

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Hamilton Duncan, Individually)
and Hamilton Duncan, as Personal)
Representative of the Estate of)
Christine A. Duncan)

C/A No.: 2013-CP-40-5740

Plaintiff,)

ORDER
(ending action)

vs.)

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Roy Drasites and)
Elizabeth Drasites,)

JAN 08 2016

Defendants.)

SC Court of Appeals

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RICHLAND COUNTY

The above-captioned matter was referred to the undersigned as Master-in-Equity for Richland County by Order of Reference executed by the Honorable L. Casey Manning. A final hearing was held on April 28, 2015. Present at the hearing were Michael W. Tighe, Esquire and W. Taylor Stanley, Esquire for the Plaintiff; James Randall Davis, Esquire for the Defendants; and Defendant Roy Drasites. Also present and testifying were surveyors Dennis Johns, Larry Smith, and Carl Bostick (collectively, the "Surveyors"); and Tommy Boozer of SCE&G Lake Management.

PROCEDURAL HISTORY

Plaintiff, Hamilton Duncan, filed his Summons and Complaint on September 23, 2013. This matter was referred to the undersigned as Master-in-Equity by Order of Reference dated December 9, 2013. By Consent Order dated June 19, 2014, Hamilton Duncan, as Personal Representative of the Estate of Christine A. Duncan was added as a Plaintiff in this action. Also by Consent Order dated June, 19, 2014, Plaintiff was granted leave to amend his Complaint. In his Amended Complaint, Plaintiff seeks an injunction enjoining the Defendants and their agents from obstructing or otherwise interfering with the Plaintiff's right-of-way easement and from

unreasonably discouraging prospective buyers; and to dismantle and remove rip rap, water pipe(s) and other obstructions blocking Plaintiffs' right-of-way easement. Plaintiff also seeks an Order declaring (a) that the Easement extends to the edge of Defendants' Property; (B) that Plaintiff is entitled to maintain the Easement in such a way that it will be traversable by vehicle towing a water craft and enable Plaintiff to launch the water craft from the Easement.

The parties agree that the Easement Deed (as hereafter defined) is an express grant of an easement across the Defendants' property. It is the Plaintiff's contention that the easement at issue is for the purpose of ingress, egress and access to Lake Murray, as is mentioned in the grant of the easement itself and that the easement may be used by vehicle towing light watercraft. Contrary to this, it is the Defendants' position that either (i) the easement does not run the entire length of the Defendants' southwest property line, leaving some portion of the Defendants' property free from the burden of the easement, which would prevent Plaintiff from reaching the lake without trespassing on Defendants' Property, or (ii) in the alternative, that the purpose of the easement was to gain access to a dirt road shown on a plat of Woodtrail Subdivision which road allegedly connected to Johnson Marina Road. For the reasons set forth herein, I find the Defendants' contentions unpersuasive, and find Plaintiff has met his burden of proof.

At a hearing of this matter on October 16, 2014, the parties agreed to the appointment of a third surveyor (in addition to the one each party had previously retained). The results of the third party surveyor to be binding upon the parties with regard to the extent of the Easement. Thereafter, the Court found the results of the surveyor panel inconclusive and required a hearing on this matter.

To the extent necessary, Findings of Fact shall be deemed Conclusions of Law and Conclusions of Law shall be deemed Findings of Fact. Based upon the pleadings, motions, arguments of counsel, testimony and evidence in the case, I find the following:

FINDINGS OF FACT

1. Plaintiff, Hamilton Duncan, Individually and as Personal Representative of the Estate of Christine A. Duncan is a citizen and resident of the State of West Virginia, County of Kanawha.

2. Defendants Roy Drasites and Elizabeth Drasites are citizens and resident of the State of South Carolina, County of Richland.

3. By General Warranty Deed dated June 28, 2002 and recorded in the Office of the Register of Deeds for Richland County in Deed Book 680, Page 383, A. Charles Craft, III and Manita B. Craft conveyed a fee simple interest to Plaintiff and his wife, Christine A. Duncan in 1312 Silver Point Road, Chapin, South Carolina 29036, more particularly described as follows (the "Duncan Property"):

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in R. M. C. Office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 208.93 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in

Deed Book D393 at page 130, being more particularly shown on the plat above referred to.

Said lands are identical to the lands described in that certain deed from Jay Clark Case to A. Charles Craft, III and Manita B. Craft, dated December 15, 1995 and found recorded in the RMC office for Richland County in Deed Book 1293 at page 688.

