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

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

David R. Gooldy, Respondent,

vs.

The Storage Center – Platt Springs, LLC, Appellant.

FINAL BRIEF OF APPELLANT

Robert E. Stepp
S.C. Bar No.: 5335
rstepp@sowellgray.com
Bess J. DuRant
S.C. Bar No.: 77920
bdurant@sowellgray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Tel No.: (803) 929-1400

Attorneys for Appellant, The Storage Center – Platt Springs, LLC

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Post Office Box 11449
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Attorneys for Appellant, The Storage Center – Platt Springs, LLC

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STATEMENT OF ISSUES ON APPEAL

1. **DID THE MASTER-IN-EQUITY ERR IN FINDING AND CONCLUDING THE EXISTENCE OF AN IMPLIED EASEMENT BASED ON A DEED THAT DESCRIBED THE PROPERTY BY REFERENCE TO A PLAT WITH A "50' ROAD" NOTATION OUTSIDE OF THE BOUNDARY LINES OF THE PROPERTY CONVEYED AND SURVEYED?**

2. **DID THE MASTER-IN-EQUITY ERR IN FINDING AND CONCLUDING THE EXISTENCE OF AN IMPLIED EASEMENT WHEN THE COMMON GRANTOR'S REPRESENTATIVE TESTIFIED THAT THERE WAS NO INTENT TO CREATE AN EASEMENT OR ROAD, WHEN NO ROAD WAS EVER CREATED, AND WHEN SUBSEQUENT PLATS NEVER SHOWED A ROAD?**

3. **DID THE MASTER-IN-EQUITY ERR IN AWARDING ACTUAL DAMAGES WHEN NO EASEMENT RIGHTS OF RESPONDENT HAVE BEEN VIOLATED AND PUNITIVE DAMAGES WHEN THERE IS NO EVIDENCE OF REPREHENSIBILITY OR EVIDENCE SUPPORTING THE RATIO BETWEEN ACTUAL AND PUNITIVE DAMAGES, AND WHEN THERE ARE NO COMPARABLE CASES WITH COMPARABLE PUNITIVE DAMAGE AWARDS?**

STATEMENT OF THE CASE

This dispute is about the existence of an implied easement. Respondent David R. Gooldy ("Gooldy" 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 in Lexington County, South Carolina. Prior to the filing of this lawsuit, Gooldy was using The Storage Center's land that abuts the southern side of Gooldy's Parcel as a driveway. On February 1, 2010, Gooldy filed a lawsuit against The Storage Center after The Storage Center closed off its property, thereby preventing Gooldy from using it as a driveway. (R. pp. 35 - 41.) In his lawsuit, Gooldy asserted four causes of action: (1) Declaratory Judgment, Easement by Implication or Estoppel, (2) Declaratory Judgment, Easement by Prescription, (3) Estoppel – T emporary and Permanent Injunctive Relief, and (4) Negligence/Gross Negligence/Intentional Act, Denial of Property Rights. (*Id.*) Gooldy argues that he is entitled to an easement over The Storage Center's property because his deed, along with the deeds of his predecessors-in-title, references a plat that contains a notation that says "50' road" outside of his boundary lines of the property surveyed on the plat. (R. pp. 37-38, ¶¶ 6-9.)

On February 25, 2010, Gooldy filed a motion for preliminary injunction, seeking an order preventing The Storage Center from interfering with his access to the driveway. (R. pp. 49 – 51.) In opposition to Gooldy's motion, The Storage Center filed the affidavit of Carroll McGee, who is a partner of Congaree Associates that was the common grantor of both parties' parcels of land. (R. pp. 59 - 61.) In his affidavit, McGee stated that Congaree Associates did not cause the at-issue plat to be prepared or that Congaree Associates ever subdivided its property and sold lots by reference to a plat showing a

road. (R.p. 59, ¶¶ 2-5.) Most importantly, McGee swore that Congaree Associates never built a road on the property and never gave Gooldy or any prior owner permission to encroach on its land. (R. p. 60, ¶¶ 6, 7.) On April 23, 2010, the circuit court denied Gooldy's motion on the grounds that he "failed to make a sufficient showing of irreparable harm" and that he "has access to his property." (R. p. 1.) The circuit court also referred this matter to the master-in-equity ("Master"), upon the consent of both parties. (*Id.*)

In response to Gooldy's complaint, The Storage Center filed an answer, in which it asserted several affirmative defenses and pled a counterclaim against Gooldy for encroaching and trespassing on The Storage Center's property. (R. pp. 42 - 48.) Specifically, The Storage Center denied that any road ever existed and also denied that Gooldy had any easement rights over property owned by The Storage Center. (R. pp. 42 – 44, ¶¶ 6-27.)

After the parties engaged in discovery, both parties filed motions for summary judgment. (R. pp. 52 - 53; R. pp. 54 – 73.) To support its motion for summary judgment, The Storage Center relied on the previously filed Affidavit of Carroll E. McGee and the Affidavit of James T. Loflin (R. pp. 59 - 72.) James Loflin acquired title to the property from Congaree Associates in 1986 and was a predecessor-in-title to Gooldy. (R. p. 63, ¶ 2.) In his affidavit, Loflin states that he used the property that abutted the southern side of the parcel presently owned by Gooldy, but that "[a]t all times, the strip of land I used to access my property was the property of Congaree Associates." (R. pp. 63 – 64, ¶¶ 3, 6.) Moreover, he testified that he never owned the strip of land at issue and that he never acquired an easement to it. (R. p. 64, ¶ 7.) He further testified that when he conveyed the

parcel to his wife, he did not convey any easement rights with respect to the strip of land. (R. p 64, ¶¶ 7-9.) Finally, he testified that when his wife conveyed the parcel, she did not convey any easement rights because she never had any to convey. (R. p 64, ¶¶ 10-11.)

