

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
Civil Action No. 2014-CP-15-0211

GENE F. BUNTON, SR.; )  
RANDOLPH L. BUNTON, SR.; and )  
MARY ELIZABETH B. BRELAND; )

Plaintiffs, )

vs. )

LOIS BLACKWELDER, )

Defendant. )

ORDER

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SC Court of Appeals

### Introduction

1. This action was commenced upon the March 13, 2014 filing of a complaint by the Plaintiffs that stated causes of action of nuisance and breach of contract against the Defendant.
2. The Defendant filed an answer that asserted several defenses against the Plaintiffs' causes of action and stated counterclaims for Partition and Confirmation of Access and Utility Easement Against the Defendants.
3. Upon consent of the Plaintiffs and the Defendant, a non-jury trial was held on May 26, 2015.
4. At trial, the Plaintiffs abandoned all of their causes of action as set out in the complaint and the Defendant abandoned her cause of action for a partition and confirmation of access easement, leaving only the Confirmation of a Utility Easement Against the Defendants at issue.
5. The Court heard testimony on the issue and, deciding that sufficient evidence to issue a final order had not been presented, ordered that the deposition be taken

of a Coastal Electric Cooperative employee who was knowledgeable about the placement of electric power lines.

6. Joseph Frakes, an employee of Coastal Electric Cooperative who determines the placement of electric power lines in Colleton County, was deposed on July 16, 2015 and the transcript of that deposition was submitted to the Court.

#### **Findings of Fact**

7. On March 31, 1938, Maggie Brown conveyed three and three fourths (3.75) acres of real property in Colleton County, South Carolina to Jewel Bunton a/k/a Jewel R. Hudson Bunton (hereinafter "Jewel Bunton"), which deed was recorded in the Office of the Clerk of Court for Colleton County, South Carolina (hereinafter the "Register of Deeds") in Deed Book 76 at Page 433 (hereinafter "the Brown Tract").
8. Jewel Bunton was Married to Joseph Curtis Bunton.
9. On August 8, 1961, Dorothy Hudson Jones conveyed an adjoining two and three fourths (2.75) acres of real property to Jewel Bunton, which deed was recorded with the Register of Deeds in Deed Book 129 at Page 247 (hereinafter "the Jones Tract") (hereinafter the Brown Tract and the Jones Tract shall be collectively known as "the Bunton Property").
10. On or about October 11, 1974, Jewel Bunton conveyed to Gene F. Bunton approximately one and one fourth (1.25) acres of the Bunton Property, which deed was recorded with the Register of Deeds in Deed Book 179 at Page 235 (hereinafter "the Gene F. Bunton Parcel").

11. In 1990, Joseph Curtis Bunton suffered from illness that necessitated a level of care that neither he nor Jewel Bunton was able to provide. The Defendant and her husband, James C. Bunton, son of Jewel Bunton and Joseph Curtis Bunton, Sr., took it upon themselves to care for Joseph Curtis Bunton, Sr. despite great expense to themselves and their business and with little to no help from James C. Bunton's siblings, the Plaintiffs.
12. Joseph Curtis Bunton lived with James C. Bunton, Sr. and Defendant in their home on James Island, South Carolina until his death in January 1992.
13. On or about April 23, 1991, Jewel Bunton conveyed approximately sixty-one hundredths (0.61) of an acre of the Bunton Property to Gene F. Bunton and Margaret L. Bunton, which deed was recorded with the Register of Deeds in Deed Book 523 at Page 48. This portion of real property was situated on the eastern boundary of the Gene F. Bunton Parcel.
14. In 1994, Jewel Bunton became ill and could no longer care for herself.
15. In May 1994, at the urging of the Plaintiffs, Defendant and James C. Bunton, Sr. moved from their home on James Island, South Carolina to live with Jewel Bunton at 277 Sandy Dam Lane, Walterboro, South Carolina (hereinafter the "Home Place").
16. Defendant and James C. Bunton, Sr. lived with and cared for Jewel Bunton until the date of Jewel Bunton's death.
17. On June 21, 1995, Jewel Bunton died testate with her daughter, Barbara B. Ward, predeceasing her.

