THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Trial Court Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

David R. Gooldy.....Respondent,

vs.

The Storage Center – Platt Springs, LLC.....Appellant.

INITIAL BRIEF OF RESPONDENT

James Randall Davis
DAVIS, FRAWLEY, LLC
140 East Main Street
Post Office Box 489
Lexington, South Carolina 29071
Telephone: (803) 359-2512
randy@oldcourthouse.com
ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE MASTER-IN-EQUITY ERR IN FINDING AND CONCLUDING THAT AN IMPLIED EASEMENT WAS CREATED IN THE RESPONDENT WHEN HE WAS CONVEYED A PARCEL OF LAND BY A GRANTOR WHICH REFERENCED A PLAT THAT SHOWED THAT A 50' ROAD WAS CONTIGUOUS TO THE GRANTED PROPERTY ON THE SOUTHERN SIDE?

II. DID THE MASTER-IN-EQUITY ERR IN FINDING AND CONCLUDING THAT PREDECESSOR-IN-TITLE INTENDED TO CONVEY THE RESPONDENT A 50' ROAD EASEMENT WHEN THE PREDECESSOR-IN-TITLE (CONGAREE ASSOCIATES) REFERENCED A PLAT SHOWING A 50' ROAD AREA CONTIGUOUS TO THE SUBJECT PROPERTY ?

II. DID THE MASTER-IN-EQUITY ERR IN AWARDING ACTUAL DAMAGES AND PUNITIVE DAMAGES BASED ON THE FACTORS SET FORTH IN *GAMBLE V. STEVENSON, 305 S.C. 104, 406 S.E.2D 350; BMW OF NORTH AMERICA V. GORE, 517 U.S. 559 (1996), AND MITCHELL, JR. V. FORTIS INS. CO., 385 S.C. 570, 686 S.E.2D 176 (2009)?*

STATEMENT OF THE CASE

Respondent David R. Goodly (or "Respondent") and Appellant The Storage Center – Platt Springs, LLC ("The Storage Center" or "Appellant") are owners of adjacent property located on South Lake Drive also known as SC Highway No., 6 (hereinafter referred to as "South Lake Drive") in Lexington County, South Carolina.

On January 24, 2002 Respondent purchased his Property with improvements thereon. (Trial Tr. 19:10-11) The deed to the Respondent's property referenced a plat which showed a fifty (50') foot road abutting Respondent's property on the southern side. (Trial Tr. 25: 14-15)

On September 27, 2007, Appellant purchased the abutting property (7.35 acres) to the Respondent's property. Appellant's property bordered the Respondent's property on the northern, western and southern sides. (Trial Exhibit Appellant's Exhibits C & J)

After Appellant purchased the 7.35 acres tract, a dispute arose between Respondent and Appellant as to the right of the Respondent to have access for ingress/egress over the fifty (50') foot road as shown on the plat referenced in the Respondent's deed. After an attempted resolution of the access issue by the parties, Appellant installed a metal post – wire cable barricade blocking Respondent's access over the fifty (50') foot road. (Trial Tr. 266:17-18.)

On February 1, 2010, Respondent filed a lawsuit against The Storage Center. (Compl.) In his lawsuit, Respondent asserted four causes of action: (1) Declaratory Judgment, Easement by Implication or Estoppel, (2) Declaratory Judgment, Easement by

Prescription, (3) Estoppel – Temporary and Permanent Injunctive Relief, and (4) Negligence/Gross Negligence/Intentional Act, Denial of Property Rights. Respondent argues that he is entitled to an easement over The Storage Center's property because his deed, along with the deeds of his predecessor-in-title, reference a plat which showed a fifty (50') foot road abutting Respondent's property on the southern side. (Compl. Pages 4-5.)

On February 25, 2010, Respondent filed a motion for preliminary injunction, seeking an order preventing The Storage Center from interfering with his access to the driveway. (Not. Of Mot. & Mot. For Prelim Inj., filed February 25, 2010). On April 23, 2010, the circuit court denied Respondent's request. (Form 4 Order, filed April 26, 2010.) The circuit court also referred this matter to the master-in-equity ("Master"), upon the consent of both parties. (Consent Order of Reference)

In response to Respondent's complaint, The Storage Center filed an answer, in which it asserted several affirmative defenses and pled a counterclaim against Respondent for encroaching and trespassing on The Storage Center's property. (Answer of The Storage Center, filed April 21, 2010.) Specifically, The Storage Center denied that any road ever existed and also denied that Respondent had any easement rights over property owned by The Storage Center. (Answer)

Respondent and Appellant both filed motions for summary judgment. (Notice of Mot. & Motion for Summ. J. of Respondent, dated February 1, 2011; Notice of Mot. & Motion for Summ. J. of Appellant dated January 31, 2011). The Master denied the cross motions for summary judgment because there were material issues of fact. (Form 4 Order, dated March 4, 2011.)