The Master denied the cross motions for summary judgment. (R. p. 2.)

On October 25, 2012, the case was tried before the Master. The Master granted a directed verdict to The Storage Center with respect to Gooldy's claim for easement by prescription because Gooldy failed to establish use that was adverse or under a claim of right for twenty years. (R. pp. 193:3 – R. pp. 203:19.) On July 29, 2013, the Master issued his order, in which he found and concluded (1) that Gooldy has access over the "road that borders the Plaintiff's property on the southern side"; (2) that Gooldy is entitled to $2,500 for lost income when he had to construct an alternate makeshift entrance; and (3) that Gooldy is entitled to $7,500 in punitive damages because The Storage Center prevented Gooldy access to the strip of land. (R. pp. 3 - 22.)

The Storage Center timely filed its motion to alter or amend the judgment on August 12, 2013. (R. pp. 74 - 84.) In its motion, The Storage Center set out numerous grounds as to why the Master should reconsider the Trial Order. (*Id.*) On November 15, 2013, the Master heard The Storage Center's motion. (R. pp. 407 - 454.) On March 13, 2014, the Master issued its Order denying The Storage Center's motion to reconsider. (R. pp. 23 – 32.)

The Storage Center is appealing both the Trial Order filed on August 1, 2013, and the Order filed on March 13, 2014. On April 9, 2014, The Storage Center timely filed and served its notice of appeal.

STATEMENT OF THE FACTS

I. The Acquisition of Parcels by Gooldy and The Storage Center

Gooldy's property consists of approximately 0.68 acres, ("Gooldy Parcel") and was acquired by him on or about January 24, 2002 (R. pp. 375 - 376.). Gooldy operates his chiropractic practice from this location. (R. pp. 115:16-18.). The Storage Center owns property that surrounds Gooldy's Parcel on three sides ("Adjoining Property"). The deed conveying the property to Gooldy describes the property being conveyed by reference to a plat entitled "Plat Prepared for James Loflin" ("Loflin Plat"). (R. pp. 375-376.) The Loflin Plat was prepared on December 10, 1985 and was recorded in the Office of the Register of Mesne Conveyances for Lexington County on September 11, 1986 in Plat Book 212-G at Page 204.[1] (R. p. 377.) The Loflin Plat contains the notation "50' ROAD" on a portion of the Adjoining Property.[2] (*Id.*) The purported "road" is not surveyed and its beginning, end, boundaries and other dimensions are not shown on the Loflin Plat. (*Id.*) At the time the Loflin Plat was recorded, the Adjoining Property was owned by Congaree Associates, which was also the grantor of the property to Loflin that is now the Gooldy Parcel. (*See id.*; R. pp. 394 - 395.) The Adjoining Property is now owned by The Storage Center. (R. pp. 392 - 393.) The Loflin Plat was only a survey of the property being conveyed to Loflin, *i.e.* the Gooldy Parcel, and was not a survey of the surrounding property. (R. p. 212:8-14; R. p. 295:15-17.) Every deed

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[1] The Loflin Plat was revised twice before the parcel was recorded on September 11, 1986. (R. p. 377.) First, it was revised on April 4, 1986 to show the "proposed dwelling, well, septic tank & tile field." (*Id.*) Second, it was revised on August 12, 1986 to show "20' strip along the northern property line." (*Id.*)

[2] The Loflin Plat does not depict all of the Adjoining Property or any of its boundaries except those shared with the Gooldy parcel.

in Gooldy's chain of title describes the property by reference to the Loflin Plat. (R. pp. 379 - 391.)

In 2007, Congaree Associates sold the Adjoining Property to The Storage Center. (R. pp. 392 - 393.) Prior to the sale, Frank Strasburger of Congaree Associates had the Adjoining Property surveyed and a plat prepared. The result was the "Strasburger Plat," which was drawn by Charles Meeler on October 26, 2006 and recorded in the Office of the Register of Deeds for Lexington County on October 27, 2006 on Slide 918 at Page 2. (R. pp. 396-398.) The Strasburger Plat does not show any road adjacent to the Gooldy Parcel or anywhere else on the Adjoining Property, and does not contain any references to an easement across the Adjoining Property in favor of Gooldy or anyone else. (*Id.*) When conveyed by Congaree Associates to The Storage Center, the Adjoining Land was described by reference to the Strasburger Plat, which was incorporated for descriptive purposes into the deed from Congaree Associates to The Storage Center. (R. pp. 392 - 393.)

II. Dispute Arises Between Gooldy and The Storage Center

Prior to the filing of this lawsuit, Gooldy was using The Storage Center's land that abuts the southern side of Gooldy's Parcel as a driveway. The present dispute arose when The Storage Center informed Gooldy that he could not use The Storage Center's property to access his parcel. The Storage Center attempted to settle the property dispute with Gooldy through a shared access agreement and a cash payment. (R. pp. 338:6 – 340:21.) These efforts to settle continued for approximately two years; however, Gooldy never agreed to any of The Storage Center's offers. (R. pp. 340:22 – 341:5.)

