

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

RECEIVED

JUN 04 2015

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP3900460

SC Court of Appeals

Myra D Chapman vs. Deer Crossing LLC

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CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP; Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed; Reversed; Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this May 6, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Marcus Wesley Meetze PO Box 81118 Simpsonville, SC 29680

✓ James C. Alexander PO Box 618 Pickens, SC 29671

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Handwritten signature: Harold P Welborn, Jr. - Deputy
Harold P Welborn, Jr. - Clerk of Court

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2015 MAY 6 AM 11 58

COUNTY OF PICKENS)

MYRA S. CHAPMAN,)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

CIVIL ACTION NO.:2013-CP-39-460

Plaintiff,)

vs.)

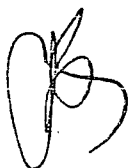
DEER CROSSING, LLC,)

Defendant.)

FINAL ORDER

This matter is before the Court for a Final Hearing on Plaintiff's Complaint. In Plaintiff's Complaint, she alleged two causes of action: (1) a Declaratory Judgment Action pursuant to S.C. Code 15-53-20 and (2) for Injunctive Relief. The relief sought in the Complaint was for the Court to (a) declare the main driveway off of Hope Road in Pickens County as a Right-of-Way of Plaintiff to the subject property owned by Plaintiff and/or (b) order the impediments to Plaintiff's access to the Right-of-Way be removed. Plaintiff additionally sought attorney's fees pursuant to S.C. Code 15-53-10.

Defendant filed an Answer and Counterclaim, denying the Plaintiff had any right to use the gravel drive or unimproved road, asserting the affirmative defenses of laches and alleging Plaintiff has suffered no harm because she could access all of her property from another specific right of way



deeded to Plaintiff when she received title to Tract B-1.1 Defendant also filed a counterclaim for frivolous proceedings.

This matter was referred to me by Order of Reference dated September 26, 2014 and under said Order I was authorized to take testimony and other evidence offered and to make appropriate findings of facts and conclusions of law as to all pending issues in this case, with authority to enter a final judgment in this case, with appeal, if any, directly to the South Carolina Supreme Court or Court of Appeals as provided in the South Carolina Appellate Court Rules.

A Final Hearing was held in this matter on February 10, 2015. Present at the Final Hearing were Plaintiff, her attorney Marcus W. Meetze, Defendant, by and through its Member Anne Roberts, and Defendant's attorney, James Alexander. Both attorneys were well prepared and made zealous arguments on behalf of their clients. The Court heard arguments and took testimony from Plaintiff, Plaintiff's witness Jeana Patterson, and Anne Roberts.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The property at issue in this matter was once part of the Estate of Jean Pope. On or about July 27, 1988, Mrs. Pope passed away. Pursuant to the Last Will and Testament of Jean Pope, approximately 73 acres of land located off of New Hope Road in Pickens County, S.C. was to be subdivided, with two (2) acres to each of the following: Mike Pope, Marty Pope, Myra Harden (Chapman), Lisa Pope, Lee Pope and Misty Chapman. The subdivision of the property was reflected in two (2) plats prepared for the Jean McGrew Pope Estate, one recorded April 30, 1990 and the other recorded on November 15, 1993 at the Pickens County Courthouse. Both plats clearly show an

¹ At the Final Hearing in this matter, Defendant moved to amend its Answer to assert the additional defense of Abandonment. Plaintiff consented to the amendment.

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“existing unimproved road” and “existing gravel road”, which Plaintiff has alleged is a right-of-way to access certain parcels of land identified in the plats and now owned by her.

I. Chapman Property

By deed of distribution of the Estate of Jean Pope recorded in the Pickens County Register of Deeds Office dated April 30, 1990 in Book 97 at Page 95, Plaintiff obtained title to the property identified as Tract B in the above-referenced plats. In addition, Plaintiff obtained a “right-of way beginning at a point on existing gravel road at a nail and running S65-38-01 W 114.38 feet to a point; thence N35-14-59W 200 feet to a point on line of Tract B; thence with a line of Tract B N54-45-01E 50 feet to the corner; thence S35-14-59E 158 feet; thence N65-38-01E 93.29 feet to a gravel road; S02-45-08E 54.52 feet to the point of the BEGINNING.” This deeded right of way was not over the existing gravel driveway and unimproved road on defendant’s property but was a separate access to the nearest public road.

