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
R. Lawton McIntosh, Circuit Court Judge

Case No. 2011-CP-32-01010
Tracking No. 2013-002056

Glenda Renee Couram, ...Appellant,

v.

Mr. & Mrs. Christopher Hooker, Mr. & Mrs. Carl Reibold, All persons claiming any Legal or Equitable Right, Title, Estate, Lien or Interest in the Property described in the Complaint Adverse to the Plaintiff's, Cox & Dinkins, Inc., Fair Builders/Developers, Inc., Donald "Don" Rawls & Steve Fair in their official and individual capacities, Carolina Water Svc. (CWS), Carolina Trace Utilities, Inc., & Utilities, Inc. Corporate Offices (CWS),

Defendants,

Of whom Mr. & Mrs. Hooker, Mr. & Mrs. Reibold, Cox & Dinkins, Inc., Donald "Don" Rawls, and Steven A. Fair are the...

Respondents.

FINAL BRIEF OF RESPONDENTS MR. & MRS. HOOKER and MR. & MRS. REIBOLD

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STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court Abuse Its Sound Discretion In Granting Hooker and Reibold's (the Neighbors') Motion for Declaratory Judgment?

2. Did the Trial Court Properly Deny Appellant's Post-Trial Motion Seeking to Overturn the Jury Verdict?

3. Did the Trial Court Properly Grant the Neighbors' Motion for a Directed Verdict for Civil Conspiracy?

4. Did the Trial Court Properly Grant the Neighbors' Motion for a Directed Verdict for Slander of Title?

5. Did the Trial Court Properly Grant the Neighbors' Motion for a Directed Verdict for Slander of Title when Appellant did not Prove Special Damages?

6. Did the Trial Court Abuse Its Discretion by Dismissing Appellant's Witnesses After They Testified and Appellant Approved Their Dismissal?

7. Did the Trial Court Properly Grant the Neighbors' Motion for a Directed Verdict for Nuisance?

8. Did the Trial Court Properly Grant the Neighbors' Motion for a Directed Verdict for Invasion of Privacy?

9. Did the Trial Court Properly Grant the Neighbors' Motion for a Directed Verdict for Intentional Infliction of Emotional Distress?

STATEMENT OF THE CASE

This action commenced on March 11, 2011, when Glenda Renee Couram (Appellant) filed a summons and complaint against Mr. and Mrs. Christopher Hooker, Mr. and Mrs. Carl Reibold (Hooker and Reibold), other unknown parties, and Carolina Water Service (CWS). Appellant sought to quiet title to property originally owned by CWS, indicated by a subdivision plat of Wrenwood, Phase IV, her plat, and the plat relied upon by Hooker and Reibold when they purchased their property (R. pp. 677-78, *p. 665*).[1] Appellant sought damages against Hooker and Reibold for nuisance, trespass, conversion, harassment and civil conspiracy.

Subsequently, after several filed amended complaints, Appellant added Cox & Dinkins, Inc. (Cox & Dinkins), Donald "Don" Rawls (Mr. Rawls), Steve Fair, and Fair Builders/Developers, Inc. (collectively "Fair"). Appellant sought damages against Hooker and Reibold for a boundary dispute, trespass, nuisance, slander of title, invasion of privacy, and intentional infliction of emotional distress. Hooker and Reibold filed their third amended answer and counterclaim on April 26, 2012, denying Appellant's allegations and counterclaiming for nuisance and intentional infliction of emotional distress. Hooker and Reibold also sought a declaratory judgment determining the

[1] The Neighbors included in their Designation of Matter to be Included in the Record on Appeal, filed July 14, 2014, Defendant's Exhibit 2, and Defendant's Exhibits 5 and 6, pursuant to Rule 209(b), SCACR. Appellant omitted Defendant's Exhibit 2 and did not provide Defendant's Exhibits 5 and 6 in the Record on Appeal. The Neighbors moved on September 22, 2014 for an Order compelling Appellant to amend the Record on Appeal to include these exhibits. Appellant claims p. 665 of the Record on Appeal is Defendant's Exhibit 2; however, the Record on Appeal lists p. 665 at Plaintiff's Exhibit 2, with "D. Exhibit 2" handwritten at the top right of the page. As of the date of this filing, this motion has not received a ruling. This reference serves to notify the Court that the missing Exhibits shall be reflected throughout the Neighbors' brief by *underlined italics* (for Defendant's Exhibits 5 and 6) or *p. 665* (Plaintiff's Exhibit 2 claimed by Appellant as Defendant's Exhibit 2), and also acts as the Neighbors' good faith effort to comply with Rule 211, SCACR.

location of the property line between their properties and Appellant's property. Appellant's reply constituted a general denial of Hooker and Reibold's allegations.

At trial, from July 8, 2013 through July 10, 2013, all parties presented their claims and defenses at a jury trial before the Honorable R. Lawton McIntosh. After Appellant presented her case, the trial court granted directed verdict motions in favor of Cox & Dinkins, Mr. Rawls, Fair, Mrs. Hooker and Mrs. Reibold on all causes of action alleged by Appellant (R. p. 432, line 5-p. 446, line 24, p. 454, line 11-p. 459, line 10). The trial court granted directed verdict motions in favor of Hooker and Reibold on all causes of action except trespass and nuisance (R. p. 447, line 3-p. 454, line 9).

After Hooker and Reibold presented their case, the trial court granted a directed verdict for all remaining parties (Hooker and Reibold, Appellant) on each party's allegation of nuisance (R. pp. 549, line 23-p. 551, line 13). Appellant next called Mr. Rawls as a reply witness. After Appellant directly examined Mr. Rawls, Hooker and Reibold moved to admit Mr. Rawls as an expert witness, which the trial court granted (R. p 567, line 8-p. 568, line 13). Mr. Rawls testified the Cox & Dinkins survey (R. *p. 665*) accurately portrayed the property line between the properties owned by Appellant, Hooker and Reibold. Using this testimony from Appellant's witness, and the surveys admitted into evidence, the trial court granted Hooker and Reibold's motion for a declaratory judgment establishing the property line between the parties using the Cox & Dinkins survey. However, the trial court denied Hooker and Reibold's motion for a directed verdict on Appellant's trespass cause of action (R. p. 576, line 20-p.578, line 19).

