STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS CASE NUMBER: 2012-CP-08-3013
Cynthia Jacqueline Jackson Mills, Plaintiff, vs. Janet Lynne Hudson, Henry Russell Jackson, and Mildred Jackson Hudson, Defendants.	**ORDER DENYING MOTION**

On July 23, 2015, this Court heard argument on Plaintiff's Motion to Reconsider Final Order or in the Alternative for a New Trial, filed May 6, 2015. Plaintiff moved for this Court to reconsider its Final Order in this case enrolled on April 27, 2015.

Plaintiff's attorney Christopher S. Inglese, Esq. appeared, along with his client. Defendants' attorney Patrick R. Watts, Esq. appeared, along with his clients.. After due deliberation upon the record, the argument the parties presented, and the applicable law this Court concludes that Plaintiff's Motion should be denied in all respects.

FINDINGS OF FACT

Throughout this Order documents referred to as recorded are recorded in the Berkeley County Register of Deeds office. Probate records referred to are filed in the Berkeley County Probate Court.

By deed dated January 21, 1969, recorded in Book A-194, page 79, four of Thomas and Ella Jackson's six children conveyed to one other of their children John H. Jackson all their right, title and interest in and to a parcel of land stated to contain "two (2) acres, more or less, and butting and bounding...on the north by lands of Ruben Jackson, formerly part of the same tract;...being the remaining portion of a tract of land said to contain ten and 3/10 (10.3) acres conveyed to Thomas Jackson by D.E. Hill by deed dated January 20, 1923, and of record in the Office of the Clerk of Court for Berkeley County in Book A-51, at Page 227,...."

Recitals in this deed state that Thomas Jackson had died intestate twenty two years earlier in 1947 and that Ella Jackson had died intestate twenty one years earlier in 1948.

On or about May 12, 1974, John H. Jackson died testate. His duly probated Will dated

July 28, 1970, devised "the two (2) acres of land which I purchased from the Heirs of my late father, the late Thomas Jackson" to his wife Eunice Jackson for and during the term of her life, and from and after her death or upon her remarriage, devised the two (2) acre parcel of land unto his daughter Jackie Jackson. All parties agree that Jackie Jackson is the Plaintiff.

Fourteen years after her father acquired the property described above Plaintiff acquired it by deed dated November 30, 1983, recorded December 16, 1983, in Book A-537, page 172. Her deed uses the same legal description as used in her father's 1969 deed.

Twenty three years later, on November 28, 2006, Plaintiff sued Ruben Jackson's nonagenarian widow Learline Jackson and granddaughter Janet L. Hudson over the property she got in 1983. That lawsuit is numbered 2006-CP-08-2581. Janet L. Hudson is also a Defendant in the present case.

In her Complaint Plaintiff described the real property the subject of her lawsuit simply with the same legal description found in her 1983 deed and her father's 1969 deed. She alleged that the defendants were depriving her of use of the property by placing a mobile home on it.

On December 11, 2007, the former Berkeley County Master in Equity, Honorable Robert E. Watson conducted the trial on the merits of Plaintiff's lawsuit.

On March 12, 2008, Judge Watson issued his Final Order Denying Plaintiff Relief and Quieting Title in Defendant Learline Jackson, enrolled March 13, 2008. Plaintiff's Exhibit 10.

Plaintiff did not seek reconsideration of that order. She did not appeal. It is now the law among these parties.

According to that Order Plaintiff introduced a plat she had had commissioned that delineated a 1.207 acre lot designated as Lot 2. This plat also delineated a parcel designated as Lot 3 with Plaintiff's name underneath that. The plat states that this Lot 3 contains 1.887 acres. Plaintiff's Exhibit 11.

According to Judge Watson's order Plaintiff testified that she believed Lot 2 belonged to her. As proof she offered up various deeds from Thomas Jackson and the Last Wills and Testaments of various Jackson family members. Plaintiff also testified that should the Court find her to be the owner of the parcel titled Lot 2 that would then give her access to U.S. Highway 17-A from her property. One can reasonably surmise that the various deeds and Wills Plaintiff

presented to this Court, were, or should have been, the same ones she presented to Judge Watson. Plaintiff's Exhibits 4 through 8 inclusive.

A remainderman of Learline's property Henry Russell Jackson testified in 2007 and an attorney Rutherford P.C. Smith, Esq. testified as an expert witness on Learline's behalf. Judge Watson's order summarizes their evidence. Mr. Jackson is a Defendant in this case.

Judge Watson found that the lands in question were part and parcel of lands of Learline Jackson (life estate) based upon the testimony of all the witnesses and the deeds and documents examined by the court.