On October 25, 2012, the case was tried before the Master. The Master granted a directed verdict to The Storage Center with respect to Respondent's claim for easement by prescription because Respondent failed to establish use that was adverse or under a claim of right for twenty years. (Trial Tr. 109:3-119:19) On July 29, 2013, the Master issued his order, in which he found and concluded (1) that Respondent has access over the "road that borders the Respondent's property on the southern side"; (2) that Respondent is entitled to $2,500 for lost income when he had to construct an alternate makeshift entrance; and (3) that Respondent is entitled to $7,500 in punitive damages because The Storage Center prevented Respondent access to the strip of land. (Order, filed Aug. 1, 2013, hereinafter "Trial Order".)

The Storage Center timely filed its motion to alter or amend the judgment on August 12, 2013. (Def.'s Mot. Pursuant to Rule 59(e), SCRCP, filed Aug. 12, 2013.) In its motion, The Storage Center set out numerous grounds as to why the Master should reconsider the Trial Order. On November 15, 2013, the Master heard The Storage Center's motion. (Tr. of hearing on Def.'s Mot. Pursuant to Rule 59(e), SCRCP.) On March 13, 2014, the Master issued its Order denying The Storage Center's motion to reconsider. (Order, field Mar. 13, 2014, hereinafter "Rule 59(e) Order.")

STATEMENT OF FACTS
(Facts Prior to Litigation)

January 24, 2002 Respondent purchased the subject property, with improvements thereon, located on South Lake Drive (also known as S.C. Highway 6) in Lexington County. Respondent has used the property for his chiropractic practice. (Trial Tr. 19:9-10, 5-6). The legal description for the Respondent's property read as follows (Trial Tr. 21:1-2 and Exhibit 1):

> All those certain piece, parcel of lot of land, with all improvements thereon, situate, lying and being on the western side of S.C. Highway No. 6. approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, and recorded in the Office of the RMC for Lexington County in Plat Book 212G at page 204. The within described property contains 0.68 acre more or less.

The deed to the Respondent's property referenced a plat which showed a fifty (50') foot road abutting Respondent's property on the southern side and on the east by S.C. Highway 6. (Trial Tr. 25:14-15 and Trial Exhibit 2). The seller's representative told Respondent at the time of purchase that this fifty (50') foot road was the access from S.C. Highway 6 to the purchaser's property. (Trial Tr. 30:1-10). Respondent used this access as his only access to his property until the barricading of the access by the Appellant in July 2009. (Trial Tr. 30:19-20). Respondent described the fifty (50') foot road area as having an asphalt apron coming off S.C. Highway 6 covering a culvert, followed by a gravel area on the fifty (50') foot road area, which was flat and had been maintained and went to the back of the Respondent's property. (Trial Tr. 23:22-25; 24:1-3) There was a

small hedge of trees lying between the fifty (50') foot road area and an adjoining subdivision by the name of Westchester Estates. (Trial Tr. 27:10-18).

On September 27, 2007, Appellant purchased the abutting property (7.35 acres) to the Respondent's property (Appellant's property bordered the Respondent's property on the northern, western and southern sides. Both properties bordered S.C. Highway 6. Appellant's property wrapped like a horseshoe around three sides of the Respondent's property.). (Trial Exhibit of Appellant Exhibit C and J).

Respondent's and Appellant's properties both have a common grantor, Congaree Associates, a South Carolina Limited Partnership (hereinafter referred to as "Congaree"). (Trial Exhibit Respondent's 11). Respondent's property was subdivided from a larger tract owned by Congaree. (Trial Tr. (Trial Exhibit 1 (See Derivation)). Congaree first conveyed the Respondent's property to James T. Loflin by deed dated September 15, 1986, and recorded in the Register of Deeds Office for Lexington County on September 23, 1986 in Book 837 at Page 36. (Trial Exhibit Appellant's Exhibit D) The legal description in the Loflin deed contains the identical description as the Respondent's deed's legal description, as does each deed in the chain-of-title to the Respondent's property - - all of the deeds in the chain-of-title reference the same plat referenced in Respondent's deed. (Trial Exhibit 11).

The Respondent's deed is in the chain-of-title of the Appellant's property. (Trial Exhibit Respondent's 11) After Appellant purchased the 7.35 acres tract, Appellant's representatives notified the Respondent of their belief that the Respondent did not have the

right to have access for ingress/egress over the fifty (50') foot road as shown on the plat referenced in the Respondent's deed, which the Respondent disputed. (Trial Tr. 33:11-25).

