

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF JASPER )

IN THE COURT OF COMMON PLEAS  
A NON-JURY MATTER  
C/A No.: 2012-CP-27-380

SHEILA PERRY, ALMA REED EFAW, )  
ISIAH DEVORE, JAKIE WILSON, )  
DENISE DEVORE, R. DEVORE, )  
LESLEY LISLIE, LATASHA )  
CHANEYFIELD, SHELDON )  
CHANEYFIELD, WILLIAM "CHIC" )  
CHANEYFIELD, ENOCH )  
CHANEYFIELD, JOANN NAZARENE, )  
GAIL JENKINS, MARK WASHINGTON, )  
LARRY CHANEYFIELD, RAMONA )  
PINCKNEY, LINDA CHANEYFIELD, )  
and SANDY CHANEYFIELD, )

Plaintiffs, )

vs. )

The Heirs and Distributees of JOHN )  
GILES, aka JOHN GYLES; The Heirs and )  
Distributees of JOE WRIGHT, SR.; )  
The Heirs and Distributees of JOE )  
WRIGHT, JR.; The Heirs and Distributees )  
of LILLIE CHANEYFIELD; The Heirs and )  
Distributees of MATTIE SIMMONS )  
WILLIAMS; The Heirs and Distributees of )  
WILLIAM HENRY WRIGHT; The Heirs )  
and Distributees of CATHERINE CUFF; )  
BERTHA BARBARA; WILSON FAMILY )  
HOLDINGS, LLC; LESLIE H. HANNA; )  
ANDREW SINGLETON, ET AL.; )  
HEIRS OF JAMES SIMMONS; JASPER )  
DEVELOPMENT & CONSTRUCTION; )  
ISIAH CHANEYFIELD; MARTHA R. )  
JACKSON and WEST JACKSON; and all )  
other heirs at law, devisees, or persons )  
unknown, claiming by, under, or through )  
any of the above-named persons, JOHN )  
DOE and MARY ROE, being fictitious )

names designating a class of persons, or a )  
legal entity, infants, incompetents, persons )  
in the Armed Forces of the United States of )  
America, if any, known or unknown, who )  
may be an heir, devisee, legatee, issue, )

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SC Court of Appeals

REPORT AND ORDER OF  
SPECIAL REFEREE

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MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY SC

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SCANNED

alienee, administrator, executor, creditor, )  
 successor or assign having any right, title, )  
 interest, estate in or lien upon the real estate) )  
 described in the Complaint herein, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

This matter was referred to me as Special Master with Finality to take testimony and to issue a Final Order in this matter. I heard the matter on May 1, 2013 for a final hearing on an action to Quiet Title and confirm boundaries. The following were present at the hearing: Defendant Bertha Barbara and her attorney C. Stephen Bennett, Esquire; Plaintiff Alma Reed Efaw and her attorney R. Thayer Rivers, Jr.; Defendant Leslie H. Hanna and his attorney Marion C. Fairey, Jr., Esquire; and, Anne Starr Hughes, a paralegal with the Law Office of R. Thayer Rivers, Jr. The Guardian ad Litem, Robert M. Hughes, Esquire, of the Jasper County Bar, had previously submitted his Answer submitting the interest of any unknowns, minors, or persons under disability to the Court for its protection.

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**PROCEDURAL BACKGROUND, SUMMARY, AND DISCUSSION**  
**OF THE EVIDENCE PRESENTED**

The Summons, Complaint and *Lis Pendens* were filed on June 14, 2012. I find that all Defendants have been properly served by personal service, publication, and/or certified mail and that this matter is properly before this court. I further find that all Defendants are in default, with the exception of Bertha Barber, represented by C. Stephen Bennett, and Leslie H. Hanna and Wilson Family Holdings, both represented by Marion C. Fairey.

At the hearing on this matter testimony was taken and evidence presented which establishes the following.

1. The property that is the subject of this action is described as follows:

Giles Property:

"ALL that certain piece, parcel or tract of land, situate, lying and being in Jasper County, South Carolina, Coosawhatchie Township, bounded as follows: North by lands n/f the Estate of Adam Burns; East by lands n/f Jim Simmons; South by lands n/f Estate of John Pinckney; and West by lands n/f George Garbade. Said tract of land contains (10) acres, more or less, and is more fully shown on that Plat surveyed by W. R. Mew, November 1, 1909."