Upon conclusion of the three (3) day trial, the jury returned a verdict for Hooker and Reibold on Appellant's trespass claim (R. pp. 27-28, p. 643, lines 20-24). The trial

court recorded the jury verdict on July 12, 2013 and gave Appellant ten (10) days to file post-trial motions.

Appellant filed her post-trial motion on July 19, 2013. Appellant sought reconsideration of the trial court's grant of Respondent's directed verdict motions, sought to set aside the jury verdict in favor of Hooker and Reibold, and sought a new trial. The trial court denied Appellant's post-trial motion without the necessity of oral arguments by Order filed August 2, 2013 (R. pp. 29-30). All interested parties received service by mail on August 6, 2013.

Appellant filed her Notice of Appeal on September 3, 2013, serving the trial court and all interested parties that same day. Appellant appealed the jury verdict and denial of her post-trial motion.

There have been no changes in the parties as a result of death, substitution of parties or otherwise.

Throughout litigation, the Hookers and Reibolds have received the reference of "the Neighbors." When this Initial Brief refers to the Neighbors, the Neighbors are Mr. Hooker and Mr. Reibold. If either Neighbor is referred to singularly, this Initial Brief will either reflect "Hooker" or "Reibold." Mrs. Hooker and Mrs. Reibold will be referred to as "Mrs. Hooker" and "Mrs. Reibold."

STATEMENT OF THE FACTS

Appellant purchased her residence at 104 Macaw Lane from Steve Hendrix Builders on March 28, 1994. Appellant's deed describes her property as Lot 31, shown on a plat prepared for her by Drafts Surveying, Inc., recorded March 29, 1994 in Plat Book 268 at page 12 in the Office of the Register of Deeds for Lexington County (R. p. 678).

James Drafts (Mr. Drafts), who prepared Appellant's lot survey, relied upon a final subdivision plat of Wrenwood, Phase IV, recorded in Plat Book 247 at page 163 in the Office of the Register of Deeds for Lexington County (R. pp. 677-677A).

Mrs. Hooker purchased the Hookers' property at 120 Toucan Way from Fair on November 2, 2005. Mrs. Hooker's deed describes her property as Lot A shown on a final plat of Wrenwood Subdivision, Phase V, prepared by Cox & Dinkins, recorded in Plat Slide 793 at page 5 in the Office of the Lexington County Register of Deeds (R. *p. 665*).

The Reibolds purchased their property on April 14, 2006. The Reibold's deed describes their property as Lot B shown on a final plat of Wrenwood Subdivision, Phase V, prepared by Cox & Dinkins, recorded in Plat Slide 793 at page 4 in the Office of the Lexington County Register of Deeds (R. *p. 665*).

Mr. Rawls prepared the Cox & Dinkins survey. He relied on several plats, including the final subdivision plat of Wrenwood, Phase IV, recorded in Plat Book 247 at page 163 in the Office of the Register of Deeds for Lexington County (R. pp. 677-677A).

Fair purchased the property constituting Lots A and B in 2004. Wrenwood Subdivision, Phase V acted as common area, a park bordering Appellant's property, before Fair bought this property (R. p. 374, lines 15-16, p. 375, lines 7-8).

Mr. Drafts marked the corner pin (the "corner pin") between Hooker's property and Appellant's property using the phrase "I.P.F. (#4 rebar)" at the western side of the property along Macaw Lane. The length from this pin to the next pin on Appellant's western boundary along Macaw Lane totals 69.87 feet (R. p. 678). No additional pin is shown along Appellant's western boundary. The length from the corner pin to the next pin on Appellant's southern boundary totals 119.86 feet. When combined with the length to the next pin on the southern boundary (the distance of the dotted line marked "L4"), which totals 30.02 feet, the total distance of the southern boundary of Appellant's property totals 149.88 feet (R. p. 678). Appellant's southern property line sets the boundary line between her property and the Neighbors' properties.

Mr. Rawls, in the Cox & Dinkins survey, measures Appellant's southern boundary line at 149.84 feet (80.15 feet + 69.69 feet), a difference of .04 feet between his plat and Mr. Drafts' plat. He marks the corner pin between Hooker's property and Appellant's property using the phrase "1/2" rebar (o)." In measuring the western boundary of Appellant's property along Macaw Lane, Mr. Rawls measures the total length as 69.86 feet to ½ rebar (o). Mr. Rawls' measurement of Appellant's western property line differs from Mr. Drafts' measurement by .01 foot (69.87 feet minus 69.86 feet). Mr. Rawls also found no additional pin along Appellant's western boundary. (R. *p. 665*).

SCOPE OF REVIEW

In ruling on a directed verdict motion, the Court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Swinton Creek Nursery v. Edisto Farm Credit, ACA,* 334 S.C. 469, 514 S.E.2d 126, 130 (1999). When the evidence only yields one inference, a directed verdict in favor of the moving party is proper. *Id.* The trial court can only be reversed by this Court when there is not evidence to support the ruling below. *Creech v. South Carolina Wildlife and Marine Resources Dep't,* 328 S.C. 24, 491 S.E.2d 571 (1997).

The Court will not consider an issue not preserved for appellate review. *Beverly S. v. Kayla R.,* 395 S.C. 399, 718 S.E.2d 224, 225 (Ct. App. 2011). Issue preservation requires a party to preserve an issue both at trial and in presentation of the issue on appeal. *Id.*

ARGUMENT

I. The Trial Court Properly Granted the Neighbors' Motion for Declaratory Judgment as Evidence Proved the Cox & Dinkins Survey Accurately Portrayed the Property Line Between Appellant and the Neighbors.

The Neighbors answered Appellant's complaint by filing a counterclaim for a declaratory judgment pursuant to the South Carolina Uniform Declaratory Judgment Act. S.C. Code Ann. §15-53-10, *et seq.* (2012). Specifically, the Neighbors sought judgment from the trial court setting the boundary line between Appellant's property and the Neighbors' properties (R. pp. 116-17, paragraphs 52-53).

To state a cause of action under the Declaratory Judgment Act, the moving party must demonstrate a justiciable controversy. *Sunset Cay, LLC v. City of Folly Beach,* 357 S.C. 414, 593 S.E.2d 462, 466 (2004). Justiciable controversies are defined as real and substantial controversies appropriate for judicial determination, as distinguished from a difference of a contingent, hypothetical or abstract character. *Power v. McNair,* 255 S.C. 150, 177 S.E.2d 551, 553 (1970). The basic purpose of the Declaratory Judgment Act provides for declaratory judgments without awaiting a breach of existing rights. The Act is liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes without awaiting a violation of rights or disturbance of the relationship. *Sunset Cay,* 593 S.E.2d at 466.