18. Following the death of Jewel Bunton, Defendant and James C. Bunton, Sr. returned to their home on James Island.

19. In the latter part of 1995, the Plaintiffs asked Defendant and James C. Bunton, Sr. to return to the Home Place, make it their permanent residence, see to its maintenance and upkeep, and pay any expenses associated with its maintenance and upkeep.

20. Defendant and James C. Bunton, Sr. made the Home Place their permanent residence and lived there until James C. Bunton, Sr.'s death on March 19, 2012. Defendant continued to live at the Home Place until September 2012.

21. The will of Jewel Bunton was submitted for probate with the Probate Court of Colleton County, South Carolina and assigned Probate Case No. 1995-ES-15-00204.

22. Paragraph VIII of Jewel Bunton's will states:

I give, devise and bequeath four (4) acres of land, to my children, JAMES C. BUNTON, SR., MARY ELIZABETH "BETTY" BUNTON BRELAND, BARBARA B. WARD AND RANDOLPH L. BUNTON, SR. to be divided into one (1) acre each. No provision as to real estate is being made for my son, GENE F. BUNTON, as I have already conveyed to him a portion of my real property.

23. The Plaintiffs and James C. Bunton, Sr., retained Robert L. Heirs, S.C.R.L.S., to prepare a subdivision plat of the Bunton Property, which plat is entitled "Plat of Tracts of Land Situated About Three Miles Southeast of Walterboro Surveyed for (1) James C. Bunton; (2) Betty B. Breland; (3) Randolph L. Bunton; [and] (4) Gene F. Bunton," and recorded with Register of Deeds in Plat Book 31 at Page 739 and in Plat Book 31 at Page 778 (hereinafter "the Subdivision Plat").

24. On November 18, 1996, pursuant to Paragraph VIII of Jewel Bunton's will, the Personal Representatives of the Estate of Jewel Bunton conveyed Tract 1 as shown on the Subdivision Plat to James C. Bunton, Sr., which deed was recorded with the Register of Deeds in Deed Book 750 at Page 248.
25. On December 28, 1996, Mary Elizabeth Bunton Breland, Randolph L. Bunton, Sr., and Gene F. Bunton quitclaimed all of their interest, if any, in Tract 1 as shown on the Subdivision Plat to James C. Bunton, Sr., which quitclaim deed was recorded with the Register of Deeds in Deed Book 756 at Page 133.
26. James C. Bunton, Sr. died testate on March 19, 2012 and his will was probated in the Probate Court for Colleton County, South Carolina, and assigned Probate Court Case No. 2012-ES-15-00092 (hereinafter "the Estate of James Bunton").
27. On August 29, 2012, the Personal Representative for the Estate of James Bunton conveyed all of James Bunton's interest in Tract 1 to the Defendant, which Deed of Distribution was recorded with the Register of Deeds in Deed Book 2047 at Page 314.
28. Defendant is the sole owner in fee simple of Tract 1 as shown on the Subdivision Plat.
29. Defendant and the Plaintiffs own the tract labeled "HOME LOT" on the Subdivision Plat in equal shares as cotenants.
30. Plaintiff Randolph L. Bunton, Sr. and Karen S. Bunton are the fee simple owners of the real property labeled "WAYNE D. WARD N/F", "TRACT 3", and "RANDOLPH L. & KAREN S. BUNTON" on the Subdivision Plat.

