

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

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Richard B. Ness, Special Referee

Case No. 2009-CP-38-1170

RECEIVED

JUL 08 2014

SC Court of Appeals

Patrick J. Williams, Frank J. Wallmeyer and
Mary B. Wallmeyer, Respondents,

v.

F. Carlisle Smith and First Citizens Bank and
Trust Company, Defendants,

Of whom F. Carlisle Smith is Appellant.

INITIAL REPLY BRIEF OF THE APPELLANT,
F. CARLISLE SMITH

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July 8, 2014
Columbia, South Carolina

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ARGUMENT IN REPLY

I.

Respondents' (Williams) chain of title does not support the Stroman line as the western boundary of the Williams property.

Williams says at page 9 of his brief he “cannot make heads or tails of” Appellant’s (Smith) argument regarding the Williams chain of title not supporting where Williams asserts the western boundary of his property is located. While Smith is certain the Special Referee recognized and understood the argument, Smith respectfully suggests the Special Referee erred in rejecting that argument.

As set out in Smith’s opening brief, the first deed in Williams’ chain, describes the property conveyed as comprising 765 acres, with P.W. Farrell being the grantee. This 1888 deed says the western boundary of the 765 acre tract conveyed was Dean Swamp Creek. (Smith exhibit 17, ROA ____).

The next deed in the Williams chain (Smith exhibit 17, ROA ____) describes the property conveyed as comprising 286 acres. This 1889 deed describes the property conveyed as being bounded on the west by the “lands of P. W. Farrell.” The western boundary of the 286 acre tract is not Dean Swamp Creek, but the 765 acre tract conveyed to P.W. Farrell the year before in the 1888 deed. Each subsequent deed in the Williams chain describes the property conveyed as containing as containing 1050 or 1051 acres (765 acres plus 286 acres).

Smith’s wetland’s scientist estimated the acreage in the uplands area on the Steadman plat as approximately 680 acres. (Trial transcript p. 742, line 22 – 743, line 23, ROA ____ and Smith exhibit 6, ROA ____). This acreage estimate comports with the 765 acre tract conveyed to Williams’ predecessor-in-interest in 1888. The deed conveying the 765 acre tract described its

western boundary as Dean Swamp Creek which, therefore, must have been located far to the east of the Stroman line, described by both Smith and his surveyor as being an old stream bed running along a ridge line separating the low lying swamp land from higher ground used as farm land. (Trail transcript p. 756, line 21 – 758, line 21, ROA _____, trail transcript p. 834, line 18 – 838, line 13, ROA _____ and Steadman survey, Smith exhibit 9, ROA _____).

Every deed following the 1889 deed, except for the 1978 deed into Williams (Smith exhibit 17, ROA _____), describes the western boundary of the property as the waters or run of Dean Swamp Creek. However, the deed into Williams, does not describe the western boundary as the “run” or “waters” of Dean Swamp Creek, but rather as “Dean Swamp.”

For nearly 100 years the western boundary of the Williams tract was described as the “run” or “waters” of Dean Swamp Creek. The last deed in the chain, however, describes the western boundary as “Dean Swamp.” The inference to be drawn from this change is clear. The grantor intended Dean Swamp to be the western boundary and the only evidence of the location of Dean Swamp in this record or before the Special Referee is as shown on the Steadman Survey as “edge of swamp.” (Smith exhibit 9, ROA _____).

The foregoing is undisputed. The so-called “Stroman line” is not the western boundary of Williams’ property. Williams’ chain of title shows the western boundary of his tract is not the Stroman Line, but is in the old creek bed described by Smith and his surveyor and runs along the line denominated on the Steadman Survey as “edge of swamp.” The court erred in concluding otherwise and its order should be reversed.

II.

Williams failed to carry his burden in a trespass to try title case because he introduced no evidence to prove any of the four ways to establish paramount title.