After an attempted resolution of the access issue by the parties, Appellant installed two metal posts in the fifty (50') foot road connected by a wire cable with "No Trespassing" signs attached to the wire cable blocking Respondent's access over the fifty (50') foot road from S.C. Highway 6. (Trial Tr. 41:1-12). After Appellant blocked his access, Respondent created a "makeshift" entrance on the northern side of his property, buying material and equipment, and doing the work himself to establish the alternate access for his patients. (Trial Tr. 41:23-25; 49:1-19).

Thereafter, this litigation ensued.

Evidence as to Intent of Congaree Associates Deed to James Loflin, Predecessor-in-Title to Respondent

Carroll McGee, general partner of Congaree Associates, a South Carolina Limited Partnership, testified that he was an experienced real estate broker for a period of 50 years. (Trial Tr. 120:16-18). Congaree had been formed by the McGee organization in the early 1980's. Congaree purchased the 500 acre tract of land that contained the Respondent and Appellant's properties and fifty (50') foot road in dispute. (Trial Tr. 121:13-16; 122:1-12)

In August 1983, Congaree recorded a subdivision plat for Westchester Phase I, containing 13 lots, which borders S.C. Highway 6. This property is immediately adjacent to the fifty (50') foot road which borders the Respondent's property on the southern side. (Robert E. Collingwood (hereinafter referred to as "Collingwood") was the surveyor for this plat. (Trial Exhibit Appellant's Exhibit J).

On January 27, 1984, Westchester Phase II, prepared for Congaree, which is a second portion of Westchester Subdivision and borders Phase I, shows the disputed fifty (50') foot road on the plat for Westchester Phase II. Collingwood also prepared this plat for Congaree, which was submitted to the Lexington County Planning Commission for approval. (Trial Exhibit Appellant's Exhibit GG) The fifty (50') foot road abuts both Lot 13 of Westchester Phase I and what later becomes Respondent/predecessor's property. (Trial Exhibit J)

On July 15, 1985, Mike Chris, Lexington County Planning Commission, sends a letter giving provisional County approval for the proposed platted Phase II of Westchester Subdivision prepared by Collingwood. The letter contained the standard county requirements for private road subdivisions. (Trial Exhibit KK).

On December 10, 1985, James T. Loflin (Respondent's predecessor-in-title), who was a McGee employee/agent, has a plat prepared for the purpose of living on the corner lot (Respondent's property) next to the fifty (50') foot road entrance to proposed subdivision in a model log cabin home. Collingwood was the surveyor of the subject property. (Trial Exhibit 2).

On April 4, 1986, Collingwood revised the plat to show the proposed dwelling, well, septic tank and field. (Trial Exhibit 2). Thereafter, on August 12, 1986, Collingwood again revises said plat to indicate a twenty (20') foot strip along the northern boundary of the lot. (Trial Exhibit 2).

On September 11, 1986, Congaree, by Carroll McGee as its general partner, conveys the lot to Loflin, his employee agent, by deed incorporating the plat showing the fifty (50') foot road with plat prepared by the surveyor Collingwood. (Trial Exhibit 11).

McGee testified he never discussed the road with Loflin or Collingwood or anyone else. (Trial Tr. 125:14-18). McGee testified he never intended to build Phase II road shown on proposed plat given conditional approval by the Planning Commission because it costs too much. (Trial Tr. 125:14-18). McGee also testified that he assumed he did review the plat that was used in the Loflin deed prior to the conveyance to Mr. Loflin. (Trial Tr. 152:21-25) McGee admits that Collingwood who prepared the plat for Westchester Phase II would have known when he prepared the plat for the Respondent's predecessor-in-title (Loflin) about the fifty (50') foot road area on the Loflin plat was the same as the fifty (50') foot road on the Westchester Phase II plat. (Trial Tr. 152:1-11). McGee admits Collingwood had something to go by to show the road area on the Loflin plat, that being the proposed, conditionally approved, road on the Westchester Phase II plat. (Trial Tr. 152:1-11).

McGee testified he did see the plat and the deed for Loflin and it was executed by him for Congaree. (Trial Tr. 152:21-25). McGee confirms there was no affirmative action by anyone on behalf of Congaree that gave any information to the Respondent to not use that area that he had been using since the purchase of the property for his access. (Trial Tr. 157:13-15).