The justiciable controversy between Appellant and the Neighbors concerned the location of the property line between the parties' real properties. Appellant claimed the Neighbors trespassed into her property by crossing her property line while seeking a corner rebar, by cutting dead tree limbs, and performing other landscaping (R. p. 470, lines 4-12, p. 518, lines 13-18, p. 519, lines 4-8). The Neighbors sought the precise

location of the property line to determine where to place fences (R. p. 469, lines 14-20, p.521, line 25-p.522, lines 1-2, 7-9).

Appellant presented testimony at trial from Mr. Drafts, who prepared the survey for her real property (R. p. 315, lines 11-13, R. p. 678). Mr. Drafts measured Appellant's western boundary with Macaw Lane at 69.87' (R. p. 678) and located the corner pin marking Appellant's boundary with Hooker's future lot. Mr. Drafts marked the corner pin as "I.P.F. (#4 rebar)" (R. p. 678). Mr. Drafts also marked a 5' utility easement on Appellant's lot, a 15' easement on Appellant's lot, and finally measured the length of Appellant's southern boundary, marking her property line next to the future locations of Hooker's lot and Reibold's lot, at 149.88' (119.86' plus line L4 which measures 30.02') (R. p. 678).

Mr. Drafts based Appellant's plat upon the subdivision plat of Wrenwood Subdivision. This plat states the length of Appellant's western boundary with Macaw Lane as 69.92' (R. p. 677A). Mr. Drafts compared the three plats introduced into evidence (R. pp. 677-678, *p. 665*) and found these plats to be accurate to within "a tenth of a foot all the way around" (R. p. 325, line 22-p. 326, line 6), acceptable in surveying for Class B surveys (R. p. 326, lines 7-9).

More importantly, Mr. Drafts did not identify a rebar located fifteen (15') feet inside Appellant's property (R. p. 319, line 8-p. 320, line 25, R. p. 326, lines 18-21). This fact became the crux of Appellant's case because she alleged the Neighbors tried to claim this extra fifteen (15') feet as their property (R. p. 372, lines 8-15, R. p. 386, lines 12-14, R. p. 392, lines 18-20, R. p. 414, lines 5-7).

In addition to presenting Mr. Drafts as her witness. Appellant also called Mr. Rawls to testify. Mr. Rawls prepared the Cox & Dinkins survey (R. *p. 665*). Appellant questioned Mr. Rawls on his experience as a surveyor (R. p. 561, lines 8-12). Mr. Rawls admitted preparing the Cox & Dinkins survey (R. p. 561, lines 21-23), referring to the same subdivision survey relied upon by Mr. Drafts (R. pp. 677-677A). Mr. Rawls affirmed Mr. Drafts' prior testimony of the measurements being different by less than an inch, in Mr. Rawls' opinion the measurements between the surveys being different by less than ½ inch (R. p. 563, lines 9-14).

Mr. Rawls measured Appellant's western boundary on Macaw Lane at 69.86', indicating this measurement with the phrase "N 06 25' 27" E 69.86' to <u>½" rebar (o)</u>" (R. *p. 665*) (emphasis added). The disputed corner pin between Hooker's property and Appellant's property is marked on the Cox & Dinkins survey as "<u>1/2" rebar (o)</u>" (R. *p. 665*) (emphasis added). Both Mr. Drafts and Mr. Rawls testified (o) means "old" (R. p. 327, lines 8-10, R. p. 565, lines 11-14). Mr. Drafts also testified that "I.P.F." and (o) mean the same thing (R. p. 328, lines 8-11)).

The Neighbors' counsel questioned Mr. Rawls further on his experience (R. p. 566, line 16-p. 567, line 24). The trial court granted Hooker and Reibold's motion to admit Mr. Rawls as an expert witness (R. p. 568, lines 3-13). As an expert, Mr. Rawls gave his opinion as to the accuracy of the boundary line between Appellant's property and the Neighbors' properties (R. p. 569, lines 13-23), SCRE 702. Mr. Rawls testified that the southern boundary line (between Appellant and the Neighbors) measured 80.15 feet, and 69.69 feet (149.84 feet), and accurately portrayed the property line between the parties' properties (R. p. 569, lines 13-18).

Upon redirect examination by Appellant, Mr. Rawls testified no measurement or pin could be found that would give anyone cause to believe there would be a fifteen (15') foot or twenty (20') foot discrepancy in the location of the parties' shared property line (R. p. 570, lines 8-23 (left side page 570 on ROA)).

The trial court granted the Neighbors a declaratory judgment on the grounds that Mr. Rawls' testimony and the surveys proved the Neighbors owned their properties up to the boundary line as shown on the Cox & Dinkins plat (R. p. 576, lines 11-18). Appellant objected; however, the trial court reminded Appellant neither Mr. Rawls nor Mr. Drafts located another iron pin fifteen (15') feet inside Appellant's property (R. p. 577, line 23-p. 578, line 19) and Appellant's own witness refuted her assertion of the extra iron pin (R. p. 578, lines 14-16).

The trial court found a justiciable controversy existed regarding the location of the boundary line between the parties' properties. The trial court's grant of a declaratory judgment rests in the sound discretion of the court, to be reasonably exercised in furtherance of the Declaratory Judgment Act. *Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co.,* 249 S.C. 561, 155 S.E.2d 618, 621 (1967). In the present case, the Neighbors proved a justiciable controversy to the trial court, using Appellant's own witnesses and the parties' surveys. The location of the boundary line became the issue. The Neighbors asserted their legal rights to use their real properties up to the boundary line and also asserted a positive legal duty denied by the Appellant (using Appellant's own witnesses). This Court has found justiciable controversy exists when these factors are present in a declaratory judgment action. *Pond Place Partners, Inc. v. Poole,* 351 S.C. 1, 567 S.E.2d 881, 889 (Ct. App. 2002).