After its several attempts to resolve the matter, The Storage Center informed Gooldy in July 2009 that he did not have permission to use its land as a driveway and installed a wire fence to prevent entry. (R. p. 125:3-5; R. p. 166:3-11; R. p. 341:6-14.) At all times, The Storage Center was acting under its good faith belief that it had the unfettered right to control all of the property it owned. (R. p. 356: 8-12.) Moreover, The Storage Center did not prevent Gooldy from accessing his property, as was recognized by the circuit court when it denied Gooldy's motion for preliminary injunction. (R. p. 1.) Gooldy always has had the ability to access his property from its northern side, as well as directly from Highway 6. (R. pp. 172:22 – 173:1.)

III. Evidence Relating to the Alleged 50' Road and Easement

There is no fifty foot wide road adjoining the Gooldy Parcel. (R. p. 404; R. p. 378; R. pp. 160:14- 161:2) Likewise, there was no intent by Congaree Associates to grant Loflin or his successors in title any right to use any portion of the Adjoining Property for ingress, egress, or any other purpose. (R. p. 224:16-20.) It is undisputed that Congaree Associates did not intend the reference to the Loflin Plat in the deed to James Loflin, to create an easement. (*Id.*) The deed from Congaree Associates to Loflin referred to the Loflin Plat only for the purpose of describing the property being conveyed to Loflin, and only conveyed the property within the boundary lines shown on the Loflin Plat, *i.e.* the Gooldy Parcel. (R. pp. 228:8 – 229:13; R. pp. 394 – 395.) The subject of the "road" or any easement rights was never even mentioned or discussed. McGee testified: "Let me make this clear. I never discussed that road with Mr. Loflin or the successors to him. It never came up. Nobody ever asked me." (R. p. 224:12-15.) McGee's testimony is unequivocal that by delivering the deed Loflin to be recorded, Congaree Associates did

not intend to create an easement. (R. pp. 228:13 – 229:13.) Additionally, Congaree Associates would not have incorporated the Loflin Plat in the legal description of the deed to Loflin if it knew that one of Loflin's successors would claim rights to any easement in connection with the Gooldy Parcel. (R. p. 229:17-21.)

In addition to McGee's testimony, plats of the Adjoining Property made subsequent to the conveyance to Loflin also establish that there was never an intent to create or convey any easement rights in favor of Loflin and his successors. Robert Collingwood, the same surveyor who prepared the Loflin Plat, drew plats of the Adjoining Property for Congaree Associates in 1998 and 2002. (R. pp. 399-405; R. p. 403.) Those plats, which reflect surveys of the property of Congaree Associates itself, do not show any road, and do not contain any reference to any easements, rights of way, or any other rights favoring the owner of the Gooldy Parcel. (*Id.*) In fact, the 2002 plat was revised on March 3, 2003 (nearly one year after Gooldy purchased his land) to show easements. (R. p. 403.) Again, Collingwood did not make any references to the alleged road or easement on the revised 2002 plat. (*Id.*) Additionally, both the Strasburger Plat and the Lexington County TMS map show no references to the alleged 50' road. (R. pp. 396-398; R. p. 402.)

The 1998 and 2002 plats prepared for Congaree Associates were recorded in the Lexington County records. On the other hand, the only recorded plat containing any reference to the alleged road is the Loflin Plat. Unlike the 1998 and 2002 plats, the Loflin Plat was not a survey of Congaree Associates' property, was not a survey of the road, and was not prepared for the benefit of Congaree Associates. Collingwood also prepared a proposed plat drafted before the Loflin Plat. (R. p. 405.) But unlike the 1998

and 2002 plats, this proposed plat (a) never received final approval from Lexington County, (b) was never recorded, and (c) reflects a contemplated project that Congaree Associates did not pursue or construct. Congaree Associates never subdivided its land or sold lots referencing a recorded subdivision plat. (R. p. 206:16-21; R. p. 214:24-25.) In sum, Congaree Associates never caused a plat to be prepared and recorded that contained any reference to a 50' road.

The absence of any intention by Congaree Associates to create a road is most starkly evidenced by the fact that no road has ever existed. Neither Congaree Associates, nor any subsequent owner ever caused a road to be built. (R. pp. 208:25-209:3; R. p. 209:20-25; R. p. 232:17-19; *see also* R. p. 404.) Consequently, no road existed at the time Gooldy purchased his parcel. (R. pp. 160:14-161:2.) None of these recorded plats shows a survey of a road. Charles Meeler, who drew the Strasburger Plat and has been a registered surveyor for twenty-four years (R. p. 244:17-20), testified as follows:

> I didn't feel like there was a road there. In my professional opinion, there was no road. Lexington County required road names. I couldn't find a – I couldn't find a name for that alleged road, so, you know, to my knowledge and all the research work I did, there was no road existed there. South Carolina DOT had no record of a road there. Lexington County had no record of a road there. So I just felt like that was a part of [Congaree Associates'] property.

(R. p. 249:13-22.) Meeler's manifestly correct conclusion that no road existed was based on his review of the Loflin Plat, the 1998 and 2002 plats drawn by Collingwood, and Lexington County's TMS map that showed no road. (R. p. 265: 14-18; R. p. 271: 9-16.)

The lack of intent to create or convey any easement rights is evidenced by (1) the uncontroverted testimony of Carroll McGee of Congaree Associates that no easement was intended and none was ever even discussed, (2) the subsequent plats drawn by

Collingwood (the preparer of the Loflin Plat), Meeler, and Lexington County, and (3) the fact that no road ever existed.