By deed dated September 21, 1935, recorded September 21, 1935, in Book A-60, page 274, Thomas Jackson conveyed to Ruby Jackson a parcel of land described by named adjacent landowners and stated to contain 3 acres. All parties to this case agree that "Ruby" was Learline's husband Ruben. Plaintiff's Exhibit 7A.

The exhibits in this case show that the Lot 2 Plaintiff claimed in 2006 lies within this property conveyed to Ruben. Plaintiff's Motion acknowledges that.

This deed to Ruben was a general warranty deed. It reserved no easement of any sort.

Four years after Judge Watson enrolled his order that Plaintiff never owned Lot 2, six years after Plaintiff commenced her lawsuit asserting title to Lot 2 and 77 years after Ruben Jackson took title by general warranty deed to the land that included Lot 2, Plaintiff commenced this present lawsuit asserting an easement for access across Lot 2 upon the theory of necessity.

Plaintiff proceeded upon two prongs. First, "Plaintiff...had always believed that she owned (as part of her father's grant in the 1969 deed) the lower portion of the property subsequently adjudicated in the 2006 lawsuit to be Ruben Jackson's property." "Plaintiff (and her father before her) always assumed, believed and used the property that was the subject of the 2006 lawsuit as if it were part of her lands." "[T]he 2008 order (from the 2006 lawsuit) operated as the date of severance, based on the fact that 2008 order adjudicated...that the lands... previously believed by the Plaintiff to be part of her tract, were actually part of the lands conveyed to Ruben Jackson in 1935...."

Secondly, "if the 1935 deed into Ruben Jackson included all of the area of land in question, as determined by the 2008 order, then this conveyance may have been the moment of

severance, which actually rendered the Plaintiff's tract landlocked...." "[T]he Plaintiff's tract and the tract conveyed to Ruben Jackson in the 1935 deed derived from the lands conveyed to Thomas Jackson in 1923." "Thomas Jackson never owned the lands to the South of the Plaintiff's tract, ...Thomas Jackson conveyed-out the lands to the East and West of the Plaintiff's tract during his lifetime." "[A]fter the conveyance from Thomas Jackson to Ruben Jackson in 1935, the residual lands of Thomas Jackson (the Plaintiff's tract) would have been rendered absolutely landlocked, with no access to a public right-of-way." The quoted sentences above are the Plaintiff's, taken from pages 4 and 6 of her Motion to Reconsider Final Order to which this Order applies.

CONCLUSIONS OF LAW

Judge Watson's 2008 order did not operate as a severance of any of Plaintiff's property. First, it lacks certain technical elements of a conveyance. For instance, it lacks two witnesses. It lacks words of grant, bargain and sale. Section 27-7-10, Code of Laws of South Carolina (1976) as amended (Code).

More fundamentally Judge Watson's order does not actually convey any land away from the Plaintiff. The order found that Plaintiff never had title to that land to begin with. Simply put, Plaintiff went to court asserting, "I believe I own that property. It is part of the land my father got in 1969 and that I got in 1983." Judge Watson ruled, "No, you failed to prove you own that property. To the contrary, all the evidence indicates you and your father never owned that property. Your grandfather Thomas deeded that property to your uncle Ruben in 1935." All that Judge Watson's order did was disabuse Plaintiff of her <u>belief</u> that she and her father ever owned the land. *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 433 S.E.2d 875 (Ct. App. 1992).

There was never any actual, physical unity of title between the land Plaintiff got in 1983 and the land she claimed in 2006. Judge Watson's order took no land that she had title to and conveyed it to the defendants in that case. Thus there was no severance. Thus Judge Watson's order gave rise to no easement of access by necessity across Defendants' land in favor of Plaintiff's land. *Paine Gayle Properties, LLC v. CSX Transp. Inc.*, 400 S.C. 568, 735 S.E. 2d 528 (Ct. App. 2012). *Brasington v. Williams,* 143 S.C. 223, 141 S.E. 375 (1927). Plaintiff provided this Court with no law on easement by necessity based upon imaginary unity of title.

Plaintiff is not entitled to an easement of access by necessity based merely upon Thomas

Jackson's 1935 conveyance to Ruben Jackson. That conveyance indeed left Thomas Jackson's remaining property landlocked. However, the law recognizes that a piece of land can become landlocked and not be entitled to any easement for access to a public right of way. A grantor who landlocks himself by conveying the exterior portion of his property by general warranty deed that does not expressly reserve an access easement does not automatically get the easement by implication. "The *necessity* does not create the right to a way of necessity (*Cannon v. Dick*, 170 N.C. 305, 87 S.E. 224), but is a *circumstance* that indicates the contemplated intent of grantor and grantee,..." *Brasington*, 141 S.E. 375, 381. "If, on the other hand, the *quasi* servient tenement is granted, while the *quasi* dominant tenement is retained, no easement is reserved, by implication,...". *id.*, p. 383.