Finally, the trial court correctly ruled on the location of the boundary line between the parties' properties. A boundary dispute is an action at law, and the location of a disputed boundary line is a question of fact. *Bodiford v. Spanish Oak Farms, Inc.*, 317 S.C. 539, 455 S.E.2d 194, 197 (Ct. App. 1995). In an action at law, the trial judge's findings are equivalent to a jury's findings. *Danley Williams v. Moore,* 400 S.C. 90, 733 S.E.2d 224, 230 (Ct. App. 2012). On appeal of an issue tried without a jury, this Court's jurisdiction is limited to correction of errors at law. *Madren v. Bradford,* 378 S.C. 187, 661 S.E.2d 390, 393 (Ct. App. 2008). Questions regarding credibility and weight are exclusively for the trial judge. *Id.* This Court will not disturb the trial judge's findings of fact as long as they are reasonably supported by the evidence. *Epworth Children's Home v. Beasley,* 365 S.C. 157, 616 S.E.2d 710, 714 (2005).

The trial court reviewed the testimony offered by Appellant's witnesses, Mr. Drafts and Mr. Rawls. Each surveyor testified as to the accuracy of his respective plat (R. p. 326, lines 2-9, p. 563, lines 9-14, p. 564, lines 19-21). Mr. Rawls, introduced as an expert, gave his opinion as to the accuracy of the plat he prepared (R. p. 569, lines 13-18). Both surveyors testified that no fifteen (15') foot discrepancy existed, nor did a new iron pin exist, both claimed by Appellant. The trial court found Appellant's own witnesses refuted her claim the Cox & Dinkins plat did not show the correct boundary line.

Therefore, the trial court acted with proper discretion when it granted a declaratory judgment for Hooker and Reibold by establishing the parties' boundary line using the Cox & Dinkins survey (R. *p. 665*). The evidence produced at trial reasonably supported the trial court's findings of fact concerning the boundary line dispute and

assisted the trial court in resolving a justiciable controversy by way of a declaratory judgment.

II. The Trial Court Properly Denied Appellant's Post-trial Motion Seeking to Overturn the Jury Verdict in Favor of the Neighbors.

Appellant's argument regarding jury prejudice concerns the trial court's grant of a directed verdict motion for Respondents Cox & Dinkins, Mr. Rawls and Fair against Appellant's trespass cause of action. The trial court denied the Neighbors' motion for directed verdict on the trespass cause of action (R. p. 454, lines 3-7, p. 576, line 20-p. 577, line 2), sending this cause of action to the jury. The jury returned a unanimous verdict for the Neighbors (R. p. 643, lines 20-24).

In her post-trial motion, Appellant listed the same arguments she raises in her brief (R. pp. 146-71). In the conclusion to her post-trial motion, Appellant seeks to overturn the jury verdict, but provides no support, either factually or legally, for overturning the verdict in favor of the Neighbors (R. p. 171).

The trial court denied Appellant's post-trial motions without the necessity for oral argument (R. pp. 29-30).

Appellant's final brief claims trespass by Respondents Cox & Dinkins, Rawls and Fair. (Appellant's Final Brief, pp. 32-34). Appellant lists facts she alleges against the Neighbors (Appellant's Final Brief, pp. 33-34, R. p. 161), but no error of law concerning the jury's verdict.

Appellant's request to overturn the jury verdict in favor of the Neighbors should not be considered by this Court because Appellant failed to preserve this issue for review on appeal. Issues and arguments are preserved for appellate review on when raised to and

ruled on by lower courts. *Elam v. S.C. Dep't of Transp.,* 361 S.C. 9, 602 S.E.2d 772, 779-80 (2004).

However, should the Court determine Appellant properly raised the issue of overturning the jury verdict, the Court should still deny Appellant's post-trial motion for new trial. Other than the statement regarding her desire to overturn the jury verdict, Appellant provides no new evidence or law supportive of her claim. Upon review, a trial judge's order denying a new trial will be upheld unless the order is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. *Norton v. Norfolk S. Ry. Co.,* 350 S.C. 473, 567 S.E.2d 851, 854 (2002). This Court's review is limited to consideration of whether evidence exists to support the trial court's order.

Appellant limits her argument for overturning the jury verdict to a claim the evidence did not support the verdict (R. p. 171). The mere argument the verdict is against the evidence is insufficient for this Court to overturn the trial court's ruling of Appellant's post-trial motion. *Brickman v. South Carolina Railroad Company,* 8 S.C. 173 (1876). Appellant showed no compelling reason to support overturning the trial court's order denying her new trial motion. Therefore, the trial court acted properly in denying Appellant's post-trial motion seeking a new trial. *Curtis v. Blake,* 392 S.C. 494, 709 S.E.2d 79, 83 (Ct. App. 2011).

III. The Trial Court Properly Granted The Neighbors' Directed Verdict Motion Against Appellant's Civil Conspiracy Cause of Action.

At trial, Appellant admitted her conspiracy claim concerned Fair, Mr. Rawls and Cox & Dinkins (R. p. 413, lines 9-11). Appellant further admitted the conspiracy issue "was not with Reibold and Hooker" (R. p. 413, line 13). The only evidence Appellant

provided concerning discussions between the Neighbors and third parties consisted of her testimony that she watched the Neighbors speak with Officer Creech after Appellant called law enforcement for a third consecutive evening on December 16, 2010 (R. p. 385, lines 20-22) and her testimony that Reibold called Fair, "because Mr. Fair showed up" (R. p. 378, lines 6-8). No further evidence exists that the Neighbors met together or with other parties regarding Appellant.

Civil conspiracy consists of three elements: (1) a combination of two or more persons (2) for the purpose of injuring Appellant, and (3) causing special damages. *Hackworth v. Greywood at Hammett, LLC,* 385 S.C. 110, 682 S.E.2d 871, 874 (Ct. App. 2009). Appellant must prove all three elements in order to recover damages for civil conspiracy. *Pye v. Estate of Fox,* 369 S.C. 555, 633 S.E.2d 505, 511 (2006). To establish a conspiracy, Appellant must produce evidence from which a party may reasonably infer joint assent of the minds of two or more parties to prosecute an unlawful enterprise. *Id.*

After admitting her civil conspiracy claim did not involve the Neighbors (R. p. 413, line 13), Appellant tried to claim the Neighbors committed a civil conspiracy because they worked together to take twenty (20') feet of her property (R. p. 431, lines 20-22). Appellant produced no evidence that the Neighbors worked together to take her property. Other than being neighbors, there is no evidence the Neighbors acted together to damage Appellant.