IV. Expert Testimony of Rosser W. Baxter Jr.

Rosser W. Baxter Jr. is The Storage Center's well qualified expert. Baxter has been a surveyor for forty-seven years and a registered surveyor for thirty-three years. (R. p. 275:9-10; R. p. 280:2-9). In preparation for his testimony in the case, Baxter reviewed all of the relevant plats,[3] deeds,[4] and documents. Baxter also visually inspected the property (R. pp. 287:12 – 288:14; R. pp. 305:14- 307:18). Based upon this extensive body of information, as well as his forty-seven years of experience as a surveyor, Mr. Baxter testified as follows:

1. The notation of the "50' Road" on the Loflin Plat is not a survey of a road (R. p. 291:14-17; R. p. 296:21-23; R. p. 302:19-21), in part, because it fails to show any dimensions of the road (R. p. 301:14-17).
2. The "50' Road" notation on the Loflin Plat did not create a road (R. p. 291:18-23), and it was an error for the Loflin Plat to have included a reference to the alleged 50' Road when such a road never existed (R. p. 301:7-13; R. p. 312:12-15).
3. The Loflin Plat fails to meet surveying practices and standards by including the "50' Road" notation when it is not part of the Gooldy Parcel and such a road did not exist (R. pp. 302:19 – 303:2).

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[3] R. p. 377 & R. p. 396-398, R. p. 399-401, R. p. 403 & R. p. 404.

[4] R. p. 379 - 391 & R. p. 392 – 393.

4. The "50' Road" notation on the Loflin Plat does not mean that, as a matter of surveying principles that a 50' road actually exists on the property (R. pp. 291:24 – 292:3).
5. The Loflin Plat is only a survey of the 0.68 acres conveyed to Loflin from Congaree Associates and not a survey of anything outside the 0.68 acres (R. pp. 292:24 – 293:10; R. p. 294:3-6).
6. The Loflin Plat is an individual lot plat, not a subdivision plat (R. p. 296:8-13).
7. The Loflin Plat does not indicate whether the alleged road is public or private (R. p. 297:23-25).
8. The Loflin Plat does not show any access from the Gooldy Parcel to the alleged 50' road (R. p. 298:8-14) and creates no rights of access in the owner of the Gooldy Parcel (R. p. 315:2-7) and that even if the alleged road existed, the Loflin Plat does not establish that the owner of the Gooldy Parcel had the right to use the road (R. p. 298:15-18).
9. The Loflin Plat is the only public record he viewed that made any reference to an alleged 50' road (R. p. 308:13-22).

Regarding further insufficiencies contained in the Loflin Plat, Baxter testified that the Loflin Plat does not identify Congaree Associates as the owner of the Adjoining Property. (R. pp. 298:19 – 299:21.) Baxter further testified that it is improper for a surveyor to reflect conditions on property that adjoins the property being surveyed. (R. p. 300:3-14.) Gooldy offered no testimony – expert or otherwise – to dispute Baxter's expert opinion testimony.

V. Testimony Regarding Damages

Gooldy sought the following as damages: (1) reimbursement for his labor and costs in creating a "makeshift road" (R. pp. 133:2 – 134:1); (2) compensation for his lost income allegedly due to the barricading of access to the driveway (R. p. 139:2 – 10); and (3) punitive damages (R. pp. 35 - 41.). The only testimony regarding damages was proffered by Gooldy, himself. Regarding the reimbursement costs, he offered no calculation as to how his labor spent creating the "makeshift road" totals $5,000 and offered no time records or receipts to substantiate the claim. (R. p. 171:6-14.) He also asserted that the "[c]onstruction of the barrier on access to the property" caused him to lose income from his chiropractic practice. (R. p. 138:20-23.) After the trial, the Master awarded Gooldy actual damages of $2,500 for lost income due to his construction of the "makeshift" road. (R. p. 22.) Additionally, the Master granted a punitive damages award of $7,500. (*Id.*)

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 and 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 this standard to the present case, it is clear that the Master committed an error of law by failing to apply *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965), which is controlling precedent as to whether reference to a plat in a deed incorporates or conveys anything other than the metes and bounds description of the property. Additionally, there is no evidence that reasonably supports the finding that the parties intended to create an easement. Therefore, this Court should reverse the Master's Orders.

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 this standard to the present case, it is clear that the Master erred in awarding punitive damages. The record does not contain any evidence regarding the reprehensibility of The Storage Center's conduct. Moreover, the record does not support the ratio of actual to punitive damages as awarded by the Master. Finally, there are no comparative penalties that exist with respect to this matter. For these reasons, this Court should reverse the Master's award of punitive damages.

ARGUMENT

The Master erred in finding and concluding that an implied easement was created by the Loflin Plat because the deed incorporated the plat solely for the purposes of describing the boundaries of the property. South Carolina law is clear that easements

shown on a plat do not become part of the deed when the plat is incorporated for the purpose of describing the property conveyed. *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965). In addition to failing to apply this principle of law, the Master ignored the uncontradicted testimony of Carroll McGee, the other plats that showed no road, and the fact that no road has ever existed. For these reasons, this Court should reverse the Master.

I. The Master-in-Equity Committed an Error of Law in Finding the Existence of an Implied Easement Based on the Loflin Plat.

Incorporation of a plat into a deed in order to describe the property does not serve to convey or incorporate easements or other encumbrances on the plat. To the contrary, "[w]hen a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 574, 635 S.E.2d 660, 667 (Ct. App. 2006). Thus, while the deed incorporates the plat for the purpose of showing the boundaries of the property, it does ***not*** incorporate the plat for any other purpose.