Testimony by Surveyors

Appellant's witness surveyor Meeler testified that there were surveys done by Surveyor Collingwood in the same area as the existing property which did not show the road in question; however, Meeler testified that he was not certain but his final opinion was that these plats were prepared after the 1986 Loflin plat. (Trial Tr. 166-167). The same witness surveyor found no road name for the road in question and no evidence it had been dedicated to the County of Lexington or the State of South Carolina. (Trial Tr. 165:13-22). Expert Witness surveyor Baxter testified that his main factor for indicating the road in questions was not a "road" was because it did not have a name. (Trial Tr. 236: 16-25; 237: 1-2)

Testimony as to Respondent's Damages

Respondent spent forty (40) hours in one week constructing the alternate road and lost income from patients for that week on an average of Eighty-five and no/100 ($85.00) per patient for a total loss of Five Thousand and no/100 ($5,000.00) Dollars. (Trial Tr. 86:2-5)

Appellant had a survey prepared of his property as part of his due diligence and the principle of the Appellant knew that his survey showed Respondent's driveway and parking encroachment on his property and also referenced the plat which was incorporated into Respondent's deed showing the area purchased by the Appellant as a road area. (Transcript p. 261-262)

Initially, agent of Appellant gave Respondent a 24 hour deadline to get back with him as to the shared access. (Trial Tr. 34: 17-22) Appellant put up stainless steel pipe with

wire between it with "No Trespassing" signs on it and what he had to do was create a makeshift access from Highway 6 across his grass in the front of his property for people to have access to his property. (Trial Tr. 41: 8-17) Appellant admitted that they had received a letter from Respondent's law firm asking for the barrier wire to be taken down but they refused to do so. (Trial Tr. 270: 1-8)

Appellant admits putting up barrier wire across the fifty (50') foot right of way of Respondent and put up "No Trespassing" signs. (Trial Tr. 266: 20-22) The wire barrier made his property look like it was unobtainable and like he was "going out of business." (Trial Tr. 50:21-22)

Appellant knew that the Respondent believed interference with his right of way would adversely affect his property. (Trial Tr. 254: 18-20) Appellant purchased the property in 2007 and put the barrier wire up in 2009 so they had sufficient time to bring a declaratory judgment if they wanted to instead of taking the action they did. (Trial Tr. 271: 16-20) Appellant admits he did not bring a declaratory judgment action as an alternative to barricading Respondent's right of way. (Trial Tr. 266: 7-8) Appellant admitted that he could see putting the barrier up would affect Respondent's regular traffic pattern for his patients. (Trial Tr. 266: 24-25; 267: 1-4).

STANDARDS OF REVIEW

I. Standard of Review for Existence of an Easement

"The determination of the existence of an easement is a question of fact in a law action and subject to any evidence standard of review when tried by a judge without a jury." *Pittman v. Lowther*, 363 S.C. 47, 50, 610 S.E.2d 479, 482 (2005). However, an appellate court must correct any error of law factual finding when "there is no evidence that reasonably supports those findings." *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010) (quoting *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997)).

When applying the above standard, it is clear that the Master did not commit an error of law. There is a long line of cases which are cited in this Brief that supports the Master's Order confirming an easement in the 50' road adjacent to the Respondent's property. Furthermore, there is overwhelming evidence supporting the finding that the parties intended to create an easement.

II. Standard of Review for Punitive Damages Award

"[A]ppellate courts must conduct a de novo review when evaluating the constitutionality of a punitive damages award." *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C, 570, 583, 686 S.E.2d 176, 183 (2009) (citing *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 431 (2001)); see also *Hale v. Finn*, 388 S.C. 79, 88, 694 S.E.2d 51, 56 (Ct. App. 2010).

When applying the above standard, the reprehensible nature of The Storage Center's conduct is established by the evidence of The Storage Center barricading and preventing a party exercising his property rights. Furthermore, the punitive damage is well within the ratio requirements of Supreme Court cases.

ARGUMENT I

DEED REFERENCING A PLAT SHOWING A ROAD CREATES AN EASEMENT IN THE GRANTEE

Appellant argues that South Carolina law states that a road shown on a plat incorporated into a deed conveys only the physical dimensions of the conveyed lot and not any easement to the road unless the lot is a standard subdivision lot. *Bennett v. Investors Title Ins. Co., Inc.*, 635 S.E.2d 649 (Ct. App. 2006) and 635 S.E.2d 660 (Ct. App. 2006); *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965).

Appellant incorrectly argues that *Bennett* stands for the proposition the plat incorporated by deed only conveys that portion of the physical outline of the property conveyed. Respondent would contend that the *Bennett* case held that the Grantor in a deed does not warrant or covenant the width of an existing highway right of way easement (easement given to a third party) by incorporating a plat that incorrectly states the width of a preexisting SCDOT easement. *Bennett* did hold that the right of way did exist. As our Supreme Court edified in the above referenced cases: A plat, however is not an index to encumbrances, and the mere reference in a deed, as in this case, to a plat for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to exclude such easement from the covenant against encumbrances in the absence of a clear intention that is to operate. *Bennett v. Investors Title Ins. Co., Inc.*, 635 S.E.2d 649 (Ct. App. 2006) and 635 S.E.2d 660 (Ct. App. 2006); *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965).

