

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SEP 04 2015
SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Richard B. Ness, Special Referee

Appellate Case No. 2014-000204
Civil Action No. 2009-CP-38-01170

Patrick J. Williams, Frank J. Wallmeyer, and
Mary B. Wallmeyer, Respondents,

v.

F. Carlisle Smith and First Citizens Bank
and Trust Company, Inc., Defendants,

Of Whom F. Carlisle Smith is Appellant.

**RESPONDENTS' RETURN TO
APPELLANT'S PETITION FOR REHEARING**

Respondents Patrick J. Williams, Frank J. Wallmeyer, and Mary B. Wallmeyer (collectively, "Williams"), through their undersigned counsel and pursuant to Rule 240(e), SCACR, submit this Return to Appellant's Petition for Rehearing (the "Petition").

INTRODUCTION

Williams and Appellant F. Carlisle Smith are the owners of two adjoining parcels of land in Orangeburg County, South Carolina. They dispute the location of the boundary line that divides their two parcels (identified on appeal as the "Williams Property" and the "Smith Property"). The matter was tried before a Special Referee,

Richard B. Ness, who entered an Order of Judgment on October 3, 2013 (the “Order”) finding, among other things, that the boundary line between the Williams Property and the Smith Property is as depicted on a plat entitled “A Plat of Disputed Property Line State of South Carolina County of Orangeburg Goodland Township Prepared for Patrick J. Williams.” The parties have referred to the boundary line depicted on this plat as the “Stroman Line.” Smith moved to alter or amend the judgment, but the Special Referee denied the motion and affirmed the Order. Smith timely appealed, and the parties subsequently briefed and argued their respective positions to this Court. On August 19, 2015, this Court issued its opinion affirming the Order. Smith filed his Petition on September 3, 2015. For the reasons set forth herein, the Petition should be denied.

ARGUMENT

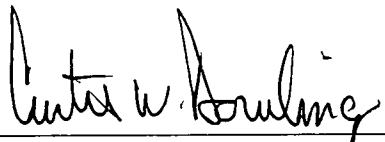
Pursuant to Rule 221(a), SCACR, rehearing may be appropriate if the court has “overlooked or misapprehended” one or more points raised by the losing party. However, petitions for rehearing are usually “dismissed with a simple order to that effect” because “they contain nothing but a ‘rehash’ of what the losing party has said before, matters which the court has already considered well and disposed of.” Arnold v. Carolina Power & Light Co., 167 S.E. 234, 238 (S.C. 1933). A comparison of the Petition to Appellant’s briefs reveals that it is exactly the type of petition described in Arnold.

- Section I of the Petition more or less repeats Section III of Appellant’s Final Brief verbatim.
- Section II of the Petition more or less repeats Section I of Appellant’s Final Brief verbatim.
- Section III of the Petition more or less repeats Section II of Appellant’s Final Brief verbatim.

“[T]he purpose of a petition for rehearing is not just to have the case tried in [the appellate] court a second time.” Arnold, 167 S.E. at 238. Yet that is precisely what Smith seeks in his Petition. The propositions he raises “have already been presented to this Court in the printed briefs and in the oral argument” and “have been considered by this Court in the preparation of the filed opinion.” Hicks v. Hicklin, 197 S.E. 390, 393 (S.C. 1938). They have not been overlooked or misapprehended by this Court, and thus the Petition should be denied.

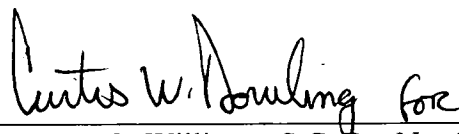
CONCLUSION

For the above-stated reasons, Respondents Patrick J. Williams, Frank J. Wallmeyer, and Mary B. Wallmeyer respectfully request that Appellant’s Petition for Rehearing be denied.



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PROOF OF SERVICE

I, the undersigned employee of Barnes, Alford, Stork & Johnson, LLP, do hereby state that I have on September 4, 2015, served a copy of the **RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING** upon all other parties, through their attorney(s) of record, by depositing copies of the documents in the United States Mail, first class, sufficient postage prepaid, with the return address(es) clearly noted, addressed as follows:

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