using access across another property owner in the rear of their property, this is only a short term accommodation by the adjacent landowner in light of the desire of the Plaintiffs to prevent any further unpleasant encounters with the Defendants and others on their behalf.

Uncontradicted evidence establishes that defendant Thomas Gilstrap, Sr. was very much involved in the negotiations related to the purchase of the property by plaintiffs and the location of the road for the exclusive easement and that he was paid by the Plaintiffs to work on the road. As noted, the road did follow the existing dirt trail/road and that this was agreed to by defendant Thomas Gilstrap, Sr. on behalf of Addie Gilstrap. There is also evidence that at some point in the mid 1990s, defendant Thomas Gilstrap, Sr. fenced both sides of Mustang



Drive in order to keep his cattle on his property and off of Mustang Drive. Thomas Gilstrap, Sr. owns most of the remaining property of Addie Gilstrap over which Mustang Drive is located and his actions over the years are consistent with the plaintiffs' position that the easement was exclusive to them since he was keeping his cattle off of Mustang Drive. The easement agreement was drafted by an attorney, was properly executed by both parties and witnesses, and was properly recorded in Register of Deeds Office for Pickens County. Documentary evidence in the form of tax maps and surveys were presented that clearly identify the road known as Mustang Drive and one such tax map is attached to this Order. One plat was prepared for defendant Thomas R. Gilstrap, Sr. dated January 29, 1997 and recorded in Plat Book 283 at page 13 on September 18, 1997 and this plat shows this 20 foot easement as granted by the easement agreement document recorded in book 60 at page 71 in favor of the plaintiffs.

The court finds that the clear intention of plaintiffs and Addie Gilstrap was for the plaintiffs to have the exclusive and peaceful right to use the real property on which their road is constructed and which is now Mustang Drive. The attached tax map shows a road identified as Ed Gilstrap way which veers off of Mustang Drive. Ed Gilstrap Way is located on a 47.71 acre tract.

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of real property currently owned by Thomas R. Gilstrap, Sr. and Reba Gilstrap, identified as tax map number 5132-01-08-9039.

The court finds that the plaintiffs, their heirs and assigns forever, have the exclusive and sole right to use Mustang Drive immediately after the intersection of Ed Gilstrap Way and Mustang Drive for the entire distance of Mustang Drive to the real property owned by the plaintiffs. Such location is shown on the attached Exhibit. Starting the exclusive easement at this point allows all parties properties to have some type access to a public roadway. Plaintiffs are solely responsible for the maintenance or upkeep of Mustang Drive for the exclusive road distance.

The Court finds that the plaintiffs, their heirs and assigns forever, and the defendants, their heirs and assigns forever, shall have joint use of Mustang Drive as it begins on Old Dacusville Road and runs to Ed Gilstrap Way. The right of the defendants to use Mustang Drive ends at the intersection of Ed Gilstrap Way and Mustang Drive. Plaintiffs and defendants are jointly responsible for the maintenance or upkeep of Mustang Drive for this distance.

5. The defendants raise the issue of lack of consideration for the exclusive easement agreement signed by Addie Gilstrap on March 14, 1989, almost 25 years ago, and claim that this easement agreement is void on that basis. There was no evidence

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presented to establish a lack of consideration for the exclusive easement. Even so, if any such evidence had been presented, inadequate consideration without more does not suffice to set aside a transaction; inadequate consideration is important only in connection with other factors such as undue influence.

Hemingway vs. Small, 324 S.E.2nd 335 (S.C.App. 1984). More importantly, the Court finds that a lack of consideration defense can only be raised by the original seller, who is Addie Gilstrap, and not by subsequent title owners. The relief requested by defendants is denied.

6. The defendants claim that they are entitled to an easement by prescription. The party asserting the right to a prescriptive easement must show: (1) continued and uninterrupted use for twenty years; (2) the identity of thing enjoyed; and (3) use which was either adverse or under a claim of right. Boyd v. BellSouth, 633 S.E.2nd 136 (S.C. 2006). The court finds that the defendants have failed to present sufficient evidence by a preponderance of the evidence that they or their predecessor in title have had continuous and uninterrupted use that was either adverse or under a claim of right for a period in excess of twenty years. Some testimony of use was presented. However, as stated above, Thomas Gilstrap, Sr. fenced Mustang Drive on both sides in the mid 1990s, leaving Mustang Drive to the plaintiffs for exclusive use. Any evidence of use presented by defendants



did not establish continuous and uninterrupted use such that is necessary to give rise to an easement by prescription. The request for the declaration of an easement by prescription in favor of defendants is denied.