As opposed to the pre-existing SCDOT easement in the *Bennett* case which is an easement to a third party, here the plat in question in this case incorporated an easement

not to a third party but to the grantee in the deed and that easement was created by the grantor as he deeded the property to the grantee. As our State courts have indicated, basic deed law states that if a deed describes land by referencing a plat, the plat becomes part of the deed. When streets, alleyways, parks or other open areas are displayed on plats in conjunction with sale of property, an easement is created in favor of the grantee. *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975). Therefore, if an easement is recorded in a deed through a plat, it becomes part of the deed and is part of the chain-of-title. This rule was recognized and applied in *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950), as well as numerous other decisions of the Supreme Court and the Court and the Court of Appeals. These cases hold that such an easement inures to the benefit of the grantee and his successors in title. The existence of the easement will be implied by law, unless it appears that the grantor specifically intended otherwise. See also 28 C.J.S. *Easements* §§ 39 and 40 (1941).

Furthermore, the case law is clear that Respondent's relied upon principle includes cases wherein the grantor conveys land abutting a street (not necessarily a subdivision), and the grantee is entitled to the use of the street which borders its property and the grantor of the deed is estopped from denying the street's existence. *McAllister v. Smiley*, 301 S.C. 10. 389 S.E.2d 857 (1990); *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950).

The Court also notes that when a road is called for as a boundary, the tract extends to the center of the road, unless there is evidence of an intent to exclude the road on the face of the deed or plat. *Rushing v. Sellers*, 81 S.E.2d 281 (1954).

ARGUMENT II

EVIDENCE SUPPORTS CONGAREE ASSOCIATES INTENDING TO CREATE AN EASEMENT

The evidence does not support Appellant's argument that Congaree had no intention to convey an easement to Respondent's predecessor-in-title Loflin. The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement. 25 Am.Jur.2d *Easements and Licenses* § 19 (2004); 28A C.J.S. § 62; also *Murrells Inlet Corporation. v. Ward*, 378 S.C. 225, 662 S.E.2d 452.

However, on the issue of intent of the parties in creating an easement, the Courts have, over time, developed certain presumptions regarding the creation of implied easements in certain circumstances. One such presumption arises when an owner subdivides his land and has the land platted into lots and streets. This Court has recognized this presumption includes conveyance of properties referencing a road bordering the conveyed parcel. *McAllister v. Smiley*, 301 S.C. 10. 389 S.E.2d 857 (1990).

The recording of the plat expresses an intent to dedicate the road area for the use by the grantee in said conveyance. It would be the burden of the Appellant to overcome this presumption. Furthermore, the *Murrells Inlet* case indicates the deed and the recorded plat can be controlling, notwithstanding an "intent analysis". The lower court found that the deed in question was clear as to the grantor's intent and contains no specific objective evidence of expressing any intent except referencing the plat described in the deed which

shows the property bounded by the fifty (50') foot road on the southern side and creating an easement.

Even looking beyond the four corners of the deed as to intent, this intent is to dedicate the road in question for use by the grantee is based on the evidence that: (a) the grantor of the deed, Congaree, owned the road area in question at the time of the conveyance (Trial Tr. 126:1-4),(b) reviewed the deed in question prior to the execution (Trial Tr. 126:7-14), (c) the surveyor who prepared the plat was the surveyor who had done previous work for Congaree, knew the history on the road, including the creation of Westchester Phase I and Phase II which was using the same road area as part of its access for Westchester Phase II (Trial Tr. 152:1-4), (d) that surveying standards required Collingwood to show the road on the plat when he had specific knowledge of the road history, (e) that Congaree was deeding the Loflin/Respondent lot to an employee/agent who was building a log cabin model home adjacent to the fifty (50') foot road in question (Trial Tr. 127:7-15), (f), that it was clear as of the date of the Criss letter from the County of Lexington in 1985 showed that the proposed road area was still a viable road (Trial Tr. 131:13-24), (g) and there is no specific objective evidence that Congaree intended to terminate the easement area after the Criss letter .

Although McGee testified that since the road for Westchester Phase II would be too costly (Trial Tr. 132:3-10), he never intended for there to be an easement, he never testified when he came to this conclusion or whom he told. McGee testified that he never talked to anyone-not Collingwood or Loflin-- about the easement. Loflin did not testify. Collingwood did not testify. (Trial Tr. 64:6-13)

There is no evidence of any letter to the County that Phase II was terminated, no corporate minutes indicating as decision was made to stop the subdivision process, no testimony or correspondence informing surveyor Collingwood.