The South Carolina Supreme Court addressed precisely this issue in *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965). In *Lancaster*, a deed referenced a plat that depicted a publicly recorded gas pipeline easement that ran across the owner's property. *Id.* at 466-67, 144 S.E.2d at 210. The issue was whether the depiction of the easement on the plat that was incorporated into the deed was sufficient to give notice to the purchaser of the existence of the easement. *Id.* at 466, 144 S.E.2d at 210. The supreme court held that while "the reference to the recorded plat made it a part of deed ***for the purpose of showing the boundaries, metes, courses, and distances of the***

property conveyed," *id.* at 469, 144 S.E.2d at 211 (emphasis added), it did not make the easement shown on the plat part of the deed. In other words, the plat did not become part of the deed to reflect the easement even when the easement existed within the boundary lines on the plat. *Id.* This is true even though (1) the easement was properly recorded in the public records, (2) ran across the owner's property, and (3) was depicted on a recorded subdivision plat which was incorporated into the deed's legal description.[5] *Id.* The supreme court concluded, as follows:

> A plat . . . is not an index to encumbrances, and the mere reference in a deed . . . 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 the clear intention that it so operates.

Id. Consequently, a plat that is referenced in a deed for descriptive purposes becomes a part of the deed ***only*** to provide the boundaries of the property conveyed, and therefore, references to easements on the plat do not become part of the deed, as a matter of law.

When this principle is applied to the present case, it is clear that the reference on the Loflin Plat to the "road" did not convey any rights regarding the "road" to Loflin or to any subsequent purchaser. Like the deed in *Lancaster*, the deed to Loflin (and the deed to Gooldy) incorporates the plat solely for descriptive purposes. Thus, Congaree Associates cannot as a matter of law be deemed to have created a right in a non-existent road because it signed a deed that incorporated a plat that showed a "road" that was not part of the description of the property being conveyed. The incorporation of the Loflin

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[5] In contrast, Gooldy's alleged easement is implied, and therefore, not recorded in the Lexington County records. His alleged easement does not run across or burden his property. Rather, it runs outside of the boundary lines of his property as depicted on the Loflin Plat. Finally, Gooldy's alleged easement was depicted on an individual lot plat, not a recorded subdivision plat.

Plat only serves to show that the parties intended to convey the 0.68 acres within the boundary lines on the plat. As a matter of law, the deed incorporates the Loflin Plat only to the extent of incorporating the 0.68 acres within the boundary lines. The Master could not therefore look outside of the boundary lines on the Loflin Plat to infer the existence of a road or an easement to use it. Therefore, the 50' road notation did not become part of the deed to Loflin. As a result, no basis exists to conclude that Gooldy received any rights in the alleged 50' road by means of the plat.[6] Gooldy's claim for an implied easement fails as a matter of law, and the Master committed an error of law by holding that Gooldy has an implied easement.

II. The Master-in-Equity Erred in Finding and Concluding an Implied Easement When the Common Grantor Testified that There Was No Intent to Create an Easement or Road and When No Road Was Ever Created.

The Master not only disregarded the *Lancaster* rule, but also disregarded uncontroverted testimony that there was no intent to create an easement at the time of severance. The intent at the time the deed was executed is of paramount importance when determining whether an implied easement exists. Here, the uncontroverted evidence establishes that the common grantor did not intend to create an easement. Therefore, the Master erred in finding to the contrary.

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[6] Because Congaree Associates only conveyed the 0.68 acres within the boundary lines on the Loflin Plat, Loflin and his successors had no rights with respect to the property surrounding the 0.68 acres. Therefore, Congaree Associates had every right to deny access and block any alleged rights of way at any time it owned the surrounding parcel, including the day after it executed the deed to Loflin.

A. **<u>The Creation of an Easement is a Question of Intent</u>**.

Easements by implication "must be determined as of the time of the severance of the ownerships of the tracts involved." *Boyd v. BellSouth Tel. Tel. Co., Inc.*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006). Courts examine the intentions of the parties to the conveyance to determine whether an implied easement exists. *See Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 235, 662 S.E.2d 452, 456-57 (Ct. App. 2008) (providing "the intentions of the parties to the transaction are the overriding focus when examining implied easements."). Courts must strictly construe implied easements because they are not favored "because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself." *Inlet Harbour v. S.C. Dep't of Parks, Recreation, & Tourism*, 377 S.C. 86, 91-92, 659 S.E.2d 151, 154 (2008).

When analyzing whether an implied easement exists, courts may look to the deed, in addition to other evidence of intent. *Inlet Harbor*, 377 S.C. at 91-92, 659 S.E.2d at 154. (rejecting argument that court should only look to plat reference in deed to determine whether parties intended to create an implied easement). When examining a deed, the court must focus on the intention of the parties. *See Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391 (1987). "One of the first canons of construction of a deed is that the intention of the grantor must be ascertained and effectuated if no settled rule of law is contravened." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 570, 635 S.E.2d 660, 665 (Ct. App. 2006) (internal quotation marks omitted). Consequently, courts must construe the deed "as a whole, and effect given to every part thereof, if such can be done consistently with the law." *Id.* at 571, 635 S.E.2d at 665.

"'The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution.'" *Id.* at 574, 635 S.E.2d at 667 (quoting *Lancaster*, 246 S.C at 468, 144 S.E.2d at 211 (emphasis added)). Therefore, a court is not limited to the deed to determine intent. It can look to "the circumstances surrounding its execution." Additionally, it can look to evidence after the execution of the deed because the subsequent evidence may show that prior intent to create an easement never existed.