4. The reference in the deed recorded in Book 680 at Page 383 contains a scrivener's error, and should read as follows:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in R. M. C. Office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 208.93 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at Page 150, being more particularly shown on the plat above referred to.

Said lands are identical to the lands described in that certain deed from Jay Clark Case to A. Charles Craft, III and Manita B. Craft, dated December 15, 1995 and found recorded in the RMC office for Richland County in Deed Book 1293 at page 688.

5. Christine A. Duncan passed away a citizen and resident of the State of South Carolina, County of Richland. Plaintiff Hamilton Duncan has been appointed Personal Representative of the Estate of Christine A. Duncan.

6. By deed dated March 17, 2014, recorded in the Office of the Register of Deeds for Richland County on April 1, 2014, in Book 1936 at Page 1081, and corrective deed dated

September 24, 2014, recorded in the Office of the Register of Deeds for Richland County on October 2, 2014, in Book 11431 at Page 18, Plaintiff Hamilton Duncan, individually conveyed his interest in the Duncan Property to Hamilton Duncan as Personal Representative of the Estate of Christine A. Duncan.

7. The origin of the easement at dispute in this case is deed dated July 28, 1976 and recorded August 3, 1976 in Deed Book D393 at Page 150 (the "Easement Deed"), wherein Woodberry Utilities, Inc. conveyed to Jay Clark Case a "non-exclusive Right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" [the Drasites Property] and extending from the property line of Jay Clark Case to the 360° degree contour of Lake Murray" (the "Easement").

8. The Easement Deed contains a scrivener's error and was intended by the parties to read "non-exclusive Right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360-foot contour of Lake Murray."

9. The Easement has been included in each and every deed conveying the Duncan Property, including the deed to the Plaintiff.

10. By deed dated August 11, 1995, recorded August 14, 1995 in the Office of the Register of Deeds for Richland County in Deed Book 1273 at Page 242, Silver Pointe Cove Associates, Inc. conveyed a fee simple interest in 1310 Silver Point Road, Chapin, South Carolina to Roy R. Drasites and Elizabeth P. Drasites, Defendants herein, more particularly described as follows (the "Drasites Property"):

ALL THAT CERTAIN PIECE, PARCEL, OR LOT of land, together with improvements thereon, if any, situate, lying and being located in the County of Richland, State of South Carolina, being shown and delineated as Lot 1, on a final plat of Silver Pointe Cove subdivision, by CTH Surveyors, Inc., dated April 3,

1995, revised April, 25, 1995, and recorded in the Office of the RMC for Richland County in Plat Book 55 at Page 7241, and further being shown on a plat prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc., dated August 9, 1995, to be recorded and having such metes and bounds as shown on said latter plat.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

11. Both surveys referred to in the deed to the Defendants show the Easement running along the entire southeastern property line of the Drasites Property.

12. By deed dated October 28, 1960, and recorded in the Office of the Register of Deeds for Richland County on May 1, 1963 in Book 354 at Page 554 (the "SCE&G Deed"), South Carolina Electric & Gas Company conveyed what is commonly known as the fringe lands to Betty A. Thompson, a predecessor in title to the Defendants. "Fringe lands" means any property acquired for Lake Murray, but found to be above the 360-foot contour; in this case, it was deeded to the landowner bordering Lake Murray, one of the parties' predecessors in title.

13. The SCE&G deed specifically references the 360-foot contour, as it then existed, as the property line of the fringe lands therein conveyed. Therefore, the 360-foot contour was also the property line of the Drasites Property at the time of its conveyance to the Drasites.

14. The cove upon which the Drasites Property and Easement are situate was excavated during the period of the Defendants' ownership of the Drasites Property. This excavation, along with erosion changed the location of the 360-foot contour on the Drasites Property and Easement so that, at the time of the litigation, the 360-foot contour was located where the Drasites' sea wall was placed.

15. During the excavation, the iron pipes referenced in the SCE&G Deed were removed.

16. With the exception of one plat (a plat prepared for the Defendants for the instant litigation by Mr. Bostick), each and every plat in the record in both the Plaintiff's and Defendants' chains of title shows the Easement extending to the edge of the Drasites Property line.

17. The plat referenced in the deed into the Defendants as "prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc., dated August 9, 1995..." was recorded on August 14, 1995 in the Register of Deeds for Richland County in Plat Book 55 at Page 9030. The deed into the Defendants also references another plat, which also shows the Easement extending to the edge of the Drasites Property line.