By deed recorded in the Pickens County Register of Deeds Office on November 15, 1993 in Book 221 at Page 273, Plaintiff obtained title to the property identified as Tract B-1 in the above-referenced plats from the Estate of Jean Pope.

By deed recorded in the Pickens County Register of Deeds Office on March 8, 2004 in Book 798 on Page 163, Plaintiff obtained title to the property identified as Tracts D, D-1 and D-2 in the above-referenced plats. It is Plaintiff’s position that when she obtained title to Tracts D, D-1 and D-2, she also obtained the use of a right identified on the plats as a “existing unimproved road” and “existing gravel road”.²

² Title to D, D,-1 and D-2 was transferred to Betty Melissa Pope from the Estate of Jean Pope. Betty Melissa Pope transferred title to Lanelle Day (see deed recorded in the Pickens County Register of Deeds Office on September 27, 1996 in Book 341 at Page 287). By Master’s Deed recorded in the Pickens County Register of Deed on January 31,

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II. Deer Crossing Property

By deed recorded in the Pickens County Register of Deeds Office on March 21, 2011 in Book 1375 at Page 183, Defendant obtained title to the property identified as Tracts E, E-1, F, F-1 and F-2 in the plats referenced above. The deed specifically makes referenced to “a plat prepared by T. Craig Keith, Surveyor, dated 1/22/90, revised 2/13/92 and revised again 11/30/92 and recorded in Plat Book 61, at Page 14, in the Register of Deeds Office for Pickens County, South Carolina”.

Plaintiff obtained title to the above-referenced property from Anne Roberts. Anne Roberts obtained title to the property by deed from Jeffrey C. Jung, which was recorded in the Register of Deeds Office for Pickens County on November 18, 2010 in Book 1355 at Page 99. Prior to or contemporaneously with obtaining title to the property, Mrs. Roberts purchased an Owner’s Title Insurance Policy from Stewart Title Guaranty Company. The policy provides in the “EXCEPTIONS FROM COVERAGE” the policy “does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arrive by reason of [...] 3. Right of way of “Existing Gravel Road”, “Existing Unimproved Road” and thirty (30’) foot road right of way and right of way of New Hope Road and “Old Road Bed” as shown on plat referred to herein. [...] 6. Possible use of others in and to Deed Crossing Lane, “Existing Gravel Road”, “Existing Unimproved Road”, New Hope Road and “Old Road Bed”. This further establishes that Defendant was aware of the gravel road and the unimproved road (a.k.a. the “right of way”) at the time Ms. Roberts purchased the tract. Also presented into evidence was an email from the law firm which closed the transaction for Anne Roberts. Understandably, Ms. Roberts testified she would not have purchased the property without assurance that the gravel road and driveway shown on the plats were not an

2002 in Book 655 at Page 24, title was transferred to BB&T of South Carolina, who then transferred title to Plaintiff.



issue. And, the Court is aware that Ms. Roberts has taken a piece of mountain property and transformed it, through hard work and money, into a beautiful and tranquil setting. However, this recognition cannot allow the Court to issue a decision it feels would be inconsistent with the law and the evidence herein.

III. Plaintiff's Right of Way

Plaintiff argues that she is entitled to the use of the right of way identified as "Existing Gravel Road" and "Existing Unimproved Road" on the plat prepared by T. Craig Keith, Surveyor, dated 1/22/90, revised 2/13/92 and revised again 11/30/92 and recorded in Plat Book 61, at Page 14, in the Register of Deeds Office for Pickens County, South Carolina for access to tracts D, D-1, and D-2. I agree. The Court specifically notes that this case does not involve issues relating to tracts B and B-1.