B. <u>The Record is Devoid of Any Evidence of an Intent to Create an Easement</u>.

There is no evidence in the record that reasonably supports a finding that the common grantor had an intent to create an easement. To the contrary, the uncontroverted evidence establishes that there was never any such intent. First, the incorporation of the Loflin Plat into the deed does not evidence any intent. Second, the principal of the common grantor testified that there was no intent to create an easement at the time of severance. This testimony is only bolstered by the fact that no road was ever built, as reflected in plats drafted by the same surveyor who drafted the Loflin Plat. The record contains no evidence that there was any intent to create an easement.

1. The Deed Reveals the Lack of Intent to Convey an Easement.

As previously discussed, the *Lancaster* rule provides that easements on a plat do not become part of the deed, as a matter of law, when the plat is incorporated for descriptive purposes. *Lancaster*, 246 S.C. at 469, 144 S.E.2d at 211. The reference to the Loflin Plat in the deed to Loflin is therefore not evidence of intent to create an

easement. Congaree Associates' failure to do more than simply incorporating the plat for descriptive purposes evidences its lack of intent to create an easement. The Master erred in concluding the plat's incorporation created easement rights.

2. The Uncontroverted Testimony of the Common Grantor's Principal Underscores the Lack of Intent to Create an Easement.

Carroll McGee, the principal of Congaree Associates, unequivocally testified that there was never any intent to establish any easement rights when Congaree Associates conveyed the Gooldy Parcel to Loflin.[7] It did not intend to create or convey any rights in the alleged 50' road to Loflin. (R. pp. 228:13 – 229:6.) By referencing the Loflin Plat, Congaree Associates only intended to convey the property within the boundary lines, *i.e.* the Gooldy Parcel. (R. pp. 228:8 – 229:12.) By allowing the deed that referenced the Loflin Plat to be recorded, Congaree Associates did not intend to create an easement. (R. pp. 228:13 – 229:13.) There is no evidence to the contrary. Therefore, no easement existed at the time Congaree Associates severed its parcel and sold the Gooldy Parcel to Loflin, and therefore, no easement exists today. The Master erred in finding otherwise.

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[7] The Master should have considered the testimony of Carroll McGee with respect to the intent surrounding the alleged easement. As discussed above, because (1) an implied easement "goes against the general rule that a written instrument speaks for itself [,]" *Inlet Harbour*, 377 S.C. at 91-92, 659 S.E.2d at 154, and (2) the intention of the parties referencing a plat in a deed must be "determined from the whole instrument and the circumstances surrounding its execution[,]" *Bennett*, 370 S.C. at 574, 635 S.E.2d at 667, the Court cannot limit itself to the deed to determine the parties' intent. *See also Inlet Harbor*, 377 S.C. at 93, 659 S.E.2d at 155 ("Thus, to the extent the [claimant of the easement] urges this Court to ignore everything except the deed's reference to a residential subdivision plat, this argument fails to remain true to the principles underlying implied easements.") The Court must consider any evidence that sheds light on the parties' intent.

3. No Road Has Ever Existed.

The lack of intent is most plainly evidenced by the fact that no road was ever constructed. Neither Congaree Associates nor any of its predecessors or successors in title ever caused a road to be built. (R. pp. 208:25-209:3; R. p. 209:20-25; R. p. 232:17-19; *see also* R. p. 404.) No road existed at the time Gooldy purchased his parcel. (R. pp. 160:14-161:2.) None of the recorded plats shows a survey of a road. (R. pp. 396 - 398 & R. p. 399-401.) The Lexington County's TMS map shows no road. (R. p. 403.) The most recent surveyor of the subject property testified that no road existed (R. p. 249:10-22.), as did The Storage Center's expert (R. p. 301:7-13; R. p. 312:12-15). The Master erred in finding a road existed when there is no evidence in the record to support such a finding.

4. Subsequent Plats Show No Road.

Because no road has ever existed, it is not surprising that plats drawn after the Loflin Plat do not show any road or easement. Given that these plats were prepared for the owner of the property that supposedly contained the "road," they are strong evidence that Congaree Associates never intended to create any such road. Robert Collingwood, the surveyor who drew the Loflin Plat, subsequently drew two other plats of the subject parcels in 1998 and 2002 that did not contain any references to the alleged 50' road or any associated easements. (R. pp. 399-401 and R. p. 403.) In fact, the 2002 plat, which was drafted ***after*** Gooldy purchased his parcel in January of 2002, was revised in 2003 "to show easements," yet the revised plat shows no reference to the alleged 50' road or any associated easement. (R. p. 403.) Additionally, the Strasburger Plat drafted by Charles Meeler in 2006 did not include any references to the alleged 50' road or any

associated easement. (R. pp. 396-398.) Finally, Lexington County's TMS map, which was drafted in the 2000s, shows no road abutting the southern side of the Gooldy Parcel. (R. p. 402.) In sum, the deed's execution and subsequent actions support McGee's clear testimony that Congaree Associates never intended to create or convey in easements in favor of Loflin and his successors.

C. Any Presumption of Intent Was Rebutted by the Testimony of the Common Grantor's Principal.

To the extent that the reference to the Loflin Plat is evidence of intent, it at best creates only ***a rebuttable presumption*** of intent. Any such presumption was completely overcome by Carroll McGee's uncontradicted testimony that Congaree Associates did not intend to create or convey any easement rights to Loflin and his successors.