18. The subdivision plat prepared for R.J. Marsh, Inc., dated July 2, 1981 and recorded in the Office of the Register of Deeds in Plat Book 53 at Page 0170 (the "Woodtrail Subdivision Plat") shows the Easement extending to the edge of the Drasites Property. The Woodtrail Subdivision Plat, however shows the end of the Easement near an alleged dirt road leading to Johnson Marina Road.

19. As testified at hearing, the Woodtrail Subdivision was never developed as shown on the Woodtrail Subdivision Plat. The land depicted is not configured as reflected thereon. In short, the Woodtrail Subdivision has never been brought to fruition.

20. Defendants assert that the purpose of the Easement is to reach an alleged dirt road beyond the Drasites Property. In making this argument, Defendants have essentially admitted that the Easement extends to the edge of the Drasites Property's boundary line and that it was for use by vehicles. However, as Mr. Tommy Boozer testified, because the alleged road would be below the 360-foot contour, no one could have used the road as of the date of the easement because it would have been within the lake borders. Based upon the evidence and testimony in

the record, and upon my view of the Easement, Drasites Property and Duncan Property, I find and conclude that no road existed in 1976, for which the Easement could provide ingress, egress and access.

21. Therefore, I find and conclude that purpose of the Easement was and is for access to Lake Murray, not for access to an alleged dirt road which connected to Johnson Marina Road, as alleged by the Defendants.

CONCLUSIONS OF LAW

1. While the determination of the existence of an easement is a question of fact in a law action, the question of the extent of an easement is an action in equity. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 231, 662 S.E.2d 452, 455 (Ct. App. 2008). An easement is a right which one person has to use the land of another for a specific purpose. *Kelley v. Snyder*, 396 S.C. 564, 572, 722 S.E.2d 813, 817 (Ct. App. 2012).

2. The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it. *Smith*, 312 S.C. at 467, 441 S.E.2d at 336. "An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. It also passes with the dominant estate upon conveyance." *Rhett*, 401 S.C. at 492, 736 S.E.2d at 881. An easement runs with the land of the dominant estate although a conveyance of the dominant estate does not expressly mention it. *Id.*

The Easement Deed creates an easement for the benefit of the Duncan Property. The Easement therein created has one terminus on the Duncan Property as shown on the plats in evidence, and, as stated in the grant, the Easement exists "extending from the property line of Jay

Clark Case (grantee) to the 360° degree [foot] contour of Lake Murray.” The Easement concerns the property and is essentially necessary for the enjoyment of the Duncan Property, specifically to access Lake Murray. I therefore find and conclude the Easement is an easement appurtenant; the Duncan Property is the dominant estate and the Drasites Property is the servient estate.

3. Whether a grant in a written instrument creates an easement and the type of easement created are to be determined by ascertaining the intention of the parties as gathered from the language of the instrument; the grant should be construed so as to carry out that intention. *Smith v. Commissioners of Public Works of City of Charleston*, 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct. App. 1994). A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. *Rhett v. Gray*, 401 S.C. 478, 490, 736 S.E.2d 873, 879 (Ct. App. 2012). Both deeds and easements are valid to subsequent purchasers when they are recorded. See *Murrells Inlet Corp.*, 378 S.C. at 232, 662 S.E.2d at 455.

At one time, all three of the Surveyors determined the Easement reached the boundary of the Drasites Property with Lake Murray. The easement itself mentions Lake Murray, and does not reference any road. As reflected by the evidence and testimony in the record, as well as by the reference to Lake Murray in the Easement Deed itself, at the time the Easement was granted, Lake Murray was in existence. The evidence in the record, the testimony, and the language of the Easement Deed itself, all lead me to find and conclude that the purpose of the Easement is and was to access Lake Murray and burdens the entire length of the Drasites Property from the Duncan Property to the original boundary of the Drasites Property with Lake Murray.

4. Where a deed describes land as shown on a certain plat, such becomes part of the deed. *Murrells Inlet Corp.*, 378 S.C. at 232, 662 S.E.2d at 455. Recordation of a plat containing

an easement is sufficient to show that the owner intended to dedicate that easement. *See Id.* at 234, 662 S.E.2d at 456.