This is the same property conveyed to John Gyles by deed of Elsie Jackson, dated November, 1909 and recorded in Beaufort County, South Carolina in Deed Book 29 at Page 449.

Jasper County Tax Map Ref. 062-00-10-004

ALSO:

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"ALL that certain piece, parcel or tract of land, situate, lying and being in Jasper County, South Carolina, containing four (4) acres, more or less and bounded as follows: North by lands n/f Toney Chaneyfield; East by lands n/f John Pinckney; South by lands n/f Emma Wright; and West by lands n/f Emma Wright.

This is the same property conveyed to John Giles by deed of Emma Wright dated December 17, 1900 and recorded in Beaufort County, South Carolina in Deed Book 24 at Page 150."

Jasper County Tax Map ref. 062-00-10-003

ALSO:

Home Place:

All that certain piece, parcel or lot of land containing one (1) acre, more or less, and known as the "Homeplace" of Joe Wright, Sr., and being generally bounded and described as follows: On the Northwest by the R/W of Highway S-27-13; on the Northeast by a dirt road and lands, n/f of Isaiah Chaneyfield; on the Southeast by lands, n/f of Martha R. And West Jackson, and on the Southwest by a paved county road, Forrest Drive.

~~This being the remaining one (1) acre of the Estate of Joe Wright, Sr. that was reserved in the division of the property of the Estate of Joe Wright, Sr., as described in those certain Deeds recorded in Deed Book 52 at Page 164 and Deed Book 52 at Page 165 in the Office of the ROD for Jasper County, South Carolina.~~

2. John Giles died intestate years ago, leaving as his sole surviving heir, Joe Wright, Sr. That Joe Wright, Sr. thereafter died intestate in April of 1955, leaving as his sole heirs five (5) children, to-wit: Joe Wright, Jr., Catherine W. Cuff, Lillie Chaneyfield, Mattie W. Simmons and William Henry Wright.

3. That the children of Joe Wright, Sr. divided other properties of Joe Wright, Sr. amongst themselves, leaving the one (1) acre "House Spot" (one of the Subject Properties) intact, and did not partition the "Giles Property."

4. That Joe Wright, Jr., a child of Joe Wright, Sr., conveyed all his interest in the "Giles Property" to his daughter, Bertha Barbara, by Deed dated February 7, 2000, and recorded in the Office of the Register of Deeds for Jasper County, South Carolina in Deed Book 214 at Pages 4 and 7. Joe Wright, Jr. did not convey his interest in the one (1) acre "House Spot," and he thereafter died intestate.

5. Testimony was taken from Ms. Alma Reed Efaw and Ms. Bertha Barbara as to the Family Tree of Joe Wright, Sr., sole Heir of John Giles. That Family Tree is attached hereto and made a part hereof, as is their percentage of undivided interest in the three (3) parcels of property in question, which is also made a part of this Order.

6. Testimony was also taken from Anne Starr R. Hughes, who is qualified as an expert in the records of the Office of the Clerks of Court/ROD in Beaufort, Hampton and Jasper Counties. Hughes' testimony established the chain of title to the Giles Property and the L. H. Hanna Property. For the purposes of the issues of easement by necessity, Hughes's testimony

~~also established that there was a common grantor for both the Giles four (4) acre tract and the L.~~

H. Hanna property, that common grantor being one Emma Wright. Emma Wright was conveyed a parcel of thirty (30) acres, more or less, by Deed recorded June 4, 1892 in the Office of the Clerk

of Court for Beaufort, South Carolina in Deed Book 18 at Page 198. At that time, the Subject Property was a portion of Beaufort County, Jasper County having not been established until 1912. On December 18, 1900, by Deed recorded in Deed Book 24 at Page 150, Emma Wright conveyed the four (4) acre Subject Property parcel to John Giles. Thereafter, by a Deed recorded November 15, 1906 in Deed Book 26 at Page 487 in the Office of the Clerk of Court for Beaufort County, South Carolina, Emma Wright conveyed the remainder of her 30-acre tract, being a parcel of twenty-six (26) acres, more or less, to Lawrence Nettles, a predecessor in title to the L. H. Hanna, thereby establishing the Common Grantor between the parcels.