The Master erred in attempting to find evidence of intent by relying on cases that involve the creation of subdivisions. Deeds that reference plats that depict streets may convey to purchasers an implied easement over said streets. *See Bennett*, 370 S.C. at 594-95, 635 S.E.2d at 657-58. These easements arise in the context of subdivisions when developers divide their land, plat it into lots and streets, and then sell the lots with reference to the plat depicting the streets, thereby giving the purchasers an implied easement regarding those streets. *See, e.g., Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 925 (1965); *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 233, 662 S.E.2d 452, 455-56 (Ct. App. 2008). However, these easements are created ***only*** when the developer ***intends*** to create these easements. *See Bennett*, 370 S.C. at 594-95, 635 S.E.2d at 657-58 (holding intentions of parties in incorporating plat in deed was to show the boundaries, metes, courses, and distances of conveyed property, not to represent or warrant the width of a right-of-way); 25 Am. Jur. 2d *Easements and Licenses*

§ 21 ("An easement will be implied from a map or plat *only if it was intended by the parties* . . . ." (Emphasis added)).

Thus, even a subdivision plat that shows roads as part of the property being surveyed creates only a ***presumption*** that an easement is intended, which can be overcome by evidence that the developer did not intend to create such an easement. *Inlet Harbour*, 377 S.C. at 93, 659 S.E.2d at 154-55 (holding that mere reference to plat in deed was insufficient to create presumption that grantors intended to convey easement over nearby road). After all, "the rule applied in *Blue Ridge* is nothing more than a presumption" that can be overcome by the developer's intent. *Id.*

In the present case, even if the Master could properly conclude that the Loflin Plat created a subdivision, only a presumption that an implied easement in favor of Loflin and his successors would arise. This presumption was clearly rebutted by the testimony of Carroll McGee when he testified that Congaree Associates had no intent to create or convey an easement to Loflin. (R. pp. 228:13 – 229:13.) Moreover, McGee testified that Congaree Associates would have not executed the deed that incorporated the Loflin Plat it had understood that by doing so Loflin or any of his successors would claim that they had any easements rights because of the 50' road notation in the Loflin Plat, (R. p. 229:17-21.).

At best, Gooldy has offered evidence creating only a rebuttable presumption of an easement. This presumption is clearly overcome by the uncontroverted testimony of McGee and the other evidence discussed above. Consequently, the Master erred in finding an implied easement because the presumption was overcome as a matter of law.

D. **The Master's Reliance on an Unrecorded Proposed Plat That Shows a Road Is Misguided.**

The Master places great emphasis on an unrecorded proposed plat (R. p. 405) that shows a road to support his conclusion that Congaree Associates intended to create an easement. (R. pp. 6-7, 15-16; R. pp. 24-28.) However, this proposed plat (a) never received final approval from Lexington County, (b) was never recorded, and (c) reflects a project that Congaree Associates elected not to pursue. Congaree Associates never subdivided its land or sold lots referencing a recorded subdivision plat that contained any reference to a 50' road. (R. p. 206:16-21; R. p. 214:24-25.) The inclusion of a road on a ***proposed plat*** does not necessarily reflect any intent to create a road. Rather, it shows to the contrary because it demonstrates that while Congaree Associates considered creating a road, it elected not to do so. The absence of action by Congaree Associates to record the plat or to build the road should be inclusive as to its actual intent. Thinking about installing a road and intending to install a road are two very different concepts. The direct testimonial evidence from Carroll McGee is that Congaree Associates never built a road (R. pp. 208:25-209:3; R. p. 209:20-25; R. p. 232:17-19), and it never intended to convey any easement rights to Loflin (R. p. 224:16-20). Any inference of an intent to the contrary gleaned from the proposed plat is wholly rebutted by the testimony of McGee.

III. The Master Erred in Awarding Actual Damages Because No Easement Rights of Respondent Have Been Violated and Punitive Damages Because the Record Lacks Evidence of Reprehensibility, Evidence Supporting the Ratio Between Actual and Punitive Damages, and Reliance on Comparable Cases with Comparable Punitive Damage Awards.

Because it was error to find the existence of an easement in favor of Gooldy, it was likewise error to award any damages to Gooldy. In the absence of a basis to award actual damages, it was error to award punitive damages. The award of both actual and punitive damages should be reversed on this ground.

Moreover, the punitive damages award does not pass constitutional muster. The test to ensure that a punitive damage award satisfies due process is three-fold, as announced by the United States Supreme Court in *BMW of North America v. Gore*, 517 U.S. 559 (1996) and adopted by the South Carolina Supreme Court in *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009).

First, the trial court must "consider the degree of reprehensibility of the defendant's conduct." *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009). "Second, the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award." *Id.* at 587-88, 686 S.E.2d at 185. In other words, the court must consider the ratio between compensatory damages and punitive damages. *Id.* at 588, 686 S.E.2d at 185. Finally, the trial court must "consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Id.* at 588-59, 686 S.E.2d at 185-86.

A. No Evidence Exists to Establish That Defendant's Conduct Was Reprehensible.

When considering reprehensibility, a court must analyze whether:

1. the harm caused was physical as opposed to economic;
2. the tortuous conduct evidenced an indifference to or a reckless disregard for the health or safety of others;
3. the target of the conduct had financial vulnerability;
4. the conduct involved repeated actions or was an isolated incident; and
5. the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

Mitchell, 385 S.C. at 587, 686 S.E.2d at 185. To the extent that there is any evidence in the record regarding these factors, it does not support an award of punitive damages. First, any alleged harm suffered by Gooldy was purely economic. Second, there is no evidence of any indifference to or a reckless disregard for the health and safety of others as the purported damage was purely economic. Third, there is no evidence that Gooldy was financially vulnerable. To the contrary, the evidence reveals that both Gooldy's income and patient counts increased from 2010 to 2011, and his income in 2011 was the highest gross income he had since 2005. (R. p. 176:3-13; R. p. 177:21-25; R. p. 178:12-18.). Fourth, there is no evidence that that conduct involved repeated actions.