A general premise of law in South Carolina is that when a deed refers to and, in fact incorporates, a recorded plat or survey, the grantee takes the property subject to items reflected on the recorded plats/surveys. Defendant argues that this general premises is limited to subdivisions with streets actually platted out and which are designed to be deeded to the county and do not apply to the facts of this case. See Town of Kingstree v. Chapman, 747 SE2d 494 (SC App. 2013), Murrells Inlet Corp. v. Ward, 662 SE2d 452 (SC App. 2008); 7 A.L.R.2d 607. I am compelled to disagree.

In Billings v. McDaniel, 217 S.C. 261, 60 S.E.2d 592, the respondents were seeking to enjoin the appellant from obstructing a certain alleyway or right of way. All of the property involved was once a portion of the estate of S.W. Mobley, deceased, which was divided into various lots on or about February 20, 1909. The property was depicted on a plat of the same date. The Court held the respondents were entitled to use of the right of way and appellant was enjoined from obstructing it. The Court stated:



according to the great weight of judicial opinion, the lot purchaser is entitled to the use of all the streets and ways, near or remote, as laid down on the plat by which he purchases. This being the law, the land owner, when he lays off his land into lots, streets, and alleys, and has the same platted, and then sells lots with reference to the map thereof, must be presumed to know that he thereby dedicates such streets and alleys to the use of such lot owners and the public; and the rights of the lot owner are not to wait in abeyance until the public authorities see fit to accept and take charge of such streets and alleys, but he is at once entitled to have all such streets and alleys opened for his use, necessary to the enjoyment of his property. Id. at. 594.

In Billings, the Court was not examining streets actually platted out and/or which were designed to be deeded to the county. I can find no authority which limits the holding of the Billings or the general premise of law in South Carolina to subdivision plats. Here the gravel drive and unimproved road are noted on the plats, although not the typical defined "platting" seen in subdivision cases. As such, the Court finds that since the drive and road are clearly noted on the plats, the principal in Billings applies and that the Defendant took the property subject to the clearly denoted gravel drive and road. This conclusion is further supported by the fact that the drive and road were and still are physically visible on the tract itself.

In this matter, all deeds reference the plat prepared by T. Craig Keith, Surveyor, dated 1/22/90, revised 2/13/92 and revised again 11/30/92 and recorded in Plat Book 61, at Page 14, in the Register of Deeds Office for Pickens County, South Carolina. The plat reflects the right of way identified as "Existing Gravel Road" and "Existing Unimproved Road". Because the deed transferring title to the property to Defendant refers to the plat which reflects the right of way, Defendant, despite the work and transformation of the tract into its current state, took title to the property subject to the right of way.

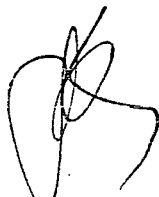
IV. Deeded Right of Way

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Defendant argues that to the extent there is a right of way over Defendant's property, it is limited to a platted right of way referenced in a survey by Dunn on July 28, 2008. I disagree. There was no explanation given as to who or why or even when such a right of way was done. Further the testimony established that this right of way was never "on the ground" but apparently only on the survey. Finally, this right of way only runs to the tract of land identified as F-1 and does not service the rest of the tracts as does the gravel road shown on the plat prepared by T. Craig Keith, Surveyor, dated 1/22/90, revised 2/13/92 and revised again 11/30/92 and recorded in Plat Book 61, at Page 14, in the Register of Deeds Office for Pickens County, South Carolina.

V. Doctrine of Laches/ Abandonment

Defendant also argues that, to the extent that the gravel road exists on the 1990 and 1993 recorded surveys, its use has been abandoned or that the doctrine of laches applies that would negate Plaintiff's use of the gravel road. Unfortunately for Defendant, the evidence simply doesn't support either claim. First, photographs that were introduced show that even before Ms. Roberts and Deer Crossing started the work they have undertaken, there was an existing road "on the ground". Second, the testimony from Plaintiff, who has had family members on the tracts in question since her mother owned all the land in question, was that for many years, the gravel road was and still is the only access used to get to the tracts in the rear of the property. Third, the testimony of Jeanna Patterson, a sister of Plaintiff and who formerly owned one of the tracts, was that the gravel road, from as far back as she could remember, was the access family used to get to all tracts on the back of the property. She testified she regularly used the gravel road up until she sold her tract in 2003. Fourth, Plaintiff testified that she last used the gravel road in question in 2009 and that it was both obvious and driveable.