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7. I have also reviewed as evidence a number of aerial photographs that show the properties from as far back as 1955 and photographs through the present time. The oldest photographs are from the time that Interstate 95 had not been built and the access to the properties passed from Highway 17. A photograph from 1970 was introduced into evidence and that photograph clearly shows that the dirt road that passes from (first) Highway 17 (and then later the Frontage Road of Interstate 95) which is the sole access to the premises. This dirt road passes across the L.H. Hanna property to the John Giles parcel. This dirt road is the source of access to both the ten (10) acre and four (4) acre "Giles tracts." As of the time of the hearing, the dirt road was visible in the photographic evidence presented.

8. There was further testimony given by Bertha Barbara that years ago she had visited the property with her father, the late Joe Wright, Jr. She testified that in accessing the land her and her father had used the road leading from the Frontage Road over the property of Mr. Hanna to the family's holdings. On cross-examination, Ms. Barbara candidly admitted that she had left Jasper County many decades ago and that the visit to the property described above was her only personal use of the land.

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Ms. Barbara further testified, over the objection of Mr. Fairey, that her father had stored lumber on the tract and that until his death in 2008, her father had routinely used the road traversing the Hanna property to reach the Giles tracts. Ms. Barbara also testified as to her knowledge that throughout the 1970's and 1980's members of the family had hunted the various family tracts. Mr. Fairy timely objected to this testimony as well. As to the attack upon the admissibility of the statements due to lack of personal knowledge and hearsay, I find the testimony to be admissible. First, though Ms. Barbara admitted that she had neither personally hunted the property nor used it herself for storing lumber (or any other purpose, except the one visit there with her father many years ago), her testimony of the property uses by other members of her family was based on her own knowledge of the family's customs and uses of the property. Furthermore, her testimony of other family members' use of the property is not hearsay. Even if it were, the testimony would fall under the hearsay exception of Rule 803(20) of the South Carolina Rules of Evidence. Rule 803(20), SCRE, provides in pertinent part that "[t]he following are not excluded by the hearsay rule, even though the declarant is available as a witness:

**(20) Reputation Concerning Boundaries or General History.**

Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

In the undersigned's view, the testimony is admissible and relevant to the issues before the court.

9. Having presented evidence through the above two witnesses, the Plaintiffs/Cross-Claimant rested. Defendants Hanna and Wilson Family Holdings, LLC timely moved for a directed verdict. Counsel for the Plaintiffs and Ms. Barbara conceded that there was no evidence to support

~~the establishment of an easement under any theory across the Wilson Property; the undersigned~~

therefore directed a verdict in favor of Wilson Family Holdings, LLC. Based upon the testimony by Ms. Barbara (discussed above), Mr. Hanna's motion for a directed verdict was denied.

10. The defendant Leslie Hanna was then called to testify. Mr. Hanna testified that he bought his tract from Ralph and Brenda Woodie in 2008. Mr. Hanna testified that he had visited the tract numerous times and has not seen any active access road or other evidence of ingress or egress across the middle of his property to the Giles Property. Mr. Hanna also introduced the recorded plat of the property which had no reference to an access road through the property as alleged by the Plaintiffs and Cross-Claimant. He further testified that when he purchased the property, neither his deed, nor any of the preceding deeds in the chain of title referenced or mentioned any easement or right of way across his property to the Giles Property.

11. At the close of all evidence the undersigned took the matter under advisement, requested, and has considered proposed orders by the parties.

As to the issue of the existence of an easement, Plaintiffs and Ms. Barbara contend that these activities on the land establish a period of prescriptive use in excess of that required by both statute and common law. A discussion of the legal standards and analysis concerning the claimed easement is therefore warranted.

#### Discussion

“An easement is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed. An easement is therefore not an estate in lands in the usual sense.” *Proctor v. Steedley*, 398 S.C. 561, 730 S.E.2d 357 (2012).

The determination of an easement is an action at law. *Slear v. Hanna*, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998). Establishing an easement in an action of law is a question of fact. *Jowers v Hornsby*, 292 S.C. 549 551, 357 S.E.2d 710, 711 (1987); *Hartley v. John Wesley United Methodist Church of Johns Island*, 255 S.C. 145, 149, 584 S.E.2d 386, 387 (Ct. App. 2003). The scope of review of a Special Referee in an action at law is limited to the correction of errors of law. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976). The

findings of fact of a Special Referee will not be disturbed where there is some evidentiary support for them. *Id.*

An easement may arise in three ways:

- (a) by grant;
- (b) from necessity; or
- (c) by prescription.

*Kelly v. Snyder*, 396 S.C. 564, 572, 722 S.E.2d 813, 817 (Ct. App. 2012).