7. The defendants claim that they are entitled to an easement by necessity. The party asserting the right of an easement by necessity must prove: (1) unity of title; (2) severance of title; and (3) necessity. The necessity required for such an easement must be actual, real, and reasonable as distinguished from convenient. Boyd v. BellSouth, 633 S.E.2d 136 (S.C. 2006). The defendants have failed to present evidence that they need to use Mustang Drive to have access to their property. As noted above, with the result reached herein, all defendants can access their real property by their own public road frontage or through other property that each defendant owns or can use. While the real property owned by Jake Gilstrap and other defendants is landlocked, that real property does not border on or adjoin Mustang Drive so their rights are not impacted by this Order. Also, any remedy would be against their grantor who still owns real property with road frontage. Defendants did not present any evidence that he could not use the property of his grantor, Thomas Gilstrap, Sr. and Reba Gilstrap, to access his property. The defendants have not presented evidence that established that it is necessary to use



Mustang Drive to access their property. The request for the declaration of an easement by necessity in favor of defendants is denied.

8. The defendants claim that they are entitled to an easement by prior use. The party asserting the right of an easement by prior use must prove: (1) unity of title; (2) severance of title; and (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 apparent or known to the parties; (6) 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. Necessity in this context means there could be no other reasonable mode of enjoying the dominant tenement without this easement. Boyd v. BellSouth, 633 S.E.2nd 136 (S.C. 2006). As set forth above in the discussion of an easement by necessity, the defendants have failed to present any evidence that they must use Mustang Drive to access their property. Also, the common grantor did not intend for any prior use to continue as the Court has already found that Addie Gilstrap intended for plaintiffs to have exclusive use of the driveway that is now known as Mustang Drive. The request for the declaration of an easement by prior use in favor of defendants is denied.

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(9) Defendants claim that the word "exclusive" in the plaintiffs' easement agreement was the result of a mutual or unilateral mistake and request reformation to allow them to use Mustang Drive. A contract may be reformed on a mutual mistake which consists of an omission or an insertion of some material element affecting the subject matter or terms of the contract which is inconsistent with the agreement which preceded it.

Commercial Union Assurance Co. v. Castile, 320 S.E.2d 488

(S.C.App. 1984). For a unilateral mistake, equity may grant a reformation in circumstances which would make it a great wrong to enforce the agreement. Sims v. Tyler, 281 S.E.2d 229 (S.C. 1981). There was no evidence presented that any mistake, mutual or unilateral, was made as the court has found as set forth above that the parties intended the easement to be exclusive in favor of the plaintiffs. More importantly, the court finds that an action to reform a document can only be raised by the original seller, who is Addie Gilstrap, and not by subsequent title owners. Defendants request for a reformation of the easement agreement is denied.

10. Defendants raised the issue of the right for a limited use of Mustang Drive. The Court finds that there is no legal basis by which the Court can fashion such a remedy. Further, the vast majority of the problems that led to this litigation are the result of actions taken by the defendants or



their children or grandchildren and the Court is reluctant to attempt to fashion such a remedy, even if there was a legal or evidentiary basis, based upon the harsh and inappropriate actions taken. This request by defendants is denied.

11. The plaintiffs allege that the defendants and their minor children have continually trespassed on their exclusive easement and have created hostile situations between the parties and request a monetary judgment as a result. While there have clearly been hostile, harassing and inappropriate actions taken by defendants or their children against plaintiffs, the court finds that the plaintiffs have not presented sufficient evidence by which the court can quantify an amount of money and therefore denies the plaintiffs request for monetary damages based on the trespass cause of action.

12. The defendants claim that exclusive use by the plaintiffs of Mustang Drive is repugnant to defendants' fee simple title of the real property over which Mustang Drive traverses and they deserve the right to use Mustang Drive since it is on their property. Defendants were asked at trial for legal precedent to establish this claim. However, the defendants have not provided any South Carolina case or statutory law or any such case or statutory law from other jurisdictions to support this claim. Parties to an easement have the absolute right to enter into a contract regarding real estate for any



lawful purpose. Addie Gilstrap chose to bargain for and then grant the plaintiffs an exclusive easement over what is now Mustang Drive. The effect of her valid and legal agreement was that while she still owned the property after the easement agreement was signed, only plaintiffs had the right to use that property. Fee simple ownership of real property can be subject to many other matters by agreement which include long term leases, conservation easements and grants, and mortgages that affect their control of their property. These are all matters by agreement and are generally recorded. It is noted that all of the defendants received their real property after the recording of plaintiffs' deed and easement agreement. This recording by plaintiffs places the defendants on notice of the exclusive easement agreement and a title examination would have revealed the existence of that easement agreement. Deeds and easements are valid to subsequent purchasers without notice when they are recorded. S.C.Code Ann. section 30-7-10 (Supp.2005) Frierson vs. Watson, 636 S.E.2d 872 (S.C.App. 2006) Since the defendants received their real property after the recording of plaintiffs documents, they take their property subject to the right of the Plaintiffs to have exclusive use of the real property over which Mustang Drive runs. A title examination would have revealed the exclusive easement and the defendants had the option not to purchase the real property. They chose to do so anyway and they



take their property subject to plaintiffs' exclusive easement. There is no legal basis on which to grant the relief requested and defendants request is denied.