Finally, Appellant produced no evidence of special damages in her case against the Neighbors. She claimed Reibold trimmed oak trees on the property line (R. p. 387, lines 6-7), but offered no evidence of cost or damage she suffered. Because Appellant

could not prove special damages, her conspiracy action against Hooker and Reibold should be barred. *Vaught v. Waites,* 300 S.C. 201, 387 S.E.2d 91, 94 (1989).

Using these standards, and Appellant's own admission her civil conspiracy claim did not involve the Neighbors, the trial court correctly upheld the Neighbors' motion for directed verdict in their favor on the civil conspiracy claim.

IV. The Trial Court Properly Granted a Directed Verdict for The Neighbors on Appellant's Cause of Action for Slander of Title.

This Court defines slander of title as a false and malicious statement, oral or written, made in disparagement of a person's title to real property, causing Appellant injury. *Pond Place Partners,* 351 S.C. 1, 567 S.E.2d at 890. The elements of the cause of action for slander of title include (1) the publication of (2) a false statement (3) derogatory to Appellant's title (4) with malice (5) causing special damages (6) as a result of diminished value in the eyes of third parties. *Huff v. Jennings,* 319 S.C. 142, 459 S.E.2d 886, 889 (Ct. App. 1995).

The trial court granted the Neighbors' directed verdict motion on Appellant's slander of title claim based on the lack of a published statement by either Hooker or Reibold (R. p. 447, line 9-p.448, line 1). Appellant claims Hooker published a false statement to law enforcement about the property line (R. p. 447, lines 18-22). However, Hooker testified he only spoke with the officer about marking what Hooker believed was his property line (R. p. 474, lines 3-5) (emphasis added). Officer Creech, Appellant's witness, corroborated Hooker's testimony (R. p. 301, lines 16-18). Hooker believed he located the rebar marking the corner property line based on the plat (R. *p. 665*) referred to in his wife's deed to their residence (R. p. 466, line 21-p. 467, line 6) so he could build a fence for his young son to plat soccer (R. p. 468, lines 15-22).

Hooker could not have published a false statement because he believed he found the rebar marking the corner property line between his property and Appellant's property. Moreover, this statement cannot be considered malicious because Hooker used recorded documentation to justify his belief that he found the corner rebar indicating the property line. Hooker did not act with malice. He did not act recklessly or wantonly, or with conscious disregard of Appellant's rights. Using the definition of actual malice set by this Court in *Solley v. Navy Federal Credit Union, Inc.,* 397 S.C. 192, 723 S.E.2d 597, 603 (Ct. App. 2012), Appellant cannot show Hooker acted maliciously (or even published a false statement).

Regarding Reibold, Appellant produced no evidence that Reibold published a false statement concerning Appellant's title to her property. The only evidence offered at trial about Reibold's use of a published statement was the plat (R. *p. 665*) referred to in the deed to his property (R. p. 518, lines 5-10). Reibold used this plat so he could determine where to build a fence (R. p. 522, lines 1-9).

Because Appellant could not show either of the Neighbors published a false statement, which is necessary to prove slander of title as set forth in *Huff, supra,* the trial court properly granted the Neighbors' motion for a directed verdict against Appellant's claim of slander of title.

V. The Trial Court Properly Granted a Directed Verdict for The Neighbors for Slander of Title Because Appellant Did Not Prove Special Damages.

In furtherance of her argument for slander of title, Appellant claimed to prove special damages she incurred as the result of slander of title by all Respondents. Appellant claimed she will incur costs to correct her title and remove an illegal rebar, and

she incurred costs in legal research, consultation with surveyors, attorney consultation fees and other costs (Appellant's Final Brief, pp. 38-39).

However, Appellant provided no evidence of these costs at trial. The only reference Appellant made to financial loss concerned her alleged inability to refinance her real property (R. p. 400, lines 12-13). Appellant did not provide the name of the lender she used, nor did she provide documentation from her refinancing process or witnesses who could testify as to her alleged losses. Finally, Appellant provided no corroborating evidence as to other injury or harm she claimed to suffer.

Special damages include impairment of vendibility or value caused by disparagement, and the expense of measures reasonably necessary to counteract the publication, including litigation. *Huff,* 319 S.C. at 150-1, 459 S.E.2d at 892. While Appellant alleged special damages, she provided no evidence to prove these damages. The trial court found Appellant presented no evidence concerning her alleged refinance (R. p. 443, lines 11-13). Therefore, the trial court correctly granted Hooker and Reibold's directed verdict motion for slander of title not only because neither Respondent published a false statement, but also because Appellant failed to prove any special damages.

VI. The Trial Court Did Not Abuse Its Discretion By Dismissing Appellant's Witnesses After Obtaining Appellant's Approval to Dismiss Her Witnesses.

After Appellant's first witness, Officer Creech, completed his testimony, the trial court asked all parties if the officer could be excused. Appellant answered, "Yes" (R. p. 314, lines 9-10). When asked again by the trial court whether Officer Creech could be excused, Appellant stated, "I said yes" (R. p. 314, lines 20-23).

After Appellant's second witness, Mr. Drafts, concluded his testimony, the trial court asked all parties if Mr. Drafts could be excused. Appellant answered "Yes, sir" (R. p. 338, lines 23-24).

The next day, Appellant sought to recall Officer Creech and Mr. Drafts "to cross" (R. p. 340, lines 5-6). The trial court took Appellant's request under consideration, but advised Appellant the Court could not let Appellant have a "second bite at the apple...because you thought of something you did not ask" (R. p. 341, lines 18-23). Appellant understood recall would be at the trial court's discretion; further admitting she did not issue new subpoenas for her witnesses (R. p. 342, lines 12-16). Thereafter, the trial court admitted Officer Creech's incident report dated December 15, 2010 into evidence (R. p.346, line 17-p.347, line 5, pp. 670-71). The trial court previously admitted Mr. Drafts' survey of Appellant's property into evidence (R. p. 678).

After Appellant presented her case, the trial court ruled against recalling Officer Creech or Mr. Drafts, without objection from Appellant (R. p. 431, lines 10-14). The trial court dismissed Appellant's post-trial motion concerning this issue without argument.

The trial court's admission and rejection of testimony are matters largely within the trial court's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion. *Burroughs v. Worsham,* 352 S.C. 382, 574 S.E.2d 515, 519 (Ct. App. 2002). To warrant reversal, Appellant must show both the error of the ruling and resulting prejudice. *Recco Tape and Label Co. v. Barfield,* 312 S.C. 214, 439 S.E.2d 838, 840 (1994). Appellant must show prejudice before this Court will reverse a judgment for an alleged error in the exclusion of evidence. *Potomac Leasing Co. v. Bone,* 294 S.C. 494, 366 S.E.2d 26, 28 (Ct. App. 1988).