With the exception of the Bostick plat prepared for this litigation, the plats in evidence all show and delineate the Easement as extending from the Duncan Property to the property line of the Drasites Property with Lake Murray. Specifically, the Defendants took title to the Drasites Property with reference to a plat showing the Easement extending to the edge of the Drasites Property and thereafter recorded plats showing the Easement extending to the edge of the Drasites Property. The Defendants' own surveyor, Mr. Bostick has shown the Easement running all the way to the end of the Drasites Property line in at least two surveys. It was not until this litigation occurred that Mr. Bostick prepared a survey for the purpose of showing the Defendants' contentions which shows the Easement stopping short of the Drasites Property line. Prior to the current dispute, the Defendants never objected to or interfered with the use of the Easement by the owners of the Duncan Property. I find that based on the plats and evidence in the record, the equities require me to find that the Easement extends to the edge of the Drasites Property line.

5. The unrestricted grant of an easement conveys all such rights as are incident or necessary to its reasonable and proper enjoyment. *Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 28 S.E.2d 545, 549 (1943). "The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. In other words, a grant or reservation of an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated." *Id.* The owner of the easement cannot materially increase the burden of the servient estate or impose thereon a new

and additional burden. *Rhett*, 401 S.C. at 493, 736 S.E.2d at 881. "Although to the extent of the easement, the rights of the easement owner are paramount to those of the landowner, the easement owner's rights are not absolute but are limited, so the owners of the easement and the servient tenement may have reasonable enjoyment. The owner of an easement has all rights incident or necessary to its proper enjoyment, but nothing more." *Id.*

The Easement was granted by deed dated July 28, 1976 and recorded August 3, 1976 in the Register of Deeds for Richland County in Deed Book D393 at Page 150. Lake Murray was in existence as of the date of the Easement Deed, as reflected by the reference to Lake Murray in the Easement Deed, as well as by testimony in the record. The Easement, by its express grant, is twenty feet wide, well in excess of what is needed solely for pedestrian access. I further find and conclude that the intention of the parties to the Easement Deed was that the owners of the Duncan Property be granted the right of ingress, egress, and access to Lake Murray, including by vehicle towing light watercraft. I find that the use of the Easement, including use by vehicle to launch watercraft, is incident or necessary to the proper use and enjoyment of the Easement. I find that this is not an additional burden on the land of the servient estate, the Drasites Property, and that such use by vehicle is as little burdensome to the use contemplated by the grant of the easement. The Plaintiff does not contend he has any right or intent to build a dock or ramp on the Easement.

6. In the absence of an agreement, the owners of the servient estate are under no duty to maintain and repair an easement for the benefit of the dominant estate. *Hayes v. Tompkins*, 287 S.C. 289, 294, 337 S.E.2d 888, 891 (Ct. App. 1985) (citing *Richardson v. Jennings*, 184 N.C. 559, 114 S.E. 821 (1922)). The owner of an easement has the duty to keep it in repair. *Id.*; see also 12 S.C. Jur. Easements § 25 ("Ordinarily, the owner of the dominant tenement has the duty

to keep the easement in repair.”). The general rule is that “in the absence of a contract stipulation or prescriptive right to the contrary, the owner of an easement is liable for costs of maintenance and repairs where it exists and is used and enjoyed for the benefit of the dominant estate alone.” *Richardson v. Jennings*, 184 N.C. 559, 114 S.E. 821, 823.

As previously stated, Plaintiff is entitled to use the Easement to access Lake Murray, including use by vehicle towing and launching light watercraft. Plaintiff is the owner of the dominant estate; Defendants are the owner of the servient estate. Because I find and conclude that the use of the Easement includes access to Lake Murray by vehicle towing and launching watercraft, I further find and conclude that the Plaintiff, and his successors in title, are entitled to maintain the Easement in such a way as will allow this use. Any maintenance which Plaintiff, or his successors in title, perform to allow this use, will be at such party’s expense.


THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

- a. The Easement burdens the entire length of the Drasites Property;
- b. The purpose of the Easement is for ingress, egress, and access to Lake Murray;
- c. Included within the Plaintiff, and his successors in title’s rights, to use the Easement is the right to vehicular use of the Easement, including by vehicle towing and launching light watercraft;
- d. Plaintiff and his successors in title are entitled to maintain the Easement in such a way that will allow use of the Easement, including by vehicle towing and launching light watercraft; to the extent Plaintiff, or his successors in title, perform such maintenance, it shall be at their expense.
- e. Defendants are hereby enjoined from discouraging any prospective purchasers of the Duncan Property

AND IT IS SO ORDERED.

July 20
May 2015
Columbia, South Carolina

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Joseph M. Stickland
Master-in-Equity, Richland County