Other Collingwood Plats

Appellant has argued that other plats prepared by Collingwood (two most probably after the 1986 plat prepared by Collingwood for Loflin) shows intent not to convey an easement to Loflin, Respondents Predecessor-in-Title. The lower court gave little weight to this evidence due to the time between the disputed deed and the latter recorded plat. (Trial Tr. 136-140). The time period in determining the issue of intent, would be the date of the execution of the Loflin deed and it must be determined by the four corners of the deed as cited in the *Murrells Inlet* case.

Right of Reliance by Subsequent Grantees

Also when a grantor conveys, by an unambiguous deed referencing a plat and the deed contains no specific evidence of any intent except to create the easement, creates an easement that can be relied upon by subsequent purchasers acquiring the right to use the easement. It would be unfair to deny the subsequent purchasers, such as the Respondent, who purchased sixteen (16) years after the original conveyance the right to the full use and enjoyment of the easement as indicated by the plat, regardless of what the common grantor now argues what its intentions were at the time the deed and plat were recorded. *Murrells Inlet Corporation. v. Ward*, 378 S.C. 225, 662 S.E.2d 452.

No Ambiguity in Deed

The validity of Respondent's position as to the easement is further supported in the principle that if there is any ambiguity in the deed (which the Court does not find) conveying the Loflin/Respondent's property the ambiguity should be construed liberally and most strongly in favor of the person who did not write or prepare the contract is not responsible for the ambiguity and any ambiguity in a contract doubt, or uncertainty as to its meaning, should be resolved against the party who prepared the contract or is responsible for the verbiage. Congaree was the grantor; Collingwood was Congaree's surveyor, and the grantee was a Congaree employee/agent.

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes and meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and, thus, primarily responsible for its inaccuracies should justly and suffer for its shortcomings, if any. *Myrtle Beach Lumber Company v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423. The above rule of law that an ambiguity created by a drafter of the document supports Respondent's easement grant.

Validity of Westchester Phase II Plat

Appellant contends that a plat (Trial Exhibit GG – Westchester Phase II) was only a proposed plat and provides no evidence to support that Congaree intended to convey an easement to Respondent's Predecessor-in-Title Loflin. Citing the following reasons: (a) never received final approval from Lexington County; (b) was never recorded; and (c) reflects a project Congaree intended not to pursue. Respondent would respond by

indicating that the plat was approved by the Planning Office in Lexington County, subject to minor clarifications (Trial Tr. 172: 11-13). Secondly, the importance of the plat shows that Congaree intended and had taken the governmental steps to have a road approved and that road included an area which is reflected as the road area on the Loflin plat. The surveyor for Congaree, Bob Collingwood, prepared the Westchester Phase II plat and it was prepared prior to the Loflin plat and he is the same surveyor that prepared the Loflin plat that showed on the Loflin plat this same road area (Trial Tr. 152:1-8). The record is void of any evidence that Congaree intended to terminate the approval process for this road area prior to the conveyance from Congaree to Loflin. As the lower court held, in its Order, at trial McGee testified he never discussed the road with Loflin or Collingwood, his surveyor. McGee never testified about WHEN or WHY or HOW or to WHOM he communicated his purported change of mind about the road. He simply stated that after he realized the project was too costly, then Phase II was never developed.

ARGUMENT III

ROAD DESIGNATION ON PLAT NOT NAMED

Appellant further argues that the fifty (50') foot road area referred to on Respondent's plat was an error because it was not named nor was it part of the State of South Carolina, County of Lexington road system. In the case of *Murrells Inlet Corporation. v. Ward*, 378 S.C. 225, 662 S.E.2d 452, the Court states the grantee receives a private easement at the time of conveyance in any streets referenced in the plat. *Carolina Land,* 265 S.C. 105–106, 217 S.E.2d 19; *Blue Ridge*, 247 S.C. 119, 145 S.E.2d 925; *Giles,* 304 S.C. 73, 403 S.E.2d 132.; *see Newington Plantation,* 318 S.C. 365,

458 S.E.2d 38 ("While dedication for public use is significant to the creation of a public easement, it is irrelevant to the determination whether a private easement exists."). "[W]here lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance.' "*Vick v. S.C. Dep't of Transp.*, 347 S.C. 470, 478, 556 S.E.2d 693, 697 (Ct.App.2001) (quoting *Outlaw,* 222 S.C. 31, 71 S.E.2d 512). "Absent evidence of the seller's intent to the contrary, a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a private easement by implication with respect to those streets, whether or not there is a dedication to public use." *Newington Plantation,* 318 S.C. 365, 458 S.E.2d 38.

The fact that the road has not been dedicated, expressly or impliedly, to a governmental entity is irrelevant as to whether a private easement exists in the subject road which is what the Respondent is claiming in his action. The case of *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528, indicates that as between an owner who conveyed a lot, according to a plat, and the grantee, dedication is complete upon conveyance even though the street is not accepted by public authorities. The rights in the road after the conveyance of the grantee were created even though the street had never been used as a road and had been listed as an unopened road area.