Appellant thoroughly questioned her witnesses at trial. Even after Appellant agreed to the trial court's request to dismiss Officer Creech and Mr. Drafts, the trial court still took Appellant's request to recall these two witnesses under advisement. The trial court admitted Officer Creech's entire police report as evidence (R. pp. 670-71) and also entered Mr. Drafts' survey of Appellant's real property into evidence (R. p. 678). Officer Creech could not have provided any additional information besides what he produced in his report (R. p. 301, line 1-p. 302, line 6). Mr. Drafts could not provide any additional evidence to supplement his testimony concerning the plat he prepared for Appellant (R. pp. 315-24), comparisons to the Cox and Dinkins survey (R. pp. 324-26, *p. 665*) and knowledge of surveying regulations and abbreviations (R. pp. 326-28). Appellant even re-examined Mr. Drafts after objecting to Mr. Drafts "contradicting his testimony" (R. p. 328, line 20-p. 336, line 17).

The trial court properly ruled against recalling Officer Creech and Mr. Drafts to testify again. Any additional testimony these witnesses provided would only have been cumulative, as each witness received thorough examination from Appellant and opposing counsel. Finally, Officer Creech's report (R. pp. 670-71) and Mr. Drafts' survey of Appellant's real property (R. p. 678) served as appropriate supplements to their testimonies. Appellant cannot show how the trial court erred in this ruling, nor can she show prejudice to her case. Therefore, using the *Burroughs* standard, the trial court acted properly within its discretion to dismiss both Officer Creech and Mr. Drafts after the jury heard their respective testimonies.

VII. The Trial Court Properly Granted the Neighbors' Motion for Directed Verdict Against Appellant's Cause of Action for Nuisance.

The trial court originally denied the Neighbors' directed verdict motion against Appellant's nuisance cause of action (R. p. 449, lines 14-18). After the Neighbors presented their case against Appellant, which included their claim against Appellant for nuisance, the trial court carefully reviewed the jury charge of nuisance and granted a directed verdict for both sides against the other's respective nuisance cause of action (R. p. 550, line 1-p.551, line 13). The trial court considered the parties' respective cases against the other to be "a classic land dispute" with nothing the parties did in their use of the property that is illegal (R. p. 550, line 25-p. 551, line 9).

A private nuisance is that class of wrongs arising from the unreasonable, unwarrantable, or unlawful use by a person of his own property, whether real or personal. *O'Cain v. O'Cain,* 322 S.C. 551, 473 S.E.2d 460, 466 (Ct. App. 1986). The traditional concept of private nuisance requires Appellant to demonstrate the Neighbors unreasonably interfered with ownership and possession of her land. *Ravan v. Greenville County,* 315 S.C. 447, 434 S.E.2d 296, 306 (Ct. App. 1993). A nuisance is anything that hurts, inconveniences or damages; anything that essentially interferes with the enjoyment of life or property. *O'Cain,* 322 S.C. at 561, 473 S.E.2d at 466 (citing *Strong v. Winn-Dixie Stores, Inc.,* 240 S.C. 244, 125 S.E.2d 628 (1962).

The trial court found the Neighbors and Appellant all believed they owned real property at or near the property line shown by the surveys relied upon by Appellant (R. p. 678) and the Neighbors (R. *p. 665*). Testimony established the Neighbors believed their survey set the property line between their properties and Appellant's property (R. p. 301, lines 16-18, p. 474, lines 3-5, p. 305, line 25-p. 306, line 6). The Neighbors each

exhibited a reasonable belief that they could use their survey to build a fence just inside their property line (R. p. 469, lines 2-7, p. 311, lines 2-25).

The evidence also shows neither Hooker nor Reibold unreasonably interfered with Appellant's use of her property. Hooker testified that he personally met Appellant three (3) times in five (5) years. The first time Hooker met Appellant, in the summer of 2007, she accused him of trespass because he cut grass and stepped into her yard (R. p. 378, lines 10-11, p. 467, lines 7-23). The second meeting occurred in the summer of 2010, when Hooker sprayed weed killer in his back yard to kill weeds and Appellant accused Hooker of killing her crepe myrtle trees, providing Hooker no evidence to support her claim (R. p. 468, lines 2-12). Hooker testified these crepe myrtle trees were approximately thirty (30') feet away from where he sprayed and the weed killer would not be a detriment to Appellant's crepe myrtles (R. p. 481, lines 17-23). The final time Hooker met with Appellant was December 15, 2010, when Appellant contacted law enforcement and requested that Officer Creech charge Hooker for criminal trespass (R. p. 301, line 24-p. 302, line 3, p. 474, lines 11-13, pp. 670-71). All Hooker did in these three (3) meetings was cut his grass, kill weeds in his back yard, and explain why he inserted a black tube on the rebar he believed was the corner pin reflecting the property line between his property and Appellant's property. Hooker placed the tube over the corner pin to easily mark the corner pin location and to show others where not to run, to avoid safety issues or injury (R. p. 470, lines 13-20, p. 492, lines 18-22).

Similarly, Reibold encountered Appellant on few occasions. Shortly after purchasing his home in 2006, a sheriff's deputy informed Reibold that Appellant contacted law enforcement to claim Reibold trespassed when cutting hedges and tree

limbs (R. p. 518, lines 11-17). Reibold then contacted Fair. Fair and Reibold met in Reibold's back yard, while Appellant watched Fair and Reibold discuss the property line location (R. p. 520, lines 2-10, p. 537, lines 11-16). In 2010, Appellant personally claimed to Reibold that he trespassed on her land when cutting tree limbs (R. p. 519, lines 2-8). After leaving a letter at Reibold's front door that same evening, Appellant approached Reibold in his back yard. Reibold offered to resolve the dispute with Appellant without litigation; however, Appellant would have "nothing to do with that" (R. p. 519, line 22-p. 520, line 1).

Appellant's nuisance claims against Hooker concern his efforts to locate the corner pin marking the corner of his property line between his property and Appellant's property. In fact, Appellant admitted Hooker had as much right to the corner pin as she did (R. p. 412, lines 17-24).