The reason the law will not ordinarily recognize an implied reservation of an access easement is that it holds the general warranty in the grantee's deed in higher regard. "These rules are founded on the principle that a grantor shall not derogate from his own grant." *id.*

Apparently, the law will recognize an implied reservation of an access easement in favor of a grantor's landlocked remainder under narrow conditions. "[N]o easement is reserved, by implication, *unless it is strictly* (italics added) necessary to the enjoyment of the property retained." *id.*

> So it is evident that, in determining the degree of necessity required to establish such an easement, a marked distinction is made between a case in which the *grantor* is claiming the easement over the land conveyed, as being expressly or impliedly reserved to him, and a case in which the *grantee* is claiming the easement over the land remaining in the title of the *grantor*. Under the cases cited, particularly *Crosland v. Rogers*, 32 S.C. 130; 10 S.E., 874, it is held that it is *less difficult* for the plaintiff in the circumstances last stated to establish his easement of necessity than for the plaintiff in the circumstances first stated, for in that event the plaintiff would be claiming in derogation of his own grant, while in the other the grantor will be presumed to have granted that without which the land conveyed by him could not be enjoyed. *id.*, p. 383.

The facts of the *Brasington* case illustrate the kind of circumstances that might support a finding of strict necessity permitting the implication that a grantor reserved an access easement

across his grantee's property without expressing same in their deed. There the interior property lay inside an oxbow of a wide river. One can reasonably conclude that the circumstances surrounding the transaction must be so substantial and obvious that the grantee and his successors could never deny that grantor had no other choice but to cross grantee's land.

Therefore, Plaintiff needed to provide evidence of the circumstances surrounding the 1935 conveyance that demonstrated a strict necessity for Thomas Jackson's property to have that access easement across Ruben's property and nowhere else. Plaintiff failed to provide any such evidence.

Plaintiff most probably could not have done that, anyway. Such evidence very likely no longer exists after 77 years. There would be, for example, no direct eyewitness testimony about how Ruben and Thomas were handling the access issue or what physical conditions affected Thomas' property. Plaintiff's expert witness scoured the public records and found nothing there.

On the other hand, Defendants in this case presented evidence of present day conditions indicating no geographical or topographical impediments to accessing a public right of way across lands to the east, south or west of Plaintiff's property. Their evidence actually revealed that there is a county maintained dirt road a short distance to the south of Plaintiff's property with high ground in between.

South Carolina's Statute of Repose bars Plaintiff from any relief. By this action and her 2006 action she has attempted to disrupt a *status quo* that has been in place and observed and relied upon by Ruben Jackson and his immediate family for over three quarters of a century. Section 15-3-380. Code of Laws of South Carolina (1976) as amended. *All Saints Parish Waccamaw v. The Protestant Episcopal Church*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004).

South Carolina's Statute of Limitations for filing actions to recover real property also bars Plaintiff from relief. In 1983 she took title to land said to contain two acres. In this action and in her 2006 action she testified that she <u>believed</u> the property conveyed to her by that 1983 deed included an additional acre, and that additional acre afforded her access to U.S. Highway 17-A. She waited over twenty years before seeking judicial declarations affirming her beliefs. Thomas Jackson himself had 12 years from 1935 to 1947 to resolve the access issue on the public record. Thomas Jackson's children, including John H. Jackson, had twenty two years between 1947 and 1969 to resolve the access issue on the public record. Section 15-3-340,

Code.

South Carolina's doctrine of *res judicata* bars Plaintiff from any relief. In her 2006 case she testified that should the Court find her to be the owner of the parcel titled Lot 2 in her survey that would then give her access to U.S. Highway 17-A from her property. She was concerned about access then. One can reasonably conclude that someone claiming outright title to three acres when her deed states she got only two would be mindful that the Court might find she did not own the additional acre. She had the opportunity to ask the Court for an easement over Lot 2 if the Court found she did not own it. Judge Watson's order indicates she did not ask. The *res judicata* doctrine mandates that she should have. Since she did not in 2006, she cannot now. "Under the doctrine of res judicata, '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'" *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999).

Having reached the conclusions as set forth above on the core elements of Plaintiff's case this Court need not address any of the other matters set out in her motion.

ORDERS

Based upon the foregoing findings and conclusions, together with those set forth in this Court's Final Order in this case enrolled April 27, 2015, this Court,

ORDERS Plaintiff's Motion to Reconsider Final Order or in the Alternative for a New Trial filed May 6, 2015, denied in all respects.

AND IT IS SO ORDERED.

9/4, 2015
Moncks Corner, SC

Honorable Dale E. Van Slambrook
Master in Equity
Berkeley County