The Master tries to avoid the last factor by stating that the barricading of access was akin to a "continuing nuisance" and that it "impacted the Plaintiff's land every single day since it stopped traffic every single day." (R. p. 31.) However, there is no evidence in the record that denying access "stopped traffic every single day." To the contrary, Gooldy built a "makeshift road" to avoid any such issue. The Master based his actual damages award on this "makeshift road" and granted Gooldy $2,500 for the purported

loss income he experienced while building the road. (R. p. 19; R. pp. 31-32.) Moreover, the circuit court denied Gooldy's motion for preliminary injunction on the ground that "plaintiff has access to his property." (R. p. 1.) The record is replete with evidence that Gooldy and his patients had access to the property. It is devoid of evidence that traffic issues plagued Gooldy on a daily basis.

Finally, there is no evidence to support the Master's finding that the harm was the result of intentional malice, trickery, or deceit. "'Malice is defined as the deliberate[,] intentional doing of an act without just cause or excuse.'" *Pallares v. Seinar*, 407 S.C. 359, __, 756 S.E.2d 128, 131 (2014) (quoting *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006)). There is no evidence that Appellant acted without just cause given the uncertainty regarding the existence of an easement. The Storage Center blocked off access to its property to protect itself from liability. (R. p. 341: 10-14.) Blocking access was also necessary to prevent an easement by prescription from arising after the passage of time. Moreover, The Storage Center was acting, at all times, under its good faith belief that it had the unfettered right to control all of the property it owned. (R. p. 356:8-12.) It did not prevent Gooldy from accessing his property. (R. p. 1.) The Storage Center's action does not rise to the level to support a conclusion that it was acting with intentional malice. *See Jenkins v. Few*, 391 S.C. 209, 222, 705 S.E.2d 457, 464 (Ct. App. 2010) (finding defendant acted with "intentional malice" when he twice sabotaged plaintiff's fertilizer trucks and "express[ed] his desire to put [plaintiff] out of business . . . .")

In sum, the record does not support any finding that The Storage Center's conduct was reprehensible, and therefore, this Master erred in ordering a punitive damages award.

B. The Record Does Not Support The Ratio of Actual or Potential Harm to the Punitive Damage Award.

In considering the ratio of actual to punitive damages, the trial court may consider the following:

1. the likelihood that the award will deter the defendant from like conduct;
2. whether the award is reasonably related to the harm likely to result from such conduct; and
3. the defendant's ability to pay.

Mitchell, 385 S.C. at 588, 686 S.E.2d at 185. There is no evidence that The Storage Center owns or develops property elsewhere in South Carolina so that this award will deter it from like conduct in South Carolina.[8] Second, the award is not reasonably related to the harm as this Court ruled that the only harm suffered by Gooldy was $2,500. The $7,500 punitive damage award results in a 3 to 1 ratio, which is not supported by the record. Finally, there is no evidence of The Storage Center's ability to pay. Consequently, the record does not substantiate the punitive damage award, and the Master erred in ordering it.

C. No Comparative Penalties Exist in This Matter.

Because Gooldy has offered no comparative jury or civil penalties to the present matter, this Court should vacate the punitive damage award. The Master relies on *Poole*

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[8] South Carolina courts must look solely to conduct occurring within South Carolina to determine if a punitive damage award passes constitutional muster. As stated by the *Mitchell* court, "[i]n *Campbell*, the Supreme Court held that punitive damages awards may not be based on out-of-state conduct and must be related to the plaintiff's injury or damage." *Mitchell*, 385 S.C. at 586, 686 S.E.2d at 184. Continuing the *Mitchell* court continued with "'[n]or, as a general rule, does a State have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction.'" *Id.* (quoting *State Farm v. Campbell*, 538 U.S. 408, 421-22 (2003)).

v. Edwards, 197 S.C. 280, 15 S.E.2d 349 (1941) to support a punitive damage award. (R. p. 32.) In *Poole*, the plaintiff sought damages in the amount of $1500, but was awarded $450, which constituted both actual and punitive damages. *Id.* at __, 15 S.E.2d at 350-52. Gooldy has offered no other support, and therefore, this Master erred in granting a punitive damages award.

CONCLUSION

For the reasons stated above, this Court should reverse the findings and conclusions of the Master relating to the implied easement and actual and punitive damages, hold that an implied easement in favor of Gooldy does not exist as a matter of law, and enter judgment for Appellant.

SOWELL GRAY STEPP & LAFFITTE LLC

By:

Robert E. Stepp
SC Bar # 5335
Bess J. DuRant
SC Bar # 77920
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Appellant The Storage Center – Platt Springs, LLC

Columbia, South Carolina

December 9, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master In Equity

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

David R. Gooldy, Respondent,

vs.

The Storage Center – Platt Springs, LLC, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By:

Robert E. Stepp, Esquire
S.C. Bar No.: 5335
Bess J. DuRant, Esquire
S.C. Bar No.: 77920
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

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PROOF OF SERVICE

I certify that I have caused the service of the Final Brief and Final Reply Brief on Respondent David R. Gooldy by hand delivery on December 10, 2014, to his attorney of record, James Randall Davis, Esquire, Nicholson, Davis, Frawley, Anderson and Ayer, LLC, 140 East Main Street, P.O. Box 489, Lexington, South Carolina 29701.

Robert E. Stepp
S.C. Bar No.: 5335
rstepp@sowellgray.com
Bess J. DuRant
S.C. Bar No.: 77920
bdurant@sowellgray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Tel No.: (803) 929-1400

Attorneys for Appellant