Appellant's nuisance claims against Reibold concern his cutting of dead tree limbs and vines that are located close to the property line between Reibold's property and Appellant's property (R. p. 38, lines 16-21, p. 519, lines 4-11, p. 525, lines 9-21, p. 541, lines 14-22, p. 542, lines 9-19, *Defendant's exhibits 5 and 6*).

An owner of property, even when conducting lawful business thereon, is subject to reasonable limitations and must not unreasonably interfere with the health or comfort of neighbors or their right to the enjoyment of their property. If acting unreasonably so as to produce material injury or great annoyance to another, this conduct constitutes a nuisance. However, not every annoyance or disturbance of a landowner constitutes a nuisance. People living in organized communities must of necessity suffer some inconvenience and annoyance from their neighbors and must submit to reasonable

annoyances consequent upon the reasonable use of property by others. *Winget v. Winn-Dixie Stores,* 242 S.C. 152, 130 S.E.2d 363, 367 (1963).

The trial court determined the Neighbors acted reasonably considering their respective beliefs about the location of their property line. Hooker simply believed he located a corner pin marking the corner of his property line with Appellant, the first step in building a privacy fence for his children to play in their back yard. Reibold only cut tree limbs and landscaped to maintain the natural beauty of the wooded area between his real property and Appellant's real property.

Using the standard jury charge (R. p. 550, lines 7-24) and the law regarding private nuisance, the trial court accurately pointed out the parties only engaged in a "classic land dispute" (R. p. 550, line 25). The complaints Appellant had against the Neighbors, and the Neighbors had against Appellant, stemmed from each party's belief in the location of the property line between their properties. Because each party's belief was not unreasonable, the trial court properly granted a directed verdict dismissing the nuisance case against each party.

VIII. The Trial Court Properly Granted the Neighbors' Motion for Directed Verdict Against Appellant's Cause of Action for Invasion of Privacy.

The Supreme Court specified three distinct causes of action for invasion of privacy: (1) the unwarranted appropriation or exploitation of one's personality; (2) the publicizing of one's private affairs with which the public has no legitimate concern; or (3) the wrongful intrusion into one's private activities, in such manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities. *Swinton Creek,* 334 S.C. 469, 514 S.E.2d at 130.

In this case, Appellant makes no claim the Neighbors used her name, likeness or identity for publication or profit.

Wrongful publicizing of private affairs involves public disclosure of private facts about the Appellant. The gravaman of this tort is publicity, as opposed to mere publication. Publicity gives rise to a cause of action for invasion of privacy. *Rycroft v. Gaddy,* 281 S.C. 119, 314 S.E.2d 39, 43 (Ct. App. 1984). However, communication to one person or to a small group of people will not give rise to a claim for invasion of privacy. *Swinton Creek,* 334 S.C. at 478-9, 514 S.E.2d at 131. In this case, Appellant provided no evidence the Neighbors communicated with a third party. Instead, Appellant contacted a third party, Officer Creech, to file complaints against the Neighbors (R. p. 300, lines 18-22, p. 310, lines 13-16).

The final cause of action for invasion of privacy, wrongful intrusion into one's private activity in such manner as to outrage or cause mental suffering, shame or humiliation, requires Appellant to show blatant and shocking disregard of her rights and serious mental or physical injury, or humiliation to herself, when she claims an intrusion alone without evidence of public disclosure. *Rycroft,* 281 S.C. at 124, 314 S.E.2d at 43.

Wrongful intrusion into private affairs consists of four elements Appellant must plead and prove: (1) an intrusion, which may consist of watching, spying, prying, overhearing, or other similar conduct which must be decided on the facts of ease case; (2) into that which is private, meaning the intrusion on Appellant must concern those aspects of herself and her home which she would normally expect would be free from exposure by the Neighbors; (3) which is substantial and unreasonable enough to be legally cognizable, meaning the Neighbors must act in a fashion that would cause mental injury

to persons of ordinary feelings and intelligence in similar circumstances, and (4) intentional, meaning the Neighbors must have acted willingly, desiring the outcome of their conduct, or should have known the result would follow from their conduct. *Snakenburg v. Hartford Casualty Insurance Company, Inc.*, 299 S.C. 164, 383 S.E.2d 2, 6 (Ct. App. 1989).

The evidence proved Hooker located an iron pin he believed marked the corner of the property line between his property and Appellant's property (R. p. 301, lines 12-18, p. 474, lines 3-5). Reibold only removed dead limbs and choking vines, and killed snakes (R. p. 523, lines 2-10, p. 525, lines 9-21). Appellant did not testify to or provide proof the Neighbors spied on her. She offered no proof the Neighbors exposed her communications to third parties. Appellant actually exposed her issues to third parties by contacting law enforcement to arrest either Hooker or Reibold, or charge them with criminal trespass, on December 14, 15 and 16, 2010 (R. p. 301, lines 24-25, p. 473, lines 11-16, p. 479, lines 22-25, p. 485, lines 8-14, p. 525, line 22-p. 526, line 8). The trial court found Appellant suffered no blatant or shocking disregard of her rights, instead finding Appellant lacked evidence supporting her action for invasion of privacy (R. p. 433, lines 2-12).

Appellant's lack of evidence, her decision to involve third parties, and her failure to prove Hooker and Reibold published anything about her private affairs support the trial court's decision to grant a directed verdict in favor of the Neighbors on Appellant's cause of action for invasion of privacy. Both holdings from *Snakenburg* and *Rycroft,* combined with facts from trial, confirm the trial court properly granted the directed verdict motion

as Appellant failed to provide evidence to show the Neighbors committed any cause of action for invasion of privacy.

IX. The Trial Court Properly Granted the Neighbors' Motion for Directed Verdict Against Appellant's Cause of Action For Intentional Infliction of Emotional Distress.

The Supreme Court expressly defined the tort of intentional infliction of emotional distress, or outrage, in *Ford v. Hutson,* 276 S.C. 157, 276 S.E.2d 776 (1981). To recover damages for this tort, the *Ford* Court held the moving party must establish: (1) the Neighbors intentionally or recklessly inflicted severe emotional distress, or were certain, or substantially certain that such distress would result from their conduct; (2) the conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the Neighbors caused Appellant's emotional distress; and (4) the emotional distress suffered by Appellant was severe, such that no reasonable person could be expected to endure it. *Id* at 162, 276 S.E.2d at 778.