It is clear from the above law that even though you do not have a state or county road, the law creates a private easement to the abutting property owner even thought the road is not public.

Appellant also argues that the road is not a road because its description is too vague or undefined. This argument is not persuasive. First, it is not essential to the validity of a grant of an easement that it be described by metes and bounds or by figures given definite dimensions of the easement. 28 A C.J.S. *Easements* § 54 (1996). Second, Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable. *Plott v. Justin Enterprises*, 374 S.C. 504, 649 S.E.2d 95 (1987).

Road Defined to a Great Degree of Certainty

The proper examination of the public records reveals that the road is defined to a great degree of certainty. The common grantor, Congaree, had already recorded the Westchester Phase I plat. The fifty (50') foot road shown on the Loflin/Respondent plat is located to the north of Phase I, Lot 13 of Westchester Subdivision. This lot of two hundred fifty (250') feet (the identical boundary footage length), of the Respondent's property on the southern side. As the survey shows, the same surveyor, Collingwood, placed the pins in the ground along the road in question for both lots (Lot 13 of Phase I of Westchester Subdivision and the Loflin/Respondent's lot) so that the fifty (50') foot road is bounded by both lots. The eastern side of the fifty (50') foot road in question is bounded by S.C. Highway 6. The Loflin/Respondent's plat indicates a dotted line running west which gives indication that the road is question is to continue.

Furthermore, Respondent testified that at the time he purchased the property, the area in question had been used as a road area. The was an asphalt entrance from South Lake Drive onto the fifty (50') foot road area, a gravel road driveway in the fifty (50') foot

area which extended in a semicircle from one side of the Respondent's property to the other side. This road area was an open area. This road area appeared on the Appellant's plat at the time of purchase. The lower court made a specific finding and conclusion that the easement that the Respondent had was access for ingress and egress over the road that borders the Respondent's property on the southern side which would be fifty (50') feet in width on eastern and western sides and two hundred and fifty (250') feet in length on the northern side and southern side with the boundary on the southern side of the road being the northern boundary of Lot 13, Phase I of Westchester Subdivision and the northern boundary being the southern boundary of the 0.68 acre lot (Respondent's lot).

ARGUMENT IV

EVIDENCE SUPPORTS IMPOSING PUNITIVE DAMAGES

The actual damages awarded to the Respondent were based on Respondent's testimony that he did not treat patients during the 40 hour week spent constructing an alternate road for access for his patients. The loss of net income was $2,500.00. (August 1, 2014 Order, p. 17). The lower court awarded Seven Thousand Five Hundred and no/100 ($7,500.00) Dollars in punitive damages.

The practice of awarding punitive damages originated in principles of common law "to deter the wrongdoer and others from committing like offenses in the future. Laird v. Nationwide Ins. Co., 243 S.C. 388, 393, 134 S.E.2d 206, 210 (1964). Punitive damages may properly be imposed to further a state's legitimate interests in punishing unlawful conduct and deterring its repetition. *BMW of North America v. Gore*, 517 U.S. 559, 116 S.C. 1589, 134 L.ed.2d 809 (1996). The state's interest in awarding punitive damages

must remain consistent with the principle of penal theory that "the punishment should fit the crime. *Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004). *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009).

The trial court considered the *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991) factors as to those factors supporting the factors in *BMW of North America v. Gore*, as adopted/explained by South Carolina in *Mitchell v. Fortis Ins. Co.*, 686 S.E.2d 176 (2009). The lower court also recognized South Carolina law which allows for an award of punitive damages for willful obstruction of a right of way or easement. Citing *Poole v. Edwards*, 197 S.C. 280, 15 S.E.2d 349 (1941). The lower court further focused on the three factor test of *BMW of North America v. Gore*, as adopted/explained by South Carolina in *Mitchell v. Fortis Ins. Co.*, 686 S.E.2d 176 (2009). The three factors are: (a) the degree of reprehensibility of the Appellant's conduct; (b) whether the conduct was a physical act or only an economic effect; and (c) the ratio of damages between the actual damages and the punitive damages.

As to the degree of reprehensibility, the Appellant, barricaded a road area which was platted prior to the Appellant's purchase of its property and which Appellant had record notice of and knew who had the benefit of that easement. Appellant testified that it did barricade the existing access of the Respondent for his patients and acknowledged, in trial testimony, that it could have an adverse impact on the Respondent. (Trial Tr.266: 17-19) The barricade had no legitimate purpose for the benefit of the Appellant and Appellant never chose the court system to determine the validity of Respondent's claim even though it had time to do so. (Trial Tr. 266: 7-16)

Obstructing the road was a physical act that impacted the Respondent's land every single day since it stopped traffic every single day. It was not an isolated physical event. As the lower court stated, it was in the nature of a continuing nuisance. As indicated above, in *Poole*, willful obstruction of a right of way is a basis for punitive damages. The end results of the obstruction of the right of way was a physical harm to the Respondent's land. Said obstruction was repeated daily which resulted in a continuing nuisance on a daily basis and the obstruction was not of a mere accident nature but intended malice of irrefutable harm directed against a known individual.