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VI. Responsibility for Maintenance

In light of the ruling herein, the Court finds it proper that Plaintiff and Defendant are jointly responsible for the future maintenance and upkeep of the right of way. In the event such work is reasonable and necessary, the initiating party seeking such maintenance or upkeep shall notify the other party of such intentions in writing within 21 days of such work being done and provide a clear explanation of anticipated work and an estimate of the costs involved. The non-initiating party shall then respond in writing within 10 days and provide their own estimate for the work to be done, in the event the non-initiating party is of the opinion that the scope and cost of the work anticipated by initiating party is excessive. If the parties are unable to agree as to scope and/or cost, then either or both parties shall file a motion with the Court and shall be entitled to an expedited hearing on the scope and cost of the work to be done. The non-prevailing party in court shall pay all costs and fees of the prevailing party in pursuing the motion. Further, Defendant is not responsible for any costs incurred in the improvement or maintenance of the right of way past the far left corner of Tract F-2.

Defendant has sought expenses for past work and improvements to the gravel drive and road. The Court declines to allow the same based upon Plaintiff not having input into the work done and based upon the lack of evidence of such amounts expended by Defendant.

VII. Attorney's Fees

Plaintiff has requested attorney's fees pursuant to the Court of Appeal's holding in South Carolina Electric & Gas Company vs. Hartough, 654S.E.2d 87 (Ct. App. 2007) and S.C. Code Ann 15-53-100). I find that the statutes involving declaratory judgment actions, while allowing for recoverable costs in certain cases, do not provide a basis for recovery of attorney fees in this matter.

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the road identified as "Existing Gravel Road" and "Existing Unimproved Road" on the plat prepared by T. Craig Keith, Surveyor, dated 1/22/90, revised 2/13/92 and revised again 11/30/92 and recorded in Plat Book 61, at Page 14, in the Register of Deeds Office for Pickens County, South Carolina is a right of way over Defendant's property; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is entitled to use of the above-referenced right-of-way and subject to reasonable use (including speed of vehicles) and reasonable hours of use. In no way may this Order be interpreted as providing any type use by members of the public. Rather, it is a narrow use granted to Plaintiff and her invitees; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall remove, within 35 days of this Order, any impediments that prevent Plaintiff's use of the above-referenced right of way and/or provide Plaintiff with means to access the gate; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff and Defendant are jointly responsible for the maintenance and upkeep of the right of way. Before incurring any costs with regards to the maintenance and upkeep of the right of way, each party will contact the other for written permission and approval on the conditions as noted above. Defendant is not responsible for any costs incurred in the improvement or maintenance of the right of way past the far left corner of Tract F-2.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff and Defendant and their agents, heirs and/or representatives are restrained and enjoined, subject to the contempt powers of this Court, from abusing or misusing the right-of-way in any way and from harassing or interfering with the party in any manner. Any abuse of the rights of way, any damage done to either

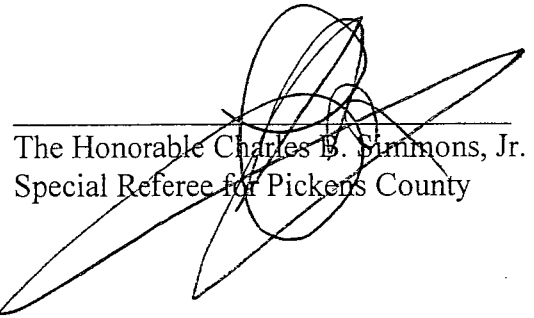
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party's property, or any violations of the terms of this Order are subject to the contempt power of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's right to utilize the right of way will terminate upon her sale of tracts D, D-1, and D-2.

IT IS SO ORDERED.

5/5, 2015
Greenville, South Carolina


The Honorable Charles B. Simmons, Jr.
Special Referee for Pickens County