13. The defendants claim that plaintiffs have trespassed on their real property and installed utilities. They claim damages for the trespass and request that the plaintiffs be required to remove the utilities. There was no credible evidence presented that plaintiffs' utilities were not on the twenty (20) foot easement. However, the court finds that the existing public utilities have been in place, regardless of whose land they are on, for such a long period of time as to constitute a waiver and removal would be tantamount to economic waste. Defendants request is denied.

14. The plaintiffs and all defendants are enjoined and restrained from interfering, harassing or causing any problem with any other party relative to the use by the plaintiffs of their exclusive easement over Mustang Drive. This restraining order, to the extent it can, extends to the parents and grandparents of any minor children and they are responsible for the actions of these minors. Any violation of this order as found by a court of competent jurisdiction will subject the party found to be at fault to a minimum fine of \$2,500.00 and imprisonment as determined by that court pursuant to the law of the State of South Carolina.

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15. The plaintiffs and defendants are enjoined and restrained from interfering, harassing or causing any problem with any other party relative to the use by the plaintiffs and defendants of the joint easement to use Mustang Drive from Old Dacusville road to the intersection of Ed Gilstrap Way and Mustang Drive. This restraining order extends to the parents and grandparents of any minor children. Any violation of this Order as found by a court of competent jurisdiction will subject the party found to be at fault to a minimum fine of \$2,500.00 and imprisonment as determined by that court pursuant to the law of the State of South Carolina.

16. Each party will pay their own attorney's fees and costs. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. The plaintiffs, their heirs and assigns forever, have the exclusive and sole right to use Mustang Drive immediately after the intersection of Ed Gilstrap Way and Mustang Drive for the entire distance of Mustang Drive to the real property owned by the Plaintiffs. Plaintiffs are solely responsible for the maintenance of upkeep of Mustang Drive for this distance.

2. The plaintiffs, their heirs and assigns forever, and the defendants, their heirs and assigns forever, have the joint right to use, without interference, Mustang Drive as it begins on Old Dacusville Road and runs to Ed Gilstrap Way. The right of



the defendants to use Mustang Drive ends at the intersection of Ed Gilstrap Way and Mustang Drive. Plaintiffs and defendants are jointly responsible for the maintenance or upkeep of Mustang Drive for this distance.

3. The plaintiffs and all defendants are enjoined and restrained from interfering, harassing or causing any problem with any other party relative to the use by the plaintiffs of their exclusive easement over Mustang Drive. This restraining order extends to the parents and grandparents of any minor children and they are responsible for the actions of these minors. Any violation of this order as found by a Court of competent jurisdiction will subject the party found to be at fault to a minimum fine of \$2,500.00 and imprisonment as determined by that court pursuant to the law of the State of South Carolina.

4. The plaintiffs and defendants are enjoined and restrained from interfering, harassing or causing any problem with any other party relative to the use by the plaintiffs and defendants of the joint easement to use Mustang Drive from Old Dacusville road to the intersection of Ed Gilstrap Way and Mustang Drive. This restraining order extends to the parents and grandparents of any minor children and they are responsible for the actions of these minors. Any violation of this order as found by a Court of competent jurisdiction will subject the

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party found to be at fault to a minimum fine of \$2,500.00 and imprisonment as determined by that court pursuant to the law of the State of South Carolina.

5. Plaintiffs request for monetary damages on their trespass cause of action is denied.

6. Defendants request for the declaration of an easement by necessity or prescription or prior use in their favor is denied.

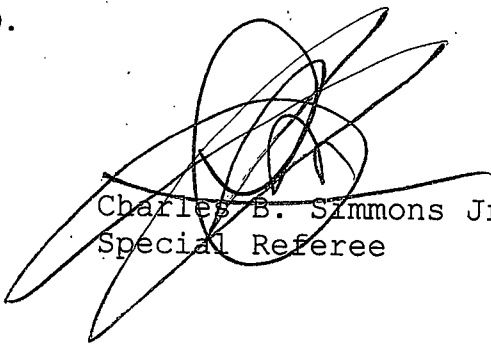
7. Defendants request for the reformation of the easement agreement based on a mutual or unilateral mistake is denied.

8. Defendants request for judgment based on their trespass cause of action is denied.

9. All other relief requested by either party is denied.

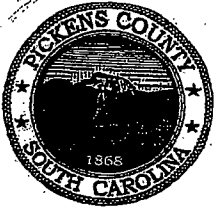
10. Each party will pay their own attorney's fees and costs.

IT IS SO ORDERED.



Charles B. Simmons Jr.
Special Referee

Pickens, South Carolina
February 7, 2014



Pickens County Assessor's Office

Account No: R0004773
 Parcel No: 5132-01-16-4313
 Tax Area: 8 Dacusville
 Acres: 26.3
 Deed: 60/70

Owner Name: WILLIMON MATTHEW H JR
 Mailing Address: 602 CEDAR LANE RD GREENVILLE, SC 296112916

The Pickens County Assessors office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The Assessor parcel maps are for assessment use only and do NOT represent a survey. Any person or entity who relies on any information obtained from this website does so at his or her own risk.

Legal Description: MH AND LOT COMBINED
 Situs Address: 253 MUSTANG-DR