31. Plaintiff Gene F. Bunton, Sr. is the fee simple owner of the real property labeled "GENE F. BUNTON", "GENE F. & MARGARET BUNTON", "TRACT 4", and "TRACT 2" on the Subdivision Plat.
32. There is a Coastal Electric Cooperative electric power line that runs along the northern side of Sandy Dam Lane, which borders the real property owned by Plaintiffs Gene F. Bunton, Sr. and Randolph L. Bunton, Sr.
33. Electric service is provided to the real property owned by Plaintiffs Gene F. Bunton, Sr. and Randolph L. Bunton, Sr. and the Home Place via the above-referenced Coastal Electric Cooperative electric power line.
34. There is no electrical power service to Tract 1.
35. After vacating the Home Place in late 2013, Defendant became interested in having electric power lines run to Tract 1 so that she could fully enjoy her real property.
36. Defendant spoke to the Plaintiffs about running an electric power line to Tract 1 across the real property owned by Plaintiff Gene F. Bunton, Sr. or Plaintiff Randolph L. Bunton, Sr.
37. The Plaintiffs vehemently denied Defendant's request to have electric power lines run to Tract 1.
38. During his deposition, Joseph Frakes testified that there were several options for delivery of electricity to Tract 1.

39. Joseph Frakes described the following options for placement of electric power lines:

- a. An overhead power line running from the power line now in place along Sandy Dam Lane along the western side of the Access Road as shown on the Subdivision Plat and terminating on Tract 1. Several trees now standing on the western side of the Access Road would have to be trimmed or removed to install this power line. This option is described on pages 13 through 17 of the Deposition of Joseph Frakes and sketched by Joseph Frakes on Defendant's Exhibit 2 to said deposition.
- b. An underground power line running from the power line now in place along Sandy Dam Lane placed under the eastern side of the Access Road and terminating on Tract 1. Except for a short installation period, the placement of this underground power line would in no way interfere with the Plaintiffs' use of the Access Road or other parts of their real property. This option is described on pages 17 through 20 of the Deposition of Joseph Frakes and sketched by Joseph Frakes on Defendant's Exhibit 4 to said deposition.
- c. An underground power line running from the power line now in place along Sandy Dam Lane placed along the western side of the Access Road on real property owned by Plaintiff Randolph L. Bunton, Sr. and terminating on Tract 1. The placement of this underground power line would in no way interfere with the Plaintiffs' use of the Access Road or other parts of their real property. This option is described on pages 20

through 22 of the Deposition of Joseph Frakes and sketched by Joseph Frakes on Defendant's Exhibit 5 to said deposition.

- d. An overhead power line running from an electric power pole now in place on the real property owned by Plaintiff Gene F. Bunton, Sr. and terminating on Tract 1. Placement of this power line would necessitate the repositioning of the guy line on the power pole now in place, upgrading the transformer on that pole, and trimming several trees between the existing power pole and Tract 1. This option is described on pages 22 through 26 of the Deposition of Joseph Frakes and sketched by Joseph Frakes on Defendant's Exhibit 6 to said deposition.
- e. An overhead power line running from the power line now in place along Sandy Dam Lane fifteen feet to the west of the Access Road as shown on the Subdivision Plat across real property owned by Plaintiff Randolph L. Bunton, Sr. and terminating on Tract 1. Moving the power line farther to the west would eliminate the necessity to trim or remove trees near the access road. This option is described on pages 29 through 30 of the Deposition of Joseph Frakes and sketched by Joseph Frakes on Defendant's Exhibit 8 to said deposition.
- f. An overhead power line running from an electric power pole now in place on the real property owned by Plaintiff Randolph L. Bunton, Sr., running across Tracts 2 and 3 as shown on the subdivision plat parallel to their boundary with the real property designated as belonging to L.G. Fishburne, Jr. on the Subdivision Plat and terminating on Tract 1.

Placement of this power line would minimally encumber the real property owned by the Plaintiffs. This option is described on pages 31 through 35 of the Deposition of Joseph Frakes and sketched by Joseph Frakes on Defendant's Exhibit 9 to said deposition.

g. The replacement of the overhead power line running between the existing poles on the parcels labeled "HOME LOT" and "Gene F. & Margaret Bunton" with a higher capacity power line and the installation of an underground power line that begins at the pole on the Home Lot and terminates on Tract 1. This option is described on pages 35 through 44 of the Deposition of Joseph Frakes and sketched by Joseph Frakes on Defendant's Exhibit 10 to said deposition.

40. Each of the prospective power line placements, as described by Joseph Frakes during his deposition, would cause a minimal amount of, if any, interference with the Plaintiffs' use and enjoyment of their real property.