**a. Easement By Grant**

As to the existence of an easement by grant, Plaintiff's and Cross-Claimant's action fails as a matter of law. There is no evidence that there has ever been an express easement granted across the Hanna Property to the Giles Property. Plaintiffs' expert conceded that after a thorough search of the deeds and plats of record regarding these tracts, there was no written or recorded grant of an easement in the chain of title for both the Giles Property and the Hanna tract for ingress or egress. Accordingly, the Plaintiffs and Cross-Claimant have failed meet their burden of proving the existence of any easement by express grant or deed.

Without an express easement, the Plaintiffs and Cross-Claimant's action turns upon the existence of an easement by prescription or an easement by necessity with respect to the Hanna Property. Plaintiffs and Cross-Claimant bear the burden of proving either type of easement.

**b. Easement by Prescription**

To meet the requirements for establishing a prescriptive easement, the party asserting the easement must allege and prove: (1) continued and uninterrupted use for 20 years, (2) the identity of the thing enjoyed, and (3) use which was either adverse or under a claim of right. *Harvey*

*County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993); *Morrow v. Dyches*, 328 S.C. 522,

527,492 S.E.2d 420, 423 (Ct. App. 1997); *Hartley v. John Wesley United Methodist Church of Johns Island*, 355 S.C. 145, 150, 584 S.E.2d 386, 388 (Ct. App. 2003).

Here, the evidence in the record is insufficient to establish an easement by prescription. Ms. Barbara's testimony was that from the early 1950's until the present, she recalled accessing the Giles Property across a road on the Hanna tract one time. Though she did testify as to other family member's customary use of the property and access over the Hanna tract, such evidence does not satisfy the burden of showing continued and uninterrupted use for 20 years. *Kelley v. Snyder*, 396 S.C. 564, 573, 396 S.E.2d 813, 818 (Ct. App. 2012) (continual use must be of reasonable frequency as determined from the nature of the needs of the claimant).

Moreover, the plaintiffs and cross-claimant have not met their burden as to the third element. A party seeking to establish a prescriptive easement must prove that their use of the easement was either adverse or under a claim of right. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993). "A party claiming a prescriptive easement under a claim of right must demonstrate a substantial belief that he had the right to use the parcel or road based upon the totality of the circumstances surrounding his use." *Kelley v. Snyder*, 396 S.C. 564, 574, 722 S.E.2d 813, 818 (Ct. App. 2012); citing, *Hartley v. John Wesley United Methodist Church of Johns Island*, 396 S.C. 564, 574, 722 S.E.2d 813, 818 (Ct. App. 2003). No testimony was offered that Ms. Barbara or any previous owner had been given permission at any time to cross what is now the Hanna Property to access the Giles Property. There was no evidence that any prior owner or the Hanna tract acknowledge the right of any owner of the Giles Property to cross the Hanna tract, as was the case in *Revis v. Barrett*, 321 S.C. 206, 208, 467 S.E.2d 460, 461 (Ct. App. 1996). There was no

~~evidence that any road across the Hanna tract was over a state road (Id.) or a road maintained by~~  
any county or municipal government to imply public use as was the case in *Hartley v. John Weseley United Methodist Church of Johns Island*, 355 S.C. 145, 152, 584 S.E.2d 386, 389 (Ct.

App. 2003). Additionally, there was no evidence that the Plaintiffs or Cross-Claimant maintained or serviced a road across the Hanna tract. *Loftis v. SCE&G*, 361 S.C. 434, 604 S.E.2d 714 (Ct. App. 2004). Accordingly, the Plaintiff and Cross-claimant have failed to meet this burden of proof that they are entitled to an easement by prescription.

**c. Easement by Necessity**

The elements of a claim for easement by necessity are: (1) unity of title, (2) severance of title, and (3) necessity. *Boyd v. Bellsouth Tel. Co.*, 369 S.C. 410, 418-19, 633 S.E.2d 136, 140-41 (2006). "The necessity required for easement by necessity must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible." *Id.* at 420, 633 S.E.2d at 141. "The necessity element of easement by necessity must exist at the time of the severance and the party claiming the right to an easement must not create the necessity when it would not otherwise exist." *Id.* (citations omitted).