The Court in *Ford* also stressed the heightened burden of proof set forth in the second and fourth elements of the tort of intentional infliction of emotional distress. *Hansson v. Scalise Builders of South Carolina,* 374 S.C. 352, 650 S.E.2d 68, 71 (2007). This heightened standard means Appellant cannot prove her case with mere bald assertions. *Id* at 358, 650 S.E.2d at 72. The Court should seek additional evidence to corroborate Appellant's assertions. Without corroborating evidence to prove unreasonableness, or abusive conduct by the Neighbors, or the severity of Appellant's emotional distress, the trial court's directed verdict in favor of the Neighbors is proper. *Rhodes v. Security Finance Corporation of Landrum,* 268 S.C. 300, 233 S.E.2d 105

(1977). Appellant's allegations of emotional distress and damage resulting from the Neighbors' conduct include pain suffered from a blood clot in her leg (R. p. 393, lines 8-15), being informed to ignore the Neighbors, traveling to Wal-Mart and the library to avoid the Neighbors (R. p. 398, lines 2-3, 7-9), cutting her grass at 7:00 a.m. to avoid the Neighbors (yet she also testified the blood clot rendered her unable to walk) (R. p. 398, lines 15-17) and panic or anxiety attacks (R. p. 399, lines 9-11). Appellant made these assertions, yet provided no corroborating evidence, whether from medical records or third party testimony (from medical professionals, a librarian, or Wal-mart employees) to support her claims.

Using the standard set in *Hansson*, Appellant cannot rely solely on her assertions of emotional distress. Appellant must present supporting evidence to show severe emotional distress. Further, the supporting evidence must also show the Neighbors triggered Appellant's severe emotional distress. The trial produced no evidence besides Appellant's allegations to support these elements of intentional infliction of emotional distress; therefore, the trial court properly granted the Neighbors' directed verdict motion on Appellant's cause of action for intentional infliction of emotional distress.

X. Appellant Provided No Evidence Against Mrs. Hooker and Mrs. Reibold at Trial, Leading to the Trial Court Properly Dismissing All Causes of Action Against These Defendants.

Appellant included as defendants in her case Mrs. Hooker and Mrs. Reibold. Appellant's pleadings never included Mrs. Hooker and Mrs. Reibold in her causes of action. At trial, Appellant's only mention of either Mrs. Hooker or Mrs. Reibold concerned a letter Appellant delivered to Mrs. Hooker because Mrs. Hooker is the sole owner of the Hooker's real property (R. p. 379, lines 5-7). Upon the conclusion of

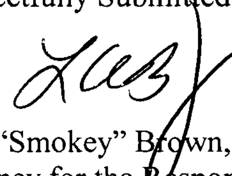
Appellant's case, the trial court granted Respondent's motion to dismiss Mrs. Hooker and Mrs. Reibold as to the entire complaint (R. p. 454, lines 11-25).

Since it is unclear whether Appellant filed her appeal against Mrs. Hooker and Mrs. Reibold, the *Swinton Creek* standard for a directed verdict motion applies. Because the only evidence in the case against Mrs. Hooker and Mrs. Reibold is that Mrs. Hooker received a letter from Appellant, the trial court properly granted the directed verdict motion to dismiss Mrs. Hooker and Mrs. Reibold from Appellant's entire complaint.

Conclusion

For the reasons stated above, this Court should respectfully affirm the trial court's grant of a directed verdict for the Neighbors on the Appellant's causes of action for civil conspiracy, slander of title, nuisance, invasion of privacy and intentional infliction of emotional distress. This Court should also respectfully affirm the trial court's grant of a declaratory judgment in favor of the Neighbors setting the boundary line between their properties and Appellant's property using the Cox and Dinkins plat (R. *p. 665*). Finally, the Court should also respectfully affirm the jury's verdict in favor of the Neighbors concerning the Appellant's trespass claim.

Respectfully Submitted,



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Dated this **2nd** day of October 2014.

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
R. Lawton McIntosh, Circuit Court Judge

Case No. 2011-CP-32-01010
Tracking No. 2013-002056

Glenda Renee Couram, ...Appellant,

v.

Mr. & Mrs. Christopher Hooker, Mr. & Mrs. Carl Reibold, All persons claiming any Legal or Equitable Right, Title, Estate, Lien or Interest in the Property described in the Complaint Adverse to the Plaintiff's, Cox & Dinkins, Inc., Fair Builders/Developers, Inc., Donald "Don" Rawls & Steve Fair in their official and individual capacities, Carolina Water Svc. (CWS), Carolina Trace Utilities, Inc., & Utilities, Inc. Corporate Offices (CWS),

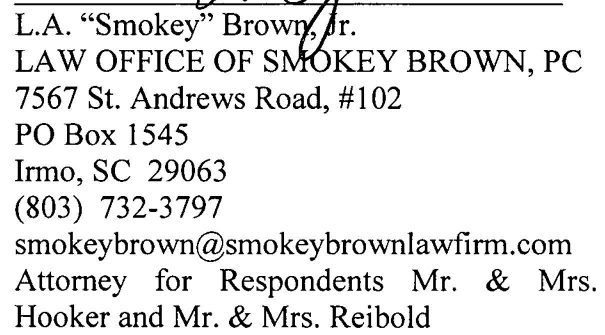
Defendants,

Of whom Mr. & Mrs. Hooker, Mr. & Mrs. Reibold, Cox & Dinkins, Inc., Donald "Don" Rawls, and Steven A. Fair are the...

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondents Mr. & Mrs. Hooker and Mr. & Mrs. Reibold is in substantial compliance with Rule 211(b) and Rule 267, SCACR.



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Irmo, South Carolina

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Defendants,

Of whom Mr. & Mrs. Hooker, Mr. & Mrs. Reibold, Cox & Dinkins, Inc., Donald "Don" Rawls, and Steven A. Fair are the..

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CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of Respondents Mr. & Mrs. Hooker and Mr. & Mrs. Reibold by depositing a copy of this in the United States Mail, postage prepaid, on October 3, 2014, to the attorneys and *pro se* litigants listed below:

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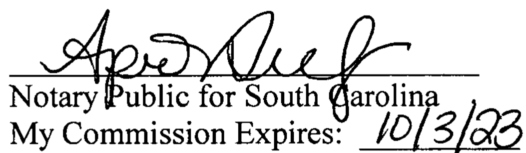
Sworn to and subscribed before me
this 3 day of October 2014



Notary Public for South Carolina
My Commission Expires: 10/3/23