41. Defendant will bear the cost, if any, of the placement of electric power lines.

42. It was the intention of Jewel Bunton that the devisees named in her will be able to fully use and enjoy the real property devised to them.

43. Electric power lines run to each of the tracts devised by the will of Jewel Bunton, with the exception of Tract 1.

44. As a result of the Plaintiffs' obstruction of Defendant's efforts to place electric power lines to Tract 1, Defendant is unable use and enjoy Tract 1 without electricity.

## Conclusions

45. No adequate remedy at law exists to attain the full end and justice in this case.
46. The foundation of equity jurisprudence is to fashion a remedy where none exists at law. 12 S.C. Juris. Equity § 8.
47. Equity will not suffer a wrong to be without a remedy. *State ex rel. Daniel v. Strong*, 185 S.C. 27, 192 S.E. 671 (1937). The Plaintiffs' obstruction of Defendant's efforts to have full use and enjoyment of her land is a wrong that natural justice demands be corrected.
48. Equity regards and treats that as done which in good conscience ought to be done. *Wilkie v. Philadelphia Life Ins. Co.*, 187 S.C. 382, 197 S.E. 375 (1938). Had Jewel Bunton known that her children, the Plaintiffs, would work so diligently to keep the Defendant, who lovingly cared for Jewel Bunton and Joseph C. Bunton, from using and enjoying Tract 1, there can be little doubt that she would have amended her will to provide for electric power lines to be run to Tract 1. Had the Plaintiffs done in good conscience what ought to have been done, electricity would have been run to Tract 1 in 2013.
49. Equity will treat all members of a class equally and distribute benefits equally. *Nash v. Gardner*, 232 S.C. 215, 101 S.E. 2d 283 (1957), *Myers v. Sinkler*, 235 S.C. 162, 110 S.E.2d 241 (1959). "The maxim is of broad application, and should never be departed from or in any wise rejected unless it is clearly not intended to apply." *Myers* 235 S.C. at 175, 110 S.E.2d at 247. The language of Paragraph VIII of Jewel Bunton's will is clear in its intent: that each of her children should receive an equal share of real property. It would be irrational and

unconscionable to conclude that she intended that the land be distributed equally, but not equally distribute the devisees' ability to use and enjoy the land.

50. As the Defendant has suffered a wrong at the hands of the Plaintiffs, the Plaintiffs have not done in good conscience what ought to be done, and the Defendant has not been treated as an equal in the class of devisees of the will of Jewel Bunton, equity requires that Defendant have electrical power available to her on Tract 1.

51. As equity requires that Defendant have electrical power available to her on Tract 1, it is necessary that an injunction be issued, pursuant to the powers granted this court by South Carolina Constitution Article V, § 20, that

- (a) enjoins the Plaintiffs from preventing Defendant from having electric power lines installed in conformity with one of the descriptions provided by Joseph Frakes in his deposition, enumerated in Paragraph 39, sub-paragraphs "a" through "g" above, and
- (b) requires the Plaintiff or Plaintiffs across whose real property the power lines are run to grant utility easements to Coastal Electric Cooperative for the installation and maintenance of said power lines.

#### Order

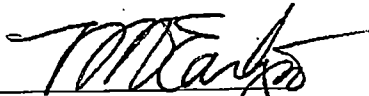
It is therefore ORDERED as follows, to wit:

- A The Plaintiffs are enjoined from preventing Defendant from having electric power lines installed in conformity with one of the descriptions provided by Joseph Frakes in his deposition, enumerated in Paragraph 38, sub-paragraphs "a" through "g" above;

B The Plaintiff or Plaintiffs across whose real property the power lines are run are required to grant utility easements to Coastal Electric Cooperative for the installation and maintenance of said power lines; and

C Plaintiffs are further enjoined from preventing or obstructing in any way the Defendant's use and enjoyment of Tract 1 as shown on the Subdivision Plat.

So ORDERED on Sept 22, 2015.

  
Hon. Doyet A. Early, II  
Judge, Fourteenth Judicial Circuit  
Colleton County Court of Common Pleas