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"To establish unity of title, the owner of the dominant estate must show that his land and that of the owner of the servient estate once belonged to the same person." *Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002). Severance of title means that title to a larger tract was severed "by conveyance of a part to the predecessor in title of the plaintiff and of a part to the predecessor in title to the defendant; they both claim, from a common source, different parts of the integral tract, which necessarily assumes a severance." *Brasington v. Williams*, 143 S.C. 223, 246, 141 S.E. 375, 382 (1927). In this case, the elements of unity of title and severance of title are present.

Based upon the testimony of Ms. Barbara, evidence exists to support a long term, customary ~~use of the properties and the access road by family members of the Plaintiff. Evidence exists in the~~ record that any "prior use" of access across the Hanna Property to the Giles Property was in existence at the time the two estates were severed, that such a use was apparent or known to the

parties at the time of severance, or that at the time of severance there was no other reasonable mode of enjoying the dominant estate without the easement.

Based upon careful consideration of the evidence presented at hearing, the submissions and arguments of the parties, and as a result of the foregoing, I make the following

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. That all parties have been properly served and that the Court has jurisdiction over the property and the parties hereto.

2. That Joe Wright, Sr. is declared the sole heir of John Giles and the Heirs of Joe Wright, Sr., are hereby established. A chart of the same is attached hereto and made a part hereof, as is a chart indicating their undivided interest in the Subject Property, and they are the owners, in fee simple, of the Subject Property. It is to be noted that the undivided interest of the Heirs of Joe Wright, Jr. in the "House Spot" differs from that of the "Giles Property."

3. That the "House Spot" of Joe Wright, Sr. be placed up for a Private Sale, with the costs of this action to be deducted, as far as practicable, from the proceeds of said sale, with any remainder being distributed amongst the parties in accordance with the attached percentage chart.

4. That two (2) branches of the Family of Joe Wright, Sr. have supplied contributions toward the costs of this action, specifically the Heirs of Lillie Chaneyfield and the Heirs of Catherine Cuff. Those contributions are to be reimbursed from either the sale of the "House Spot" or the Sale of the Giles Property. Also, it is to be noted that Alma Reed Efaw, a Plaintiff, has been instrumental in her service as Treasurer for the receipt of funds from several other branches of the Joe Wright, Sr. family. All such contributions towards the costs of this ~~action are subject to reimbursement from the sales proceeds.~~

5. That Bertha Barbara has expended monies in the prosecution of this action in addition to having paid property taxes in the past, and upon receipt of her documentation, this

Court may order reimbursement through a Supplemental Order. Judgment is reserved on this issue for a period of Ninety (90) days from the date of this Order and the parties are encouraged to resolve this issue through a Consent Order in the interests of time and efficiency. However, should there be any dispute as to this issue, the attorneys are to notify the undersigned of the need for a supplemental hearing, to be held within ninety (90) days of the date of entry of this Order.

6. That the two (2) Giles Properties be appraised and that the property be listed for a private sale, with any remaining costs and fees and a reasonable attorney fee of ten (10.0%) percent of the gross sales proceeds be apportioned amongst the parties in accordance with their interest in the property and constitute a lien thereon until paid.

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7. Plaintiffs/Cross-Claimants have failed to meet their burden of proving an easement by grant or an easement by prescription. However, I find that an easement by necessity exists and the three (3) elements have been proven to my satisfaction. Taken together, the evidence of aerial photographs and the testimony of the witnesses, shows that this is the only means of access to the tracts at issue, and Plaintiffs/Cross-Claimant have satisfied the requirements of establishing an easement by necessity, for ingress and egress to and from the Plaintiffs' property.

8. That an easement has been established in the dirt road leading from the Frontage Road of Interstate 95 through the lands of L.H. Hanna to the Four (4) acre Giles Tract.

9. This easement has been established by necessity.

10. That the Plaintiffs and Cross-Claimant, their heirs and assigns, are entitled to use this road for ingress and egress to the property.


~~11. That the Defendant L. H. Hanna shall be entitled to contribution by the Plaintiffs~~  
and Cross-claimant for any sums spent to maintain or improve the road.

12. That the Jasper County Tax Map is attached hereto and made a part hereof to remove any question as to the location and existence of the road.

13. That a Special Referee Fee of \$500.00 Dollars is appropriate for this matter.

14. That a Guardian ad Litem fee for Robert M. Hughes, Esquire, in the mount of Two Hundred Fifty (\$250.00) Dollars is appropriate for this matter.

AND IT IS SO ORDERED this 7<sup>th</sup> day of April, 2014, at Ridgeland, South Carolina.

  
\_\_\_\_\_  
Matthew V. Creech  
Special Referee