Citing *Williams v. Moore*, 400 S.C. 90, 733 S.E.2d 224, (Ct. Ap. 2012); *Coker v. Cummings*, 381 S.C. 45, 672 S.E.2d 383 (Ct. App. 2008); and *Bodiford v. Spanish Oak Farms, Inc.*, 317 S.C. 539, 455 S.E.2d 194 (Ct. App. 1995), Williams asserts this is a boundary dispute case, an action at law, and not a trespass to try title case. (Williams' brief at 6).

The parties in *Williams* did not suggest that case was anything but a boundary line dispute. *Coker* was an appeal from the grant of summary judgment. Both parties in *Bodiford* treated the case as a boundary line dispute. None of the cases cited by Williams address Smith's position that this case is a trespass to try title case.

This is a trespass to try title case. Williams' burden was to show title by one or a combination of four methods. *Watson v. Suggs*, 313 S.C. 291, 294, 437 S.E.2d 172, 173 (Ct. App. 1993). Those methods are: (1) showing a grant from the state to someone and successive deeds to the plaintiff (perfect legal paper title method), (2) tracing his title to a common source from whom both he and the defendant claim through separate chains of title, (3) plaintiff showing he and those under whom he claims, have been in actual, hostile, exclusive, and continuous possession of the land adversely to the defendant for twenty years, or (4) plaintiff showing he alone or with those from whom he has inherited have been in actual, hostile, exclusive, and continuous possession of the land adversely to the defendant for ten years. *Id.*

Williams' numerous witnesses and exhibits focused exclusively on Williams' assertion the Stroman Line is the boundary between Williams' and Smith's tracts and the assertion Smith or

person or persons unknown somehow diverted or blocked the run of what had been Dean Swamp Creek. None, even if correct, relate to Williams' burden in a trespass to try title case.

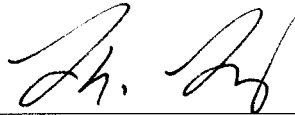
Smith further respectfully submits this action sounds in equity. Where a party asserts some feature of equitable cognizance, such as obliteration of a boundary line by an adjoining landowner, the cause of action to settle that boundary line dispute is in equity. *Uxbridge Co. v. Poppenheim*, 135 S.C. 26, 30, 133 S.E. 461 (1926).

One of Williams' theories is Smith changed somehow the natural course of Deans Swamp Creek. This case sounds in equity, not law.

CONCLUSION

For the reasons set forth above and in Smith's opening brief, the court erred in concluding the Stroman line was the boundary between the Smith and Williams tracts. That decision should be reversed and the case remanded to the circuit court for retrial.

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CERTIFICATE OF COUNSEL

The undersigned certifies the Initial Reply Brief of Appellant complies with Rule 211(b),
SCACR.

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CERTIFICATE OF SERVICE

I, Crystal Smith, an employee of Callison Tighe & Robinson LLC, Attorneys for the Appellant, certify I have served a copy of the **INITIAL REPLY BRIEF of the Appellant, F. Carlisle Smith**, by mailing it to them at their last known addresses, by depositing it in the United States Mail, postage prepaid, addressed to counsel of record at the following addresses:

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Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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Re: *Patrick J. Williams, Frank J. Wallmeyer and Mary B. Wallmeyer v. F. Carlisle Smith and First Citizens Bank and Trust Company, Inc.* (2009-CP-38-1170)
SCCA Tracking #: 2014-000204
Our File No: 5399.001

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of the following document concerning this matter:

1. Initial Reply Brief of Appellant, F. Carlisle Smith.

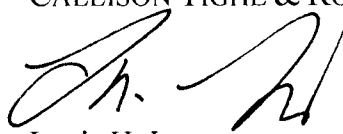
Kindly file the same and return a clocked copy to me via my courier. By copy of this letter, I am hereby serving the same on opposing counsel.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang

LHL/cs

Enclosure

cc: Curtis Dowling, Esq. (w/ encl.)
Mr. F. Carlisle Smith (w/ encl.)
Gregory G. Williams, Esq. (w/ encl.)
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