The ratio of damages between the actual and punitive damages was 3 to 1. Much larger rations have been upheld.11 *S.C. Jur. Damages* §43 (December 2013). The conduct (barricading the road) led to a week's lost work, the $2,500.00 award.

CONCLUSION

Respondent was created an easement by law when the conveyance was made from Congaree Associates to James Loflin, predecessor-in-title to the Respondent. Every deed in the Respondent's chain of title from his common grantor utilized the same legal description referencing the same plat. A long line of property cases in this State have recognized the creation of this type easement as was cited in the lower court's initial Order, the Rule 59 Order and Respondent's Brief. The *Smithco* and *Bennett* do not overrule this long line of cases. The plat reference by the common grantor in the deeds in the Respondent's chain of title create Respondent's easement. Furthermore, utilizing the intent analysis for creating an easement, there is overwhelming evidence that the original common grantor of the parties intended to create the easement and is estopped from now claiming it does not exist. This is based on the evidence of the common grantor executing a deed which referenced the plat which plat was prepared by a surveyor who had assisted the common grantor in preparing other plats in the same vicinity showing the 50' road in question as a road area, common grantor not taking any steps to terminate the easement which it had created, and once the easement is created, the subsequent grantees have a right to rely upon their right to the same easement when there is no specific evidence of any other intent except to create the easement.

Even though the road is not a public road, basic law of this State created a private easement in the Respondent and a deed does not have to have a description by metes and bounds; although, in this case, the evidence is it was actually used as a road area, was noted on Appellant's plat prior to purchase of its property and there are plat exhibits as evidence which specified the easement area which allowed the court to specifically define the easement access provided to the Respondent.

Respondent's granted punitive damages are consistent with the requirements in the *Gamble*, *Smithco*, and *Mitchell* cases. Appellant instituted action that did physical harm to Respondent which affected him on a daily basis as to the access of himself and his patients to his property. Appellant did not seek judicial declaratory action of Respondent's rights when Appellant had record notice knowledge of the property rights of Respondent. The 3

to 1 ratio of actual to punitive damages falls within the legal parameters of court allowed amounts.

DAVIS, FRAWLEY, LLC

By: _____

James Randall Davis
Post Office Box 489
Lexington, South Carolina 29071
PHONE: (803) 359-2512
randy@oldcourthouse.com
ATTORNEYS FOR RESPONDENT

Lexington, South Carolina
September 12, 2014.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Trial Court Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

David R. Respondent.....Respondent,

vs.

The Storage Center – Platt Springs, LLC.....Appellant.

CERTIFICATE OF COUNSEL

I hereby certify that this Brief of Respondent complies with Rule 211(b) of the South Carolina Appellate Court Rules.

DAVIS, FRAWLEY, LLC

By: _____

James Randall Davis
Post Office Box 489
Lexington, South Carolina 29071
Telephone: (803) 359-2512
randy@oldcourthouse.com
ATTORNEYS FOR RESPONDENT

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vs.

The Storage Center – Platt Springs, LLC, Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent, by email (bdurant@sowellgray.com) (rstepp@sowellgray.com) and by U.S. regular mail, postage pre-paid on September 12, 2014, addressed to its attorney of record, Robert E. Stepp, Esquire and Bess J. DuRant, Esquire, Sowell Gray Stepp & Laffitte, L.L.C., 1310 Gasden Street, Post Office Box 11449, Columbia, South Carolina 29211.

James Randall Davis
randy@oldcourthouse.com
DAVIS FRAWLEY, LLC
140 East Main Street (29072)
Post Office Box 489
Lexington, South Carolina 29071
Tel: (803) 359-2512
Attorney for Respondent

David B. Sample
Attorney at Law
1506 Ebenezer Road
Rock Hill, SC 29732

CHARLOTTE NC 282

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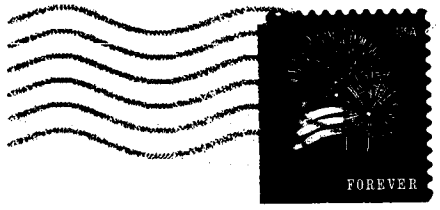

Michael J. Anzelmo
B. Rush Smith, III
Nelson Mullins Riley and Scarborough, LLP
P.O. Box 11070
Columbia, SC 29211

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